

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

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S.C. SUPREME COURT

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Circuit Court Case No. 2014-CP-37-00143  
Court of Appeals Appellate Case No.: 2015-001860  
Supreme Court Case No. \_\_\_\_\_

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Polly Thompson, ..... Respondent,

v.

Cathy Swicegood, ..... Petitioner/Appellant.

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APPENDIX VOLUME I

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## The South Carolina Court of Appeals

Polly Thompson, Respondent,

v.

Cathy Swicegood, Appellant.

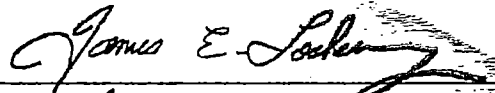
Appellate Case No. 2015-001860

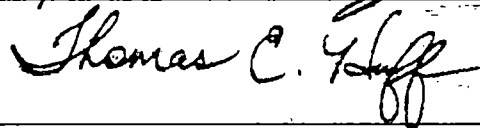
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### ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law 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:

J. Falkner Wilkes, Esquire  
John G. Reckenbeil, Esquire  
Margaret A. Chamberlain, Esquire  
Melissa Hope Moore, Esquire  
The Honorable Ellis B. Drew, Jr.

**FILED**

August 10, 2020

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Polly Thompson, Respondent,

v.

Cathy Swicegood, Appellant.

Appellate Case No. 2015-001860

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Appeal From Oconee County  
Diane Schafer Goodstein, Circuit Court Judge  
Ellis B. Drew, Jr., Master-in-Equity

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Opinion No. 5736  
Heard September 18, 2019 – Filed July 1, 2020

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**AFFIRMED AS MODIFIED**

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John G. Reckenbeil, of Law Office of John G.  
Reckenbeil, L.L.C., of Mauldin, and J. Falkner Wilkes,  
of Greenville, for Appellant.

Margaret A. Chamberlain, of Chamberlain Law Firm,  
LLC, of Greenville, and Melissa Hope Moore, of Law  
Office of Melissa H. Moore, LLC, of Fountain Inn, for  
Respondent.

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**LOCKEMY, C.J.:** Cathy Swicegood appeals the master-in-equity's order of partition, arguing the master erred by (1) refusing to consider the issue of the parties' alleged common-law marriage and stay the action pending a resolution of that issue in family court, (2) excluding evidence proving her contributions to jointly owned real property, (3) determining her contribution to such property, and



(4) failing to apply the correct analysis when determining the parties' interests in the property. We affirm as modified.

## **FACTS**

Polly Thompson filed this action in circuit court for partition and ouster in March 2014. She alleged she and Swicegood held title to two properties—a home in Westminster, South Carolina (the Lake Hartwell home) and a condominium in Hilton Head, South Carolina (the Hilton Head condo)—as joint tenants. Thompson alleged she was entitled to sole ownership and title as to both properties.

Swicegood then filed a summons and complaint in family court alleging a common-law marriage existed between the parties and seeking, among other things, recognition of the separation of the parties, an award of separate support and maintenance, and equitable division of marital property.<sup>1</sup> Swicegood moved to dismiss or, alternatively, stay the partition action, arguing she sought an order from the family court declaring she and Thompson were married by common law. Thereafter, the family court dismissed Swicegood's complaint for lack of subject matter jurisdiction, finding that pursuant to the then-existing laws banning same-sex marriage in this state, no common-law marriage existed as a matter of law. Swicegood appealed the family court's order.<sup>2</sup> Meanwhile, in October 2014, the circuit court denied Swicegood's motion to dismiss or stay the partition action, finding there was no just cause for granting a stay. The court reasoned in part that Thompson filed her petition in circuit court first and Swicegood's subsequent filing in family court did not remove jurisdiction from the circuit court.

The partition action proceeded to a hearing before the master-in-equity in March 2015. At the outset of the hearing, Thompson moved to exclude any evidence or argument concerning whether the parties were married and any evidence regarding "sweat equity" in any property other than the two properties at issue in the partition action. Swicegood again moved to stay the proceeding, arguing that after the family court dismissed the case for lack of subject matter jurisdiction and the circuit court denied her previous motion to stay, the United States District Court

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<sup>1</sup> The couple's primary residence was not a property at issue in the partition action.

<sup>2</sup> We decided this appeal in *Swicegood v. Thompson*, Op. No. 5735 (S.C. Ct. App. filed July 1, 2020), which includes a complete procedural history of the family court matter.

had overturned South Carolina's statutory prohibition of same-sex marriage.<sup>3</sup> The master denied Swicegood's motion to stay and granted Thompson's motion to exclude evidence of the alleged marriage, reasoning he expressed no opinion as to whether there was a marriage, and even if there were, the matter was "still a partition action" according to the pleadings. Swicegood argued she was entitled to sweat equity because during the thirteen-year relationship, a significant amount of assets and sweat equity culminated into the purchase of these properties and she "and others" took actions to bring value to these properties. However, the master granted Thompson's motion to exclude evidence of any sweat equity Swicegood may have had in any property other than the Lake Hartwell home or Hilton Head condo.

Thompson purchased the Hilton Head condo in June 2013 for \$372,500. The deed listed both parties as owners. Thompson paid the down payment with an inheritance she received from her parents, and Swicegood contributed no funds. The mortgage on the Hilton Head condo was in Thompson's name only, and she paid all of the mortgage payments on the property as well as all regime fees, insurance premiums, utility bills, and fitness club fees. According to Thompson, the Hilton Head condo required some improvements, such as wallpaper removal, painting, plumbing repair, and replacing light fixtures, switches, and the washer and dryer. She stated she paid for all of the labor and construction associated with these improvements, and although she acknowledged Swicegood performed some of this labor, she stated she paid Swicegood for her work. Thompson explained she rented out the Hilton Head condo when possible and had earned \$22,000 in rental income since purchasing the home. Thompson testified she contributed \$142,477.01, less the rental income, to the Hilton Head condo.

The Lake Hartwell home consisted of two lots: Lot 58 and Lot 59. Thompson purchased the first lot, Lot 59, in May 2010 for \$38,500; she paid a down payment of \$10,209.98 and obtained a mortgage for the balance of the purchase price. Thompson purchased the second lot, Lot 58, in July 2012 for \$35,000 and paid the full purchase price with her inheritance. Thompson then had a home constructed on the lots. Swicegood contributed \$22,000 of the total \$28,678.43 down payment on the construction of the home, and Thompson contributed the remaining \$6,678.43. Thompson obtained a mortgage for the remaining \$151,500 of the purchase price. She testified the \$10,209.98 and \$6,678.43 she paid for the purchase and construction of the Lake Hartwell home came from her checking

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<sup>3</sup> See *Condon v. Haley*, 21 F. Supp. 3d 572, 587 (D.S.C. 2014) (striking down South Carolina's ban on same-sex marriage as unconstitutional).

account, and none of those funds came from Swicegood. Additionally, Thompson paid all mortgage payments, homeowners' association fees, taxes, and insurance premiums on the property. She explained she hired a builder to build the home and paid for other construction and improvements to the property. Thompson stated she paid \$42,735.41 for the construction and improvements, including \$7,000 paid on Swicegood's Lowe's credit card and several checks for Swicegood's labor. Thompson again acknowledged Swicegood performed some labor and agreed she was often present during the building of the Lake Hartwell home but insisted she paid Swicegood for this work.

Swicegood moved into the Lake Hartwell home in December 2013 after the couple separated. Thompson alleged Swicegood changed the locks and denied her entry to the home thereafter. During this time, Thompson continued to pay the mortgage, homeowner's association fees, insurance, and taxes on the home. She claimed \$14,143.77 in damages due to Swicegood's ouster but later stipulated she sent Swicegood a letter in December 2013 giving her permission to live there.

Thompson stated that in exchange for Swicegood's work on the Hilton Head condo, she gave her a 2009 Buick and paid her with checks. She conceded Swicegood paid her \$9,500 for the Buick but stated it was worth "at least \$18,000." Thompson acknowledged she previously owned a villa in Hilton Head, which she purchased in 2003 with proceeds from the sale of stock she owned. She stated she sold this property in December 2013, it was titled in her name only, and no funds from its sale were applied to any other purchase. Thompson admitted Swicegood transferred title in property she owned to Thompson by quitclaim deed in 2010. Although the master refused to admit evidence concerning this transfer, Thompson acknowledged the \$22,000 Swicegood contributed to the purchase of the Lake Hartwell home came from the sale of that property.

Swicegood testified she operated a business that provided landscaping and interior design services. She stated she and Thompson continually tried to "flip" properties in order to have "nice places" to live in upon retirement. Swicegood attempted to explain she contributed labor to the villa that Thompson previously owned, and Thompson objected. Swicegood conceded, acknowledging the master's earlier ruling. Swicegood explained she removed carpet, painted, changed outlets and switches, created window treatments, covered cornice boards, and replaced new toilets, faucets, and towel racks in the Hilton Head condo. She stated she had furniture reupholstered, purchased bedding, and decorated. Swicegood testified it took seven days to flip the condo. She stated she paid someone \$1,300 to complete plumbing and electrical work. Swicegood testified she also touched up paint and

replaced light bulbs when she stayed at the Hilton Head condo. She provided an "invoice," consisting of a summary of the work she completed at the Hilton Head condo, which totaled \$17,490. Of this amount, Swicegood estimated she was owed \$5,910.91. However, she admitted the invoice was not created at the time the work was done; rather, she "rewrote" all of her invoices for use at the hearing. Swicegood confirmed she had no documentation showing her payment for any of the materials listed on the invoice. She averred the refurbishing of the Hilton Head condo allowed the parties to earn higher rental income on the property. Swicegood testified she "drew the plans" for the Lake Hartwell home and was present at the home "every single day" during its construction. She agreed Thompson had paid her for work on the Lake Hartwell home and the Hilton Head condo, but she denied she had been paid for all of her work. Swicegood identified several checks she received from Thompson. She agreed the checks ranged from \$1,000 and \$5,000 but stated some checks were for materials. She acknowledged Thompson paid her "to handle the affairs" during the building of the Lake Hartwell home in Thompson's place. Swicegood admitted she changed the locks at the Lake Hartwell home after she moved in because Thompson continued to come to the home even though their attorneys had asked her not to.

Swicegood also presented the testimony of Stephanie Computaro, who testified Swicegood did "the majority of the work" during the refurbishing of the Hilton Head condo, and "as far as the hands on construction" and "the vision, buying of the materials to do those jobs, that was a hundred percent [Swicegood]."

Following the partition hearing, the parties made their offers to purchase the properties. They agreed the mortgage balance for the Lake Hartwell property was \$143,407.75, with equity of \$67,742, and the mortgage balance for the Hilton Head condo was \$269,100.57, with equity of \$120,599. Thompson offered to purchase the Hilton Head condo for \$275,100.57, and the Lake Hartwell home for \$188,407.75, while Swicegood offered to transfer title of the Hilton Head condo to Thompson in exchange for Thompson transferring title of the Lake Hartwell property to Swicegood. The master found Thompson made the greater offer to purchase. Because the remaining balance on mortgage for the Hilton Head condo was \$269,100.57, the master determined there was \$6,000 in proceeds from the Hilton Head condo to be divided between the parties. Likewise, because the remaining balance on the Lake Hartwell home was \$143,407.75, the master determined there was \$45,000 in proceeds from the Lake Hartwell home to be divided between the parties.

The master concluded that with respect to the Hilton Head condo, Thompson paid the entire down payment on the property, every mortgage payment, all regime fees, all homeowner's insurance premiums, all taxes, and all fitness club dues and cable fees. He found Thompson's contribution totaled \$129,838.70, and though Swicegood contributed sweat equity in the form of interior decorating, the amount of work she performed was disputed, and Thompson presented evidence she paid Swicegood for her labor and materials. The master found the equity in the condo was \$120,325, and Swicegood contributed nothing financially to the property and was entitled to no right, title, or interest in that property. With respect to the Lake Hartwell home, the master concluded Swicegood paid \$22,000 of the down payment on the home and Thompson paid \$45,679.21 for the two lots and \$6,678.43 of the down payment on the home. The master determined Thompson paid every mortgage payment, all property owners' association dues, all homeowner's insurance premiums and all taxes. He found Swicegood contributed sweat equity in the form of interior decorating and design, but the amount of work she performed was disputed and Thompson presented evidence she paid Swicegood for her labor and materials. He concluded Thompson contributed \$129,838.70 and Swicegood contributed \$22,000 towards the Lake Hartwell home, and the equity in the home was \$67,742.25. The master found Thompson's contributions far exceeded both Swicegood's contributions and the equity in the property. The master found there was a tremendous disparity between the parties' contributions to the property and Swicegood had no right, title, or interest in the Lake Hartwell property.

As to both properties, the master found the disparities between the parties' contributions to the acquisition and maintenance of the properties was in favor of Thompson and awarding Swicegood any interest in the property would be unjust and inequitable. Thus, the master awarded Thompson full right, title, and ownership of both properties, and awarded the remaining \$6,000 and \$45,000 to Thompson. The master denied Thompson's claim for ouster, finding although Swicegood committed ouster Thompson failed to establish damages. Swicegood filed a motion to reconsider, which the master denied. This appeal followed.

## **STANDARD OF REVIEW**

"The question of subject matter jurisdiction is a question of law." *Porter v. Labor Depot*, 372 S.C. 560, 567, 643 S.E.2d 96, 100 (Ct. App. 2007). "This Court reviews all questions of law de novo." *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). "A partition action is an equitable action and, as such, we may review the evidence to determine facts in accordance with our own

view of the preponderance of the evidence." *Zimmerman v. Marsh*, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005). "However, this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the trial judge was in a better position to assess the credibility of the witnesses." *Laughon v. O'Braitis*, 360 S.C. 520, 524-25, 602 S.E.2d 108, 110 (Ct. App. 2004). On the other hand, "evidentiary and procedural rulings of the family court are reviewed for an abuse of discretion." *Brown v. Odom*, 425 S.C. 420, 429, 823 S.E.2d 183, 187 (Ct. App. 2019). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Burke v. Republic Parking Sys., Inc.*, 421 S.C. 553, 558, 808 S.E.2d 626, 628 (Ct. App. 2017) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

## **LAW/ANALYSIS**

### **I. Denial of Motion to Stay**

Swicegood argues the circuit court erred by refusing to consider the issue of marriage and stay the partition action pending a resolution of the marriage issue. She contends that if the courts were to determine she and Thompson were married, the order of partition would be void for lack of subject matter jurisdiction because the family court would have exclusive jurisdiction to determine their respective interests in the properties. Swicegood further asserts the court's refusal to stay the matter prejudiced her because the family court would have applied a different analysis in determining the parties' interests in the properties. We disagree.

"The granting of a motion for a stay of proceedings rests entirely within the discretion of the trial [court]." *City of Spartanburg v. Belk's Dep't Store of Clinton*, 199 S.C. 458, 20 S.E.2d 157, 167 (1942). Section 63-3-530(A)(2) of the South Carolina Code (2010 & Supp. 2019) provides,

*The family court has exclusive jurisdiction . . . to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage . . . .*

(emphasis added). "[M]arital property" is defined as "all real and personal property which has been acquired by the parties during the marriage and which is

owned as of the date of filing or commencement of marital litigation . . . ." S.C. Code Ann. § 20-3-630(A) (2014). "The [family] court does not have jurisdiction or authority to apportion nonmarital property." S.C. Code Ann. § 20-3-630(B) (2014); *see also Tipton v. Tipton*, 351 S.C. 456, 459, 570 S.E.2d 195, 196 (Ct. App. 2002) (holding the family court "lacked subject matter jurisdiction to determine the parties' property rights in any way" when the family court found no common-law marriage existed between the parties and the appellant did not appeal that finding).

"Under South Carolina law, the Court of Common Pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment." *Eichor v. Eichor*, 290 S.C. 484, 487, 351 S.E.2d 353, 354 (Ct. App. 1986). "[P]roperty held in joint tenancy is subject to partition." *Smith v. Cutler*, 366 S.C. 546, 551, 623 S.E.2d 644, 647 (2005). "An action for partition of undivided interests is not marital litigation, and thus is not within the jurisdiction of the family court." *Gilley v. Gilley*, 327 S.C. 8, 10, 488 S.E.2d 310, 312 (1997) (quoting *Eichor*, 290 S.C. at 487, 351 S.E.2d at 355).

As a threshold matter, we find the circuit court had subject matter jurisdiction to hear the partition action. *See Eichor*, 290 S.C. at 487, 351 S.E.2d at 354 ("Under South Carolina law, the Court of Common Pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment."). In *Swicegood*, Op. No. 5735, we concluded no common-law marriage existed between the parties as a matter of law and affirmed the family court's dismissal of Swicegood's complaint based on lack of subject matter jurisdiction. Absent a marriage, there can be no marital property. The family court therefore lacked subject matter jurisdiction to divide the parties' property. Thus, the circuit court had subject matter jurisdiction over the partition action.

Next, we find the master was not obligated to grant a stay of the partition action under the circumstances of this case. *See City of Spartanburg*, 199 S.C. 458, 20 S.E.2d 157 ("The granting of a motion for a stay of proceedings rests entirely within the discretion of the trial [court]."). The parties' marital status in and of itself does not affect the circuit court's subject matter jurisdiction over a partition action between such parties. *See Gilley*, 327 S.C. at 10, 488 S.E.2d at 312 ("An action for partition of undivided interests is not marital litigation, and thus is not within the jurisdiction of the family court." (quoting *Eichor*, 290 S.C. at 487, 351 S.E.2d at 355)). Here, the family court dismissed the complaint for lack of subject matter jurisdiction, finding the parties had no common-law marriage as a matter of law pursuant to state laws prohibiting same-sex marriage, which were still in effect

at the time. *See* S.C. Code Ann. § 20-1-15 (2014) ("A marriage between persons of the same sex is void ab initio and against the public policy of this State."); *see also* S.C. Const. art. XVII, § 15 ("A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State"); S.C. Code Ann. § 20-1-10 (2014) (stating "[a]ll persons, except . . . persons whose marriage is prohibited by this section, may lawfully contract matrimony"); *id.* (stating "[n]o man shall marry . . . another man" and "[n]o woman shall marry . . . another woman"). Thus, at the time the circuit court and master ruled upon Swicegood's motion to stay, the family court lacked subject matter jurisdiction to determine the parties' property rights. Under these circumstances, we find the master did not err by refusing to stay the partition action pending resolution of the family court matter.

