

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Opinion No. 5633 (S.C. Ct. App. Filed March 27, 2019)

William Loflin and Leslie Loflin, ...Appellants/Respondents,

v.

BMP Development, LP, Balsam Mountain Group, LLC,
Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago Title
Insurance Company, and Counsellor Title Agency, Inc., ... Defendants,

Of Whom

Chicago Title Insurance Company is Respondent/Petitioner.

APPENDIX
Volume II of II

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
14TH JUDICIAL CIRCUIT
C.A. NO.: 2013-CP-07-1807

2 COUNTY OF BEAUFORT

3 WILLIAM LOFLIN and LESLIE
4 LOFLIN,

5 Plaintiffs,

6 vs.

7 BMP Development, LP, Chicago
8 Title Insurance Company, and
9 Counsellor Title Agency, Inc.,

10 Defendants.

COPY

11 DEPOSITION OF RANDY HERRON, P.L.S.

12 January 23, 2015

13 11:40 a.m.

14 ---oOo---

15 Taken by the Plaintiffs
16 Pursuant to Notice
17 At Herron Associates
Waynesville, North Carolina

18 Reported by:

19 Mary K. Stepp, Court Reporter
20
21
22
23
24
25

44

1 property owners up there that have called us to get a
2 survey of their property. We've actually gone down there
3 and done a survey of property and supplied it to them,
4 but it's been very few.

5 Q. Okay. When would the 2/6/2002 plat have been
6 delivered to Bob Burnette, if it showed revisions, and
7 you said the process was --

8 A. It would have been about that same day.

9 Q. About the same day?

10 A. Yeah, because, I mean, as soon as we made
11 revisions, we either called him to pick them up or run
12 them up by his office.

13 MR. SOLOMONS: Okay. I don't think I have
14 anything else. Thank you for your time. Hamlin may have
15 a question.

16 EXAMINATION

17 BY MR. O'KELLEY:

18 Q. Mr. Herron, can you hear me?

19 A. Yes.

20 Q. Okay. I'm Hamlin O'Kelley. I'm representing
21 Chicago Title in this case. Mr. Herron, can you tell
22 me -- and, again, I'm asking this because I can't see
23 what you all have marked. Which of the exhibits before
24 you, besides Exhibit No. 2, have been recorded in either
25 the courthouse or the Register of Deeds office in Jackson

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

WILLIAM LOFLIN and LESLIE
LOFLIN,

Plaintiffs,

vs.

CASE NO. 2013-CP-07-1807

BALSAM MOUNTAIN PRESERVE
COMMUNITY ASSOCIATION,
CHICAGO TITLE INSURANCE
COMPANY, and COUNSELLOR
TITLE AGENCY, INC.,

Defendants.

DEPOSITION OF: SARAH FRANCES ROBERTSON

DATE: January 6, 2014

TIME: 10:01 a.m.

LOCATION: One Beaufort Town Center
2015 Boundary Street, Third Floor
Beaufort, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TRISHA M. THOMAS

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scheduledepo.com

4

1 A. Thank you. ~~ACIENS~~ a test. 4 Clarks
2 Summit Drive, Suite 200, Bluffton, 29910. I guess

3 Q. How long have you been with the McNair
4 firm?

5 A. I took full-time position in 1999.

6 Q. And before that -- strike that!

7 When were you admitted to the bar?

8 A. 1997.

9 Q. What did you do between 1997 and 1999?

10 A. I worked for a company called Executive
11 Jet.

12 Q. Was there a time when you practiced
13 with Mr. Bethea at his law firm, as opposed to the
14 McNair Law Firm?

15 A. I did work for Bethea, Jordan &
16 Griffin.

17 Q. When did you work for Bethea, Jordan &
18 Griffin?

19 A. That was in 1999.

20 Q. Okay. So how long did you work for --
21 I'm going to call it the Bethea firm if that's okay
22 with you. How long did you work for the Bethea
23 firm?

24 A. I started in 1999 and then we merged
25 with McNair in 2004.

6

1 A. 23-B Shelter Cove Lane, Suite 400,
2 Hilton Head.

3 Q. Now, when the Bethea firm and the
4 McNair firm merged in 2004, what Bethea lawyers
5 became lawyers for the McNair firm besides you and
6 Mrs. Bethea?

7 A. To my knowledge all of them did.

8 Q. Well, how many were there? Just take a
9 guess.

10 A. Between ten and 20.

11 Q. Okay. And after the merger was
12 Mr. Bethea head of the real estate section, at

13 least in Bluffton.

14 A. Yes.

15 Q. -- of the McNair firm?

16 A. In Bluffton, yes.

17 Q. In Hilton Head too?

18 A. I'm not sure that we had a designated
19 head of the real estate for the entire office.

20 MR. SPEIGHTS: Let's go off the record.

21 (Off-the-record conference.)

22 BY MR. SPEIGHTS:

23 Q. When the merger took place, did you
24 have real estate documents at the Bethea firm in
25 Hilton Head and real estate documents at the

1 about the same one?

2 Q. We're talking about the same one.

3 A. It's a title insurance agency that our
4 firm owns, and that is the company through which we
5 process title insurance policies.

6 Q. So if you obtain title insurance
7 through Chicago Title, you would go through
8 Counsellor Title?

9 A. Counsellor Title is an agent for
10 Chicago Title, yes.

11 Q. Is it an agent for any other title
12 companies?

13 A. It is.

14 Q. What other title companies?

15 A. I'd have to check my list. First
16 American, off the top of my head. We have written
17 for a number of different companies over the years.

18 Q. Who is the top person at Counsellor
19 Title within the McNair firm?

20 A. I would probably say Cary Griffin,
21 C-A-R-Y.

22 Q. Is that a man or a woman?

23 A. That is a man.

24 Q. Where is he located?

25 A. He's in our Hilton Head office.

12

1 Q. Is Counsellor Title a corporation?

2 A. I believe so.

3 Q. And what is the principal place of
4 business of Counsellor Title?

5 A. I think it is our Hilton Head office.

6 Q. And is it your understanding that
7 Counsellor Title is owned entirely by the McNair
8 Law Firm?

9 A. I believe so.

10 Q. Describe what you have done for
11 Counsellor Title other than securing title
12 insurance for various clients.

13 A. I am a licensed agent for and my
14 license is with Counsellor Title. As an agent I do
15 all the normal activities that any other title
16 agent would do, I suppose: Review title, prepare
17 title insurance commitments, title policies.

18 Q. Did Mr. Bethea have the same
19 relationship?

20 A. To my knowledge.

21 Q. Did he have any position with
22 Counsellor Title other than the same relationship
23 you had with Counsellor Title?

24 A. He may have been an officer of the
25 entity.

22

1 MR. STEPP: I did.

2 THE WITNESS: Okay.

3 MR. STEPP: But you're free to answer
4 the question, if you can.

5 BY MR. SPEIGHTS: Now, what was the question?

6 Q. You can answer unless he instructs
7 you --

8 A. Making sure I understood where we were.

9 As a title agent we do have an
10 obligation through the title policy with the
11 insured.

12 Q. Were you involved in locating the
13 documents that Mr. Stepp produced in connection
14 with your deposition?

15 A. I was not.

16 Q. Do you know who he dealt with to locate
17 the documents that he produced?

18 A. From what I've seen, yes.

19 Q. Who?

20 A. Mr. Garner and Anne Dietz.

21 Q. Anne who?

22 A. Anne, A-N-N-E; Dietz, D-I-E-T-Z.

23 Q. And is she located in Columbia?

24 A. She's in -- Anne is in our Hilton Head
25 office.

48

1 here on behalf of Chicago Title, and these may be
2 redundant. I apologize.

3 Can you just clarify to the best of
4 your knowledge the relationship between Counsellor
5 Title Agency and Chicago Title Insurance Company?

6 A. Counsellor Title is an agency for -- we
7 have an agency with Chicago Title.

8 Q. Okay.

9 A. Chicago Title is one of our
10 underwriters.

11 Q. Okay. At the time of the closing in
12 question -- we're going to refer to the purchase
13 here -- were you a licensed title agent in South
14 Carolina through Counsellor Title Agency?

15 A. Yes.

16 Q. And to the best of your knowledge, at
17 the time of the same closing was Mr. Bethea a
18 licensed title insurance agent through Counsellor
19 Title Agency?

20 A. Yes.

21 MS. BREES: That is it. Thank you very
22 much.

23 EXAMINATION

24 BY MR. SPEIGHTS:

25 Q. Why did you need a property

COPY

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF BEAUFORT
4 WILLIAM LOFLIN and
5 LESLIE LOFLIN,
6 Plaintiffs,
7 vs. CASE NO. 2013-CP-07-1807
8 BMP DEVELOPMENT, LP, BALSAM
9 MOUNTAIN GROUP, LLC, COWARD,
10 HICKS & SILER, PA, J.K. COWARD, JR.,
11 CHICAGO TITLE INSURANCE COMPANY,
12 and COUNSELLOR TITLE AGENCY, INC.,
13 Defendants.

11 DEPOSITION OF: J.K. COWARD, JR.
12 DATE: September 28, 2015
13 TIME: 10:11 AM
14 LOCATION: Speights & Runyan
15 2015 Boundary Street
16 Beaufort, SC
17 TAKEN BY: Counsel for the Plaintiffs
18 REPORTED BY: MARIE H. BRUEGGER, Registered
19 Professional Reporter, CRR
20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES
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1 Q. Have you ever talked on the telephone
2 with Mr. Loflin?

3 A. I don't recall.

4 Q. Have you ever talked on the telephone
5 with Mrs. Loflin?

6 A. I don't recall.

7 Q. I'm not going to explore relationships
8 at the moment, but I'm going to go through a list
9 of names and ask whether you know them or not.

10 Jim Chaffin?

11 A. Yes.

12 Q. Jim Anthony?

13 A. I know of him. I've never met him.

14 Q. Craig Lehman?

15 A. Yes.

16 Q. Bob Tufts?

17 A. I don't recall.

18 Q. Bruce Fine?

19 A. I know him.

20 Q. Laura Locklair?

21 A. The name's familiar, but I don't know
22 in exactly what context.

23 Q. Ms. Locklair represented the
24 association in this lawsuit before the association
25 was dismissed. Do you recall ever talking to her

1 financial officer and Mr. Bethea.

2 Q. Do you recall the name of the chief
3 financial officer?

4 A. I do not. I would recognize it if you
5 said his name.

6 Q. Was it Mr. Blaisdell, or something
7 similar to that?

8 A. That name is familiar, but I don't
9 think that was the name.

10 Q. Have you ever visited Chechesee?

11 A. If I recall, I think you drive through
12 Chechesee to get to Spring Island.

13 Q. I believe you drive through
14 Callawassie to get to Spring, but you pass by
15 Chechessee.

16 A. Okay, all right. I've not -- I didn't
17 stop. I went straight to Spring Island.

18 Q. Did you meet with anyone other than
19 Mr. Bethea while you visited Spring Island?

20 A. Actually, I didn't meet him at Spring
21 Island; I met him at his law office in Bluffton.

22 Q. Where did you stay at Spring Island?

23 A. They had a guest cottage that Heather
24 Baker and I stayed at.

25 Q. Was that a yellow one or a red one or

1 another color?

2 A. Oh, I have -- I do not recall. I'm
3 sure it was muted and blended in with the scenery.

4 Q. When was it that you visited Spring
5 Island?

6 A. 2001.

7 Q. And when you were at Mr. Bethea's law
8 firm, did you meet with anyone other than
9 Mr. Bethea?

10 A. I think at the time he had a female
11 associate that I might have met then.

12 Q. Was that, by any chance,
13 Ms. Robertson?

14 A. It was.

15 Q. How long did you meet with Mr. Bethea
16 and/or Ms. Robertson?

17 A. Probably an hour.

18 Q. How many nights -- and I believe you
19 said Ms. Baker was with you?

20 A. Uh-huh.

21 Q. You'll have to say yes or no for this
22 court reporter.

23 A. Yes.

24 Q. Did Ms. Baker meet with you and
25 counsel?

1 A. Yes.

2 Q. How many nights did you stay at Spring
3 Island?

4 A. Two, I think.

5 Q. Did you play any golf?

6 A. No.

7 Q. So I don't want to misunderstand your
8 visit. During your visit to Spring Island, did
9 you do anything professionally, other than meeting
10 with Mr. Bethea and/or Ms. Robertson for about an
11 hour?

12 A. I think so. It would be hard to
13 describe exactly. It'd be hard to bill for. They
14 basically wanted us just to understand the nature
15 of the development and the style, the culture of
16 their development, and so a lot of it just was us
17 observing and listening and watching how Spring
18 Island was operated.

19 Q. Had you done any work in connection
20 with Balsam before coming to South Carolina in
21 2001?

22 A. It was very limited at that time.

23 Q. What had you done?

24 A. Talked with Mr. Bethea about the
25 development, talked about the procedures they were



1 I'm trying to pin down whether he used Counsellor,
2 a South Carolina company with its office in
3 Beaufort County, South Carolina, in connection
4 with the closing of multiple transactions
5 involving Balsam. That's all I'm headed now. I
6 may well head elsewhere.

7 MR. OVERSTREET: And I think I've
8 given you some leeway, and I will continue to do
9 so. I just wanted to give you that heads-up.

10 BY MR. SPEIGHTS:

11 Q. Let me rephrase the question,
12 Mr. Coward, because, frankly, I don't remember
13 what it was. But when you represented South
14 Carolina residents in connection with the purchase
15 of property at Balsam, did you always use
16 Counsellor Title to secure title insurance with
17 Chicago?

18 A. It's my recollection that in the
19 initial purchases by people of lots in Balsam that
20 we quite often used Counsellor Title.

21 Q. Under what circumstances would you not
22 use Counsellor Title?

23 A. If there was a resale, refinance,
24 those kinds of things.

25 Q. When you secured insurance -- strike

1 that.

2 When you secured title insurance from
3 Chicago and did not use Counsellor, did you
4 normally use a particular agency other than
5 Counsellor?

6 A. It would have probably been Investors
7 or Statewide if I did. Those are my other two
8 go-to title insurance companies.

9 Q. You testified earlier that all of
10 these purchases had title insurance. Was that
11 required to purchase property at Balsam?

12 A. I don't think so.

13 Q. Did you recommend to the Loflins that
14 they obtain title insurance?

15 A. I think in a form letter, I would have
16 informed them that we were getting a title policy
17 to insure their title. I do not recall whether I
18 named Counsellor Title as the company.

19 Q. Do you believe that they should have
20 gotten title insurance?

21 A. I do.

22 Q. Why?

23 A. It's like any insurance. It's good to
24 have later on if there's problems.

25 MR. SPEIGHTS: Let's go off the record

1 with it.

2 (Off-the-record discussion.)

3 MR. SPEIGHTS: Let's go back on the
4 record.

5 BY MR. SPEIGHTS:

6 Q. Now if you'll skip down on the
7 complaint to Paragraph 12 and your answer. This
8 question concerns the February 12, 2002, letter,
9 which I'm going to show you in a minute, and your
10 answer essentially craves reference to that
11 letter.

12 I'm not going to mark all of the
13 documents that you have produced, because,
14 fortunately, your counsel has them Bates stamped,
15 and I can refer to that, but because we're going
16 to be talking about this letter a little bit, I'm
17 going to ask the court reporter to mark this one
18 as an exhibit.

19 And because this is the first document
20 that I'm going to refer to the Bates stamp, I'm
21 going to always refer to the bottom number, which
22 has Coward and a number, and it is always preceded
23 by zeroes, but I'm just going to refer to the
24 actual number itself. So I'm going to ask the
25 court reporter to mark the letter of February 12,

1 still with the firm?

2 A. Just barely.

3 Q. What do you mean by just barely?

4 A. She's accepted a position with Jackson
5 County, and she will be working as a county
6 employee on -- as of the first of October.

7 Q. And what position will she have?

8 A. County attorney.

9 Q. And is it fair to say that you and
10 Ms. Baker worked on the Balsam-related matters
11 more than any other counsel within your law firm?

12 A. Correct.

13 Q. And then last is Benjamin D. Ellis.
14 Is he still with the firm?

15 A. He is not.

16 Q. Where is he located?

17 A. I don't know.

18 Q. Does he still practice law?

19 A. I don't know.

20 Q. When did he leave?

21 A. I don't know exactly. He worked out
22 of the Cashiers office, and I would say maybe ten
23 years ago, he left. He did not interact with our
24 office much at all.

25 Q. Now, going back to the letter, the

1 A. No.

2 Q. Was that some sort of regular motions
3 hearing or roster call that day?

4 A. I don't remember exactly. Any
5 conversation that I had with Judge Coward was in
6 open court in front of a bunch of other lawyers.

7 Q. Did you prepare a proposed order
8 before you went to court that day?

9 A. I don't recall whether I had it
10 prepared. That would have been my practice, to
11 have something prepared.

12 Q. Was the order which Judge Coward
13 signed prepared by you?

14 A. Yes.

15 Q. Did you have any private conversation
16 with Judge Coward before appearing in court that
17 day?

18 A. No. I had no idea he would even be in
19 court that day.

20 Q. Did he sign the order while in open
21 court that day?

22 A. I don't recall.

23 Q. I guess asking a different way, did
24 you have to go back over to the courthouse and get
25 the order signed or send it over there with

1 J.K. COWARD - EX. BY MR. O'KELLEY
that plat.

2 Q. And until Ms. Parris went to
3 Mr. Herron's office to retrieve it, you had never
4 seen that plat, correct?

5 A. Ms. Stanley went.

6 Q. Excuse me, Ms. Stanley.

7 A. Yes. I'd never seen it until she
8 brought it back from the surveyor's office.

9 Q. How long have you been an agent for
10 Chicago Title?

11 A. '84.

12 Q. I think you said you write title
13 insurance with Stewart Title too. Is that
14 correct?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. And then you mentioned one other
19 crowd, South?

20 A. Statewide.

21 Q. Where is Statewide Title Insurance
22 based out of?

23 A. And also, did I say Investors?

24 Q. You did not. You said Stewart.

25 A. Investors, Stewart, Investors,

J.K. COWARD - EX. BY MR. O'KELLEY
1 Statewide.

2 Q. And Chicago?

3 A. And Chicago. Then there are
4 occasionally other smaller boutique title
5 companies that I use.

6 Q. Can you tell me the names of those
7 smaller companies?

8 A. There's one called Cardinal. There's
9 one called Black Acre.

10 Q. And you have been an agent in good
11 standing with Stewart, Statewide, Investors,
12 Chicago, Cardinal, and Black Acre since the time
13 you entered into your agency agreements with those
14 companies. Is that correct?

15 A. Uh-huh, yes.

16 Q. Do you have Exhibit D-3 in front of
17 you? That's the title insurance policy.

18 A. Uh-huh.

19 Q. Back in 2002, when this policy was
20 issued, it was issued by Counsellor Title, was it
21 not?

22 A. It was.

23 Q. And you were the attorney who did the
24 opinion allowing this title to be issued -- policy
25 to be issued, correct?

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
WILLIAM LOFLIN and LESLIE
LOFLIN,

COPY

Plaintiffs,

vs. CASE NO. 2013-CP-07-1807

BALSAM MOUNTAIN PRESERVE
COMMUNITY ASSOCIATION,
CHICAGO TITLE INSURANCE
COMPANY, and COUNSELLOR
TITLE AGENCY, INC.,

Defendants.

DEPOSITION OF: WILLIAM L. BETHEA, JR.

DATE: January 6, 2014

TIME: 12:17 p.m.

LOCATION: One Beaufort Town Center
2015 Boundary Street, Third Floor
Beaufort, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 A. Yes.

2 Q. When did you first represent Jim
3 Chaffin or Chaffin Light Associates?

4 A. Probably going back at least 25 years.

5 Q. What developments were you involved
6 with over the years?

7 A. Spring Island, Chechessee Creek,
8 Callawassie, Balsam Mountain, and several other
9 initiatives that didn't get off the ground.

10 Q. Did you ever own an interest in any of
11 these developments you've listed: Spring Island,
12 Chechessee, Callawassie, Balsam Mountain?

13 A. My spouse owned an interest in Spring
14 Island and in Balsam Mountain.

15 Q. And --

16 A. Limited -- limited partnership
17 interest.

18 Q. Was she one of the founding members?

19 A. Correct.

20 Q. Of both?

21 A. Of both.

22 Q. Is it your recollection that Mr. Loflin
23 was a founding member of Balsam?

24 A. That's my -- my recollection, yes.

25 Q. We may dig down a little bit later, but

6

1 just with the microscope out, generally, before you
2 left McNair and went to work for Chaffin Light,
3 what was your general involvement with these
4 developments? And I'll call them the four
5 developments. I'm not concerned with those of Jim
6 that didn't work out.

7 A. Right. I was basically an advisor. I
8 mean I advised him on real estate matters on all
9 those developments. I -- I did the covenant work
10 on -- on three out of the four: Spring Island,
11 Balsam, and Chechessee. And then just general
12 business matters.

13 Q. Did you give legal advice about the
14 developments?

15 A. Yes.

16 Q. Did you bill for your time?

17 A. Yes, I did.

18 Q. Were you generally paid an hourly to
19 represent him, both at Bethea and at McNair?

20 A. I was.

21 Q. Did you primarily deal with
22 Mr. Chaffin?

23 A. Primarily, yes.

24 Q. Did you bill him monthly?

25 A. Yes.

12

1 property owners association.

2 Q. Let me go back to the first one.

3 Balsam Mountain Company, is that an LLC?

4 A. Balsam Mountain Company is an LLC.

5 Balsam Mountain Preserve is an LP.

6 Q. Who are the owners -- or who were the
7 owners? When Balsam Mountain Company was formed,
8 who were the owners of that LLC?

9 A. My recollection would be that it's
10 probably Jim Chaffin and Jim Light.

11 Q. Were you involved in drafting the
12 paperwork for that?

13 A. Yes. In conjunction with North
14 Carolina counsel.

15 Q. Were you involved in drafting the
16 paperwork for Balsam Mountain Preserve?

17 A. I was, in conjunction with North
18 Carolina counsel.

19 Q. Were you involved in drafting the
20 paperwork for the community association?

21 A. I was, in connection with -- in
22 conjunction with North Carolina counsel.

23 Q. Did you work with the same North
24 Carolina counsel on all three?

25 A. I did.

20

1 Bill Loflin dated October 1, 2008, was marked for
2 identification.)

3 BY MR. SPEIGHTS:

4 Q: Tell me again where you found the
5 notebook or had the notebook.

6 A: It was -- we have also moved in the
7 last six months and --

8 Q: You've moved homes?

9 A: Moved homes for the last six months.

10 Q: Okay.

11 A: I took stuff from the office to the
12 house and then we moved again. And that just ended
13 up in my bookcase in my office, so I -- I was able
14 to find that.

15 Q: Okay. Were there any other Balsam
16 companies besides the three we've mentioned?

17 A: There was another North Carolina LLC
18 that was called Anthony Investments that did the --
19 the -- it ended up owning a number of lots. It did
20 a bulk purchase from Balsam Mountain Preserve,
21 ended up doing a number of lots and did the --
22 what's the -- what's the name of the house?

23 MR. LOFLIN: Boarding house.

24 THE WITNESS: Boarding house, the
25 boarding house, that 40 -- 40 interest in a group

1 of cottages, and that's referred to in this memo
2 actually.

3 BY MR. SPEIGHTS: I would like to ask you a few questions.

4 Q. Is that named after Jim Anthony?

5 A. Probably, yeah.

6 Q. And did you do any work in connection
7 with the Anthony Investments?

8 A. Yes, I did. I did work.

9 Q. What did you do?

10 A. I worked with North Carolina counsel to
11 form the company.

12 Q. Do you know what the status of that
13 company is today?

14 A. Is -- it is still in existence, but it
15 was -- it was comprised completely of 40 investors
16 in -- in Balsam Mountain Preserve. Only had an
17 interest in it if there was excess profit after all
18 of the assets were disposed of and the investors'
19 investment had been returned. As it's turned out,
20 that will never be the case.

21 Q. So was the formation of this in some
22 way to try to get some more money --

23 A. Yeah.

24 Q. -- to Balsam Mountain?

25 A. It was -- it was to build the -- the

22

1 center, the boarding house which was -- served as
2 the clubhouse for the resort and the cottages that
3 were around it to provide lodging for prospects.

4 Q. Any other Balsam companies?

5 A. There were probably a half a dozen
6 shell companies that were never used, simply formed
7 to protect names that were similar to Balsam.

8 Q. Were there any others related to Balsam
9 that didn't have the name Balsam, whether it's
10 Arnold Palmer Golf Course or Seabiscuit Stables or
11 anything else?

12 A. Not that I -- not that I'm aware of,
13 no. No.

14 Q. During this period of time -- let's
15 take it from the time Balsam first cranked up until
16 you left McNair -- how much of your time was being
17 spent, percentage basis, on Chaffin Light related
18 work?

19 A. Probably 25 percent.

20 Q. Does your wife own property at Balsam
21 Mountain?

22 A. No.

23 Q. And you don't own any property at
24 Balsam Mountain?

25 A. No.

1 Q. Back when you --

2 A. I own an interest in Anthony
3 Investments.

4 Q. Okay.

5 A. Which is an LLC interest.

6 Q. And does an Anthony Investments still
7 own some lots at Balsam Mountain?

8 A. They do. And some -- some of the
9 shares in the boarding house.

10 Q. And who is the person in charge of
11 Anthony Investments these days?

12 A. An attorney from Atlanta by the name of
13 Charles Gregory.

14 Q. At one point in time did you have plats
15 of the Balsam development?

16 A. We would have had plats of the Balsam
17 development in the HUD filings that we regularly
18 made with -- as lots were added, yes, and those --
19 those files were taken by us, by me, to Chaffin
20 Light and were left at Chaffin Light when I
21 departed.

22 Q. What are the HUD files you're talking
23 about?

24 A. Any development in excess of 50 lots is
25 required to file -- to make a declaration that's

1 insurance on it based on certifications from that
2 law firm, so to that extent we were indirectly
3 involved.

4 Q. Well, I'm glad that the -- I'm glad
5 that the money came to a South Carolina company,
6 but why would Mr. Coward have used Counsellor
7 rather than whoever he might normally use in North
8 Carolina?

9 A. Well -- well, North Carolina -- North
10 Carolina has a different system than South Carolina
11 does as far as the way they treat their -- their
12 agents. In North Carolina the companies have their
13 own offices. We decided to qualify Counsellor in
14 North Carolina so that we could write title
15 insurance in North Carolina through Counsellor
16 simply because it was -- it was a way of creating
17 some profitability.

18 Q. I appreciate that, but why did
19 Mr. Coward choose Counsellor rather than a number
20 of other companies up there?

21 A. Well, he was -- he was local counsel
22 for -- for Balsam and therefore thought it was the
23 right thing to do.

24 Q. And I assume Counsellor was used on
25 more than one lot purchase?

26

1 A. Oh, yeah. Yeah.

2 Q. Now, do you, as you sit here, actually
3 remember having any involvement in that initial
4 transaction?

5 A. No, no.

6 Q. Do you know whether you did it or
7 Ms. Robertson did it or somebody else did it?

8 A. Well, Jay Coward closed the
9 transaction. The only -- only thing that -- that I
10 or Sarah would have had to deal with that was after
11 the closing had been completed and the
12 certification came from the Coward law firm and the
13 policy was issued.

14 Q. My question, though, was whether you
15 know whether it was you or Ms. Robertson that did
16 whatever was done.

17 A. No. I don't recall. I mean, it could
18 have been either one of us.

19 Q. Would, typically, you and Ms. Robertson
20 handle matters related to Balsam?

21 A. Yes.

22 Q. What else do you have for me today?
23 Anything else?

24 A. That's it.

25 Q. Okay.

20 228 9089

State of North Carolina
Department of the Secretary of State
Certificate of Domestic Limited Partnership

SOSID: 0560708
Date Filed: 8/16/2000 9:46 AM
Elaine F. Marshall
North Carolina Secretary of State

A. Return Acknowledgement to:

Name: Sarah F. Robertson

Mailing Address: P.O. Drawer 3

City/State/Zip: Hilton Head Island, SC 29938-0003

Read Instructions on reverse before beginning. Attach additional pages as needed.

No. pages
attached:

B. Name of limited partnership (must contain words "limited partnership"): Balsam Mountain Preserve, Limited Partnership			
C. If formed prior to October 1, 1986, complete this section:			
County of filing:	County file number:	Date of filing:	
D. Name of registered agent: James A. Anthony			
E. Address of registered office:			
Street/Number:	City:	NC	Zip: County:
1200 Rockhouse Road	Hot Springs		28743 Madison
F. Address of office where records are kept, if not kept at registered office:			
Street/Number:	City:	NC	Zip: County:
G. Latest date upon which limited partnership is to dissolve: December 31, 2050			
H. Complete for each general partner:			
Name	1. Balsam Mountain Company, LLC		2.
Street/Number	1200 Rockhouse Road		
City	Hot Springs		
State/Zip	NC 28743		
County	Madison		
Name	3.		4.
Street/Number			
City			
State/Zip			
County			
I. The following signatures of EACH general partner constitute an affirmation under the penalties of perjury that the facts herein are true.			
Type or print for EACH general partner.			
1. If the general partner is an individual, complete this section.			Date
a. Name	Signature		
b. Name	Signature		
c. Name	Signature		
2. If the general partner is a corporation or other entity, complete this section			Date
a. Name of corporation or other entity	Balsam Mountain Company, LLC		8/11/00
Title of officer signing	Secretary	Signature	<i>William L. Bethea, Jr.</i>
b. Name of corporation or other entity			
Title of officer signing			
c. Name of corporation or other entity			
Title of officer signing			

NOTES: Filing fee is \$50.00. This document and one exact or conformed copy must be filed with the Secretary of State
Revised January 2000
CORPORATIONS DIVISION

P.O. BOX 29622

Form LP-01
RALEIGH, NC 27626-0622

20 228 9088

State of North Carolina
Department of the Secretary of State

SOSID: 560698
Date Filed: 8/16/2000 8:16 AM
Elaine F. Marshall
North Carolina Secretary of State

Limited Liability Company
ARTICLES OF ORGANIZATION

Pursuant to §57C-2-20 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Organization for the purpose of forming a limited liability company.

1. The name of the limited liability company is: Balsam Mountain Company, LLC
2. If the limited liability company is to dissolve by a specific date, the latest date on which the limited liability company is to dissolve: *(If no date for dissolution is specified, there shall be no limit on the duration of the limited liability company.)* December 31, 2050
3. The name and address of each person executing these articles of organization is as follows: *(State whether each person is executing these articles of organization in the capacity of a member, organizer or both).*
Sarah F. Robertson - Organizer
P.O. Drawer 3
Hilton Head Island, SC 29938-0003
4. The street address and county of the initial registered office of the limited liability company is:

Number and Street 1200 Rockhouse Road

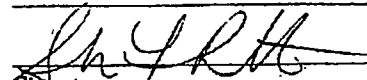
City, State, Zip Code Hot Springs, NC 28743 County Madison
5. The mailing address *if different from the street address* of the initial registered office is:
6. The name of the initial registered agent is: James A. Anthony
7. Check one of the following:

☒ (i) *Member-managed LLC*: all members by virtue of their status as members shall be managers of this limited liability company.

☐ (ii) *Manager-managed LLC*: except as provided by N.C.G.S. Section 57C-3-20(a), the members of this limited liability company shall not be managers by virtue of their status as members.
8. Any other provisions which the limited liability company elects to include are attached.

9. These articles will be effective upon filing, unless a date and/or time is specified:

This is the 11th day of August, 2000.


Signature

Sarah F. Robertson, Organizer
Type or Print Name and Title

NOTES:

1. Filing fee is \$125. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.

(Revised January 2000)
CORPORATIONS DIVISION

P.O. Box 29622

(Form L-01)
RALEIGH, NC 27626-0622

State of North Carolina
Department of the Secretary of State

20 270 9093

ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the corporation is: Balsam Mountain Property Owners' Association
2. _____ (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).
3. The street address and county of the initial registered office of the corporation is:
Number and Street 1200 Rockhouse Road
City, State, Zip Code Hot Springs, NC 28743 County Madison
4. The mailing address *if different from the street address* of the initial registered office is:

5. The name of the initial registered agent is:
James A. Anthony, Jr.
6. The name and address of each incorporator is as follows:
William L. Bethea, Jr.
P.O. Drawer 3
Hilton Head Island, SC 29938-0003
(Check either a or b below.)
a. _____ The corporation will have members.
b. ☒ The corporation will not have members.
8. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.
9. Any other provisions which the corporation elects to include are attached.
10. The street address and county of the principal office of the corporation is:
1200 Rockhouse Road, Hot Springs, NC 28743 County Madison
11. The mailing address *if different from the street address* of the principal office is:
P.O. Box 39, Balsam, NC 28707-0039

Revised January 2000

CORPORATIONS DIVISION

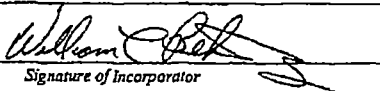
P. O. BOX 29622

Form N-01

RALEIGH, NC 27626-0622

12. These articles will be effective upon filing, unless a later time and/or date is specified: _____

This is the 23rd day of September, 2000.



Signature of Incorporator
William L. Bethea, Jr. INCORPORATOR
Type or print Incorporator's name and title, if any

NOTES:

1. Filing fee is \$60. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.

Revised January 2000

Form N-01

CORPORATIONS DIVISION

P. O. BOX 29622

RALEIGH, NC 27626-0622

Articles of Incorporation
Balsam Mountain Property Owners' Association

Item 8

Upon dissolution, all residual assets will be distributed to one or more non-profit organizations which are organized and operated for charitable or non-profit purposes.

AGREEMENT OF LIMITED PARTNERSHIP
OF
BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP

A North Carolina Limited Partnership

AGREEMENT made as of this 25th day of September, 2000, by and between BALSAM MOUNTAIN COMPANY, LLC, a North Carolina limited liability company with an address at PO Box 39, Balsam, North Carolina 28707-0039 (the "General Partner"); MONTGOMERY BLAISDELL, an individual residing at 9 River Bend Drive, Callawassie Island, South Carolina 29910 (the "Initial Limited Partner") and each of the persons from time to time listed on the attached Exhibit "A" (the "Limited Partners").

WITNESSETH:

WHEREAS, the parties hereto wish to form a limited partnership pursuant to the provisions of the North Carolina Revised Uniform Limited Partnership Act under the name of BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP (the "Partnership").

NOW, THEREFORE, in consideration of the foregoing premises, and the covenants and agreements herein contained, the parties hereto do hereby agree as follows:

1. THE PARTNERSHIP

1.1 Name of the Partnership. The name of the Partnership will be "Balsam Mountain Preserve, Limited Partnership."

1.2 Business of the Partnership. The Partnership will carry on the business of (a) acquiring and owning approximately 4,347 acres of land known as Balsam Mountain Preserve, located in Jackson County, North Carolina (the "Land"), as more particularly described in the attached Exhibit "B"; (b) developing and constructing a residential community including one golf course, various other amenities, roads, utilities and various other related improvements (collectively, the "Project"); (c) selling residential lots, creating the Balsam Mountain Club, an equity club which will eventually be owned by the Club members, and selling memberships therein; (d) establishing and organizing the operation of the Balsam Mountain Trust; and (e) operating, maintaining, repairing and otherwise dealing with the Project and any other activity necessary in connection with or incidental to the foregoing, including the financing, refinancing and disposition of the Project. The General Partner shall have the full authority to conduct the business of the Partnership in such manner as it so determines to be in the interest of the Partnership, subject to the specific restrictions set forth in this Agreement. It is anticipated that

the Project will be developed in two or more phases. Prior to the commencement of development the Partnership will engage in necessary pre-development activities, including, without limitation, seeking necessary permits, licenses and approvals, engaging in development sales and marketing activities, developing plans and specifications, engaging consultants, contractors, managers and other entities to provide services to the Partnership, and obtaining construction and other financing. The development activity is anticipated to include the development of approximately 350 Homesteads and related infrastructure, an 18-hole golf course, a club house and various recreational facilities, a nature preserve and certain other community improvements. The Partnership's business shall also consist of the operation of the Project and the Balsam Mountain Club, an equity club which will eventually be owned by the Club members, and all other activities which in the reasonable opinion of the General Partner are related to the foregoing.

1.3 Office and Agent for Service of Process.

(a) The office and principal place of business of the Partnership shall initially be 1200 Rockhouse Road, Hot Springs, North Carolina 28743. The General Partner may, at any time and from time to time, change the location of that place of business to another location in North Carolina, upon written notice of the change to the Limited Partners, and may establish such additional place or places of business of the Partnership as it may from time to time determine.

(b) The Partnership's agent for service of process shall be James A. Anthony, Jr. of 1200 Rockhouse Road, Hot Springs, North Carolina 28743.

(c) The mailing address of the Partnership shall be P.O. Box 39, Balsam, North Carolina 28707-0039.

1.4 Term. The term of the Partnership commenced August 16, 2000, the date the Partnership's Certificate of Domestic Limited Partnership was filed with the Secretary of State of North Carolina, and will continue until the Partnership has sold or otherwise disposed of its assets with the intent of discontinuing its business; provided, however, that if the Partnership receives notes or other evidence of indebtedness in connection with such sale or disposition, the General Partner may elect to continue the business of the Partnership until the date upon which such notes or other evidence of indebtedness are paid in full or otherwise disposed of by the Partnership. Notwithstanding the above, the Partnership may be sooner terminated as provided in Article 9 hereof, and will terminate in all events no later than 11:59 p.m. on December 31, 2050.

1.5 Ownership of Partnership Property. The Project and other property acquired by the Partnership shall be deemed to be owned by the Partnership, such ownership being subject to the other terms and provisions of this Agreement. Each Partner hereby expressly waives the right to require partition of any Partnership property or any part thereof.

1.6 Certificate of Domestic Limited Partnership. The General Partner shall not be required to deliver to the Limited Partners a copy of the Certificate of Domestic Limited Partnership of the partnership or any amended certificate, either upon its return by the Secretary of State of North Carolina or otherwise.

2. DEFINITIONS

2.1 "Act of Bankruptcy" means, as to any Partner, the happening of any of the following events:

(a) If such Partner (i) files a voluntary petition in bankruptcy; (ii) is adjudicated a bankrupt or insolvent; (iii) files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors; (iv) files no answer, or an answer or other pleading admitting or failing to contest material allegations of a petition filed against him in any proceeding of this nature; or (v) seeks or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of said Partner, or of all or of any substantial part of his properties (the term "acquiesce" includes, but is not limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within ten days after the appointment);

(b) A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against such Partner seeking a reorganization arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal Bankruptcy Code or under any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and said Partner acquiesces in the entry of such order, judgment or decree or such order, judgment or decree remains unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such partner or of all or any substantial part of his properties or his interest in the Partnership is appointed without the consent or acquiescence of such Partner and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(c) Such Partner admits in writing his inability to pay his debts as they mature;

(d) Such partner gives notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; or

(e) Such Partner makes an assignment for the benefit of his creditors or takes any other similar action for the protection or benefit of creditors.

2.2 "Affiliate" of, or a person or entity "affiliated" with, a specified person or entity, means (a) a person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified; (b) a person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other person; (c) any officer, director, partner or employee of such person; and (d) if such other person is an officer, director, partner or employee, any other entity for which such person acts in any capacity. For the purpose of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of securities, by contract or otherwise.

2.3 "Agreed Value" shall have the meaning set forth in Paragraph 3.4 hereof.

2.4 "Agreement" means this Amended and Restated Agreement of Limited Partnership, as originally executed and as hereafter amended or modified from time to time.

2.5 "Available Cash" means, at the time of determination which shall be December 31 of each year, cash, demand deposits and short-term marketable securities, after provision has been made for reserves in such amounts as the General Partner shall deem reasonable to provide for the ongoing needs of the Partnership, including, without limitation anticipated operating expenses, construction costs and working capital reserves.

2.6 "Capital Account" means, with respect to any Partner or Unit Holder, the capital account maintained for such person in accordance with the following provisions:

(a) To each person's Capital Account there shall be credited such person's Capital Contributions, such person's distributive share of profits in any items in the nature of Net Proceeds from Homestead sales (as hereafter defined), income or gain which are specially allocated pursuant to Paragraph 4.1 hereof and the amount of any Partnership liabilities assumed by such person or which are secured by any Partnership property distributed to such person.

(b) To each person's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Partnership property distributed to such person pursuant to any provision of this Agreement, such person's distributive share of losses, any items in the nature of expenses or losses that are specially allocated pursuant to Paragraph 4.1 hereof, any amounts of capital specially allocated pursuant to Paragraph 3.3 and the amount of any liabilities of such

person assumed by the Partnership or which are secured by any property contributed by such person to the Partnership.

(c) In the event any interest in the Partnership is transferred in accordance with the terms of this Agreement the transferee shall succeed to the capital account of the transferor to the extent it relates to the transferred interest.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of capital accounts are intended to comply with Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the capital accounts or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Partnership or the General Partner and Unit Holders), are computed in order to comply with such regulations the General Partner may make such modification provided that it is not likely to have a material affect on the amounts distributable to any Partner or Unit Holder pursuant to Article 9 hereof upon the dissolution of the Partnership. The General Partner also shall (a) make any adjustments that are necessary or appropriate to maintain equality between the capital accounts of the Partners and the Unit Holders and the amount of partnership capital reflected on the Partnership's balance sheet, as computed for book purposes in accordance with Regulation Section 1.704-1(b)(2)(iv)(q); and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this agreement not to comply with Regulation Section 1.704-1(b).

2.7 "Capital Contributions"

(a) With respect to any Limited Partner, "Capital Contributions" means the \$350,000 purchase price paid for each limited partnership interest/Unit by each Limited Partner pursuant to Article 3 as a contribution to Partnership capital.

(b) With respect to the General Partner, "Capital Contributions" means \$100,000 in cash contributed to the Partnership, the assignment of the Partnership of its rights to acquire the Land under the Purchase Agreement, and arranging for a \$5,000,000 loan from BB&T on behalf of the Partnership.

2.8 "Code" refers to the Internal Revenue Code of 1986, as amended, or any successor legislation.

2.9 "Completion" means the date on which the Project is completed.

2.10 "General Partner" refers to Balsam Mountain Company, LLC, a North Carolina limited liability company, and any substitute or additional general partner admitted to the Partnership in accordance with Paragraphs 8.1 or 9.3.

2.11 "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the Partnership;

(b) the Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner[s], as of the following times: (i) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Partnership to a Partner or Unit Holder of more than a de minimis amount of Partnership Property as consideration for an interest in the Partnership; and (iii) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the General Partner[s] reasonably determine[s] that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners and Unit Holders in the Partnership;

(c) the Gross Asset Value of any Partnership asset distributed to any Partner or Unit Holder shall be the gross fair market value of such asset on the date of distribution; and

(d) the Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Article 3 hereof.

2.12 "Homesteads" means all the Land, to be developed into up to 350 single family residential building sites save and except (a) those Homesteads purchased by using the Homestead Credit and 30% discount to Unit Holders; (b) those four (4) Homesteads reserved by the General Partner for distribution by it to its Members or affiliates; (c) approximately 350 to 400 acres reserved for the Balsam Mountain Club; and (d) the approximately 1,500 acres reserved for open space, the nature reserve and riding and walking trails.

2.13 "IRS" means the Internal Revenue Service.

2.14 "Land" means the approximately 4,347 acre parcel of land located in Jackson County, North Carolina, on which the Project will be located, as more particularly described on the attached Exhibit "B".

2.15 "Limited Partners" means the persons who execute and deliver to the Partnership Subscription Agreements substantially in the form of the attached Exhibit "C", from the date such Subscription Agreement is accepted by the General Partner, and all persons thereafter becoming limited partners hereof and excluding any persons thereafter withdrawing as limited partners.

2.16 "Liquidating Transaction" means the sale, transfer or other disposition of all or substantially all of the Partnership's assets in a transaction or series of related transactions occurring at a time when it is the intent of the Partnership to terminate its business.

2.17 "Majority in Interest of the Limited Partners" for purpose of Paragraphs 5.4(b), 5.4(c), 5.9 and 10.4 means such of the Limited Partners who, collectively at the time of determination, own more than 50% of the Units, except to the extent qualified in Paragraphs 5.9(a) and (c). In all other circumstances a vote of a Majority in Interest of the Limited Partners mean such of the Limited Partners who, collectively, at the time of determination, own more than 50% of the Limited Partnership Interest.

2.18 "Memorandum" means that certain Confidential Offering Memorandum dated August 31, 2000, relating to the Partnership, together with all amendments thereto.

2.19 "Net Income" and "Net Loss" means the income or loss of the Partnership as reported for federal income tax purposes, adjusted as appropriate under Code Section 704(b).

2.20 "Net Revenue from Homestead Sales" means gross revenue from Homestead sales less a 10% commission paid to facilitate those sales, and less than 2% contribution to the Balsam Mountain Trust, plus all revenues generated which result from the overall diminution of size or quality (below 350 Homesteads as originally contemplated). In the unlikely event of any bulk parcel sale out of the Land by the Partnership for purposes of this definition the calculation will be accomplished in the same manner as for Homestead Sales.

2.21 "Partners" means the General Partner and the Limited Partners, collectively.

2.22 "Partnership" means Balsam Mountain Preserve, Limited Partnership, a North Carolina limited partnership, in which the purchasers of the Units will become Limited Partners and of which Balsam Mountain Company, LLC is the General Partner..

2.23 "Partnership Act" means the North Carolina Revised Uniform Limited Partnership Act, as the same shall be amended and in full force and effect from time to time.

2.24 "Project" has the meaning set forth in Paragraph 1.2 hereof.

2.25 "Purchase Agreement" means the Purchase and Sale Agreement dated July 13, 2000, as amended, by and between GPT Enterprises, LLC and Chaffin/Light Associates Co., pursuant to which the Partnership will acquire the Land.

2.26 "Subscription Agreement" means the agreement substantially in the form of the attached Exhibit "C" which will be executed by Limited Partner and accepted by the General Partner as a condition of such Limited Partner's admission to the Partnership.

2.27 "TMP" has the meaning set forth in Paragraph 10.10 hereof.

2.28 "Transferee" has the meaning set forth in Paragraph 8.1(a) hereof.

2.29 "Treasury Regulations" means the regulations promulgated by the Department of the Treasury as in effect as of the date of this Agreement and as hereafter promulgated or amended.

2.30 "Unit Holders" has the same meaning as Limited Partners. 'Unit Holder' means any one of the Unit Holders.

2.31 "Units" means the thirty-five (35) limited partnership interests in the Partnership offered pursuant to the Memorandum, inclusive of the revenue sharing rights as Limited Partners, the Balsam Mountain Club membership, the \$200,000 Homestead Credit to be applied to the selection, on a priority basis, of a mountain Homestead in Balsam Mountain Preserve at a thirty percent (30%) discount, not to exceed \$150,000, on the purchase price of the Homestead.

3. PARTNERS AND CAPITAL CONTRIBUTIONS

3.1 Capital. The capital of the Partnership shall consist of amounts contributed to the Partnership pursuant to this Article 3.

3.2 General Partner. The capital contribution of the General Partner consists of One Hundred Thousand and 00/100 Dollars (\$100,000.00) in initial cash capital and an Assignment of the Purchase Agreement with GPT Enterprises, LLC to acquire the Land. The General Partner also contributed all of the plans and agreements that the General Partner and its affiliates have developed or obtained in connection with the Project to the date hereof, provided, however, the Partnership will reimburse the General Partner for all costs incurred on behalf of the Project in excess of \$100,000.00. The General Partner will also arrange for a Five Million and 00/100 Dollar (\$5,000,000.00) loan to the Partnership from Branch Banking and Trust Company ("BB&T"). Additionally, the General Partner shall be responsible for using its best efforts to obtain any additional funding required for the Project.

3.3 Limited Partners.

(a) The Initial Limited Partner shall formally make a contribution to the Partnership capital in the amount of \$10.

(b) Limited partnership interests will be sold to the Limited Partners in Units (the "Units"). Pursuant to the Memorandum, the capital contribution of the limited partners will be the purchase price of \$350,000.00 per Unit payable \$50,000.00 in cash at the time of subscription on or before September 18th, with \$300,000.00, representing the remainder of the Unit price, due and payable September 25, 2000. Each Limited Partner admitted to the Partnership shall have tendered his/her Subscription Agreement and any other documents required by the General Partner, together with payment of \$50,000.00. The Limited Partners shall share the interest in allocations and distributions to the Limited Partners as provided in this Agreement in proportion to the number of Units owned by each Limited Partner. For tax purposes, and subject to applicable HUD regulations, the Partnership will treat Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00) of the capital contribution as a sale by the Partnership and a purchase by a Limited Partner of real and personal property (i.e. \$200,000 as a credit against the purchase of a Homestead and \$25,000 for an equity golf membership), when those distributions are actually made. Thereafter, the capital account of each Limited Partner shall be One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00).

(c) The General Partner, in its sole discretion, may elect to sell single Units to more than one investor who will own those Units in common with other co-investors.

(d) The General Partner shall have the authority, in its sole discretion, to modify the dates prescribed in Section 3.3(b) above so long as they do not extend beyond November 24, 2000.

3.4 Return of Capital Contributions. Except as otherwise herein expressly provided, the Capital Contributions of the Partners will be returned to them only in the manner and to the extent provided in Article 4 and Article 9 hereof, and no Partner shall have the right to demand redemption of his interest, whether or not he withdraws from the Partnership. Except as provided herein, no Partner will have the right to demand or receive property other than cash in return for his Capital Contributions and no Partner shall be liable for the return of any portion of the Capital Contributions of any other Partner; the return of those Capital Contributions shall be made solely from Partnership assets.

3.5 Liability of Limited Partners. Subject to compliance with other terms of this Agreement, the liability of the Limited Partners (other than a Limited Partner who is also a general partner of the Partnership) to the Partnership shall be limited to the amount of his agreed Capital Contributions and a Limited Partner shall have no further personal liability to contribute money to, or in respect of, the liabilities or the obligations of the Partnership, nor shall

a Limited Partner be personally liable for any obligations of the Partnership, except as may be provided in the Partnership Act.

3.6 Default on Capital Contributions. If a Unit Holder fails to make any capital contributions when due, such Unit Holder shall be in default and the Partnership may exercise all legal rights including, without limitation, the commencement of an action to collect from such defaulting Unit Holder by legal process the entire amount of his unpaid capital contributions, together with all court costs and reasonable attorneys fees.

4. PARTNERSHIP ALLOCATIONS AND DISTRIBUTIONS

4.1 Allocations.

(a) Net Income. After giving effect to the special allocations set forth in Paragraph 4.2 Net Income for any fiscal year should be allocated in the following order and priority:

(i) First, one hundred percent (100%) to the Limited Partners to the extent of their receipt of distributions in accordance with Paragraphs 4.3, 4.4 and 4.5 in excess of their capital contribution.

(ii) Then, one hundred percent (100%) to the General Partner.

(b) Net Loss. After giving effect to the special allocation made in Paragraph 4.2, Net Loss for any fiscal year shall be allocated one percent (100%) to the General Partner.

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

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Article 4, if there is a net decrease in Partnership Minimum Gain during any Partnership fiscal year, each Partner who would otherwise have an Adjusted Capital Account Deficit at the end of such year shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-1T (b)(4)(iv). This Paragraph 4.2 is intended to comply with the minimum gain chargeback requirements in such Section of the Regulations and shall be interpreted consistently therewith.

(b) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations or distributions described in Regulations Section 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), items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Limited Partner as quickly as possible, provided that an allocation pursuant to this Paragraph 4.2 shall be made if and only to the extent that such Limited Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 4 have been tentatively made as if this Paragraph 4.2 were not in the Agreement.

(c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Partnership fiscal year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore, and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentence of Regulations Section 1.704-1(b)(4)(iv)(f), and each such Limited Partnership shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Paragraph 4.2(c) shall be made if and only to the extent that such Unit Holder would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 4 have been tentatively made as if Paragraph 4.2(b) were not in the Agreement.

(d) Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, 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 Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

4.3 Curative Allocations.

(a) The allocations set forth in Paragraph 4.2(a), 4.2(b) and 4.2(c) hereto (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Section 1.704-1(b). Notwithstanding any other provisions of this Article 4 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other Net Income, Net Loss, and items of income, gain, loss, and deduction amount the Partners so that, to the extent possible, the net amount of such allocations of other Net Income, Net Loss, and other items and the Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Regulatory Allocations had not occurred.

(b) For purposes of determining the Net Income, Net Loss, or any other items allocable to any period, Net Income, Net Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the General Partner[s] using any permissible method under Code Section 706 and the Regulations thereunder.

(c) Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Partners and Unit Holders in the same proportions as they share Net Income or Net Loss, as the case may be, for the year.

(d) The Partners are aware of the income tax consequences of the allocations made by this Article 4 and hereby agree to be bound by the provisions of this Article 4 in reporting their shares of Partnership income and loss for income tax purposes.

4.4 Tax Allocations: Code Section 704(c).

(a) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners and Unit Holders so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Article 2 hereof).

(b) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Article 2 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Any elections or other decisions relating to such allocations shall be made by the General Partner[s] in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Paragraph 4.44 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing any Person's Capital Account or share of Net Income, Net Loss, other items, or distributions pursuant to any provision of this Agreement.

4.5 Distribution.

(a) Net Revenue from Homestead Sales. Cash shall be distributed to each Limited Partner in an amount equal to 0.2571% of Net Revenue from Homestead Sales (as defined in Paragraph 2.20). Such cash distributions shall be made to the Limited Partners on a quarterly basis or more frequently if the General Partner so elects.

(b) Available Cash. After the distributions required by Paragraph 4.5(a) above, all available cash shall be distributed one hundred percent (100%) to the General Partner.

(c) As indicated in Section 4.5(c) above, the Limited Partners return as a group is computed at nine percent (9%) (0.2571% each x 35 Limited Partners) of the Net Revenue from Homesteads Sales (gross sales revenues less ten percent (10%) commission, less two percent (2%) contribution to the Balsam Mountain Trust). The Revenue from Homesteads Sales is based upon assumed sales of 311 Homesteads which excludes a return on the sales of the thirty-five (35) Limited Partners Homesteads themselves and four (4) Homesteads which will be retained for distribution by the General Partner. In the unlikely event of a bulk parcel sale out of the Land, the Limited Partners return would be computed in the same manner as with Homestead sales. The only exception to that computation methodology is in the unlikely event of a Bulk Sale of the entire Project (including the Land), in which event the debts of the Partnership would be discharged from the gross revenues received on the bulk sale of the Project and the remaining proceeds (after establishing a reasonable reserve for terminating the affairs of the Partnership) would be disbursed as follows:

(i) First, there would be disbursed to each of the Limited Partners on a pro-rata basis an amount up to the amount of their individual Capital Contribution (less the \$200,000 Homestead credit if previously applied against the purchase of a Homestead);

(ii) Second, the General Partner would receive a disbursement of up to its \$100,000 Capital Contribution;

(iii) Third, to the extent that additional funds remain available for disbursement, the General Partner and each of the Limited Partners would receive twenty percent (20%) return on their Capital Contributions (or prorata portion thereof, if funds were not sufficient to provide the full 20%);

(iv) Fourth, to the extent that additional funds remain available for distribution, fifty percent (50%) of the available funds would be

divided pro-rata among the Limited Partners as a group and fifty percent (50%) would be disbursed to the General Partner.

4.6 Property Distribution. Subsequent to the acquisition of the Land, the Partnership shall distribute the following to each Limited Partner:

(a) A Homestead Credit of \$200,000 to be applied to the selection, on a priority basis, of a five (5) to (30)-acre mountain Homestead in Balsam Mountain Preserve, together with a discount of thirty percent (30%), not to exceed \$150,000, on the purchase price of the Homestead. (The Partnership must comply with certain land registration requirements prior to the distribution.) For purposes of this distribution the Partners agree that this asset is valued at \$200,000.

(b) A golf membership in Balsam Mountain Club, an equity club which will eventually be owned by the Club members. (Certain restrictions apply to this membership which are set forth in the Memorandum.) For purposes of this distribution the Partners agree that this asset is valued at \$25,000.

These distributions shall be treated as sales by the Partnership under Section 707(a)(2)(B) of the Code. The Partnership shall recognize gain or loss, as appropriate, upon the sale of the assets listed above.

5. DUTIES, POWERS AND RESTRICTIONS OF THE GENERAL PARTNER

5.1 Management.

(a) The overall management and control of the business and affairs of the Partnership shall be vested solely in the General Partner. The General Partner may, however, delegate certain of its responsibilities for management of the business affairs of the Partnership including the clerical and day-to-day operations of the Partnership to an Affiliated or non-Affiliated third party.

(b) The General Partner has a fiduciary duty to the Partnership and the Partners to act in good faith in its exercise of its rights and obligations hereunder.

5.2 General Authority of the General Partner.

(a) To the extent permitted by law and except as otherwise expressly provided for herein or otherwise by written agreement with the Partners, the General Partner shall have full, complete and exclusive discretion to manage and control the Partnership's business in all respects and to make all decisions affecting the business of the Partnership, including, without limitation, the following specific powers:

(i) to take all steps necessary to undertake and complete the pre-development activities, and other aspects of operating the Project;

(ii) to purchase, lease, hold, operate, and manage all equipment and other assets necessary for the operation of the Project and to enter into, execute, deliver and perform any agreements with respect to such activities; provided, however, all material documents executed by the Partnership pursuant to which it incurs any legal obligation shall expressly provide that the Limited Partner is a limited partner of the Partnership and is not liable for the payment of any obligations on behalf of the Partnership except to the extent of its interest in the Partnership;

(iii) to apply for and obtain any necessary approvals, licenses and/or certificates necessary for or advisable in connection with the Partnership's business;

(iv) to exercise, on behalf of the Partnership, any rights of the Partnership to acquire real property, including any Homesteads, and to execute, acknowledge and deliver any documents and instruments which may be deemed necessary or convenient to effect the exercise of such rights;

(v) to arbitrate, compromise, settle, sue on or defend any claim of or against the Partnership;

(vi) to insure the Partnership against such risks and hazards in such amounts as it shall determine and to cause the General Partner to be named as an additional insured on all liability policies maintained by the Partnership;

(vii) to designate depositories for the funds of the Partnership and to make deposits therein and withdrawals therefrom in accordance with Paragraph 7.3;

(viii) to employ, engage, retain and oversee any Affiliated or non-Affiliated persons, firms or corporations to act as managing agents, brokers, accountants or lawyers or other personnel as the General Partner may deem necessary or desirable; to pay such fees, expenses, salaries, wages and other compensation to such persons as it shall, in its sole discretion, determine;

(ix) subject to Paragraph 5.4 hereof, to sell and convey all property owned by the Partnership on such terms as it may deem reasonable;

(x) to pay bills for operating expenses and other expenses, including extraordinary expenses and expenses incurred in connection with the construction of the Project;

(xi) subject to Paragraph 5.4 hereof, to lend money to the Partnership, with or without security, and charge interest on any such loan (except where expressly prohibited by other provisions of this Agreement) at its actual cost of borrowing;

(xii) to execute, acknowledge and deliver any and all documents and instruments which may be deemed necessary or convenient to effect any of the duties enumerated in this Paragraph 5.2, including documents to acquire the Land, to convey the Homesteads, or which may be required in connection with any transaction contemplated herein, or related to the business of the Partnership, and any documents related to authorized financing, including, without limitation, notes, required mortgage and other security agreements with respect to any property owned by the Partnership; and

(xiii) to perform all other necessary or desirable business in connection with the acquisition, management and operation of the Partnership and the Project and to do any and all acts and things necessary, convenient or advisable to effectuate the purpose of the Partnership and/or the duties of the General Partner under this Paragraph.

(b) Fees and Reimbursements to the General Partner. The Partnership is specifically authorized and directed to pay the General Partner the following fees and to reimburse the General Partner for the following expenses and costs:

(i) Pre-development Expenses. The Partnership shall pay and/or reimburse the General Partner for all actual expenses incurred by it in furtherance of the development of the Project prior to the close of the syndication, including but not limited to master planning expenses, pre-acquisition land planning, engineering, legal and accounting expenses, expenses associated with the bridge application and other permit obtainment activities, interest on loans for pre-development expenses, the extension payments, the costs of pre-acquisition operations and other similar acquisition and development expenses. The General Partner has been reimbursed for all such expenses incurred on behalf of the Partnership prior to the date hereof. For purposes of this subparagraph,

construction shall be deemed to commence as of the date upon which the Partnership obtains a permit required prior to commencement of development/construction activities on the Land.

(ii) Partnership Development Management Fee. The Partnership shall pay to the General Partner or an independent contractor retained by the Partnership a fee for its services in connection with the ongoing management of the Partnership and its business. Such fee shall be payable monthly throughout the term of the Partnership. The fee will represent time expenditures made by the General Partner and its personnel. The General Partner shall also be reimbursed for the direct cost of all office salaries, project manager salaries, salesperson salaries, sales commissions, marketing expenses, legal fees, architects' and engineers' fees and expenses, travel and entertainment costs, office expenses, accounting fees and similar costs related to the business of the Partnership or the Project, which the General Partner in its reasonable discretion deems necessary or prudent.

(iii) Organization and Syndication Expenses. The Partnership shall pay, and/or reimburse the General Partner for any and all expenses incurred on behalf of the Partnership in connection with the formation of the Partnership and the sale of the Units.

5.3 Devotion of Time of General Partner. The General Partner shall be required to devote to the affairs of the Partnership such time as it, in its absolute discretion, may deem necessary and proper to the performance of its duties hereunder. It is specifically understood and agreed that the General Partner shall not be required to devote full time to the business of the Partnership.

5.4 Restrictions on the General Partner.

(a) In addition to other acts expressly prohibited by this Agreement or by law, the General Partner shall not have any authority to:

- (i) do any act in contravention of this Agreement;
- (ii) do any act which would make it impossible to carry on the ordinary business of the Partnership, except as expressly provided in this Agreement or except in connection with a Liquidating Transaction;
- (iii) possess Partnership property or assign the rights of the Partnership in specific property for other than a Partnership purpose; or

(iv) knowingly or willfully do any act (except an act expressly permitted by this Agreement) that would cause the Partnership to become an association taxable as a corporation.

(b) No sale of an interest in Partnership property shall be made to any Partner or to any Affiliate or to any entity or business venture in which any Partner has financial or other interest other than at its fair market value, as the same shall be determined by an independent appraiser selected by the General Partner or as consented to by a Majority in Interest of the Limited Partners. For purposes of this paragraph, the transfer of the four (4) Homesteads to the Members or designees of the General Partner shall not be a sale but shall be a specifically approved transfer.

(c) Unless otherwise approved by a Majority in Interest of the Limited Partners, compensation for services rendered to the Partnership by any Partner or Affiliate thereof and for which the compensation has not been provided in this Agreement shall be at the fair value thereof and the interest rate and other terms for any funds loaned to the Partnership by a Partner or Affiliate thereof shall be commercially reasonable.

5.5 Right to Rely on Authority of the General Partner. Any action taken by Balsam Mountain Company, LLC, in its capacity as General Partner acting on behalf of the Partnership pursuant to the authority conferred on them herein shall be binding on the Partnership. In no event shall any person dealing with the General Partner or its representatives with respect to the conduct of the affairs of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, or be obligated to inquire into the necessity or expediency of any act or action of the General Partner or its representatives, and every contract, agreement, deed, mortgage, deed of trust, promissory note, or other instrument or document executed by the General Partner or its representatives with respect to any property of the Partnership or the conduct of its affairs shall be conclusive evidence in favor of any and every person relying thereon or claiming thereunder that (a) at the time of the execution and/or delivery of such instrument or document, this Agreement was in full force and effect; (b) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership and all of the Partners hereof; and (c) the General Partner or its representatives were duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

5.6 Liability of the General Partner: Indemnity.

(a) The General Partner and its Affiliates shall have no liability to the Partnership or to any Partner for any loss suffered by the Partnership which arises out of any action or inaction of the General Partner or its Affiliates if the General Partner, in good faith, determined that such course of conduct was in the best interest of the Partnership and such course of conduct did not constitute fraud,

gross negligence or willful misconduct of the General Partner or its Affiliates. The General Partner and its Affiliates shall be indemnified by the Partnership against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by them in connection with the Partnership, provided that the same were not the result of negligence or misconduct on the part of the General Partner or its Affiliates.

(b) Notwithstanding the above, the General Partner and its Affiliates and any person acting as a broker/dealer shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws.

(c) In any claim for indemnification for federal or state securities law violations, the party seeking indemnification shall place before the court the position of the Securities and Exchange Commission with respect to the issue of indemnification for securities law violations.

(d) The Partnership shall not incur the cost of that portion of any insurance, other than public liability insurance, which insures any party against any liability the indemnification of which is herein prohibited.

5.7 Other Ventures. Any of the Partners may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operating, management, syndication, brokerage and development of real property. Neither the Partnership nor the Partners shall have, or have the right to acquire, any right by virtue of this Agreement in and to such independent venture or to the income or profits derived therefrom.

5.8 Limitations on Limited Partners.

(a) No Limited Partner, except for a Limited Partner who is also a general partner of the Partnership, shall participate in the management of the Partnership's business or shall do or perform any act, thing, or deed in the name of or for or on behalf of the General Partner or the partnership.

(b) No Limited Partner (other than any Limited Partner who is also a general partner of the Partnership) shall receive any salary or other compensation for

5.9 Removal of the General Partner.

(a) The General Partner may be removed as General Partner at any time by a Majority in Interest of the Limited Partners for fraud, gross negligence or willful misconduct if such fraud, gross negligence or willful misconduct results

in a material diminution in the value of the partnership interests of the Limited Partners.

(b) Notwithstanding the foregoing, such removal shall not be effective until any third party which has granted financing to the Partnership has been given notice of such removal proceeding and has given consent thereto, if consent to the removal or change of the General Partner is required by the terms of such financing, which consent may be granted or withheld in the lender's sole discretion. In addition, the Limited Partners agree that they will not exercise their right to remove or enforce any of their rights against the General Partner until such time as they have given written notice to the General Partner (and the lenders, if required) of their intention to exercise such right and specifying the particulars of the default relating thereto and have provided the General Partner (and the lenders, if required) with a reasonable time thereafter, in no event exceeding sixty (60) days, within which to cure the default; provided, however, that, such sixty (60) day period will be extended an additional one hundred twenty (120) days if the General Partner is diligently seeking to cure such default and notifies the Limited Partners of such action prior to the expiration of the first sixty (60) day period. If such default is cured within the permitted time, the rights of the Limited Partners under this Paragraph 5.9(b) with respect to that particular default will terminate.

(c) The sole interest in the Partnership to which the removed General Partner will be entitled will be its interest under Article 4, which interest shall thereafter be allocable to it solely as a limited partner of the Partnership. The General Partner hereby agrees that, in the event of such removal, it will approve the appointment of any new general partner(s) as approved by a Majority in Interest of the Limited Partners. In the event the General Partner fails or refuses to act on such appointment the other Partners may designate the new general partner and empower it to file any necessary certificate to reflect such changes.

(d) Any removal of the General Partner under this Paragraph 5.9 and any transfer of the General Partner's interest in the Partnership shall not relieve such removed or transferring General Partner from its obligations to the Partnership incurred prior to such removal or transfer. Upon removal of the General Partner or a transfer of the General Partner's interest in the Partnership the Partnership shall file an amendment to the Partnership's certificate of limited partnership as provided in Paragraph 5.9(d), removing the General Partner as general partner of the Partnership and naming the new general partner.

5.10 Vote of Limited Partners.

(a) If the vote or consent of any Partner to any action of the Partnership or any Partner, as contemplated by this Agreement in Paragraph 5.4(b) and (c), 5.9, 9.3 and 10.4, is solicited by the General Partner, the solicitation shall be effected by notice in the manner provided in Paragraph 10.2. The vote or consent of each Partner so solicited shall be deemed conclusively to have been cast or granted as requested in the notice of solicitation if the Partner fails to express written objection by notice given to the Partnership in accordance with Paragraph 10.2 within fifteen (15) days and actually received by the Partnership within twenty (20) days after notice of solicitation. The General Partner and all persons dealing with the Partnership shall be entitled to act in reliance on the deemed vote or consent, and any action taken or omitted based on that reliance shall not be void or voidable by reason of any notice or communication given by a Limited Partner at any other time or in any other manner.

(b) Unless otherwise specifically provided in this Agreement, in any situation in which the Limited Partners are authorized or required under this Agreement or by law to vote on or consent to any Partnership action, the Limited Partners agree to be bound by and to vote or consent in such manner as is agreed to by a Majority in Interest of the Limited Partners.

6. PRE-DEVELOPMENT ACTIVITIES AND OPERATION OF THE PROJECT

6.1 Project Development. Except as otherwise specifically provided for herein, the General Partner shall have full responsibility for, and control of, the pre-development activities of the Partnership. In connection therewith, the General Partner is authorized, and hereby undertakes, to take or has taken the following actions:

(a) The General Partner shall cause the Partnership to acquire the Land pursuant to the Purchase Contract for a purchase price of approximately \$9,600,000.00 plus the \$480,000 real estate commission and on such other terms as the General Partner, in its sole discretion, shall determine. The General Partner is empowered to execute, acknowledge and deliver on behalf of the Partnership any and all documents and instruments that may be necessary for such acquisition. Prior to the closing of title to the Land, the General Partner shall obtain a title insurance policy for the Land in an amount not less than the purchase price thereof, at the Partnership's expense.

(b) The General Partner is empowered to engage architects, engineers and other contractors to prepare all drawings, plans and specifications necessary for the construction of the Project. The General Partner is empowered to seek all

building, zoning and environmental permits and approvals necessary for construction of the Project.

(c) The General Partner is empowered to arrange for, and to cause the Partnership to enter into commercial loan(s) to supplement the Capital Contributions to the Partnership, if needed, to complete the purchase of the Land and also to finance the construction of the Project on such terms and conditions as the General Partner, in its absolute discretion, shall determine. The General Partner is authorized to execute, acknowledge and deliver any and all documents and instruments which may be deemed necessary or convenient to close the commercial loan[s], including, without limitation, notes, mortgages, deeds of trust and other security agreements with respect to the Land.

(d) The General Partner is authorized to employ, engage, retain and oversee, on behalf of the Partnership, any Affiliated or non-Affiliated person to perform the pre-development activities and services related thereto, and to pay such fees, expenses and salaries and other compensation for those services as it, in its sole discretion, shall determine. For this purpose, the General Partner is authorized to utilize all the remaining capital of the Partnership after payment of any fees specified herein and the costs and expenses incurred in connection with the offer and sale of the Units.

(e) In the event that the Partnership has insufficient funds to successfully complete the pre-development activities that must be accomplished prior to the time that the Partnership commences construction of the Project, and the General Partner determines, in its sole discretion, that the Partnership should continue to pursue development of the Project, the General Partner may borrow money for purposes of completing the pre-development activities.

(f) In the event that (i) the General Partner determines that the Partnership will be unable to accomplish the development of the Project, or (ii) the General Partner determines that the development of the Project is not economically feasible, the General Partner shall cause the Partnership to postpone further development activities unless and until the General Partner has reason to believe that the development activities will be successful and that the Project is economically feasible. In addition, the General Partner may at such time elect to abandon development of the Project and to proceed in a commercially reasonable manner to liquidate the assets of the Partnership through a sale of the Land, either in bulk or through subdivision and sale of parcels, or in such other manner as the General Partner, in its absolute discretion, determines. If the General Partner determines to sell the Land pursuant to this subparagraph, the General Partner undertakes to take all commercially reasonable steps to assure the prompt disposition of the Land. In connection therewith, the General Partner is authorized to do any and all acts necessary to sell the Land, including, without

limitation, seeking zoning and subdivision approval, and to cause the Partnership to incur the costs of such actions. In the event of such Bulk Sale of the Project, the provisions of Paragraph 4.5(c) shall apply to the disposition of the proceeds from such bulk sale.

(g) If the General Partner determines to borrow money on behalf of the Partnership pursuant to Subparagraph 6.1(e) above, nothing herein shall prohibit the General Partner from obtaining such loan from an Affiliate or providing such funds itself on a commercially reasonable basis.

(h) If the requirements of Subparagraphs 6.1(a), (b) and (c) are met and there are sufficient funds to continue the development of the Project as determined by the General Partner, in its sole discretion, the General Partner shall undertake the construction of the Project. In connection therewith, the General Partner may retain, engage and oversee any independent contractors to do the construction as the General Partner may deem necessary or desirable and to pay such fees, expenses, salaries, wages and other compensation to such persons as it shall, in its sole discretion, determine subject to the requirements of Subparagraph 5.4(c) hereof.

6.2 Project Operations. The General Partner shall have full, complete and exclusive authority and discretion to manage and control the operations of the Project. The General Partner may delegate all or some of its authority to an Affiliated or a non-Affiliated party and may pay such fees, expenses, salaries, wages and other compensation to such party, subject to the requirements of Subparagraph 5.4(c) hereof.

6.3 Reserves. The General Partner may establish reserve accounts, in such amounts as it deems necessary, to provide for any contingent or unforeseen liabilities or obligations of the Partnership, and to apply such funds for the benefit of the Partnership.

7. BOOKS AND RECORDS; ACCOUNTS

7.1 Books.

(a) The General Partner will maintain or cause to be maintained full and accurate books and records of the Partnership, and all Partners will have the right to inspect and examine the same at reasonable times and upon reasonable notice. If said records and books are to be kept at any place other than the Partnership's principal office, all Limited Partners will be immediately notified thereof in writing.

(b) The records to be kept in the office referred to in Paragraph 7.1(a) above shall include, without limitation: (i) a current list of the full name and last known address of each Partner; (ii) a copy of the Partnership Agreement and

Certificate of Limited Partnership and all amendments thereto; (iii) copies of the Partnership's federal, state and local income tax returns and reports, if any, for the three most recent years; and (iv) copies of any then effective written Partnership agreement and any financial statements of the Partnership for the three most recent years.

7.2 Accounting and Fiscal Year.

(a) The books will be kept on an accrual basis, and the fiscal year of the Partnership will be the calendar year or such other year as may be required by the Code. The books will be closed and balanced at the end of each fiscal year and will be audited at the expense of the Partnership by such firm of certified public accountants as shall be designated by the General Partner, if required by law, or 30% in interest of the Limited Partners.

(b) The General Partner will furnish to each Partner, within ninety (90) days after the close of each fiscal year, or as soon thereafter as practical, a report of sales activity and a schedule reflecting the Net Revenue from Homesite Sales. Further, the General Partner shall provide financial statements, including a balance sheet, and the related statements of income and retained earnings and changes in financial position. These statements will be audited if required by Paragraph 7.2(a) above. The General Partner also agrees to arrange for the preparation of all tax returns required to be filed for the Partnership and hereby agrees to retain the same accountant to prepare such returns as may be engaged by the Partnership to audit the Partnership's annual financial statements. The General Partner will furnish to each Partner within ninety (90) days after the close of each fiscal year, or as soon thereafter as is practicable, a Schedule K-1, or other statements given to the Partners, which sets forth each Partner's share of the Net Income, Net Loss, depreciation and other relevant fiscal items of the Partnership for such fiscal year.

7.3 Partnership Deposits and Disbursements. In order to insure that the books of the Partnership accurately reflect the receipts and disbursements of the Partnership in connection with the operation of the Project, all receipts of the Partnership, including Capital Contributions from the Partners, will be deposited and maintained in the name of the Partnership in such bank account(s) as shall be designated by the General Partner. The General Partner will disburse only from funds in said Partnership accounts any and all fees, payments of debt service or similar items payable to any lending institutions, and all other Partnership expenses and obligations, including any and all obligations owed to the General Partner and its Affiliates.

8. TRANSFER OF PARTNERS' INTERESTS; WITHDRAWAL

8.1 General Partner. A General Partner may not assign, sell or transfer all or any portion of its interest in the Partnership to any person (the "Transferee") without the consent of a Majority in Interest of the Limited Partners. If such consent is granted, it shall be subject to the provisions of Paragraph 5.4 and Paragraph 5.9 hereof. Notwithstanding the foregoing, consent from the Limited Partners shall not be required in the event the General Partner assigns, sells or transfer all or a portion of its interest in the Partnership to an entity wholly owned or controlled by the General Partner.

8.2 Limited Partners.

(a) A Limited Partner may not assign, sell or transfer all or any portion of his interest in the Partnership without the prior written consent of the General Partner or its successors or assigns.

(b) Notwithstanding the foregoing, a Limited Partner is not prohibited from (i) designating, by written notice to the General Partner, a person to succeed to his interest in the partnership pursuant to the provisions of Section 706 of the Code or Treasury Regulation Section 1.706-1(c)(3)(iii) in the event of his death; or (ii) assigning from time to time his rights to receive all or any portion of the distributions to which he may be entitled under the terms of this Agreement and any or all allocations of items of gain, loss, depreciation and other "distributive items" referred to in the Code with which he may be credited or charged hereunder. Notwithstanding the foregoing, however, any such partial assignment or transfer shall not discharge a Limited Partner from any liability or obligation to the Partnership by reason of such partial assignment or transfer.

8.3 Section 754 Election. In the event of a transfer of all or part of the interest of a Limited Partner in the Partnership by sale or exchange or on the death of a Limited Partner, the General Partner, at the request of any Partner, shall cause the Partnership to elect, pursuant to Section 754 of the Code or corresponding provision of subsequent law, to adjust the basis of the Partnership property as provided in Section 743 of the Code. This and all other elections required or permitted to be made by the Partnership under the Code shall be made by the General Partner in such manner as in the General Partner's reasonable judgment will be most advantageous to a Majority in Interest of the Limited Partners.

8.4 Liability of Partner Upon Transfer. Nothing in this Agreement shall be deemed to render a Partner liable for the acts of any successor or to affect the Partner's obligations to creditors of the Partnership (other than Partners) as determined pursuant to the Partnership Act.

9. DISSOLUTION OF PARTNERSHIP

9.1 Events of Dissolution. The Partnership shall be dissolved on the earlier to occur of:

(a) on a date designated by the General Partner if such occurs subsequent to a Liquidating Transaction;

(b) upon the occurrence of an Act of Bankruptcy, liquidation, removal, withdrawal, death, dissolution of or assignment for the benefit of creditors by a General Partner and the failure to elect or designate a successor General Partner pursuant to Paragraph 9.3 hereof;

(c) upon a Liquidating Transaction; provided, however, that if the Partnership receives a promissory note upon the sale of all or substantially all of the Partnership's assets, the General Partner may elect not to dissolve the Partnership while that promissory note remains uncollected;

(d) in any event, no later than 11:59 p.m. on December 31, 2050.

9.2 Limited Partners. Neither the death of the Limited Partner nor an Act of Bankruptcy by the Limited Partner will dissolve the Partnership or terminate the Partnership's business, but the rights of such Limited Partner to receive Partnership distributions and allocations, on the happening of such an event, will devolve upon the Limited Partner's legal representative or successors in interest, as the case may be, subject to the terms and conditions of this Agreement, and the Partnership shall continue as a limited partnership. Such Limited Partner's representative or successors in interest shall be liable for all of the obligations of such Limited Partner.

9.3 General Partner. An Act of Bankruptcy, dissolution, liquidation, removal, death, withdrawal of, or assignment for the benefit of creditors by a General Partner shall dissolve the Partnership, unless within ninety (90) days after notice is given to the remaining General Partner, if any, of the occurrence of such event, such remaining General Partner elects to continue the business of the Partnership by the appointment of a new general partner(s) or, in the event there is no remaining general partner, all of the then-remaining Partners consent to the continuation of the business of the Partnership by the appointment of a new general partner(s). The affected General Partner (or its legal representatives, as the case may be) is hereby deemed to consent to the continuation of the business of the Partnership by the appointment of the new general partner(s). The affected General Partner or its legal representatives, as the case may be, shall be a limited partner of the Partnership from and after the date of such event, with the same interest in Partnership distributions and allocations set forth in Article 4 hereof.

9.4 Distribution Upon Liquidation. Upon dissolution or termination of the Partnership the assets of the Partnership shall be liquidated by the General Partner, or, in the event that there is no General Partner, by the other Partners, as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice, and the General Partner or the other partners, as the case may be, shall cause to be prepared by the firm of certified public accountants then retained by the Partnership a statement setting forth the assets and liabilities of the Partnership as at the date of dissolution, which statement shall be furnished to all of the Partners. Upon the dissolution or termination of the Partnership, the net proceeds from the liquidation of the assets of the Partnership shall be distributed first pro-rata to all Partners with respect to their Capital Accounts until the Limited Partners Capital Accounts are equal to zero, and then to the General Partner as provided in Paragraph 4.05 hereof. Net Income or Net Loss relating to any such dissolution or termination of the Partnership shall be allocated as provided in Article 4 hereof.

9.5 Capital Accounts. For the purposes of any applicable state laws, upon the dissolution of the Partnership any negative capital account balances of the Limited Partners shall in no event be considered to be an asset of the Partnership and, except as otherwise provided herein, in no event shall the Limited Partners have any obligation to make any repayment thereof or contribution of capital in respect thereto. The General Partner shall be required to restore a deficit capital account upon liquidation.

10. MISCELLANEOUS

10.1 Execution in Counterparts. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original, but all of which, taken together, shall constitute one and the same agreement, binding upon the parties hereto, their heirs, executors, administrators, successors and permitted assigns.

10.2 Notices.

(a) All notices and demands under this Agreement shall be in writing and shall be personally delivered or couriered, or sent by facsimile or other means of written telecommunications, or deposited in the United States mail, postage paid, registered or certified, return receipt requested, directed to the parties at their respective addresses set forth herein, and to the Partnership at its place of business set forth above. Any party hereto may designate a different address to which notices or demands shall thereafter be directed by written notice given in the same manner and directed to the Partnership at its office hereinabove set forth.

(b) A personal or courier delivered notice shall be effective upon delivery to addressee; a notice sent via facsimile or other means of written telecommunications shall be effective upon sending; a mailed notice shall be effective upon the date shown on the return receipt or other evidence of delivery;

provided, however, that if the recipient refuses to accept delivery, such notice shall be effective when mailed.

10.3 Power of Attorney.

(a) The Subscription Agreement to be executed by the Limited Partners contains a special power of attorney granted by the Limited Partners to the General Partner and to its successors and assigns. In the event of any conflict between the provisions of this Agreement and any document executed or filed by the General Partner pursuant to the Special Power of Attorney granted in the Subscription Agreement, this Agreement shall govern. Pursuant to the Power of Attorney granted by the Limited Partners, the General Partner may execute or file the following documents:

(i) this Agreement and the Partnership's Certificate of Limited Partnership, any amendments thereto and modifications thereof, including, without limitation: (A) any amendment to the Partnership's Certificate of Limited Partnership to be filed in accordance with the laws of the State of North Carolina and the applicable laws of any other state or jurisdiction in which the said attorney deems such filing to be necessary to give effect to the provisions of this Agreement and to preserve the character of the Partnership as a limited partnership; or (B) any amendment to or modification of this Agreement and the Partnership's Certificate of Limited Partnership, to effect the addition, substitution or removal of one or more Limited Partners or a General Partner, provided that each such amendment or modification evidences an amendment to or modification of this Agreement adopted in accordance with the terms thereof;

(ii) any such other agreements, instruments and documents as the General Partner may deem necessary for the purpose of admitting a Limited Partner as one of the Limited Partners in the Partnership;

(iii) any other certificate or instrument or document which may be required to be filed by the Partnership or the Partners under the law of any state or other jurisdiction to the extent that the General Partner may deem such filing to be necessary or desirable;

(iv) any other certificate or instrument or document which may be required to effectuate the dissolution and termination of the Partnership pursuant to the provisions of this Agreement;

(v) any Limited Partner's subscription documents to correct or complete in accordance with the apparent intent thereof; and

(vi) any such other instrument or document as the General Partner may deem necessary or desirable fully to effectuate the provisions of this Agreement in accordance with its terms.

(b) The attorney specified above shall have full power and authority to do and perform each and every act and thing whatsoever requisite and necessary in and about the foregoing as fully as each Limited Partner might or could do if personally present and each Limited Partner hereby ratifies and confirms all that the said attorney shall lawfully do or cause to be done by virtue hereof. Nothing contained in this Special Power of Attorney shall empower the said attorney, without the prior written consent of a Limited Partner, to execute any instrument or document which increases the liability of such Limited Partner beyond the liability contemplated by the Subscription Agreement and this Agreement, or which reduces the pro rata share of such Limited Partner in Net Revenue from Homestead Sales and distributions of cash to be received by such Limited Partner under the provisions of this Agreement.

(c) Each Limited Partner, by executing the Subscription Agreement, acknowledges that he has received and reviewed this Agreement and understands that this Agreement permits certain amendments to be effected and certain other action to be taken or omitted by or with respect to the Partnership, only with the written approval of a specified percentage of Limited Partners. Each Limited Partner expressly agrees that this Special Power of Attorney does not empower the said attorney to execute any such approval or any objection for or in behalf of such Limited Partner. However, if, as and when (i) an amendment of this Agreement or other action is proposed to be taken or omitted by or with respect to the Partnership which requires, under the provisions of this Agreement, the approval of a specified percentage in interest of the Limited Partners; (ii) forms of approval to such amendment or action or omission to act have been mailed to all Limited Partners at their respective addresses for purposes of notice designated by them pursuant to this Agreement and counterparts of such approvals executed by Limited Partners holding the percentage of limited partnership interests in the Partnership specified in this Agreement as being required for such amendment or action or omission to act have been returned to the Partnership (if the Partnership has not received a sufficient number of such approvals within twenty (20) days after notice of solicitation given in accordance with Paragraph 10.2, any Partners who have not submitted a written objection within such twenty (20) days will be deemed to have delivered their approval and consented to such amendment, action or omission to act); and (iii) a Limited Partner has failed or refused to execute such an approval, then, notwithstanding any statute or rule of law, other than such as cannot be legally waived or surrendered, which might, in the absence of this agreement of such Limited Partner, be deemed to require the consent to such amendment or action of all the Limited Partners, or a greater percentage in interest of the Limited Partners than

that specified in this Agreement, such Limited Partner agrees that the said attorney, with full power of substitution, is hereby authorized and empowered to make, execute, date, consent to, swear to, verify, acknowledge, publish, deliver, record and file, for and in behalf of such Limited Partner, and in the name, place and stead of such Limited Partner, any and all instruments and documents which may be necessary or appropriate to permit such amendment to be lawfully made or such action to be lawfully taken or omitted.

(d) The foregoing grant of authority:

(i) is a Special Power of Attorney coupled with an interest and, as such, shall be durable and irrevocable, and shall survive the death or insanity or incapacity of each Limited Partner;

(ii) may be exercised by the said attorney by a separate signature for each Limited Partner or by a single signature for all of the Limited Partners as attorney for all of them; and

(iii) shall survive the assignment by a Limited Partner of the whole or any portion of his interest in the Partnership, except that, where the assignee of the whole such interest has furnished a power of attorney and has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, as provided in this Agreement, this power of attorney shall survive such assignment for the sole purpose of enabling an attorney to take such action as may be necessary to effect such substitution and shall thereafter terminate.

10.4 Amendment.

(a) This Agreement may be modified or amended at any time by a writing signed by the General Partner and by a Majority in Interest of the Limited Partners acting in person or by power of attorney as provided in Paragraph 10.3; provided, however, that no such modification or amendment shall change the interest of any Partner in the capital, profit and losses or cash distributions of the Partnership or his rights of contribution or withdrawal with respect thereto, or amend Paragraph 1.4 or Article 9 hereof or this Paragraph 10.4 without the express, written consent of each Partner materially affected thereby.

(b) Each Limited Partner shall receive a copy of any amendment to this Agreement which has been executed by the General Partner pursuant to the power of attorney granted by each Limited Partner to the General Partner.

10.5 Additional Documents. Each party hereto agrees to execute, with acknowledgment or affidavit, if required by the General Partner, any and all documents and

writings which may be necessary or expedient in connection with the achievement of the Partnership's purposes.

10.6 Meetings.

(a) A meeting of the Partners for the purpose of acting upon any matter upon which the Partners are entitled to vote may be called by the General Partner at any time, and shall be called by the General Partner no more than fifteen (15) days after receipt by it of a written request for such a meeting signed by a Majority in Interest of the Limited Partners. The General Partner shall give written notice of any such meeting to the other Partners, which notice shall specify the purpose of the meeting, and such meeting shall be held no less than five (5) and no more than thirty (30) days after the General Partner sends such notice to the other Partners.

(b) The General Partner may, and no more than fifteen (15) days after receipt of a written request signed by the other Partners shall, submit to the other Partners any matter upon which they are entitled to vote for a vote by written consent without a meeting. Such written consents shall be treated for all purposes as votes at a meeting.

10.7 Validity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

10.8 Governing Law. This Agreement shall be construed according to, and the management of the Partnership shall be governed by, the laws of the State of North Carolina.

10.9 Waiver. The waiver by any party hereto of the breach of any term, covenant, agreement or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein, nor shall any custom, practice or course of dealings arising among the parties hereto in the administration hereof be construed as a waiver or diminution of the right of any party hereto to insist upon the strict performance by any other party of the terms, covenants, agreements and conditions herein contained.

10.10 Litigation Expenses. In the event of litigation or legal proceeding of any type relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing party.

10.11 Entire Agreement. This Agreement and all documents and instruments incorporated herein, together with the Memorandum and all documents and instruments incorporated therein, by specific reference are intended by the parties hereto to be the final

expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made.

10.12 Federal Tax Audits.

(a) In the event that the IRS commences an examination of the Partnership's tax return(s), the General Partner shall be the tax matters partner ("TMP") who shall have primary responsibility for conducting negotiations with the IRS in connection with any administrative proceedings at the partnership level with respect to partnership items, and, if necessary, for filing a petition for a readjustment of a final partnership administrative adjustment by the IRS with the United States Tax Court, the district court of the United States for the district in which the Partnership's principal place of business is located, or the United States Court of Claims for a readjustment of a final partnership administrative adjustment.

(b) The TMP shall engage legal counsel to represent the partnership in any administrative proceeding at which such legal counsel deems it appropriate to be present and in any judicial proceedings which are brought by the TMP.

(c) The TMP shall notify all Partners of the commencement of any administrative proceeding by the IRS and shall keep all Partners currently advised of developments in any such proceedings.

(d) Notwithstanding anything to the contrary contained in Paragraphs (a) and (b) above, the TMP shall have no authority to bind any Limited Partner by any settlement agreement entered into by the TMP and the IRS, unless such Limited Partner has expressly notified the TMP in writing that he is so authorized. Within thirty (30) days after the TMP has received notice from the IRS of a final partnership administrative adjustment, the TMP shall notify all of the Limited Partners of such final administrative adjustment and the effect it will have on their individual tax returns on a per Unit basis. Such notification shall also include information concerning the Limited Partners' right to request the same settlement terms from the IRS.

(e) The TMP shall be entitled to indemnity from the Partnership for any act performed by it within the scope of its duties as tax matters partner, except for the negligent or willful acts or failures to act as a tax matters partner, provided that any indemnity under this Paragraph shall be provided out of and to the extent of Partnership assets only and no Limited Partner shall have any personal liability on account thereof.

(f) All reasonable expenses incurred by the TMP in connection with any administrative proceeding before the IRS and/or judicial review of such

proceeding, including reasonable attorneys' fees, shall be deemed a Partnership operating expense.

(g) Any Partner other than the TMP who wishes to participate in the administrative proceedings at the Partnership level may do so, but any legal, accounting or other expenses incurred by such Partner in connection therewith shall not be deemed a Partnership expense but shall be paid by such Partner.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and in the year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witnesses:

Sh. J. R. H.
William E. Beck

Sh. J. R. H.
William E. Beck

Sh. J. R. H.
William E. Beck

GENERAL PARTNER:

BALSAM MOUNTAIN COMPANY,
LLC

By: James J. Chaffin, Jr.
James J. Chaffin, Jr., Manager

INITIAL LIMITED PARTNER:

Montgomery Blaisdell
Montgomery Blaisdell

LIMITED PARTNERS:

Balsam Mountain Company, LLC

By: James J. Chaffin, Jr.
as Attorney-in-fact for the Limited
Partners whose names appear listed on
Schedule A

EXHIBIT "A"
LIST OF LIMITED PARTNERS
OF BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP

NAME AND ADDRESS	NUMBER OF UNITS	CAPITAL CONTRIBUTION	DATE OF ADMISSION
Montgomery P. Blaisdell 9 River Bend Drive, Callawassie Island, SC 29910		\$10.00	9/25/00
William B. and Karen S. Allin 116 Tall Pines Trail Greenwood, SC 29646	1	\$350,000	9/26/00
Bill Barnette Box 188 705 Allen Street Greenwood, SC 29646	1	\$350,000	9/26/00
Ann Baruch 230 Laurel Lane Haverford, PA 19041-1722	1	\$350,000	9/26/00
Ross and Nancy Berlin 293 Plantation Circle South Ponte Vedra Beach, FL 32082	1	\$350,000	9/26/00
Doubletop Mountain Holdings, LLC ATTN: William L. Bethea, Jr. and Peter LaMotte 14 Bram's Point Road Hilton Head Island, SC 29926	1	\$350,000	9/26/00
Harrold P. and Linda L. Bowen 24 Dockside Lane PMB 135 Key Largo, FL 33037	1	\$350,000	9/26/00
James Bradshaw PO Drawer 5211(29938) 90 Beach City Road Hilton Head Island, SC 29926 and Carlos Evans 425 Colville Road Charlotte, NC 28207	1	\$350,000	9/26/00
Bill Branstrom 320 S. Tryon Street Suite 202 Charlotte, NC 28202 and Dennis Thompson 9114 Winged Bourne Charlotte, NC 28210	1	\$350,000	9/26/00

John and Margaret G. Carswell 26 East Bay Street Savannah, BA 31401 and Pisgah Partners, LLC c/o Henry and Emily Clay 3221 Amherst Avenue Columbia, SC 29205	1	\$350,000	9/26/00
Gordon F. and Gilliam L. Granger 10 Live Oak Forest PO Box 4063 Spring Island, SC 29910	1	\$350,000	9/26/00
Robert W. and Diane M. Gundeck 2660 West Wesley Road Atlanta, GA 30327	1	\$350,000	9/26/00
Rod Hanlon 3060 Peachtree Road NW Suite 1777 Atlanta, GA 30305	1	\$350,000	9/26/00
William H. and Kay Iredale 732 Lippincott Avenue Moorestown, NJ 08057	1	\$350,000	9/26/00
Henry B. and Harriett Kinard III 127 East Cambridge Avenue Greenwood, SC 29646	1	\$350,000	9/26/00
Kenneth D. and Donna C. Lewis 2633 Richardson Drive Charlotte, NC 28211	1	\$350,000	9/26/00
Hugh D. and Linda Lockman 40 Old House Creek Drive Hilton Head Island, SC 29926	1	\$350,000	9/26/00
William P. and Leslie W. Loflin PO Box 4016 Spring Island, SC 29910	1	\$350,000	9/26/00
John and Susan Masaschi PO Box 4059 38 John Cochran Circle Spring Island, SC 29910	1	\$350,000	9/26/00
Finley Merry 2222 Cumming Road Augusta, GA 30904	1	\$350,000	9/26/00
Fleming Norvell 2560 Walton Way Augusta, GA 30904	1	\$350,000.00	

Leonard Park 2771 Cokesbury Road Greenwood, SC 29649	1	\$350,000	9/26/00
Mark and Diana Permar 81 Dungannon Hall Kiawah Island, SC 29455	1	\$350,000	9/26/00
Morgan (Randy) Pirkle and Sandra Almond 17 West Wesley Ridge Atlanta, GA 30327	1	\$350,000	9/26/00
Joseph C. (Carry) Rich 100 Maple Street South Hamilton, MA 01982	1	\$350,000	9/26/00
Harold S. (H.S.) and Kim Russell 212 Wentworth Street Charleston, SC 29401	1	\$350,000	9/26/00
Charles R. Schaller 8 Bonny Shore Landing PO Box 4072 Spring Island, SC 29910	1	\$350,000	9/26/00
W. Thomas Smith, Jr. 1325 Peachtree Street, #902 Atlanta, GA 30309	1	\$350,000	9/26/00
David L. Sparks 604 Ridgecrest Drive Clemson, SC 29631	1	\$350,000	9/26/00
J. Ronald Terwilliger 2859 Paces Ferry Road Suite 1100 Atlanta, GA 30339	1	\$350,000	9/26/00
Ullman Family Partnership, LP c/o Richard O. Ullman 610 Breckenridge Wayne, NJ 07470	1	\$350,000	9/26/00
Leonard Wood 1110 N. Chase Parkway Suite 150 Marietta, GA	1	\$350,000	9/26/00
William F. and Gay Yelverton 4439 N. 33 rd Street Arlington, VA 22207	1	\$350,000	9/26/00

EXHIBIT "B"

LEGAL DESCRIPTION

TRACT ONE:

That tract of land containing 4200.19 acres, more or less, and as more fully described on the "Survey For: Champion International Corporation, County: Jackson, G.M.D.: Scotts Creek, State: North Carolina, Date: June 22, 1999, Scale: 1" = 1500' Surveyed By: Bauknight & Associates, Inc. by W. Slate Bauknight, Georgia RLS #2534, North Carolina Temporary permit #T-226, June 22, 1999 and recorded in Jackson County on October 20, 1999 in Plat Cabinet 9, Slides 927-931 (the "Survey"), to which record reference is hereby made and incorporated herein.

Together with all of Grantor's right title and interest in and to any and all easements for road right of ways and public utilities set forth in Deed recorded in Book 71 at Page 156 of the Jackson County Public Registry and together further with all of Grantor's right title and interest in and to all easements for road right of way and public utilities which have heretofore been excepted and reserved in Deeds of Conveyance from Grantor or its predecessors and which are of record in the Jackson County Public Registry.

This being the same property conveyed to GPT Enterprises, L.L.C. by Champion International Corporation by Special Warranty Deed dated October 27, 1999 and recorded October 28, 1999 in the office of the Jackson County Register of Deeds in Deed Book 1064 at Page 315.

TRACT TWO

BEING AND COMPREHENDING that tract of land containing 147.48 acres, more or less, as shown and depicted on that map or plat entitled F. S. J. Properties, Inc. prepared by Scott M. Sylvester, R.L.S., PA and recorded in Plat Cabinet 5, Slide 867, in the office of the Register of Deeds for Jackson County, North Carolina, to which reference is hereby made and incorporated herein.

Together with any easements for roadways and public utilities, if any, which are appurtenant to the above described 147.48 acre tract of land.

This being the same property conveyed to GPT Enterprises, L.L.C. by FSJ Properties, Inc. by deed dated November 3, 1999 and recorded in the office of the Jackson County Register of Deeds in Deed Book 1066 at Page 134.

EXHIBIT "C"

SUBSCRIPTION AGREEMENT

**SUBSCRIPTION AGREEMENT - POWER OF ATTORNEY
BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP**

To: BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP
PO Box 39
Balsam, North Carolina 28707-0039

From: William P. Loelin (the "Subscriber")

BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP is a limited partnership (the "Partnership") formed under North Carolina law. The general partner of the Partnership is BALSAM MOUNTAIN COMPANY, LLC, a North Carolina limited liability company (the "General Partner"). The Partnership is in the process of providing for the admission of limited partners (the "Limited Partners"). A total of thirty-five (35) limited partnership interests (the "Units") in the Partnership are being offered for sale in the amount of \$350,000 each, with \$50,000 in cash due upon subscription no later than September 18, 2000 and \$300,000 due and payable September 25, 2000, as more particularly described in the Confidential Offering Memorandum, delivered to Subscriber previously or simultaneously herewith, and any amendments thereto utilized in connection with such offer and sale (the "Confidential Offering Memorandum"). The agreement that will govern the affairs of the Partnership and the respective rights and obligations of its partners (the "Partnership Agreement") is substantially the same as the document set forth as Exhibit C to the Confidential Offering Memorandum.

1. Subscription. Subject to the terms and conditions hereof and the provisions of the Confidential Offering Memorandum and the Partnership Agreement, Subscriber hereby tenders this subscription for the number of Units specified in Paragraph 13 hereof. Subscriber may revoke this subscription only if, prior to the date of its acceptance by the Partnership, Subscriber notifies the Partnership in writing of such revocation at the address set forth above. If Subscriber gives the Partnership written notice of rescission Subscriber shall receive a return of Subscriber's capital contribution plus any interest earned thereon less any applicable escrow fees.

2. Tender of Payment. Tender of payment of one-seventh (1/7) of the amount of the purchase price (\$50,000 per Unit) is made in full upon execution of this Subscription Agreement, no later than September 18, 2000. The remaining six-sevenths (6/7) of the purchase price in the amount of \$300,000 per Unit is to be paid on September 25, 2000. Such sum will be deposited upon receipt and held in escrow for the benefit of Subscriber pending the closing of the transaction contemplated by the offer and sale of the Units in accordance with the terms of the Partnership Agreement and the Confidential Offering Memorandum. At such time as the conditions precedent to such closing shall have been satisfied, such sum will be remitted to the Partnership. The sum tendered herewith and this Subscription Agreement will be returned promptly to Subscriber, with any interest accrued thereon, if (a) Subscriber revokes this subscription in a timely manner as provided above; or (b) this subscription is rejected in whole or in part by the General Partner; or (c) less than twenty (20) of the Units offered for sale concurrently herewith are sold on or prior to the date upon which the offer and sale of the Units terminates in accordance with the provisions of the Confidential Offering Memorandum, as the same may be amended.

3. Acceptance of Subscription. The Partnership has the right to accept or reject this subscription, in whole or in part, and the same shall be accepted by the Partnership when it is signed by the General Partner and the funds of subscription tendered concurrently herewith are transferred to the Escrow Agent.

4. Minimum Subscription; Right to Disburse; Sale of Remaining Units. The Partnership is offering a minimum of 20 Limited Partnership Units to raise capital to partially fund the acquisition of the Land and initial development activities of the Project. If twenty (20) or more Units are subscribed on the Offering Termination Date, the General Partner shall have the right to close and disburse on the Units subscribed as of that date and the General Partner shall have the right to continue the sale of the remaining unsold Units up to a total of thirty-five (35) Units until but not beyond November 24, 2000.

5. Right to Extend Offering. As provided in the Confidential Offering Memorandum, the General Partner has the right to extend the closing date of the Offering and the Offering Termination Date to a date no later than November 24, 2000.

6. Adoption of Partnership Agreement. Subscriber hereby ratifies, adopts, accepts and agrees to be bound by all the terms and provisions of the Partnership Agreement, as the same may be amended to the date hereof and hereafter in accordance with its terms, and to perform all obligations imposed upon a Limited Partner thereunder. Upon (a) the acceptance of this subscription by the General Partner on behalf of the Partnership and (b) the execution of the Partnership Agreement or amendment thereto evidencing the admission of Subscriber as a Limited Partner of the Partnership, Subscriber shall become a Limited Partner of the Partnership.

7. Representations and Warranties of Subscriber. Subscriber hereby represents and warrants to the Partnership and the General Partner and their respective partners, agents and employees as follows:

7.1 that Subscriber has adequate means of providing for Subscriber's current needs and personal contingencies, and Subscriber has no need now, and anticipates no need in the foreseeable future, to sell the Units for which Subscriber hereby subscribes, and Subscriber currently has sufficient financial liquidity to afford a complete loss of Subscriber's investment in the Partnership;

7.2 that Subscriber meets, and anticipates that Subscriber will continue to meet, at least one of the financial suitability categories set forth at Paragraph 14;

7.3 that Subscriber or Subscriber's purchaser representative has received and has had an opportunity to read and become familiar with the Confidential Offering Memorandum, including the exhibits annexed thereto and any amendments thereof, and Subscriber confirms that all documents, records and books pertaining to Subscriber's proposed investment in the Partnership have been made available to Subscriber and/or Subscriber's purchaser representative;

7.4 that Subscriber and/or Subscriber's purchaser representative have had an opportunity to ask questions of and receive answers from the General Partner, or its authorized

without having first registered the Units under the Securities Act of 1933. Subscriber further acknowledges that Subscriber understands the meaning and legal consequences of the representations and warranties in Paragraphs 7 and 14 hereof, and Subscriber hereby agrees to indemnify and hold harmless the Partnership and the General Partner and their agents and employees from and against any and all loss, damage or liability, including reasonable costs and expenses (including attorneys' fees), due to or arising out of a breach of any such representations or warranties or any failure to fulfill any covenants or agreements contained in this Subscription Agreement. All representations, warranties and covenants contained in this Subscription Agreement and the indemnification contained in this Paragraph 8 shall survive the acceptance of this Subscription Agreement and the sale of Units in the Partnership. Notwithstanding the foregoing, however, no representation, warranty, acknowledgment or agreement made herein by Subscriber shall in any manner be deemed to constitute a waiver of any rights granted to Subscriber under federal or state securities laws.

9. Consent to Use of Information. Subscriber hereby consents to the utilization by the Partnership, as necessary in connection with dealings with any institutional lender or governmental agency which the General Partner deem to be in the Partnership's interest and in furtherance of its business purpose and objectives, of any information supplied to the Partnership by Subscriber or by Subscriber's representatives in connection with the offer and sale of the Units and agrees to supply any additional information reasonably requested by any such lender or company, agency, or any surety.

10. Limitation on Transfer of Units. Subscriber acknowledges that there are substantial restrictions on the transferability of the Units. Since the Units will not be, and Subscriber has no right to require that they be, registered under the Securities Act of 1933 or applicable state securities laws, the Units may not be, and Subscriber agrees that they shall not be, sold unless such sale is exempt from such registration under said Act or applicable state securities laws. Subscriber further acknowledges that the Units may not be sold without the express written consent of the General Partner and compliance with all relevant provisions of the Partnership Agreement. Subscriber also acknowledges that Subscriber shall be responsible for compliance with all conditions on transfer imposed by any Blue Sky or state securities law administrator and will hold the Partnership and the General Partner harmless from any breach thereof.