## **II. Partition**

Swicegood argues the master erred in determining the value of each party's contribution to the properties. She asserts the master erred by excluding evidence of the value she contributed to each property, including evidence relating to properties other than the Lake Hartwell home and Hilton Head condo. Swicegood contends she and Thompson purchased and "flipped" multiple properties, culminating in the purchase of the Hilton Head condo. She asserts her efforts in renovating properties the couple formerly owned attributed to the appreciation realized from the sale of those properties, and the "net gain" therefrom was "funneled into" the funds Thompson used to purchase the Hilton Head condo and Lake Hartwell home. Swicegood argues the master excluded evidence of the chain of sales that would have demonstrated such accumulation of equity. Further, she contends the master erred by failing to "adequately consider" her contribution of "sweat equity" of \$20,000 in the Lake Hartwell home. Thus, she argues the master's decision should be reversed and remanded for a determination of the full value of her contributions to and interest in the properties based on all of the relevant evidence. We disagree.

### **A. Exclusion of Evidence**

"The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *Burke*, 421 S.C. at 558, 808 S.E.2d at 628 (quoting *State v. Commander*, 396 S.C. 254, 262-63, 721 S.E.2d 413, 417 (2011)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary



support or are controlled by an error of law." *Id.* (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "The general rule is that a joint tenant who, at his own expense, places permanent improvements *upon the common property*, is entitled in a partition suit to compensation for the improvements whether the co-tenants assented thereto or not." *Shumaker v. Shumaker*, 234 S.C. 421, 425-26, 108 S.E.2d 682, 685 (1959) (emphasis added) (quoting *Dalgarno v. Baum*, 30 S.E.2d 559 (Va. 1944)). "In the absence of consent . . . the amount of compensation is estimated by and *limited to* the amount by which the value of the common property has been enhanced." *Ackerman v. Heard*, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (Ct. App. 1986).

First, we find the master did not abuse his discretion in excluding evidence of Swicegood's contributions to former properties. *See Shumaker*, 234 S.C. at 425-26, 108 S.E.2d at 685 ("The general rule is that a joint tenant who, at his own expense, places permanent improvements *upon the common property*, is entitled in a partition suit to compensation for the improvements whether the co-tenants assented thereto or not." (emphasis added) (quoting *Dalgarno*, 30 S.E.2d 559)). Here, the only properties at issue in the partition action were the Lake Hartwell home and the Hilton Head condo. Swicegood testified she and Thompson "flipped" several properties and ultimately purchased the Lake Hartwell home and Hilton Head condo; however, she proffered no evidence as to any specific value realized from her work on previous properties. Neither did she proffer evidence that Thompson used proceeds from any prior sale of such properties to purchase the Lake Hartwell home or the Hilton Head condo. Rather, Thompson testified she paid the entire down payment on the Hilton Head condo and the entire purchase price for Lot 58 with the inheritance she received from her parents. She stated the \$10,209.98 and \$6,678.43 she paid on the Lake Hartwell home came from her checking account. Thus, we find the master did not err by excluding evidence of any indirect contributions Swicegood made to properties other than the two properties at issue in this case.<sup>4</sup>

Further, as evidenced by the master's order, the master admitted and considered evidence of Swicegood's direct contributions to the Lake Hartwell Home and the

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<sup>4</sup> We note Thompson admitted Swicegood's direct contribution of \$22,000 for the purchase of the Lake Hartwell home came from the sale of property Swicegood owned. However, the master considered this direct contribution in reaching its conclusion, and we likewise consider this contribution in our review of the master's findings.

Hilton Head condo, which consisted of testimony as well as exhibits documenting her contributions of labor and materials.

### **B. Swicegood's Contributions<sup>5</sup>**

Although we review actions in equity de novo, we are not required to disregard the findings of the circuit court or its superior position to assess witnesses' credibility. *See Zimmerman*, 365 S.C. at 386, 618 S.E.2d at 900 ("A partition action is an equitable action and, as such, we may review the evidence to determine facts in accordance with our own view of the preponderance of the evidence."); *Laughon*, 360 S.C. at 524-25, 602 S.E.2d at 110 ("However, this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the trial judge was in a better position to assess the credibility of the witnesses.").

The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties.

S.C. Code Ann. § 15-61-50 (2005). "The general rule is that a joint tenant who, at his own expense, places permanent improvements upon the common property, is entitled in a partition suit to compensation for the improvements whether the co-tenants assented thereto or not." *Shumaker*, 234 S.C. at 425-26, 108 S.E.2d at 685 (quoting *Dalgarno*, 30 S.E.2d 559)).

We find the master did not err in determining Swicegood was not entitled to any interest in the subject properties based upon her indirect contributions. Here, Thompson admitted Swicegood purchased some materials and contributed some labor to the improvement of the properties; however, Thompson also presented evidence she paid Swicegood several thousand dollars for this labor and material. Additionally, Thompson testified she paid \$42,735.41 for construction and improvements to the Lake Hartwell home. Swicegood admitted Thompson paid her but denied she completely reimbursed her for her work. Swicegood did not

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<sup>5</sup> We have combined Swicegood's third and fourth issues under this heading.

dispute Thompson paid all of the mortgage payments, utilities, insurance premiums, taxes and other dues on both properties. We find the evidence supports the master's findings that Thompson's contributions to both properties significantly outweighed Swicegood's. Although Swicegood performed some labor at both properties, we find the evidence shows Thompson reimbursed her for her contributions.

However, we find the master erred by concluding Swicegood was not entitled to a portion of the \$45,000 remaining on the Lake Hartwell home. The master correctly concluded Thompson made the greater offer to purchase the properties and determined the remaining amounts to be divided between the parties was \$6,000 in the Hilton Head condo and \$45,000 in the Lake Hartwell home. The evidence shows Swicegood contributed nothing financially to the Hilton Head condo and therefore the master did not err by concluding Swicegood was not entitled to a portion of the \$6,000 remaining therein. As to the Lake Hartwell home, the master concluded Thompson contributed \$129,838.70, Swicegood contributed \$22,000, and the equity in the home was \$67,742.25. We acknowledge Thompson's contributions exceeded Swicegood's. Nevertheless, because Swicegood contributed \$22,000 to the purchase of the home, we find the master erred in failing to apportion any of the \$45,000 remaining in the Lake Hartwell home to Swicegood. Swicegood is entitled to a percentage of the \$45,000 proportionate to her financial contribution of \$22,000 to the purchase of the property and Thompson's contribution of \$129,838.70. Swicegood's contribution of \$22,000 was 14.49 percent<sup>6</sup> of the parties' total contributions of \$151,838.70 toward the purchase price. Thus, we find she is entitled to 14.49 percent of the \$45,000 remaining in the Lake Hartwell home for a total of \$6,520.50.<sup>7</sup>

Accordingly, we affirm the master's finding Thompson was entitled to sole ownership, title, and interest in both properties and to the \$6,000 remaining in the Hilton Head condo. We modify the master's order by awarding Swicegood a portion of the \$45,000 remaining in the Lake Hartwell home. According to our calculations, Swicegood is entitled to \$6,520.50, which is equal to 14.49 percent of \$45,000.

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<sup>6</sup> The actual figure was 14.489, which we rounded to two figures for simplicity.

<sup>7</sup> Thompson argues we should affirm the master's findings as to this issue because he found Swicegood committed ouster. However, the master denied Thompson's claim for ouster—a ruling Thompson did not appeal. Therefore, we decline to affirm the master's findings on this basis.

**CONCLUSION**

For the foregoing reasons, the master's order of partition is

**AFFIRMED AS MODIFIED.**

**HUFF and HILL, JJ., concur.**

# The South Carolina Court of Appeals

Polly Thompson, Respondent,

v.

Cathy Swicegood, Appellant.

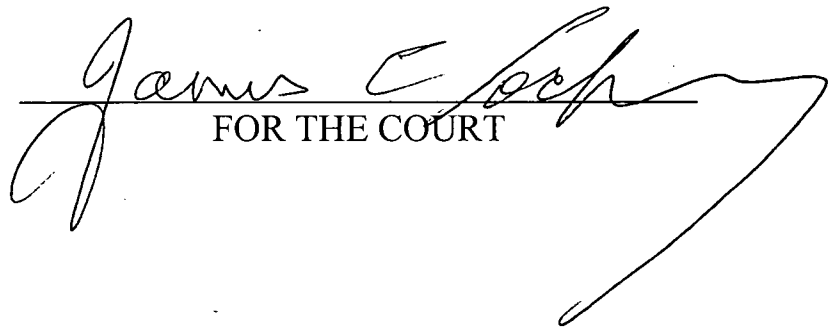
Appellate Case No. 2015-001860

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## ORDER

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Because the affidavit of service was not presented to the lower court, it may not be included in the record on appeal for this case. Accordingly, the motion to supplement the record on appeal is denied. *See* Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal.").

  
FOR THE COURT

Columbia, South Carolina

cc:

J. Falkner Wilkes, Esquire

John G. Reckenbeil, Esquire

Margaret A. Chamberlain, Esquire

Melissa Hope Moore, Esquire

**FILED**

Dec. 8, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )  
Polly Thompson, )  
Petitioner, )  
v. )  
Cathy Swicegood, )  
Respondent )

IN THE COURT OF COMMON PLEAS  
THE TENTH JUDICIAL CIRCUIT

2014- CP-37-0143

ORDER OF PARTITION

RECEIVED  
SEP 02 2015  
SC Court of Appeals

Date of Hearing: March 16, 2015 and May 21, 2015  
Presiding Judge: The Honorable Ellis B. Drew, Jr.  
Attorney for Petitioner: Ms. Margaret A. Chamberlain  
Attorney for Respondent: Mr. John G. Reckenbeil  
Court Reporter: Ms. Karen Senn

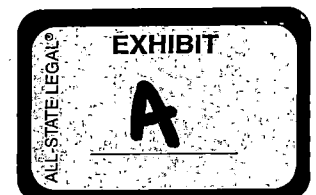
FILED OCONEE SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2015 JUN 26 A 10:52

This matter came before the Court pursuant to a Petition for Partition, Ouster, and Accounting filed by Petitioner, Polly Thompson's ("Petitioner"), on March 11, 2014. Respondent, Cathy Swicegood ("Respondent"), filed an Answer in a timely fashion.<sup>1</sup> The parties were before the Court for the trial on March 16, 2015, and again for a final hearing to review the financial information and to issue a ruling on May 21, 2015.

**Findings of Fact**

1. There are two properties at issue in this case: 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County ("the Hilton Head Condo"); and 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County ("the Lake Hartwell Home").
2. Although this action was filed in Oconee County, the parties consented to trying the case in Anderson County.
3. This Court has jurisdiction over the parties and the subject of this litigation.
4. The two properties referenced above are jointly titled in both parties' names.

<sup>1</sup> Wells Fargo was initially named as a Respondent based upon its first mortgage lien on the real properties at issue. By Consent Order of Dismissal filed on May 14, 2014, Wells Fargo was dismissed as a party.



5. The parties stipulated that the values provided by Petitioner as to the fair-market value, equity, expenses, and mortgage amounts for both properties were correct and accurate.
6. At the commencement of the final hearing, the Petitioner made an offer to purchase the properties from Respondent. Her offer was:
  - a. Polly Thompson offers to purchase the Hilton Head property for the amount of \$275,100.57. The first \$269,100.57 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$6,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
  - b. Polly Thompson offers to purchase the Lake Hartwell property for the amount of \$188,407.75. The first \$143,407.75 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$45,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
7. The Respondent made an offer to transfer title of the Hilton Head Condo to Petitioner in exchange for Petitioner transferring title of the Lake Hartwell Home to her.
8. The Court finds that Petitioner made the greater offer to purchase.
9. The Court finds that although Respondent did commit ouster by excluding Petitioner from the Lake Hartwell Home, the Petitioner presented no evidence of resulting damages.

**Hilton Head Condo**

10. The Petitioner presented evidence without objection to the following:
  - a. Petitioner paid the entire down payment of \$102,361.55 for the Hilton Head Condo when it was purchased in 2013.

- b. The Petitioner made every mortgage payment.
  - c. The Petitioner paid all of the regime fees.
  - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
  - e. The Petitioner paid all of the fitness club dues and paid all of the cable fees, and these expenses had to be incurred in order to rent the condo.
11. The Respondent contributed "sweat equity" to the condo in the form of interior decorating, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.
12. The Petitioner had contributed \$164,479.84 toward the Hilton Head Condo, and Respondent had not contributed anything financially.
13. The equity in the Hilton Head Condo is \$120,325.00.
14. This Court finds that Respondent has no right, title or interest in the Hilton Head Condo.
15. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

**Lake Hartwell Home**

16. The Lake Hartwell Home was built between 2010 and 2012.
17. The Petitioner presented evidence without objection to the following:
- a. Petitioner paid \$45,679.21 for the two lots and paid \$6,678.43 of the down payment on the house. Respondent paid \$22,000.00 of the down payment.
  - b. The Petitioner made every mortgage payment.
  - c. The Petitioner paid all of the property owners' association dues.
  - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
18. The Respondent contributed "sweat equity" to the Lake Hartwell Home in the form of interior decorating and design, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.



19. The Petitioner has contributed \$129,838.70 towards the Lake Hartwell home, and Respondent has contributed \$22,000.00.
20. The equity in the Lake Hartwell Home is \$67,742.25.
21. Petitioner's contributions far exceed both Respondent's contributions as well as the equity in the property.
22. There is a tremendous disparity between the contributions made to this property by the parties.
23. This Court finds that Respondent has no right, title or interest in the Lake Hartwell Home.
24. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

**Conclusion**

To determine the parties' respective property interests, this Court must consider the individual contributions of the parties to the acquisition and maintenance of the jointly-titled property. The disparity between the parties' contribution to the acquisition and maintenance of the properties is in favor of the Petitioner. The evidence in the record clearly and unequivocally demonstrates that Petitioner's contributions far exceed both Respondent's contributions as well as exceed the equity in the properties. It would be unjust and inequitable to award any interest in either property to the Respondent.

**WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County.
2. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County
3. The Petitioner shall promptly provide the Respondent with deeds transferring both properties in their entirety to Petitioner. The Respondent shall execute these deeds and return them to Petitioner within 15 days of the final hearing.
4. The Respondent, Cathy Swicegood, shall immediately vacate the Hilton Head Condo.

She may, within 30 days from the date of the final hearing, remove her clothes, tools and personal belongings from the Hilton Head Condo. She must be admitted to the property and escorted at all times by a member of the property management company, other than Ms. Linda Swinson. The Respondent may remain in the property for no more than one hour.

5. The Respondent, Cathy Swicegood, shall vacate the Lake Hartwell Home within 30 days of the final hearing.
6. At a mutually agreed upon date and time within 10 days of the final hearing, the Petitioner may access the Lake Hartwell Home to inspect the property. She shall have a third party present and may not remain longer than one hour.
7. The Petitioner's claim for ouster is denied.
8. The Petitioner's claim for attorney's fees and costs is granted. The Respondent, Cathy Swicegood, shall pay Petitioner, Polly Thompson, \$5,000.00 in legal fees and costs in the amount of \$250.00 for a total of \$5,250.00.

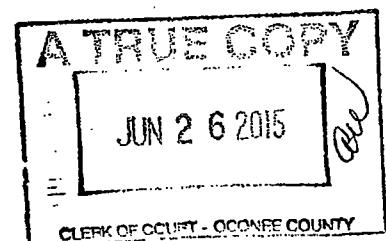
IT IS SO ORDERED.

/s/ Ellis B. Drew, Jr.  
The Honorable Ellis B. Drew, Jr.  
Masters-in-Equity Judge, Oconee County  
Tenth Judicial Circuit

FILED OCONEE, SC  
BEVERLY H. WHITEFIELD  
CLERK OF COURT  
2015 JUN 26 A 10:52

Anderson, South Carolina

6-23, 2015



STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

**RECEIVED**

SEP 02 2015

SC Court of Appeals

Polly Thompson, )  
PETITIONER, )

2014-CP-37-00143

VS. )

**ORDER DENYING RESPONDENT'S  
MOTION TO RECONSIDER**

Cathy Swicegood, )  
RESPONDENT. )

The Court has carefully considered the Respondent's Motion to Reconsider and the issues set forth therein.

The Court has also carefully considered Petitioner's Memorandum in opposition to Respondent's Motion.

This case was extensively tried and therefore the Court dispenses with further oral argument.

For the reasons set forth in the Petitioners Memorandum, the Court hereby concludes that the Respondent's Motion is Denied.

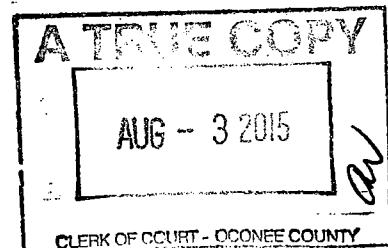
It is so Ordered.

**/s/ Ellis B. Drew, Jr.**

Ellis B. Drew, Jr., Master in Equity  
Tenth Judicial Circuit

*July 31, 2015*

FILED OCONEE SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2015 AUG - 3 P 2:25



THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

---

Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

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**RECEIVED**

**Jul 13 2020**

**SC Court of Appeals**

Polly Thompson, ..... Respondent,  
v.  
Cathy Swicegood, ..... Appellant.

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PETITION FOR REHEARING

---

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John G. Reckenbeil  
Post Office Box 1633  
Spartanburg, SC 29304  
(864) 582-5472

Counsel for Appellant

## PETITION

Pursuant to Rule 221 the Respondent hereby moves this Court to reconsider its opinion and grant the Respondent a rehearing based on the following.