11. Special Power of Attorney.

11.1 Each Limited Partner hereby appoints Balsam Mountain Company, LLC, the General Partner of the Partnership, with full power of substitution, Subscriber's true and lawful attorney, for Subscriber and in Subscriber's name, place and stead and for Subscriber's use and benefit to sign, swear to, acknowledge, file and record:

- (a) the Partnership Agreement and the Certificate of Limited Partnership, any amendments thereto and modifications thereof, including, without limitation:
 - (i) any amendment to the Certificate of Limited Partnership to be filed in accordance with the laws of the State of North Carolina and the applicable laws of any other state or jurisdiction in which said attorney deems such filing to be necessary to give effect to the provisions of the Partnership Agreement and to preserve the character of the partnership as a limited partnership; (ii) any amendment to or modification of the Partnership Agreement and the Certificate of Limited Partnership, to effect the

addition, substitution or removal of one or more Limited Partners or a General Partner, provided that each such amendment or modification evidences an amendment to or modification of the Partnership Agreement adopted in accordance with the terms thereof;

(b) any such other agreements, instruments and documents as the General Partner may deem necessary for the purpose of admitting a Limited Partner as one of the Limited Partners in the Partnership;

(c) any other certificate or instrument or document which may be required to be filed by the Partnership or the Partners under the law of any state or other jurisdiction to the extent that the General Partner may deem such filing to be necessary or desirable;

(d) any other certificate or instrument or document which may be required to effectuate the dissolution and termination of the Partnership pursuant to the provisions of this Agreement;

(e) any Limited Partner's subscription documents to correct or complete same in accordance with the apparent intent thereof; and

(f) any such other instrument or document as the General Partner may deem necessary or desirable fully to effectuate the provisions of the Partnership Agreement in accordance with its terms.

11.2 Under the power of attorney, the attorney specified in this Paragraph 11 shall have full power and authority to do and perform each and every act and thing whatsoever requisite and necessary in and about the foregoing as fully as each Limited Partner might or could do if personally present and each Limited Partner hereby ratifies and confirms all that said attorney shall lawfully do or cause to be done by virtue hereof. Nothing contained in this Special Power of Attorney shall empower said attorney, without the prior written consent of a Limited Partner, to execute any instrument or document which increases the liability of such Limited Partner beyond the liability contemplated by the Partnership Agreement and this Agreement, or which reduces the pro rata share of such Limited Partner in the Net Revenue from Homestead Sales and distributions of cash relating thereto to be received by such Limited Partner under the provisions of the Partnership Agreement.

11.3 If, as and when (a) an amendment of the Partnership Agreement or other action is proposed to be taken or omitted by or with respect to the Partnership which requires the approval of a specified percentage in interest of the Limited Partners; (b) forms of approval to such amendment or action or omission to act have been mailed to all Limited Partners at their respective addresses for purposes of notice designated by them pursuant to the Partnership Agreement and counterparts of such approvals executed by Limited Partners holding the percentage of limited partnership interests in the Partnership specified in the Partnership Agreement as being required for such amendment or action or omission to act have been returned to the Partnership (if the Partnership has not received a sufficient number of such approvals within twenty (20) days after notice of solicitation given in accordance with the Partnership Agreement, any Partners who have not submitted a written objection within such twenty (20) days will be deemed to have delivered

their approval and consented to such amendment, action or omission to act); and (c) a Limited Partner has failed or refused to execute such an approval, then, notwithstanding any statute or rule of law, other than such as cannot be legally waived or surrendered, which might, in the absence of this agreement of such Limited Partner, be deemed to require the consent to such amendment or action of all the Limited Partners, or a greater percentage in interest of the Limited Partners than that specified in the Partnership Agreement, such Limited Partner agrees that the said attorney, with full power of substitution, is hereby authorized and empowered to make, execute, date, consent to, swear to, verify, acknowledge, publish, deliver, record and file, for and in behalf of such Limited Partner, and in the name, place and stead of such Limited Partner, any and all instruments and documents which may be necessary or appropriate to permit such amendment to be lawfully made or such action to be lawfully taken or omitted.

11.4 The foregoing grant of authority

(a) is a Special Power of Attorney coupled with an interest and, as such, shall be irrevocable, and shall survive the death or insanity or incapacity of each Limited Partner;

(b) may be exercised by the said attorney by a separate signature for each Limited Partner or by a single signature for all of the Limited Partners as attorney for all of them; and

(c) shall survive the assignment by a Limited Partner of the whole or any portion of Subscriber's interest in the Partnership, except that, where the assignee of the whole such interest has furnished a power of attorney and has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, as provided in the Partnership Agreement, this power of attorney shall survive such assignment for the sole purpose of enabling said attorney to take such action as may be necessary to effect such substitution and shall thereafter terminate.

12. Partnership Agreement Prevails in Conflict. In the event of any conflict between the provisions of the Partnership Agreement and any document executed or filed by the General Partner pursuant to the Special Power of Attorney granted in this Subscription Agreement, the Partnership Agreement shall govern.

13. Legal Description. For purposes of complying with the securities regulations governing the offer and sale of the Units, Subscriber takes notice of the following legal disclosures:

ANY REPRODUCTION OR DISTRIBUTION OF THE MEMORANDUM, IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS TO ANY PERSON OTHER THAN THE PERSON TO WHOM THE MEMORANDUM WAS FURNISHED BY THE PARTNERSHIP WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARTNERSHIP IS PROHIBITED. THE PERSON TO WHOM THE MEMORANDUM WAS FURNISHED BY THE PARTNERSHIP, BY ACCEPTING DELIVERY OF THE MEMORANDUM, AGREES TO RETURN THE MEMORANDUM TO THE PARTNERSHIP IF HE DECLINES TO PURCHASE A UNIT IN THE PARTNERSHIP.

THE CONTENTS OF THE MEMORANDUM SHOULD NOT BE CONSTRUED AS INVESTMENT OR LEGAL ADVICE, AND NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ARE INTENDED OR SHOULD BE INFERRED WITH RESPECT TO THE ECONOMIC RETURN WHICH MAY ACCRUE TO A PURCHASER OF A UNIT. EACH PROSPECTIVE SUBSCRIBER SHOULD CONSULT HIS OWN ADVISOR REGARDING THE FINANCIAL, TAX AND LEGAL IMPLICATIONS OF AN INVESTMENT IN PARTNERSHIP. THE STATEMENTS MADE IN THE MEMORANDUM ARE MADE AS OF THE DATE OF THE MEMORANDUM, EXCEPT AS OTHERWISE INDICATED. NEITHER THE DELIVERY OF THE MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL UNDER ANY CIRCUMSTANCES CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE PARTNERSHIP SINCE THE DATE OF THE MEMORANDUM OR THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THAT DATE.

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THE MEMORANDUM, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON. NO OFFERING LITERATURE OR ADVERTISING IN ANY FORM OTHER THAN THE MEMORANDUM AND THE DOCUMENTS REFERRED TO THEREIN MAY BE EMPLOYED IN THE OFFERING OF THE UNITS.

THE MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, IN ANY STATE OR OTHER JURISDICTION IN WHICH, OR TO ANY PERSON TO WHOM, IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SOLICITATION.

THE UNITS OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. THE UNITS ARE OFFERED IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND SUCH LAWS. THE UNITS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE TRANSFERABILITY OF THE UNITS ARE RESTRICTED BY FEDERAL AND STATE SECURITIES LAWS. MOREOVER, NO PUBLIC MARKET FOR THE UNITS EXISTS AND NONE WILL DEVELOP.

THE UNITS OFFERED HEREBY ARE HIGHLY SPECULATIVE AND INVOLVE A HIGH DEGREE OF RISK. NO MARKET FOR THESE UNITS EXISTS AND SUBSCRIBERS SHOULD NOT ANTICIPATE THAT ONE WILL DEVELOP. THE UNITS MAY NOT BE TRANSFERRED OR RESOLD.

IN MAKING AN INVESTMENT DECISION SUBSCRIBERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

14. Financial Disclosures. Subscriber hereby represents that Subscriber falls within the following financial suitability categories (please indicate each criterion that is satisfied by checking the appropriate answer):

- YES__ NO__ (a) A person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and a reasonable expectation of reaching at least the same income level in the current year;
- YES__ NO__ (b) A person whose individual net worth or joint net worth with that person's spouse at the time of purchase exceeds \$1 million;
- YES__ NO__ (c) An entity in which all of the equity owners meet one or more of the applicable criteria above.

15. Amount of Subscription. Subscriber hereby subscribes for _____ Unit(s) in BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP and acknowledges that, if this subscription is accepted, Subscriber will be obligated to contribute to Partnership capital in the amount of \$350,000 per Unit purchased, of which \$50,000 shall be tendered with this subscription no later than September 18, 2000 and \$300,000 which shall be paid by September 25, 2000.

16. Release of Offering Proceeds. The Offering Proceeds shall not be released by the Escrow Agent until the following conditions have been satisfied:

- (a) The Escrow Account shall contain cash of at least Seven Million and No/100 (\$7,000,000.00); and
- (b) The Partnership certifies to the Escrow Agent that it is prepared to close on the purchase of the Land and will use the Offering Proceeds to complete such closing and acquire the Land.

17. Notice to Subscriber. Correspondence addressed to Subscriber, including notices to the Limited Partners in the manner prescribed in the Partnership Agreement, should be sent to the address listed on the signature page of the Subscription Agreement until such time as Subscriber shall notify the General Partner, in writing, of a different address to which such correspondence and notices are to be sent.

18. Internal Revenue Code Section 1446 Certification. Section 1446 of the Internal Revenue Code of 1986 ("Code") provides that the Partnership must pay a withholding tax to the Internal Revenue Service ("IRS") with respect to a Subscriber's allocable share of the Partnership's "effectively connected taxable income" if Subscriber is a "foreign person", as that term is defined in the following circumstances:

(a) Individuals. Subscriber hereby certifies:

YES ☐ NO ☐ I am not a nonresident alien for purposes of U.S. income taxation;
YES ☐ NO ☐ My Social Security Number is the number indicated below; and
YES ☐ NO ☐ My residence address is as indicated on the signature page of this
Subscription Agreement.

I hereby agree that if I become a nonresident alien, I will notify the Partnership within thirty days of doing so. I understand that this certification may be disclosed to the IRS by the Partnership, and that any false statement I have made herein could be punished by fine, imprisonment, or both.

(b) Entities. Subscriber hereby certifies on behalf of the purchasing entity:

YES ☐ NO ☐ The purchasing entity is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the Treasury regulations promulgated thereunder.

YES ☐ NO ☐ The purchasing entity's U.S. employer identification number is as indicated below.

Subscriber hereby agrees to notify the Partnership within thirty days of the date on which the purchasing entity becomes a "foreign person", as that term is defined in the Code. The purchasing entity understands that this certification may be disclosed to the IRS by the Partnership and that any false statement contained herein could be punished by fine, imprisonment, or both.

Foreign Persons. Those persons and entities who cannot make the above certifications or who did not fully complete the certification in either subparagraph (a) or (b), hereby acknowledge that the Partnership will withhold tax on such person's allocable share of the Partnership's "effective connected taxable income" as required pursuant to Section 1446 of the Code.

19. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which constitute one instrument.

PLEASE EXECUTE BOTH SIGNATURE PAGES
AND RETURN IN THE ENCLOSED ENVELOPE.

IN WITNESS WHEREOF, Subscriber has executed this Subscription Agreement on the
date of _____, 2000.

William P. Coffin
Subscriber Signature

P.O. Box 1006
Street or Post Office Box Address

Spring Island SC 29910
City, State, and Zip Code

259-66-3297
Social Security or Employee Identification
Number

STATE OF South Carolina)
COUNTY OF Beaufort)

The foregoing instrument was acknowledged before me this 11th day of
September, 2000 by William P. Coffin.

Tammy Jo Buchanan
Notary Public for _____
My Commission Expires: _____

TAMMY JO BUCHANAN
Notary Public, South Carolina
My Commission Expires Apr. 12, 2006

Accepted and agreed to by the General Partner on behalf of BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP, a North Carolina limited partnership, for the number of Unit(s) for which the subscription was submitted.

BALSAM MOUNTAIN COMPANY, LLC
a North Carolina limited liability company
General Partner of Balsam Mountain Preserve, Limited Partnership

By: James J. Chaffin, Jr.
James J. Chaffin, Jr., Member

Date: 9-21-00

STATE OF South Carolina
COUNTY OF Beaufort

The foregoing instrument was acknowledged before me this 21st day of September, 2000 by James J. Chaffin, Jr., a member of BALSAM MOUNTAIN COMPANY, LLC, a North Carolina limited liability company, on behalf of the company.

Wammy Jo Buchanan
Notary Public for _____
My Commission Expires: _____

WAMMY JO BUCHANAN
Notary Public, South Carolina
My Commission Expires Apr. 12, 2006

20 269 9072

State of North Carolina
Department of the Secretary of State

SOSID: 565221
Date Filed: 9/26/2000 2:02 PM
Elaine F. Marshall
North Carolina Secretary of State

APPLICATION FOR CERTIFICATE OF AUTHORITY

Pursuant to §55-15-03 of the General Statutes of North Carolina, the undersigned corporation hereby applies for a Certificate of Authority to transact business in the State of North Carolina, and for that purpose submits the following:

1. The name of the corporation is Counsellor Title Insurance Agency, Inc.; and if the corporate name is unavailable for use in the State of North Carolina, the name the corporation wishes to use is:

2. The state or country under whose laws the corporation was organized is: South Carolina

3. The date of incorporation was December 4, 1985; its period of duration is: perpetual

4. The street address of the principal office of the corporation is:

Number and Street: 23-B Shelter Cove Lane, Suite 400

City, State, Zip Code: Hilton Head Island, SC 29928

5. The mailing address *if different from the street address* of the principal office of the corporation is:
PO Drawer 3
Hilton Head Island, SC 29938-0003

6. The street address and county of the registered office in the State of North Carolina is:

Number and Street: 1200 Rockhouse Road

City, State, Zip Code: Hot Springs, NC 28743

County: Madison

7. The mailing address *if different from the street address* of the registered office in the State of North Carolina is:

8. The name of the registered agent in the State of North Carolina is: James A. Anthony, Jr.

9. The names, titles, and usual business addresses of the current officers of the corporation are (attach if necessary):

Name

Title

Business Address

See Attached

APPLICATION FOR CERTIFICATE OF AUTHORITY

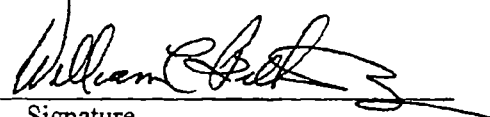
Page 2

10. Attached is a Certificate of Existence (or document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country of incorporation. *The Certificate of Existence must be an original and less than six months old.*
11. If the corporation is required to use a fictitious name in order to transact business in this State, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name is attached.
12. This application will be effective upon filing, unless a delayed date and/or time is specified:

This is the 22nd day of September, 2000 *

Counsellor Title Insurance Agency, Inc.

Name of Corporation

By: 

Signature

William L. Bethea, Jr., Vice President

Type or Print Name and Title

<u>Name</u>	<u>Title</u>	<u>Business Address</u>
Cary S. Griffin	President	PO Drawer 3, Hilton Head Island, SC 29938
William L. Bethea, Jr.	Vice President	PO Drawer 3, Hilton Head Island, SC 29938
Lynn M. Buchman	Vice President	PO Drawer 3, Hilton Head Island, SC 29938
Michael L.M. Jordan	Secretary/Treasurer	PO Drawer 3, Hilton Head Island, SC 29938

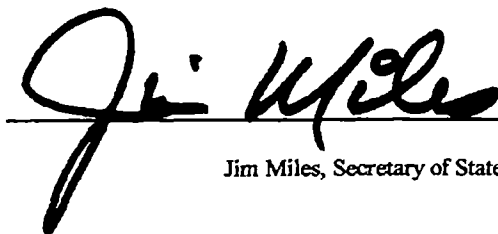
The State of South Carolina

Office of Secretary of State Jim Miles **Certificate of Existence**

I, Jim Miles, Secretary of State of South Carolina Hereby certify that:

COUNSELLOR TITLE INSURANCE AGENCY, INC.,
a corporation duly organized under the laws of the State of South Carolina on **December 4th, 1985**, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the Corporation that it is subject to being dissolved by administrative action pursuant to Section 33-14-210 of the South Carolina Code, and that the corporation has not filed articles of dissolution as of the date hereof.

Given under my Hand and the Great Seal of
the State of South Carolina this 20th day of
September, 2000.



Jim Miles, Secretary of State



BETHEA, JORDAN & GRIFFIN, P.A.
ATTORNEYS AND COUNSELORS AT LAW

5 BELFAIR VILLAGE DRIVE
BLUFFTON, SC 29910-2605
843.815.2171
FAX: 843.815.5991

HILTON HEAD ISLAND OFFICE:
SHELTER COVE EXECUTIVE PARK
23-B SHELTER COVE LANE, SUITE 400
HILTON HEAD ISLAND, SC 29928-3588

POSTAL ADDRESS: P.O. DRAWER 3
HILTON HEAD ISLAND, SC 29918-0903
843.785.2171
FAX: 843.686.5991

WILLIAM L. BETHEA, JR.
bbethea@bjglaw.com
www.bjglaw.com

September 5, 2001

VIA OVERNIGHT DELIVERY

J.K. Coward, Jr., Esquire
Coward, Hicks & Siler, P.A.
705 West Main Street
Sylva, north Carolina 28779

RE: Balsam Mountain Preserve, Limited Partnership

Dear Jay:

As we are nearing the finalization of HUD materials and related matters I thought it would be very helpful if you, Heather, and/or Orville could take a look at the current status of various documents. In that regard, please find enclosed the following:

1. Original and blackline version of the standard Contract Form.
2. Original and blackline version of the combination Reservation Agreement / Contract Form. As to this, it obviously has the identical language as it relates to the bulk of the contract provisions. The only major difference between this and the Contract is the reservation component.
3. Clean and blackline version of the Property Report.
4. Clean and blackline version of the AID portion of the Statement of Record.

Jay, I may call you to chat with you about one or two very specific areas. Other than that, however, I just wanted to make sure that you were completely "in the loop" for the matters that are enclosed.

With very best personal regards, I am

Most sincerely,

BETHEA, JORDAN & GRIFFIN, P.A.

William L. Bethea, Jr.

WLBjr:kgb
Enclosures

c: Mr. James A. Anthony, Jr.

(64784.1) 15404-011

MCNAIR_LOFLIN_000030



**FOUNDER'S
BALSAM MOUNTAIN PRESERVE
RESERVATION AGREEMENT
WITH PROVISIONS ALLOWING CONVERSION TO PURCHASE AND SALE AGREEMENT**

Prospective Purchaser(s): William P. Loflin and Leslie W. Loflin with an address of PO Box 4016, Spring Island, SC 29910 (hereinafter, referred to as "Purchaser").

Prospective Seller: BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP, a North Carolina limited partnership, with an address of 38 Church Street, Waynesville, NC 28786 (hereinafter, referred to as "Seller").

THIS RESERVATION AGREEMENT WITH PROVISIONS ALLOWING CONVERSION TO PURCHASE AND SALE AGREEMENT ("Agreement") is made this 19th day of October, 2001 between Seller and Purchaser.

BACKGROUND INFORMATION

Seller is the owner of approximately 4,400 acres in Jackson County, North Carolina on which it is creating a private club community within a nature preserve setting. Balsam Mountain Preserve will eventually contain up to 350 Homesteads. At this stage of community planning, all of the specific Homestead locations have not been finalized. The Homesteads will be offered for sale in phases after a Statement of Record ("Statement of Record") one part of which is the Property Report ("Property Report") has been made effective for each phase by the Interstate Land Sales Registration Division of the Office of the Assistant Secretary for Housing - Federal Housing Commissioner, U.S. Department of Housing and Urban Development ("HUD"). Prior to the actual offering of these Homesteads for sale and the registration of the Homesteads with HUD, it is the desire of both parties that Purchaser be permitted to reserve a Homestead pursuant to this Agreement and to do so in such a way as to permit Purchaser to have the ability, if Purchaser chooses to do so, to convert this Agreement into a binding purchase and sale agreement with a minimum of effort when the Homesteads are available for sale.

Purchaser is a Founder and Limited Partner in Balsam Mountain Preserve, Limited Partnership and as such has certain preferential rights to select a Homestead in Balsam Mountain Preserve and to receive certain credits and discounts in accordance with the Limited Partnership Agreement of Seller.

To evidence Purchaser's intent to acquire a Homestead as hereinafter described, Purchaser wishes to enter into this Agreement to indicate Purchaser's Founder Homesite selection and to reserve it in accordance with the terms of this Agreement.

In consideration of the mutual promises contained in this Agreement, Purchaser and Seller hereby covenant and agree as follows:

AGREEMENT

1. **Incorporation of Defined Terms.** The terms defined above shall have the same meaning when used in this Agreement.

2. **Reservation.** Purchaser hereby expresses an interest in and reserves the right to purchase Balsam Mountain Preserve Homestead Number 108, as shown on that certain Phase 1 Plan prepared by Herron Land Surveying, certified by James Randy Herron, Professional Land Surveyor (N.C. No. L.3202), an excerpt of which plan is attached to this Agreement as Exhibit "A" (the "Property"), following registration of the Property with HUD, upon the terms and conditions as set forth hereafter. The sale and conveyance of the Property shall be subject to those matters set forth more fully elsewhere in this Agreement. So long as this Agreement is in effect, Seller agrees that it shall not sell the Property to any other party.

3. Purchase Price. The purchase price for the Property shall be \$495,000.00 ("Purchase Price").

4. Founder's Credit, Discount, Exchange Right and Resale Limitation. As a Founder and Limited Partner of the Seller, Purchaser is entitled to receive a credit of Two Hundred Thousand and No/100 Dollars (\$200,000.00) towards the Purchase Price and also a discount of thirty percent (30%), not to exceed \$150,000.00 on the Purchase Price of the Property. Such credit and the applicable discount shall be applied at closing as hereafter provided; Moreover, for as long as the Seller is offering Homesteads for sale in Balsam Mountain Preserve, the Purchaser, as a Limited Partner of Seller, shall likewise have a one-time option to exchange the Homestead for another Homestead of equal or greater value subsequently developed for sale in Balsam Mountain Preserve. This option entitles the exchanging Limited Partner to a credit of the fair market value of the initial Homestead, which shall be determined in the absolute discretion of the Seller less a ten percent (10%) sales commission and two percent (2%) contribution to the Balsam Mountain Trust. Additionally, a Founding Member is precluded from selling his or her Homestead for a period of five (5) years following the date of the Closing on the Homestead without the consent of Balsam Mountain Company, LLC, the General Partner of Seller.

5. Opportunity to Convert to Purchase and Sale Agreement; No Obligation without Conversion. After an initial Statement of Record has become effective with HUD for the Property, and if this Agreement is still in effect, Seller will provide to Purchaser a copy of the effective HUD Property Report and shall extend to Purchaser the opportunity to convert this Agreement into a binding agreement of purchase and sale (the "Conversion") by mailing or delivering to Purchaser the Conversion Addendum of the type attached as Exhibit "B" (the "Conversion Addendum"). If Purchaser desires to elect to complete the Conversion, Purchaser shall return an executed Conversion Addendum to Seller within ten (10) days (unless extended by Seller in its sole discretion) of Purchaser having received such Conversion Addendum. Purchaser and Seller acknowledge that Purchaser has no obligation to purchase the Property under this Agreement unless and until Purchaser has converted this Agreement into a binding Purchase and Sale Agreement by execution of the Conversion Addendum.

6. Termination of Reservation. Unless the Conversion Addendum has been executed to convert this Agreement into a binding Purchase and Sale Agreement as described in Section 5 above, this Agreement shall terminate and expire upon the happening of the any of the following:

6.1 Purchaser's mailing or otherwise delivering to Escrow Agent and Seller a written request for termination signed by Purchaser and specifically releasing all rights relating to the Homestead.

6.2 The passage of fourteen (14) calendar days after the Purchaser has received notice from the Seller of the opportunity to purchase the Property, together with the Conversion Agreement and the effective HUD Property Report described above.

6.3 Ninety (90) calendar days after the date of this Agreement.

Upon the occurrence of any of the above this Agreement shall terminate and be of no further force and effect.

7. Acknowledgments. Purchaser acknowledges that:

7.1 No HUD Property Report or other similar document relating to the Property has been given to Purchaser in connection with this Agreement, and no effective HUD Property Report has yet been issued.

7.2 Purchaser will not rely on any representations relating to Balsam Mountain Preserve other than those which may in the future be contained in a HUD Property Report in effect under the Interstate Land Sales Full Disclosure Act, which HUD Property Report shall be delivered to Purchaser as set forth above.

7.3 Purchaser shall receive an executed copy of this Agreement after its execution by Seller.

8. **Notice.** In the event Purchaser shall determine to give notice to Seller of termination or cancellation of this Agreement or to give notice for any other purpose called for in this Agreement, the notice shall be sent by facsimile or other forms of wire or wireless communication, by U.S. mail (certified), by a commercial courier service, or in person to the address set forth below:

Balsam Mountain Preserve, Limited Partnership
38 Church Street
Waynesville, NC 28786-3762
Telephone: (828) 456-8033
Facsimile: (828) 456-8034

Any notice required to be given to Purchaser for any purposes under this Agreement shall be in the same manner described above to the address set forth at the beginning of this Agreement.

THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY ONLY IF THIS AGREEMENT IS CONVERTED TO A BINDING PURCHASE AND SALE AGREEMENT AS DESCRIBED IN SECTION 5 ABOVE.

9. **Financing:** This Agreement is not contingent upon Purchaser obtaining financing as described in the Financing Addendum attached as Exhibit "C" (if applicable).

10. **Closing Date:** Purchaser and Seller agree that the closing of this transfer shall take place on or before the date set forth in the Conversion Addendum executed by Purchaser and Seller ("Closing Date" or "Closing"). In no event will Closing and delivery of the deed be in excess of one hundred eighty (180) days of the signing of this Agreement by Purchaser. The Closing shall be held at the offices of Coward, Hicks & Siler, P.A., Attorneys at Law, located at 705 West Main Street, Sylva, North Carolina 28779, or such other place as Seller may designate.

11. **Conveyance of Property:** At Closing, Seller shall convey good and marketable title to the Property to Purchaser in fee simple by general warranty deed, free from encumbrances except those restrictions and other matters referred to in this Agreement. If requested by Purchaser, Seller will arrange for the issuance by Chicago Title Insurance Company of title insurance coverage for Purchaser and, if applicable, Purchaser's lender, at Purchaser's expense. Seller, at Seller's sole expense, shall deliver to purchaser at Closing, and shall cause to be recorded prior to the deed to the Property, an individual plat of the Property. That plat will be prepared to scale by a licensed surveyor or engineer and will accurately reflect the dimensions of the Property, the courses, distances and monuments of the boundaries of the Property, the relationship of the Property to proposed or existing roads, the names of abutting roads, the ownership of abutting land and the general location of the Property in relation to the overall phase of Balsam Mountain Preserve.

12. **Prorations:** All Jackson County property taxes, assessments and other applicable charges shall be prorated as of the Closing Date.

13. **Closing Expenses:** Each party shall be responsible for their own closing expenses as is the custom in Jackson County, North Carolina. As an example, Seller shall be responsible for paying for the preparation and recording of the plat and deed, and for paying the North Carolina excise tax for the deed. Purchaser shall be responsible for the cost associated with title examination, title insurance, and all financing costs, if any. Each party shall be responsible for their own legal fees.

14. **Brokerage:** Seller has its own sales staff and shall not be obligated to pay any commission to any outside agency or broker unless specifically agreed in writing. Purchaser warrants that Purchaser has had no dealing with any real estate broker or agent regarding the purchase of the Property and Purchaser agrees to hold Seller harmless from any claims for broker's commissions or finder's fee or claims from any party claiming by or through Purchaser.

15. **Declaration of Governance:** It is expressly understood and agreed by Purchaser that the Property shall be conveyed subject to the recorded Plat, all special easements as shown thereon, any applicable restrictions or covenants of record and subject to those general easements, equitable restrictions, limitations on use and affirmative obligations contained in the Declaration of Governance for Balsam Mountain Preserve to be recorded in the Office of the Register of Deeds for Jackson County, North Carolina, as amended from time to time (hereinafter called the "Declaration"), a copy of which has been provided to Purchaser simultaneously with the execution of this Agreement the receipt of which is hereby acknowledged WJB (initial here). Seller urges Purchaser to read the Declaration. A complete review of the Declaration is recommended by Seller, but Purchaser does acknowledge that the Declaration includes the following provisions:

15.1 **Design Review Requirements:** No structure or improvement may be erected, placed or altered on the Property except in compliance with the Design Guidelines referenced in the Declaration. Prior to the commencement of construction, any proposed building plan, site plan, or landscaping plan must be submitted to, and approved in writing by, Seller (as Reviewer under the Declaration). Purchaser agrees that the actual construction of improvements on the Property will have no material variation from the plans approved by Seller unless Seller shall have also approved these variations in writing. Reviewer may grant or deny approval of Purchaser's plans, in its sole discretion, including purely aesthetic considerations. Pursuant to the Declaration, Seller may delegate all or a portion of these review rights to a habitat and landscape review committee that will be referred to as the Habitat Review Board.

15.2 **Community Association:** In order to provide for the preservation, maintenance, security and operation of common facilities within the Preserve, as well as to provide the owners of property within the Preserve with services for the use, and benefit of said owners there has been created the Balsam Mountain Preserve Community Association (the "Association"). All property owners in the Preserve automatically become members of the Association upon ownership of property within the Preserve.

15.3 **Assessments:** The Association is granted the right to assess property owners within its jurisdiction in order to carry out the prescribed functions. Purchaser hereby acknowledges that it is aware of the right of the Association to levy and enforce assessments and Purchaser hereby agrees to pay promptly all such assessments which are properly made against them by the Association. The Declaration provides for the following types of assessments:

- (a) Base Assessments, for Common Expenses as defined in the Declaration. (Note: for the year 2002, the Base Assessment is \$1,500.00 but only one-half (1/2) of that will actually be collected because of the early stage of development activity.)
- (b) Special Assessments to cover unbudgeted expenses approved by the members of the Association.
- (c) Specific Assessments against a particular piece of property within the Preserve for any special services provided at the request of the owner to cover costs to bring such property into compliance with the governing documents.
- (d) A one-time contribution to the working capital of the Association is payable by Purchaser at Closing in an amount equal to one-sixth of the Base Assessment.

Purchaser acknowledges that the highlights in Section 15.1 through 15.3 above only represent a brief summary of selective portions of the Declaration. A complete review of the Declaration is recommended by Seller.

16. **NALT Conservation Easement:** Purchaser acknowledges being advised by Seller that Seller has granted a conservation easement to the North American Land Trust, a tax exempt organization committed to preserving and conserving natural habitats and environmentally sensitive areas ("NALT"). The Conservation Easement covers substantially all

of the undeveloped areas in Phase I of Balsam Mountain Preserve that are not being developed either as homesteads, golf course or other recreational areas and roads or other infrastructure (the "NALT Conservation Easement"). The full text of the NALT Conservation Easement will be recorded in the Office of the Register of Deeds for Jackson County, North Carolina, prior to closing. Most of the land surrounding your Property is subject to the NALT Conservation Easement.

17. **Balsam Mountain Trust:** The Balsam Mountain Trust ("Trust") is a North Carolina not-for-profit corporation created for the purpose of promoting the conservation, preservation, regeneration, restoration and improvement of native forest and other natural resources; protecting and preserving resources of historical and archaeological significance, promoting arts and crafts and the study of ecological and environmental issues in the Blue Ridge and Great Smoky Mountains of western North Carolina. Trust will work closely with Seller, Club and NALT, to develop and implement a management plan for the wildlife and open space areas within the Preserve that are subject to the NALT Conservation Easement. As provided in the Declaration, Seller shall pay to Trust an assessment in the amount of one percent (1%) of the Purchase Price upon sale of the Property to Purchaser. On all subsequent transfers, the Trust assessment shall be in the amount of two percent (2%) of the gross sales price of an unimproved homestead and in the amount of one percent (1%) of the gross sales price of a homestead with a home. Purchaser acknowledges that when the Property is resold, a Trust assessment will be payable by Purchaser as the then-seller of the Property.

18. **Balsam Mountain Club:** As a Founder and Limited Partner of Seller, you are entitled to receive a Founding Membership in the Balsam Mountain Club ("Club") without payment of Membership Deposit and without the requirement for completing an application or receiving formal approval of Membership. Such Membership is pre-approved and will be issued in conjunction with the closing of the Property. For the first five (5) years after the opening of the Balsam Mountain Club golf course, Founding Members will pay only fifty percent (50%) of dues charged Golf Members. Thereafter, Founding Members will pay the same dues as Golf Members, unless the Founding Member selects Sports privileges and pays Sports dues. Founding Members are precluded from selling his or her Golf Membership for a period of five (5) years from the Closing on the Homestead without consent of the General Partner of Seller. The following information on the Club is provided for the purpose of acquainting Purchaser with the disclosure relating to the Club that will be provided to all other purchasers of Homesteads in Balsam Mountain Preserve. It is qualified as to this Agreement, as appropriate, by the special provisions relating to Founder Members contained in this paragraph.

Purchaser acknowledges the understanding that Seller is developing the Club within Balsam Mountain Preserve as a private, non-equity club pursuant to the Balsam Mountain Membership Plan (the "Club Plan"). The Club will feature golf, tennis, swimming, fitness, equestrian, and dining facilities and will be owned and operated by Seller. The Club will have up to three hundred seventy five (375) memberships which are offered by invitation only. **OWNERSHIP OF A HOMESTEAD IN BALSAM MOUNTAIN PRESERVE DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB FACILITIES, OR TO ACQUIRE A MEMBERSHIP IN THE CLUB, AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB FACILITIES.** Memberships may be offered to initial purchasers of homesteads at Balsam Mountain Preserve. Each purchaser who is invited to apply must complete an application for membership. If approved for membership in the Club, purchaser will pay their deposit for a membership at the time of closing on the homestead. If a purchaser is offered a membership and does not elect to apply and purchase a membership as outlined above, there is no assurance that a membership will be available in the future. Purchaser acknowledges (initial here WPA) receipt of the Plan which recognizes the special category of Founder's Memberships.

19. **Water and Sewer Service:** Purchaser acknowledges that the water service for the Property can only be supplied from an individual well to be drilled on the Property, and that a septic tank system must be installed to provide waste water services for the Property, as more fully described below:

19.1 Arrangements for a septic tank system installation must be made by Purchaser independently, and any and all charges associated with installation and maintenance

for the septic tank systems are to be paid by Purchaser. Between the date of signing this Agreement and the Closing Date, Seller shall cause a percolation test to be conducted on the Property or on adjacent land in reasonably close proximity to the Property to which the Property has access. Seller shall also obtain a Septic System Permit for the Property at Seller's expense prior to the Closing Date. Purchaser's obligation to close under this Agreement is contingent upon a Septic System Permit being available on the Closing Date.

19.2 Arrangements for well drilling must be made by Purchaser independently and any and all charges associated with installation and maintenance are to be paid by Purchaser. There is no assurance that a productive well can be installed to serve the Property. If within twenty-four (24) months from the Closing, Purchaser determines that a productive well cannot be installed either on the Property or on adjacent land in reasonably close proximity to the Property, Seller agrees to allow Purchaser to exchange the Property for another homestead owned by Seller in Balsam Mountain Preserve, with a credit in the amount of the Purchase Price paid at the Closing of the Property being allowed towards the established purchase price of the replacement homestead. If Seller does not have a suitable replacement homestead available for exchange, Seller agrees to refund to Purchaser the amount of the Purchase Price actually paid by Purchaser under this Agreement within thirty (30) days after Purchaser advises Seller of their decision to request a refund. This right of exchange credit or refund is a limited one and shall not continue beyond twenty-four (24) months from the date of recording of the deed to the Property into Purchaser's name.

20. Completion of Certain Facilities: Seller is obligated to complete the following: (a) gravel roads directly adjacent to the Property or adjacent to driveway easements connecting the Property to the gravel roads shown on the Plat referred to in Section 2 above; and (b) installation of electric service and telephone to the Property, as outlined in the Property Report prepared pursuant to the rules and regulations of the Office of Interstate Land Registration, U.S. Department of Housing and Urban Development, a copy of which Property Report will be delivered to Purchaser as provided in Section 5 and in Exhibit "B". Also, as part of the Club Plan referenced in Section 18 above, Seller is obligated to complete one eighteen-hole golf course; a golf clubhouse, including dining facilities; community recreation facilities to include a swimming pool, a fitness center, and four (4) tennis courts; and equestrian facilities. This obligation to complete is subject only to circumstances beyond Seller's control such as forces of nature, strikes, material shortages, permitting delays, or other occurrences which are sufficient to constitute impossibility of performance under North Carolina law. In the event of such occurrences, Seller shall proceed to completion within a reasonable time after the abatement of the event causing delay.

21. Master Plan: Purchaser acknowledges and agrees that Seller's Master Plan for the development of Balsam Mountain Preserve is subject to continuing revision and change at the sole election of Seller as set forth in the Declaration and as declared on the current Master Plan documents.

22. Condition of the Property; Seller Representations: By execution of this Agreement, Purchaser acknowledges that the Property is being conveyed in an "as is" condition and Purchaser agrees that Seller has made no pledges, covenants or commitments in regard to the development of the Project, including, but not limited to, representations of Seller with respect to Club facilities, roads, sewer, water, telephone and electric service which has induced Purchaser to buy the Property, other than as stated in this Agreement, the recorded Declaration, and the Club Plan.

23. Default:

23.1 Upon the failure of Purchaser to comply with the terms of the Agreement within the stipulated time, and after receipt of notice of said default with a twenty (20) day right to cure, it is understood and agreed by and between the parties hereto that Seller's remedies shall be limited to retaining all earnest money deposited by Purchaser as liquidated and agreed damages. Time is of the essence in the twenty (20) day right-to-cure.

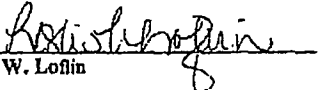
23.2 Upon the failure of Seller to comply with the terms of this Agreement, and after notice with a twenty (20) day right to cure, it is understood and agreed by and between the parties hereto that Purchaser's sole remedy shall be to cancel the Agreement and obtain a refund of all earnest money deposits. Time is of the essence in the twenty (20) day right-to-cure.

24. Miscellaneous: The term "Purchaser" as used in this Agreement refers to the masculine, feminine, neuter, singular or plural, as the identity of the Purchaser or the context requires. The captions used in this Agreement are for information and convenience only and shall in no way define, limit or construe the contents of any provisions of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. For the convenience of the parties hereto, duplicate originals of this Agreement may be executed and each such original shall be deemed to be an original instrument. This Agreement shall be governed and construed in accordance with the laws of North Carolina. If either party is required to institute suit against the other party to enforce its rights under this Agreement, and if such party obtains a valid judgment against the other party the non-prevailing party agrees to pay all reasonable costs, expenses and reasonable attorney's fees of the prevailing party attributable to the enforcement of this Agreement. This Agreement and all documents and instruments incorporated herein by specific reference are intended by the parties hereto to be the final expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a written agreement duly executed by the parties hereto. All the undertakings contained herein which remain executory at Closing shall survive the Closing and shall remain in full force and effect. Purchaser may not assign its rights under this Agreement nor delegate its duties under this Agreement without the prior written consent of Seller.

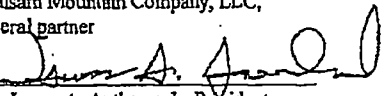
The parties have executed this Agreement as of the date first above written.

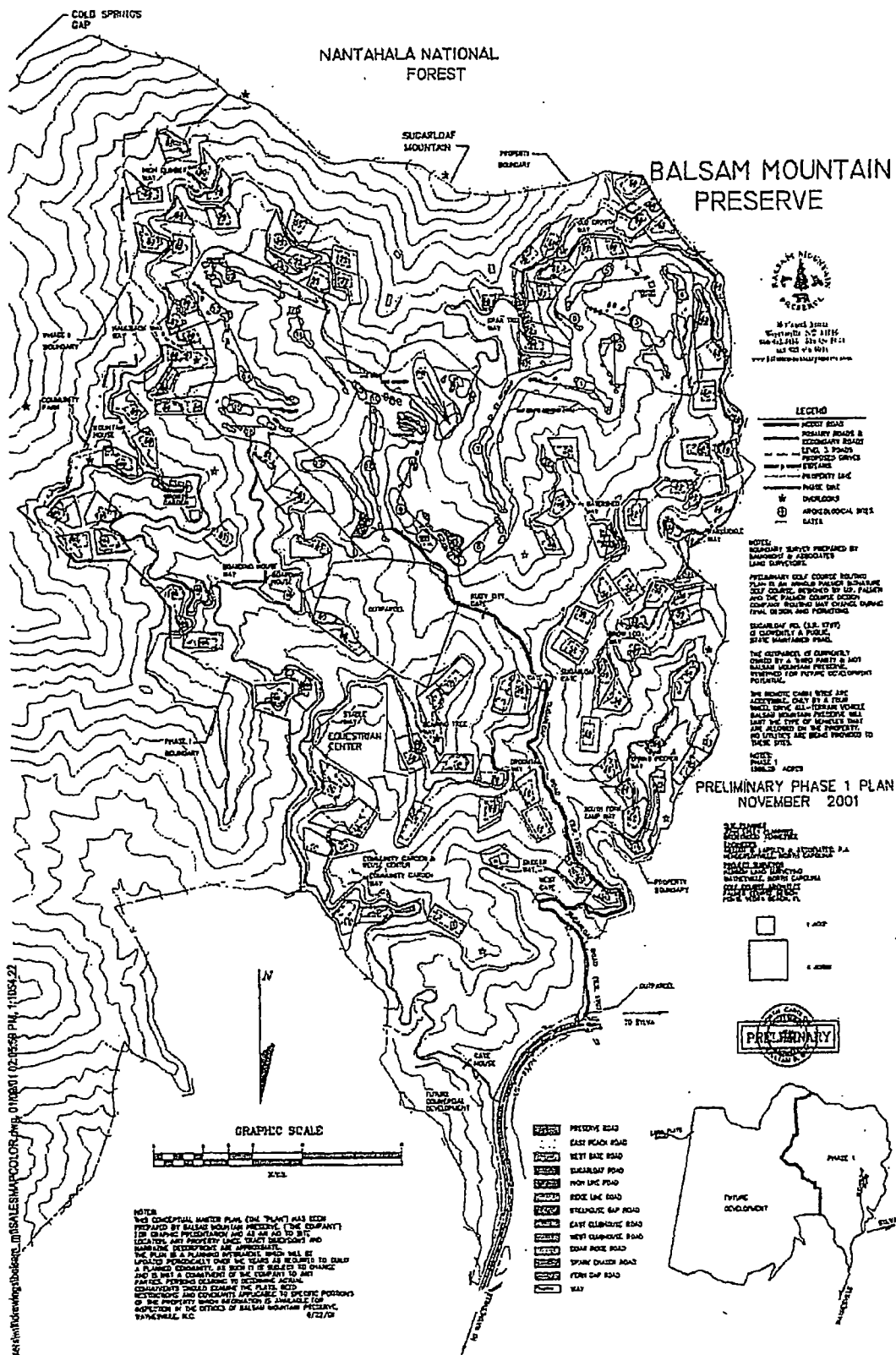
Purchaser(s):

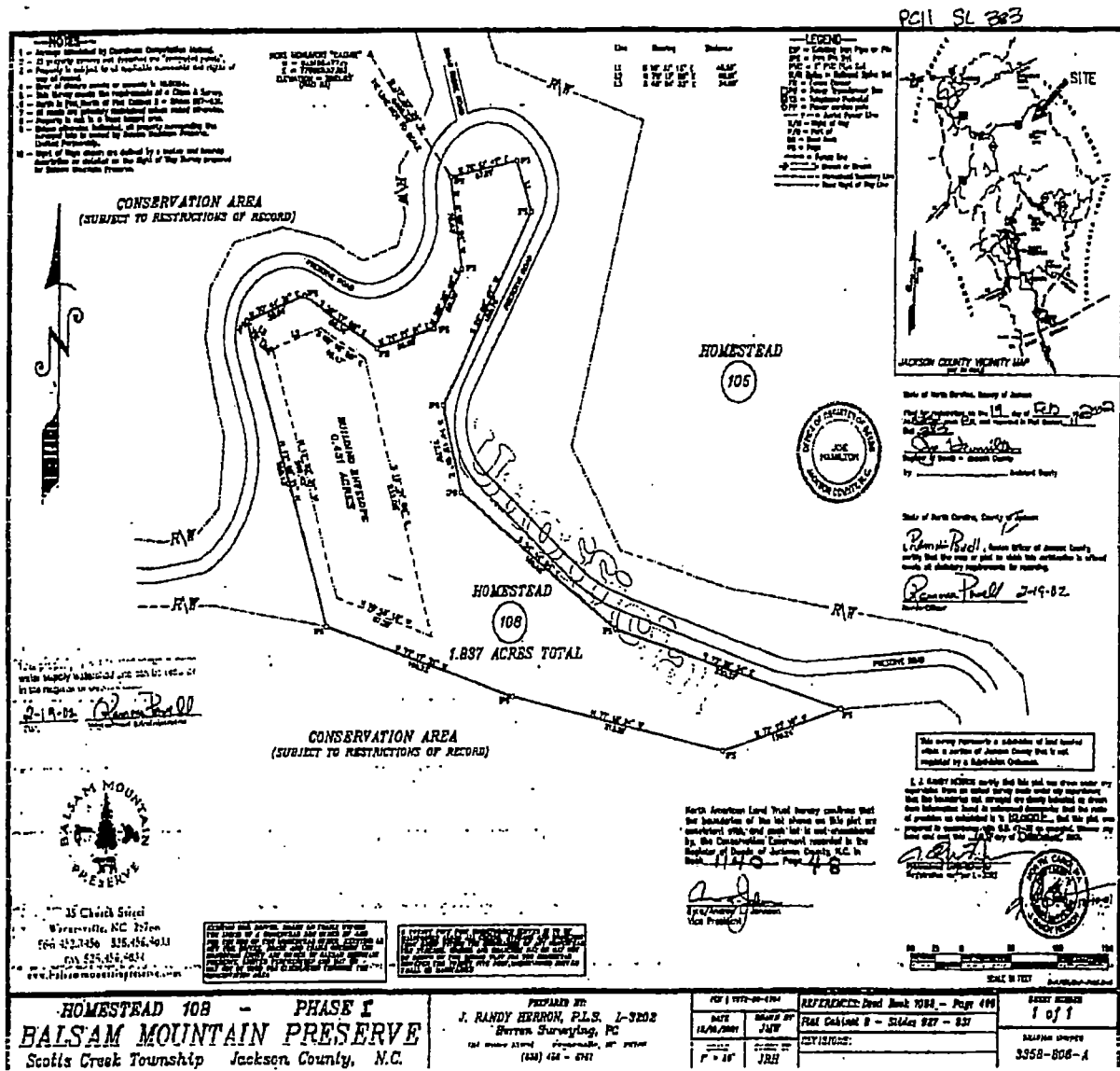

William P. Loffin

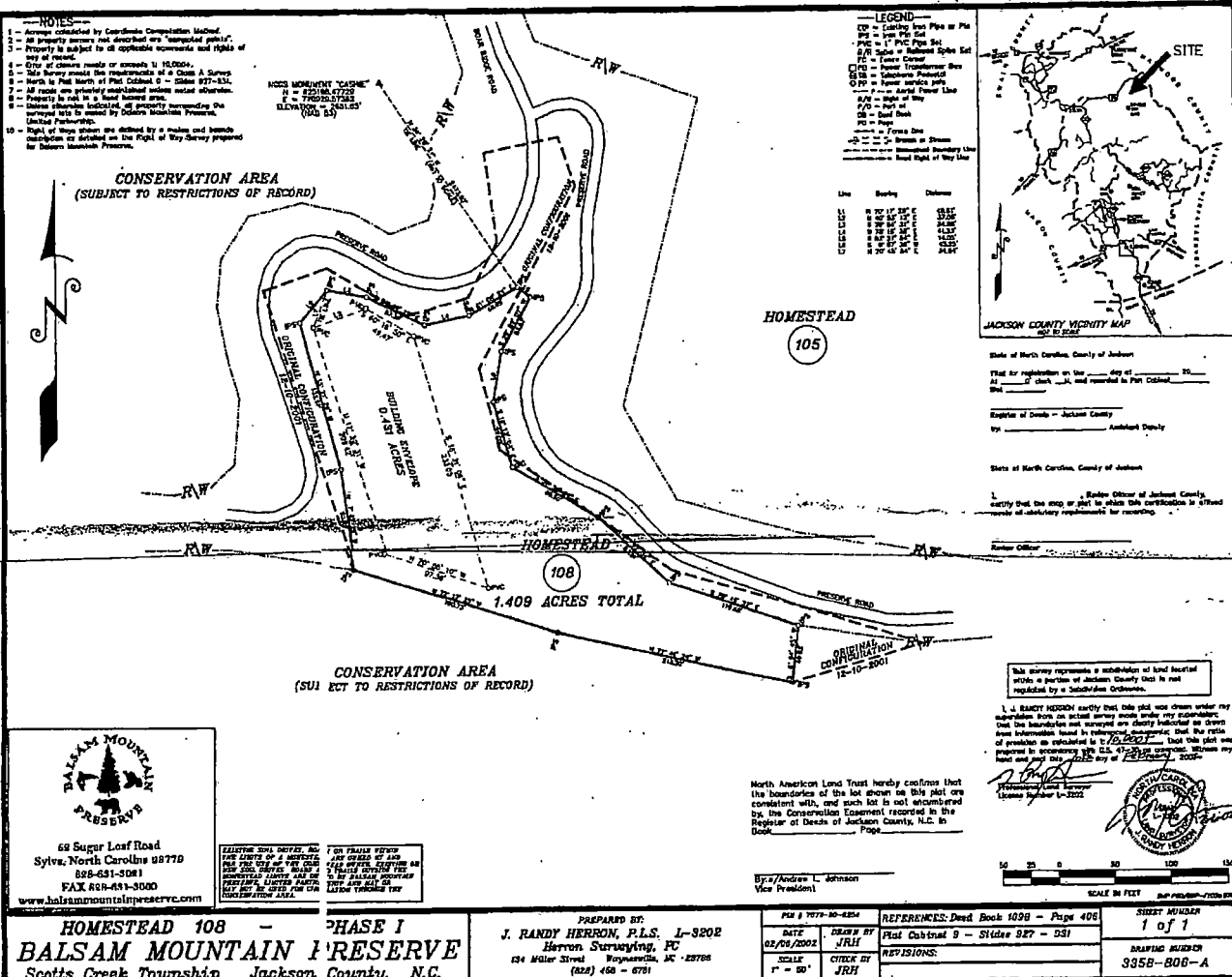

Leslie W. Loffin

BALSAM MOUNTAIN PRESERVE,
LIMITED PARTNERSHIP,
a North Carolina limited partnership
By: Balsam Mountain Company, LLC,
its general partner

By: 
James A. Anthony, Jr. President







B. Type of Loan

and Urban Development. OLAB No. 2502-0265

1. ORIGIN	2. OFFER	3. ORIGIN	4. ORIGIN	5. ORIGIN	6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
1. ORIGIN	2. OFFER	3. ORIGIN	4. ORIGIN	5. ORIGIN	11793-004-04-025MB	803213428	
C. Note: This form is loaned to you by a statement of loan settlement costs. Amounts paid to and by the settlement agent are shown below marked "to" or "by" were paid outside the closing. They are shown here for informational purposes and are not reported in the notes. WARNING: It is a crime to knowingly make false statements to the lender. States on this or any other similar form. Parties upon completion may provide a loan and independent. For details see TILA 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 18							

SUBSTITUTE FORM 1099 SELLER STATEMENT. The information contained herein is important to you and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this form is required to be reported and the IRS determines that it has not been reported. The Correct Sales Price displayed on line 401 above constitutes the Gross Proceeds of the transaction.

SELLER INSTRUCTIONS: If this trust estate was your principal residence, file Form 2119, *Sale or Exchange of Principal Residence*, for any gain, with your income tax return for either transaction; complete the applicable parts of Form 4797, *Form 4252*, and/or Schedule D (Form 1040).

You are required by law to provide Bathed, Jordan & Griffin, P.A. with your correct taxpayer identification number. If you do not provide your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law, and Under penalties of perjury. I certify that the number shown on this statement is my correct taxpayer identification number.

104: _____ SELLER 1 _____ SELLER 2 _____ SELLER(S) SIGNATURE(S) _____ SELLER 1 _____ SELLER 2 _____

SETTLEMENT STATEMENT

PAGE: 2

I. SETTLEMENT CHARGES		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL SALES/BROKER'S COMMISSION based on price \$ @ 0.000 =			
Division of commission (Line 700) as follows:			
701 \$	to		
702 \$	to		
703 Commission paid at Settlement			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801 Loan Origination Fee	%		
802 Loan Discount	%		
803 Assessor's Fee			
804 Credit Report			
805 Lender's Inspection Fee			
806 Mortgage Application Fee			
807 Assumption Fee			
808			
809			
810			
811			
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901 Interest Earn	to		
902 Mortgage Insurance Premium for	to		
903 Hazard Insurance Premium for	to		
904			
905			
1000. RESERVES DEPOSITED WITH LENDER FOR			
1001 Hazard Insurance	mo. @ \$		
1002 Hazard Insurance	mo. @ \$		
1003 City Recourse Taxes	mo. @ \$		
1004 County Property Taxes	mo. @ \$		
1005 Annual Assessments	mo. @ \$		
1009 Applicable Analysis Adjustment			
1100. TITLE CHARGES			
1101 Settlement or closing fee			
1102 Abstract or title search			
1103 Title examination			
1104 Title Insurance binder			
1105 Document Preparation			
1106 Notary Fees			
1107 Attorney's fees	to Brooker, Jordan & Griffin, P.A.		
Includes Above Items No.	1101, 1105 & 1107		
1108 Title Insurance	to Counsellor Title Insurance Agency, Inc.		
Includes Above Items No.	1108, 1109 & 1110		
1109 Lender's Coverage \$			
1110 Owner's Coverage \$			
1111 Commission Title/ELI 10% to Lender 80% of total premium			
1112			
1113			
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201 Recording Fees Deed \$	Mortgage \$ 18.00 Release \$	18.00	
1202 County Recording Fee	Deed \$ Mortgage \$		
1203 State Recording Fee	Deed \$ Mortgage \$		
1204 Transfer Fee	Deed \$ Mortgage \$		
1205			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301 Survey			
1302 Post Inspection			
1303			
1304			
1305			
1306			
1307			
1308			
1400. TOTAL SETTLEMENT CHARGES		18.00	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, this is a true and accurate statement of all receipts and disbursements made on my account in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

William P. Griffin
William P. Griffin

Terrie W. Griffin
Terrie W. Griffin
The HUD-1 Settlement Statement which I have received is a true and accurate account of the transaction. I have caused or will cause funds to be disbursed in accordance with this statement.
2/11/02
2/11/02

WARNING: It is a crime to knowingly make a false statement on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S.C. Section 1001 and Section 1010.

After Recording Return To:

Loan #: 803213428

BJG/WLB/smb

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated February 11, 2002, together with all Riders to this document.

(B) "Borrower" is WILLIAM P LOFLIN and LESLIE W LOFLIN

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is LIGHTHOUSE COMMUNITY BANK

Lender is a Corporation

the laws of the United States of America

PO BOX 25000

HILTON HEAD ISLAND SC 29925

organized and existing under
Lender's address is

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated February 11, 2002. The Note states that Borrower owes Lender TWO HUNDRED FIFTY THOUSAND AND 00/100

Dollars (U.S. \$ 250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 1, 2004.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ Other(s) [specify]
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM 1959L1 (0011)

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Form 3041 1/01

GREATLAND

To Order Call: 1-800-530-9393 Fax: 816-701-1131

- (H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- (I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
- (J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (K) "Escrow Items" means those items that are described in Section 3.
- (L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
- (O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
- (P) "Successor In Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the

of **BEAUFORT**
[Name of Recording Jurisdiction]

COUNTY
[Type of Recording Jurisdiction]

See Attached "Exhibit A"

which currently has the address of

SPRING ISLAND
[City]

, South Carolina

15 LITTLE NECK CROSSING
[Street]

29910
[Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM 1059L2 (001)

(Page 2 of 11 pages)

Form 3041 1/01

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part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall

promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may

require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is

completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may

require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has—if any—with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with

Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest In Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in §12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 11 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

William P. Loflin (Seal) Leslie W. Loflin (Seal)
WILLIAM P LOFLIN Borrower LESLIE W LOFLIN Borrower

____ (Seal) ____ (Seal)
____ Borrower ____ Borrower

____ (Seal) ____ (Seal)
____ Borrower ____ Borrower

Signed, sealed and delivered in the presence of:

Paul G. Ewing Shirley K. Ewing

State of South Carolina
County of ~~Marion~~ Beaufort

I the undersigned Notary Public (name and title), do hereby certify that

William P. Loflin and Leslie W. Loflin, personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal (where required by law) this the 11TH day of February 2002

Shirley K. Ewing
Notary Public for South Carolina

My commission expires: 06/15/09

"Exhibit A"

ALL that certain piece, parcel or lot of land situate, lying and being on SPRING ISLAND in Beaufort County, South Carolina, shown and described as Lot 241 on a plat entitled "Subdivision Plat of Little Neck Crossing Phase 7 (Lots 234 - 243) Located on Spring Island in Beaufort County, South Carolina," which plat is dated April 22, 1997, and is prepared by Davis & Floyd, Inc., and certified to by Robert K. Leake, S.C.R.L.S. #2946, which plat is recorded in the Beaufort County Records in Plat Book 60 at Page 173. For a more detailed description as to the location, courses, metes, bounds, distances, etc., reference may be had to the above recorded plat.

This mortgage being second and junior in priority to that certain mortgage to Lighthouse Community Bank in the original principal amount of \$875,000.00 dated December 20, 2001 and recorded December 28, 2001 in Book 1519 at Page 1990, Beaufort County Records.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 1179 at Page 883, Beaufort County Records.

This Mortgage was prepared in the Law Offices of Bethea, Jordan & Griffin, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by William L. Bethea, Jr.



LIGHTHOUSE

BANKING • INVESTMENTS

STATE OF SOUTH CAROLINA INSURANCE • MORTGAGES

AGREEMENT

COUNTY OF BEAUFORT

WHEREAS, Lender has agreed to lend Borrower \$250,000.00 to purchase real property located at LOT 108 BALSAM MOUNTAIN PRESERVE, BALSAM, NC 28707.

and

WHEREAS, to evidence such indebtedness to Lender, Borrower has agreed to give his promissory note ("Note") to Lender for \$250,000.00 and to give lender a first mortgage on said real property at LOT 108 BALSAM MOUNTAIN PRESERVE, BALSAM, NC 28707 and as additional collateral, a 2nd mortgage on 15 LITTLE NECK CROSSING, SPRING ISLAND, SC 29910 (also owned by Borrower), upon the following terms and conditions.

This AGREEMENT MADE AND ENTERED at the Town of BLUFFTON, SOUTH CAROLINA this JANUARY 11, 2002 by and among LIGHTHOUSE COMMUNITY BANK ("LENDER") and WILLIAM P LOFLIN & LESLIE W LOFLIN (Borrower), as follows:

1. In the event the \$250,000.00 for real property at LOT 108 BALSAM MOUNTAIN PRESERVE, BALSAM, NC 28707 actually closes, upon the principal balance thereon having been paid down by \$250,000.00 (that is, to \$0) Lender will satisfy of record the said ~~THIRD~~ mortgage on 15 LITTLE NECK CROSSING, SPRING ISLAND, SC 29910.
2. In the event the said \$250,000.00 loan to purchase LOT 108 BALSAM MOUNTAIN PRESERVE, BALSAM, NC 28707 is not actually closed by the JANUARY 15, 2002 then on Borrower's request, Lender will satisfy of record the said 2nd mortgage on 15 LITTLE NECK CROSSING, SPRING ISLAND, SC 29910.
3. The foregoing recitals ("whereas" clauses) are here incorporated by reference. This agreement entered into on and as of the date first hereinabove written.

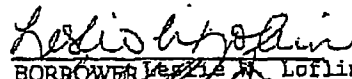
LIGHTHOUSE COMMUNITY BANK

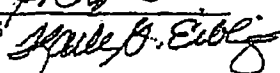
BY: _____

ITS: _____


BORROWER William P. Loflin

WITNESS


BORROWER Leslie W. Loflin

WITNESS 

Lighthouse Mortgage Corporation 5 Office Park Road P.O. Box 25000 Hilton Head Island, SC 29925 (843) 341-3000 Fax (843) 341-2255

LIGHTHOUSE COMMUNITY BANK • LIGHTHOUSE INVESTMENT ADVISORS • LIGHTHOUSE MORTGAGE CORPORATION
SUNBELT COMMERCIAL CAPITAL • CARSWELL • LIGHTHOUSE INSURANCE

NOTICE OF RIGHT TO CANCEL**REFINANCING WITH ORIGINAL CREDITOR**

Borrower: **WILLIAM P LOFLIN**
LESLIE W LOFLIN

Property
Address: **15 LITTLE NECK CROSSING**
SPRING ISLAND, SC 29910

Your Right to Cancel

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of this new transaction, which is **February 11, 2002** ; or
- (2) the date you received your new Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below. If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this new transaction, you may do so by notifying us in writing, at:

(Name of Lender) **LIGHTHOUSE COMMUNITY BANK**

(Business Address) **PO BOX 25000**
HILTON HEAD ISLAND SC 29925

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of **February 14, 2002**
[Date]

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

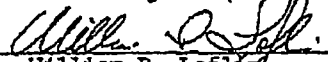
I WISH TO CANCEL.

Consumer's Signature

Date

I herewith acknowledge receipt of two copies of this notice.

Date: **2/11/02**


Signature **William P. Loflin**

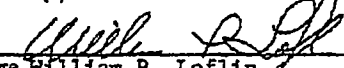
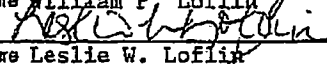

Signature **Leslie W. Loflin**

CONFIRMATION

More than 3 business days have elapsed since the date of the new transaction and we received this Notice and Truth-in-Lending disclosures with regard to the new transaction. We certify that the new transaction has not been rescinded.

Date: **2/15/02**

Customer(s):


Signature **William P. Loflin**

Signature **Leslie W. Loflin**

Signature

Signature

COWARD, HICKS & SILER, P.A.

ATTORNEYS AT LAW
705 WEST MAIN STREET
SYLVA, NORTH CAROLINA 28779-3099

TELEPHONE: (828) 586-2147
FAX (828) 586-2605

ORVILLE D. COWARD
ORVILLE D. COWARD, JR.
RALPH L. HICKS
ROBERT F. SILER
J.K. COWARD, JR.
WILLIAM H. COWARD
KIMBERLY R. COWARD
MONTY C. BECK
RICHARD K. WALKER
THOMAS R. CRAWFORD
HEATHER C. BAKER
BENJAMIN D. ELLIS

KENT COWARD
1929-1989

OFFICES IN:

SYLVA, NC
FRANKLIN, NC
CASHIER, NC

12 February 2002

Mr. & Mrs. William P. Loflin
c/o Chaffin Light Associates
42 Mobley Oaks Lane
Okatie, SC 29910

RE: Founder's Acquisition of Balsam Mountain Preserve Homestead No. 108

Dear Mr. & Mrs. Loflin:

Jim Anthony of Balsam Mountain Preserve has provided us with copies of your Founder's contract for the purchase of your Homestead in Balsam Mountain Preserve. Jim has asked us to prepare the deed and closing statement on behalf of Balsam Mountain Preserve, Limited Partnership. He has also indicated his belief that you would like to have us assist you with this transaction. I would certainly be pleased to do so and would also like to take this opportunity to welcome you to our community. I look forward to meeting you personally, hopefully in the near future.

Our firm has also been asked to prepare the deed and related documents for the Seller in this sale. This creates a dual representation situation. Dual representation is permissible as long as both parties are aware of it and consent to it. My function is to insure that the contract, with which the Buyer and the Seller both agree, is closed to your mutual satisfaction. While conflicts in a transaction of this nature are relatively rare, should one arise, we would have to withdraw our representation of either party. If you have any questions or concerns regarding the dual representation, please let me know right away.

In connection with completing the closing, there are a number of documents that I need to ask you to review, execute and return. Those documents include the following:

1. Settlement Statement
2. Contribution Letter
3. Loan Documents from Lighthouse Community Bank
4. Self addressed return UPS envelope

Please place the signed closing statement and the loan documents in the enclosed UPS envelope and deposit that with UPS for return to us. After closing we will forward your net proceeds check.

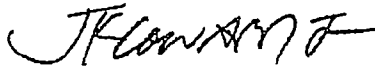
Also enclosed is a copy of your Deed, the original of which will be executed by Balsam Mountain Preserve, Limited Partnership, a copy of the plat describing your property and a copy of the septic permit. We will record the plat and the original deed in the Jackson County Register of Deeds. When that recording has been completed, we will return the original deed to you. At that time, we will also send you an Owner's Title Insurance Policy for your lot.

It is our further understanding that you have already received a copy of the Declaration of Governance for the Balsam Mountain Community Association. That is the document which sets forth the governance structure for Balsam Mountain Preserve and also the architectural and other restrictions that are applicable to your homestead. You should have also received a copy of the Property Report that has been filed with HUD for which you would have previously signed and returned a signature page acknowledging receipt of that document. If for any reason you have not received both of these documents, please let me know immediately and I will make sure that you promptly receive copies of any missing documents.

We would like to thank you for allowing us to work with you on this closing. If you have any questions about any of the aspects of this letter or the closing process, please feel free to contact me. If I am unavailable when you call, my associate, Heather Baker, also a real estate attorney with the firm, will be happy to help you.

Sincerely Yours,

COWARD, HICKS & SILER, P.A.



J. K. Coward, Jr.

{66789.1}

COMPLIANCE AGREEMENT

LENDER: LIGHTHOUSE COMMUNITY BANK
BORROWERS: WILLIAM P LOFLIN and LESLIE W LOFLIN
SELLER: _____
PROPERTY: LOT 108 BALSAM MOUNTAIN PRESERVE
ADDRESS: BALSAM, NC 28707

THE UNDERSIGNED BORROWERS FOR AND IN CONSIDERATION OF THE ABOVE REFERENCED LENDER THIS DATE FUNDING THE CLOSING OF A FIRST MORTGAGE LOAN ON THE ABOVE REFERENCED PROPERTY, AGREES, IF REQUESTED BY LENDER OR CLOSING AGENT FOR LENDER, TO FULLY COOPERATE AND ADJUST FOR CLERICAL ERRORS, ANY OR ALL LOAN CLOSING DOCUMENTATION IF DEEMED NECESSARY OR DESIRABLE IN THE REASONABLE DISCRETION OF LENDER TO ENABLE LENDER TO SELL, CONVEY, SEEK GUARANTY OR MARKET SAID LOAN TO ANY ENTITY. BORROWERS UNDERSTAND THAT THIS MAY INCLUDE THE EXECUTION OF A NEW NOTE AND MORTGAGE.

IF BORROWERS FAIL OR REFUSE TO IMMEDIATELY AND FULLY COMPLY WITH ALL SUCH REQUEST, THE LENDER OR HOLDER OF THE PROMISSORY NOTE MAY DECLARE THE INDEBTEDNESS (LOAN) TO BE IN DEFAULT AND ACCELERATE ALL PAYMENTS TO BECOME IMMEDIATELY DUE AND PAYABLE AND MAY FORECLOSE ACCORDING TO THE MORTGAGE OR EXERCISE ANY OR ALL OTHER RIGHTS AVAILABLE IN SAID LOAN DOCUMENTS OR TAKE ANY ACTION AS PROVIDED FOR BY LAW IN THE EVENT OF NONCOMPLIANCE.

THE UNDERSIGNED DO HEREBY SO AGREE AND COVENANT IN ORDER TO ASSURE THAT THE LOAN DOCUMENTATION EXECUTED THIS DATE WILL CONFORM AND BE ACCEPTABLE IN THE MARKET PLACE IN THE INSTANCE OF TRANSFER, SALE OF CONVEYANCE BY LENDER OF ITS INTEREST IN AND TO SAID LOAN DOCUMENTATION.

William P. Loflin
BORROWER

Leslie W. Loflin
BORROWER

BORROWER

BORROWER

SWORN TO AND SUBSCRIBED BEFORE ME THIS
14th DAY OF February, 2002.

[Signature]
NOTARY PUBLIC FOR:
MY COMMISSION EXPIRES:

South Carolina
01/15/07

#2546-51052
Coward000487

Sarah F. Robertson

tion and recorded in this office in Book 1227 at page 202
This 1944 of February 2002 338P.M.
Register of Deeds Joe Samita

LOAN NO. 803213428

DEFINITIONS

(A) "Security Instrument" means this document, which is dated FEBRUARY 15, 2002, together with all Riders to this document.

(B) "Borrower" is WILLIAM F. LOFLIN AND LESLIE W. LOFLIN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is LIGHTHOUSE COMMUNITY BANK

Lender is UNITED STATES OF AMERICA, ISLAND, SOUTH CAROLINA 29925 organized and existing under the laws of . Lender's address is P.O. BOX 25000, HILTON HEAD

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is, Terry L. Rohlfing

(E) "Note" means the promissory note signed by Borrower and dated FEBRUARY 15, 2002. The Note states that Borrower owes Lender TWO HUNDRED FIFTY THOUSAND AND NO/100-----.

Dollars (U.S. \$ 250,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MARCH 1, 2004

THESE

REGISTERED
2002 FEB 19 P 3:38
Joe Tammillo
REGISTER OF DEEDS
JACKSON CO. ILL.

APPENDIX 621
606

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
 (G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
 (H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider
☐ Balloon Rider
☒ 1-4 Family Rider

☐ Condominium Rider
☐ Planned Unit Development Rider
☐ Biweekly Payment Rider

☐ Second Home Rider
☒ Other(s) [specify]
 LEGAL ATTACHED

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
 (J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
 (K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
 (L) "Escrow Items" means those items that are described in Section 3.
 (M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
 (N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
 (O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
 (P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
 (Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, in trust, with power of sale, the following described property located in the COUNTY of

JACKSON COUNTY

(Type of Recording Jurisdiction)

(Place of Recording Jurisdiction)

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

which currently has the address of LOT 108 BALSAM MOUNTAIN PRESERVE

BALSAM

(City)

North Carolina 28707

(Zip Code)

("Property Address"):

NORTH CAROLINA - Single Family - Federal Main/Prohibit Most UNIFORM INSTRUMENT
 UNIFORM INSTRUMENT 42030.12468

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TO HAVE AND TO HOLD this property unto Trustee and Trustee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. If Borrower has breached any covenant or agreement in this Security Instrument and Lender has accelerated the obligations of Borrower hereunder pursuant to Section 22 then Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds

for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 2. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke this waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender

may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting in the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attach priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve, if permitted under Applicable Law, in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve, if permitted under Applicable Law. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (to the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, if permitted under Applicable Law, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1988 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repair and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstates as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees in such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a deed for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser. If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substances or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spillage, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with Applicable Law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of 5.00 % of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Attorneys' Fees. Attorneys' fees must be reasonable.

BY SIGNING UNDER SEAL BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

William P. Loflin (Seal)
WILLIAM P. LOFLIN Borrower

Leslie W. Loflin (Seal)
LESLIE W. LOFLIN Borrower

____ (Seal)
____ Borrower

____ (Seal)
____ Borrower

____ (Seal)
____ Borrower

____ (Seal)
____ Borrower

____ (Space Below This Line For Acknowledgment)
SOUTH
STATE OF NORTH CAROLINA, County ss:

I, Sarah F. Robertson, a Notary Public
of the County of Beaufort, State of North Carolina, do hereby certify that
William P. Loflin and Leslie W. Loflin personally appeared before
me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal this 14th day of February 2002

My Commission Expires: 06/15/09

[Signature]
Notary Public



STATE OF NORTH CAROLINA,

County ss:

The foregoing certificate of _____
a Notary Public of the County of _____, State of _____, is
certified to be correct.
This _____ day of _____

Registrar of Deeds

Probate fee _____ paid.

By _____
Deputy Assistant

A"
That certain Lot or Homestead Number 108, containing 1.837 acres, as shown on that certain plat dated the 10th day of December, 2001, Drawing #3358-806-A, prepared by Herron Surveying, PC, certified by J. Randy Herron, Professional Land Surveyor (N.C. #3202), and recorded in the Office of the Register of Deeds for Jackson County, North Carolina, in Plat Cabinet 11 at Slide 333 (the "Property").

TOGETHER WITH the right of ingress and egress over all roads existing or hereafter constructed within rights-of-way in Balsam Mountain Preserve for access to US Highway 74, which may be hereafter delineated on plats of record. It is contemplated that these roads will be more accurately surveyed and improved prior to such recordation, and it is the intent of the Grantor that those improvements and locations, as identified on said recorded plats, will inure to the benefit of the Grantee herein.

SUBJECT TO the covenants, conditions, and restrictions in that certain Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on December 20, 2001, in Book 1140, at Page 191.

#2548-51052
Coward000448



CHICAGO TITLE INSURANCE COMPANY

ATTORNEY'S FINAL OPINION OF TITLE FOR OWNER'S AND/OR MORTGAGEE POLICY

THE FOLLOWING IS THE TITLE OPINION OF THE UNDERSIGNED ATTORNEY RENDERED TO CHICAGO TITLE INSURANCE COMPANY FOR ITS ADVICE IN ITS CONSIDERATION OF AN APPLICATION FOR TITLE INSURANCE AND DOES NOT CONSTITUTE AN OBLIGATION FOR THE COMPANY.

The undersigned hereby certifies to Chicago Title Insurance Company that, based on an examination of the title to the real estate described in Schedule A hereof, in accordance with the rules promulgated by Chicago Title Insurance Company, marketable fee simple title is, as of this report, vested in:

WILLIAM P. LOFLIN and wife, LESLIE W. LOFLIN

subject to the liens, encumbrances and other exceptions shown under Schedule B hereof. The instruments creating the estate to be insured are set forth below.

COMPLETE THIS SECTION FOR OWNER'S INSURANCE

1. Nature of Instrument WARRANTY DEED Amount Paid \$495,000.00
2. Grantor(s): Balsam Mountain Preserve, Limited Partnership
3. Grantee(s): WILLIAM P. LOFLIN and wife, LESLIE W. LOFLIN
4. Dated: February 15, 2002, filed for record in the office of the Register of Deeds for Jackson County, NC on February 19, 2002, at 2:38 PM in Book 1144 at Page 220.
5. Estate or interest of Grantee(s) under this instrument is: X Fee Simple

COMPLETE THIS SECTION IF MORTGAGEE INSURANCE DESIRED

6. Name of insurer: LIGHTHOUSE COMMUNITY BANK
7. Nature of instrument: DEED OF TRUST
8. Trustee: TERRY L. ROHLFING
10. Mortgagee or Beneficiary: LIGHTHOUSE COMMUNITY BANK
11. Dated: February 15, 2002, filed for record in the office of the Register of Deeds for Jackson County, NC on February 19, 2002, at 2:38 PM in Book 1144 at Page 220.
12. Principal amount of debt secured: \$750,000.00
13. Transferred by separate Assignment dated _____, 2002, from _____ to _____, filed for record on _____, 2002, at _____ AM/PM in Book _____ at Page _____

In the opinion of the undersigned, the instrument described above constitutes a valid FIRST lien on the premises therein described, subject only to the liens, encumbrances, and other objections set forth under Schedule B hereof and the transfer, if any, shown in item 13 is a valid assignment thereof.

SCHEDULE A

VERBATIM DESCRIPTION OF PREMISES AS CONTAINED IN INSTRUMENTS TO BE INSURED (or attach copies of recorded instruments)

(Brief Legal) Lot 106, Phase I, Balsam Mountain Preserve

SCHEDULE B

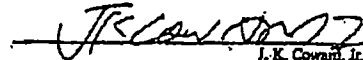
1. Subject to those restrictive covenants and exceptions cited in Schedule B of Attorney's Preliminary Opinion on Title, with the following changes:

- a. Partial Release of Deed of Trust from Balsam Mountain Preserve, Limited Partnership, to Branch Banking and Trust Company of South Carolina dated 09/26/00, in the original principal amount of \$5,000,000.00, recorded on 09/26/00 in Book 1117 at Page 608; as modified by Deed of Trust Modification Agreement dated 09/17/01, recorded in Book 1191 at Page 258; and further modified by Deed of Trust Second Modification Agreement dated 12/17/01, recorded in Book 1211 at Page 149, Jackson County, North Carolina Records. Said Partial Release from Branch Banking and Trust Company of South Carolina is dated February 25, 2002, and recorded on March 1, 2002, at 3:12 PM in Book 1146 at Page 181.
- b. Survey of subject lot was recorded in the office of the Register of Deeds, Jackson County, North Carolina, on February 19, 2002, in Plat Cabinet 11, Slide 383.

2. Any other defects, liens and encumbrances to which said title is subject (if none, so state):

NONE

*This title is certified down to February 19, 2002, at 3:18 PM.



J. K. Coward, Jr.
Coward, Hicks & Siler, P.A.
705 West Main Street
Sylva, NC 28779
Phone: 828-386-2147
Fax: 828-386-2605

*This date should be the date you last examined the records for all matters affecting the subject title and should be on or subsequent to the date and time of filing for record the instrument(s) to be insured.

Owner's Information Sheet

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

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

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

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

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

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

You do not owe any more premiums for the Policy.

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

If you have any questions about your Policy, contact:
CHICAGO TITLE INSURANCE COMPANY

Your Residential Title Insurance Policy



**Chicago Title
Insurance Company**

171 North Clark Street
Chicago, Illinois 60610-3204

Issued by:
COUNSELLOR TITLE AGENCY, INC.
23 B SHELFER COVER LANE, SUITE 400
MILTON HEAD ISLAND, SC 29528

34 0063 097 00000014

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P000000205

Chicago Title Insurance
Company

Residential
Title Insurance Policy

One-to-Four Family
Residences

Owner's Coverage Statement

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

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

Your insurance is limited by the following:

- Exclusions on page 2

- Exceptions in Schedule B

- Conditions on pages 2 and 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy—up to the Policy Amount

and

- any costs, attorneys' fees and expenses we have to pay under this Policy

Covered Title Risks

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

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
 - a mortgage or deed of trust
 - a judgment, tax, or special assessment
 - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before

the Policy Date—unless you agreed to pay for the labor and material.

9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure—other than a boundary wall or fence—because:
 - It extends on to adjoining land or on to any easement
 - It violates a restriction shown in Schedule B
 - It violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

Company's Duty to Defend Against Court Cases

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

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

This policy is not complete without Schedules A and B.

Exclusions

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

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

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

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

2. The right to take the land by condemning it, unless:
 - a notice of exercising the right appears in the public records on the Policy Date

- the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date—unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date—this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A
- or
- in streets, alleys, or waterways that touch your land

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

Conditions

1. Definitions

- a. Easement—the right of someone else to use your land for a special purpose.
- b. Land—the land or condominium unit described in Schedule A and any improvements on the land which are real property.
- c. Mortgage—a mortgage, deed of trust, trust deed or other security instrument.

- d. Public Records—title records that give constructive notice of matters affecting your title—according to the state statutes where your land is located.
- e. Title—the ownership of your interest in the land, as shown in Schedule A.

2. Continuation Of Coverage

This Policy protects you as long as you:

- own your title
- or
- own a mortgage from anyone who buys your land.
- or

- are liable for any title warranties you make
- This Policy protects anyone who receives your title because of your death.

3. How To Make A Claim

- a. You Must Give The Company Notice Of Your Claim
- If anyone claims a right against your insured title, you must notify us promptly in writing.

Send the notice to the issuing office or
Chicago Title Insurance Company
Claims Department
171 North Clark Street
Chicago, Illinois 60601-3294

Please include the Policy number shown in Schedule A, and the county and state where the land is located.

Our obligation to you could be reduced if:

- you fail to give prompt notice
- and
- your failure affects our ability to dispose of or to defend you against the claim

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

You must give us a written statement to prove your claim of loss.

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

The statement must have the following facts:

- the Covered Title Risks which resulted in your loss
- the dollar amount of your loss
- the method you used to compute the amount of your loss

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

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

We may require you to answer questions under oath.

Our obligation to you could be reduced if you fail or refuse to:

- provide a statement of loss
- or
- answer our questions under oath
- or
- show us the papers we request.
- and
- your failure or refusal affects our ability to dispose of or to defend you against the claim.

Conditions (continued)

4. Our Choices When You Notify Us Of A Claim	After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following: a. Pay the claim against your title. b. Negotiate a settlement. c. Prosecute or defend a court case related to the claim.	d. Pay you the amount required by this Policy. e. Take other action which will protect you. f. Cancel this policy by paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.
5. Handling A Claim Or Court Case	You must cooperate with us in handling any claim or court case and give us all relevant information. We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.	When we defend your title, we have a right to choose the attorney. We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.
6. Limitation Of The Company's Liability	a. We will pay up to your actual loss or the Policy Amount in force when the claim is made—whichever is less. b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it. If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until: • the cause of the claim is removed - or	• we settle your claim c. The Policy Amount will be reduced by all payments made under this policy—except for costs, attorneys' fees and expenses. d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you. e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.
7. Transfer Of Your Rights	When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.	We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable. With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.
8. Arbitration	If it is permitted in your state, you or the Company may demand arbitration. The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company. The arbitration award may: • include attorneys' fees if allowed by state law • be entered as a judgment in the proper court.	The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date. The law used in the arbitration is the law of the place where the property is located. You can get a copy of the Rules from the Company.
9. Our Liability Is Limited To This Policy	This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.	

American
Land Title
Association

Residential
Title Insurance
Policy (6-1-S7)



CHICAGO TITLE INSURANCE COMPANY

By:

Robert M. S. C. E.
President

By:

M. A. ...

P000000208

RESIDENTIAL OWNERS FORM
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

SCHEDULE A

OFFICE FILE NUMBER: BALSAMPOLICIESVB
POLICY NUMBER: 34 0083 097 00000014
DATE OF POLICY: 2/19/02, at 3:38pm
AMOUNT OF INSURANCE: \$495,000.00

1. Name of Insured:
William P. Loflin and Leslie W. Loflin

2. Your interest in the land covered by this Policy is:
Fee Simple and Easement

Subject to:

Deed of Trust from William P. Loflin and Leslie W. Loflin to Terry L. Rohlifing for Lighthouse Community Bank, dated 2/15/02, in the original principal amount of \$250,000.00, recorded on 2/19/02, at 3:38pm in Mortgage Book 1227 at Page 202, Jackson County records, and the matters shown in Schedule B.

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

ALL of that certain piece, parcel or tract of land, situate, lying and being in Scott's Creek Township, Jackson County, North Carolina, bounded and more particularly described as follows:

That certain Lot or Homestead Number 109, containing 1.837 acres, as shown on that certain plat dated the 10th day of December, 2001, prepared by Herron Land Surveying, certified by James Randy Herron, Professional Land Surveyor (N.C. #3202), and recorded in the Jackson County Records in Plat Cabinet 11 at Slide 383.

TOGETHER WITH the right of ingress and egress over all roads existing or hereafter constructed within rights-of-way in Balsam Mountain Preserve for access to US Highway 74, which may be hereafter delineated on plats of record.

This Policy valid only if Schedule B is attached.

SCHEDULE A
Residential Owners
(Rev. 1/89)

PC00000209

RESIDENTIAL OWNERS FORM
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B

Policy Number: 34 0063 097 00000014

EXCEPTIONS FROM COVERAGE

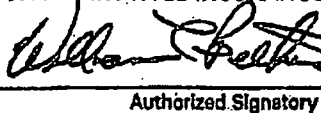
In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

Special Exceptions: The mortgage, if any, referred to in Item 2 of Schedule A.

1. Taxes and assessments for the year 2002 and subsequent years, which are a lien, but are not yet due and payable.
2. Covenants, restrictions and affirmative obligations as contained in the Declaration of Governance for Balsam Mountain Preserve dated 12/19/01 recorded in Book 1140 at Page 191, Jackson County, North Carolina Records.
3. Covenants, restrictions and affirmative obligations as contained in the Conservation Easement and Declaration of Restrictions and Covenants between Balsam Mountain Preserve and North Carolina American Land Trust as recorded in Book 1140 at Page 48, Jackson County, North Carolina Records. (As to ingress and egress roads only, subject to reserved rights to create and maintain paved or unpaved roads.)
4. Restriction contained in that certain Deed from Balsam Mountain Preserve, Limited Partnership, recorded in Deed Book 1144 at Page 520.
5. Easements in favor of Nantahala Power and Light Company as recorded in Book 500, Page 114, Jackson County Records.
6. Rights of others including riparian, littoral & drainage in and to the waters of any branch, river, stream, creek, lake, canal, ditch or other watercourse which joins or traverses the land.
7. Any and all easements of record, if any, and easements visible upon ground but not of record.
8. This policy affords assurance as to the location of the boundary lines of subject property, but does not insure the engineering calculations in computing the exact amount of acreage contained therein.

Countersigned

COUNSELLOR TITLE INSURANCE AGENCY, INC.


Authorized Signatory

Schedule B of this Policy consists of 2 page(s).

SCHEDULE B
Residential
(Rev. 1/89)

P000000210

COWARD, HICKS & SILER, P.A.

ATTORNEYS AT LAW
705 WEST MAIN STREET
SYLVIA, NORTH CAROLINA 28778-3099

TELEPHONE: (828) 566-2147
FAX (828) 566-2605

ORVILLE D. COWARD
ORVILLE D. COWARD, JR.
RALPH L. HICKS
ROBERT F. SILER
J.K. COWARD, JR.
WILLIAM H. COWARD
KIMBERLY R. COWARD
MONTY C. BECK
RICHARD K. WALKER
THOMAS R. CRAWFORD
HEATHER C. BAKER
BENJAMIN D. ELLIS

KENT COWARD
1020-1982

OFFICES IN:

SYLVIA, NC
FRANKLIN, NC
CASHIERS, NC

March 25, 2002

Mr. & Mrs. William P. Loffin
c/o Chaffin Light Associates
42 Mobley Oaks Lane
Okatie, SC 29910

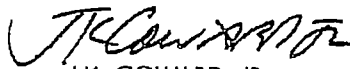
RE: Homestead Number 108, Balsam Mountain Preserve

Dear Mr. & Mrs. Loffin:

Enclosed are the recorded Deed and Title Insurance for your lot.

Now that we have now completed your closing services let me assure you on behalf of the firm that we'll be happy to assist you in any follow-up you may require. Please feel free to contact us. We look forward to meeting you.

Sincerely yours,


J.K. COWARD, JR.

jp/enc

f:\kelly\balsammin\postclose.lt

STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE

STATEMENT OF CHANGE OF REGISTERED
OFFICE AND/OR REGISTERED AGENT

Pursuant to §55D-31 of the General Statutes of North Carolina, the undersigned entity submits the following for the purpose of changing its registered office and/or registered agent in the State of North Carolina.

INFORMATION CURRENTLY ON FILE

The name of the entity is: Balsam Mountain Preserve Community Association

Entity Type: ☐ Corporation, ☐ Foreign Corporation, ☒ Nonprofit Corporation, ☐ Foreign Nonprofit Corporation,
☐ Limited Liability Company, ☐ Foreign Limited Liability Company ☐ Limited Partnership, ☐ Foreign Limited Partnership,
☐ Limited Liability Partnership, ☐ Foreign Limited Liability Partnership

The street address and county of the entity's registered office currently on file is:

Number and Street: 1200 Rockhouse Road

City, State, Zip Code: Hot Springs, NC 28743

County: Madison

The mailing address *if different from the street address* of the registered office currently on file is:

The name of the current registered agent is: James A. Anthony, Jr.

NEW INFORMATION

1. The street address and county of the new registered office of the entity is:
(complete this item only if the address of the registered office is being changed)

Number and Street: 52 Sugar Loaf Road

City, State, Zip Code: Sylva, NC 28779

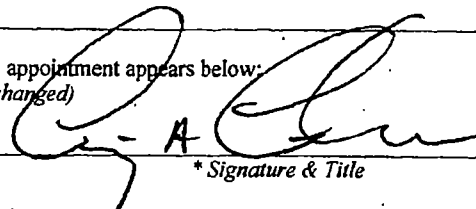
County: Jackson

2. The mailing address *if different from the street address* of the new registered office is:
(complete this item only if the address of the registered office is being changed)

3. The name of the new registered agent and the new agent's consent to appointment appears below:
(complete this item only if the name of the registered agent is being changed)

Craig A. Lehman

Type or Print Name of New Agent


* Signature & Title

4. The address of the entity's registered office and the address of the business office of its registered agent, as changed, will be identical.
5. This statement will be effective upon filing, unless a date and/or time is specified:

This is the 1 day of May, 2006

Balsam Mountain Preserve Community Association

Craig A. Lehman
Entity Name

Craig A. Lehman, President
Signature

Type or Print Name and Title

Notes: Filing fee is \$5.00. This document must be filed with the Secretary of State.

* Instead of signing here, the new registered agent may sign a separate written consent to the appointment, which must be attached to this statement.

CORPORATIONS DIVISION
Revised January 2002

P. O. BOX 29622

RALEIGH, NC 27626-0622
Form BE-06

SPEIGHTS & RUNYAN
ATTORNEYS AT LAW
100 OAK STREET EAST
POST OFFICE BOX 685
HAMPTON, SOUTH CAROLINA 29924
(803) 943-4444

A. G. SOLOMONS, III
GSOLOMONS@SPEIGHTSRUNYAN.COM

March 23, 2012

FACSIMILE (803) 943-4599

Chicago Title Insurance Company
Claims Department
171 North Clark Street
Chicago, Illinois 60601-3294

Dear Sir or Madam:

I am writing on behalf of Bill Loflin, policy holder of policy number 34 0063 097 00000014, purchased on February 19, 2002. The amount of coverage is \$495,000.00.

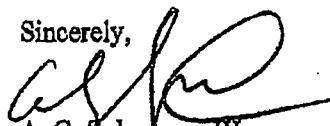
The covered property is located in Jackson County, North Carolina and was purchased directly from the development Balsam Mountain Preserve. When he purchased the property, the deed and plat of record described his property as containing 1.837 acres of land and contained drawings of the property including proposed road locations.

Mr. Loflin has been informed that the 1.837 acres he purchased was not described properly and is actually 1.4 acres. Balsam Mountain Preserve asserts that a second plat which reduces Mr. Loflin's acreage and materially alters the layout of his property is a proper description of the land. The second plat contained drawings of the same roads in different locations, most importantly dividing his property rather than going around his property.

This letter serves as a formal notice that Mr. Loflin intends to file a claim against the title insurance on this piece of property. I understand that due to a refinancing of the property, the policy number may have changed but the property has been continuously insured by Chicago Title since the date referenced above.

Please have someone contact me as soon as this letter has been received so that we may take the necessary steps to secure this claim.

Sincerely,



A. G. Solomons, III

AGS/kpn

CHICAGO TITLE INSURANCE COMPANY

601 RIVERSIDE AVENUE, BUILDING FIVE, FOURTH FLOOR, JACKSONVILLE, FL 32204



August 21, 2012

VIA FAX (803) 943-4599

VIA CERTIFIED MAIL

7007 2680 0000 9400 1750

RETURN RECEIPT REQUESTED

Mr. A.G. Solomons, III

Speights & Runyan

100 Oak Street East

Hampton, South Carolina 29924

AUG 24 2012

Re: Claim Number: 430452
Insureds: William P. Loflin and Leslie W. Loflin
Policy Number: 34 0063 097 00000014
Property: As described in Policy

Dear Mr. Solomons:

As you are aware I am senior claims counsel to Chicago Title Insurance Company ("Company") and this claim has been assigned to me for administration. On behalf of the above-referenced Insureds you have submitted this claim alleging a title defect based on a discrepancy in the acreage of the property. Specifically, you have alleged that Insured acquired title to the property from the developer, Balsam Mountain Preserve. On the date of closing the deed and plat of record described the property as containing 1.837 acres pursuant to that certain plat recorded at Plat Cabinet 11, Slide 383 ("Original Plat"). In connection with the purchase and sale transaction, the Company issued to Insureds the above-referenced owner's title policy ("Policy") dated February 19, 2002 ("Policy Date"). Subsequently, the developer asserted to Insureds that a revised plat was prepared which relocated roadways and decreased the acreage of the subject property to 1.4 acres.

The Company has obtained a title search of the property. It appears that there is no revised plat of record. Therefore, title appears to be established as insured as the Original Plat was, as of the Policy Date, the correct plat. Furthermore, the Original Plat depicts the property described on Schedule A of the Policy. Therefore, there appears to be no title defect in this matter. Moreover, Scheduled B, Paragraph 8 of the Policy specifically excludes coverage for the amount of acreage. However, in this case, there appears to be no discrepancy with the amount of acreage pursuant to the title records. In the event that the developer records a revised plat which appears in the public record after the Policy Date, any matter arising therefrom would be considered a post policy issue and would therefore be excluded under Paragraph 3 of the Exclusions of the Policy. As discussed above, however, that is not the case at this time as no revised plat is of record. The Company will consider any additional information that Insureds provide and reserves the right to modify this coverage decision in light of any additional information it may receive related to this claim.

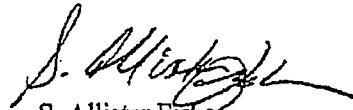
Direct dial: (904) 854-3676 • Toll free: (877) 862-9111 • Fax: (904) 357-1261

E-mail: Allister.Fisher@jnf.com

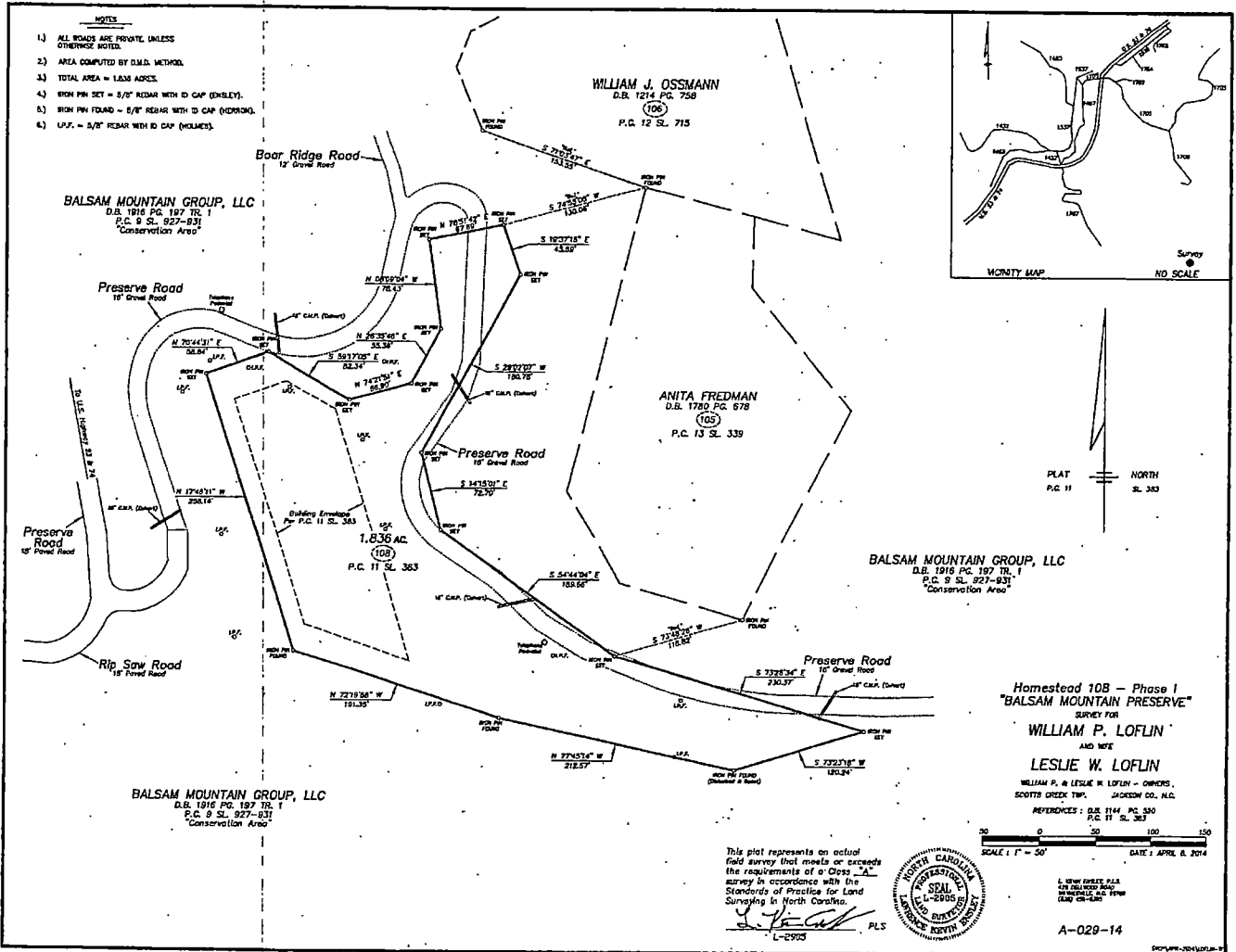
Mr. A.G. Solomons, III
Speights & Runyan
August 21, 2012
Page 2

Reference in this letter to any particular provision of the Policy will not be construed as a waiver or modification of any other term, condition, stipulation, exclusion exception or endorsement of the Policy. Accordingly, nothing contained in this letter is intended as, or should be deemed to constitute a waiver or relinquishment of any of the Company's rights or remedies whether legal or equitable all of which are hereby expressly reserved. Should you have any questions or wish to discuss this matter further, please let me know. I may be reached directly by telephone at (904) 854-3676 or via e-mail at Allister.Fisher@fnf.com.

Very truly yours,



S. Allister Fisher
Assistant Vice President
Senior Claims Counsel



SPEIGHTS & RUNYAN

ATTORNEYS AT LAW
108 OAK STREET, EAST
POST OFFICE BOX 685
HAMPTON, SOUTH CAROLINA 29924
(803) 943-4444

DANIEL A. SPEIGHTS
DSPEIGHTS@SPEIGHTSRUNYAN.COM

TELECOPIER
(803) 943-4599

February 13, 2015

Robert E. Stepp, Esquire
Sowell, Gray, Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Re: William Loflin and Leslie Loflin v. BMP Development, LP,
Balsam Mountain Group, LLC, COWARD, HICKS & SILER,
P.A., J.K. Coward, Jr., Chicago Title Insurance Company and
Counsellor Title Agency, Inc., C/A No. 2013-CP-07 -1807

Dear Bobby:

Pursuant to our telephone conversation of this morning, enclosed herewith is an index to the Loflin documents. The index (and the documents for your inspection) does not include those documents produced in the litigation (including at the various depositions we have taken), which I understand you already have.

As discussed, you may designate those documents you want copied from the index or you can come to Hampton and examine all the documents and designate what you would like copied.

By copy of this letter, I am providing Hamlin with the same opportunity. My only request is that if both you and Hamlin want to examine the documents in Hampton, you will do so at the same time.

I am going to get back with you shortly concerning the date we will examine your documents and Hamlin's documents. In the meantime, if you have an index of those documents for us to examine, I would appreciate your forwarding it to me as soon as possible.

Finally, before examining your documents, I will execute and deliver to you the Confidentiality Agreement which you sent to me, with the understanding that you and Hamlin also will execute the same Agreement before examining our documents.

Please accept my kind regards.

Sincerely yours,

Dan

Daniel A. Speights

DAS/rb

Enclosure

cc G. Hamlin O'Kelley, Esquire
A. G. Solomons, III, Esquire

LOFLIN DOCUMENTS (VOL. I of File - docs provided by Bill Loflin)

PLATS:

12/10/2001 1st recorded Plat for Balsam Mountain Preserve by J. Randy Herron of Herron Surveying, PC

02/06/2002 Unrecorded Plat by Herron

06/20/2007 Unrecorded Plat of Homestead 108 prepared by W. Edwin Holmes, PLS of Ed. Holmes & Associates Land Surveyors, PA of Asheville, NC

04/08/2014 Plat prepared for Bill Loflin by L. Kevin Ensley, P.L.S.

N/D Drawing with Lot 108 hilited labeled Exhibit A

N/D Drawing of Balsam Mountain Preserve Homestead - Homestead # 83 (not for recordation)

CONTRIBUTION TO BALSAM MOUNTAIN TRUST:

02/15/2002 Letter signed by William P. Loflin & Leslie W. Loflin re: Contribution to Balsam Mountain Trust - \$5,000; attached is adjustable rate note dated 2/11/02 for \$250,000 from Loflins to Lighthouse Community Bank

02/15/2002 Deed of Trust for \$250,000 from Loflins to Lighthouse Community Bank

02/14/2002 Compliance Agreement between Loflins and Lighthouse Community Bank

02/14/2002 Name Affidavit - Leslie W. Loflin

02/14/2002 Name Affidavit - William P. Loflin

02/15/2002 Escrow Waiver signed by the Loflins

02/08/02 Mortgage Loan Commitment between Loflins and Lighthouse Community Bank

02/14/2002 Payment breakdown letter

00/00/1999 Federal Tax return for Loflins

00/00/2000 Federal Tax return for Loflins

02/14/2002 Request for copy of tax form signed by Loflins

SPEIGHTS & RUNYAN
ATTORNEYS AT LAW
100 OAK STREET EAST
POST OFFICE BOX 685
HAMPTON, SOUTH CAROLINA 29924
(803) 943-4444

FACSIMILE (803) 943-4599

February 26, 2015

VIA UPS GROUND

G. Hamlin O'Kelley, III, Esquire
BUIST BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, South Carolina 29464

Robert E. Stepp, Esquire
Sowell, Gray, Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, SC 29201

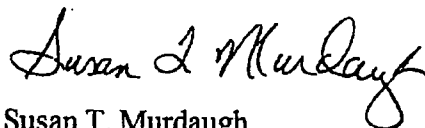
Re: William Loflin and Leslie Loflin v. BMP Development, LP,
et al., C/A No. 2013-CP-07-1807

Gentlemen:

Please find enclosed herewith your copy of all Plaintiffs' documents as listed on the previously provided index. Also enclosed is an invoice to each of you for copying and shipping costs.

Please accept my kind regards.

Sincerely yours,



Susan T. Murdaugh
Paralegal to Daniel A. Speights

STM
Enclosures

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

William Loflin and Leslie Loflin,
Plaintiffs,

v.

BMP Development, LP, Balsam
Mountain Group, LLC, COWARD
HICKS & SILER, P.A., J.K. Coward,
Jr., Chicago Title Insurance Company
and Counsellor Title Agency, Inc.
Defendants.

COURT OF COMMONPLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2013-CP-07-1807

AFFIDAVIT OF WILLIAM LOFLIN

Personally appeared before me William Loflin, who being duly sworn deposes and
says:

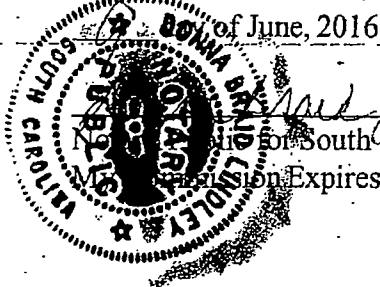
1. That he is one of the Plaintiffs in the above-referenced lawsuit.
2. That in February of 2002 the Loflins purchased Lot 108 consisting of 1.87 acres.
3. Lot 108 is recorded in the Jackson County records in Book 1227 at 202.
4. The recorded plat shows Balsam Mountain Preserve Road going around rather than through Lot 108.
5. Balsam Mountain Preserve Road actually cuts through Lot 108, over the property, rather than around the purchased lot.
6. In April of this year Mr. Loflin informed the current homeowners association that he objected to any attempts to pave Balsam Mountain Preserve Road.
7. Over his objections, the road has now been paved.
8. Additionally, Mr. Loflin had an independent survey performed and his property lines clearly marked with surveying markers. He also had placed several steel posts where the road enters his property, according to the

recorded plat. The steel posts were removed by someone other than the Plaintiff.

9. The property pins have been destroyed.

William P. Loflin
WILLIAM LOFLIN

SWORN TO before me this



8th of June, 2016

William P. Loflin (L.S.)
Notary Public for South Carolina
Commission Expires: 6-27-22

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-07-1807

William Loflin and Leslie Loflin,)

Plaintiffs,)

v.)

SUPPLEMENTAL
AFFIDAVIT OF WILLIAM LOFLIN

BMP Development, LP, Balsam)
Mountain Group, LLC, COWARD)
HICKS & SILER, P.A., J.K. Coward,)
Jr., Chicago Title Insurance Company)
and Counsellor Title Agency, Inc.)

Defendants.)

Personally appeared before me William Loflin, who duly deposes and says:

1. I reviewed the Third Amended Complaint before it was filed and hereby attest that the factual assertions set forth therein as to my involvement in this matter are true and accurate.

2. Prior to the development of Balsam Preserve, the Bethea Firm, including Mr. Bethea and Ms. Robertson, regularly represented my wife and me in real estate transactions in Beaufort County. We did not know that the Bethea Firm owned Counsellor Title Agency, Inc.

3. In 2006, Craig Lehman informed me that there was an encroachment on Lot 108, that the property contained only 1.4 acres, and that Balsam Mountain Preserve Road went through the property. Mr. Lehman suggested that the road had been constructed through Lot 108 after the Closing. Because I knew the Recorded Plat showed no road through my

property, I had no reason to doubt that the road Mr. Lehman was now disclosing was an after purchase encroachment.

4. In early 2007, I telephoned Mr. Coward and sought his assistance regarding the encroachment on Lot 108. At that time, I did not know that the road through my property, which also resulted in less acreage than set forth in my Deed and Plat, was the same road that existed prior to the Closing. Mr. Coward did not disclose that he already represented Balsam in efforts to resolve certain boundary problems, nor did he offer any help regarding my situation.

5. In early 2012, I first learned that Balsam Mountain Preserve Road went through my property before the Closing, which also resulted in less acreage as set forth in my Deed and Plat, as reflected in an Unrecorded Plat that had been prepared for Balsam before the Closing.

6. No one informed me that Chicago would take the position that its coverage was limited to matters of record, and if I had known that, I would not have purchased insurance with Chicago.