This Court denied Appellant's motion to consolidate the records of two appeals pending between the parties offered for the purpose of considering evidence as to the date of service of each underlying case. Proof of service of the family court summons and complaint involving the parties was part of this Court's record in the family court appeal (2018-000008). Both appeals involved the same parties and had overlapping issues. The cases were heard and opinions issued on the same day. When compared the proofs of service show that the family court action was filed *and served* first. Granting Appellant's motion would have allowed the Court to address the circuit court's lack of jurisdiction. This would have changed the outcome of the case as the circuit court never had subject matter jurisdiction. "The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. Fielden v. Fielden, 274 S.C. 219, 262 S.E. (2d) 43 (1980); Harden v. South Carolina State Highway Dept., 266 S.C. 119, 221 S.E. (2d) 851 (1976); State v. Gorie, 256 S.C. 539, 183 S.E. (2d) 334 (1971)." Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989).

The circuit court does not obtain jurisdiction until proper service of the initial pleadings. "Under Rule 3(a), SCRPC, a civil action is commenced by the filing and service of a summons and complaint. "Louden v. Moragne, 327 S.C. 465, 468, 486 S.E.2d 525, 526 (Ct.App.1997). "Service of the summons brings the defendant within the court's jurisdiction and gives the court

the power to render a personal judgment against the person served." *Id.* (citing James F. Flanagan, South Carolina Civil Procedure 7 (2d ed.1996)). The circuit court's jurisdiction could not attach prior to service of the petition for partition, which occurred on March 17, 2016. By that time, the family court's jurisdiction had already attached by way of both filing and service of the Appellant's summons and complaint seeking separate maintenance and equitable division. Once jurisdiction attaches, the family court's jurisdiction is exclusive. *See* S.C. Code Section 63-3-530 (A)(2). Granting the Appellant's motion would have allowed the Appellant to show the circuit court's lack of subject matter jurisdiction. The Court should therefore reconsider its decision and grant a rehearing in this case.

In affirming the circuit court this Court misperceived the nature of the evidence offered by the Appellant, as well as its purpose. The issue of each party's interest in the subject property is a factual determination. The family court erred in excluding relevant evidence of value contributed by the Appellant to the subject properties. Here the evidence was necessary to understanding and valuing the Appellant's interest in the properties. Exclusion of the evidence made a accurate determination of the Appellant's interest impossible. The "flipping" of prior properties was an essential part of the value that was added to the properties in question. "In the absence of consent . . . the amount of compensation is estimated by and limited to the amount by which the value of the common property has been enhanced." Ackerman v. Heard, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (Ct. App. 1986). An accurate determination of the amount of enhancement could not be made without evidence of the gains that were achieved in flipping prior properties and rolled over in the subject properties.

The of purchasing and selling of real properties culminated in the purchase of the Hilton

Head property. There was evidence to show that the gains realized from the sequential property sales was attributable directly the efforts of the Appellant in renovating and refurbishing each property. That gain was then funneled into the purchase money used by the Respondent to purchase each of the subject properties. The excluded evidence as to the series of sales and resulting build up of equity was necessary to show the full extent of value the Appellant contributed to the ultimate purchase of the two properties. Its exclusion prevented a fair analysis of the Appellant's interest in the property. Based on the foregoing the Court should reconsider its decision and grant a rehearing in this case.

Respectfully submitted,

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(864) 282-1292

John G. Reckenbeil  
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(864) 582-5472

Counsel for Appellant

July 13, 2020.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

---

Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

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**Jul 13 2020**

**SC Court of Appeals**

Polly Thompson, ..... Respondent,  
v.  
Cathy Swicegood, ..... Appellant.

---

CERTIFICATE OF SERVICE

---

I certify that on the 13th day of July, 2020, I served the Appellant's Petition for Rehearing on the Respondent by delivering a copy of same via AIS email only as follows:

Ms. Margaret A. Chamberlain  
Chamberlain Law Firm, LLC  
600 Pettigru Street  
Greenville, SC 29601  
via AIS email only to: mchamberlain@chamberlainlawfirmllc.com

and to:

John G. Reckenbeil, Esq.  
LAW OFFICE OF JOHN G. RECKENBEIL, LLC  
P.O. Box 16735  
Greenville, SC 29606  
via AIS email only to: john@johnreкенbeillaw.com  
Attorney for Appellant



Respectfully submitted,

s/J. Falkner Wilkes

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Counsel for Appellant

July 13, 2020.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Ellis B. Drew, Master in Equity

Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

**RECEIVED**

**Jul 28 2020**

**SC Court of Appeals**

Polly A. Thompson, ..... Respondent,

v.

Cathy J. Swicegood, .....Appellant.

**RESPONDENT POLLY A. THOMPSON'S RETURN IN OPPOSITION  
TO APPELLANT'S PETITION FOR REHEARING**

Respondent, Polly A. Thompson, hereby submits this Return in Opposition of Appellant's Petition for Rehearing pursuant to the Court's request under Rule 219(b) and 221(a), South Carolina Appellate Court Rules ("SCACR").

**ARGUMENTS**

**I. APPELLANT'S PETITION FOR REHEARING DOES NOT STATE ANY  
POINT THIS COURT OVERLOOKED OR MISAPPREHENDED.**

A Petition for Rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR (emphases added); *see Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). "In order to prevail on a petition for rehearing, [Appellant] must demonstrate the Court overlooked or misapprehended their argument." *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001)(emphasis added). The purpose of a Petition for Rehearing is not "to present points a lawyer did not present to the court in his briefs, nor is the purpose of the petition for rehearing to have the case tried in the appellate court

a second time.” *Kennedy*, 349 SC 531, 564 S.E.2d 322; *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933).

Appellant’s Petition for Rehearing fails to state with particularity any point this Court supposedly overlooked or misapprehended. A thorough examination of the Petition reveals that the Appellant simply disagrees with this Court’s ruling. Beyond that disagreement, it is unclear as to what the Appellant contends this Court either overlooked or misapprehended in its opinion because the Petition merely repeats arguments Appellant previously made. Because Appellant fails to demonstrate with particularity that this Court has overlooked or misapprehended any points warranting rehearing, the Petition must be denied. This Court’s opinion reaches the correct result for the correct reasons and does not overlook or misapprehend the issues and arguments presented by the parties. Respondent asserts this Court, through a unanimous panel, properly affirmed (with modification) the master’s ruling.

## **II. THIS COURT CORRECTLY DENIED APPELLANT’S MOTION TO SUPPLEMENT THE RECORD ON APPEAL.**

In her Petition, Appellant contends this Court denied “Appellant’s motion to consolidate the records of two appeals pending between the parties offered for the purpose of considering evidence as to the date of service underlying the case.” However, the Appellant did not file a “motion to consolidate the records,” but rather filed a motion requesting to supplement the record on appeal in the partition action with an affidavit of service from the separate action in Family Court. (Motion, November 6, 2017). Appellant argues that granting the motion would have allowed Appellant to show the circuit court’s lack of subject matter jurisdiction. Appellant’s Petition largely repeats the arguments previously made in the motion without addressing the actual basis for the Court’s denial of the motion to supplement the record on appeal.

In its Order, this Court properly denied Appellant’s motion based on Rule 210(c), SCACR stating, “Because the affidavit of service was not presented to the lower court, it may not be included in the record on appeal of this case.” (Order, December 8, 2017). The record is clear, not only did Appellant fail to present the document to the Circuit Court with her Motion to Dismiss or in the Alternative Stay the Proceedings, she also failed to present it to the Master in Equity for consideration during two days of trial. (R. Vol. I, pp. 78; 132-133; 215-373). Appellant’s failure to

present the affidavit of service to the lower court constituted a waiver of her right to submit the document to this Court and to have this Court give it, or any reference to it, consideration. Thus, the supplementation of the record was properly denied based on Rule 210(c), SCACR.

Consequently, Appellant has failed to show this Court overlooked or misapprehended Appellant's arguments in her motion to supplement the record. Appellant completely ignores the underlying basis of the Court's denial of the motion (Appellant's own failure to present the Affidavit of Service to the lower court) and instead attempts to have the motion tried for a second time.

### **III. THIS COURT CORRECTLY RULED THE MASTER DID NOT ABUSE HIS DISCRETION IN EXCLUDING EVIDENCE OF APPELLANT'S CONTRIBUTIONS TO PRIOR PROPERTIES.**

Appellant argues this Court "misperceived the nature of the evidence, offered by the Appellant, and its purpose." (Appellant's Petition for Rehearing). Appellant's Petition, however, simply rehashes the argument set forth in Appellant's brief that the exclusion of evidence of Appellant's renovation and refurbishing of properties other than the common properties prevented a fair analysis of Appellant's interest in the common properties. This argument misses the mark and fails to state with particularity the points supposed to have been overlooked or misapprehended by the court. Rule 219(a), SCACR.

South Carolina courts have consistently held, "the admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *Burke v. Republic Parking Sys., Inc.*, 421 S.C. at 558, 808 S.E.2d at 628 (quoting *State v. Commander*, 396 S.C. 254, 262-63, 721 S.E.2d 413, 417 (2011)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.* (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

In fashioning an award in a partition action, a court may consider the amount of any down payment and any mortgage payments, as well as the reasonable value of repairs and improvements made to the property. See *Shumaker v. Shumaker*, 234 S.C. 421, 426, 108 S.E.2d 682, 685 (1959) (holding that "The general rule is that a joint tenant who, at his own expense, places permanent

improvements upon the common property, is entitled in a partition suit to compensation for the improvements whether cotenants assented thereto or not.” *Shumaker v. Shumaker*, 234 S.C. 421, 426, 108 S.E.2d 682,685 (1959)(emphasis added). Likewise, the amount of compensation to be awarded in a partition and accounting action for improvements is “estimated by and limited to the amount by which the value of the common property has been enhanced.” *Ackerman v. Ackerman*, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (1986)(emphasis added).

This Court quoted *Burke* and *Shumaker* in support of its conclusion that the master did not abuse his discretion in excluding the evidence of Appellant’s renovations to the previously owned properties. The common properties at issue were the Lake Hartwell home and the Hilton Head condo. This Court fully considered Appellant’s hearing testimony that she and Respondent flipped several other properties prior to purchasing the Lake Hartwell home and Hilton Head Condo, but duly notes Appellant proffered no evidence as to any specific value realized from her work on the previously owned properties and no evidence that any proceeds from the sales of the flipped properties were used to purchase the Lake Hartwell or Hilton Head properties. This Court further considered Respondent’s testimony that the entire down payment on the Hilton Head property came from inheritance from her parents, and the payments of \$10,209.98 and \$6,678.43 for the purchase of Lake Hartwell home came from her checking account. Respondent presented proof of her contributions by way of canceled checks and proof of electronic transfers that were admitted into evidence without objection from Appellant. Therefore, this Court considered, addressed, and properly interpreted the law and evidence in concluding the master did not err by excluding evidence of any indirect contributions Appellant made to properties other than the two common properties at issue in this case.

#### **IV. CONCLUSION**

A rehearing in this case is unwarranted. Appellant’s Petition for Rehearing merely regurgitates arguments Appellant previously put forth in her motion to supplement the record and in her brief. It not only fails to state with particularity any point this Court supposedly overlooked or misapprehended, it attempts to have these matters tried a second time by the Court of Appeals. The Opinion of this Court affirming (with modification) the master’s Order of Partition is legally and factually correct. Appellant’s Petition for Rehearing should be denied.

Respectfully submitted,

*s/Margaret A. Chamberlain*

Margaret A. Chamberlain (SC Bar # 015226)

CHAMBERLAIN LAW FIRM, LLC

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ATTORNEY FOR RESPONDENT

*s/Melissa H. Moore*

Melissa H. Moore (SC Bar # 101315)

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ATTORNEY FOR RESPONDENT

Greenville, South Carolina

July 28, 2020

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Ellis B. Drew, Master in Equity

---

Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

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**Jul 28 2020**

**SC Court of Appeals**

Polly A. Thompson, ..... Respondent,

v.

Cathy J. Swicegood, .....Appellant.

---

PROOF OF SERVICE

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I certify that I have served Return in Opposition of Appellant's Petition for Rehearing on the attorneys for the Appellant by AIS e-mail on July 28, 2020. A copy of the sent email is attached.

Respectfully submitted,

s/Margaret A. Chamberlain

Margaret A. Chamberlain (SC Bar # 015226)

CHAMBERLAIN LAW FIRM, LLC

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ATTORNEY FOR RESPONDENT

POLLY A. THOMPSON

July 28, 2020

Other Counsel of Record:

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Greenville, South Carolina 29606  
Via AIS e-mail only to: [john@johnreckenbeillaw.com](mailto:john@johnreckenbeillaw.com)  
Counsel for Appellant

Mr. J. Falkner Wilkes  
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Counsel for Appellant

Melissa H. Moore (SC Bar # 101315)  
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Via AIS e-mail only to: [mmoore@melissahmoore.com](mailto:mmoore@melissahmoore.com)  
Counsel for Respondent



**Paralegal at Chamberlain Law Firm LLC**

---

**From:** Paralegal at Chamberlain Law Firm LLC <paralegal@chamberlainlawfirmllc.com>  
**Sent:** Tuesday, July 28, 2020 10:39 AM  
**To:** John Reckenbeil (john@johnreckenbeillaw.com); JFalknerWilkes@gmail.com; mmoore@melissahmoore.com; 'Margaret Chamberlain'  
**Subject:** Polly Thompson v. Cathy Swicegood (2015-1860)  
**Attachments:** Return to Motion for Rehearing (PARTITION).pdf; Proof of Service (Return).pdf

With this email, please find attached a Return to Motion for Rehearing along with a Proof of Service, both of which are being served electronically, in the case of Polly Thompson v. Cathy Swicegood (2015-1860).

Thank you  
Caitlin Brown

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**Jul 28 2020**

**SC Court of Appeals**

PARALEGAL  
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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

---

Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

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SC Court of Appeals

Polly Thompson, ..... Respondent,  
v.  
Cathy Swicegood, ..... Appellant.

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BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

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**STATEMENT OF ISSUES ON APPEAL**

1. Did the court err in refusing to consider the issue of marriage and stay the action pending a resolution of the marriage issue?
2. Did the court err in the exclusion of evidence proving Appellant's direct and indirect contributions to jointly owned real property?
3. Did the court err in the determination of the Appellant's contribution in jointly owned real property?
4. Did the court apply the appropriate analysis in its determination of the parties' interests in the real property at issue?

**STATEMENT OF THE CASE**

This is an action for partition of jointly owned real property initiated by the Respondent. Appellant counterclaimed and alleged that the circuit court lacked jurisdiction and that the court should consider the parties' relationship and same sex marriage.

A trial was held before the Honorable Ellis B. Drew, Master in Equity on March 16, 2015 and May 21, 2015. An Order of Partition was entered on June 26, 2015. A timely motion for reconsideration was filed by the Appellant which was denied by order entered August 3, 2015. A timely notice of appeal was filed by the Appellant.

The Respondent was represented below by Margaret Chamberlain of Greenville. The Appellant was represented below by John Reckenbeil and J. Falkner Wilkes joins representation of the Appellant on appeal.

**STATEMENT OF THE FACTS**

At the beginning of the trial the Respondent moved to exclude any evidence as to the parties' marriage. 219. The Respondent also moved to exclude any evidence as to a claim based on "sweat equity" by the Appellant in any real property other than the two subject of the partition action. 219. Respondent claimed that the indirect "sweat equity" in other property was not properly before the court as it was not raised in the Appellant's Answer and Counterclaim. 219.

Also at the beginning of the trial the Appellant argued a motion to stay the proceedings based on the existence of on-going litigation between the parties arising out of the family court on the issue of marriage, and the potential for exclusive jurisdiction of the family court over the subject real property as part of the parties' marital estate. 221. The court denied the motion stating that it expressed no opinion on whether there was a marriage and, that even if there was, it was still a partition action with two people that jointly owned property. 221. The Respondent renewed the motion at the end of the Plaintiff's case. 287. The court granted the Respondent's motion to exclude indirect contributions including the "sweat equity" in the relationship including other real property that the Appellant claimed was rolled over into the real property subject of this action. 227; 288-289.

The parties agreed as to the basic values of the properties. 228. The



Respondent testified that she added the Appellant's name to the title of both properties so that if anything happened to the Respondent the Appellant would have a place to live. 252. She also testified that she put the Appellant's name on the property because their relationship was deteriorating and that she thought it would help their relationship. 253. She specifically testified that putting the Appellant's name on the titles protected the Appellant in the event of her [the Respondent] death. 253. The properties were titled as joint tenancy with the right of survivorship. 262. Respondent testified thought that despite this she did not intend to convey fifty percent interest to the Appellant or that the Appellant receive fifty percent interest in the event that they "separated". 253.

The Respondent also put the Appellant on a checking account that she had since sometime in the 1990's. 254. Respondent referred to the account in her testimony as "joint checking account". 255, l. 22-25. The Respondent admitted that the Appellant contributed \$22,000.00 to the Lake Hartwell property. 258. At one point the Respondent's counsel sent a letter to the Appellant's counsel telling her she could live in the lake house. 267. Part of the acquisition of the property at issue involved the Appellant's execution of a quitclaim deed to the Respondent on other property in Greenville county for one dollar, love and affection. 269.

Appellant's counsel proffered that witness Stephanie Camputaro could have

testified to other properties and the relationship of the parties (evidence that had been excluded under the pre-trial ruling). 189. The court allowed testimony that Camputaro was witness to many conversations about their properties, their life as a whole and what they both achieved together. “Like any other married couple they both contributed different things.” 189, l. 20-23. The parties both contributed to the life and properties that they had. 190. That they kept upgrading the equity and properties. 190. Camputaro witnessed the Appellant doing the majority of the work in refurbishing the Hilton Head property. 192; 228. Camputaro equated the parties’ relationship financially to a marriage. 198. (The court repeatedly stated that it would not consider evidence of marriage or relationship.)