WILLIAM LOFLIN

SWORN TO before me this

1st day of July, 2016


(L.S.)
Notary Public for South Carolina
My Commission Expires: 6/5/2005

Dan Speights

From: Mullen, Carmen T. Law Clerk (Leigh Ellen Gray) <CMullenLC@sccourts.org>
Sent: Thursday, August 11, 2016 4:11 PM
To: Mike McCall
Cc: Dan Speights; Gibson Solomons; Valerie Hampton; Melissa Oken; G. Hamlin O'Kelley; Will Jordan; Bobby Stepp; David Overstreet; David Wyatt; Tara Markham
Subject: RE: 2013-CP-07-1807 / William Loflin v. Balsam Mountain Preserve et al
Importance: High

Good afternoon,

Judge Mullen has issued the following rulings in connection with the motion hearings in this case on Monday, June 13 in Beaufort:

1. Defendant Coward Hicks and Siler, PA's Motion for Summary Judgment is granted on the ground that the statute of limitations has run. Judge Mullen has requested that Mr. McCall please prepare a proposed order.
2. Defendant Counsellor Title Agency, Inc.'s Motion for Summary Judgment is also granted and Judge Mullen has asked Mr. Stepp to prepare a proposed order.
3. Defendant Chicago Title's Motions for Summary Judgment is also granted. She has asked that Mr. O'Kelly please prepare a proposed order.

Judge Mullen has requested that these proposed orders be emailed to me in MS Word format by this Monday, 8/15. Please let me know if you have any questions or concerns. Please also note that my last day with Judge Mullen is Tuesday, 8/16, and that her next law clerk, Paige Ornduff, may be closing this one out. Paige begins work next week. Thank you all—it's been a pleasure.

Best,
Leigh Ellen

Leigh Ellen Gray
Law Clerk to the Honorable Carmen T. Mullen
Fourteenth Judicial Circuit

Dan Speights

From: G. Hamlin O'Kelley <hamlin.okelley@buistbyars.com>
Sent: Monday, August 15, 2016 9:15 AM
To: Mullen, Carmen T. Law Clerk (Leigh Ellen Gray)
Cc: David Overstreet; Dan Speights; Gibson Solomons; Bobby Stepp; David Wyatt; Tara Markham; Mike McCall
Subject: RE: 2013-CP-07-1807 / William Loffin v. Balsam Mountain Preserve et al
Attachments: Order Granting Chicago Title Summary Judgment (00816381xA3465).doc

Leigh Ellen:

Attached is the Order Granting Summary Judgment to Chicago Title Insurance Company. I'm copying all counsel of record on this email.

Should you have any questions, please feel free to contact me. Thanks – Hamlin

G. Hamlin O'Kelley, III
Attorney at Law
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: Hamlin.okelley@buistbyars.com
Direct Line: 843.284.1408
Main Office: 843.856.4488



CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

William Loflin and Leslie Loflin,
Plaintiffs,

vs.

BMP Development, LP, Balsman Mountain
Group, LLC, Coward, Hicks & Siler, P.A.,
J.K. Coward, Jr., Chicago Title Insurance
Company, and Counsellor Title Agency,
Inc.,
Defendants.

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2013-CP-07-1807

**ORDER GRANTING
CHICAGO TITLE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came before this Court on June 13, 2016, for a hearing of the Defendant Chicago Title Insurance Company's Motion for Summary Judgment filed July 14, 2015. Present at the hearing were G. Hamlin O'Kelley, III, for Chicago Title Insurance Company, Daniel A. Speights and A. Gibson Solomons, III, for the Plaintiffs.¹ For the reasons stated herein, the Motion is GRANTED.

STANDARD OF REVIEW

Summary judgment is proper when it is clear that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. SCRCivP 56 (c); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of

¹ Motions by the Defendants Coward, Hicks & Siler, P.A., J.K. Coward, Jr., and Counsellor Title Agency, Inc., were heard at the same time and are addressed by separate Orders of this Court.

a factfinder.” *Moore v. Weinberg*, 733 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007), *aff’d* by 383 S.C. 583, 681 S.E.2d 875 (2009).

Summary judgment should be granted when plain, palpable, and undisputed facts exist upon which reasonable minds cannot differ. *Trico Surveying, Inc. v. Godley Auction Co., Inc.*, 314 S.C. 542, 544, 431 S.E.2d 565, 555 (1993). Where there is no dispute over the operative facts, summary judgment is proper as a matter of law. *Citizens & Southern Nat’l Bank of S.C. v. Langford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994). Here, the material facts are not in dispute and, based upon those undisputed facts, Chicago Title Insurance Company is entitled to judgment as a matter of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Plaintiffs are the owners of Lot 108 in the Balsam Mountain Preserve development located in Jackson County, North Carolina. (Third Amended Complaint, ¶ 13) The Plaintiff William Loflin purchased this property in 2002 for \$495,000.00. (*Id.* at ¶ 10) Chicago Title Insurance Company (hereinafter “Chicago Title”) issued the Plaintiff a title insurance policy (the “Policy”) for Lot 108.² (Third Amended Complaint. at ¶ 5). At the time of the closing in 2002, Lot 108 was not staked. (*Id.* at ¶ 10) During the closing, the Plaintiffs received a deed to Lot 108 and a copy of the only recorded plat reflecting that Lot 108 consisted of 1.837 acres. (*Id.* at ¶ 13). The only recorded plat also showed that the Balsam Mountain Preserve Round went around Lot 108. (Third Amended Complaint, *id.* at 10) The plat was recorded in Jackson County, North Carolina, in Plat Cabinet 11 at Slide 383 and incorporated in the deed to the Plaintiffs which deed was recorded in Jackson County in Book 1227 at Page 202. (*Id.* at ¶13.) The plat recorded in Plat Cabinet 11 at Slide 383 is the only recorded plat for Lot 108 (the “Recorded Plat”)(*Id.* at

13). The deed conveyed Lot 108 as shown on the Recorded Plat. (*Id.*) The Plaintiffs have alleged that they purchased Lot 108 as shown on the Recorded Plat. (*Id.*) The Title Insurance Policy issued to the Plaintiffs by Chicago Title insured the Plaintiffs' title to Lot 108 containing 1.837 acres as referenced in the Recorded Plat in Jackson County, North Carolina. (*Id.* at ¶ 13).

Four years after the closing, in 2006, the Plaintiffs claim that BMP Development informed them that, contrary to the duly recorded deed and duly recorded plat, Lot 108 only contained 1.4 acres and that Balsam Mountain Preserve Road went "through" their property as shown on an unrecorded plat. (*Id.* at ¶ 20). Although allegedly discovered in 2006, the Loflins did not file suit until 2013. (Complaint, July 18, 2013). The Plaintiffs claim the unrecorded plat shows both the reduced acreage and the Balsam Mountain Preserve Road going through their Lot 108. (Third Amended Complaint, *id.* at ¶20) According to the Complaint, there is no recorded plat or deed showing the reduced acreage or Balsam Mountain Preserve Road going through Lot 108. (*Id.*) The Plaintiffs claim that there is a trespass and encroachment upon their property by way of this unrecorded plat, which they discovered in 2006. (*Id.* at ¶ 16)

In 2012, six years after discovering this unrecorded plat, the Plaintiffs informed Chicago Title of the unrecorded plat. (*Id.* at ¶ 20). In response, Chicago Title advised that based upon a title search, the only recorded deed and the Recorded Plat did not show any impairments to the Plaintiff's title and denied the claim. (*Id.*)

The Plaintiffs have asserted breach of contract and negligence actions against Chicago Title and Counsellor Title Agency, Inc. (*Id.* at ¶¶ 147-151) The Plaintiffs claim they entered into a contract with Chicago Title to "investigate and insure lot 108 was protected from all risks set forth herein, including, but not limited to, easements, encumbrances and fraud." (*Id.* at ¶ 148). In addition, they allege that Lot 108 contains 1.4 rather than 1.837 acres and there is a road

² Chicago Title issued lenders' policies of title insurance for refinances of the property at later dates. (*Id.*)

dissecting the property as shown on an unrecorded plat, rather than what is shown on the recorded plat. (*Id.* at ¶ 149) There are no specifics alleged as to how Chicago Title breached its contract when the deed to the Plaintiffs and the Recorded Plat show that the Plaintiffs received the title for which they bargained and for which the Title Insurance Policy was issued. (*Id.*) The claim for negligence states that Chicago Title knew or should have known the risks associated with Lot 108 and either allowed exposure to such risk or negligently failed to ascertain and insure against such risks. (*Id.* at ¶ 153-155). The Plaintiffs claim they are entitled to the full value of their property and consequential damages. (*Id.* at ¶155). These are the only claims against Chicago Title.

None of the Plaintiffs' claims may stand as set forth below as follows:

I. THE PLAINTIFFS CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS AS TO ALL CAUSES OF ACTION

The Plaintiffs' claims are barred by the applicable statute of limitations. The Plaintiffs have asserted claims against Chicago Title for breach of contract and for negligence. (Third Amended Complaint, ¶¶ 147-155). The applicable statute of limitations for both causes of action is three years. S.C. Code Ann. §15-3-530. The "discovery rule" governs and runs on the date the party first knew or should have known by the exercise of reasonable diligence that a cause of action has arisen. *Dean v. Ruscon*, 321 S.C. 360, 468 S.E.2d 645 (1996). At the time a party should realize his injury is attributable to someone else's actions, the statute begins to run. *Republic Contr. Corp. v. South Carolina Dep't of Highways & Pub. Transp.*, 332 S.C 197, 503 S.E.2d 761 (1998). As established in their Third Amended Complaint, the Plaintiffs learned in 2006 that contrary to their deed and recorded plat there was a potential encroachment on their property, that there was less acreage than they thought they had, and that Balsam Mountain Road went through instead of around their property. (Third Amended Complaint, ¶20). Yet, the

Plaintiffs failed to file suit until July, 2013, well beyond the three year statute of limitations. Accordingly, the Chicago Title is entitled to judgment as a matter of law under the applicable statute of limitations.

II. THE PLAINTIFFS HAVE NO CLAIMS FOR DAMAGE DUE TO AN UNRECORDED PLAT AS THEY HAVE TITLE TO THE PROPERTY AS INSURED AND CONVEYED PURSUANT TO THE RECORDED PLAT IN JACKSON COUNTY, NORTH CAROLINA

The Plaintiffs took title to their property based upon the only plat recorded in Jackson County, North Carolina, recorded in in Plat Cabinet 11 at Slide 383 and incorporated in the deed to the Plaintiffs which deed was recorded in Jackson County in Book 1227 at Page 202. (Third Amended Complaint, *id.* at 10) The plat recorded in Plat Cabinet 11 at Slide 383 is the only recorded plat for Lot 108 (*id.* at 13). At the hearing of this matter, no one disputed that this is the only plat recorded in Jackson County, North Carolina, surveying the Plaintiffs' property. As this property is in North Carolina, North Carolina substantive law as to recording must apply. According to North Carolina Code Section 47-18, unrecorded interests in land are invalid against subsequent purchasers of property. *See* N.C.G.S.A. §47-18. Unless an interest is "of record", it cannot be enforced against any subsequent purchaser. *Id.*; *see Hill v. Pinelaw Memorial Park*, 292 S.E.2d 779 (N.C. 1981). By enacting Section 47-18, the intent of the North Carolina General Assembly was that prospective purchasers should be able to rely only on the public record. *Schuman v. Roger Baker & Assoc., Inc.*, 319 S.E.2d 208 (N.C. Ct. App. 1984). It is only when a search of the public records reveals an encumbrance that a purchaser is chargeable with the notice of its existence. *Turner v. Glenn*, 18 S.E.2d 197 (N.C. 1942). If no interest is recorded, it is not enforceable against subsequent purchasers. *Id.* In this matter, the unrecorded plat cannot create any encumbrance and cannot create any damages for the Plaintiffs as it has no

impact upon the Plaintiffs' title to their property. Accordingly, Chicago Title is entitled to judgment as a matter of law.

III. THE PLAINTIFFS CLAIMS MUST FAIL AS A MATTER OF LAW AS TO THEIR CAUSE OF ACTION AGAINST CHICAGO TITLE FOR BREACH OF CONTRACT AS SET FORTH IN THE TWENTIETH CAUSE OF ACTION

The Plaintiffs have alleged that the contract at issue is the policy of title insurance issued by Chicago Title through its agent, Counsellor Title Agency, Inc., in 2002 (the "Policy") (*Id.* at ¶ 5). The Plaintiffs have acknowledged that the Policy was issued (*Id.*) The Plaintiffs have acknowledged that their deed references the Recorded Plat showing the correct acreage and the Balsam Mountain Road going around Lot 108. (*Id.* at ¶¶ 13-14) The Policy complies with the deed and recorded plat and insures that title which the Plaintiffs have and have had since 2002. (*Id.* at ¶ 13-14). There are no allegations stated in the Third Amended Complaint that support any breach of the contract as the Plaintiffs received the benefit of their bargain, have the title for which they bargained, and for which there is title insurance. There are no allegations to support the Plaintiffs' claims that Chicago Title had to "investigate and insure that Lot 108 was protected from all risks." In their lengthy Memorandum in Opposition to Certain Defendants' Motions for Summary Judgment, there are no case law or other citations supporting this allegation of investigation and insurance for Lot 108 being protected from "all risks". Further, Chicago Title relies on its agents and does no investigations. There has been no evidence or testimony produced to support those allegations. The Plaintiff's own allegations state that their deed referenced the recorded plat. In the deposition of Cynthia Baines, claims counsel for Chicago Title, counsel for the Plaintiffs asked the following questions:

Q. Okay. Do you understand that Mr. and Ms. Loflin claim responsibility of a Chicago title even if there's no problem with record title?

A. That seems to be their allegation.

(Baines Depo, pp. 11, ll. 22-25).

Q. Are you personally familiar with a lawsuit brought by an insured against Fidelity in which the insured claims that there should have been coverage but the record title was good – even though the record title was good?

A. This case.

(Baines Depo; p. 14)(copies of these pages attached).

By this very questioning of the Plaintiffs' counsel, it is acknowledged that the title of record in this matter is good as recorded in Jackson County, North Carolina. To this very day, there is no other plat to search or rely on by Chicago Title or its agents in issuing a title insurance policy. There is simply no breach as the Plaintiffs received the title referenced in both their recorded deed and the Recorded Plat referenced in that deed.

None of the enumerated "Covered Title Risks" in the Policy are triggered by the Plaintiffs' allegations related to the unrecorded plat or by any evidence in presented to this Court at the time of the hearing of this matter or in the Plaintiffs' Memorandum in Opposition to Certain Defendants' Motions for Summary Judgment submitted to this Court after the hearing on June 13, 2016.

The Title Insurance Policy states:

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

1. *Someone else owns an interest in your title.*
2. *A document is not properly signed, sealed, acknowledged, or delivered.*
3. *Forgery, fraud, duress, incompetency, incapacity, or impersonation.*
4. *Defective recording of any document.*
5. *You do not have legal right of access to and from the land.*
6. *There are restrictive covenants limiting your use of the land.*
7. *There is a lien on your title because of: (a) a mortgage or deed of trust; (b) a judgment, tax or special assessment; (c) a charge by a homeowner's or condominium association.*
8. *There are liens on your title arising now or later for labor and material furnished before the Policy Date – unless you agreed to pay for the labor and material.*
9. *Others have rights out of leases, contracts, or options.*

10. *Someone else has an easement on your land.*
 11. *Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease, or to make a mortgage loan.*
 12. *You are forced to remove your existing structure – other than a boundary wall or fence- because:*
 - *it extends on to adjoining land or on to any easement .*
 - *it violates a restriction shown in Schedule B*
 - *it violates an existing zoning law.*
 13. *You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.*
 14. *Other defects, liens, or encumbrances.*
-

(Policy, Owner's Coverage Statement)(emphasis added).

The Policy also contains Exclusions that states the insured is not insured against loss, costs, attorneys' fees and expenses resulting from the following:

3. Title Risks:

- *that are created, allowed or agreed to by you*
- *that are known to you, but not to us, on the Policy Date – unless they appeared in the public records*
- *that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks.*

(Policy, Exclusions)(emphasis added).

None of the Title Risks set forth in the Owner's statement of coverage are triggered, and, perhaps more importantly, the allegations of the unrecorded plat affect title after the Policy Date, meaning they are specifically excluded from coverage under the Policy. As stated above and here again, the Plaintiffs' title is as shown on the Recorded Plat and only on the Recorded Plat. Therefore, there is no coverage, and, accordingly, no breach of contract.

IV. THE PLAINTIFFS RECEIVED THE BENEFIT OF THEIR TITLE INSURANCE POLICY AND FAIL TO ALLEGE ANY CAUSE OF ACTION FOR ANY BREACH OF THAT CONTRACT

Title insurance is retrospective, not prospective. The Plaintiffs received the benefit of their title issuance and there has been no breach of that contract. Generally, title insurance

operates to protect a purchaser or mortgagee against defects in or encumbrances on title **which are in existence at the time the insured takes title.** *Preservation Capital Consultants, LLC v. First American Title Ins. Co.*, 406 S.C. 309, 751, S.E.2d 256 (2013); *Firstland Village Assoc. v. Lawyers Title Ins. Co.*, 277 S.C. 184; 284 S.E. 2d 582 (1981)(citing *National Mortgage Corp. v. American Title Ins.. Co.*, 261 S.E.2d 844 (N.C. 1980))(emphasis added). Title insurance is unique in that it is retrospective, not prospective. *Firstland Village Assoc., id.* at 184, 284 S.E.2d 582. The risks of title insurance end where the risks of other kinds begin. *Id.* Title insurance, instead of protecting the insured against matters that may arise during a stated period after the issuance of the policy, is designed to save the insured harmless from any loss through defects, liens, or encumbrances that may affect or burden the insured's title when the insured takes it. *Id.*

Here, the Plaintiffs allege that the title Policy insured Lot 108, containing 1.837 acres as described in the deed and recorded plat, which they received title for at their closing in 2002. The Plaintiffs admit that the recorded deed references the Recorded Plat with the correct acreage and showing the road going around their property. It was not until 2006, four years after the closing, that the Plaintiffs claim to have learned of the alleged unrecorded plat showing a different acreage and a different configuration of Balsam Mountain Preserve Road. At the time the Plaintiffs took title, there were no encumbrances of record, and the Plaintiffs received good title to their land. Further, there is no reference to the so-called unrecorded plat, meaning there can be no coverage to have been breached. *See Christensen v. Mikell*, 324 S.C. 70, 476 S.E.2d 692 (1996) (holding Chicago Title could not have breached a contract where there was no coverage for a fourteen acre tract of land). As in *Christensen*, where there is no coverage, there is no breach.

Neither Chicago Title nor its agents at Counsellor Title Agency, Inc., could have been aware of any unrecorded plat. To the contrary, the Plaintiffs have alleged in Paragraph 10 of their Amended Complaint that they received a duly executed deed to Lot 108 referencing a recorded plat showing 1.837 acres transferred and Balsam Mountain Preserve Road going around Lot 108. (Plaintiffs' Third Amended Complaint, ¶ 13) There was no lien, encumbrance, defect or other matter recorded at the time the Plaintiffs' Policy was issued that could have been discovered at the time of closing. (*Id.* ¶13). Instead of protecting the insured against matters that may arise during a stated period *after* the issuance of the policy, a title policy is designed to save the insured from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it. *Firstland Village Assoc. v. Lawyers Title Ins. Co.*, 277 S.C. 184; 284 S.E. 2d 582 (1981)

In this matter, there were no such defects, liens, or encumbrances of record at the time of the issuance of the policy. The Plaintiffs' own allegations make that clear. Accordingly, there is no breach of contract and Chicago Title is entitled to judgment as a matter of law.

V. THERE IS NO LIABILITY FOR ANY NEGLIGENCE CLAIM WHERE THE PLAINTIFFS' OWN ALLEGATIONS SET FORTH NO DUTY TO PROTECT THE PLAINTIFFS FROM UNRECORDED MATTERS, NO TITLE SEARCH WOULD REVEAL UNRECORDED MATTERS, AND NO EXPERT HAS ESTABLISHED ANY DUTY OR BEACH THEREOF

The Plaintiffs have alleged that Chicago Title is negligent since it "knew or should have known the risks associated with Lot 108 and either willingly allowed exposure to such risks despite this knowledge or negligently failed to ascertain and insure against such risks." (Plaintiffs' Third Amended Complaint, ¶ 153) By their own allegations, no title search could have revealed that there was an unrecorded plat. No title search would have revealed an unrecorded plat. There are no allegations that state what risks were known or should have been

known at the time the policy of insurance was issued, which is the time at issue as to the coverage under the policy. *Preservation Capital Consultants, LLC v. First American Title Ins. Co.*, 406 S.C. 309, 751, S.E.2d 256 (2013). There has been no expert witness named nor testimony provided that Chicago Title has been negligent in the denial of any claims. The only allegation in the Third Amended Complaint relating to the time of issuance of the policy is that the deed references the recorded plat and that plat showing Lot 108 containing 1.87 acres and showing Balsam Mountain Road going around the property. (Plaintiffs' Third Amended Complaint, ¶ 13). There can be no negligence where the Plaintiffs' allegations fail to show how Chicago Title could have breached any duty to the Plaintiffs at the time the policy was issued as was required by the recorded documents on file in Jackson County, North Carolina.

Chicago Title denied the Plaintiffs' claim regarding the unrecorded plat discovered in 2006, a copy of which is not part of the Plaintiffs' Amended Complaint. The Plaintiffs' own pleadings make clear that this is an item discovered four years after the policy was issued. There can be no breach of a duty of care here for a failure to investigate something that was not of public record and issued after the policy. *Preservation Capital Consultants, LLC, id. at*, 406 S.C. 309, 751, S.E.2d 256 (2013) The policy at issue, referenced as the First Insurance Contract, insures Lot 108, with 1.87 acres, without a road going through it based upon the recorded plat from 2002. Title insurance is unique in that it is retrospective, not prospective. *Firstland Village Assoc., id. at* 184, 284 S.E.2d 582. The risks of title insurance end where the risks of other kinds begin. *Id.* There can be no negligence in failing to ascertain and insure risk when those risks arise four years after the policy was issued and remain unrecorded. Accordingly, the claims against Chicago Title should be granted judgment as a matter of law; therefore it is hereby

ORDERED, that the Defendant Chicago Title Insurance Company be awarded a judgment as a matter of law in this matter and is hereby dismissed from this action with finality; and

IT IS SO ORDERED!

Beaufort, South Carolina
_____, 2016

The Honorable Carmen T. Mullen
Presiding Judge of the Fourteenth Circuit



Elaine F. Marshall
Secretary

North Carolina

**DEPARTMENT OF THE
SECRETARY OF STATE**

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

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PC, PLLC, LP and Non-Profit entities are not required to file annual reports.

Corporation Names

Name	Name Type
NC BMP DEVELOPMENT LP	LEGAL
NC BALSAM MOUNTAIN PRESERVE, LIMITED PARTNERSHIP	PREV LEGAL
NC BALSAM MOUNTAIN PRESERVE LP	PREV LEGAL

Limited Partnerships Information

SOSID:	0560708
Status:	Current-Active
Effective Date:	8/16/2000
Citizenship:	DOMESTIC
State of Inc.:	NC
Duration:	PERPETUAL

Registered Agent

Agent Name:	LEHMAN, CRAIG A.
Office Address:	52 SUGAR LOAF ROAD SYLVAN NC 28779
Mailing Address:	52 SUGAR LOAF ROAD SYLVAN NC 28779

Principal Office

Office Address:	NO ADDRESS
Mailing Address:	NO ADDRESS

Officers/Company Officials

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20 228 9087

State of North Carolina
Department of the Secretary of State
Certificate of Domestic Limited Partnership

SOSID: 0560708
Date Filed: 8/16/2000 9:46 AM
Elaine F. Marshall
North Carolina Secretary of State

A. Return Acknowledgement to:
Name: Sarah F. Robertson
Mailing Address: P.O. Drawer 3
City/State/Zip: Hilton Head Island, SC 29938-0003

Read Instructions on reverse before beginning. Attach additional pages as needed.

No. pages
attached

B. Name of limited partnership (must contain words "limited partnership"): Balsam Mountain Preserve, Limited Partnership			
C. If formed prior to October 1, 1986, complete this section:			
County of filing:	County file number:	Date of filing:	
D. Name of registered agent: James A. Anthony			
E. Address of registered office:			
Street/Number:	City:	NC	Zip: County:
1200 Rockhouse Road	Hot Springs		28743 Madison
F. Address of office where records are kept, if not kept at registered office:			
Street/Number:	City:	NC	Zip: County:
G. Latest date upon which limited partnership is to dissolve: December 31, 2050			
H. Complete for each general partner:			
Name	1. Balsam Mountain Company, LLC		2.
Street/Number	1200 Rockhouse Road		
City	Hot Springs		
State/Zip	NC 28743		
County	Madison		
Name	3.		4.
Street/Number			
City			
State/Zip			
County			
I. The following signatures of EACH general partner constitute an affirmation under the penalties of perjury that the facts herein are true.			
Type or print for EACH general partner:			
1. If the general partner is an individual, complete this section.			Date
a. Name	Signature		
b. Name	Signature		
c. Name	Signature		
2. If the general partner is a corporation or other entity, complete this section			Date
a. Name of corporation or other entity	balsam Mountain Company, LLC		Name of officer signing William L. Bethea, Jr.
Title of officer signing Secretary	Signature	William L. Bethea, Jr. 8/11/00	
b. Name of corporation or other entity	Name of officer signing		
Title of officer signing	Signature		
c. Name of corporation or other entity	Name of officer signing		
Title of officer signing	Signature		

NOTES: Filing fee is \$50.00. This document and one exact or conformed copy must be filed with the Secretary of State
Revised January 2000
CORPORATIONS DIVISION

P.O. BOX 29622

Form LP-01
RALEIGH, NC 27626-0622

21 262 5009

State of North Carolina
Department of the Secretary of StateSOSID: 0560708
Date Filed: 9/20/2001 8:06 AM
Elaine F. Marshall

Amendment to Certificate of Domestic Limited Partnership North Carolina Secretary of State

A. Return Acknowledgement to:		Office Use Only
Name:	Sarah F. Robertson	
Mailing Address:	P.O. Drawer 3	
City/State/Zip:	Hilton Head Island, SC 29938-0003	

Read Instructions on reverse before beginning. Attach additional pages as needed. No. pages attached:

B. Name of limited partnership (must contain words "limited partnership"): Balsam Mountain Preserve, Limited Partnership			
C. Date of original filing with Secretary of State: 08/16/2000		D. File number originally assigned by Secretary of State: 0560708	
E. Change or amend as follows (complete all applicable sections)			
1. Name of limited partnership changed to:			
2. Name of registered agent changed to: James A. Anthony, Jr.			
3. Address of registered office changed to:			
Street/Number:	38 Church Street	City:	Waynesville NC Zip: 28786 County: Haywood
4. Address of office where records are kept changed to:			
Street/Number:	38 Church Street	City:	Waynesville NC Zip: 28786 County: Haywood
5. Address of following general partner(s) changed to:		6. Following general partner(s) added:	
Name	Balsam Mountain Company, LLC	Name	
Street/Number	38 Church Street	Street/Number	
City/State/Zip	Waynesville, NC 28786	City/State/Zip	
County	Haywood	County	
Change Date	September 1, 2001	Add Date	
7. Following general partners withdrawn:		8. CONTINUATION OF BUSINESS. After an event of withdrawal, the limited partnership intends to continue business pursuant to N.C. Gen. Statute §59-801.	
Name		9. Dissolution date changed to:	
Street/Number			
City/State/Zip			
County			
Withdrawal Date		10. Other information:	
F. The signatures of the following general partners constitute affirmations under the penalties of perjury that the facts herein are true.			
Type or print the name of EACH general partner who signs this document.			
1. If the general partner is an individual, complete this section.			Date
a. Name	Signature		
b. Name	Signature		
c. Name	Signature		
2. If the general partner is a corporation or other entity, complete this section.			Date
a. Name of corporation or other entity	Balsam Mountain Company, LLC	Name of officer signing	James J. Chaffin, Jr.
Title of officer signing	Member	Signature	9/13/01
b. Name of corporation or other entity		Name of officer signing	
Title of officer signing		Signature	
c. Name of corporation or other entity		Name of officer signing	
Title of officer signing		Signature	

NOTES: Filing fee is \$25.00. This document and one exact or conformed copy must be filed with the Secretary of State.
(Revised January 2000)
CORPORATIONS DIVISION

P.O. BOX 29622

Form LP-02
RALEIGH, NC 27626-0622

22 270 5072

State of North Carolina
Department of the Secretary of State

SOSID: 0560708
Date Filed: 10/1/2002 9:24 AM
Elaine F. Marshall
North Carolina Secretary of State

Amendment to Certificate of Domestic Limited Partnership

A. Return Acknowledgement to: Name: Sarah F. Robertson Mailing Address: P.O. Drawer 3 City/State/Zip: Hilton Head Island, SC 29936-0003	Office Use Only

Read Instructions on reverse before beginning. Attach additional pages as needed.

No. pages
attached

B. Name of limited partnership (must contain words "limited partnership"): Balsam Mountain Preserve, Limited Partnership			
C. Date of original filing with Secretary of State: August 16, 2000		D. File number originally assigned by Secretary of State: 0560708	
E. Change or amend as follows (complete all applicable sections)			
1. Name of limited partnership changed to: Balsam Mountain Preserve LP			
2. Name of registered agent changed to:			
3. Address of registered office changed to:		City:	NC
Street/Number:		Zip:	County:
4. Address of office where records are kept changed to:		City:	NC
Street/Number:		Zip:	County:
5. Address of following general partner(s) changed to:		6. Following general partner(s) added:	
Name		Name	
Street/Number		Street/Number	
City/State/Zip		City/State/Zip	
County		County	
Change Date		Add Date	
7. Following general partners withdrawn:		8. CONTINUATION OF BUSINESS. After an event of withdrawal, the limited partnership intends to continue business pursuant to N.C. Gen. Statute §59-801.	
Name			
Street/Number			
City/State/Zip			
County			
Withdrawal Date			
9. Dissolution date changed to:			
10. Other information:			
F. The signatures of the following general partners constitute affirmations under the penalties of perjury that the facts herein are true.			
Type or print the name of EACH general partner who signs this document			
1. If the general partner is an individual, complete this section.			Date
a. Name	Signature		
b. Name	Signature		
c. Name	Signature		
2. If the general partner is a corporation or other entity, complete this section.			Date
a. Name of corporation or other entity Balsam Mountain Company, LLC	Name of officer signing James A. Anthony, Jr.		
Title of officer signing President / Manager	Signature <i>[Signature]</i>	9/24/02	
b. Name of corporation or other entity	Name of officer signing		
Title of officer signing	Signature		
c. Name of corporation or other entity	Name of officer signing		
Title of officer signing	Signature		

NOTES: Filing fee is \$25.00. This document and one exact or conformed copy must be filed with the Secretary of State.
(Revised January 2000)
CORPORATIONS DIVISION

P. O. BOX 29622

Form LP-02
RALEIGH, NC 27626-0622

SOSID: 0560708

Date Filed: 6/8/2005 12:19:00 PM

Elaine F. Marshall

North Carolina Secretary of State

C200515700371

State of North Carolina
Department of the Secretary of State

Amendment to Certificate of Domestic Limited Partnership

A. Return Acknowledgment to:

Name: Sarah F. Robertson - McNair Law Firm, P.A.

Mailing Address: P.O. Drawer 3

City/State/Zip: Hilton Head, SC 29938

Office Use Only

Read Instructions on reverse before beginning. Attach additional pages as needed.

No. pages
attached:

B. Name of limited partnership (must contain words "limited partnership"):		Balsam Mountain Preserve LP	
C. Date of original filing with Secretary of State:		08/16/2000	
D. File number originally assigned by Secretary of State:		0560708	
E. Change or amend as follows (complete all applicable sections):			
1. Name of limited partnership changed to: BMP Development LP			
2. Name of registered agent changed to: Balsam Mountain Management Company LLC			
3. Address of registered office changed to:		City/State/Zip/County	
Street/Number: 52 Sugar Loaf Road		Sylva NC 28779 Jackson	
4. Address of office where records are kept changed to:		City/State/Zip/County	
Street/Number: 52 Sugar Loaf Road		Sylva NC 28779 Jackson	
5. Address of following general partner(s) changed to:		6. Following general partner(s) added:	
Name	Balsam Mountain Management Company LLC	Name	
Street/Number	52 Sugar Loaf Road	Street/Number	
City/State/Zip	Sylva, NC 28779	City/State/Zip	
County	Jackson	County	
Change Date	05/11/2005	Add Date	
7. Following general partner withdrawn:		8. CONTINUATION OF BUSINESS. After an event of withdrawal, the limited partnership intends to continue business pursuant to N.C. Gen. Stat. §59-801.	
Name		9. Withdrawal date changed to:	
Street/Number		10. Other information:	
City/State/Zip			
County			
Withdrawal Date			
F. The signatories of the following general partners concur: information under the penalty of perjury that the facts herein are true.			
Type or print the name of EACH general partner who signs this document.			
1. If the general partner is an individual, complete this section.		Date	
a. Name	Signature		
b. Name	Signature		
c. Name	Signature		
2. If the general partner is a corporation or other entity, complete this section.		Date	
a. Name of corporation or other entity	Balsam Mountain Management Company LLC, Gen Pt	Name of officer signing	James J. Chaffin, Jr., Member
Title of officer signing	Member	Signature	<i>James J. Chaffin, Jr.</i> 5/11/05
b. Name of corporation or other entity		Name of officer signing	
Title of officer signing		Signature	
c. Name of corporation or other entity		Name of officer signing	
Title of officer signing		Signature	

NOTES: Filing fee is \$25.00. This document and one exact or confirmed copy must be filed with the Secretary of State.
(Revised January 2000)
CORPORATIONS DIVISION

P.O. BOX 29622

Form LP-02
RALEIGH, NC 27626-0622

SOSID: 0560708
Date Filed: 8/25/2006 10:53:00 AM
Elaine F. Marshall
North Carolina Secretary of State
C200620600289

STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE

STATEMENT OF CHANGE OF REGISTERED
OFFICE AND/OR REGISTERED AGENT

Pursuant to §55D-31 of the General Statutes of North Carolina, the undersigned entity submits the following for the purpose of changing its registered office and/or registered agent in the State of North Carolina.

INFORMATION CURRENTLY ON FILE

The name of the entity is: BMP Development LP

Entity Type: ☐ Corporation, ☐ Foreign Corporation, ☐ Nonprofit Corporation, ☐ Foreign Nonprofit Corporation,
☐ Limited Liability Company, ☐ Foreign Limited Liability Company ☒ Limited Partnership, ☐ Foreign Limited Partnership,
☐ Limited Liability Partnership, ☐ Foreign Limited Liability Partnership

The street address and county of the entity's registered office currently on file is:

Number and Street: 38 Church Street

City, State, Zip Code: Waynesville, NC 28786

County: Jackson

The mailing address *if different from the street address* of the registered office currently on file is:

The name of the current registered agent is: Balsam Mountain Management Company LLC

NEW INFORMATION

1. The street address and county of the new registered office of the entity is:
(complete this item only if the address of the registered office is being changed)

Number and Street: 52 Sugar Loaf Road

City, State, Zip Code: Sylva, NC 28779

County: Jackson

2. The mailing address *if different from the street address* of the new registered office is:
(complete this item only if the address of the registered office is being changed)

3. The name of the new registered agent and the new agent's consent to appointment appears below:
(complete this item only if the name of the registered agent is being changed)

Craig A. Leiman
Type or Print Name of New Agent

[Signature]
* Signature & Title

4. The address of the entity's registered office and the address of the business office of its registered agent, as changed, will be identical.

5. This statement will be effective upon filing, unless a date and/or time is specified:

This is the 1 day of May, 2006.

BY: Balsam Mountain Management Company LLC, as General Partner
Entity Name

[Signature]
Signature
Craig A. Leiman, President
Type or Print Name and Title

Notes: Filing fee is \$5.00. This document must be filed with the Secretary of State.

* Instead of signing here, the new registered agent may sign a separate written consent to the appointment, which must be attached to this statement.

CORPORATIONS DIVISION
Revised January 2002

P. O. BOX 29622

RALEIGH, NC 27626-0622
Form BE-06



Elaine F. Marshall
Secretary

North Carolina

**DEPARTMENT OF THE
SECRETARY OF STATE**

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

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*Safari users : There are compatibility issues with Adobe Forms and Safari Preview. For mac users opening this site in Chrome may resolve the issue or you can click below to open a non-fillable version of the annual report.
[Print a Safari Compatible Annual Report form](#)

Corporate Names

Legal: Anthony Investments, LLC

Limited Liability Company Information

SosId: 0611159
Status: Current-Active
Annual Report Status: Current
Citizenship: Domestic
Date Formed: 11/27/2001
Fiscal Month: December
State of Incorporation: NC
Registered Agent: Coward, J. K., Jr.

Corporate Addresses

Mailing: 174 Callawassie Dr
Okatie, SC 29909-4245
Principal Office: 174 Callawassie Dr
Okatie, SC 29909-4245
Reg Office: 705 W. Main Street
Sylva, NC 28779-5555
Reg Mailing: 705 W. Main Street
Sylva, NC 28779-5555

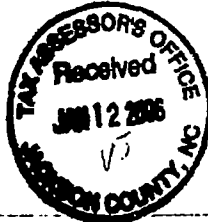
Company Officials

All LLCs are managed by their managers pursuant to N.C.G.S. 57D-3-20.

Manager: Anthony Management LLC
174 Cullawassie Drive
Okatie SC 29909-4245
Member: Charles L. Gregory
One Securities Centre 3490 Piedmont Road, Suite 700
Atlanta GA 30305

Doc: 01/12/2006 Type: CRP
Fee Amt: \$17.00 Page 1 of 2
Excise Tax: \$0.00
Jackson County, NC
Joe Hamilton Register of Deeds
BK 1561 Pg 619-620

THIS INSTRUMENT PREPARED BY:
J.K. Coward, Jr.
705 W. Main St.
Sylva, NC 28779



DEED OF CORRECTION

NORTH CAROLINA
JACKSON COUNTY

THIS DEED OF CORRECTION, made and entered into this the 21st day of December, 2005, by and between Balsam Mountain Preserve LLC, a Delaware Limited Liability Company, party of the first part; and ANTHONY INVESTMENTS, LLC, ("Grantee"), party of the second part, whose address is 52 Sugarloaf Road, Sylva NC 28779;

WITNESSETH:

THAT WHEREAS, said party of the first part heretofore executed to party of the second part a certain deed dated January 6, 2003 and recorded in Book 1176 at page 47, in the Office of the Register of Deeds of Jackson County; and,

WHEREAS, the description referred to therein referred to a Plot of Lot 62, which has subsequently been revised to be more accurate and the party of the second part has requested the party of the first part to correct the property description to reflect the more accurate description, and the party of the first part has agreed to do so; and,

WHEREAS, each party desires that the description herein replace the former description and be deemed the correct description for all purposes whatsoever hereinafter.

NOW, THEREFORE, said party of the first part, for the purpose of correcting said incompleteness and in consideration of the sum of Ten (\$10.00) Dollars to it in hand paid, has bargained and sold, and by these presents does bargain, sell and convey unto said party of the second part, its successors and assigns, those certain tracts or parcels of land, lying and being in Scotts Creek Township, Jackson County, North Carolina, and more particularly described as follows:

That certain Lot or Homestead Number 62, Phase I, containing 1.857 acres, as shown on that certain plat dated the 5th day of December, 2002, Revised 2/21/05, Drawing #3358-806-A, prepared by Herron Land Surveying, certified by James Randy Herron, Professional Land Surveyor (N.C. #3202), and recorded in the Office of the Register of Deeds for Jackson County, North Carolina, in Plat Cabinet 14 at Slide 669 (the "Property").

TOGETHER WITH the right of ingress and egress over all roads existing or hereafter constructed within rights-of-way in Balsam Mountain Preserve for access to US Highway 74, which may be hereafter delineated on plats of record. It is contemplated that these roads will be more accurately surveyed and improved prior to such recordation, and it is the intent of the Grantor that those improvements and locations, as identified on said recorded plats, will inure to the benefit of the Grantee herein.

SUBJECT TO the covenants, conditions, and restrictions in that certain Declaration of

of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina, on June 29, 2005, in Book 1511 at Page 140; and Fifth Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina, on November 15, 2005, in Book 1547 at Page 133.

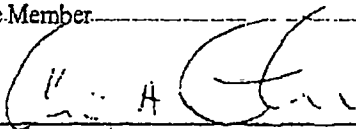
TO HAVE AND TO HOLD said land, together with all privileges and appurtenances thereunto belonging to it, the said party of the second part, its successors and assigns, in fee simple forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its General Partner, the day and year first above written.

Balsam Mountain Preserve LLC

By: Balsam Mountain Company, LLC
its Sole Member

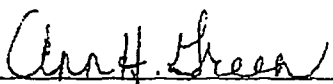
By:


Craig A. Lehman, President

NORTH CAROLINA
COUNTY OF JACKSON

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that Craig A. Lehman personally appeared before me this day and acknowledged that he is the President of Balsam Mountain Company, LLC, the sole member of Balsam Mountain Preserve LLC, a Delaware Limited Liability Company, and being authorized to do so, executed the foregoing instrument on behalf of the Limited Liability Company.

Witness my hand and notarial seal this the 28th day of December, 2005.

 (SEAL)
NOTARY PUBLIC

My Commission Expires:

6/28/09



Doc ID: 003420510002 Type: CRP
Recorded: 01/24/2006 at 04:15:25 PM
Fee Amt: \$17.00 Page 1 of 2
Excise Tax: \$0.00
Jackson County, NC
Joe Hamilton Register of Deeds
BK 1563 PG 587-588

Prepared by:
Heather C. Baker
705-W. Main-St.
Sylva, NC 28779



Quitclaim Deed

NORTH CAROLINA
JACKSON COUNTY



THIS DEED, made, executed and delivered, this the 17th day of January, 2006, by and between Anthony Investments, LLC, a North Carolina Limited Liability Company ("Grantor"); and Balsam Mountain Preserve LLC, a Delaware Limited Liability Company, ("Grantee"), whose address is: 52 Sugar Loaf Road, Sylva, NC 28779;

WITNESSETH:

That said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) to it, in hand paid, the receipt of which is hereby acknowledged, has remised and released and by these presents does remise, release, convey, and forever quitclaim unto the Grantee, its successors and assigns, all right, title and interest in and to that certain tract of land lying and being in Scotts Creek Township, Jackson County, North Carolina, and more particularly described as follows:

That certain Lot or Homestead Number 62, containing 1.965 acres, as shown on that certain plat dated the 5th day of December, 2002, Drawing #3358-806-A, prepared by Herron Land Surveying, certified by James Randy Herron, Professional Land Surveyor (N.C. #3202), and recorded in the Office of the Register of Deeds for Jackson County, North Carolina, in Plat Cabinet 11 at Slide 982 (the "Property");

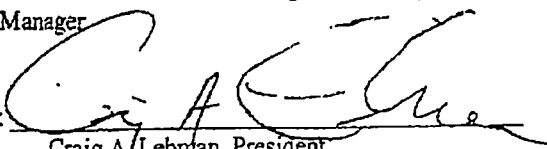
LESS AND EXCEPT that certain re-surveyed Lot 62, Phase I, containing 1.857 acre, as shown on that certain plat dated the 5th day of December, 2002, revised 2/21/05, Drawing #3358-806-A, prepared by Herron Land Surveying, certified by James Randy Herron, Professional Land Surveyor (N.C. #3202), and recorded in the Office of the Register of Deeds for Jackson County, North Carolina, in Plat Cabinet 14 at Slide 669 (the "Property"), as conveyed to Michael P. Frey and wife, Pamela L. Frey in Deed Book 1561, page 621, Jackson County Public Registry.

TO HAVE AND TO HOLD the aforesaid lands and all privileges thereunto belonging to them, the Grantee, its successors and assigns.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its General Partner, the day and year first above written.

ANTHONY INVESTMENTS, LLC

By: Balsam Mountain Management Company LLC
Its Manager

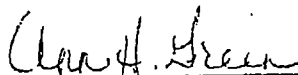
By: 

Craig A. Lehman, President

NORTH CAROLINA
COUNTY OF JACKSON

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that Craig A. Lehman personally appeared before me this day and acknowledged that he is the President of Balsam Mountain Management Company, LLC, the Manager of Anthony Investments, LLC, a North Carolina Limited Liability Company, and being authorized to do so, executed the foregoing instrument on behalf of the Limited Liability Company.

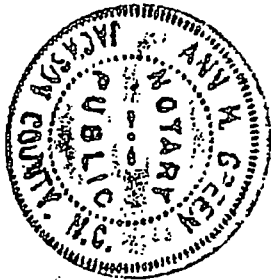
Witness my hand and notarial seal this the 18th day of January, 2006.



(SEAL)

NOTARY PUBLIC

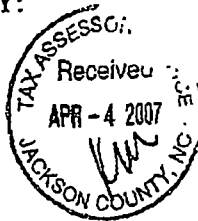
My Commission Expires: 6/22/09



Doc ID: 003831720003 Type: CRP
Recorded: 04/04/2007 at 01:06:08 PM
Fee Amt: \$20.00 Page 1 of 3
Excise Tax: \$0.00
Jackson County, NC
Joe Hamilton Register of Deeds
BK 1665 Pg 152-154

THIS INSTRUMENT PREPARED BY:

Heather C. Baker, Esquire
705 W. Main Street
Sylva, NC 28779



QUIT CLAIM DEED

NORTH CAROLINA
JACKSON COUNTY

THIS QUITCLAIM DEED, made and entered into this the 4th day of April, 2007, by and between **Balsam Mountain Preserve LLC**, a Delaware limited liability company (hereafter referred to as "Grantor") and **Seavy A. Carroll** ("Grantee"), whose address is 2404 Morganton Road, Fayetteville, North Carolina 28303

WITNESSETH:

THAT WHEREAS, Anthony Investments, LLC (hereafter "Anthony") and Grantor heretofore conveyed to Samuel J. Morris, III, Stuart C. Segerman and Kristin F. Segerman (hereafter "Morris-Segerman") Homestead 45 and Homestead 46 of Balsam Mountain Preserve as described in Deed dated 2/25/05 and recorded in Book 1485, Page 182, Jackson County Register of Deeds, with further reference to Plat Cabinet 13, Slides 716 and 715; and,

WHEREAS, the parties to the above referenced deed have discovered that the surveys and resulting plats for Homesteads 45 and 46 in Balsam Mountain Preserve contained errors which needed to be corrected to conform with the intent of the parties at the time of conveyance; and,

WHEREAS, Grantor has caused new surveys to be performed and new plats to be produced which now accurately reflect the intent of the parties; and,

WHEREAS, the new descriptions have realigned the property lines which have thereby caused minor voids and overlaps in the description of the property conveyed and retained by the parties; and,

WHEREAS, Anthony and Grantor have corrected the descriptions to what they should have been and the Deed of Correction executed by all parties was recorded in the Jackson County Register of Deeds in Book 1465 at Page 162 with further reference to Plat Cabinet 13, Slide 716 & 715; and,

WHEREAS, the deed and plat of Homestead Number 45, Phase I which was recorded in Deed Book 1485, Page 182 and Plat Cabinet 13 at Slide 716, Jackson County Records, contained certain incorrect courses and distances on the western boundary of Homestead 45 and the revised plat in Plat Cabinet 16 at Slide 257 has corrected those erroneous courses and distances on the western boundary; and

WHEREAS, to remove any confusion that may have been created in the Jackson County Records relating to the ownership of property abutting Homestead 45 along its western boundary, Grantor does wish to declare, confirm and renounce any claim to any interest in lands lying to the west of the western boundary of Homestead 45 as shown in Plat Cabinet 13, Slide 716 & 715

NOW, THEREFORE, Grantor for the purpose of correcting the descriptions and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) to it in hand paid, does revise, release, convey and forever quit claim unto the Grantee, their heirs and assigns, all right, title and interest that certain tract of land lying and being in Scotts Creek Township, Jackson County, North Carolina and more particularly described as follows:

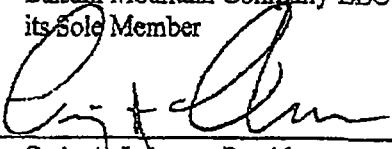
Any interest owned by Grantor in and to any land lying west of the western boundary of Lot or Homestead 45, as shown on the plat dated the 20th day of December, 2005, revised February 2, 2006, prepared by W. Edwin Holmes, Professional Land Surveyor, and recorded in the Office of the Register of Deeds for Jackson County, North Carolina, in Plat Cabinet 16 at Slide 257.

TO HAVE AND TO HOLD the aforesaid lands and all privileges thereto belonging to them, the Grantee, their heirs and assigns.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed by its duly authorized officer and its seal to be hereunto affixed by authority of its Member, and the day and year first above written.

Balsam Mountain Preserve LLC

By: Balsam Mountain Company LLC
its Sole Member

By: 
Craig A. Lehman, President

NORTH CAROLINA
COUNTY OF JACKSON

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that Craig A. Lehman personally appeared before me this day and acknowledged that he is the President of Balsam Mountain Company LLC, the sole member of Balsam Mountain Preserve LLC, a Delaware Limited Liability Company, and being authorized to do so, executed the foregoing instrument on behalf of the Limited Liability Company.

Witness my hand and notarial seal this the 4th day of April, 2008.

Anna H. Green (SEAL)

My Commission Expires:

6/28/09



22
W
JACKSON COUNTY

This Instrument Prepared By:
Heather C. Baker
705 W. Main St.
Sylva, NC 28779



Quitclaim Deed

NORTH CAROLINA
JACKSON COUNTY

THIS DEED, made, executed and delivered, this the 29 day of May, 2007, by and between **Balsam Mountain Preserve LLC**, a Delaware Limited Liability Company, by **Balsam Mountain Company LLC**, a Delaware Limited Liability Company, its Sole Member ("Grantor") and **Anthony Investments, LLC**, a North Carolina limited liability company, by **Balsam Mountain Management Company LLC**, its Manager ("Grantee") and whose address is 52 Sugar Loaf Road, Sylva, North Carolina 28779.

WITNESSETH:

WHEREAS, Grantee is the owner of various lots within Balsam Mountain Preserve, including Lot or Homestead 21 which is currently bisected by a pristine stream. Upon further planning it became apparent that it would be highly desirable from an environmental standpoint not to have a dwelling located in such close proximity to a stream. Accordingly, Grantor and Grantee have agreed to relocate Lot 21 to a location where it will not present a potential adverse affect on the stream. Such relocation will be accomplished by exchange of Quitclaim Deeds from Grantor (BMP) to Grantee (Anthony) as it relates to the new location of Lot 21 and from Grantee (Anthony) to Grantor (BMP) as it relates to the abandoned location of Lot 21; and

and likewise shown on that certain plat entitled "Revised Phase I HUD Plat, Balsam Mountain Preserve" prepared by Herron Surveying PC and certified by Randy Herron PLS (NC) L-3202, which plat is dated October 25, 2005 and was recorded in the Office of the Register of Deeds for Jackson County, North Carolina in Plat Cabinet 14 at Slides 450 through 453 ("Revised Phase I HUD Plat");

WHEREAS, Grantee and Grantor have caused to be prepared a revised survey for Lot 21 which will depict the new location of Lot 21 as more particularly set forth hereafter and upon such relocation the current site for Lot 21 shall revert to unsubdivided acreage.

NOW, THEREFORE, the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) to it, in hand paid, the receipt of which is hereby acknowledged, has remised and released and by these presents does remise, release, convey, and forever quitclaim unto the Grantee, its successors and assigns, all right, title and interest in and to that certain tract of land lying and being in Scotts Creek Township, Jackson County, North Carolina, and more particularly described as follows:

----- That certain Lot or Homestead Number 21, Phase I containing 2.11 acres, as shown -----
on that certain plat entitled "Homestead 21 Map Prepared for Balsam Mountain Preserve", prepared by Ed Holmes & Associates Land Surveyors, P.A. and certified by W. Edwin Holmes, P.L.S. (N.C.) L-2755, which plat is dated April 19, 2007 and recorded in the Office of the Register of Deeds for Jackson County, North Carolina in Plat Cabinet 110 at Slide 412 ("Revised Homestead 21 Plat").

TOGETHER WITH the right of ingress and egress over all roads existing or hereafter constructed within rights-of-way in Balsam Mountain Preserve for access to US Highway 74, which may be hereafter delineated on plats of record. It is contemplated that these roads will be more accurately surveyed and improved prior to such recordation, and it is the intent to the Grantor that those improvements and locations, as identified on said recorded plats, will inure to the benefit of the Grantee herein.

SUBJECT TO the covenants, conditions, and restrictions in that certain Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on December 20, 2001 in Book 1140 at Page 191; First Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on November 18, 2002 in Book 1170 at Page 491; Second Supplemental Declaration and Amendment to the Declaration of

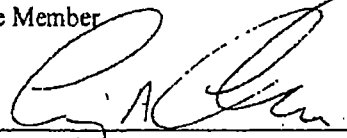
Deeds for Jackson County, North Carolina on August 10, 2007 in Book 1772 at Page 843; Fourth Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on June 29, 2005 in Book 1511 at Page 140; Fifth Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on November 15, 2005 in Book 1547 at Page 133; Sixth Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on August 1, 2006 in Book 1606 at Page 74; and Seventh Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on ~~May~~ June 4, 2007 in Book 1677 at Page 5100.

TO HAVE AND TO HOLD the aforesaid lands and all privileges thereunto belonging to them, the Grantee, its successors and assigns.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name by its duly authorized officers and its seal to be hereunto affixed by authority of its Sole Member the day and year first above written.