Appellant’s counsel proffered that the Appellant could testify to contributions excluded by the court that she claimed should have been considered in determining her interest in the prosperities. 300. The court responded that those would be the subject of another case or another court. 300. Appellant testified that she spent a lot of time and effort working on the property which they intended for their retirement. 301. Appellant testified that she was unable to take on other jobs while renovating their properties. 302. The parties continually worked on flipping properties to upgrade to more desirable property for their retirement. 302. The decision to purchase the Hilton Head property was a joint decision. 303. All of the

prior properties rolled forward to help enable the purchase the Hilton Head property. 204. The Appellant testified to the extensive work she performed in renovating property. 206; 229-247. Appellant also testified that she paid \$1,300.00 out of pocket for plumbing and electrical work. Appellant prepared a “standard invoice” to list the work and value she put into the Hilton Head property. 215; 229. Appellant testified to two values constituting some of her direct contributions to the properties, \$13,000 and \$17,490.83. 216.

Appellant testified that each party’s will left everything to the other party. 219. Appellant testified that she drew the plans for the Lake Hartwell home and was there during every single day of construction. 215. Respondent’s involvement in the construction process was minimal. 220. Appellant testified to the work she performed on the lake house. 225; 250. Appellant’s contribution of \$20,000 in the lake house was on top of the \$22,000 contributions from roll over of appreciation from the prior properties. 220. Appellant said she gave the Respondent the monies left over from the previous properties (two lots and a log cabin) and the \$22,000. 220-221. Appellant testified that she was responsible for a total direct contribution of \$42,000 that was put into the lake house. 223. A summary showing the contribution was proffered as Def. Ex. 8. 323. On cross-examination the \$22,000 was referred to as the “down payment” and the only other contribution was

Appellant's "work and effort going into it as payment." 227.

At the end of the hearing the Respondent's counsel requested partition by allotment of sole title based on the contributions of the parties. 240. Appellant sought 50% interest by sale and right of first refusal. 240-241. The court then gave the parties 20 days to come up with offers to purchase the interest of the other party for the court to consider. 242. The parties agreed on the value of the properties. 243-244. The court discusses getting the bid before considering an order requiring the sale of the property. 244. The hearing was concluded to reconvene at a later date.

When the court reconvened the trial judge asked the parties to each state for the record their offer to buy out the other's interest in the properties. 351. The Appellant offered to purchase the Lake Harwell property for \$175,000. 353. The Respondent offered \$275,100 on the Hilton Head property and \$188,407 on the Lake Hartwell property. The court found that the Respondent's offer the highest for each of the two properties. 353. The court accepted the offers of the Respondent and divided the net equity in each based on what the court found were the parties' respective direct contributions of cash, excluding roll over appreciation or other indirect contributions that the Appellant had sought to introduce and have considered. 353-359. Although the court mentioned the

Appellant's "sweat equity" it awarded all of the remaining equity in both houses to the Respondent. 359-360. The court denied Respondent damages for ouster. 360. The court awarded the Respondent \$5,000 in attorney fees and costs. 360-361; 372. As part of its reasoning the court stated that the marital claim "makes no difference to me." 363, l. 21-364, l. 9.

Appellant filed a Rule 59 motion raising the following issues: 1) The court's failure to consider the issue of marriage; 2) The court's failure to consider [allow] evidence that would be proper under an equity analysis; 3) That the decision should be vacated and the matter transferred to the family court for equitable division as marital property. 132.

**ARGUMENT****I. THE COURT ERRED IN REFUSING TO CONSIDER THE ISSUE OF MARRIAGE AND STAY THE ACTION PENDING A RESOLUTION OF THE MARRIAGE ISSUE.*****Standard of Review***

A partition action is an action in equity. In an appeal from an equitable action, this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Doe v. Clark, 318 S.C. 274, 276, 457 S.E.2d 336, 337 (1995); Laughon v. O'Braitis, 360 S.C. 520, 602 S.E.2d 108 (S.C. App., 2004).

The question of subject matter jurisdiction is a question of law for the court. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). This Court is free to decide questions of law with no deference to the trial court. Hammer v. Hammer, 399 S.C. 100, 730 S.E.2d 874 (S.C. App., 2012).

***Discussion of the Issue***

The court's refusal to consider the issue of marriage and stay the trial of the case was error. The parties in this case have pending litigation as to the existence of a marriage in Appellate Case No.: 2014-001109. In the event that the parties are ultimately determined to be married, the circuit court's order will lack subject matter jurisdiction and become void *ab initio*. See DeWitt v. S.C. Dept. of

Highways & Public Transp., 274 S.C. 184, 262 S.E.2d 28 (1980) (all proceedings of a court lacking subject matter jurisdiction are a nullity, and its judgment has no effect). The court therefore erred in staying the trial in this case pending a final determination of the parties' marital status.

Lack of subject matter jurisdiction may not be waived, even by consent of the parties. Anderson v. Anderson, 299 S.C. 110, 382 S.E.2d 897 (1989). Subject matter jurisdiction can be raised at any time. [S]ubject matter jurisdiction may not be waived and the issue may be raised at any stage of the proceeding. Eaddy v. Eaddy, 324 S.E.2d 70, 283 S.C. 582 (S.C., 1984). "[I]ssues relating to subject matter jurisdiction may be raised at any time ... and should be taken notice of by this court on our own motion." Bunkum v. Manor Properties, 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct.App.1996). Brown v. Greenwood School Dist. 50 Bd., 344 S.C. 522, 544 S.E.2d 642 (S.C. App., 2001).

In the event that the parties are determined to be married pursuant to the common law, then only the family court can determine their respective interests in the real property at issue which, having been acquired during the marriage, would presumptively constitute marital property. See S. C. Code Section 20-3-630 as to marital property and S.C. Code Section 63-3-530 which provides: (A) The family court has exclusive jurisdiction: . . . (2) to hear and determine actions for divorce a

*vinculo matrimonii*, separate support and maintenance, legal separation, and in other marital litigation between the parties, and *for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees*, if requested by either party in the pleadings; *emphasis added*. See Hammer v. Hammer, 399 S.C. 100, 730 S.E.2d 874 (S.C. App., 2012). In the event that the separate litigation resolves the marital question in the Appellant's favor, then the circuit court is without subject matter jurisdiction and the order of partition becomes void. As the final ruling on the marital status of the parties could render the decision of the circuit court void, the circuit court erred in failing to stay the proceedings.

In the event that the marriage of the parties is affirmed by the separate appeal, then the Appellant would be prejudiced as the circuit court's analysis and determination of the parties' interests in the real property at issue differs substantially from the analysis applicable in the family's determinations relevant to the equitable division of marital property. See SC Code 20-3-630. The court's exclusion of evidence and refusal of considerations relevant in marital litigation, resulted in the exclusion of substantial value in the Appellant's interest in the properties that otherwise would have been considered by the family court:



In making an equitable distribution of marital property, the court must (1) identify the marital property, both real and personal, to be divided between the parties; (2) determine the fair market value of the property so identified; (3) *apportion the marital estate according to the contributions, both direct and indirect, of each party to the acquisition of the property during the marriage, their respective assets and incomes, and any special equities they may have in marital assets*; and (4) provide for an equitable division of the marital estate, including the manner in which distribution is to take place. Toler v. Toler, 292 S.C. 374, 356 S.E.2d[296 S.C. 294] 429 (Ct.App.1987); Gibson v. Gibson, 283 S.C. 318, 322 S.E.2d 680 (Ct.App.1984).

Johnson v. Johnson, 296 S.C. 289, 372 S.E.2d 107 (S.C. App., 1988), *emphasis added*.

Thus the Appellant was prejudiced by the circuit court proceeding prior to the conclusion of the litigation to settle the issue of marriage.

## **II. THE COURT ERRED IN ITS DETERMINATION OF THE VALUE OF EACH PARTIES' CONTRIBUTION TO THE PROPERTIES.**

The issue of each party's interest in the subject property is a factual determination. Assuming *arguendo* that the partition action is appropriate, the court still erred in excluding relevant evidence of value contributed by the Appellant to each property. In this case the court ruled that it would not consider evidence relating to any properties other than the two directly subject to the partition action. This was error.

The record shows that the parties purchased and sold (flipped) multiple

pieces of real property culminating in the purchase of the Hilton Head property.

What little testimony of the Appellant was allowed, shows that appreciation realized from the sequential property sales was attributable directly the efforts of the Appellant in renovating and refurbishing each property. The net gain from that appreciation was then funneled into the purchase money used by the Respondent to purchase each of the subject properties. Appellant sought to offer evidence to as to the chain of sales and resulting build up of equity to show the full extent of value she contributed to the ultimate purchase of the two properties. This evidence was necessary for a proper determination of the Appellant's interest in the subject properties.

The court excluded evidence relevant and necessary to a proper determination of the Appellant's interest in the subject property. Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears. State v. Alexander, 303 S.C. at 380, 401 S.E.2d at 148; State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986)." 'All that is required is that the fact shown legally tends to establish, or to make more or less probable, some matter in issue and to bear directly or indirectly thereon.' It is not required that the inference sought should 'necessarily follow' from the fact proved. Evidence is relevant if it makes the desired inference more probable than it would

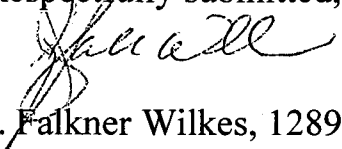
be without the evidence." Jon P. Thames & W.M. Von Zharen, A Guide to Evidence Law in South Carolina 28 (1987)(quoting Francis v. Mauldin, 215 S.C. 374, 378, 55 S.E.2d 337, 338 (1949)). Evidence the Appellant sought to introduce relating to other previously "flipped" properties was relevant in determining the amount of appreciation realized in each sale. As a result of the Appellant's efforts the appreciation that accumulated from sale to sale ultimately became a part of the Respondent's purchase money used in one or both of the properties subject of this case. As a result of the exclusion of relevant evidence, the court's valuation is in error. The court's calculation is further in error as it failed to adequately consider the Appellant's contribution of "sweat equity" of approximately \$20,000 Appellant put directly into the Lake Hartwell house. The record simply does not support the circuit court's ruling.

The court erred in excluding relevant evidence that would tend to show the value of the property attributable to the Appellant's long term "sweat equity."The court further erred in failing to consider all of the Appellant's direct "sweat equity" contributions to the subject property. The decision of the trial court should therefore be reversed and the matter remanded to the appropriate court for a determination of the full value of the Appellant's contributions to and interest in the properties at issue based on all of the relevant evidence.

**CONCLUSION**

The decision of the circuit court should be voided, or in the alternative, reversed and remanded for further findings as to the Appellant's direct and indirect contributions to the value of the property at issue.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

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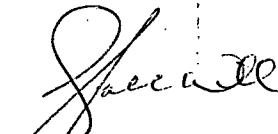
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Appellate Case No.: 2015-001860

Polly Thompson, ..... Respondent,  
v.  
Cathy Swicegood, ..... Appellant.

CERTIFICATE

I certify that the Brief of the Appellant and the Appellant's Reply are in compliance with Rule 211(b).

Respectfully submitted,



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August 28, 2017.

**The State of South Carolina  
In The Court of Appeals**

**ON APPEAL FROM THE COURT OF COMMON PLEAS**

**Ellis B. Drew, Master in Equity  
Trial Case No.: 2014-CP-37-00143**

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**APPELLATE CASE NO.: 2015-001860**

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Polly A. Thompson,

*Respondent,*

v.

Cathy J. Swicegood,

*Appellant.*

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**FINAL BRIEF OF RESPONDENT POLLY A. THOMPSON**

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**COUNTER-STATEMENT OF ISSUES ON APPEAL**

- I. CAN FAMILY COURT DIVEST THE CIRCUIT COURT OF SUBJECT MATTER JURISDICTION IF THE PARTIES ARE HELD TO BE MARRIED?
- II. DID THE MASTER PROPERLY EXCLUDE EVIDENCE OF APPELLANT'S CONTRIBUTIONS AND IMPROVEMENTS TO PROPERTIES OTHER THAN THE COMMON PROPERTIES?
- III. DID THE MASTER ERR IN ALLOWING SUMMARIES OF APPELLANT'S ALLEGED IMPROVEMENTS TO THE PROPERTIES INTO EVIDENCE UNDER SOUTH CAROLINA RULES OF EVIDENCE 1006 AND 803?
- IV. DID THE MASTER PROPERLY CONSIDER THE EVIDENCE IN DETERMINING THE VALUE OF EACH PARTY'S CONTRIBUTIONS?
- V. IS APPELLANT'S OUSTER OF RESPONDENT FROM THE LAKE HARTWELL PROPERTY A PROPER CONSIDERATION IN DETERMINING THE DIVISION OF THE PROPERTIES?

**COUNTER-STATEMENT OF THE CASE**

This appeal arises from a partition action instituted by Respondent, Polly Thompson, against Appellant, Cathy Swicegood. There are two properties subject to this partition action, one located at 505 West Sheffield Drive, Westminster, South Carolina, County of Oconee (the “Lake Hartwell property”) and the other located at 85 Folly Field Road, Hilton Head, South Carolina, County of Beaufort (the “Hilton Head” property). (R. p. 223, lines 18-22).

Respondent filed her Petition for Partition, Ouster and Accounting on March 11, 2014, seeking partition of the properties, equitable compensation for her contributions, as well as a finding of ouster against Appellant and reimbursement for her expenditures during the period of ouster. (R. pp. 210-213). On April 23, 2014, Appellant filed a Motion to Dismiss or In The Alternative, Motion To Stay Proceedings asserting this matter is better suited for family court. (R. pp. 132-133). A hearing on Appellant’s Motion to Dismiss was held on June 23, 2014. On October 16, 2014, the trial court issued an order denying Appellant’s motion and ruling that jurisdiction over the case was properly vested in the circuit court. (R. pp. 7-8).

On October 23, 2014, the case was referred to the Master in Equity for Oconee County. Appellant subsequently filed an Answer and Counterclaim on November 17, 2014. (R. pp. 70-77). On November 24, 2014, Respondent filed a Reply to Appellant’s Answer and Counterclaim. (R. pp. 67-69).

A trial was held before the Honorable Ellis B. Drew, Jr., Master in Equity for Oconee County (the “Master”), on March 16, 2015. A subsequent hearing was held before the Master on May 21, 2015. The Master issued his Order on June 26, 2015, granting Respondent, Polly Thompson, full ownership and title of both properties and attorney’s fees and costs in the amount of \$5,250.00. (R. pp. 2-6).

Appellant filed a Motion to Reconsider stating the trial court failed to address the relationship between the parties. (R. pp. 12-15). Respondent filed a Memorandum in Opposition to Appellant’s motion on July 10, 2015. (R. pp. 9-11). On August 3, 2015, the Master issued an order denying the Motion to Reconsider. (R. p. 1). Appellant filed a Notice of Appeal on September 2, 2015. (Notice of Appeal, September 2, 2015).

### **COUNTER-STATEMENT OF THE FACTS**

Counsel has set out the facts relevant to this case in great detail in the arguments set forth below.

### **ARGUMENTS**

#### **I. THIS COURT SHOULD AFFIRM THE MASTER’S RULING BECAUSE EVEN IF APPELLANT AND RESPONDENT WERE MARRIED IT WOULD NOT DIVEST THE CIRCUIT COURT OF JURISDICTION**

Appellant’s argument that the circuit court’s jurisdiction hinges upon the parties’ marital status is devoid of merit. The marital status of these parties is irrelevant to the issue of jurisdiction to hear partition actions. The circuit court has jurisdiction to hear partition actions between married couples just as it does for non-married individuals. South Carolina law on this issue is clear. “The court of common pleas has jurisdiction in **all** cases of real and personal estates held in joint tenancy or in common to make partition in kind or by

allotment . . . .” S.C. Code Ann. § 15-61-50 (2014) (emphasis added). Additionally, “**All** joint tenants and tenants in common who hold, jointly or in common, . . . shall be compellable to make severance and partition of all such lands, tenements and hereditaments.” S.C. Code Ann. §15-61-10 (2014) (emphasis added); *See also Smith v. Rucker*, 357 S.C. 532, 537, 593 S.E.2d 497 (S.C. App., 2004) (holding that husband and wife’s deed created a joint tenancy with rights of survivorship, thus the property was subject to partition under § 15-61-10).

A partition action “is not marital litigation, and thus is not within the jurisdiction of the family court.” *Gilley v. Gilley*, 327 S.C. 8, 1, 488 S.E.2d 310,311 (S.C. 1996) (*quoting Eichor v. Eichor*, 290 S.C. 484, 351 S.E.2d 353 (S.C. App., 1986)). “The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked.” *Gilley v. Gilley*, 327 S.C. at 1, 488 S.E.2d at 311 (*quoting Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969)). Thus, jurisdiction of the court is “based on the status of the case **at the time of filing**.” *Gilley*, 327 S.C. at 11, 488 S.E.2d at 311 (emphasis added). “If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached.” *Id.* (holding husband’s subsequent filing of a family court action did not divest the circuit court of its jurisdiction over wife’s partition action). Just as in the *Gilley* case, the partition action in this case was filed **before** the family court action. Appellant’s subsequent filing in family court did not strip the circuit court of subject matter jurisdiction.

Appellant’s contention that the circuit court would lack subject matter jurisdiction if the parties are determined to be married is contrary to the South Carolina partition statutes. Like the husband and wife in *Smith*, the parties in this case hold their properties as joint

tenants with rights of survivorship which makes the parties and their properties subject to partition and the jurisdiction of the circuit court under § 15-61-10 and § 15-61-50.

Furthermore, even if Respondent and Appellant were determined to be married (as were the parties in *Smith*) their marital status alone would not create an exception to the Circuit Court's jurisdiction over the parties and their properties.

Appellant further argues that only family court can determine the parties' interest in the properties because if the parties are found to be married, the properties would "presumptively" be marital property. This argument is also incorrect. Under the Equitable Apportionment Act, "marital property as such does not exist until the date when marital litigation is filed or commenced." *Prosser v. Pee Dee State Bank*, 295 S.C. 212, 214, 367 S.E.2d 698, 700 (1988) (interpreting S.C. Code § 20-3-630(A)(2014)(formerly § 20-7-473)).