Balsam Mountain Preserve LLC,
a Delaware Limited Liability Company

By: Balsam Mountain Company LLC,
a Delaware Limited Liability Company
Its: Sole Member

By: 
Craig A. Lehman, President

Craig A. Leimann personally appeared before me this day and acknowledged that he is the President of Balsam Mountain Company LLC, the Sole Member of Balsam Mountain Preserve LLC, a Delaware Limited Liability Company, and being authorized to do so, executed the foregoing instrument on behalf of the Limited Liability Company.

Witness my hand and notarial seal this the 27 day of March, 2008.

A. Christine Watkins (SEAL)
NOTARY PUBLIC
A. Christine Watkins
My Commission Expires: 10/21/08

A. Christine Watkins
Notary Public
Jackson County NC



This Instrument Prepared By:
Heather C. Baker
705 W Main St.
Sylva, NC 28779



Quitclaim Deed

NORTH CAROLINA
JACKSON COUNTY

THIS DEED, made, executed and delivered, this the 29 day of May, 2007, by and between **Anthony Investments, LLC**, a North Carolina Limited Liability Company, by **Balsam Mountain Management Company LLC**, its Manager ("Grantor") and **Balsam Mountain Preserve LLC**, a Delaware Limited Liability Company, by **Balsam Mountain Company LLC**, a Delaware Limited Liability Company, its Sole Member ("Grantee") and whose address is 52 Sugar Loaf Road, Sylva, North Carolina 28779.

WITNESSETH:

WHEREAS, Grantor is the owner of various lots within Balsam Mountain Preserve, including Lot or Homestead 21 which is currently bisected by a pristine stream. Upon further planning it became apparent that it would be highly desirable from an environmental standpoint not to have a dwelling located in such close proximity to a stream. Accordingly, Grantor and Grantee have agreed to relocate Lot 21 to a location where it will not present a potential adverse affect on the stream. Such relocation will be accomplished by exchange of Quitclaim Deeds from Grantee (BMP) to Grantor (Anthony) as it relates to the new location of Lot 21 and from Grantor (Anthony) to Grantee (BMP) as it relates to the abandoned location of Lot 21; and

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WordPerfectDocs - BMP-Quit Claim Deed Anthony Investments to BMP Lot 21

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and likewise shown on that certain plat entitled "Revised Phase I HUD Plat, Balsam Mountain Preserve" prepared by Herron Surveying PC and certified by Randy Herron PLS (NC) L-3202, which plat is dated October 25, 2005 and was recorded in the Office of the Register of Deeds for Jackson County, North Carolina in Plat Cabinet 14 at Slides 450 through 453 ("Revised Phase I HUD Plat");

WHEREAS, Grantee and Grantor have caused to be prepared a revised survey for Lot 21 which will depict the new location of Lot 21 as more particularly set forth hereafter and upon such relocation the current site for Lot 21 shall revert to unsubdivided acreage.

NOW, THEREFORE, the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) to it, in hand paid, the receipt of which is hereby acknowledged, has remised and released and by these presents does remise, release, convey, and forever quitclaim unto the Grantee, its successors and assigns, all right, title and interest in and to that certain tract of land lying and being in Scotts Creek Township, Jackson County, North Carolina, and more particularly described as follows:

That certain Lot or Homestead Number 21, Phase I containing 2.035 acres, as shown on that certain "Deed of Correction Plat" dated the 27th day of February, 2002, prepared by Herron Land Surveying and certified by James Randy Herron, Professional Land Surveyor (NC # 3202) and recorded in the Office of the Register of Deeds for Jackson County, North Carolina in Plat Cabinet 11 at Slide 816 and likewise shown on that certain plat entitled "Revised Phase I HUD Plat, Balsam Mountain Preserve" prepared by Herron Surveying PC and certified by Randy Herron PLS (NC) L-3202, which plat is dated October 25, 2005 and was recorded in the Office of the Register of Deeds for Jackson County, North Carolina in Plat Cabinet 14 at Slides 450 through 453 ("Revised Phase I HUD Plat").

TOGETHER WITH the right of ingress and egress over all roads existing or hereafter constructed within rights-of-way in Balsam Mountain Preserve for access to US Highway 74, which may be hereafter delineated on plats of record. It is contemplated that these roads will be more accurately surveyed and improved prior to such recordation, and it is the intent of the Grantor that those improvements and locations, as identified on said recorded plats, will inure to the benefit of the Grantee herein.

SUBJECT TO the covenants, conditions, and restrictions in that certain Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on December 20, 2001 in Book 1140

Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on September 12, 2003 in Book 1198 at Page 539; Third Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on August 16, 2004 in Book 1442 at Page 843; Fourth Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on June 29, 2005 in Book 1511 at Page 140; Fifth Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on November 15, 2005 in Book 1547 at Page 133; Sixth Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on August 1, 2006 in Book 1606 at Page 74; and Seventh Supplemental Declaration and Amendment to the Declaration of Governance for Balsam Mountain Preserve recorded in the Office of the Register of Deeds for Jackson County, North Carolina on May 4, 2007 in Book 1677 at Page 566. June

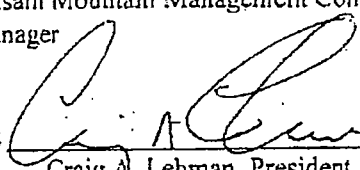
Grantor and Grantee, by the acceptance and recording of this Quitclaim Deed, agree that the above described property, shall cease to be identified as Lot 21 and shall hereafter be a part of the general acreage owned by Grantee.

TO HAVE AND TO HOLD the aforesaid lands and all privileges thereunto belonging to them, the Grantee, its successors and assigns.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name by its duly authorized officers and its seal to be hereunto affixed by authority of its Manager the day and year first above written.

Anthony Investments, LLC,
a North Carolina Limited Liability Company

By: Balsam Mountain Management Company LLC,
Its: Manager

By: 
Craig A. Lehman, President

3

WordPerfect 9.0 BMF Quit Claim Deed - Anthony Investments to BMF Lot 21

Craig A. Bennett personally appeared before me this day and acknowledged that he is the President of Balsam Mountain Management Company LLC, the Manager of Anthony Investments, LLC, a North Carolina Limited Liability Company, and being authorized to do so, executed the foregoing instrument on behalf of the Limited Liability Company.

Witness my hand and notarial seal this the 27 day of ^{March 2008}~~May~~, 2007.

A. Christine Watkins (SEAL)
NOTARY PUBLIC
A. Christine Watkins
My Commission Expires: 10/26/08

A. Christine Watkins
Notary Public
in County NC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appeal No. 2016-001840
Case No. 2013-CP-07-1807

RECEIVED

MAR 09 2017

SC Court of Appeals

William Loflin and Leslie Loflin,

Appellants,

v.

BMP Development LP, Balsam Mountain
Group, LLC, Coward, Hicks & Siler, P.A.,
J.K. Coward, Jr., Chicago Title Insurance
Company, and Counsellor Title Agency, Inc.,

Defendants,

OF WHICH

Chicago Title Insurance Company,

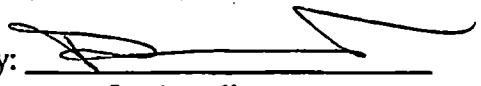
Respondent.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), Appellants' counsel hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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March 8, 2017

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Insurance Company, and Counsellor Title Agency, Inc., Defendants,

Of which
Chicago Title Insurance Company is the Respondent.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

Did the Court below commit error in ruling, as a matter of law, that title insurance is always limited to defects on the public record at the time of the closing?

Did the Court below commit error in ruling, as a matter of fact, that there were no defects or encumbrances which were in existence at the time of the closing?

Did the Court below commit error in ruling, as a matter of law, that the breach of contract cause of action was time-barred?

STATEMENT OF THE CASE

This is an appeal from a August 15, 2016 Order of the Circuit Court (Judge Carmen T. Mullen) (“**Order**”). (R. pp. 11-21). The Order granted summary judgment against Appellants, William Loflin and Leslie Loflin (“**Loflins**”), and in favor of Respondent, Chicago Title Insurance Company (“**Chicago**”).

On February 15, 2002, the Loflins, long time residents of Beaufort County, purchased Lot 108 in Balsam Mountain Preserve, a mountain community located in Jackson County, North Carolina, from BMP Development, LP (“**Balsam**”).¹ In

¹Balsam was formed by a Beaufort company, Chaffin/Light Associates, to develop Balsam Mountain Preserve [Memorandum in Opposition to Certain Defendants’ Motions for Summary Judgment (July 1, 2016) (“**Memorandum in Opposition**”) at 2]. (R. p. 321). Chaffin/Light previously had formed and managed three community developments in Beaufort County: Spring Island, Callawassie, and Chechessee Creek Club [Third Amended Complaint at 2]. (R. p. 202).

connection with their purchase and subsequent refinancing, the Loflins purchased three title insurance policies from Chicago [collectively “**Policy**” or “**Contract of Insurance**”],² through Chicago’s Beaufort County agent, Counsellor Title Agency, Inc. (“**Counsellor**”).

On July 18, 2013, the Loflins filed this lawsuit against Chicago and two other defendants in the Court of Common Pleas for Beaufort County.³ (R. pp. 42 -47). The Loflins included a cause of action for breach of contract against Chicago, which has remained unchanged since the initial Complaint.⁴

On April 14, 2014, before any defendant filed an Answer, the Loflins filed an Amended Complaint as a matter of right in which they named Chicago, Counsellor, and Balsam as defendants.⁵ (R. pp. 70-97). Balsam did not answer or otherwise plead, and

²Because Judge Mullen referred to both the “Contract of Insurance” and the “Policy” in the singular throughout her Order, the Loflins will do likewise.

³The original Complaint named Chicago, Counsellor, and Balsam Mountain Preserve Community Associations (“**Association**”).

⁴The Loflins’ Complaints also included a cause of action for negligence, but the Loflins are not appealing Judge Mullen’s Order dismissing that count. The Loflins continue to assert that Chicago’s agents, Counsellor and the Coward Defendants, were negligent, as will be set forth in later appeals as to those parties.

⁵Although Balsam’s property, Balsam Mountain Preserve, was foreclosed, Balsam was never dissolved, and its agent of service resided in Beaufort County at the time the Loflins sued Balsam [North Carolina Statement of Change of Registered Office and/or Registered Agent; Affidavit of Service]. (R. p. 627; R. p.

before Judge Mullen assigned the case to herself as complex, the Circuit Court (Judge John Ernest Kinard, Jr.) adjudged Balsam in default and referred the matter to the Master in Equity for a damages hearing [Order (January 6, 2015)].⁶ (R. pp. 3-4). Thus, the facts as to Balsam, including its fraud on the Loflins before the closing, are established.

On April 15, 2014, Chicago filed a Motion to Dismiss the Amended Complaint for failure to state a claim [Chicago's Motion to Dismiss (April 15, 2014)],⁷ and on August 20, 2014, Chicago filed a supporting Memorandum [Chicago's Memorandum (August 20, 2014)]. (R. pp. 99-101; R. pp. 117-125). On September 3, 2015, Judge Kinard denied Chicago's Motion to Dismiss [Order (September 3, 2014)]. (R. pp. 1-2).

On January 6, 2015, the Loflins filed a Second Amended Complaint adding three additional defendants: Balsam's alleged successor, Balsam Mountain Group, LLC ("BMG"); and the law firm of Coward Hicks & Siler, P.A. and J.K. Coward, Jr. (collectively "**Coward Defendants**"), who represented the Loflins in the purchase and refinancing of Lot 108. (R. pp. 137-179). Thereafter, on August 5, 2015, at the

98).

⁶The Master in Equity has not yet conducted a damages hearing.

⁷Chicago also asserted lack of subject matter jurisdiction over the property, but it never pursued that ground.

direction of Judge Mullen, the Loflins filed their Third Amended Complaint clarifying certain allegations as to BMG. (R. pp. 201-245).

On July 9, 2015, Chicago filed a Motion for Summary Judgment based upon the identical grounds raised in its earlier Motion to Dismiss [Chicago's Motion for Summary Judgment (July 9, 2015)]. (R. pp. 194-196). Chicago (nor any of its co-defendants) took any depositions or submitted any affidavits.

On June 13, 2016, Judge Mullen conducted a hearing on Chicago's Motion for Summary Judgment [Hearing Transcript]. (R. p. 378). The Friday before the Monday hearing, Chicago filed a supporting Memorandum in which it again made the identical arguments which it had made in support of its prior Motion to Dismiss [Chicago's Memorandum in Support of Motion for Summary Judgment (June 10, 2016) ("**Chicago's Memorandum**")]. (R. pp. 308-319). In addition, although Chicago *never* filed a Motion for Summary Judgment (or any other Motion) based on the statute of limitations, Chicago also argued in its Memorandum that it was entitled to summary judgment on the statute of limitations.

Following argument, Judge Mullen permitted the Loflins to file a Memorandum and factual materials in response to Chicago's Memorandum [Hearing Transcript at 71]. (R. p. 448, lines 2-9). Subsequently, the Loflins filed their Memorandum in Opposition and factual materials, including affidavits, depositions, and documents

produced during discovery [Memorandum in Opposition]. (R. pp. 320-361). Chicago filed another Memorandum in response [Supplemental Memorandum in Support of Motion for Summary Judgment (July 11, 2016) (“**Chicago’s Supplemental Memorandum**”)]. (R. pp. 362-371).

On August 15, 2016, Judge Mullen granted Chicago summary judgment.⁸ (R. p. 21). Judge Mullen did not address the Loflins’ legal arguments or refer to any of the factual materials the Loflins submitted.⁹

The Loflins timely appealed the Order.

SUMMARY OF ARGUMENT

Judge Mullen committed reversible error when she ruled, as a matter of law, that the that Chicago’s insurance coverage was limited to any defects on the public record at the time of the closing. Judge Mullen did not base this ruling on the language of the

⁸Judge Mullen issued separate Orders granting summary judgment in favor of Counsellor and the Coward Defendants [Order at 1, n. 1]. (R. p. 11). Those decisions, which present separate and distinct issues, are not part of the present appeal.

⁹Judge Mullen did not make any changes to the Order drafted by Chicago’s counsel [Law Clerk’s email to counsel (August 11, 2016); Chicago’s email to Law Clerk (August 15, 2016)]. (R. p. 640; R. pp. 641-653). The Loflins do not make this observation in any way to suggest that it was inappropriate for Judge Mullen to request and sign an Order prepared by the prevailing party. The Loflins’ point is that Judge Mullen’s Order did not provide any analysis of the Loflins’ evidentiary showing and their corresponding legal arguments.

Policy, nor on any findings of fact.

Judge Mullen committed reversible error when she ruled, as a matter of fact, that there were no defects or encumbrances which were in existence at the time the Loflins took title. In fact, Judge Mullen did not refer to or discuss the undisputed evidentiary record submitted by the Loflins – including affidavits, depositions, and documents – proving the exact opposite.

Judge Mullen committed reversible error when she ruled, as a matter of law, that the statute of limitations ran on the Loflins' cause of action for breach of contract because they did not commence a lawsuit within three years of learning in 2006 that there was an encroachment on their property. In fact, regardless of whether the statute is three years, as Chicago argued and Judge Mullen found, or twenty years, as the Loflins assert, it is undisputed that the Loflins instituted this lawsuit less than a year after Chicago breached the Contract of Insurance.¹⁰ Additionally, it is undisputed that the Loflins brought their lawsuit only eighteen months after they discovered in 2012 that the encumbrance (and Balsam's fraud) existed prior to the purchase of the property in question.

¹⁰Because Judge Mullen did not analyze the Insurance Policies (and did not base her decision on the language of those policies), the Loflins will not address those issues in this initial brief. Any consideration of such issues, if raised, should be dealt with on remand.

SUMMARY OF FACTS

The material facts are set forth in the evidentiary record the Loflins submitted to Judge Mullen in response to Chicago's Motion for Summary Judgment, which Judge Mullen did not discuss and which Chicago did not dispute; and those factual allegations set forth in the Loflins' Third Amended Complaint which Judge Mullen and Chicago adopted.

In 2002, the Loflins' counsel delivered to them a duly executed deed to Lot 108 ("**Deed**") and an individual plat of Lot 108 ("**Recorded Plat**"). (R. p. 606-617; R. p. 585). The Recorded Plat reflected that Lot 108 consisted of 1.837 acres, and that Balsam Mountain Preserve Road went around rather than through Lot 108. Balsam Mountain Preserve Road is one of two main thoroughfares through the development [Lehman Deposition at 63]. (R. p. 469, lines 7-10).

In addition, the Loflins' counsel delivered to them Chicago's Contract of Insurance for Lot 108, containing 1.87 acres without any road going through it, as described in the Deed and the Recorded Plat. The Policy insured the Loflins from a multitude of risks associated with Lot 108, which including fraud, trespass, easements, and encumbrances [Third Amended Complaint ¶14]. (R. pp. 211-212). It is undisputed that encumbrances include encroachments.

The Contract of Insurance did not state that coverage was limited to matters of

public record. If the Loflins had been told that, they would not have purchased insurance from Chicago [Loflin's Supplemental Affidavit at ¶6]. (R. p. 639).

In 2005, Craig Lehman was hired as Balsam's President and CEO [Lehman Deposition at 7, 86]. (R. p. 454, line 5, p. 473, lines 21-24). Mr. Lehman had no first hand knowledge of what occurred in 2002 [Lehman Deposition at 99-100]. (R. p. 475, lines 21-24; p. 476, lines 2-5, 8-22). He was told by Balsam that there were boundary problems with a number of Balsam lots [Lehman Deposition at 20]. (R. p. 460, lines 9-20).

In 2006, Mr. Lehman informed the Loflins that contrary to the Deed and the Recorded Plat that Balsam delivered to the Loflins in connection with the Closing, there was an encroachment on Lot 108, that the property contained only 1.4 acres, and that a road went through the property [Loflin's Supplemental Affidavit at ¶3]. (R. p. 473, lines 15-24). Importantly, Mr. Lehman believed and communicated to the Loflins that the road had been constructed on Lot 108 *after* the closing [Lehman Deposition at 86; Loflin's Supplemental Affidavit at ¶3]. (R. p. 473, lines 15-24; R. pp. 638-639).

Mr. Lehman specifically denied that he ever saw a plat that was dated before the Closing, other than the Recorded Plat [Lehman Deposition at 31-32]. (R. p. 461, line 1 - p. 462, line 8). Mr. Lehman was not even aware of a predated plat until several years after he left Balsam in late 2009 and moved to Spring Island [Lehman Deposition

at 37]. (R. p. 462, lines 4-5). *Contrary to the assumptions made by Chicago and Judge Mullen, there is nothing in the record suggesting that Mr. Lehman ever saw the Unrecorded Plat, much less provided the Loflins with a copy in 2006.*

Following the 2006 meeting with Mr. Lehman, Mr. Loflin had a number of conversations about the problems with Balsam, including discussions with Mr. Chaffin, Mr. Lehman, and Balsam's salesman, Bob Tufts. At no time did Balsam tell the Loflins that it knew before the Closing that Lot 108 contained only 1.4 acres with a road through it [Third Amended Complaint at 13]. (R. p. 213). Balsam agreed that the Loflins would not be required to pay their assessments until the matter could be resolved [Lehman Deposition at 98]. (R. p. 474, lines 12-23). Despite multiple representations by Balsam that it would remedy the problem, however, Balsam did not do so before Balsam Mountain Preserve was foreclosed [Loflin Supplemental Affidavit; Third Amended Complaint at ¶20]. (R. p. 638-639; R. p. 213).

In early 2012, the Loflins first learned that two weeks before the original Closing, a plat had been prepared for Balsam ("**Unrecorded Plat**"), which showed that Balsam Mountain Preserve Road went through their property and reflected that Lot 108 had less acreage than in their Deed and Recorded Plat [Loflin's Supplemental Affidavit at ¶6; Third Amended Complaint at ¶23]. (R. p. 639; R. p. 214). *Based upon this fact, for the very first time, not only did the Loflins believe that they had been*

*defrauded, or at a minimum were entitled to rescission, but they recognized for the first time that Chicago's Policy was applicable to the transaction because the encroachment existed at the time of the closing [Loflin's Supplemental Affidavit].*¹¹ (R. pp. 638-639).

On March 23, 2012, the Loflins' counsel informed Chicago of the Unrecorded Plat – *which again, predated the Closing* – showing that at the time they purchased Lot 108, Balsam Mountain Preserve Road did not circumnavigate but rather dissected Lot 108. [(Memorandum in Opposition at Ex. 20). (R. p. 628). In response, Chicago denied coverage on August 21, 2012 because “there appears to be no title defect in this matter” [Memorandum in Opposition at Ex. 21]. (R. p. 629). Chicago did not raise a statute of limitations defense although it had all the facts which it later argued to Judge Mullen (without filing a Motion on that ground).

Since the foreclosure, Balsam's successors have exercised control over Balsam Mountain Preserve Road through the Loflins' property and .437 acres owned by the Loflins [Third Amended Complaint at 14]. (R. p. 214). The Loflins have objected to this encroachment, but Balsam and its successors have refused to remedy this situation, and have continued to encroach and continuously trespass upon Lot 108 [*Id.*]. In

¹¹As discussed below, the Loflins have never asserted that Chicago's Contract of Insurance would cover their damages if the encumbrance had been constructed *after* the closing.

addition, the Association informed the Loflins that if they attempted to close the road encroaching through their property, it would not defend the Loflins from potential lawsuits filed by other Balsam property owners for limiting access to their property [Third Amended Complaint at ¶21]. (R. p. 214).

On January 23, 2015, the Loflins took the deposition of Randy Herron, the surveyor who prepared both the Recorded Plat and Unrecorded Plat. Mr. Herron testified that he had provided the Unrecorded Plat to Balsam *before* the closing [Herron Deposition at 44]. (R. p. 487, lines 5-8). Subsequently, the Loflins conducted another survey which confirmed that, in fact, the road actually cuts through Lot 108 and reduces their acreage [Loflin's Affidavit; Unrecorded Plat]. (R. p. 636-637; R. p. 586).

In 2016, the Association paved the road through Lot 108 [Loflin's Affidavit]. (R. p. 636-637).

ARGUMENT

A. JUDGE MULLEN ERRED IN RULING, AS A MATTER OF LAW, THAT CHICAGO'S COVERAGE UNDER THE CONTRACT OF INSURANCE WAS LIMITED TO DEFECTS OF RECORD

Judge Mullen accepted Chicago's argument – made from the beginning of this case (but rejected by Judge Kinard) – that, despite what the Contract of Insurance says, it cannot be sued for any defects in the title that are not a matter of record. Based upon this legal conclusion, Judge Mullen found that:

- “The Plaintiffs have no claims for damage” because “they have title to the property as insured and conveyed . . .” [Order ¶ II. at 5] (R. p. 15);
- “The Plaintiffs claims must fail as a matter of law” because there is “simply no breach by Chicago Title as the Plaintiffs received the title referenced in both their recorded deed and the Recorded Plat referenced in that deed” [Order ¶ III. at 6, 7] (R. pp. 15-17); and,
- “The Plaintiffs received the benefit of their title insurance policy and failed to allege any cause of action for breach of contract” because “there were no such defects, liens, or encumbrances **of record** at the time of the issuance of the policy” [Order ¶ IV. at 9, 10 (emphasis added)]. (R. pp. 18-19).

In sum, this fundamental conclusion was at the heart of each and every decision that Judge Mullen made on the merits.

There are at least seven reasons why Judge Mullen committed reversible error when she held, as a matter of law, that Chicago could not be held responsible under its Contract of Insurance unless there was a defect on the public record:¹²

1. Reason One: The Testimony Of Chicago’s Representative

Notwithstanding Judge Kinard’s denial of Chicago’s Motion to Dismiss, Chicago continued to assert the same legal position that it could not be liable for defects which were not on the public record at the time of the conveyance. In response, the Loflins noticed the deposition of Chicago’s representative. Chicago produced Cynthia Baines,

¹²One of these reasons – the last one addressed below – precluded Judge Mullen from even considering this argument. Because the Loflins do not want to shy away from the merits, however, they will leave that explanation to the end.

a senior claims counsel for Fidelity National, the owner of Chicago, and identified to Judge Mullen by Chicago's counsel as "my client" [Hearing Transcript at 47]. (R. p. 424, lines 14-15). Ms. Baines testified as follows:

Q. Is Chicago's position that it does not provide coverage so long as the record title is correct?

A. I would say that the coverage is governed by the terms and conditions of the policy so there are possibly circumstances where there would be coverage for things that are not of record title.

[Memorandum in Opposition (Baines Deposition) Ex. 24 at 12)]. (R. p. 480, lines 2-9).

In response to Chicago's Motion for Summary Judgment, the Loflins relied on Ms. Baines' testimony at oral argument and its subsequent supporting memorandum (and attached that portion of the deposition) [Hearing Transcript at 47; Memorandum in Opposition at 30-31]. (R. p. 424, lines 12-15; R. pp. 349-350). However, Judge Mullen did not refer to, much less address or explain, this important testimony in her final Order and, as noted above, based her decision on the merits on Chicago's argument (rejected by Judge Kinard) that it could not be held liable for defects which were not part of the public record.¹³

2. Reason Two: The Contract Governs

¹³Curiously, Judge Mullen, in her only reference to the Baines deposition (which the Loflins submitted in opposition to the Motion for Summary Judgment), cited a *question* by the Loflins' counsel as an acknowledgment that the title of record in this matter is good [Order at 6-7]. (R. pp. 16-17).

Ms. Baines not only admitted that Chicago's responsibility was not limited to record title, but she was spot on when she testified that coverage is governed by the terms and conditions of the Policy. The Loflins argued and briefed the provisions of the Policy which demonstrate liability in this case. Judge Mullen did not discuss much less analyze the Policy terms in her Order.

The language of the Policy itself demonstrates the error of Judge Mullen's finding that liability is limited to what is a matter of record. By way of example only, the Policy covers Balsam's fraud (which is alleged and established by Balsam's default), which by definition is not part of the public record. The Policy also provides coverage for adverse possession, which again by definition would not be part of the public record.¹⁴

A review of the Order reflects that the ruling is devoid of any analysis of the contract. This absence is particularly troublesome because in the summary judgment context, any potential issue of fact, created by either the language of the contract or admissions of the parties, is to be preserved for the trier of fact. Because Judge Mullen did not analyze the Contract, the Loflins will not brief the particular risks covered or the liberal rules of construction in favor of an insured [See Memorandum in Opposition

¹⁴North Carolina recognizes adverse possession of land. *Rushing v. Aldridge*, 214 N.C. App. 23, 713 S.E.2d 566 (2011).

at 24-27].¹⁵ (R. pp. 343-346).

The reality is that despite Ms. Baines' recognition that the Policy governs, the Court below re-wrote the parties' agreement and granted Chicago immunity from any claims not evident from the public record. Chicago had every right to insure matters outside of the public record. If Chicago wanted to limit coverage to matters of public record, it could have clearly stated that limitation in the Policy. Absent reversal, Judge Mullen's acceptance of Chicago's argument that despite the terms which Chicago drafted, the Policy (which in actuality is an adhesion contract) is limited to defects on the public record, not only sanctions a fraud on the Loflins, but grants Chicago a judicial stamp of approval of a great scam on the insurance market.

There is simply no evidence in the record suggesting that any consumer should know (much less actually knows) that title insurance is limited to risks already covered by an attorney's title opinion. It is undisputed that the Loflins did not have that expectation when they paid for their Policy [Loflin's Supplemental Affidavit]. (R. pp. 638-639). Indeed, the Coward Defendants, whose Motion for Summary was heard and

¹⁵For example, an insurance policy must be construed to give effect to the intention of the parties as manifested by the reasonable meaning of the policy terms. Because of the unequal bargaining positions, title insurance policies are viewed as adhesion contracts. A court will strictly construe exceptions to coverage against the insurer. Courts will enforce only the restrictions and the terms in an insurance contract that are consistent with objectively reasonable expectations of the average insured.

briefed at the same time, never refuted the Loflins' unequivocal sworn statement on this point or suggested that they had told their clients (the Loflins) otherwise when they secured the Contract of Insurance.

Finally, even if the law did not impose a duty on an insurance carrier, the parties to a contract certainly could and did provide otherwise.

3. Reason Three: Judge Mullen Cited No Case From Any Jurisdiction In Support Of Her Ruling

Judge Mullen cited no case from anywhere in the nation supporting the proposition that a title insurance company is protected, as a matter of law, despite the policy terms to the contrary. The absence of such authority demonstrates the extremeness of Judge Mullen's core ruling.

The only legal authority which Judge Mullen cited is a North Carolina statute providing that prospective purchasers should be able to rely on the public record. Judge Mullen correctly found that, "It is only when a search of the public records reveals an encumbrance that a purchaser is chargeable with the notice of its existence" [Order at 5]. (R. p. 15). Based on this statute, the Court jumped to the conclusion that "the unrecorded plat cannot create any encumbrance and cannot create any damages for the Plaintiffs by this Defendant as it has no impact upon the Plaintiffs' title to their property" [*Id.*].

Respectfully, Judge Mullen's observation demonstrates a fundamental disconnect between the Loflins' basic position from day one and Judge Mullen's understanding of this case. The Unrecorded Plat did not *create* the encumbrance. The Unrecorded Plat *revealed* the encumbrance. As explained herein, in 2012, the Loflins first learned that the encumbrance existed at the time of the closing, that they had been defrauded, and, most importantly for this appeal, that the Policy applied to their purchase.

It is undisputed that the Loflins were defrauded [Motion for Default Judgment (July 17, 2014); Judge Kinard's Order (January 6, 2015)]. (R. pp. 113-115; R. pp. 3-4). It is undisputed there is an encumbrance on the Loflins' property, i.e. there is a paved road going through their home site [*See, e.g.* Lehman Deposition at 31, 54, 55]. (R. p. 461, lines 21-24; p. 463, line 20 - p. 464, line 20).

The Loflins acknowledge that if they sold the property, the subsequent purchaser would have good title. Despite the public record, however, the subsequent purchaser would also have less acreage and a road going through the property. If the Loflins did not disclose these problems, they would be subject to a lawsuit for fraud and misrepresentation. The Loflins challenge Chicago (again) to tell this Court if it will defend such a lawsuit in accordance with the terms of the Policy it issued in exchange for the Loflins' premium.

4. Reason Four: Judge Mullen Erroneously Conflated The Duties of the Parties

The Defendants in this action included a seller, an insurance company, an insurance agent, and a law firm. Each of these Defendants owed separate and distinct duties to the Loflins. While the actions and relationships of the Defendants may have created overlap of those duties, the duties never the less continue to exist.

For example, the seller committed fraud. The insurance policy covers fraud. The Court seemed to believe that because the fraud did not directly involve the insurance company, the agent, or the law firm, this somehow negated coverage of the policy for fraud. The Loflins do not have to prove that Chicago committed fraud in order to recover for fraud committed by Balsam, which is an insured risk.

Examining the distinction of the parties, the Loflins emphasized the basic distinction between the liability of a lawyer who certifies title based upon an examination of the public record and an insurance company that issues a contract of insurance to protect an insured from certain risks [Hearing Transcript at 39-40, 66-67; Memorandum in Opposition at 26]. (R. pp. 416, line 7 - p. 417, line 9; p. 443, line 8 - p. 444, line 4; R. p. 345). The law in this state does not impose a duty on a lawyer checking a title to provide a title opinion which certifies title beyond what is on the public record (although it does not prohibit a lawyer from making that representation

at his or her peril). For that reason, lawyers who certify title typically set forth the limitations on the certification, including language to make it clear that the lawyer is not certifying matters which are not of public record.

It is for this reason that good lawyers recommend that their clients obtain title insurance and that their clients choose to pay this extra amount. In contrast, an insurance company quotes a premium based on actuarial risks. The insured purchases protection from those risks, and the insurance company makes a generous profit. When a house burns down, the insured does not have to prove fault.

Although Judge Mullen did not explicitly address the Loflins' argument that there is a distinction between the duty of a title insurance company and a real estate lawyer, she held that their obligations were identical. She clothed an insurance company which insures risks with the same protections afforded a lawyer who only examines the Courthouse records. Again, however, there is a fundamental difference between an insurance company that insures risks and a lawyer who must perform an examination of the Courthouse records in a reasonable manner.

The different scopes of liability are brought into clear contrast by a cursory examination of the documents in this lawsuit. The Coward Defendants told Chicago that they limited their certification to "an examination of the title to the real estate" [Counsellor's Answer to Third Amended Complaint and Cross-Claim at Ex. A].

(R. p. 618). *Tellingly, Chicago never made such a straight-forward statement in the Contract of Insurance it drafted. Why not?*¹⁶

5. Reason Five: The Contract of Insurance Does Not Say That

If, in fact, Chicago's position is that its Contract of Insurance does not cover any defects which are not as of record, it could have easily said that in one unambiguous sentence. Nowhere in the Contract of Insurance, however, does Chicago, even stretching the English language to its outer limits, suggest that. Moreover, it is hornbook law that a policy of insurance must be read in the light most favorable to the insured.

6. Reason Six: Damages

Judge Mullen's conclusion that the Loflins have suffered no damages because the unrecorded plat has no impact upon their title is mind-boggling. It is self-evident that a lot containing 1.4 acres with a road going through it is worth less than a lot containing 1.85 acres without a road dissecting it. Furthermore, Judge Mullen's conclusion is not only refuted by common sense (no one would want a home site with

¹⁶The Coward Defendants also asserted in their Answer to Counselor's Cross-Claim that they "exercised the necessary degree of care and skill maintained by other attorneys under similar conditions and like circumstances" [Coward's Answer to Counsellor's Cross-Claim at ¶15]. (R. p. 304). Chicago has never asserted such a defense to the Loflin's breach of contract action because, unlike a professional, such a defense is not available to a company that insures risks. There is a fundamental distinction between an insurance company and a lawyer.

a paved road running through it), but the undisputed testimony of Balsam's former General Manager (Mr. Lehman) that the encroachment had a "negative impact on the property" [Lehman Deposition at 64-65]. (R. p. 470, line 23 - p. 471, line 2). Despite the fact that the Loflins' lot was particularly good because of its location near the center of activity, as a result of the reduced acreage and a road running through it, no one made an offer on the lot while Balsam was actively selling a number of otherwise inferior lots [Lehman Deposition at 59-61, 67]. (R. p. 466, line 19 - p. 468, line 6; p. 472, lines 5-25).

Finally, if the Loflins could find a purchaser for the subject property, and pointed out that the Recorded Plat does not reflect what is on the ground – as they in good faith would be required to do – they would get far less for the property. If the Loflins did not disclose this problem, they would subject themselves to a lawsuit for fraud and deceit.

7. Reason Seven: All Substantive Rulings Were Barred By The Law Of The Case Doctrine

Judge Mullen did not address the Loflins' argument that she had no authority to reverse Judge Kinard. At the hearing on Chicago's Motion, however, when the Loflins began to make this argument, Judge Mullen immediately and emphatically told the Loflins that she did not have to consider Judge Kinard's Order because it was on a

Motion to Dismiss rather than a Motion for Summary Judgment:

- “They were motions to dismiss, Mr. Speights” [Hearing Transcript at 41]. (R. p. 418, line 21).
- “But I can tell you this, on a motion to dismiss, that's exactly what I expect Judge Kinard to do. So that doesn't have all that much significance” [*Id.* at 42]. (R. p. 419, lines 11-13).
- “It’s a motion to dismiss, that's all anyone needs to say” [*Id.* at 43]. (R. p. 420, lines 22-23).

While clearly a Motion to Dismiss and a Motion for Summary Judgment can be quite different, in this instance, there was absolutely no difference in the factual record Chicago presented and no difference in the legal argument that Chicago made based upon that record. In both instances, Chicago argued that it was entitled to prevail as a matter of law based on allegations in the Loflins’ Complaint. Chicago specifically told Judge Mullen that, “Mr. Speights is exactly right. We did address the exact same issues” [*Id.* at 45]. (R. p. 422, lines 21-22). Chicago also stated that, “So he’s exactly right, the motion is the same because nothing has changed, Your Honor” [*Id.* at 46]. (R. p. 423, lines 6-7).

Chicago attempted to distinguish Judge Kinard’s Order on the ground that there existed a “different body of law” dealing with a Motion for Summary Judgment as opposed to a Motion to Dismiss [*Id.* at 45]. (R. p. 422, line 5). According to Chicago, the Loflins had to come forward with evidence to defeat a Motion for Summary

Judgment [*Id.* at 45]. (R. p. 422, lines 21-25). The Loflins submitted extensive evidence. Chicago chose not to take any depositions or submit any evidence. Of course, the burden of proof on both motions was on Chicago.

In fact, the standard for a Motion to Dismiss and a Motion for Summary Judgment are virtually the same. *Compare, Benedict College v. National Credit Systems, Inc.* (S.C.App. 2012) 400 S.C. 538, 735 S.E.2d 518 [(South Carolina Rules of Civ.Proc. 12; and *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 154, 758 S.E.2d 483, 492 (2014), *reh'g denied* (June 13, 2014) and *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006) [South Carolina Rules of Civ.Proc. 56].

In reality, Judge Mullen violated a fundamental holding of this Court: One Circuit Judge cannot overrule another Circuit Judge. *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943). That is essentially what Judge Mullen did when, based upon the identical record, she came to a conclusion of law different from that reached by Judge Kinard.

Based upon and in reliance of Judge Kinard's decision, the Loflins proceeded with discovery, including the taking of nine depositions throughout South Carolina and North Carolina. The depositions only supported Judge Kinard's ruling. Defendants elected not to take any depositions or present any new evidence.

Judge Mullen's decision was not only legally wrong, but it undermined the very purpose of a Motion to Dismiss. If Judge Kinard had denied the Motion to Dismiss, undoubtedly he would have permitted the Loflins to amend their Complaint, if they wanted to do so. Alternatively, the Loflins could have appealed that decision to this Court without investing several years and significant sums in taking depositions. The issues could have been before this Court years ago. The rules must be given effect.

The Loflins recognize that in many (if not most) circumstances, a party who loses a Motion to Dismiss may later file a Motion for Summary Judgment based upon facts. In this instance, Judge Mullen based her decision on the same facts and the same law that Chicago presented to Judge Kinard: the Loflins' factual allegations in their Complaint.

B. JUDGE MULLEN ERRED IN RULING, AS A MATTER OF FACT, THAT ANY DEFECTS OR ENCUMBRANCES WERE NOT IN EXISTENCE AT THE TIME THE LOFLINS TOOK TITLE

Chicago repeatedly argued and Judge Mullen held that the Contract of Insurance only covers those risks which existed at the time of the Closing [Hearing Transcript at 36, 46, 63; Order at 7-10]. (R. p. 413, lines 7-11; p. 423, lines 15-18; p. 440, lines 15-21; R. pp. 17-20). The Loflins agree.

Chicago also argued and Judge Mullen held that none of the defects or encumbrances were in existence at the time of the Closing. As set forth above,

however, the record is absolutely undisputed that all risks covered by the Policy existed prior to the Closing.

In their Memorandum in Opposition to Certain Defendants' Motions for Summary Judgment, the Loflins not only argued this point, but submitted sworn testimony proving that the all risks existed before the closing. For reasons that are unfathomable to the Loflins, however, Judge Mullen did not discuss, much less attempt to distinguish, the evidentiary record the Loflins submitted on this fundamental point.

The encumbrance (the road through the Loflins' property) existed before the Closing. On its face, the Unrecorded Plat itself is dated before the closing [Unrecorded Plat (February 6, 2002)]. (R. p. 586). The surveyor testified that he delivered the Unrecorded Plat to Balsam before the closing [Herron Deposition at 44]. (R. p. 487, lines 5-8). Therefore Balsam's fraud (a risk covered by the Policy), which Balsam did not contest, existed before the Closing. The policy also explicitly covers mistakes in recording [See Policy, Covered Risk 4, "Defective recording of any document"].

C. JUDGE MULLEN ERRED IN RULING THAT THE LOFLINS' BREACH OF CONTRACT LAWSUIT IS TIME-BARRED

Judge Mullen held that the statute of limitations begins to run "on the date the party first knew or should have known by the exercise of reasonable diligence that a cause of action has arisen. At the time a party should realize his injury is attributable

to someone else's actions, the statute begins to run" [Order at 4 (citations omitted)]. (R. p. 14).

Judge Mullen then ruled, however, that the statute of limitations in this lawsuit expired in 2009, three years after the Loflins learned that there was an encroachment on their property [Order at 4]. (R. p. 14). In making this ruling, Judge Mullen made three fundamental errors.

1. **Judge Mullen Erred In Failing To Apply The Applicable Trigger Date In A Breach Of Contract Action**

The Loflins made a claim pursuant to the Contract of Insurance. The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Chicago refused to perform under the Contract of Insurance on August 21, 2012 [Letter from Chicago to Solomons (August 21, 2012)]. (R. p. 628). "Under the discovery rule, a breach of contract action accrues on the date the injured party either discovered the breach or should have discovered the breach through the exercise of reasonable diligence." *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007). There was no breach to discover until August 21, 2012. The action was timely filed on July 18, 2013.

2. **Judge Mullen Erred In Finding That The Loflins Discovered In 2006 That The Encumbrance Predated The Closing**

Judge Mullen held that the Loflins “learned in 2006 that contrary to their deed and recorded plat there was a potential encroachment on their property, that there was less acreage than they thought they had, and that Balsam Mountain Road went through instead of around their property” [Order at 4]. (R. p. 14). In support of this finding, Judge Mullen cited ¶20 of Plaintiff’s Third Amended Complaint. In fact, ¶20 states the exact opposite: “Balsam did not disclose to the Loflins that it knew before the Closing that Lot 108 contained only 1.4 acres with a road through it as reflected in the Unrecorded Plat or that the Unrecorded Plat had been prepared before the Closing.”

Assuming *arguendo* that the statute of limitations on a breach of contract action begins to run prior to the date of the breach, it is undisputed that it was not until 2012 that the Loflins knew that the encumbrance (as well as the fraud) predated the Closing. As set forth in Mr. Loflins’ Affidavit, which Judge Mullen did not address:

3. In 2006, Craig Lehman informed me that there was an encroachment on Lot 108, that the property contained only 1.4 acres, and that Balsam Mountain Preserve Road went through the property. Mr. Lehman suggested that the road had been constructed through Lot 108 after the Closing. Because I knew the Recorded Plat showed no road through my property, I had no reason to doubt that the road Mr. Lehman was now disclosing was an after purchase encroachment.

* * *

5. In early 2012, I first learned that Balsam Mountain Preserve Road went through my property before the Closing, which also resulted in less acreage as set forth in my Deed and Plat, as reflected in an Unrecorded Plat that had

been prepared for Balsam before the Closing.

[Loflin Supplemental Affidavit (July 1, 2016)]. (R. pp. 638-639). Chicago offered no contrary evidence.

The Loflins timely instituted this lawsuit after discovering these fundamental facts. Again, if the road did not exist at the Closing, Chicago's argument that the Policy provided no coverage would have been appropriate.

In deciding Chicago's Motion for Summary Judgment, Judge Mullen was not required to suspend common sense. The Loflins, who have their life savings tied up in this real estate investment certainly would have looked to their insurance company if they had thought it had responsibility for their loss. Instead, believing Balsam – that the road had been constructed after the closing – they worked with Balsam for several years trying to resolve this situation (while their membership dues were suspended). To their shock and dismay, they discovered in 2012 that Balsam knew before the Closing that a road went through their property. That is what triggered the statute of limitations against Chicago. There is no reason to believe that the Loflins slept on their rights when the Court below held that they had no rights until that happened.

3. Judge Mullen Erred In Ruling That, As A Matter Of Law, That The Applicable Statute Of Limitations Is Three Years

The Loflins had twenty years (not three years) to bring their lawsuit. Not only

did the Court examine extraneous matters beyond when the triggering breach of an insurance contract occurred to determine when the statute of limitations begins to run, the Court applied the wrong statute. In this matter, the particular facts of the case would lead to an expansion of the rights of the Loflins, not diminution. Because the formation of the title policy was a required part of the transaction selling real property secured by a mortgage, S.C. Code Ann. §15-3-520 which provides for a twenty year statute of limitations in that exact scenario. See *Suttles v. Wood* (S.C.App. 1984) 280 S.C. 272, 312 S.E.2d 574.

This Court has answered the question of which statute of limitations to apply on actions concerning title insurance and applied §15-3-520. The Court stated in *Lyons v. Fid. Nat. Title Ins. Co*, 415 S.C. 115, 129, 781 S.E.2d 126, 133 (Ct. App. 2015), *reh'g denied* (Jan. 21, 2016) that:

A twenty-year statute of limitations allows policyholders to carefully monitor situations as they unfold, ultimately preventing the bringing of unnecessary claims or litigation. Thus, we agree with the circuit court that “the policies are indeed sealed instruments and that the twenty-year statute of limitations applies.”

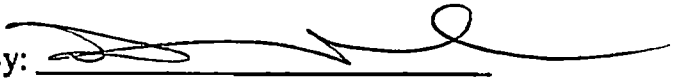
The Order applies the wrong statute.

CONCLUSION

For the foregoing reasons, the Order and Judgment below should be reversed.

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March 3, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appeal No. 2016-001840
Case No. 2013-CP-07-1807

RECEIVED

MAR 09 2017

SC Court of Appeals

William Loflin and Leslie Loflin, Appellants,
v.

BMP Development LP, Balsam Mountain Group, LLC,
Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago Title Insurance
Company, and Counsellor Title Agency, Inc., Defendants,

Of wich
Chicago Title Insurance Company is the Respondent.

CERTIFICATE OF COUNSEL

Appellants' counsel hereby certifies that this Final Brief is in compliance with Rule 211(b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical erros and misspellings.

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FEB 23 2017

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v.

BMP Development, LP, Balsam Mountain Group, LLC, Coward, Hicks & Silver,
P.A., J.K. Coward, Jr., Chicago Title Insurance Company, and Counsellor Title
Agency, Inc., Defendants

Of which[^]
Chicago Title Insurance Company is the Respondent.

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STATEMENT OF ISSUES ON APPEAL

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- V. THE CIRCUIT COURT PROPERLY RULED THAT THE LOFLILNS CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITAITON AS TO ALL CAUSES OF ACTION SO THAT ANY CAUSE OF ACTION BY THE LOFLINS IS BARRED

STATEMENT OF THE CASE

On July 13, 2013, William and Leslie Loflin filed their Summons and Complaint against the Defendants Balsam Mountain Preserve Community Association, Chicago Title Insurance Company, and Counsellor Title Agency, Inc. (R. pp. 42-47). In that Complaint, the Loflins set forth causes of action for continuous trespass and encroachment by the Balsam Mountain Community Association and breach of contract by Chicago Title Insurance Company and Counsellor Title Agency, Inc. In response, Chicago Title Insurance Company filed a motion to dismiss on August 9, 2013. (R. pp. 48-50). Counsellor Title Agency, Inc., filed its motion to dismiss on August 12, 2013. (R. pp. 51-59). Balsam Mountain Preserve Community Association filed its motion to dismiss on September 6, 2013 (R. pp. 60-65). On September 27, 2013, Balsam Mountain Preserve Community Association filed a motion for protection from discovery. (R. pp. 66-69). Balsam Mountain Preserve Community Association filed another motion for a protective order on November 18, 2013. (R. pp. 66-69). The Loflins filed motions to compel discovery on December 16, 2013.

On August 14, 2014, the Plaintiffs filed an Amended Summons and Complaint naming BMP Development LP as a party to the case and removing Balsam Mountain Preserve Community Association as a Defendant. (R. pp. 70-97). On April 16, 2014, Chicago Title Insurance Company filed its motion to dismiss the Plaintiffs' Amended Complaint. (R. pp. 99-101)). Counsellor Title Agency, Inc., filed its motion to dismiss the Plaintiffs' Amended Complaint on April 28, 2014 (R. pp. 102-112).

The Honorable Earnest Kinard denied Chicago Title Insurance Company's Motion to dismiss by Form Order on September 3, 2014. (R. pp. 1-2). At the hearing, Judge Kinard

reviewed only the Complaint as it was filed by the Plaintiffs in denying the motion. (*Id.*) He did not review anything outside of the Complaint itself. (*Id.*)

On September 11, 2014, Chicago Title Insurance Company filed its Answer to the Plaintiffs' Amended Complaint. (R. pp. 126-136) In its Answer, Chicago Title denied the causes of action against it and asserted numerous affirmative defenses, including the running of the applicable statute of limitations as the Plaintiffs knew or should have known of their alleged causes of action in 2006 as set forth in their Complaint. (*Id.*; R. p. 133).

On January 6, 2015, the Plaintiffs were permitted to file a Second Amended Complaint. (R. pp. 5-7). The Plaintiffs filed their Second Amended Complaint on the same day. (R. pp. 137-179). The Second Amended Complaint named Coward, Hicks & Siler, P.A., and J.K. Coward, Jr. as Defendants. (*Id.*) On January 21, 2015, Chicago Title Insurance Company answered the Second Amended Complaint asserting the same denials and affirmative defenses, including, but not limited to, the statute of limitations. (R. pp. 180-193).

Discovery continued throughout the entire time the case was pending.

On July 14, 2015, Chicago Title Insurance Company filed its Motion for Summary Judgment (R. pp. 194-196). Counsellor Title Agency, Inc., also filed its Motion for Summary Judgment on July 31, 2015. (R. pp. 197-200).

On August 5, 2015, the Plaintiffs filed their Third Amended Complaint. (R. pp. 201-246). Chicago Title Insurance Company filed its Answer to the Third Amended Complaint on August 14, 2015, asserting the same denials and affirmative defenses, including the running of the applicable statute of limitations. (R. pp. 247-260).

The case was unsuccessfully mediated on December 4, 2015.

The Plaintiffs set forth a Rule 30(b)(6) Notice of Deposition for Chicago Title Insurance Company that Chicago Title Insurance Company moved to quash based upon the Notice. (R. pp. 261-267).

On January 15, 2016, the case was given a Complex Case designation and assigned to the Honorable Carmen T. Mullen. (R. pp. 7-8).

On June 13, 2016, Judge Mullen heard the Defendant Chicago Title Insurance Company's Motion for Summary Judgment. (R. pp. 378-450).

At that hearing, Judge Mullen took the motion under advisement and allowed the Plaintiffs to submit any supplemental matters they desired. (R. pp. 447-448).

On August 25, 2016, Judge Mullen entered her Order Granting Chicago Title's Motion for Summary Judgment. (R. pp. 11-21). On September 1, 2016, the Plaintiffs filed their Notice of Appeal, and this appeal follows. (R. pp. 372-373).

STATEMENT OF FACTS

The underlying facts in this matter are largely undisputed. (Appellants' Brief)

The Loflins are the owners of Lot 108 in the Balsam Mountain Preserve development located in Jackson County, North Carolina. (R. p. 211). The Plaintiff William Loflin purchased this property in 2002 for \$495,000.00. (R. pp. 209-210) Chicago Title Insurance Company issued Mr. Loflin a title insurance policy (the "Policy") for Lot 108.¹ (R. p. 207).

At the time of the closing in 2002, Lot 108 was not staked. (R. pp. 209-210) During the closing, the Loflins received a Deed to Lot 108. (R. p. 211). At that same time, the Loflins received a copy of the only recorded plat reflecting that Lot 108 consisted of 1.837 acres. (*Id.*)[¶] The only Recorded Plat also showed that the Balsam Mountain Preserve Round went around Lot 108. (R. pp. 209-210) The Recorded Plat was recorded in Jackson County, North Carolina, in Plat Cabinet 11 at Slide 383 and incorporated in the deed to the Loflins. (R. p. 211). The deed transferring title to Lot 108 was recorded in Jackson County in Book 1227 at Page 202. (*Id.*) The plat recorded in Plat Cabinet 11 at Slide 383 is the only recorded plat for Lot 108 (the "Recorded Plat")(*Id.*) The deed conveyed Lot 108 as shown on the Recorded Plat. (*Id.*) There is no dispute as to that issue. (*Id.*) The Loflins have always alleged that they purchased Lot 108 as shown on the Recorded Plat. (*Id.*) All the parties agree that the Recorded Plat is the only plat of record in the records in Jackson County, North Carolina. (Appellants' Brief, p. 7)

The Title Insurance Policy issued to the Mr. Loflin by Chicago Title insured the title to Lot 108 containing 1.837 acres as referenced in the Recorded Plat in Jackson County, North Carolina. (R. p. 211). The Loflins received title as set forth in their deed based upon the Recorded Plat. (*Id.*)

Four years after the closing, in 2006, the Loflins claim that BMP Development informed them that, contrary to the duly recorded deed and the Recorded Plat, that Lot 108 only contained 1.4 acres and that Balsam Mountain Preserve Road went “through” their property as shown on an unrecorded plat. (R. p. 213)(Appellants’ Brief, p. 8) Although allegedly discovered in 2006, the Loflins did not file suit until 2013. (R. pp. 42-47; R. p. 392; R. p.p. 398-399). The Loflins asserted that the unrecorded plat shows both the reduced acreage and the Balsam Mountain Preserve Road going through their Lot 108. (R. p. 213). According to the Third Amended Complaint, there is no recorded plat or deed showing the reduced acreage or Balsam Mountain Preserve Road going through Lot 108. (R. p. 213, R. p. 412). The Loflins also claim that there is a trespass and encroachment upon their property by way of this unrecorded plat, which they discovered in 2006. (R. p. 212).