Appellant had not commenced family-court litigation at the time Respondent filed her partition action on March 11, 2014. Therefore, at the time the circuit court's jurisdiction attached, family court did not, and could not, have jurisdiction over the properties. Thus, at the time the partition was filed the properties were not and could not have been deemed "marital property" under the law. Because the jurisdiction of a court attaches to the person and the subject matter of the litigation at the time of filing, Appellant's subsequent filing of her family court Complaint did not divest the circuit court of jurisdiction over the properties. Thus, the circuit court properly asserted jurisdiction based on the status of the case and the properties at the time of filing regardless of whether or not the parties are married or not.

**II. THE MASTER PROPERLY EXCLUDED EVIDENCE OF ANY CONTRIBUTIONS AND IMPROVEMENTS TO PROPERTIES OTHER THAN THE COMMON PROPERTIES**

“The admission of evidence is a matter addressed to the sound discretion of the trial judge and his ruling will not be disturbed absent a clear abuse of discretion amounting to error of law.” *Anchor Point, Inc. v. Shoals of Anderson, Inc.*, 309 S.C. 486, 491, 424 S.E.2d 521, 524 (1992). To be subject to a partition action, real property must be held in joint tenancy or in common. S.C. Code Ann. § 15-61-50 (2014). The law is unambiguous, to be entitled to contribution from a cotenant or to be entitled to compensation for improvements, those contributions or improvements must be made to the common property, not properties that have long been sold. *See Shumaker v. Shumaker*, 234 S.C. 421, 426, 108 S.E.2d 682, 685 (1959). ( holding that “a joint tenant who, at his own expense, places permanent improvements upon the **common property**, is entitled in a partition suit to compensation for the improvements.”); *Ackerman v. Ackerman*, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (1986) (holding the amount of compensation to be awarded in a partition and accounting action for improvements is “estimated by and limited to the amount by which the value of the **common property** has been enhanced.”) 6 S.C. Jurisprudence Cotenancies § 29 (1991) (“a cotenant who has made essential repairs for the maintenance or preservation of the **common property** is entitled to contribution”); *Id.* at § 27 ( A cotenant who pays more than their share of a common debt or obligation or who pays repair or maintenance costs for the benefit of the **common property** is entitled to contribution from cotenants for their proportionate shares of the amount paid”) (emphasis added).

Respondent contends that any evidence of Appellant’s contributions or improvements to any properties other than those subject to this partition action is irrelevant. The Master

properly excluded such evidence because the other properties are not subject to this partition action and had either been sold prior to litigation or are owned solely by Respondent. (R. p. 223, lines 18-25). Any improvements made to properties not subject to this litigation cannot be assessed against the Hilton Head or Hartwell properties because these alleged improvements were not made to the common properties and did not enhance the value of the common properties.

**III. THE MASTER ERRED IN ALLOWING SUMMARIES OF APPELLANT'S ALLEGED IMPROVEMENTS TO THE PROPERTIES INTO EVIDENCE UNDER S.C. RULES OF EVIDENCE 1006 AND 803**

The Master erred in allowing Appellant's invoice for work allegedly performed to the Hilton Head property into evidence under Rule 1006 of the South Carolina Rules of Evidence. Rule 1006 states,

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation, provided the underlying data are admissible into evidence. **The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place.** The court may order that they be produced in court.

SCRE 1006 (emphasis added).

When asked on direct examination to identify the invoice for the Hilton Head property, Appellant testified that the invoice was one she prepared to "summarize" basically everything she had done to the Hilton Head property. (R. p. 314, lines 17-20). Respondent's counsel objected to the use of the summary because Appellant had not complied with the requirements for a summary under Rule 1006 (R. p. 315, lines 3-11).

Following Respondent's objection under Rule 1006, Appellant's counsel informed the court that Appellant had "reconstructed" the invoice from her recollection and memory.

(R. p. 315, lines 20-23). Respondent's counsel then objected to the admission of the invoice because it was created in preparation for trial and did not fall within the exception to Rule 803 of the South Carolina Rules of Evidence. (R. p. 316, lines 1-7).

Rule 803(5) states the following as an exception to the hearsay rule,

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, **shown to have been made or adopted by the witness when the matter was fresh in the witness' memory** and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

SCRE 803(5) (emphasis added).

The Master overruled both objections and allowed Appellant's invoice of the Hilton Head property into evidence as Defendant's Exhibit 7. (R. p. 316, lines 13-14).

Respondent contends that the invoice does not meet the requirements of Rule 1006 in that the underlying documents of the summary were not provided to or made available to Respondent for examination. (R. p. 315, lines 3-11). On cross-examination, Appellant testified that she had not provided any documentation by way of canceled check, bills or receipts for any materials for any property, but had only provided counsel with the invoices. (R. p. 329, lines 8-19). My her own admission, Appellant has not supplied Respondent with any underlying documents in support of the Hilton Head invoice.

Respondent further contends the Master erred in admitting the invoice into evidence under Rule 803. The invoice does not meet an exception to hearsay under Rule 803 and is not admissible because the invoice cannot be shown to "have been made or adopted by the witness when the matter was fresh in [her] memory" as required under the rule. On direct-examination, Appellant identified the invoice as one she prepared trying to recall what she had done to the property. (R. p. 314, lines 15-16). Appellant further testified on cross-



examination that neither the invoice proffered for the excluded properties nor the invoice for Hilton Head were originals, and neither were created at or near time the alleged work was performed. (R. p. 329, lines 3-7). In fact, Appellant testified she had “reconstructed” the invoices a mere three weeks prior to trial. (R. p. 329, lines 8-19). Trial in this case was held on March 15, 2015, and Appellant’s summary was for work allegedly performed on or around June of 2013. (R. p. 542). Appellant’s own testimony shows the invoice was “reconstructed” almost two years after the work was allegedly done, not when the matter was fresh in her memory.

For these reasons, Respondent contends the invoice for Hilton Head should have been excluded by the Master.

#### **IV. THE MASTER PROPERLY CONSIDERED THE EVIDENCE IN DETERMINING THE VALUE OF EACH PARTIES’ CONTRIBUTIONS**

When reviewing an appeal from an equitable action, the Court may find facts in accordance with its own view of the preponderance of the evidence. *Laughon v. O’Braitis*, 318 S.C. 520, 524-25, 602 S.E.2d 108, 110 (Ct. App. 2004). “However, this broad scope of review does not require the Court to disregard the findings at trial or ignore the fact that the trial judge was in a better position to assess the credibility of the witnesses.” *Id.*

In fashioning an award in a partition action, a court may consider the amount of any down payment and any mortgage payments, as well as the reasonable value of repairs and improvements made to the property. *See Shumaker v. Shumaker*, 234 S.C. 421, 426, 108 S.E.2d 682, 685 (1959) ( holding that “a joint tenant who, at his own expense, places permanent improvements upon the common property, is entitled in a partition suit to compensation for the improvements.”); 6 S.C. Jurisprudence Cotenancies § 27 (1991) ( A cotenant who pays more than their share of a common debt or obligation or who pays repair

or maintenance costs for the benefit of the common property is entitled to contribution from cotenants for their proportionate shares of the amount paid”).

The following facts regarding the Hilton Head property are undisputed and are firmly established by the record: its fair market value was \$389,700.00, the mortgage loan balance was \$269,100.57, and the estimated equity was \$120,599.43. (R. pp. 374-424).<sup>1</sup> Nor is it disputed that the mortgage note is solely in Respondent, Polly Thompson’s, name, and her contributions to the property totaled \$142,477.01 at the time of the hearing. (R. pp. 374-424) (R. pp. 228-239) (R. p. 326, lines 16-19).

Likewise, the following facts regarding the Lake Hartwell property are undisputed and are firmly established by the record: its fair market value was \$211,150.00, the mortgage loan balance was \$143,407.75, and the estimated equity was \$67,742.25. (R. pp. 425-475). Nor is it disputed that the mortgage note is solely in Respondent, Polly Thompson’s, name, and her contributions to the property totaled \$129,838.70 at the time of the hearing. (R. pp. 425-475) (R. pp. 239-254) (R. p. 327, lines 13-25) (R. p. 328, lines 1-3).

Despite stipulating to the property values and accounting contained in Plaintiff’s Exhibits 1 and 2, Appellant now claims some of Respondent’s contributions to the properties came from her. This assertion, however, is not supported by any evidence in the record. (R. pp. 215-348). The evidence shows that the overwhelming majority of the monies paid on the Hartwell property and all the money paid on the Hilton Head property came from Respondent, Polly Thompson. (R. pp. 230-231) (R. pp. 279-280). Respondent testified that the funds she used came either from inheritance from her parents or from her salary. *Id.* Respondent presented the Master with bank statements, checks and other documentation

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<sup>1</sup> Plaintiff’s Exhibit 1 and 2 are notebooks containing a summary of the property values and contributions, as well as the underlying documents in support of the summary. The notebooks were admitted into evidence without objection from Appellant.

reflecting her contributions to the properties. (R. pp. 374-475). In contrast, Appellant did not present the Master with any cancelled checks, bank statements, deposit slips or any evidence whatsoever of any funds she allegedly gave Respondent or contributed to the properties. (R. p. 329, lines 8-19).

Appellant also claims that the Master's calculation fails to consider her alleged "sweat equity" contributions to the properties. Respondent asserts the Master properly considered Appellant's alleged "sweat equity" under South Carolina partition law. "A joint tenant who, **at his own expense**, places permanent improvements upon the common property, is entitled in a partition suit to compensation for the improvements." *Shumaker*, 234 S.C. at 425, 108 S.E.2d at 682. (emphasis added).

Appellant testified that she worked on both properties and would sometimes use her own money to purchase materials and other items. (R. p. 328, lines 4-8) (R. p. 330, lines 10-11). She admitted, however, Respondent paid her for material and labor. *Id.* Appellant did not provide the Master with any cancelled checks, bills or receipts for any of her alleged expenditures. (R. p. 329, lines 3-11). While Respondent did not deny Appellant did work to the properties, Respondent testified she paid Appellant for both her labor and materials. (R. p. 235, lines 12-19). Respondent supported this assertion by producing cancelled checks paid to and cashed by Appellant for labor and materials, which reflect payment of over \$13,000.00 to Appellant for materials and labor. (R. pp. 374-475) (R. pp. 509-514) (R. pp. 330-334). Appellant presented no evidence that her improvements and materials were paid at her own expense as required under *Shumaker*. They were clearly paid at the expense of Respondent. Appellant cannot expect to be compensated for her alleged "sweat equity" by

way of partition when she was compensated for her labor by Respondent at the time the work was performed.

Respondent contends that the Master did consider Appellant's alleged "sweat equity." The Appellant failed to produce any credible evidence, documentary or otherwise, as to the value of her alleged "sweat equity" or the value by which the properties were enhanced by her efforts. The Master obviously found that it was Respondent's money alone that was used to pay the debts, improvements, maintenance and repairs for both properties. (R. pp. 358-359). Therefore, Respondent contends deference should be given to the Master's credibility assessments, as well as his finding that Respondent's money funded the properties (including paying for Appellant's labor), and his decision should be upheld.

**V. THIS COURT SHOULD AFFIRM THE MASTER'S RULING BECAUSE APPELLANT'S OUSTER OF RESPONDENT FROM THE LAKE HARTWELL PROPERTY IS A PROPER CONSIDERATION IN DETERMINING THE DIVISION OF THE PROPERTIES**

The South Carolina Rules of Appellate Procedure provide that "respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record on appeal as provided by Rule 220(c), SCACR." Rule 208(b)(2), SCACR. Rule 220(c), SCACR, further provides that "the appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record on appeal." Moreover, a respondent may raise any additional basis on which the appellate court should affirm the trial court's ruling, regardless of whether it was presented to or ruled upon by the trial court. *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000).

Although the Master did not award Respondent damages in her action for ouster against Appellant, Respondent contends Appellant's ouster of Respondent is a proper equitable consideration in deciding to affirm the Master's distribution of the properties to the

parties. A partition action is an equitable action. *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989). As such the maxim – “He who seeks equity should do equity” must apply. *Anderson v. Purvis*, 211 S.C. 255, 44 S.E.2d 611, 613 (1947). “Ouster is the actual turning out or keeping excluded a party entitled to possession of any real property.” *Freeman v. Freeman*, 323 S.C. 95, 99, 473 S.E.2d 467, 470 (Ct. App. 1996). “The acts relied upon to establish an ouster must be of an unequivocal nature, and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable.” *Id.*

In December 2013, Appellant and Respondent ended their relationship. At that time, the parties agreed Appellant could stay at the Lake Hartwell home. (R. p. 247, lines 7-11). Prior to Appellant moving in, Respondent had unfettered access to the property. Respondent testified that in January 2014, she went to check on the property and discovered Appellant had changed the locks on the home. (R. p. 247, lines 17-20) (R. p. 480). After Respondent discovered she could not access her home, Respondent’s counsel sent a letter to Appellant’s counsel on January 28, 2014, asking for keys to the property. (R. p. 476). Appellant’s counsel in turn refused to give Respondent keys to the property. (R. p. 477). Respondent requested keys and access to the property on two other occasions. (R. pp. 478-479). Appellant, however, continued to deny Respondent keys or access to the property. (R. p. 250, lines 14-17). Appellant not only denied Respondent access to the property, she also removed Respondent’s personal items and furniture from inside the home without Respondent’s knowledge. (R. pp. 250-251). Respondent went to check on the Hartwell property in November 2014, and while walking around the perimeter of the home she discovered her items were dumped onto the porch on the back of the home. *Id.* By the time Respondent discovered the items they were covered with mold and mildew. (R. p. 482-486).

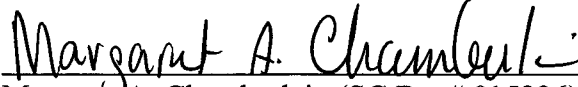
Appellant admitted that she had changed the locks and had not given Respondent a working key. (R. p. 335, lines 1-5). Appellant also admitted she removed Respondent's possessions from the home. (R. p. 335, lines 6-8). Furthermore, even after changing the locks and excluding Respondent from the property, from January 2014, to the date of the hearing, March 16, 2014, Appellant did not pay any mortgage payments, tax payments, or any other bill with the exception of power and water. (R. pp. 425-475). Nevertheless, during this period, Respondent paid \$14, 143.77 in mortgage payments, taxes and other expenses on property she could not access or enjoy. (R. p. 251, lines 22-25) (R. p. 252, lines 1-16).

Appellant's actions of changing the locks, refusing to provide Respondent with a key, and removing Respondent's possessions were distinctly hostile to Respondent's rights to the Lake Hartwell home. Therefore, Respondent asserts that Appellant's failure to act equitably toward Respondent is supported by the evidence and is a proper consideration in deciding to affirm the Master's distribution of the properties to the parties.

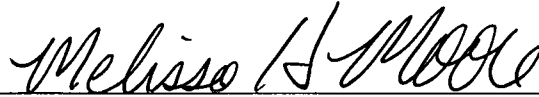
### **CONCLUSION**

For the foregoing reasons, this Court should find that subject matter jurisdiction is properly vested in the circuit court and that the Master's Order properly partitions the properties between the parties according to their contributions. Therefore, Respondent respectfully request that this Court affirm the Master's ruling.

Respectfully submitted,



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August 13, 2017

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Ellis B. Drew, Master in Equity

Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

Polly A. Thompson, ..... Respondent,

v.

Cathy J. Swicegood, ..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief complies with Rule 211, SCACR.

Exclusive of Table of Contents, Table of Authorities, and this Certificate of Counsel, this  
Brief contains (15) pages.

  
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AUG 18 2017

SC Court of Appeals



THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

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Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

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Polly Thompson, ..... Respondent,  
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Cathy Swicegood, ..... Appellant.

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REPLY

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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

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**STATEMENT OF ISSUES ON REPLY**

1. Did family court exclusive jurisdiction vest prior to circuit court jurisdiction?
2. Can circuit court jurisdiction attach prior to the commencement of the action pursuant to Rule 3, SCRCP?
3. Can the circuit court obtain concurrent jurisdiction once the family court action has been filed and served?
4. Is the circuit court order void for lack of jurisdiction?
5. Is Respondent's Issue III properly preserved for review or is it either unpreserved or the law of the case?

**STATEMENT OF FACTS IN REPLY**

On March 11, 2016 the Respondent filed a petition to partition the property at issue in the circuit court. (R. p. 207-214). On March 13, 2016, the Appellant filed a summons and complaint in the family court alleging a common law marriage and seeking, among other things, separate support and maintenance and equitable division of marital property. (R. p. 135 ). On March 17, 2016 the Appellant's family court summons and complaint was served on the Respondent. (R. p. 551). On or after March 19, 2016, the Respondent's circuit court petition for partition was served on the Appellant. (R. p. \_\_\_\_ ).

**ARGUMENT IN REPLY**

**I. THE FAMILY COURT WAS FIRST TO VEST WITH JURISDICTION AND THEREFORE HAD EXCLUSIVE JURISDICTION OVER THE PROPERTY AT ISSUE.**

***Standard of Review***

The question of subject matter jurisdiction is a question of law for the court. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). This Court is free to decide questions of law with no deference to the trial court. Hammer v. Hammer, 399 S.C. 100, 730 S.E.2d 874 (S.C. App., 2012). "[I]ssues relating to subject matter jurisdiction may be raised at any time ... and should be taken notice of by this court on our own motion." Bunkum v. Manor Properties, 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct.App.1996).

***Discussion of the Issue***

The family court obtained jurisdiction on March 17, 2016. Although the Respondent filed her partition action in the circuit court on March 11, 2016, she did not serve the petition until after the family court action had been both *filed and served*. To vest jurisdiction in the circuit court, to the exclusion of the family court, the circuit court jurisdiction must precede that of the family court. If the family court's jurisdiction attaches first, then the family court has exclusive

jurisdiction. *See* S.C. Code 63-3-530 (A)(2).

The circuit court does not obtain jurisdiction until proper service of the initial pleadings. "Under Rule 3(a), SCRCP, a civil action is commenced by the filing and service of a summons and complaint." Louden v. Moragne, 327 S.C. 465, 468, 486 S.E.2d 525, 526 (Ct.App.1997). "Service of the summons brings the defendant within the court's jurisdiction and gives the court the power to render a personal judgment against the person served." *Id.* (citing James F. Flanagan, South Carolina Civil Procedure 7 (2d ed.1996)). The circuit court jurisdiction therefore could not attach prior to service of the petition for partition, which occurred on March 17, 2016. By that time, the family court's jurisdiction had already attached by way of both filing and service of the Appellant's summons and complaint seeking separate maintenance and equitable division. Once jurisdiction attaches, the family court's jurisdiction is exclusive. *See* S.C. Code Section 63-3-530 (A)(2).

The Respondent focuses only on the date of filing of the two actions. Filing alone does not commence an action under Rule 3, SCRCP. Respondent's argument overlooks the fact that service of the circuit court petition occurred after *filing and service* of the family court action. As a result, Gilley does not apply to bar the family court jurisdiction in this case. Respondent's reliance on Gilley is



therefore misplaced. Gilley provides that: “If jurisdiction once attaches *to the person and the subject matter* of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached.” Gilley quoting Gardner, *emphasis added*. In Gilley, the circuit court obtained jurisdiction before the family court. In the present case it did not. As the family court obtained jurisdiction first, the property in question became subject to equitable division by the family court. Under Gilley, the subsequent service of the circuit court petition would not oust the family court’s jurisdiction. Since the family court’s jurisdiction is exclusive, the circuit court could not thereafter obtain jurisdiction, as the subsequent exercise of concurrent jurisdiction would directly conflict with the family court’s specific grant of exclusive jurisdiction under S.C. Code 20-7-420.

Because the circuit court lacked subject matter jurisdiction it is void *ab initio*. See DeWitt v. S.C. Dept. of Highways & Public Transp., 274 S.C. 184, 262 S.E.2d 28 (1980) (all proceedings of a court lacking subject matter jurisdiction are a nullity, and its judgment has no effect). Lack of subject matter jurisdiction may not be waived, even by consent of the parties. Anderson v. Anderson, 299 S.C. 110, 382 S.E.2d 897 (1989). [S]ubject matter jurisdiction may not be waived and the issue may be raised at any stage of the proceeding. Eaddy v. Eaddy, 324

S.E.2d 70, 283 S.C. 582 (S.C., 1984). "[I]ssues relating to subject matter jurisdiction may be raised at any time ... and should be taken notice of by this court on our own motion." Bunkum v. Manor Properties, 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct.App.1996). Brown v. Greenwood School Dist. 50 Bd., 344 S.C. 522, 544 S.E.2d 642 (S.C. App., 2001). Regardless of the outcome of the family court action on the ultimate issue of the existence of a marriage, the circuit court did not have jurisdiction to enter an order in this case. The order of partition by the circuit court should therefore be declared null and void.

**II. THE RESPONDENT'S ISSUE III AS TO A RULE 1006 OBJECTION IS NOT PROPERLY BEFORE THIS COURT.**

The Respondent did not appeal from the decision of the lower court in allowing certain evidence relating to the Appellant's work performed at the subject properties. That issue is therefore not preserved for review. Furthermore, a family court's ruling on the admission or exclusion of evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law.

Judy v. Judy, 384 S.C. 634, 641, 682 S.E.2d 836, 839 (Ct.App.2009).

**III. THE RESPONDENT HAS FAILED TO ESTABLISH OUSTER AS AN ADDITIONAL SUSTAINING GROUND TO AFFIRM.**

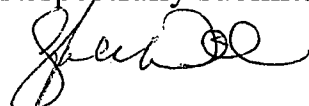
The Master made no findings supporting a cause of action for ouster, nor

did he award any damages for ouster. “The acts relied upon to establish an ouster must be of an unequivocal nature, and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable. Freeman v. Freeman, 323 S.C. 95, 44 S.E.2d 467 (Ct. App. 1996). The Respondent admits that when the parties ended their relationship they agreed that the Appellant could stay at the Lake Hartwell home. (Resp. Br. p. 13). The Respondent does not allege in her brief, nor does the record show, that the agreement that the Appellant could stay at the Lake Hartwell home came with the condition that the Respondent would have access to enter the home without the Appellant’s consent while the Appellant was living there. In light of the party’s agreement that the Appellant could reside there, the record fails to establish ouster, or damages relating to ouster.

**CONCLUSION**

The decision of the circuit court should be voided, or in the alternative, reversed and remanded for further findings as to the Appellant's direct and indirect contributions to the value of the property at issue.

Respectfully submitted,

  
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Counsel for Appellant

August 28, 2017.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

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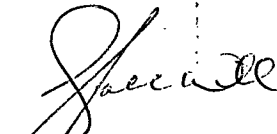
Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

Polly Thompson, ..... Respondent,  
v.  
Cathy Swicegood, ..... Appellant.

CERTIFICATE

I certify that the Brief of the Appellant and the Appellant's Reply are in compliance with Rule 211(b).

Respectfully submitted,



J. Falkner Wilkes, 12893  
114 Whitsett Street  
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(864) 282-1292

August 28, 2017.

VOLUME I

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
Ellis B. Drew, Master in Equity

RECEIVED  
AUG 30 2017  
SC Court of Appeals

Case No. 2014-CP-37-00143  
Appellate Case No.: 2015-001860

Polly Thompson..... Respondent,  
v.  
Cathy Swicegood..... Appellant.

RECORD ON APPEAL

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Counsel for Appellant

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STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

Polly Thompson, )  
PETITIONER, )  
VS. )  
Cathy Swicegood, )  
RESPONDENT. )

2014-CP-37-00143

**ORDER DENYING RESPONDENT'S  
MOTION TO RECONSIDER**

The Court has carefully considered the Respondent's Motion to Reconsider and the issues set forth therein.

The Court has also carefully considered Petitioner's Memorandum in opposition to Respondent's Motion.

This case was extensively tried and therefore the Court dispenses with further oral argument.

For the reasons set forth in the Petitioners Memorandum, the Court hereby concludes that the Respondent's Motion is Denied.

It is so Ordered.

*July 31, 2015*

*Ellis B. Drew, Jr.*  
Ellis B. Drew, Jr., Master in Equity  
Tenth Judicial Circuit

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STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )  
Polly Thompson, )  
Petitioner, )  
v. )  
Cathy Swicegood, )  
Respondent )

IN THE COURT OF COMMON PLEAS  
THE TENTH JUDICIAL CIRCUIT

2014- CP-37-0143

ORDER OF PARTITION

Date of Hearing: March 16, 2015 and May 21, 2015  
Presiding Judge: The Honorable Ellis B. Drew, Jr.  
Attorney for Petitioner: Ms. Margaret A. Chamberlain  
Attorney for Respondent: Mr. John G. Reckenbeil  
Court Reporter: Ms. Karen Senn

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This matter came before the Court pursuant to a Petition for Partition, Ouster, and Accounting filed by Petitioner, Polly Thompson's ("Petitioner"), on March 11, 2014. Respondent, Cathy Swicegood ("Respondent"), filed an Answer in a timely fashion.<sup>1</sup> The parties were before the Court for the trial on March 16, 2015, and again for a final hearing to review the financial information and to issue a ruling on May 21, 2015.

Findings of Fact

1. There are two properties at issue in this case: 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County ("the Hilton Head Condo"); and 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County ("the Lake Hartwell Home").
2. Although this action was filed in Oconee County, the parties consented to trying the case in Anderson County.
3. This Court has jurisdiction over the parties and the subject of this litigation.
4. The two properties referenced above are jointly titled in both parties' names.

<sup>1</sup> Wells Fargo was initially named as a Respondent based upon its first mortgage lien on the real properties at issue. By Consent Order of Dismissal filed on May 14, 2014, Wells Fargo was dismissed as a party.

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5. The parties stipulated that the values provided by Petitioner as to the fair-market value, equity, expenses, and mortgage amounts for both properties were correct and accurate.
6. At the commencement of the final hearing, the Petitioner made an offer to purchase the properties from Respondent. Her offer was:
  - a. Polly Thompson offers to purchase the Hilton Head property for the amount of \$275,100.57. The first \$269,100.57 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$6,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
  - b. Polly Thompson offers to purchase the Lake Hartwell property for the amount of \$188,407.75. The first \$143,407.75 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$45,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
7. The Respondent made an offer to transfer title of the Hilton Head Condo to Petitioner in exchange for Petitioner transferring title of the Lake Hartwell Home to her.
8. The Court finds that Petitioner made the greater offer to purchase.
9. The Court finds that although Respondent did commit ouster by excluding Petitioner from the Lake Hartwell Home, the Petitioner presented no evidence of resulting damages.

**Hilton Head Condo**

10. The Petitioner presented evidence without objection to the following:
  - a. Petitioner paid the entire down payment of \$102,361.55 for the Hilton Head Condo when it was purchased in 2013.

- b. The Petitioner made every mortgage payment.
  - c. The Petitioner paid all of the regime fees.
  - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
  - e. The Petitioner paid all of the fitness club dues and paid all of the cable fees, and these expenses had to be incurred in order to rent the condo.
11. The Respondent contributed "sweat equity" to the condo in the form of interior decorating, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.
12. The Petitioner had contributed \$164,479.84 toward the Hilton Head Condo, and Respondent had not contributed anything financially.
13. The equity in the Hilton Head Condo is \$120,325.00.
14. This Court finds that Respondent has no right, title or interest in the Hilton Head Condo.
15. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

**Lake Hartwell Home**

16. The Lake Hartwell Home was built between 2010 and 2012.
17. The Petitioner presented evidence without objection to the following:
- a. Petitioner paid \$45,679.21 for the two lots and paid \$6,678.43 of the down payment on the house. Respondent paid \$22,000.00 of the down payment.
  - b. The Petitioner made every mortgage payment.
  - c. The Petitioner paid all of the property owners' association dues.
  - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
18. The Respondent contributed "sweat equity" to the Lake Hartwell Home in the form of interior decorating and design, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.

*M*

19. The Petitioner has contributed \$129,838.70 towards the Lake Hartwell home, and Respondent has contributed \$22,000.00.
20. The equity in the Lake Hartwell Home is \$67,742.25.
21. Petitioner's contributions far exceed both Respondent's contributions as well as the equity in the property.
22. There is a tremendous disparity between the contributions made to this property by the parties.
23. This Court finds that Respondent has no right, title or interest in the Lake Hartwell Home.
24. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

**Conclusion**

To determine the parties' respective property interests, this Court must consider the individual contributions of the parties to the acquisition and maintenance of the jointly-titled property. The disparity between the parties' contribution to the acquisition and maintenance of the properties is in favor of the Petitioner. The evidence in the record clearly and unequivocally demonstrates that Petitioner's contributions far exceed both Respondent's contributions as well as exceed the equity in the properties. It would be unjust and inequitable to award any interest in either property to the Respondent.

**WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County.
2. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County
3. The Petitioner shall promptly provide the Respondent with deeds transferring both properties in their entirety to Petitioner. The Respondent shall execute these deeds and return them to Petitioner within 15 days of the final hearing.
4. The Respondent, Cathy Swicegood, shall immediately vacate the Hilton Head Condo.

*M*

She may, within 30 days from the date of the final hearing, remove her clothes, tools and personal belongings from the Hilton Head Condo. She must be admitted to the property and escorted at all times by a member of the property management company, other than Ms. Linda Swinson. The Respondent may remain in the property for no more than one hour.

5. The Respondent, Cathy Swicegood, shall vacate the Lake Hartwell Home within 30 days of the final hearing.
6. At a mutually agreed upon date and time within 10 days of the final hearing, the Petitioner may access the Lake Hartwell Home to inspect the property. She shall have a third party present and may not remain longer than one hour.
7. The Petitioner's claim for ouster is denied.
8. The Petitioner's claim for attorney's fees and costs is granted. The Respondent, Cathy Swicegood, shall pay Petitioner, Polly Thompson, \$5,000.00 in legal fees and costs in the amount of \$250.00 for a total of \$5,250.00.

**IT IS SO ORDERED.**

  
The Honorable Ellis B. Drew, Jr.  
Masters-in-Equity Judge, Oconee County  
Tenth Judicial Circuit

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Anderson, South Carolina

6-23, 2015

COUNTY OF OCONEE

Polly Thompson,

Petitioner,

V.

Cathy Swicegood,

Respondent.

2014- CP-37-00143

**ORDER DENYING RESPONDENT  
SWICEGOOD'S MOTION TO DISMISS  
OR IN THE ALTERNATIVE STAY  
THE PROCEEDINGS**

**Date of Hearing:** June 23, 2014  
**Presiding Judge:** The Honorable J. Cordell Maddox, Jr.  
**Attorney for Petitioner:** Ms. Margaret A. Chamberlain  
**Attorney for Respondent:** Mr. John G. Reckenbeil  
**Court Reporter:** Ms. Renee Tollison

This matter came before the Court pursuant to Respondent Cathy Swicegood's Motion to Dismiss or in the Alternative Stay the Proceedings filed with this Court on April 23, 2014. A hearing took place on June 23, 2014. Petitioner, Polly Thompson ("Petitioner"), was not present at the hearing, but was represented by her attorney, Margaret A. Chamberlain of the Greenville County Bar. Respondent, Cathy Swicegood ("Respondent"), was present at the hearing with her attorney, John G. Reckenbeil, of the Spartanburg County Bar.

Respondent moved to dismiss Petitioner's Petition for Partition and Ouster pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure, or in the alternative stay the proceedings. Respondent stated that there is a family court action pending to determine if the parties are common law married, and that family court is better suited to handle the property issues between the parties. (The family court dismissed the case, but Respondent has appealed the ruling.) In the alternative, Respondent argued that should this Court not grant the motion to

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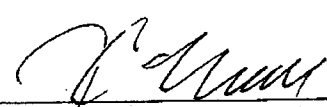
dismiss, it should stay the proceedings until the Court of Appeals makes a ruling as to the family court action. Petitioner contends that Respondent's motion must be denied because this Court's jurisdiction attached when she filed her Petition for Partition and Ouster on March 11, 2014, and that Respondent's subsequent filing of a family-court action two days later did not remove that jurisdiction.

Having considered the arguments of the attorneys, this Court finds it has jurisdiction over the subject matter of this action. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. *Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969). "If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Id.* "Accordingly, the circuit court properly maintained jurisdiction based on the status of the case at the time of filing." *Id.* This Court, therefore, finds that jurisdiction attached at the time Petitioner filed her partition action on March 11, 2014, and Respondent Swicegood's subsequent filing of her family-court action did not remove jurisdiction from this Court. Furthermore, this Court finds that although the family-court case which is now on appeal is one of first impression, it is not an exception to this Court's jurisdiction. There is no just cause for granting a stay of these proceedings.

It is therefore ORDERED that Respondent Swicegood's Motion to Dismiss or In the Alternative Stay the Proceedings is denied.

IT IS SO ORDERED.

Oconee, South Carolina  
~~October~~  
~~September~~ 9, 2014

  
 The Honorable J. Cordell Maddox, Jr.  
 Tenth Judicial Circuit Judge

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STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )  
Polly Thompson, )  
Petitioner, )  
v. )  
Cathy Swicegood, )  
Respondent )

IN THE COURT OF COMMON PLEAS  
THE TENTH JUDICIAL CIRCUIT

2014- CP-37-0143

PETITIONER'S MEMORANDUM IN  
OPPOSITION TO RESPONDENT'S  
MOTION TO RECONSIDER

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BEVERLY H. WHITEFIELD  
CLERK OF COURT

Petitioner, Polly A. Thompson, respectfully submits this Memorandum In Opposition To Respondent's Motion to Reconsider filed with the Court on July 6, 2015.

I. ARGUMENTS

A. Respondent Failed to argue Constructive Trust and Equitable Lien

It appears that Respondent is advancing the theories of constructive trust and equitable lien in his Motion to Reconsider. Petitioner asserts Respondent's Motion to Reconsider should be denied because Respondent has raised the issue of constructive trust for the first time in her Rule 59(e) motion. "A party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). See also, *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 588 S.E. 2d 639, 641 (Ct. App. 2003) (holding that a party cannot raise an issue for the first time in a Rule 59(e) motion which could have been raised at trial.) "This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before the appellate court will review those issues and arguments." Toal, Jean Hoefer, Shahin Vafai, and Robert A. Muckenfuss. *Appellate Practice in South Carolina*. 2nd ed. Columbia, SC: South Carolina Bar, Continuing Legal Education Division, 2002.

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Although Respondent's Counterclaim references the legal doctrine of constructive trust, Respondent did not argue constructive trust at trial. Respondent, therefore, cannot raise the claim of constructive trust for the first time in her Rule 59(e) motion.

Petitioner further contends that Respondent's Motion to Reconsider on the basis of equitable lien should be denied because Respondent did not plead the claim of equitable lien in her Counterclaim or argue it at trial. A counterclaim is compulsory "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Rule 13(a), SCRCF. *See also Mullinax v Bates*, 377 S.C. 394, 396, 453 S.E.2d 894, 895 (1995) (Holding that a claim is compulsory under Rule 13(a) if there is a "logical relationship" between the claim and counterclaim.) Respondent's failure to plead or argue the claim of equitable lien clearly removes it from consideration by the Court for the first time in a Rule 59(e) motion.

Petitioner respectfully contends that Respondent's claims of constructive trust and equitable lien were not raised to the court at trial and cannot be considered for the first time in a Rule 59(e) motion.

Moreover, Respondent's argument that the Court erred in not allowing Respondent to present evidence of the parties' relationship is without merit. The evidence excluded at trial did not pertain to the properties subject to the litigation. Therefore, that evidence was properly excluded.

**B. Relitigation of Respondent's Motion to Dismiss or In the Alternative Stay The Proceedings**

Respondent's shotgun approach essentially shirks responsibility to identify the rulings with which she fundamentally disagrees, and those she believes the Court has not properly ruled upon. Respondent is asking this Court to reconsider its ruling on the basis of her contention that the parties' relationship was a marriage and therefore the litigation should be transferred to family court for adjudication. This is the same argument raised by Respondent in her Motion to Dismiss or in the Alternative Stay the Proceedings filed with the Circuit Court on April 23, 2014. In its Order dated June 26, 2015, the Circuit Court held that "jurisdiction attached at the time Petitioner filed her partition action on March 11, 2014, and Respondent Swicegood's subsequent filing of her family-court action did not remove jurisdiction from this Court." Respondent is

asking this Court to reconsider an issue that has been previously raised and ruled upon in an order issued by another judge.