In 2012, six years after discovering this unrecorded plat, the Loflins informed Chicago Title of the unrecorded plat. (R. p. 213). In response, Chicago Title advised that based upon a title search, the only recorded deed and the Recorded Plat did not show any impairments to the title as received by the Loflins, and, accordingly, denied the Loflins’ claim. (R. p. 213, R. pp. 629-630).

The Loflins causes of action against Chicago Title are for breach of contract and negligence (R. pp. 241-243). The Loflins claim they entered into a contract with Chicago Title to “investigate and insure lot 108 was protected from all risks set forth herein, including, but not limited to, easements, encumbrances and fraud.” (R. p. 242). In addition, they allege that Lot 108 contains 1.4 rather than 1.837 acres and there is a road dissecting the property as shown on an unrecorded plat, rather than what is shown on the recorded plat. (*Id.*) There are no specifics alleged as to how Chicago Title in any way breached its contract when the Deed and the

¹ Chicago Title issued lenders’ policies of title insurance for refinances of the property at later dates. (*Id.*)

Recorded Plat show that the Loflins received the title for which they bargained and for which the Title Insurance Policy was issued. (*Id.*) The claim for negligence states that Chicago Title knew or should have known the risks associated with Lot 108 and either allowed exposure to such risk or negligently failed to ascertain and insure against such risks. (R. p. 242-243). The Loflins claim they are entitled to the full value of their property and consequential damages. (R. p. 243). These are the only claims against Chicago Title.

STANDARD OF REVIEW

Summary judgment is proper when it is clear that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. SCRCivP 56 (c); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Moore v. Weinberg*, 733 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007), *aff'd* by 383 S.C. 583, 681 S.E.2d 875 (2009).

Summary judgment should be granted when plain, palpable, and undisputed facts exist upon which reasonable minds cannot differ. *Trico Surveying, Inc. v. Godley Auction Co., Inc.*, 314 S.C. 542, 544, 431 S.E.2d 565, 555 (1993). Where there is no dispute over the operative facts, summary judgment is proper as a matter of law. *Citizens & Southern Nat'l Bank of S.C. v. Langford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994). Here, the material facts are not in dispute.

The Loflins confuse the standard of review stating the standard is "virtually identical" to the standard of review of a motion to dismiss. (Appellants' Brief, pp. 21-24) This oversimplification is not the law. *See Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)(a motion for failure to state a cause of action is based solely upon allegations in the complaint). Motions to dismiss only look to the complaint; motions for summary judgment look to the evidence in the record. *Id.* Matters outside of the pleadings require a different standard of review pursuant to Rule 56(c) SRCivP. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY RULED THAT THE LOFLINS HAVE NO CLAIMS FOR DAMAGE UNDER THEIR TITLE INSURANCE POLICY WHERE THEY RECEIVED TITLE TO THEIR PROPERTY AS INSURED AND AS CONVEYED ACCORDING TO THE PLAT RECORDED IN JACKSON COUNTY, NORTH CAROLINA, AND WHERE THERE ARE NO TITLE DEFECTS AFFECTING THE LOFLINS' TITLE TO THEIR PROPERTY

The Loflins took title to their property based upon the only plat recorded in Jackson County, North Carolina, recorded in in Plat Cabinet 11 at Slide 383. That Recorded Plat was incorporated in the Deed to the Loflins which Deed was recorded in Jackson County in Book 1227 at Page 202. (R. p. 209) The plat recorded in Plat Cabinet 11 at Slide 383 is the only Recorded Plat for Lot 108 (R. p. 211). That is undisputed. At the hearing of this matter, no one disputed that this is the only plat recorded in Jackson County, North Carolina, surveying the Loflins' property. (R. p. 294, R. p. 412, R. p. 433, ll 7-10, ll. 16-23).

As this property is in North Carolina, North Carolina substantive law as to recording must apply. According to North Carolina Code Section 47-18, unrecorded interests in land are invalid against subsequent purchasers of property. *See* N.C.G.S.A. §47-18. Unless an interest is "of record", it cannot be enforced against any subsequent purchaser. *Id.*; *see Hill v. Pinelaw Memorial Park*, 292 S.E.2d 779 (N.C. 1981). By enacting Section 47-18, the intent of the North Carolina General Assembly was that prospective purchasers should be able to rely only on the public record. *Schuman v. Roger Baker & Assoc., Inc.*, 319 S.E.2d 208 (N.C. Ct. App. 1984). It is only when a search of the public records reveals an encumbrance that a purchaser is chargeable with the notice of its existence. *Turner v. Glenn*, 18 S.E.2d 197 (N.C. 1942). If no interest is recorded, it is not enforceable against subsequent purchasers. *Id.* In this matter, the

unrecorded plat cannot create any encumbrance and cannot create any damages for the Loflins as it has no impact upon the Loflins' title to their property. The Loflins' title is as reflected on their Deed and on the Recorded Plat. Accordingly, Judge Mullen properly granted Chicago Title judgment as a matter of law.

II. THE CIRCUIT COURT PROPERLY RULED THAT THE LOFLINS' CAUSE OF ACTION FOR BREACH OF CONTRACT MUST FAIL WHERE THE LOFLINS' CLAIM WAS PROPERLY DENIED BECAUSE NONE OF THE COVERED RISKS AS SET FORTH IN THE TITLE POLICY WERE TRIGGERED BY THE CLAIM

The Loflins have alleged that the contract at issue is the policy of title insurance issued by Chicago Title through its agent, Counsellor Title Agency, Inc., in 2002 (the "Policy") (R. p. 207). The Loflins have acknowledged that the Policy was issued (*Id.*) The Loflins have acknowledged that their Deed references the Recorded Plat showing the correct acreage and the Balsam Mountain Road going around Lot 108. (R. pp. 211-212) The Policy complies with both the Deed and the Recorded Plat, insuring that title which the Loflins have and have had since 2002. (*Id.*). There are no allegations stated in the Third Amended Complaint that support any breach of the contract as the Loflins received the benefit of their bargain, have the title for which they bargained, and for which there is title insurance. There are no allegations to support the Loflins' claims that Chicago Title had to "investigate and insure that Lot 108 was protected from all risks." In their lengthy Memorandum in Opposition to Certain Defendants' Motions for Summary Judgment filed after the hearing in this matter, there are no case law or other citations supporting this allegation of investigation and insurance for Lot 108 being protected from "all risks". (R. pp. 320-361) Further, Chicago Title relies on its agents and does no investigations into title. There has been no evidence or testimony produced to support those allegations. The

Loflins' own allegations state that their Deed referenced the Recorded Plat. They have asserted that allegation again and again and again.

In the deposition of Cynthia Baines, claims counsel for Chicago Title, counsel for the Loflins asked the following questions:

Q. Okay. Do you understand that Mr. and Ms. Loflin claim responsibility of a Chicago title even if there's no problem with record title?

A. That seems to be their allegation.

(R. p. 479, ll. 22-25).

Q. Are you personally familiar with a lawsuit brought by an insured against Fidelity in which the insured claims that there should have been coverage but the record title was good – even though the record title was good?

A. This case.

(R. p. 482).

By this very questioning of the Loflins' counsel, it is acknowledged that the title of record in this matter is good as recorded in Jackson County, North Carolina. To this very day, there is no other plat to search or rely on by Chicago Title or its agents in issuing a title insurance policy. There is simply no breach as the Loflins received the title referenced in both their recorded deed and the Recorded Plat referenced in that deed.

None of the enumerated "Covered Title Risks" in the Policy are triggered by the Loflins' allegations related to the unrecorded plat or by any evidence in presented to this Court at the time of the hearing of this matter or in the Loflins' Memorandum in Opposition to Certain Defendants' Motions for Summary Judgment submitted to this Court after the hearing on June 13, 2016. (R. pp. 378-450; R. pp. 320-361).

Of note, the applicable Title Insurance Policy states:

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

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

(R. p. 621)(emphasis added).

The Policy also contains Exclusions that states the insured is not insured against loss, costs, attorneys' fees and expenses resulting from the following:

3. Title Risks:

- *that are created, allowed or agreed to by you*
- *that are known to you, but not to us, on the Policy Date – unless they appeared in the public records*
- *that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks.*

(R. p. 622)(emphasis added).

None of the Title Risks set forth in the Owner's statement of coverage are triggered, and, perhaps more importantly, the allegations of the unrecorded plat affect title **after** the Policy Date,

meaning they are specifically excluded from coverage under the Policy. As stated above and here again, the Loflins' title is as shown on the Recorded Plat and only on the Recorded Plat. Therefore, Judge Mullen properly ruled that there is no breach of contract where there is no coverage.

III. THE CIRCUIT COURT PROPERLY RULED THAT THE LOFLINS RECEIVED THE BENEFIT OF THEIR TITLE INSURANCE SO THAT THEY HAVE NO CAUSE OF ACTION FOR BREACH OF THAT CONTRACT

Title insurance is retrospective, not prospective. The Loflins received the benefit of their title insurance; there has been no breach of that contract. Generally, title insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title **which are in existence at the time the insured takes title.** *Preservation Capital Consultants, LLC v. First American Title Ins. Co.*, 406 S.C. 309, 751, S.E.2d 256 (2013); *Firstland Village Assoc. v. Lawyers Title Ins. Co.*, 277 S.C. 184; 284 S.E. 2d 582 (1981)(citing *National Mortgage Corp. v. American Title Ins.. Co.*, 261 S.E.2d 844 (N.C. 1980))(emphasis added). Title insurance is unique in that it is retrospective, not prospective. *Firstland Village Assoc., id.* at 184, 284 S.E.2d 582. The risks of title insurance end where the risks of other kinds begin. *Id.* Title insurance, instead of protecting the insured against matters that may arise during a stated period after the issuance of the policy, is designed to save the insured harmless from any loss through defects, liens, or encumbrances that may affect or burden the insured's title when the insured takes it. *Id.*

Here, the Loflins allege that the title Policy insured Lot 108, containing 1.837 acres as described in their Deed and Recorded Plat, which they received title for at their closing in 2002. The Loflins admit that the recorded Deed references the Recorded Plat with the correct acreage and showing the road going around their property. It was not until 2006, four years after the closing, that the Loflins claim to have learned of the alleged unrecorded plat showing a different

acreage and a different configuration of Balsam Mountain Preserve Road. At the time the Loflins took title, there were no encumbrances of record, and the Loflins received good title to their land. Further, there is no reference to the so-called unrecorded plat, meaning there can be no coverage to have been breached. See *Christensen v. Mikell*, 324 S.C. 70, 476 S.E.2d 692 (1996) (holding Chicago Title could not have breached a contract where there was no coverage for a fourteen acre tract of land). As in *Christensen*, where there is no coverage, there is no breach.

Neither Chicago Title nor its agents at Counsellor Title Agency, Inc., could have been aware of any unrecorded plat. To the contrary, the Loflins have alleged in Paragraph 10 of their Third Amended Complaint that they received a duly executed deed to Lot 108 referencing a recorded plat showing 1.837 acres transferred and Balsam Mountain Preserve Road going around Lot 108. (R. p. 211) There was no lien, encumbrance, defect or other matter recorded at the time the Loflins' title insurance policy was issued that could have been discovered at the time of closing. (*Id.*) There was no trigger of coverage at any time. Instead of protecting the insured against matters that may arise during a stated period *after* the issuance of the policy, a title policy is designed to save the insured from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it. *Firstland Village Assoc. v. Lawyers Title Ins. Co.*, 277 S.C. 184; 284 S.E. 2d 582 (1981) Without a covered risk at the time the policy was issued, there can be no coverage. In this matter, there were no such defects, liens, or encumbrances of record at the time of the issuance of the policy. The Loflins' own allegations make that clear. Judge Mullen made the proper determination of judgment as a matter of law as to Chicago Title on these grounds as well.

IV. THE CIRCUIT COURT PROPERLY RULED THAT THERE IS NO NEGLIGENCE CLAIM WHERE THE LOFLINS' OWN ALLEGATIONS SET FORTH NO DUTY TO PROTECT THE LOFLINS FROM UNRECORDED MATTERS, NO TITLE SEARCH WOULD REVEAL AN UNRECORDED MATTER, AND NO EXPERT HAS ESTABLISHED ANY BREACH OF THAT DUTY

The Loflins have alleged that Chicago Title is negligent since it “knew or should have known the risks associated with Lot 108 and either willingly allowed exposure to such risks despite this knowledge or negligently failed to ascertain and insure against such risks.” (R. p. 242). By their own allegations, no title search could have revealed that there was an unrecorded plat. No abstractor, attorney, or title researcher could have found any matter of record that would prove the existence of the unrecorded plat. No title search would have revealed an unrecorded plat. There are no allegations that state what risks were known or should have been known at the time the policy of insurance was issued, which is the time at issue as to the coverage under the policy. *Preservation Capital Consultants, LLC v. First American Title Ins. Co.*, 406 S.C. 309, 751, S.E.2d 256 (2013). There has been no expert witness named nor testimony provided that Chicago Title has been negligent in the denial of any claims. The only allegation in the Third Amended Complaint relating to the time of issuance of the policy is that the deed references the recorded plat and that plat showing Lot 108 containing 1.87 acres and showing Balsam Mountain Road going around the property. (R. p. 211). There can be no negligence where the allegations fail to show how Chicago Title could have breached any duty to the Loflins at the time the policy was issued as was required by the recorded documents on file in Jackson County, North Carolina.

Chicago Title denied the Loflins' claim regarding the unrecorded plat discovered in 2006, a copy of which is not part of their Amended Complaint. The Loflins' own pleadings make clear that this is an item discovered four years after the policy was issued. There can be no breach of a

duty of care here for a failure to investigate something that was not of public record and issued after the policy. *Preservation Capital Consultants, LLC, id. at*, 406 S.C. 309, 751, S.E.2d 256 (2013) The policy at issue, referenced as the First Insurance Contract, insures Lot 108, with 1.87 acres, without a road going through it based upon the recorded plat from 2002. Title insurance is unique in that it is retrospective, not prospective. *Firstland Village Assoc., id. at* 184, 284 S.E.2d 582. The risks of title insurance end where the risks of other kinds begin. *Id.* There can be no negligence in failing to ascertain and insure risk when those risks arise four years after the policy was issued and remain unrecorded. Judge Mullen properly granted Chicago Title judgment as a matter of law on this issue, too.

V. THE CIRCUIT COURT PROPERLY RULED THAT THE LOFLINS CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATION AS TO ALL CAUSES OF ACTION SO THAT ANY CAUSE OF ACTION BY THE LOFLINS IS BARRED

Nowhere in their Brief do the Loflins address the dismissal of their negligence claim based upon the applicable statute of limitations. They cannot overcome the statute of limitations for a negligence claim having known of their potential claims well more than three years prior to their filing this action having learned of alleged problems with their property in 2006.

The Loflins' negligence claims are clearly barred by the applicable statute of limitations. The Loflins have asserted claims against Chicago Title for breach of contract and for negligence. (R. pp. 242-243). The applicable statute of limitations is three years for the negligence cause of action. S.C. Code Ann. §15-3-530. The "discovery rule" governs and runs on the date the party first knew or should have known by the exercise of reasonable diligence that a cause of action has arisen. *Dean v. Ruscon*, 321 S.C. 360, 468 S.E.2d 645 (1996). At the time a party should realize his injury is attributable to someone else's actions, the statute begins to run. *Republic*

Constr. Corp. v. South Carolina Dep't of Highways & Pub. Transp., 332 S.C 197, 503 S.E.2d 761 (1998). As established in their Third Amended Complaint, the Loflins learned in 2006 that contrary to their deed and recorded plat there was a potential encroachment on their property, that there was less acreage than they thought they had, and that Balsam Mountain Road went through instead of around their property. (R. p. 213). Yet, the Loflins failed to file suit until July, 2013, well beyond the three year statute of limitations. Accordingly, the Chicago Title is entitled to judgment as a matter of law under the applicable statute of limitations for its negligence cause of action.

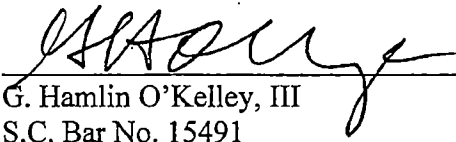
While this case was pending, this Court ruled that there is a twenty year statute of limitations for actions under sealed instruments in the context of title insurance policies. *See Lyons v. Fidelity Nat. Title Ins. Co.*, 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015); *reh'g denied* (2016). The Appellants make this argument for the first time in their Brief. (Appellants' Brief, pp. 28-29). This case is clearly distinguishable for the *Lyons* case. Unlike in the *Lyons* case, the Loflins knew some seven (7) years before filing suit that they knew of an issue regarding their property. This factual distinction differentiates this matter from the *Lyons* case.

CONCLUSION

The Circuit Court properly granted Chicago Title's motion for summary judgment where there were no facts in dispute where the title insurance policy provided no coverage for an unrecorded plat so that the Loflins took title to their property as shown in the records filed in Jackson County, North Carolina, and regarding the Loflins' claims being barred by the applicable statute of limitation so that the Loflins' claims were dismissed. For these reasons, the decision of the Circuit Court should be AFFIRMED.

Respectfully submitted,

Mt. Pleasant, South Carolina
Feb 22, 2017


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2013-CP-07-1807

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SC Court of Appeals

William Loflin and Leslie Loflin, Appellants,

v.

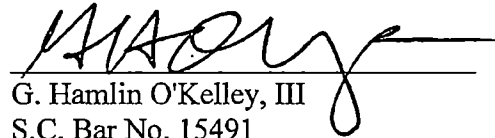
BMP Development, LP, Balsam Mountain Group, LLC, Coward, Hicks & Silver,
P.A., J.K. Coward, Jr., Chicago Title Insurance Company, and Counsellor Title
Agency, Inc., Defendants

Of which
Chicago Title Insurance Company is the Respondent.

**CERTIFICATION OF COUNSEL
PURSUANT TO RULE 211(b) SCACR**

I certify that I have served the Respondent's Final Brief and that it is in compliance with Rule 211(b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Appeal No. 2016-001840
Case No. 2013-CP-07-1807

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SC Court of Appeals

William Loflin and Leslie Loflin, Appellants,

v.

BMP Development LP, Balsam Mountain Group, LLC,
Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago Title
Insurance Company, and Counsellor Title Agency, Inc., Defendants,

Of which
Chicago Title Insurance Company is the Respondent.

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INTRODUCTION

The Brief of Respondent (“**Response**”) does not refer to the Brief of Appellants (“**Brief**”) anywhere in the Argument (except to identify where the Loflins cited one case), and the one time Chicago cites the Loflins’ Brief in its Statement of Facts is in support of a misstatement of fact.¹ Consequently, the Loflins limit this Reply to a brief discussion of the central issues in this appeal, and, simply for reference, list the points which Chicago does not contest (“**Addendum**”). The Loflins also respond to a new argument Chicago makes which did not form the basis of Judge Mullen’s decision (the specific provisions of the Policy). The Loflins will not repeat their unrefuted arguments which are fully set forth in their Brief.

SUMMARY OF REPLY

Chicago does not dispute the core facts, makes assertions wholly unsupported by the record, and ignores the Loflins’ legal arguments. Chicago simply cuts and pastes the same unsupported arguments it made in its motion and later submitted to Judge Mullen in its

¹Chicago cites the Loflins’ Brief for what it apparently believes is a fact that is necessary to support its motion: “the parties agree that the Recorded Plat is the only plat of record” [Response at 5]. The Loflins did *not* say that. Had Chicago served the Loflins with a request to admit (or inquired in a letter), they would have denied the truth of that statement. The Loflins did not and do not dispute that the Recorded Plat was the only plat of record *at the time of the closing, and in 2012 when Chicago conducted a title search* (after the Loflins put Chicago on notice of their claim). The Loflins subsequently had a new plat prepared on April 8, 2014 (“**2014 Plat**”), which they produced to Chicago during discovery, and which Mr. Loflin referenced in his affidavit [Loflin Affidavit]. (R. p. 631; R. pp. 636-637). The Loflins deny that this 2014 Plat – which, like the Unrecorded Plat, demonstrates the defect – is not of record for a subsequent purchaser to review. As the Loflins pointed out, unlike Chicago, they believe they have an ethical and legal duty to inform a subsequent purchaser of the defect [Brief at 17].

proposed Order without making any effort to address the Loflins' factual record or legal points.

The core issue in this appeal is whether or not coverage under the Policy is limited, as a matter of law, to defects on the public record. The Loflins challenged Chicago in their Brief to produce one case in America holding that title insurance is limited, as a matter of law, to matters of record [Brief at 15]. Given modern technology, Chicago had the ability to check millions of reported cases. The fact that Chicago could not produce one decision in support of Judge Mullen's finding on this core issue underscores the impropriety of summary judgment.

Additionally, in their Brief, the Loflins set forth seven distinct reasons why the specific Policy in this case is not limited to matters of public record [Brief at 12-23]. Chicago does not address, much less contest, any of these seven reasons. The evidence stands undisputed.

Neither does Chicago address, much less contest, the Loflins' argument that the record is undisputed that the defect existed at the time of the Closing [Brief at 24]. Chicago simply pretends that the undisputed evidence on this point does not exist.

Chicago's separate argument that Judge Mullen properly dismissed the Loflins' negligence claim is puzzling, to say the least, inasmuch as the Loflins told this Court and Chicago that they were not appealing Judge Mullen's Order dismissing that count [Brief at 2, n. 4].

Finally, Chicago's argument that this Court should not apply the twenty year statute of limitations because, "The Loflins knew some seven (7) years before filing suit that they knew of an issue regarding their property," is nonsensical. In any event, the record is undisputed that the Loflins timely instituted this lawsuit after Chicago breached the Contract of Insurance (which Chicago concedes is a pre-requisite for recovery) [Addendum ¶¶ 5, 6; *see* Brief at 26].

ARGUMENT

A. THE LOFLINS' BREACH OF CONTRACT CAUSE OF ACTION

1. The Policy Is Not Limited To Matters Of Public Record

Chicago's argument is based on a single proposition: that the Loflins have no claims for damage under the Policy based upon Chicago's erroneous view that coverage is limited, as a matter of law, to matters of public record [Response at 9-10]. In turn, that argument is based upon a house made of one card: that a North Carolina statute protecting subsequent purchasers from defects not of record somehow trumps the parties' Contract of Insurance. The Loflins are not subsequent purchasers, and the statute does not address the dilemma that the Loflins will face with a subsequent purchaser. *See Infra* pp. 5-6. As previously set forth by the Loflins' in their Brief, which Chicago does not address, Chicago's position fails as a matter of law, as a matter of procedure, and as a matter of fact.

As a matter of law, the burden is on Chicago to prove that it is entitled to judgment as a matter of law. The Loflins challenged Chicago to find one case in America in support

of its sole foundational position [Brief at 15-16]. Chicago has cited no case. Neither did Judge Mullen.²

As a matter of procedure, Chicago ignores the Loflins' argument that summary judgment is barred under the law of the case doctrine. The exact same issue based upon the exact same record was decided by Judge Kinard in denying Chicago's motion to dismiss. Chicago sought dismissal and later summary judgment based upon the identical facts set forth in the Loflins' operative Complaint. Nothing changed between the hearing before Judge Kinard and the hearing before Judge Mullen. The bottom line is that Judge Mullen disagreed with Judge Kinard's rejection of the precise argument that Chicago made on both occasions. The law of the case doctrine forbade her from reversing Judge Kinard.³

As a matter of fact, Chicago does not address, much less contest, a myriad of facts which prove that Judge Mullen committed reversible error when she held Chicago could not be responsible under its Contract of Insurance absent a defect on the public record [Brief at

²Even before the Loflins submitted their Memorandum in Opposition below, Judge Mullen told the parties that – unlike Chicago's representative – she had a “problem” with holding a title insurance company “responsible for something that isn't recorded,” even where the seller had committed a fraud expressly covered by the Contract of Insurance [Hearing (June 13, 2016) at 56-57]. (R. p. 433, line 16 - p. 434, line 5).

³Chicago suggests in its Standard of Review that the Loflins are confused over the standard of review [Response at 8]. The Loflins disagree [Brief at 21-23], but the important point is that Chicago did nothing to change the scope of review when it again relied on the operative complaint in support of the identical argument it made to Judge Kinard.

12 - 21; Addendum ¶¶ 12-15, 17-27].

In addition, the Loflins noted that their counsel (the Coward Defendants) told the Loflins and Chicago that they limited their certification to “an examination of the title to the real estate” [Brief at 19]. The Loflins then challenged Chicago to explain why it did not likewise make such a statement in its Policy [Brief at 19]. Again, Chicago simply ignores the Loflins’ challenge. It knows that there is nothing in its Policy – which must be read in the light most favorable to the Loflins – suggesting that coverage is limited to matters of public record.⁴

The only legal authority Chicago cites, and the only legal authority relied upon by Judge Mullen in her Order, for the proposition that as a matter of law, coverage is limited to matters of public record, is a North Carolina statute providing that prospective purchasers should be able to rely on the public record. As the Loflins showed in their Brief [Brief at 15-17] – which once again Chicago ignores – the North Carolina statute affords Chicago no protection. Again, Chicago’s own witness testified that the Policy governs, and nowhere in the Policy does it suggest that coverage is limited to matters of public record.

Chicago does not explain to this Court what it would have the Loflins tell a subsequent purchaser. The Loflins argued that in good faith they would have to point out

⁴Nor did Chicago address the footnote to this challenge in which the Loflins pointed out that, unlike their counsel (the Coward Defendants), Chicago has never asserted that it exercised the necessary degree of care and skill “because, unlike a professional, such a defense is not available to a company that insures risks. There is a fundamental distinction between an insurance company and a lawyer” [Brief at 19, n. 16].

that the Recorded Plat, unlike the Unrecorded Plat and the 2014 Plat, does not reflect what is on the ground, and that if they did not disclose this problem, “they would subject themselves to a lawsuit for fraud and deceit” [Brief at 20-21]. Surely this is not behavior the lower Court intended to enable or even encourage.

Finally, Chicago does not address the Loflins’ third challenge:

The Loflins acknowledge that if they sold the property, the subsequent purchaser would have good title. Despite the public record, however, the subsequent purchaser would also have less acreage and a road going through the property. If the Loflins did not disclose these problems, they would be subject to a lawsuit for fraud and misrepresentation. **The Loflins challenge Chicago (again) to tell this Court if it will defend such a lawsuit in accordance with the terms of the Policy it issued in exchange for the Loflins’ premium.**

[Brief at 17 (emphasis supplied)]. If Chicago will defend such a lawsuit, that is unmistakable evidence that the Policy affords coverage. If Chicago will not defend such a lawsuit, it confirms that the Policy the Loflins paid for is essentially worthless because the Loflins already had coverage for defects of record through their counsel’s certification. By granting summary judgment, the Court ignored the incongruity of the facts and Chicago’s position.

2. The Defects Existed As Of The Closing

Chicago argues again that it is not responsible under the Policy for defects which did not arise until after the Closing [Response at 13]. However, Chicago does not dispute that “the record is absolutely undisputed that all risks covered by the Policy existed prior to the Closing [Brief at 24; Addendum ¶29].

3. There Are, At A Minimum, Material Issues Of Fact As To Whether

Events Triggered Coverage⁵

Chicago argues that, “None of the Title Risks set forth in the Owner's statement of coverage are triggered, and, perhaps more importantly, the allegations of the unrecorded plat affect title **after** the Policy Date, meaning they are specifically excluded from coverage under the Policy. As stated above and here again, the Loflins' title is as shown on the Recorded Plat and only on the Recorded Plat” [Response at 12-13 (emphasis in original)].

The Loflins understand and have addressed above Chicago’s point that the Policy only covers defects which existed at the time of the Closing. The Loflins do not understand what other point Chicago is trying to make, if any.

The Loflins previously told the Court that, “Because Judge Mullen did not analyze the Contract, the Loflins will not brief the particular risks covered or the liberal rules of construction in favor of an insured” [Brief at 14, citing Memorandum in Opposition at 24-27 (footnote omitted)]. (R. pp. 343-346). This conclusion is buttressed by the fact that Chicago does not analyze any of the provisions of the Policy in its Response.

In addition, if Chicago contends that the Policy terms prevent coverage even if the Policy (and the parties’ ability to contract) is not limited as a matter of law to matters found in the public record, the proper course would be for this Court to remand the matter for discovery, if necessary, whereupon the Circuit Court could make factual findings on the specific terms. Again, the Circuit Court did not analyze the Policy, much less in light of the

⁵The Loflins reserve the right to seek summary judgment upon remand.

presumptions in favor of the insured.

Notwithstanding these views, however, Chicago did list certain provisions and exclusions in the Policy [Response at 11-12]. Although Chicago does not discuss any of these provisions or exclusions, out of an abundance of caution, the Loflins will briefly show that at a minimum, there are issues of fact as to whether or not the Policy provides coverage, particularly given the presumptions in favor of the insured.

a. Uncontroverted Facts

The following are uncontroverted facts:

- The Loflins have a road going through their Lot 108.
- The road appears adjacent to Lot 108 on the recorded plat which predates the sale of his property and dissects the property on an unrecorded plat which also predates the sale of their property.
- Randy Herron testified that Balsam received the unrecorded plat on the day it was created (9 days before the Closing) [Ex. 25 (Herron deposition at 44)]. (R. p. 487, lines 5-8).
- The Loflins did not know that the road went through their property prior to the Closing.
- The Loflins purchased an insurance Policy from Chicago Title.
- Chicago Title drafted the insurance Policy.
- Upon discovery of the fraud perpetrated by the seller coupled with the fact that someone claimed ownership on a portion of their land, the Loflins filed a claim with Chicago on March 23, 2012. (R. p. 628).
- Chicago refused to honor the contract, denying the claim on August 21, 2012. (R. pp. 629-630).

- The Loflins have attempted to shut the road and the steel posts were pulled up and the road paved.
- In the numbered risks, the contract specifically provides coverage for (1) someone else owning an interest in your land, (3) fraud, (4) defective recording of any document, (9) others having rights arising out of leases, contracts or options, (10) someone else having an easement and (14) other defects liens or encumbrances.
- The Definitions section of the Policy defines easement as “the right of someone else to use your land for a special purpose.”
- The Definitions section of the Policy defines Title as “the ownership of your interest in the land, as shown in Schedule A.”

b. The Policy

i. Drafted by Chicago Title

The Court ignored an axiom of contract law. Chicago Title is the drafter of the contract. “Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.” *Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 499-500, 649 S.E.2d 494, 502 (Ct. App. 2007); *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (quoting 17A C.J.S. *Contracts* § 324). Chicago could have very easily put in a simple sentence that stated clearly that the only covered risks are deficiencies in the public record. Instead Chicago provided numbered risks that, by

necessity, must be discovered outside the public record. Fraud, adverse possession,⁶ mistaken recordings, encroachments, easements by necessity, as well as many common easements are not issues of public record.

ii. The Context of the Transaction

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties.” *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80–81, 562 S.E.2d 482, 484–85 (Ct.App.2002); accord *D.A. Davis Constr. Co., Inc. v. Palmetto Props., Inc.*, 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984); *Williams v. Teran, Inc.*, 266 S.C. 55, 59, 221 S.E.2d 526, 528 (1976). The intention of the parties in the transaction was to provide insurance for the landowner for the unknown risks of ownership beyond the risks that can be ascertained by a simple title opinion. The contract language extends beyond and does not confine itself to merely those matters of record title. If it was Chicago Title’s secret understanding of the contract that Chicago is only obligated to matters of public record, Chicago certainly did not convey that to the Loflins through their agent (who also had served as the Loflin’s attorney, the agent of Balsam Mountain and fiduciary to the Loflins, and as attorney for Balsam Mountain) or in writing. However, parties are governed by their outward expressions not their secret intentions. *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767,

⁶North Carolina recognizes adverse possession of land. *Rushing v. Aldridge*, 214 N.C. App. 23, 713 S.E.2d 566 (2011). Adverse possession of land is not on public record. Adverse possession would certainly qualify as someone else owning an interest in the land. Strong argument can be made that the road meets the requirements of adverse possession.

769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93–94, 594 S.E.2d 485, 493–94 (Ct.App.2004). Chicago’s attempt to relegate its liability to merely a redundant insurance provider with coverage that is secondary to a real estate attorney’s E & O coverage is not an expressed intention to homeowners and contradicts the plain language of the Policy. Further, our Courts have been consistent that if there is any question about the intent of the parties, the determination of the parties’ intent is then a question of fact for the jury to determine. *South Carolina Dep’t of Natural Resources*, 345 S.C. at 623, 550 S.E.2d at 303.

iii. The Specific Policy Provisions

Whether the Court agrees that the plain reading leads one to the conclusion that title means ownership, or the Court construes the ambiguities in the Policy against the drafter, even examination of the first sentence and the defined term used in the first sentence reveals that this Policy covers risks beyond the public record.

- The covered risk explicitly named and listed first in the Policy is that “someone else owns an interest in your land.” Notwithstanding the reality that according to every subsequent survey that has been done on the property since the survey resulting in the recorded plat, Lot 108 is not shaped and does not contain what the Loflins insured, the Loflins have to deal with Balsam and its successors exerting ownership of the land covered by the road. Mr. Loflin submitted an affidavit that he took steps consistent with ownership of property, planting steel posts. Inconsistent with that ownership, those steel posts were destroyed and a road paved over his objection.
- The third covered risk is fraud or forgery. The documents show that the seller knew of a plat that showed the road dissecting his property before the sale and did not record the plat, but rather went forward with the sale. Then years later, the seller tried to slip one past the goalie by asking the Loflins to execute quit claim deeds. This is fraud. It is specifically covered by the Policy. The Defendant who committed the fraud is in default. Those allegations are

established as a matter of law.

- The fourth covered risk is defective recording of any document. Craig Lehman, the former President of Balsam stated that the reason the recorded plat was wrong was that the correct plat was not delivered [Ex. 11 (Lehman deposition at 55)]. (R. p. 464, lines 14-15). If the wrong plat was filed, this is specifically covered.
- The ninth covered risk is if “other have rights arising out of leases, contracts or options.” To the extent that the HOA at Balsam exerts rights to the road and the other excluded property rightfully belonging to the Loflins through contracts of succession with the original owners, those rights are rights arising out of a contract or option and impact the ownership of Lot 108.
- The tenth covered risk is that “someone else has an easement on your land.” Chicago elected to define easement as “the right of someone else to use your land for a special purpose.” Chicago’s loose definition does not require any impact on record title. The right to use a road crossing Lot 108 meets this definition.
- The fourteenth covered risk is for “other defects, liens or encumbrances.” First this description is unclear by nature. (“A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.”) It is not knowable to a purchaser what other encumbrances or defects Chicago may cover. Second, Craig Lehman stated that, “I knew we (Balsam) had encroached on the property and what they (the Loflins) purchased wasn’t in agreement with the master plan or their plat” [Ex. 11 (Lehman deposition at 31)]. (R. p. 461, lines 21-24).

None of this was addressed by the lower Court or by Chicago in it’s brief. It is clear that the harm done to the Loflins triggers at least one of these provisions. Even if the Court does not feel it is clear, there is an issue of material fact concerning the conclusions to be drawn from the known facts. *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 154, 758 S.E.2d 483, 492 (2014), *reh'g denied* (June 13, 2014)(emphasis supplied)(“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to

clarify the application of the law” and “**should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.**”).

iv. The Testimony of Chicago Avers Exactly The Opposite of the Court’s Ruling

In response to Plaintiffs’ request to depose a company representative, Chicago produced Cynthia Baines. Ms. Baines is senior claims counsel for Fidelity National, the owner of Chicago. While the Court ruled that Chicago’s Policy coverage is confined to only matters of record title, senior counsel produced as Chicago’s representative testified to the exact opposite.

Q. Is Chicago’s position that it does not provide coverage so long as the record title is correct?

A. I would say that the coverage is governed by the terms and conditions of the policy so there are possibly circumstances where there would be coverage for things that are not of record title.

[Ex. 24 (Baines Deposition at 12)]. (R. p. 480, lines 2-9).

B. NEGLIGENCE

Chicago devotes an entire section to arguing that the Loflins’ Negligence Cause of Action should be stricken [Response at 15-16]. Elsewhere, Chicago argues against certain statements contained in the Loflins’ negligence allegations [Response at 6]. As stated above, the Loflins expressly told Chicago and this Court in their Brief that they are not pursuing the Negligence Count [Brief at 2, n. 4].

C. STATUTE OF LIMITATIONS

Chicago does not contest that, “Judge Mullen held that the statute of limitations begins to run ‘on the date the party first knew or should have known by the exercise of reasonable diligence that a cause of action has arisen. At the time a party should realize his injury is attributable to someone else's actions, the statute begins to run’” [Brief at 25].

Chicago does not dispute that it “refused to perform under the Contract of Insurance on August 21, 2012,” and that “it was not until 2012 that the Loflins knew that the encumbrance (as well as the fraud) predated the Closing [Brief at 25-26; Addendum ¶39-41]. Neither does Chicago dispute that, “The Loflins had twenty years (not three years) to bring their lawsuit” [Brief at 28; Addendum ¶42]. In summary, Chicago does not attempt to refute that it does not show, as a matter of law, that this lawsuit is time barred.

The Loflins had twenty years (not three years) to bring their lawsuit. Not only did the Court examine extraneous matters beyond when the triggering breach of an insurance contract occurred to determine when the statute of limitations begins to run, the Court applied the wrong statute. In this matter, the particular facts of the case would lead to an expansion of the rights of the Loflins, not diminution. Because the formation of the title Policy was a required part of the transaction selling real property secured by a mortgage, S.C. Code Ann. §15-3-520 which provides for a twenty year statute of limitations in that exact scenario. See *Suttles v. Wood* (S.C.App. 1984) 280 S.C. 272, 312 S.E.2d 574.

This Court has answered the question of which statute of limitations to apply on

actions concerning title insurance and applied §15-3-520. The Court stated in *Lyons v. Fid. Nat. Title Ins. Co.*, 415 S.C. 115, 129, 781 S.E.2d 126, 133 (Ct. App. 2015), *reh'g denied* (Jan. 21, 2016) that:

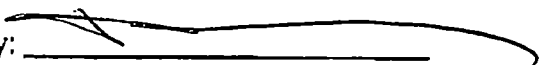
A twenty-year statute of limitations allows policyholders to carefully monitor situations as they unfold, ultimately preventing the bringing of unnecessary claims or litigation. Thus, we agree with the circuit court that “the policies are indeed sealed instruments and that the twenty-year statute of limitations applies.”

The Order applies the wrong statute.

CONCLUSION

For the foregoing reasons, and the reasons set forth in the Loflins' Brief, the Order and Judgment below should be reversed.

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March 3, 2017

ADDENDUM

FACTS AND ARGUMENTS WHICH CHICAGO DOES NOT DISPUTE

1. When Mr. Lehman informed the Loflins that there was an encroachment on Lot 108, that the property contained only 1.4 acres, and that a road went through the property, “Mr. Lehman believed and communicated to the Loflins that the road had been constructed on Lot 108 *after* the closing” [Brief at 8 (emphasis in original)].

2. “Mr. Lehman specifically denied that he ever saw a plat that was dated before the Closing, other than the Recorded Plat,” and that he “was not even aware of a predated plat until several years after he left Balsam in late 2009” [Brief at 8].

3. *“Contrary to the assumptions made by Chicago and Judge Mullen, there is nothing in the record suggesting that Mr. Lehman ever saw the Unrecorded Plat, much less provided the Loflins with a copy in 2006”* [Brief at 8 (emphasis in original)].

4. “At no time did Balsam tell the Loflins that it knew before the Closing that Lot 108 contained only 1.4 acres with a road through it” [Brief at 8-9].

5. “In early 2012, the Loflins first learned that two weeks before the original Closing, a plat had been prepared for Balsam, which showed that Balsam Mountain Preserve Road went through their property and reflected that Lot 108 had less acreage than in their Deed and Recorded Plat” [Brief at 9 (internal citation omitted)].

6. *“Based upon this fact, for the very first time, not only did the Loflins believe that they had been defrauded, or at a minimum were entitled to rescission, but they recognized for the first time that Chicago’s Policy was applicable to the transaction because the encroachment existed at the time of the closing”* [Brief at 9 (emphasis in original)].

7. “Since the foreclosure, Balsam’s successors have exercised control over Balsam Mountain Preserve Road through the Loflins’ property and .437 acres owned by the Loflins,” and that, “The Loflins have objected to this encroachment, but Balsam and its successors have refused to remedy this situation, and have continued to encroach and continuously trespass upon Lot 108” [Brief at 10].

8. “The Association informed the Loflins that if they attempted to close the road encroaching through their property, it would not defend the Loflins from potential lawsuits filed by other Balsam property owners for limiting access to their property” [Brief at 10].

9. “On January 23, 2015, the Loflins took the deposition of Randy Herron, the surveyor who prepared both the Recorded Plat and Unrecorded Plat,” and “Mr. Herron testified that he had provided the Unrecorded Plat to Balsam *before* the closing” [Brief at 10 (emphasis in original)].

10. After taking Mr. Herron’s deposition, “the Loflins conducted another survey which confirmed that, in fact, the road actually cuts through Lot 108 and reduces their acreage” [Brief at 10-11].

11. “In 2016, the Association paved the road through Lot 108” [Brief at 11].

12. Chicago’s representative testified that “the coverage is governed by the terms and conditions of the policy so there are possibly circumstances where there would be coverage for things that are not of record title” [Brief at 12].

13. “The language of the Policy itself demonstrates the error of Judge Mullen’s finding that liability is limited to what is a matter of record” [Brief at 13].

14. “If Chicago wanted to limit coverage to matters of public record, it could have clearly stated that limitation in the Policy” [Brief at 14-15].

15. “There is simply no evidence in the record suggesting that any consumer should know (much less actually knows) that title insurance is limited to risks already covered by an attorney’s title opinion,” and, “It is undisputed that the Loflins did not have that expectation when they paid for their Policy” [Brief at 15].

16. “Judge Mullen cited no case from anywhere in the nation supporting the proposition that a title insurance company is protected, as a matter of law, despite the policy terms to the contrary. The absence of such authority demonstrates the extremeness of Judge Mullen’s core ruling” [Brief at 15-16].

17. “The Unrecorded Plat did not *create* the encumbrance. The Unrecorded Plat *revealed* the encumbrance” [Brief at 16].

18. “It is undisputed that the Loflins were defrauded” [Brief at 16].

19. “It is undisputed there is an encumbrance on the Loflins’ property, i.e. there is a paved road going through their home site” [Brief at 16-17].

20. “If the Loflins did not disclose these problems, they would be subject to a

lawsuit for fraud and misrepresentation” [Brief at 17].

21. “The insurance policy covers fraud,” and, “The Loflins do not have to prove that Chicago committed fraud in order to recover for fraud committed by Balsam, which is an insured risk” [Brief at 17-18].

22. “There is a fundamental difference between an insurance company that insures risks and a lawyer who must perform an examination of the Courthouse records in a reasonable manner” [Brief at 19].

23. “If, in fact, Chicago’s position is that its Contract of Insurance does not cover any defects which are not as of record, it could have easily said that in one unambiguous sentence. Nowhere in the Contract of Insurance, however, does Chicago, even stretching the English language to its outer limits, suggest that” [Brief at 19].

24. “It is self-evident that a lot containing 1.4 acres with a road going through it is worth less than a lot containing 1.85 acres without a road dissecting it” [Brief at 20].

25. “Judge Mullen’s conclusion is not only refuted by common sense (no one would want a home site with a paved road running through it), but the undisputed testimony of Balsam’s former General Manager (Mr. Lehman) that the encroachment had a ‘negative impact on the property’” [Brief at 20].

26. “If the Loflins could find a purchaser for the subject property, and pointed out that the Recorded Plat does not reflect what is on the ground – as they in good faith would be required to do – they would get far less for the property” [Brief at 20].

27. “If the Loflins did not disclose this problem, they would subject themselves to a lawsuit for fraud and deceit” [Brief at 20-21].

28. Judge Mullen’s substantive rulings were barred by the law of the case doctrine [Brief at 21-23].

29. “As set forth above, however, the record is absolutely undisputed that all risks covered by the Policy existed prior to the Closing” [Brief at 24].

30. “Judge Mullen did not discuss, much less attempt to distinguish, the evidentiary record the Loflins submitted on this fundamental point” [Brief at 24].

31. “The encumbrance (the road through the Loflins’ property) existed before the

Closing. On its face, the Unrecorded Plat itself is dated before the closing [Unrecorded Plat (February 6, 2002)]” [Brief at 24]. (R. p. 586).

32. “Balsam’s fraud (a risk covered by the Policy), which Balsam did not contest, existed before the Closing. The policy also explicitly covers mistakes in recording” [Brief at 24-25].

33. “Judge Mullen held that the statute of limitations begins to run ‘on the date the party first knew or should have known by the exercise of reasonable diligence that a cause of action has arisen. At the time a party should realize his injury is attributable to someone else’s actions, the statute begins to run’” [Brief at 25].

34. “Chicago refused to perform under the Contract of Insurance on August 21, 2012” [Brief at 25].

35. “There was no breach to discover until August 21, 2012. The action was timely filed on July 18, 2013” [Brief at 26].

36. “Assuming *arguendo* that the statute of limitations on a breach of contract action begins to run prior to the date of the breach, it is undisputed that it was not until 2012 that the Loflins knew that the encumbrance (as well as the fraud) predated the Closing” [Brief at 26].

37. Judge Mullen did not address Mr. Loflin’s Affidavit [Brief at 26-27].

38. Mr. Loflin’s Affidavit states that, “In 2006, Craig Lehman informed me that there was an encroachment on Lot 108, that the property contained only 1.4 acres, and that Balsam Mountain Preserve Road went through the property. Mr. Lehman suggested that the road had been constructed through Lot 108 after the Closing. Because I knew the Recorded Plat showed no road through my property, I had no reason to doubt that the road Mr. Lehman was now disclosing was an after purchase encroachment.” [Brief at 27].

39. Mr. Loflin’s Affidavit states at Paragraph 5 that, “In early 2012, I first learned that Balsam Mountain Preserve Road went through my property before the Closing, which also resulted in less acreage as set forth in my Deed and Plat, as reflected in an Unrecorded Plat that had been prepared for Balsam before the Closing” [Brief at 27].

40. “The Loflins, who have their life savings tied up in this real estate investment certainly would have looked to their insurance company if they had thought it had responsibility for their loss. Instead, believing Balsam – that the road had been constructed

after the closing – they worked with Balsam for several years trying to resolve this situation (while their membership dues were suspended)” [Brief at 27-28].

41. “To their shock and dismay, they [the Loflins] discovered in 2012 that Balsam knew before the Closing that a road went through their property. That is what triggered the statute of limitations against Chicago. There is no reason to believe that the Loflins slept on their rights when the Court below held that they had no rights until that happened” [Brief at 28].

42. “The Loflins had twenty years (not three years) to bring their lawsuit” [Brief at 28].

43. “Not only did the Court examine extraneous matters beyond when the triggering breach of an insurance contract occurred to determine when the statute of limitations begins to run, the Court applied the wrong statute” [Brief at 28].

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appeal No. 2016-001840
Case No. 2013-CP-07-1807

RECEIVED

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SC Court of Appeals

William Loflin and Leslie Loflin, Appellants,
v.

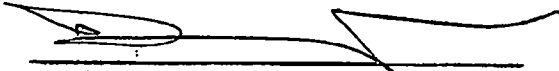
BMP Development LP, Balsam Mountain Group, LLC,
Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago Title Insurance
Company, and Counsellor Title Agency, Inc., Defendants,

Of which
Chicago Title Insurance Company is the Respondent.

CERTIFICATE OF COUNSEL

Appellants' counsel hereby certifies that this Final Reply Brief is in compliance with Rule 211(b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

March 3, 2017


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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

William Loflin and Leslie Loflin, Appellants,

v.

BMP Development, LP, Balsam Mountain Group, LLC,
Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago
Title Insurance Company, and Counsellor Title Agency,
Inc., Defendants,

Of which Chicago Title Insurance Company is the
Respondent.

Appellate Case No. 2016-001840

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 5633
Heard January 16, 2019 – Filed March 27, 2019

REVERSED AND REMANDED

Daniel A. Speights and Algernon Gibson Solomons, III,
both of Speights & Solomons, LLC, of Hampton, for
Appellants.

George Hamlin O'Kelley, III, of Buist, Byars & Taylor,
LLC, of Mt. Pleasant, for Respondent.

GEATHERS, J.: In this property dispute, Appellants William and Leslie Loflin challenge the circuit court's order granting summary judgment to Respondent Chicago Title Insurance Company (Chicago Title) on Appellants' breach of contract claim against Chicago Title. Appellants argue the circuit court erred by (1) concluding that the coverage of the title insurance policy issued by Chicago Title (the Policy) was limited to defects of record; (2) finding there were no defects in Appellants' title when the Policy was issued; and (3) concluding that their breach of contract claim against Chicago Title was barred by the statute of limitations. We reverse and remand for a trial on the merits.

FACTS/PROCEDURAL HISTORY

On September 26, 2000, Appellants purchased an interest in Defendant BMP Development, LP (Balsam), f/k/a Balsam Mountain Preserve, Limited Partnership, which was formed for the purpose of developing Balsam Mountain Preserve as a residential community in Jackson County, North Carolina.¹ Balsam Mountain Company, LLC served as the general partner, and Appellants were two of several limited partners. Although Balsam was a foreign entity, its promoter, Chaffin/Light Associates, had its principal place of business in Beaufort County and was doing business in Beaufort County "and throughout South Carolina." Chaffin/Light had previously formed and managed three developments in Beaufort County, i.e., Spring Island, Callawassie, and Chechessee Creek Club, and, through Balsam Mountain Preserve, sought to replicate Spring Island "on higher ground."

Balsam arranged for each "Founding Limited Partner" to enter into a Reservation Agreement to acquire the right to select and purchase a lot, a/k/a Homestead, in the development. Appellants entered into their Reservation Agreement on October 19, 2001, acquiring the right to purchase Balsam Mountain Preserve Homestead Number 108 (Lot 108), which was located on a mountainside in Phase I of the development. At that time, Lot 108 was not staked, but Balsam advised Appellants that the lot was approximately 1.9 acres and was circumnavigated by Balsam Mountain Preserve Road (Preserve Road).

On February 15, 2002, Appellants purchased Lot 108 for \$495,000. On February 19, 2002, Chicago Title issued the Policy to insure Appellants' title to Lot 108, described in the Policy as "containing 1.837 acres, as shown on that certain plat

¹ Appellants paid \$350,000 for their limited partnership interest.

dated the 10th day of December, 2001, prepared by Herron Land Surveying, certified by James Randy Herron, Professional Land Surveyor (N.C. #3202), and recorded in the Jackson County Records in Plat Cabinet 11 at Slide 383."² According to Appellants, the December 10, 2001 plat indicated Lot 108 was 1.837 acres and represented Preserve Road as circumnavigating the lot, and the recorded deed to Lot 108 incorporated this plat.³

In 2006, Balsam's President and CEO, Craig Lehman, advised Appellants that the size of Lot 108 was merely 1.4 acres and that Preserve Road traversed the property rather than circumnavigating it. At that time, Lehman was not aware that there was a second, unrecorded plat of Lot 108 reflecting the features described by Lehman or that the plat was prepared before the 2002 closing on the lot.⁴ Appellants believed from their discussions with Balsam that the second plat had been prepared sometime after the 2002 closing and that the Preserve Road encroachment was an "after purchase encroachment."

The unrecorded plat, which is dated February 6, 2002, indicates in dotted lines those boundary lines from the "original configuration" that bordered the acreage being shaved off the lot for a newly configured lot. The 2002 plat noted the date for the original configuration as December 10, 2001. The plat also shows Preserve Road traversing the northeastern part of the original configuration and a small area of the northwestern corner of the original configuration. Randy Herron, who had prepared the December 10, 2001 plat, also prepared the 2002 plat. He indicated that he delivered the 2002 plat to Balsam on or about February 6, 2002.

After notifying Appellants of their reduced acreage, Balsam asked Appellants to sign a quitclaim deed reflecting the reduced size of Lot 108 and Preserve Road running through the original configuration of the lot as shown in the second plat, but Appellants refused to do so. From that point forward, Balsam and its successor in interest, Balsam Mountain Group, LLC (BMG),⁵ exercised control over Preserve Road and the .437 acres in dispute. In early 2012, Appellants discovered that the

² According to Appellants, they refinanced their purchase of the lot in 2004 and again in 2006, and Chicago Title issued a policy insuring title to the lot on both occasions. According to Chicago Title, the latter policies were lenders' policies.

³ A copy of this plat, along with two additional plats dated February 6, 2002, and April 8, 2014, respectively, is included in the exhibit at the end of this opinion.

⁴ Lehman was not employed with Balsam until 2005.

⁵ According to Appellants, BMG purchased Balsam Mountain Preserve in October 2011, "at some point after it was sold at foreclosure."

unrecorded plat had been prepared for Balsam two weeks before the 2002 closing and, thus, Preserve Road actually encroached on the original configuration of Lot 108 before the closing.⁶

Subsequently, Appellants submitted a claim to Chicago Title based on Balsam's and BMG's reliance on the unrecorded plat; but Chicago Title denied the claim on August 21, 2012. On July 18, 2013, Appellants filed this action against Balsam Mountain Preserve Community Association (the Association), Chicago Title, and Counsellor Title Agency, Inc. (Counsellor Title), Chicago Title's agent, asserting causes of action for Continuous Trespass (as to the Association), Encroachment (as to the Association), and Breach of Contract (as to Chicago Title and Counsellor Title). Appellants also commissioned a new survey to confirm that Preserve Road traversed the 1.837 acres they purchased. This plat is dated April 8, 2014, and shows Preserve Road traveling in a winding path from the southeastern part of the lot to its northeastern part but not touching on the northwestern corner as shown in the February 2002 unrecorded plat.