**II. CONCLUSION**

Petitioner respectfully requests that Respondent's Motion to Reconsider be denied because Respondent failed to raise the issues presented in her motion at trial and her motion does not meet the requirements of Rule 59(e) of the South Carolina Rules Of Civil Procedure.

Respectfully submitted:

Margaret A. Chamberlain

Margaret A. Chamberlain (SC Bar # 015226)  
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Telephone (864) 250-0505  
Facsimile (864) 271-8097  
ATTORNEY FOR PETITIONER

July 8, 2015

Greenville, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
POLLY THOMPSON,  
Petitioner,  
v.  
CATHY SWICEGOOD,  
Respondent.

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IN THE COURT OF COMMON PLEAS  
RESPONDENTS' MOTION TO  
RECONSIDER  
C.A. No. 2014-CP-37-0143

TO: THE HONORABLE ELLIS B. DREW, Jr.

Respondent, by and through her undersigned counsel, respectfully submits this Motion to Reconsider the Order Granting Petitioner's request for attorney fees and costs (See Exhibit A).

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment[,] is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)).

Generally, an issue must be raised to and ruled upon by the circuit court to be preserved. Elam v. S. Carolina Dep't of Trans., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting a party must file a Rule 59(e) motion "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review").

Ms. Thompson's award of 100% of the properties in dispute are inconsistent with the equitable principles that now stand in South Carolina. The Court complete disregarded Doe v. Roe, 475 SE 2d 783 (Ct. of App 1996) (See Exhibit B) with Respondent Swicegood's inability to present evidence consistent with the Counterclaims.

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The disparity between the parties' contribution to the acquisition and maintenance of the jointly titled assets is in favor of Roe. The evidence in the record is clear and convincing that the equitable theories of constructive trust and equitable lien must be imposed to prevent a grave hardship to Roe and certain unjust enrichment to Doe. It is axiomatic and apodictic that one who comes to court looking for equity must first do equity, and clearly, Doe mislead, misrepresented, and manipulated Roe during the course of their relationship. This Court cannot shield and protect such inequitable actions. Doe v. Roe, 475 SE 2d 783 (Ct. app 1996).

The trial court's failure to even consider the evidence to establish Ms. Swicegood's and Ms. Thompson's true intent of the thirteen and one-half year relationship was error. The trial court ignoring the evidence to be presented for proving the counterclaims resulted in Respondent Swicegood being foreclosed from a proper analysis that is consistent with the holding in Doe v. Roe.

The Trial Court failed to apply the determination of the Honorable W. Marsh Robertson in his Order handed down on May 7, 2014. "The action brought by Plaintiff (Swicegood divorce action) constitutes "Marital Litigation" as referenced in SC Code Ann. 63-3-530". (See Exhibit C, Order of the Family Court of Greenville County) At the very least this Court of Equity should hold true a decision by a Court of competent jurisdiction that what was being contested was marital litigation. Thereby it would have been appropriate to follow the South Carolina Court of Appeals holding and factual analysis in Doe v. Roe.

Finally, this Court's cases and the Nation's traditions make clear that marriage is a keystone of the Nation's social order. See *Maynard v. Hill*, 125 U. S. 190, 211. States have contributed to the fundamental character of marriage by placing it at the center of many facets of the legal and social order. There is no difference between same- and opposite- sex couples with respect to this principle, yet same-sex couples are denied the constellation of benefits that the States have linked to marriage and are consigned to an instability many opposite-sex couples would find intolerable. It is demeaning to lock same-sex couples out of a central institution of the Nation's society, for they too may aspire to the transcendent purposes of marriage. The limitation of marriage to opposite-sex couples may long have seemed natural and just, but its inconsistency with the central meaning of the fundamental right to marry is now manifest.

Indeed, it is most often through democracy that liberty is preserved and protected in our lives. But as Schuetz also said, "the freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power. (See Justice Kennedy Majority opinion Obergefell et al. v. Hodges, No. 14-556 June 26 2015) (See Exhibit D)

The Constitution of the United States of America has always been clear and unequivocal. However, the slow to stagnant evolution of some American's comprehension, to include those who "sit on the bench" and "stand on the floor" of those words that were so perfectly prescribed by our forefather's breathing life into our nation's constitution sounding in equality, can no longer be a "repressive tolerance" to the locomotive of progress all Americans were fundamentally granted by God.

The Supreme Court of the United States of America has acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. (See Lawrence, 539 U.S., at 575). This dynamic also applies to same-sex marriage. The challenged laws burden the liberty of same-sex couples, and they abridge central precepts of equality. The marriage laws at issue are in essence unequal: Same-sex couples are denied benefits afforded opposite-sex couples and barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial works a grave and continuing harm, serving to disrespect and subordinate gays and lesbians. (Justice Kennedy writing for the Majority, Obergefell et. al v. Hodges No. 14-556 June 26, 2015).

Therefore Respondent Swicegood respectfully requests this Court to reconsider the entire case with full consideration of all 13 ½ years of the evidence to be consistent with the holding of Doe v. Roe. (Exhibit B)

#### OR IN THE ALTERNATIVE

In light of the Supreme Court decision of Obergefell, the ruling and Order of the Oconee County Master in Equity Court should be vacated and this entire matter be transferred to the Family Court of Greenville County, applying the laws of domestic relations of the State of South Carolina.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

*John G. Reckenbeil*

John G. Reckenbeil  
215 Magnolia Street (29306)  
Post Office Box 1633  
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Dated: July 6, 2015  
Spartanburg, South Carolina

ATTORNEY FOR CATHY SWICEGOOD

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )  
Polly Thompson, )  
Petitioner, )  
v. )  
Cathy Swicegood, )  
Respondent )

IN THE COURT OF COMMON PLEAS  
THE TENTH JUDICIAL CIRCUIT

2014- CP-37-0143

ORDER OF PARTITION

Date of Hearing: March 16, 2015 and May 21, 2015  
Presiding Judge: The Honorable Ellis B. Drew, Jr.  
Attorney for Petitioner: Ms. Margaret A. Chamberlain  
Attorney for Respondent: Mr. John G. Reckenbeil  
Court Reporter: Ms. Karen Senn

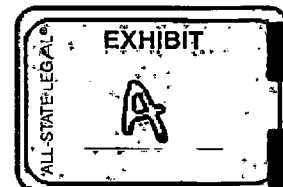
FILED OCONEE, SC  
BEVERLY H. WHITEFIELD  
CLERK OF COURT  
2015 MAR 25 A 10:52

This matter came before the Court pursuant to a Petition for Partition, Ouster, and Accounting filed by Petitioner, Polly Thompson's ("Petitioner"), on March 11, 2014. Respondent, Cathy Swicegood ("Respondent"), filed an Answer in a timely fashion.<sup>1</sup> The parties were before the Court for the trial on March 16, 2015, and again for a final hearing to review the financial information and to issue a ruling on May 21, 2015.

**Findings of Fact**

1. There are two properties at issue in this case: 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County ("the Hilton Head Condo"); and 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County ("the Lake Hartwell Home").
2. Although this action was filed in Oconee County, the parties consented to trying the case in Anderson County.
3. This Court has jurisdiction over the parties and the subject of this litigation.
4. The two properties referenced above are jointly titled in both parties' names.

<sup>1</sup> Wells Fargo was initially named as a Respondent based upon its first mortgage lien on the real properties at issue. By Consent Order of Dismissal filed on May 14, 2014, Wells Fargo was dismissed as a party





5. The parties stipulated that the values provided by Petitioner as to the fair-market value, equity, expenses, and mortgage amounts for both properties were correct and accurate.
6. At the commencement of the final hearing, the Petitioner made an offer to purchase the properties from Respondent. Her offer was:
  - a. Polly Thompson offers to purchase the Hilton Head property for the amount of \$275,100.57. The first \$269,100.57 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$6,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
  - b. Polly Thompson offers to purchase the Lake Hartwell property for the amount of \$188,407.75. The first \$143,407.75 of this offer should satisfy the mortgage. Because the note on the property is in Polly Thompson's name alone, there is no need for Ms. Thompson to pay off this debt. She will simply continue to make payments and shall be solely responsible for this debt. The remaining \$45,000.00 shall be divided between the parties in percentages the Court deems appropriate and equitable in light of the contributions of each party.
7. The Respondent made an offer to transfer title of the Hilton Head Condo to Petitioner in exchange for Petitioner transferring title of the Lake Hartwell Home to her.
8. The Court finds that Petitioner made the greater offer to purchase.
9. The Court finds that although Respondent did commit ouster by excluding Petitioner from the Lake Hartwell Home, the Petitioner presented no evidence of resulting damages.

**Hilton Head Condo**

10. The Petitioner presented evidence without objection to the following:
  - a. Petitioner paid the entire down payment of \$102,361.55 for the Hilton Head Condo when it was purchased in 2013.

- b. The Petitioner made every mortgage payment.
  - c. The Petitioner paid all of the regime fees.
  - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
  - e. The Petitioner paid all of the fitness club dues and paid all of the cable fees, and these expenses had to be incurred in order to rent the condo.
11. The Respondent contributed "sweat equity" to the condo in the form of interior decorating, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.
12. The Petitioner had contributed \$164,479.84 toward the Hilton Head Condo, and Respondent had not contributed anything financially.
13. The equity in the Hilton Head Condo is \$120,325.00.
14. This Court finds that Respondent has no right, title or interest in the Hilton Head Condo.
15. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

**Lake Hartwell Home**

16. The Lake Hartwell Home was built between 2010 and 2012.
17. The Petitioner presented evidence without objection to the following:
- a. Petitioner paid \$45,679.21 for the two lots and paid \$6,678.43 of the down payment on the house. Respondent paid \$22,000.00 of the down payment.
  - b. The Petitioner made every mortgage payment.
  - c. The Petitioner paid all of the property owners' association dues.
  - d. The Petitioner made all of the homeowners' insurance payments and paid all of the taxes.
18. The Respondent contributed "sweat equity" to the Lake Hartwell Home in the form of interior decorating and design, but the amount of work she performed was disputed. Furthermore, Petitioner presented evidence that she paid Respondent for her labor and materials.

19. The Petitioner has contributed \$129,838.70 towards the Lake Hartwell home, and Respondent has contributed \$22,000.00.
20. The equity in the Lake Hartwell Home is \$67,742.25.
21. Petitioner's contributions far exceed both Respondent's contributions as well as the equity in the property.
22. There is a tremendous disparity between the contributions made to this property by the parties.
23. This Court finds that Respondent has no right, title or interest in the Lake Hartwell Home.
24. Awarding Respondent any interest in this property would result in a grave inequity to Petitioner and an unjust enrichment to Respondent.

**Conclusion**

To determine the parties' respective property interests, this Court must consider the individual contributions of the parties to the acquisition and maintenance of the jointly-titled property. The disparity between the parties' contribution to the acquisition and maintenance of the properties is in favor of the Petitioner. The evidence in the record clearly and unequivocally demonstrates that Petitioner's contributions far exceed both Respondent's contributions as well as exceed the equity in the properties. It would be unjust and inequitable to award any interest in either property to the Respondent.

**WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 85 Folly Field Road, Unit 3203, Hilton Head, South Carolina 29928, in Beaufort County.
2. The Petitioner, Polly Thompson, is entitled to full right, title and ownership of 505 West Sheffield Drive, Westminster South Carolina 29693, which occupies lots 58 and 59 in Oconee County
3. The Petitioner shall promptly provide the Respondent with deeds transferring both properties in their entirety to Petitioner. The Respondent shall execute these deeds and return them to Petitioner within 15 days of the final hearing.
4. The Respondent, Cathy Swicegood, shall immediately vacate the Hilton Head Condo.

She may, within 30 days from the date of the final hearing, remove her clothes, tools and personal belongings from the Hilton Head Condo. She must be admitted to the property and escorted at all times by a member of the property management company, other than Ms. Linda Swinson. The Respondent may remain in the property for no more than one hour.

5. The Respondent, Cathy Swicegood, shall vacate the Lake Hartwell Home within 30 days of the final hearing.
6. At a mutually agreed upon date and time within 10 days of the final hearing, the Petitioner may access the Lake Hartwell Home to inspect the property. She shall have a third party present and may not remain longer than one hour.
7. The Petitioner's claim for ouster is denied.
8. The Petitioner's claim for attorney's fees and costs is granted. The Respondent, Cathy Swicegood, shall pay Petitioner, Polly Thompson, \$5,000.00 in legal fees and costs in the amount of \$250.00 for a total of \$5,250.00.

IT IS SO ORDERED.

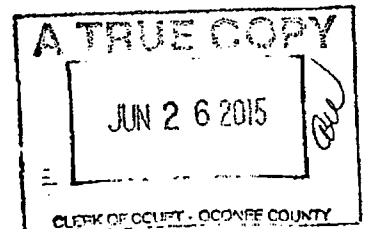
/s/ Ellis B. Drew, Jr.  
The Honorable Ellis B. Drew, Jr.  
Masters-in-Equity Judge, Oconee County  
Tenth Judicial Circuit

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Anderson, South Carolina

6-23, 2015

Page 5 of 5



475 S.E.2d 783 (1996)

Jane DOE, Appellant,

v.

Mary ROE and Sharonview Federal Credit Union, Respondents.

No. 2548.

Court of Appeals of South Carolina.

Heard June 5, 1996.

Decided July 22, 1996

Rehearing Denied September 24, 1996.



784 \*784 Kenneth E. Merriman, Florence, for appellant.

E. Hood Temple, of The Hyman Law Firm; Mary Layton Wells, of Scott & Jernigan, Joseph P. McLean, of Clarke, Johnson, Peterson & McLean, Florence, for respondents.

PER CURIAM.

This case concerns the division of real and personal property between two individuals who were involved in an intimate homosexual relationship for a period of thirteen years. The plaintiff, Jane Doe<sup>[1]</sup>, brought this action for partition of real property along with a claim and delivery action for specified personal property. The defendant, Mary Roe, asserted a counterclaim based upon theories of constructive trust, partnership, and equitable lien. She also alleged a cause of action for claim and delivery for specified personal property along with a demand for an accounting of a jointly owned bank account.<sup>[2]</sup> After a nonjury trial, the trial judge imposed a constructive trust and equitable lien in favor of Roe on the real property titled in Doe's name and undertook to divide the real and personal property. We reverse that portion of the order which imposed a constructive trust and equitable lien in favor of Roe and affirm the trial court's decision to deny Doe an offset for personal property.

## STANDARD OF REVIEW

A partition action is an equitable action. *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989). Likewise, an action to declare a constructive trust or establish an equitable lien is in equity. *Lollis v. Lollis*, 291 S.C. 525, 354 S.E.2d 559 (1987); *Fibkins v. Fibkins*, 303 S.C. 112, 399 S.E.2d 158 (Cl.App.1990). In an equitable action heard by the judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Id*

## FACTS

785 Jane Doe and Mary Roe met in June of 1979. Doe was twenty-one years old and Roe was twenty-seven. They became lovers \*785 and Doe moved into Roe's home. Doe was not working and owned no significant personal or real property. Roe was employed, owned a house, and had several automobiles. Roe testified Doe had occasional minimum wage jobs until 1985 when Roe helped her obtain a job at Fluor Daniel. Until that time, Roe financially supported Doe.

In 1985, Roe became interested in purchasing some rental property as an investment. During her discussion of the matter with Doe, Roe testified Doe began inquiring what she was going to get out of their relationship. Roe asserted Doe was not contributing financially to their household at that time and had only recently become employed with Fluor Daniel. Roe admitted she was advised by Sharonview Federal Credit Union that she needed a co-signer on the loan based upon Sharonview's debt ratio guidelines. Roe testified she and Doe jointly purchased the property because of

Doe's concerns over what she was going to get from their relationship.

Beginning in 1986, Doe began traveling out of state for her employer for extended periods of time. According to Doe, she sometimes would spend up to ten months of the year out of town. While out of town, Doe and Roe would communicate regularly by phone and mail. Doe admitted in cross examination that she repeatedly communicated her love and commitment to Roe during these periods of time. The record contains exhibits of cards and letters from Doe to Roe expressing her love and fidelity.

In 1989, Roe and Doe jointly purchased the Gregg Avenue property as a home. The transaction was handled by Roe with a power of attorney from Doe because she was working out of state. Roe testified she made the down payment and titled the property jointly at Doe's request. On cross examination, Roe stated Doe was travelling extensively out of state and repeatedly stated "she would have to have a reason to come back to the Florence area ... And in doing this I thought that I gave her a reason even if it meant that I was buying love; that's what I did."

In 1990, Roe was offered a job promotion which would have necessitated a move to Charlotte. Roe testified she wanted the promotion very much as she had worked hard for a number of years. However, Doe stated she was not going to move to Charlotte. As a result of Doe's objections, Roe turned down the promotion.

In 1992, Doe was working in Washington. Roe testified they communicated regularly and Doe repeatedly expressed her commitment to her. Roe continued to handle financial matters for Doe from South Carolina including payment of her bills. However, a serious rift occurred in the relationship when Doe admitted to Roe in May of 1992 that she was having an affair with another woman. Although Doe came back to South Carolina and resumed cohabitation with Roe, she moved out of the Gregg Avenue home in June of 1992.

## **TRIAL COURT ORDER**

In the order, the trial judge found two parcels of real property, McIver Road and Gregg Avenue, were purchased and jointly titled in Roe's and Doe's names during the course of their relationship. With respect to McIver Road, the court found Roe made the down payment and paid the monthly mortgage payments. Additionally, she financed and personally labored upon the improvements to the property which was used as a rental investment. Roe paid off the mortgage since the parties separated. Doe did not produce any documentary evidence of financial contribution directly attributable to the McIver Road property. Based upon the evidence, the court concluded Doe had no right, title, or interest in the McIver Road property and ordered her to execute a deed transferring her interest in the property to Roe.