On April 14, 2014, Appellants filed an Amended Complaint substituting Balsam for the Association, alleging that Balsam was the alter-ego of the Association, and adding the following causes of action against Balsam: Fraud, Negligent Misrepresentation, Rescission, Breach of Contract, "Breach of Contract with Fraudulent Intent Accompanied by Fraudulent Act," Breach of Fiduciary Duty, Conversion, Unjust Enrichment, Accounting, and Indemnification. As to Chicago Title and Counsellor Title, the Amended Complaint asserted causes of action for Breach of Contract and Negligence.

On April 16, 2014, Chicago Title filed a motion to dismiss the Amended Complaint, which the Honorable Ernest Kinard denied on September 3, 2014. Counsellor Title also filed a motion to dismiss the Amended Complaint on April 28, 2014, and Judge Kinard denied this motion as well. Subsequently, Chicago Title filed its Answer and asserted several affirmative defenses, including the statute of limitations.

Appellants then filed their Second Amended Complaint on January 6, 2015, to (1) add as defendants BMG and the law firm of Coward, Hicks & Siler, P.A. and J.K. Coward, Jr., the attorney who represented Appellants in their purchase of Lot 108 (collectively, the Coward defendants), and (2) add a cause of action for

⁶ In 2016, BMG paved Preserve Road over Appellants' objections.

Successor Liability (as to BMG) and numerous causes of action against the Coward defendants.

In July 2015, Chicago Title and Counsellor Title filed their respective motions for summary judgment, and Appellants filed a Third Amended Complaint on August 5, 2015. The Honorable Carmen Mullen conducted a hearing on Chicago Title's summary judgment motion on June 13, 2016. Judge Mullen issued an order granting the motion on August 25, 2016.

In her order, Judge Mullen concluded (1) Appellants' action was barred by the three-year statute of limitations set forth in section 15-3-530 of the South Carolina Code; (2) the February 2002 plat did not have any impact on Appellants' title to Lot 108 because this plat was unrecorded and pursuant to North Carolina statutory law, "unrecorded interests in land are invalid against subsequent purchasers of property"; (3) none of the Policy's "Covered Title Risks" were triggered by Appellants' allegations or evidence; (4) no defects in title were in existence when Chicago Title issued the Policy; and (5) there was no evidence of any negligence on the part of Chicago Title because no title search would have revealed the second, unrecorded plat. This appeal followed.⁷

ISSUES ON APPEAL

1. Did the circuit court err by concluding that the Policy's coverage was limited to defects of record?
2. Did the circuit court err by finding there were no defects in title when the Policy was issued?
3. Did the circuit court err by concluding that the breach of contract claim against Chicago Title is barred by the statute of limitations?

STANDARD OF REVIEW

This court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the

⁷ Appellants do not challenge summary judgment on their negligence cause of action against Chicago Title.

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all the inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009); *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

"Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Id.*

Further, "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803; *see also Radcliffe v. S. Aviation Sch.*, 209 S.C. 411, 420, 40 S.E.2d 626, 630 (1946) ("A scintilla of evidence is *any material* evidence that, if true, would tend to establish the issue in the mind of a reasonable jury." (emphasis in original) (quoting *In re Crawford*, 205 S.C. 72, 30 S.E.2d 841, 849 (1944))); *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724 (1935) (defining "scintilla" as the smallest trace). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). Moreover, "[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.*

LAW/ANALYSIS

I. Scope of Coverage

Appellants assert the circuit court erred by concluding that the Policy's coverage was limited to defects of record. At oral argument, Chicago Title conceded this point, and we agree.

In its order, the circuit court concluded that the "unrecorded plat cannot create any encumbrance and cannot create any damages for [Appellants] by [Chicago Title] as it has no impact upon [Appellants'] title to their property." The circuit court also concluded,

There is simply no breach by Chicago Title as [Appellants] received the title referenced in both their recorded deed and the [r]ecorded [p]lat referenced in that deed.

None of the enumerated "Covered Title Risks" in the Policy are triggered by [Appellants'] allegations related to the unrecorded plat or by any evidence presented to this [c]ourt

We begin our analysis by referencing case law concerning the construction of insurance policies.

Insurance policies are subject to the general rules of contract construction. The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary, and popular meaning.

Pres. Capital Consultants, LLC v. First Am. Title Ins. Co., 406 S.C. 309, 316, 751 S.E.2d 256, 259 (2013) (quoting *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012)).

Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. Ambiguous or conflicting terms, however, must be construed liberally in favor of the insured and strictly against the insurer. It is a question of law for the court whether the language of a contract is ambiguous.

Id. (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628).

"Generally, title insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title [that] are in existence at the time the

insured takes title." *Firstland Vill. Assocs. v. Lawyer's Title Ins. Co.*, 277 S.C. 184, 186, 284 S.E.2d 582, 583 (1981). "A title insurer is generally liable for losses or damages caused by defects in the property's title, and defects for which title insurance policies provide coverage may generally be defined as liens and encumbrances that result in a loss in the title's value." *Pres. Capital Consultants*, 406 S.C. at 316, 751 S.E.2d at 259 (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628). "The terms of individual insurance agreements can control the method of valuation, but the purpose of title insurance has been stated as seeking to place the insured in the position he thought he occupied when the policy was issued." *Id.* at 316, 751 S.E.2d at 259–60. "Generally, the measure of damages should 'compare the encumbered value of the entire tract of . . . land with what the value of the entire tract of land would be without any encumbrances.'" *Id.* at 316, 751 S.E.2d at 260 (alteration in original) (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628).

Here, the Policy lists the following pertinent "Covered Title Risks" if they affect the insured's title on the Policy Date:⁸

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity[,]
or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and
from the land.
6. There are restrictive covenants limiting your use of
the land.

⁸ The Policy defines "Title" as "the ownership of your interest in the land, as shown in Schedule A," and item 2 of Schedule A states, "Your interest in the land covered by this Policy is: Fee Simple and Easement" subject to a Deed of Trust for Lighthouse Community Bank in the amount of \$250,000.00 and the matters shown in Schedule B, which lists exceptions from coverage, such as taxes for 2002 and subsequent years.

7. There is a lien on your title because of:
 - a mortgage or deed of trust
 - a judgment, tax, or special assessment
 - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor or material furnished before the Policy Date—unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease[,], or to make a mortgage loan.
12. You are forced to remove your existing structure—other than a boundary wall or fence—because:
 - it extends on to adjoining land or on to any easement
 - it violates a restriction shown in Schedule B
 - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

Additionally, the Policy provides a definition for "Public Records": "title records that give constructive notice of matters affecting your title—according to the

state statutes where your land is located." This term appears in items 1 through 3 of the Policy's "Exclusions":

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

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

...

2. The right to take the land by condemning it, *unless*:
 - a notice of exercising the right *appears in the public records* on the Policy Date.

...

3. *Title Risks*:

...

- that are known to you, but not to us, on the Policy Date—*unless they appeared in the public records*

(emphases added).

First, if the term "Title Risks" in item 3 already excluded matters not in the public records, there would have been no need to add the phrase "unless they appeared in the public records." In other words, adding the phrase "unless they appeared in the public records" implicitly acknowledges that the risk may not appear in the public records. Therefore, there is a reasonable inference from the key language in item 3 that the term "title risk" includes matters that do not appear in the

public records. This lends context to the list of the fourteen Covered Title Risks. We also agree with Appellants' argument that nowhere in the Policy is there any language expressly stating the Policy generally excludes defects not appearing in the public records. Again, Chicago Title conceded this point at oral argument.

Further, Appellants assert that several of the listed Covered Title Risks applicable to this action are matters that are necessarily outside the public records. As to item 1, "Someone else owns an interest in your title," Appellants highlight the Policy's definition of "Title,"⁹ which does not reference the public records. Appellants also connect item 1 to their circumstances by highlighting the conformity of their own commissioned survey with the February 2002 plat showing that the reality of their ownership interest is not represented by the December 2001 plat appearing in the public records. Appellants note (1) Balsam's and BMG's continued assertion of ownership of the land underlying the Preserve Road encroachment, (2) the mysterious destruction of steel posts Appellants had placed in the ground to assert their ownership of certain areas in accordance with the recorded plat, and (3) BMG's disregard of Appellants' requests to leave Preserve Road unpaved.

As to Item 3, "Forgery, fraud, duress, incompetency, incapacity[,] or impersonation," Appellants note that Balsam was held in default for failure to answer the Amended Complaint and, thus, Balsam effectively admitted that it defrauded Appellants. We also note this item covers incompetency, which would fit Appellants' allegation that Balsam recorded the wrong plat, i.e., the December 10, 2001 plat, when it should have recorded the February 6, 2002 plat.

In sum, the Policy's plain language clearly indicates that it covers certain matters that would not necessarily appear in the public records. Not only is there a notable absence of the phrase "public records" in the list of Covered Title Risks but also as a practical matter, multiple items in this list are not necessarily consistent with the recordation of any documents, such as adverse possession, fraud, incompetency, and impersonation. Further, the Policy includes a notable exception to certain excluded Title Risks for those matters "appear[ing] in the public records," implying that the term "Title Risks" includes certain matters not appearing in the public records.

Even if the Policy's terms were ambiguous as to coverage, Appellants have presented at least a scintilla of evidence establishing a genuine factual issue

⁹ The Policy defines "Title" as "the ownership of your interest in the land" See *supra* n. 8.

concerning the parties' intent as to coverage of matters not appearing in the public records. *See* Rule 56(c), SCRCP (stating that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law." (emphasis added)); *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."); *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001) ("A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. It is a question of law for the court whether the language of a contract is ambiguous. *Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties.* The determination of the parties' intent is then a question of fact." (emphasis added) (citations omitted)).

Appellants cite the following deposition testimony of Chicago Title's representative, Cynthia Baines:

Q. Is Chicago's position that it does not provide coverage so long as the record title is correct?

A. I would say that the coverage is governed by the terms and conditions of the policy[,] so there are possibly circumstances where there would be coverage for things that are not of record title

Baines gave an example of someone impersonating a landowner and purporting to convey the owner's land to an insured under the Policy. This example would likely fall within item 3 of the Covered Title Risks, "Forgery, fraud, duress, incompetency, incapacity[,] or *impersonation*." (emphasis added).

Appellants also cite to William Loflin's supplemental affidavit as relevant to the intent underlying the Policy's language. This affidavit states that when Mr. Loflin purchased the Policy, he did not intend for the Policy's coverage to be limited to matters of public record. *See Pres. Capital Consultants*, 406 S.C. at 316, 751 S.E.2d at 259 (holding that ambiguous or conflicting terms in an insurance policy "must be construed liberally in favor of the insured and strictly against the insurer" (quoting *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628)).

Based on the foregoing, the circuit court erred in concluding, as a matter of law, that the Policy's coverage was limited to defects of record.¹⁰

II. Existence of Defect

Appellants assert the circuit court erred by finding there were no defects in Appellants' title when the Policy was issued, which was February 19, 2002. We agree.

"Title insurance is unique in that it is retrospective, not prospective." *Firstland Vill. Assocs.*, 277 S.C. at 186, 284 S.E.2d at 583.

The risks of title insurance end where the risks of other kinds begin. Title insurance, instead of protecting the insured against matters that may arise during a stated period after the issuance of the policy, is designed to save him harmless from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it.

Id. (quoting *Nat'l Mortg. Corp. v. Am. Title Ins. Co.*, 261 S.E.2d 844, 847–48 (N.C. 1980)).

Here, Appellants state that the unrecorded plat reflecting the Preserve Road encroachment is dated February 6, 2002, and the surveyor who prepared this plat, Randy Herron, indicated he delivered the plat to Balsam on approximately the same date. Therefore, the plat's preparation and delivery to Balsam pre-date the Policy's February 19, 2002 issuance. Appellants also challenge the circuit court's statement that they suffered no damages because the unrecorded plat had no impact on

¹⁰ Appellants also argue Judge Kinard's denial of Chicago Title's motion to dismiss the Amended Complaint was the law of the case and, thus, precluded Judge Mullen from concluding as a matter of law that the Policy's coverage was limited to matters of public record. They note that there were no differences in the factual record and legal arguments presented by Chicago Title as to both motions. Nonetheless, "[t]he denial of a Rule 12(b)(6) motion does not establish the law of the case nor does it preclude a party from raising the issue at a later point or points in the case." *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 431, 622 S.E.2d 564, 567 (Ct. App. 2005) (alteration in original) (quoting *Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995)).

Appellants' title. They distinguish between the unrecorded plat and what this plat *represents*, i.e., Preserve Road encroaching on their lot, the lot's diminished acreage, and the impact on the resulting value of the lot compared with the value of the lot as represented on the recorded plat. Appellants cite to testimony of Balsam's former President, Craig Lehman, indicating that the Preserve Road encroachment had a negative impact on the lot's marketability.

In other words, the recorded deed and plat do not reflect the reality of Appellants' interest in Lot 108 on the date the Policy was issued. While the February 2002 plat itself may not affect Appellant's title due to Balsam's failure to record it, Appellant's ownership interest in the land on the date of the Policy's issuance was affected by what the 2002 plat *reflected* on the ground, i.e., the Preserve Road encroachment and the diminished acreage. Notably, Lehman admitted to the existence of the Preserve Road encroachment and to the disconnect between what Appellants paid for and what the February 2002 plat accurately reflected on the ground. For these reasons, we reject Chicago Title's argument that the Policy does not cover these title defects because the February 2002 plat was not discovered until after the Policy's issuance. As to the land underlying the Preserve Road encroachment, Balsam has aggressively challenged Appellants' ownership interest. *See supra* Section I. Further, as previously stated, Appellants have presented evidence showing this encroachment has had a negative impact on the marketability of Lot 108. Hence, the Preserve Road encroachment and Appellants' loss in acreage fall within items 1, 3, and 14 of the Policy's "Covered Title Risks," i.e., "Someone else owns an interest in your title," "Forgery, *fraud*, duress, *incompetency*, incapacity[,] or impersonation," (emphases added) and "Other defects, liens, or encumbrances."

Based on the foregoing, Appellants presented, at the very least, a scintilla of evidence showing a defect in the title that Chicago Title insured in February 2002. *See Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."); *Radcliffe*, 209 S.C. at 420, 40 S.E.2d at 630 ("A scintilla of evidence is *any material* evidence that, if true, would tend to establish the issue in the mind of a reasonable jury." (emphasis in original) (quoting *In re Crawford*, 205 S.C. at 30 S.E.2d at 849)); *Bethea*, 177 S.C. at 529, 181 S.E. at 724 (defining "scintilla" as the smallest trace). Therefore, the circuit court erred in granting summary judgment to Chicago Title. *See* Rule 56(c), SCRPC (stating that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is *no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law." (emphasis added)).

III. Statute of Limitations

Appellants contend the circuit court erred by concluding that their breach of contract claim against Chicago Title was barred by the statute of limitations because (1) the action did not accrue until 2012 and, (2) the applicable statute of limitations is twenty years rather than three years. At oral argument, Chicago Title conceded that the applicable statute of limitations is twenty years pursuant to section 15-3-520(b) of the South Carolina Code (2005) and, thus, Appellants' breach of contract claim is not time-barred. We agree, and therefore, we need not address the date of the claim's accrual. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

The circuit court concluded that section 15-3-530 of the South Carolina Code applied to Appellants' breach of contract cause of action against Chicago Title. However, section 15-3-520 states that the limitations period is twenty years for the following causes of action:

- (a) an action upon a bond or other contract in writing secured by a mortgage of real property;
- (b) an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725.

S.C. Code Ann. § 15-3-520 (2005).

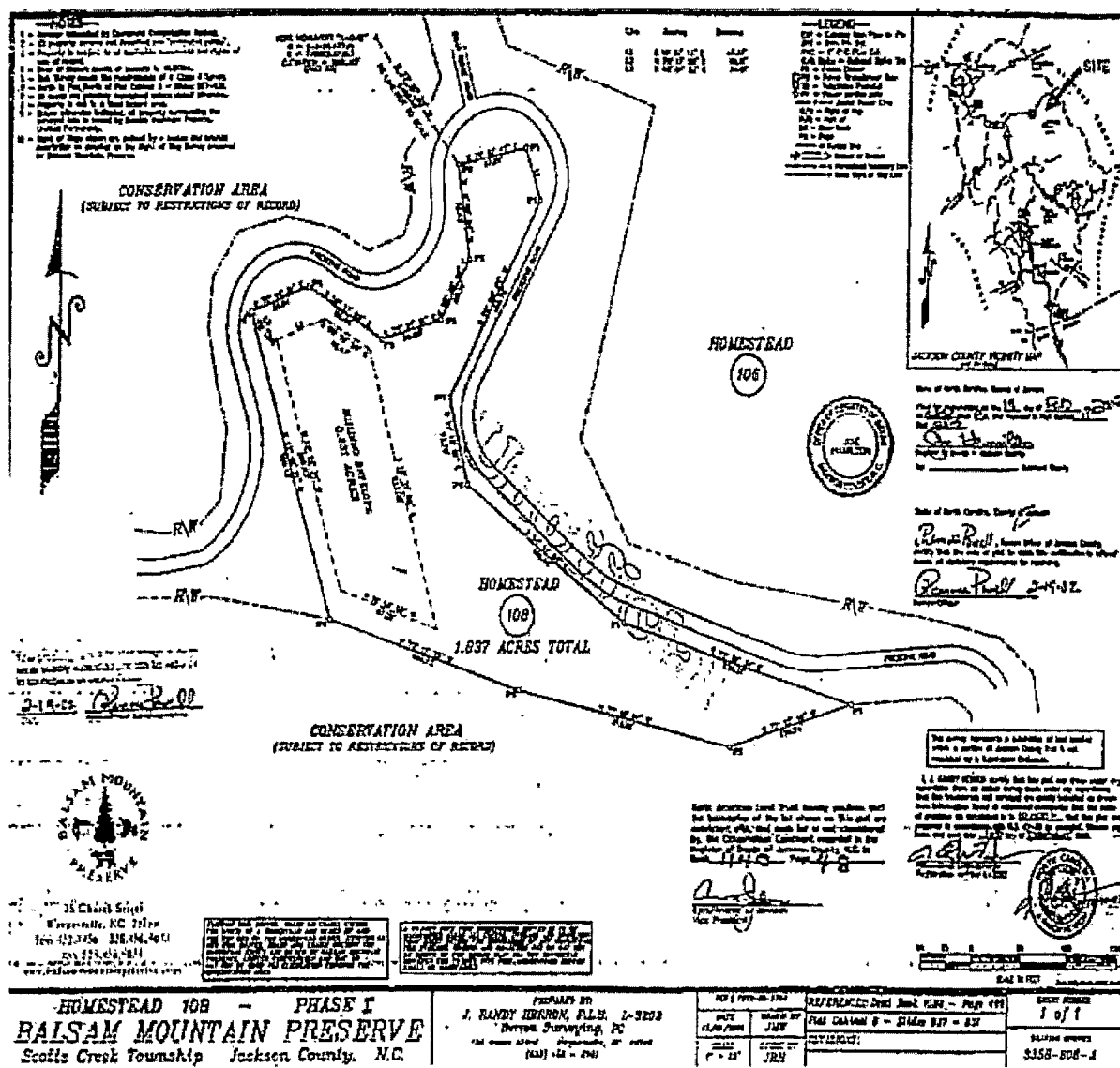
Here, the Policy qualifies as a sealed instrument because it bears the corporate seal of Chicago Title next to the signatures of its President and a second representative, which shows an intent to create a sealed instrument. Therefore, we agree that section 15-3-520 applies to the breach of contract claim against Chicago Title and the circuit court erred in concluding that this claim was barred by the statute of limitations.

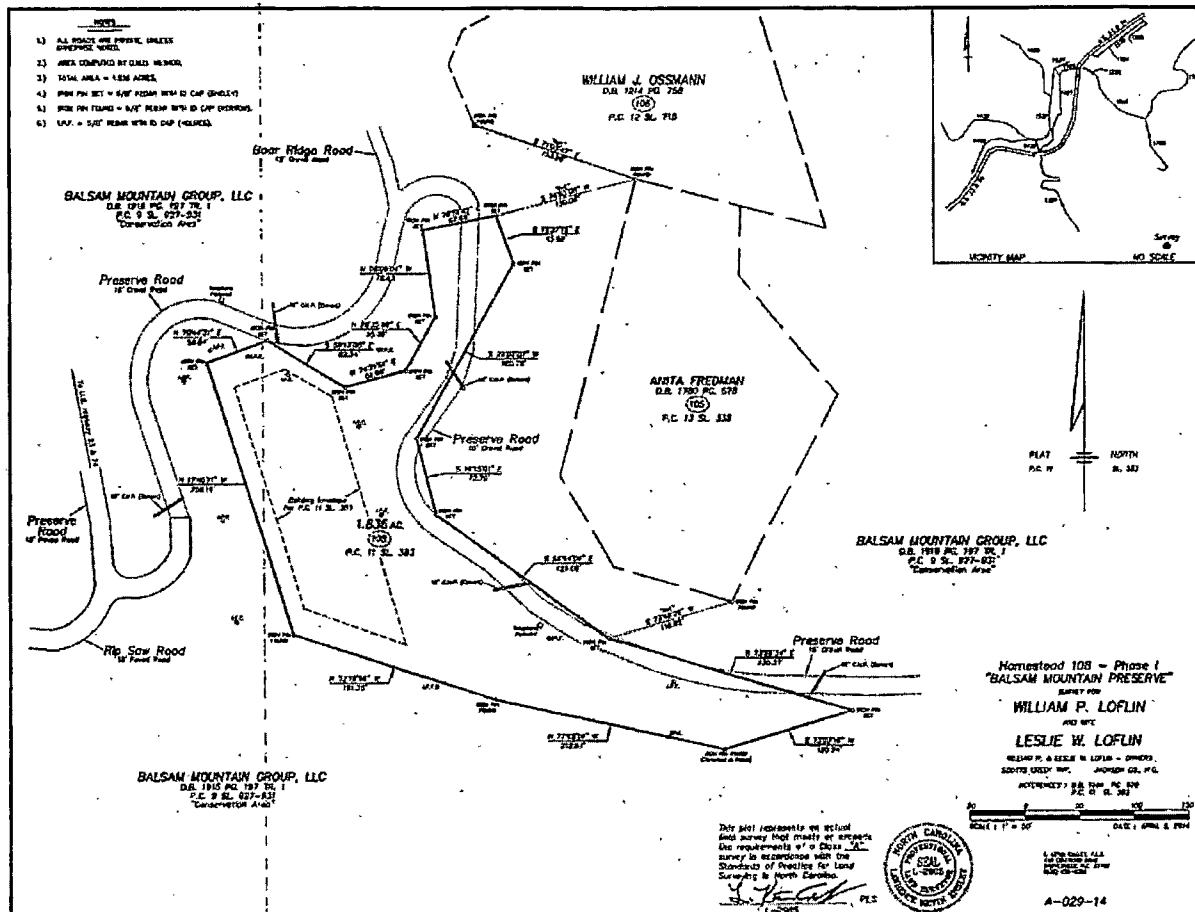
CONCLUSION

Accordingly, we reverse the circuit court's order granting summary judgment to Chicago Title, and we remand for a trial on the merits.

REVERSED AND REMANDED.

LOCKEMY, C.J., and HILL, J., concur.





89514

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen
Circuit Court Judge

Appellate Case No. 2016-001840

RECEIVED
APR 11 2019
SC Court of Appeals

William Loflin and Leslie Loflin Appellants,

vs.

BMP Development, LP, Balsam Mountain Group, LLC,
Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago
Title Insurance Company, and Counsellor Title Agency, Inc.,
Defendants,

Of which Chicago Title Insurance Company is the Respondent.

RESPONDENT CHICAGO TITLE INSURANCE COMPANY'S PETITION FOR
REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

Respondent Chicago Title Insurance Company ("Chicago Title"), pursuant to Rule 221(a), SCACR, hereby moves and petitions the Court to reconsider and rehear the within appeal and the Court's opinion entered March 27, 2019, as Opinion Number 5633 (the "Opinion"). This Petition is based on the grounds that the Court overlooked or misapprehended certain matters set forth herein, and Chicago Title respectfully requests the Court grant this Petition for Rehearing, vacate the Opinion, and affirm the circuit court's order.

In addition, pursuant to Rule 219(b), SCACR, Chicago Title suggests that such rehearing should be *en banc*.

SUMMARY OF ARGUMENT

The Opinion focuses at length on an issue not in dispute, not the basis of the circuit court's order, and conceded by Chicago Title. As written, the Opinion misapprehends North Carolina's controlling recording statutes, which require instruments affecting title to real property to be recorded in order to have priority over a subsequent purchaser for value, and which establish priority for interests in North Carolina real property from the time an instrument is recorded. The Court misconstrues the terms of the Policy to provide coverage for a road that existed only in theory on an unrecorded plat and was constructed after the Policy Date, thereby improperly transforming an excluded post-policy trespass claim into a matter covered by the Policy. The Court also misconstrues a basic insuring provision of the Policy providing coverage for claims related to the invalidity of certain instruments due to "fraud" or "incompetency" by transposing and expanding those terms to apply to other scenarios contrary to the plain meaning of the Policy. Finally, the Court creates a new procedural rule where a defendant is now bound by allegations made toward a co-defendant because the co-defendant fails to respond to the complaint.

The findings and conclusions of the Court should not be taken lightly. They will, without question, have a negative impact on the title insurance industry in South Carolina and affect how litigation with more than one defendant is conducted in South Carolina.

For these reasons, which are outlined in detail below, Chicago Title requests the Court grant this Petition for Rehearing, vacate the Opinion, and affirm the circuit court's order.

ARGUMENT

In its Opinion, the Court overlooked or misapprehended the following matters:

1. **The Court focused on whether the Policy's coverage is limited to defects of record, an issue which was not the basis of the circuit court's order, and not disputed by Chicago Title.**

The Policy covers certain risks that are of record and certain risks that are not of record. For example, as the Court noted, subject to the Policy's exceptions, exclusions, and conditions, insuring provision No. 3 of the Policy "covers the following title risks, if they affect [Appellants'] *title* on the Policy Date" . . . "3. Forgery, fraud, duress, incompetency, incapacity or impersonation." All these items relate to the validity of instruments that affect title to property that may not be apparent of record. Chicago Title admitted in its deposition and conceded at oral argument that coverage under the Policy is not limited to risks that are of record.

The circuit court's grant of summary judgment to Chicago Title is not based on a general conclusion that coverage is limited to defects of record. The circuit court correctly focused on the unrecorded 2002 plat, which was the basis of Appellants' claim. With that in mind, the circuit court concluded:

There is simply no breach by Chicago Title as [Appellants] received the title referenced in both their recorded deed and the [r]ecord[ed] [p]lat referenced in that deed.

None of the enumerated "Covered Title Risks" in the Policy are triggered by [Appellants'] allegations related to the unrecorded plat *or by any evidence presented to this [c]ourt*

(R. at 17) (emphasis added).

The circuit court correctly ruled that none of the Covered Title Risks, all of which must "affect [Appellants'] title on the Policy Date," are triggered by Appellants' allegations related to the unrecorded 2002 plat. The Court agreed the unrecorded 2002 plat "itself may not affect Appellant[s'] title due to Balsam's failure to record it . . ." As noted below, controlling North Carolina law fully supports the conclusion reached by the circuit court and this Court.

As a result, the unrecorded 2002 plat, which by its very nature is an off-record matter, does not affect title to the property and does not invoke coverage under the Policy. Because the Policy does cover certain off-record risks does not mean the Policy provides coverage for the unrecorded plat. Both can be true at the same time.

Off-record coverage under the Policy was not an issue in the circuit court. There was no need for the Court to analyze at length an issue that is not the basis of the circuit's court order.

Chicago Title therefore respectfully submits the Court overlooked and misapprehended the issues in this matter.

2. **Under controlling North Carolina law, the road depicted on the unrecorded 2002 plat as traversing through the property created no rights in third persons, is not a defect, lien, or encumbrance, and Appellants own the property as insured by the Policy.**

The insured property is located in North Carolina. All parties, the circuit court, and this Court agree North Carolina law applies to title issues regarding the insured property.¹

Unlike South Carolina, which is a race-notice state,² North Carolina is a pure race state.³ In North Carolina, subject to some limited exceptions that do not apply here, the first to record

¹ The choice of law question was not analyzed by the circuit court or this Court. Nonetheless, South Carolina courts generally follow the traditional choice of law rules in the Restatement of Conflicts of Laws. *Menezes v. WL Ross & Co., LLC*, 403 S.C. 522, 530, 744 S.E.2d 178, 182 (2013). The First Restatement requires application of the law of the situs to nearly all questions concerning interests in land. This rule applies to conveyances of land (§§ 214-22), adverse possession (§ 224), and mortgages and liens (§§ 225-231). Similarly, while the Restatement (Second) of Choice of Laws contains a balancing test in section 6 regarding state interests, the law of the situs generally controls. *See Restatement (Second) § 223 cmt b* ("Issues falling within the scope of [the Validity and Effect of Conveyance of Interest in Land] will be determined by the law that would be applied by the courts of the situs....").

² *See MI Co., Ltd. v. McLean*, 325 S.C. 616, 626, 482 S.E.2d 597, 602 (Ct. App. 1997) ("our recording act is a race-notice act.").

an instrument affecting title to real property has priority over persons holding or claiming an unrecorded interest (such as an unrecorded plat). *Beasley v. Wilson*, 147 S.E.2d 577 (N.C. 1966). Furthermore, North Carolina's recording statutes, known as the Connor Act, provide that any written instrument affecting title to real property must be recorded in order to have priority over a subsequent purchaser for value. N.C.G.S. §§ 47-18, 47-20 (2018); *Simmons v. Quick-Stop Food Mart, Inc.*, 296 S.E.2d 275 (N.C. 1982). It was the intent of the North Carolina General Assembly in enacting North Carolina's recording statutes that prospective purchasers should be able to rely solely on the public record to determine the status of title to land. *Schuman v. Roger Baker & Assoc., Inc.*, 319 S.E.2d 308 (N.C. Ct. App. 1984). It is only when a search of the public record reveals an encumbrance that a purchaser is chargeable with notice of its existence. *Turner v. Glenn*, 18 S.E.2d 197 (N.C. 1942). Under the law of North Carolina, therefore, the unrecorded 2002 plat could not impair, affect, or achieve priority over the recorded deed to Appellants and the property interests conveyed therein.

Upon the recording of the deed to Appellants, Appellants, without question, owned unencumbered title to Lot 108, free and clear of any contrary interests claimed by Balsam/BMG that may have been shown on the 2002 unrecorded plat. This is true even if Appellants had knowledge of the unrecorded 2002 plat at the time they took title to the property.

There is no dispute Appellants own their property and have legal title to it as insured by the Policy. No other person or entity owns an interest in Appellants' title. No other person or entity has claimed an *ownership* interest in Appellants' property as insured. Indeed, the Balsam Mountain Development group attempted to obtain an ownership interest by requesting, post-

³ See *Rowe v. Walker*, 441 S.E.2d 156, 158 (N.C. Ct. App. 1994) ("North Carolina is a "pure race" jurisdiction, in which the first to record an interest in land holds an interest superior to all other purchasers for value, regardless of actual or constructive notice as to other, unrecorded conveyances.").

policy, that Appellants sign a quit-claim deed, which Appellants refused to sign.⁴ According to the developer, the road Appellants claim is an encroachment was not constructed until sometime after Appellants purchased the property. (R. pp. 469-470).

North Carolina law, which governs this issue, provides that unrecorded interests in land are invalid against subsequent purchasers and do not create any interest unless they are “of record.” N.C.G.S.A. §47-18.

The Policy provides coverage for title risks if they affect title on the Policy Date. In particular, the Policy provides,

This policy insures your title to the land described in Schedule A

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

Your insurance is limited by the following:

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

Covered Title Risks

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

1. Someone else owns an interest in your title
.....
14. Other defects, liens, or encumbrances.

(R. pp. 620-621)

⁴ Appellants subsequently allowing Balsam/BMG onto the property to build the road despite their lack of legal right to the property does not change ownership of the property.

On the Policy Date, Appellants had legal title to the property as insured. On the day the motions for summary judgment were heard, Appellants had legal title to the property as insured. On the date of this appeal, Appellants had legal title to the property as insured and they continue to have such title. No one else owns an interest in Appellants' title and there are no defects, liens, or encumbrances on their title to the property.

In sum, Appellants own the property as insured by the Policy. Neither item 1 nor item 14 of the Policy's Covered Title Risks is implicated.

The Court overlooked and misapprehended the applicable law and the facts, there is no coverage under the Policy, and the circuit court correctly granted Chicago Title summary judgment.

3. **Appellants submitted no evidence that a third party claimed title to the road or the subject property or that the road existed "on the ground" on the Policy Date, but instead merely provided evidence of a secret, unrecorded plat showing where a road might someday exist.**

The Court found "Appellant's ownership interest in the land on the date of the Policy's issuance was affected by what the 2002 plat *reflected* on the ground, i.e., the Preserve Road encroachment and the diminished acreage." *Opinion* at 86. However, there is no evidence to support that the road as shown on the unrecorded 2002 plat existed on the ground on the Policy Date.

Balsam's President and CEO, Craig Lehman, testified it was his understanding that the road in question was constructed "from scratch sometime after [Appellants] purchased Lot 108." (R. pp. 469-470). He was not able to confirm if there "was some sort of trail there previously" and whether "the road was constructed as overlay of the trail." (R. p. 470).

Mr. Loflin provided two affidavits to the Court. (R. pp. 636-639). In neither affidavit did he provide evidence the road existed on the property or traversed through the property on the

Policy Date. Instead, Mr. Loflin's supplemental affidavit says when he was told in 2006 that the road was constructed through "lot 108 after the closing...", he "had no reason to doubt that the road Mr. Lehman was now disclosing was an after purchase encroachment." (R. pp. 638-639).

Appellants' Third Amended Complaint alleges that "*at some point after conveying Lot 108* to [Appellants], Balsam entered lot 108 and added to its trespass and encumbrance *by expanding Balsam Mountain Preserve Road through Lot 108*, moving dirt and apparently destroying one or more trees, and installing two culverts which drain water onto [Appellants'] property." (R. p. 215) (emphasis added).⁵

As the Court notes, the road was paved in 2016. The Court further points to the following "on the ground" evidence related to the road:

- (1) Balsam's and BMG's continued assertion of ownership of the land underlying the Preserve Road encroachment,
- (2) the mysterious destruction of steel posts Appellants had placed in the ground to assert their ownership of certain areas in accordance with the recorded plat, and
- (3) BMG's disregard of Appellants' requests to leave Preserve Road unpaved.

The issue with the Court relying on these items is they all occurred after the Policy Date and do not reflect what was "on the ground" on the Policy Date. There is no evidence contrary to

⁵ "Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions." *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015); *see also Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) ("[T]he general rule [is] that the parties to an action are judicially concluded and bound by such unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible.").

the unrecorded 2002 plat being anything other than a road that solely exists in theory in a place where Balsam wanted to construct it.⁶

Furthermore, there is no indication Balsam or BMG ever claimed a *legal* right to the area in dispute. Indeed, when Balsam requested Appellants execute a quit claim deed whereby Appellants would convey their title to the land under the proposed future road, Appellants refused to do so. Appellants may have allowed or agreed to the development of a road on their property at some point after the Policy Date, but that as a matter of law does not affect Appellants' ownership of the property under North Carolina law. Appellants still have legal title to the property as insured. To this very day, title remains as insured pursuant to the recorded plat in the name of Appellants.

As mentioned above, while there may be circumstances from which a title defect could arise as a result of something that is not of record, that is not the case here. Appellants' sole evidence of something existing on the Policy Date is the unrecorded 2002 plat, which, as a matter of the applicable North Carolina law, created no legal interest or right in the land insured by the Policy.⁷

As a result, the Court overlooked and misapprehended the applicable law and the facts, there is no coverage under the Policy, and the circuit court correctly granted Chicago Title summary judgment.

⁶ The unrecorded 2002 plat does not describe the width of the so-called road, it does not say whether it is a gravel road or a paved road, and no pins or irons are marked to show the exact location of the so-called road.

⁷ Even if there was something "on the ground," North Carolina law bars Balsam from having an interest in the property. In any event, the Policy excepts from coverage "easements visible upon ground but not of record."

4. The Court ignored the post-policy exclusion and mistakenly transformed an excluded post-policy trespass claim into a matter covered by Policy.

The Policy contains a clear and unambiguous exclusion related to matters occurring after the issuance of the Policy:

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

3. Title Risks:

- that first affect your title after the Policy Date

(R. p. 622)

The post-policy exclusion is at the heart of the nature of title insurance coverage. The title policy remains in effect as long as the insured owns the property. The insured pays no renewal premium. However, anything that happens to affect title after the insured obtains his or her interest in the property is not covered by the title policy, as confirmed by the post-policy exclusion.

Nothing else appearing, title insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title which are in existence at the time the insured takes his or her title. As the Court correctly notes, title insurance is unique in that it is retrospective, not prospective and

The risks of title insurance end where the risks of other kinds begin. Title insurance, instead of protecting the insured against matters that may arise during a stated period after the issuance of the policy, is designed to save him harmless from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it.

Firstland Vill. Assocs. v. Lawyer's Title Ins. Co., 277 S.C. 184, 186, 284 S.E.2d 582, 583 (1981).

The evidence submitted by Appellants, noted by the Court, and restated above, all relate to matters that occurred after the Policy Date, February 19, 2002. The only evidence Appellants submitted that took place before February 19, 2002, is the unrecorded 2002 plat, which, as fully discussed above, cannot create an interest in land, is not a title defect, is not a lien, and is not an encumbrance on title.

If a third party “exercised control” over a portion of the property, and if Appellants allowed or agreed to the development of a road on the property, any dispute over the development of that road falls squarely within the post-policy exclusion. Mr. Loflin’s Affidavit contains nothing but a blanket statement that Appellants objected to the road. There was no lawsuit, no injunction, no attempt to stop the road being finalized or built. (R. pp. 636-639). There is no evidence anywhere in the record that the developers asserted they owned title to Appellants’ land. As the Court states, even Appellants believed the road was an “after purchase encroachment.” *Opinion* at 75. These were all post-policy activities specifically excluded by the Policy.

In essence, the Court misapprehends issues of trespass with those of legal title to land.

The Court focuses on the location of the road vis-à-vis Lot 108 as shown on the unrecorded 2002 plat. The Court morphs the possible or perhaps future location of the road as shown on the unrecorded 2002 Plat into a defect, lien, or encumbrance. However, the actions Appellants complain about that took place “on the ground” were all conducted by Balsam and/or BMG post-policy, they do not relate to title, and they are in the nature of a trespass. (R. pp. 636-639). While Appellants may have or may have had a trespass claim against Balsam and/or BMG for their post-policy activities, trespass is not a covered matter under the Policy.

The elements of a trespass are: (1) possession of the property by the plaintiff when the alleged trespass was committed; (2) an unauthorized entry by the defendant; and (3) damage to the plaintiff. *Singleton v. Haywood Elec. Membership Corp.*, 588 S.E.2d 871, 871 (N.C. 2003). A trespass, in other words, is possession or use of property without permission or right. A trespass on insured property does not invoke policy coverage. *Chorches v. Stewart Title Guar. Co.*, 48 F.Supp.3d 151 (D. Conn. 2014).

As a result, the Court overlooked and misapprehended the applicable law and the facts, disregarded the retrospective nature of title insurance, and ignored the post-policy exclusion. There is no coverage under the Policy. The circuit court correctly granted Chicago Title summary judgment.

5. The Court misapprehends the insuring provision of the Policy providing coverage for claims related to the invalidity of certain instruments due to “fraud” or “incompetency,” contrary to the express provisions of the Policy when read as a whole.

Subject to the Policy’s exceptions, exclusions, and conditions, insuring provision No. 3 of the Policy “covers the following title risks, if they affect [Appellants’] title on the Policy Date” . . . “3. Forgery, fraud, duress, incompetency, incapacity or impersonation.” All these title risks are grouped together for one essential reason, they all relate to matters that can make an instrument, such as a deed, void or voidable.

For example,

- **Forgery**: “A deed which is a mere forgery or obtained by false pretenses is void.” 26A C.J.S. Deeds § 153 (2019).
- **Duress**: “Deeds which have been procured by, or executed under, duress or undue influence, are ordinarily regarded as voidable.” *Id.*

- **Fraud**: “Although the[re] is authority to the contrary, ordinarily a deed procured by fraud is not void but is merely voidable.” *Id.*
- **Incompetence and Incapacity**: “In order to render a deed void on the ground of mental incompetency, it should appear that the grantor was laboring under such a degree of mental infirmity as to make him incapable of understanding the nature of his act.” *Beam v. Almond*, 157 S.E.2d 215, 224 (N.C. 1967) (citing 26 C.J.S. *Deeds* § 54 at 721); 26A C.J.S. *Deeds* § 98 (2019) (“A deed, to be valid, must be made by one having mental capacity to understand its consequences. A deed will be invalidated by mental incapacity on the part of the grantor, as where he or she lacks sufficient reason to understand or appreciate his or her act or the reasonableness and consequences thereof, even though the deed may be supported by a consideration.”).

Insurance policies are subject to the general rules of contract construction.” *M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010). The Court must “interpret insurance policy language in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning.” *Id.* “[I]nsurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition.” *S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 638 S.E.2d 103, 104–05 (Ct. App. 2006). “The court cannot torture the meaning of policy language to extend coverage not intended by the parties.” *Id.* at 356, 638 S.E.2d at 105. Thus, “[w]hen a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used.” *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999).

In interpreting the Policy, and in particular insuring provision No. 3, the Court must consider the context of the words used. All those risks—forgery, fraud, duress, incompetency, incapacity, or impersonation—relate to matters that may affect the validity of an instrument that affects title to the property. Some examples include a remote or an immediate grantor claiming his or her signature was forged on a deed, he or she was mentally incompetent when a deed was executed, he or she was mentally incapacitated when a deed was executed, he or she signed the deed under fraud or duress, or someone impersonated the grantor such that the grantor did not execute a deed. (R. pp. 480 – 481).

The Court found that Appellants' allegation that Balsam recorded the wrong plat is "incompetence" covered by the Policy. Also, the Court found "fraud" took place and is covered by the Policy because of actions undertaken by the seller to Appellants. By so doing, the Court improperly expanded the scope of coverage provided by the Policy by using the terms "fraud" and "incompetence" and applying them in other contexts clearly not intended by the plain meaning of the Policy.

As a result, the Court overlooked and misapprehended the applicable law and the facts and misinterpreted the Policy. There is no coverage under the Policy. The circuit court correctly granted Chicago Title summary judgment.

6. The Court misapprehended the effect of a default by one party on the litigation position of a non-defaulting, answering party.

The Court incorrectly concludes the default admissions of the developer should be applied against Chicago Title. The Court notes that insuring provision No. 3, covers "Forgery, fraud, duress, incompetency, incapacity [,] or impersonation," and "Balsam was held in default for failure to answer the Amended Complaint, thus, effectively admitting that it defrauded

Appellants.” The Court then applies this default admission by another party to the insuring provision No. 3 of the Policy.

The Court cites no authority supporting the conclusion that Balsam’s alleged wrongful actions admitted by the operation of Rule 55, SCRCp, can bind or be held against a non-defaulting, answering party such as Chicago Title.

Long-standing conclusions of other courts suggest a default of one defendant does not constitute an admission by a non-defaulting defendant. *See Vale v. Bonnet*, 191 F.2d 334, 337 (D.C. Cir. 1951) (holding that where a default judgment was obtained against the repairmen, the judgment would not foreclose the right of the lessee to contest the issue as to whether the repairmen had been negligent); *J.M. Wildman, Inc. v. Stults*, 1 Cal. Rptr. 651 (Cal. Ct. App. 1959) (admission made by wife under her default judgment could not be used as evidence against the non-defaulting husband); *Dade County v. Lambert*, 334 So. 2d 844 (Fla. Dist. Ct. App. 1976) (default of one defendant cannot operate as an admission of the allegations against a contesting codefendant); *Khazaal v. Browning*, 717 So. 2d 1124 (Fla. Dist. Ct. App. 1998) (while a default against the non-answering defendant established that the non-answering defendant’s interest in the collateral was inferior and subordinate to the security interest of the appellees, that default did not affect the answering defendant’s own position); *Stokes v. McRae*, 278 S.E.2d 393, 395 (Ga. 1981) (in action for fraudulent transfers, grantor’s admission, through its default, of all the well-pled material facts alleged against him, did not bind the non-defaulting grantee); *Chromocolour Labs, Inc. v. Snider Bros. Property Management, Inc.*, 503 A.2d 1365, 1369 (Md. 1986) (explaining that although a default constitutes an admission of the defaulting party, it does not amount to an admission of the contesting parties, even though the defendants may be “inextricably bound”); 46 Am. Jur. 2d *Judgments* § 241 (2019) (“The default of one defendant

does not operate as an admission as against a contesting codefendant even though the defendants may be inextricably joined. An answering defendant's defenses remain to be tested by a trial and cannot be disposed of by the nonanswering defendant's default."); 49 C.J.S. *Judgments* § 258 (2019) ("The default of one defendant, although an admission by it of the allegations in the complaint, does not operate as an admission of such allegations as against a contesting codefendant even though the defendants may be inextricably joined.").

Courts have extended a similar limitation on requests for admission to hold that failure to timely respond to requests for admissions are binding only on non-responding parties, not on co-parties. See *Riberglass, Inc. v. Techni-Glass Indus., Inc.*, 811 F.2d 565, 566–67 (11th Cir. 1987) (holding defendant guarantor of company's debt not bound by deemed admission of co-defendants and finding district court improperly granted summary judgment against party on basis of deemed admissions of other non-responding parties); *Becerra v. Asher*, 921 F. Supp. 1538, 1544 (S.D. Tex. 1996), *aff'd* on other grounds, 105 F.3d 1042 (5th Cir. 1997) (deemed admissions binding only on non-responding party); *United States v. Wheeler*, 161 F. Supp. 193, 198 (W.D. Ark. 1958) (holding that facts deemed admitted as to one defendant because of his failure to respond to the plaintiff's request for admissions are not binding on a codefendant); *Alipour v. State Auto. Mut. Ins. Co.*, 131 F.R.D. 213, 215 (N.D. Ga. 1990) (even though insurance policy loss payee's right to recovery depended on insureds' right to recover, the loss payee was not bound by admission of the insureds which were the result of insureds' failure to respond to discovery request or to a motion for summary judgment); *Kittrick v. GAF Corp.*, 125 F.R.D. 103, 106 (M.D. Pa. 1989) (Plaintiff's admission under Rule 36 cannot bind a third-party plaintiff); *Darnall v. Petersen*, 592 N.W.2d 505, 510 (Neb. Ct. App. 1999) (noting that "[t]he federal courts have almost unanimously concluded that a rule 36 admission is not binding against

a codefendant” and holding the same); 8B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2264 (3rd ed) (stating “[t]he admission does not bind the party who requested it.... Nor do the admissions of a party bind a coparty.”); 32 C.J.S. *Evidence* § 561 n. 8 (noting “[a]n admission of one party is not binding on, or evidence against, a co-party” and “[d]eclarations of a defaulted defendant are generally inadmissible against his co-defendant.”).

As a result, the Court overlooked and misapprehended the applicable law applying the default admissions of Balsam to Chicago Title. There is no coverage under the Policy. The circuit court correctly granted Chicago Title summary judgment.

CONCLUSION

The Policy’s coverage for certain off-record risks was not a basis for Chicago Title’s denial of coverage and was not a basis for the circuit court’s grant of Chicago Title’s motion for summary judgment.

Controlling North Carolina law provides the unrecorded 2002 plat could not and did not affect title to the property as insured. There is no defect, lien, or encumbrance.

There is no evidence in the record on appeal that the road shown in the 2002 unrecorded plat existed at the time the Policy was issued.

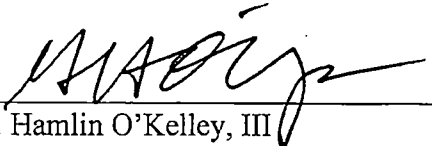
Nothing in the record implicates the insuring provisions regarding fraud and incompetency.

The default of one party cannot be held against another, answering party.

Chicago Title respectfully submits the Court misapprehended or overlooked the facts and the law as set forth above, and requests the Opinion be withdrawn and the circuit court’s grant of summary judgment in favor of Chicago Title be affirmed.

Mount Pleasant, SC
April 10, 2019

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen
Circuit Court Judge

Appellate Case No. 2016-001840

RECEIVED
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William Loflin and Leslie Loflin Appellants,

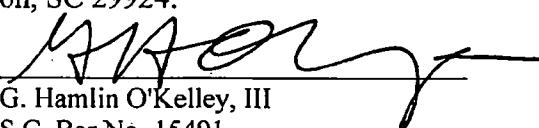
vs.

BMP Development, LP, Balsam Mountain Group, LLC,
Coward, Hicks & Silver, P.A., J.K. Coward, Jr., Chicago
Title Insurance Company, and Counsellor Title Agency, Inc.,
Defendants,

Of which Chicago Title Insurance Company is the.....Respondent.

PROOF OF SERVICE

I hereby certify that I served the Respondent's Petition for Rehearing and Suggestion for Rehearing *En Banc* via overnight delivery, on April 10, 2019, addressed to the Appellants' attorneys of record as follows: Daniel A. Speights, Esq., A.G. Solomons, III, Esq., Speights & Runyan, 100 Oak Street, East, P.O. Box 685, Hampton, SC 29924.


G. Hamlin O'Kelley, III
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April 10, 2019



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April 10, 2019

G. HAMLIN O'KELLEY, III
ATTORNEY AT LAW
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VIA OVERNIGHT DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
P.O. Box 11629
Columbia, SC 29211

RECEIVED
APR 11 2019
SC Court of Appeals

Re: *William Loflin and Leslie Loflin vs. BMP Development, LP, Balsam
Mountain Group, LLC et al.,
Case No. 2016-001840
File No.: 1089.0023*

Dear Ms. Kitchings:

Enclosed please for filing please find the following:

1. An original and seven (7) copies of the Respondent's Petition for Rehearing and Suggestion for Rehearing *En Banc* to File Letter Ordering Transcript out of Time;
2. An original and one (1) copy of the Proof of Service.

Also enclosed is the filing fee of Fifty (\$50.00) Dollars.

Please file the originals and return file-stamped copies to me in the enclosed envelope. By copy of this letter, I am serving same upon all counsel. Should you have any questions, please feel free to contact me. With kindest regards, I remain

Yours very truly,



G. Hamlin O'Kelley, III

cc: (w/Encl.)

Daniel A. Speights, Esq.
A.G. Solomons, III, Esq.

ORIGIN ID:RBWA (843) 856-4488
AMANDA TAYLOR
BUIST, BYARS & TAYLOR, LLC
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SUITE 200
MT. PLEASANT, SC 29464
UNITED STATES US

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SC COURT OF APPEALS
1220 SENATE STREET

COLUMBIA SC 29211

(843) 856-4488

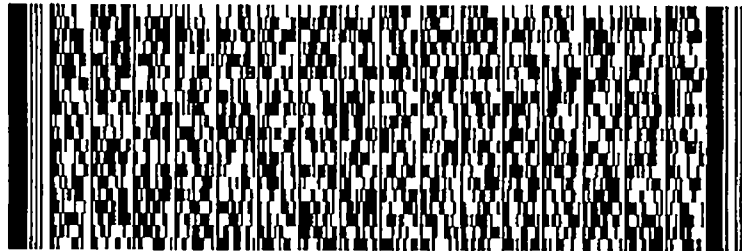
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APR 11 2019

SC Court of Appeals

The South Carolina Court of Appeals

William Loflin and Leslie Loflin, Appellants,

v.

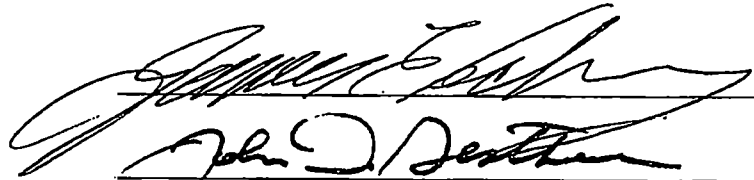
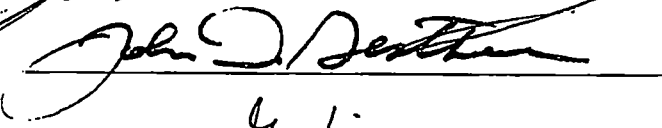
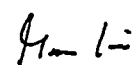
BMP Development, LP, Balsam Mountain Group, LLC,
Coward, Hicks & Siler, P.A., J.K. Coward, Jr., Chicago
Title Insurance Company, and Counsellor Title Agency,
Inc., Defendants,

Of which Chicago Title Insurance Company is the
Respondent.

Appellate Case No. 2016-001840

ORDER

After careful consideration of the petition for rehearing, this court has discovered no material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Daniel A. Speights, Esquire

Algernon Gibson Solomons, III, Esquire

George Hamlin O'Kelley, III, Esquire

FILED

September 19 2019