As to the Gregg Avenue property, the court found Roe made the down payment, paid the taxes and insurance, and funded substantial improvements to the home. Additionally, she made the mortgage payments and performed a great deal of the physical labor involved with the home improvements. The court found Doe contributed a total of \$16,600 to the Gregg Avenue property for improvements and other expenses. Based upon the proof of the combined contributions  
786 to the Gregg Avenue property, the court concluded Roe was entitled to 79.57% of the equity and Doe was entitled to 20.43%. The court held Roe was to retain ownership of the property and to pay Doe the value of her equity interest when Doe deeded her interest to Roe.

In making its conclusions concerning the division of the real estate, the court found Doe and Roe were involved in a confidential and intimate relationship when the properties were purchased. The trial judge concluded Roe was deeply in love with Doe and relied upon Doe's representations of devotion and faithfulness. Ultimately, however, Doe was not faithful to Roe. The court found Doe coerced and manipulated Roe into titling the real properties in their joint names by threatening to end their relationship. As a result of the love and devotion Roe held for Doe, and the representations made by Doe, the court found the real properties were placed in joint names. The court also noted Doe's name was required to be placed on the mortgages to satisfy a financial ratio, but "it is clear that the motivating force to place the assets at issue in joint names arose from the compelling and overwhelming love Roe held for Doe and the fear that Roe would lose Doe if she did not place the assets in joint names." The court stated as follows:

The disparity between the parties' contribution to the acquisition and maintenance of the jointly titled assets is in favor of Roe. The evidence in the record is clear and convincing that the equitable theories of constructive trust and equitable lien must be imposed to prevent a grave hardship to Roe and certain unjust enrichment to Doe. It is axiomatic and apodictic that one who comes to court looking for equity must first do equity; and clearly, Doe mislead, misrepresented, and manipulated Roe during the course of their relationship. This Court cannot shield and protect such inequitable actions.

With respect to the disputed vehicle, the court found Roe used her funds to finance the purchase of a 1990 Mazda King Cab truck. The title was issued to Roe or Doe. Doe took the vehicle to Washington where she was working for her employer. The vehicle was involved in an accident which Doe did not disclose to Roe. Doe received the insurance settlement and forged Roe's signature. She also transferred the vehicle title solely to her name, traded the truck, and received \$8,500 for it. Roe continued to be obligated for the payments. The court found both Roe and Doe were entitled to fee simple ownership of the truck and ordered Doe to pay \$4,250 to Roe.

The court also found Roe and Doe had a joint bank account with a balance of \$19,969.07 in June of 1992. Doe closed the account without Roe's knowledge. The court concluded Doe was entitled to ownership of those funds based upon the evidence of her contributions to the bank account.

## ISSUES

On appeal Doe asserts the trial judge erred in finding that Roe established the existence of either a constructive trust or an equitable lien. She also contends the court erred in failing to grant her an offset on the monies she was ordered to pay Roe for the truck because Roe had removed funds from Doe's bank account.

### I.

The trial court concluded the evidence in the record was clear and convincing that the equitable theories of constructive trust and equitable lien should be imposed on the McIver Road and Gregg Avenue properties in order to prevent a grave hardship to Roe and unjust enrichment to Doe. We disagree.

A constructive trust arises whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title. Lollis v. Lollis, 291 S.C. 525, 354 S.E.2d 559 (1987). A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. *Id.* "Fraud is an essential element, although it need not be actual fraud." *Id.* 291 S.C. at 529, 354 S.E.2d at 561. "A constructive trust arises against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a \*787 wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained or holds the right to property which he ought not in equity and good conscience hold and enjoy." Halbersberg v. Berry, 302 S.C. 97, 99, 394 S.E.2d 7, 13 (Ct.App. 1990). In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal. Lollis, 291 S.C. 525, 354 S.E.2d 559.

The sole evidence presented by Roe in this case to warrant imposition of a constructive trust is Doe's repeated question as to what she was going to get from the relationship. This query, not an unusual one in any long term relationship, is not sufficient to establish fraud, abuse of confidence, or violation of a fiduciary duty.<sup>[3]</sup> There was no evidence that Doe coerced Roe into placing the property in both names or fraudulently did so. This relationship endured for thirteen years. There is no suggestion Doe entered the relationship in order to acquire property from Roe or that she terminated the relationship after achieving her fraudulent goal. Indeed, these parties continued to cohabit together for some seven years following acquisition of the McIver Road property and three years following purchase of the Gregg Avenue property.

Likewise, there was insufficient evidence to show the existence of a confidential relationship between the parties which

was somehow abused by Doe. The Restatement, Second, Trusts, has defined a confidential relationship as existing "when one has gained the confidence of the other and purports to act or advise [with] the other's interest in mind." Restatement, Second, Trusts, § 2, Comment B (1957) If either party had the superior position with respect to business acumen, it was Roe rather than Doe. Roe took the lead in negotiating the purchase of both parcels and assumed responsibility for their upkeep and management.

An equitable lien is neither an estate nor property in the thing itself, but is simply a right of a special nature over the thing, which constitutes a charge or encumbrance upon it, so that the very thing itself may be proceeded against in equity for payment of a claim or debt. Carolina Attractions, Inc. v. Courtney, 287 S.C. 140, 337 S.E.2d 244 (Ct.App.1985) For an equitable lien to arise, there must be a debt owing from one person to another, specific property to which the debt attaches, and an intent, expressed or implied, that the property will serve as security for the payment of the debt. Perpetual Federal Sav. and Loan Ass'n v. Willingham, 296 S.C. 24, 370 S.E.2d 286 (Ct.App.1988).

There was no evidence presented that Doe owed a debt to Roe. Roe herself characterized the relationship as an "emotional partnership." She testified: "A business partnership, no. We never talked about a business partnership. All we had was an emotional partnership." Under these circumstances, no equitable lien in Roe's favor was created when the property was placed in joint names.

II

Doe argues the court erred in not allowing her an offset on the sum she was ordered to pay Roe for the 1990 Mazda truck based upon Roe's removal of money from Doe's bank account. In February of 1992, Roe withdrew \$4,800 from the joint bank account to purchase an automobile. She testified she and Doe discussed this matter before she withdrew the money. Given Doe's admitted conduct concerning the 1990 Mazda truck, we find no error in the court's decision not to credit Doe with this sum

AFFIRMED IN PART AND REVERSED IN PART.

HOWELL, C.J., and CONNOR and HEARN, JJ., concur.

[1] Because of the sensitive nature of the issues involved in this appeal, we have protected the confidentiality of the parties with assumed names

[2] The defendant, Sharonview Federal Credit Union, is joined as a party based upon its first mortgage lien on the real properties in issue

[3] We are aware that some courts have held that a homosexual relationship may give rise to a confidential relationship. See Bramlett v. Selman, 268 Ark. 457, 597 S.W.2d 80 (1980). Weekes v. Gay, 243 Ga. 784, 256 S.E.2d 901 (1979). It is not necessary for us to reach this issue, however, since we find the proof was not sufficient to establish a constructive trust.

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STATE OF SOUTH CAROLINA CLERK OF THE FAMILY COURT FOR THE  
 COUNTY OF GREENVILLE GREENVILLE, SOUTH CAROLINA  
 THIRTEENTH JUDICIAL CIRCUIT  
 CASE NUMBER: 2014-DR-23-1184

CATHY J. SWICEGOOD,

2014 MAY 7 PM 4 25  
 Plaintiff,

vs.

FAMILY COURT AMENDED<sup>1</sup> ORDER OF DISMISSAL

POLLY A. THOMPSON,

Defendant.)

JUDGE: W. MARSH ROBERTSON

COURT REPORTER: MARIA SMITH

DATE OF HEARING: MAY 5, 2014

PLAINTIFF'S ATTORNEY: JOHN G. RECKENBEIL

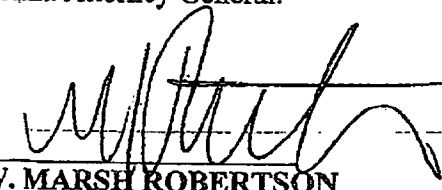
DEFENDANT'S ATTORNEY: MARGARET A. CHAMBERLAIN

This order addresses Defendant's Motion to Dismiss, heard May 5, 2014. Both parties appeared with their attorneys of record. Defendant moves for the dismissal of this case under Rule 12(b)(1), South Carolina Rules of Civil Procedure, for lack of subject matter jurisdiction. Having carefully considered the extensive arguments and written materials presented, the Court grants the motion.

Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong. *Watson v. Watson*, 319 S.C. 92, 460 S.E.2d 394 (1995). This court's jurisdiction is limited to the authority vested by the South Carolina Constitution and the South Carolina Code of Laws. The action brought by Plaintiff constitutes "marital litigation" as referenced in SC Code Ann. §63-3-530. The Family Court's jurisdiction to hear and determine such actions is premised on the existence of a marriage. Plaintiff alleges that a common law marriage exists between the parties, both of whom are women. Owing to South Carolina's prohibition on same sex marriages, such a marriage is not legally possible in this state. (See SC Code Ann. §20-1-15.) Accordingly, this Court is without jurisdictional authority to adjudicate the issues.

By virtue of this order, the following motions are rendered moot: (1) Plaintiff's Motion for Temporary Relief, and (2) Motion to Intervene by State of South Carolina Attorney General.

IT IS SO ORDERED on this 7th day of May, 2014.

  
 W. MARSH ROBERTSON  
 Family Court Judge

<sup>1</sup> This order corrects the spelling of Plaintiff's surname in the caption from "Spicegood" to "Swicegood." The original order filed May 5, 2015 is otherwise unchanged, and this order shall in no way affect the effective date of that order.





JAMES OBERGEFELL, ET AL., Petitioners

v.

RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL.;

VALERIA TANCO, ET AL., Petitioners

v.

BILL HASLAM, GOVERNOR OF TENNESSEE, ET AL.;

APRIL DEBOER, ET AL., Petitioners

v.

RICK SNYDER, GOVERNOR OF MICHIGAN, ET AL.; AND

GREGORY BOURKE, ET AL., Petitioners

v.

STEVE BESHEAR, GOVERNOR OF KENTUCKY

Nos. 14-556, 14-562, 14-571, 14-574.

Supreme Court of the United States.

Argued April 28, 2015.

Decided June 26, 2015 ☐

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

JUSTICE KENNEDY, delivered the opinion of the Court.

The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity. The petitioners in these cases seek to find that liberty by marrying someone of the same sex and having their marriages deemed lawful on the same terms and conditions as marriages between persons of the opposite sex.

These cases come from Michigan, Kentucky, Ohio, and Tennessee, States that define marriage as a union between one man and one woman. See, e.g., Mich. Const., Art. I, §25, Ky. Const. §233A; Ohio Rev. Code Ann. §3101.01 (Lexis 2008); Tenn. Const., Art. XI, §18. The petitioners are 14 same-sex couples and two men whose same-sex partners are deceased. The respondents are state officials responsible for enforcing the laws in question. The petitioners claim the respondents violate the Fourteenth Amendment by denying them the right to marry or to have their marriages, lawfully performed in another State, given full recognition.

Petitioners filed these suits in United States District Courts in their home States. Each District Court ruled in their favor. Citations to those cases are in Appendix A, *infra*. The respondents appealed the decisions against them to the United States Court of Appeals for the Sixth Circuit. It consolidated the cases and reversed the judgments of the District Courts. *DeBoerv. Snyder*, 772 F. 3d 388 (2014). The Court of Appeals held that a State has no constitutional obligation to license same-sex marriages or to recognize same-sex marriages performed out of State.

The petitioners sought certiorari. This Court granted review, limited to two questions. 574 U. S. \_\_\_\_ (2015). The first,

presented by the cases from Michigan and Kentucky, is whether the Fourteenth Amendment requires a State to license a marriage between two people of the same sex. The second, presented by the cases from Ohio, Tennessee, and, again, Kentucky, is whether the Fourteenth Amendment requires a State to recognize a same-sex marriage licensed and performed in a State which does grant that right.

## II

Before addressing the principles and precedents that govern these cases, it is appropriate to note the history of the subject now before the Court.

## A

From their beginning to their most recent page, the annals of human history reveal the transcendent importance of marriage. The lifelong union of a man and a woman always has promised nobility and dignity to all persons, without regard to their station in life. Marriage is sacred to those who live by their religions and offers unique fulfillment to those who find meaning in the secular realm. Its dynamic allows two people to find a life that could not be found alone, for a marriage becomes greater than just the two persons. Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations.

The centrality of marriage to the human condition makes it unsurprising that the institution has existed for millennia and across civilizations. Since the dawn of history, marriage has transformed strangers into relatives, binding families and societies together. Confucius taught that marriage lies at the foundation of government. 2 Li Chi: Book of Rites 266 (C. Chai & W. Chai eds., J. Legge transl. 1967). This wisdom was echoed centuries later and half a world away by Cicero, who wrote, "The first bond of society is marriage, next, children; and then the family." See *De Officiis* 57 (W. Miller transl. 1913). There are untold references to the beauty of marriage in religious and philosophical texts spanning time, cultures, and faiths, as well as in art and literature in all their forms. It is fair and necessary to say these references were based on the understanding that marriage is a union between two persons of the opposite sex.

That history is the beginning of these cases. The respondents say it should be the end as well. To them, it would demean a timeless institution if the concept and lawful status of marriage were extended to two persons of the same sex. Marriage, in their view, is by its nature a gender-differentiated union of man and woman. This view long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world.

The petitioners acknowledge this history but contend that these cases cannot end there. Were their intent to demean the revered idea and reality of marriage, the petitioners' claims would be of a different order. But that is neither their purpose nor their submission. To the contrary, it is the enduring importance of marriage that underlies the petitioners' contentions. This, they say, is their whole point. Far from seeking to devalue marriage, the petitioners seek it for themselves because of their respect—and need—for its privileges and responsibilities. And their immutable nature dictates that same-sex marriage is their only real path to this profound commitment.

Recounting the circumstances of three of these cases illustrates the urgency of the petitioners' cause from their perspective. Petitioner James Obergefell, a plaintiff in the Ohio case, met John Arthur over two decades ago. They fell in love and started a life together, establishing a lasting, committed relation. In 2011, however, Arthur was diagnosed with amyotrophic lateral sclerosis, or ALS. This debilitating disease is progressive, with no known cure. Two years ago, Obergefell and Arthur decided to commit to one another, resolving to marry before Arthur died. To fulfill their mutual promise, they traveled from Ohio to Maryland, where same-sex marriage was legal. It was difficult for Arthur to move, and so the couple were wed inside a medical transport plane as it remained on the tarmac in Baltimore. Three months later, Arthur died. Ohio law does not permit Obergefell to be listed as the surviving spouse on Arthur's death certificate. By statute, they must remain strangers even in death, a state-imposed separation Obergefell deems "hurtful for the rest of time." App. in No. 14-556 etc., p. 38. He brought suit to be shown as the surviving spouse on Arthur's death certificate.

April DeBoer and Jayne Rowse are co-plaintiffs in the case from Michigan. They celebrated a commitment ceremony to honor their permanent relation in 2007. They both work as nurses, DeBoer in a neonatal unit and Rowse in an emergency unit. In 2009, DeBoer and Rowse fostered and then adopted a baby boy. Later that same year, they welcomed another son into their family. The new baby, born prematurely and abandoned by his biological mother, required around-the-clock care. The next year, a baby girl with special needs joined their family. Michigan, however, permits only opposite-sex married couples or single individuals to adopt, so each child can have only one woman as his or her legal parent. If an emergency were to arise, schools and hospitals may treat the three children as if they had only one parent. And, were tragedy to befall either DeBoer or Rowse, the other would have no legal rights over the children she had not been permitted to adopt. This couple seeks relief from the continuing uncertainty their unmarried status creates in their lives.

Army Reserve Sergeant First Class Ijpe DeKoe and his partner Thomas Kostura, co-plaintiffs in the Tennessee case, fell in love. In 2011, DeKoe received orders to deploy to Afghanistan. Before leaving, he and Kostura married in New York. A week later, DeKoe began his deployment, which lasted for almost a year. When he returned, the two settled in Tennessee, where DeKoe works full-time for the Army Reserve. Their lawful marriage is stripped from them whenever they reside in Tennessee, returning and disappearing as they travel across state lines. DeKoe, who served this Nation to preserve the freedom the Constitution protects, must endure a substantial burden.

The cases now before the Court involve other petitioners as well, each with their own experiences. Their stories reveal that they seek not to denigrate marriage but rather to live their lives, or honor their spouses' memory, joined by its bond.

## B

The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution—even as confined to opposite-sex relations—has evolved over time

For example, marriage was once viewed as an arrangement by the couple's parents based on political, religious, and financial concerns; but by the time of the Nation's founding it was understood to be a voluntary contract between a man and a woman. See N. Cott, *Public Vows. A History of Marriage and the Nation* 9-17 (2000); S. Coontz, *Marriage, A History* 15-16 (2005). As the role and status of women changed, the institution further evolved. Under the centuries-old doctrine of coverture, a married man and woman were treated by the State as a single, male-dominated legal entity. See 1 W. Blackstone, *Commentaries on the Laws of England* 430 (1765). As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned. See Brief for Historians of Marriage et al. as *Amici Curiae* 16-19. These and other developments in the institution of marriage over the past centuries were not mere superficial changes. Rather, they worked deep transformations in its structure, affecting aspects of marriage long viewed by many as essential. See generally N. Cott, *Public Vows*; S. Coontz, *Marriage*; H. Hartog, *Man & Wife in America: A History* (2000).

These new insights have strengthened, not weakened, the institution of marriage. Indeed, changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.

This dynamic can be seen in the Nation's experiences with the rights of gays and lesbians. Until the mid-20th century, same-sex intimacy long had been condemned as immoral by the state itself in most Western nations, a belief often embodied in the criminal law. For this reason, among others, many persons did not deem homosexuals to have dignity in their own distinct identity. A truthful declaration by same-sex couples of what was in their hearts had to remain unspoken. Even when a greater awareness of the humanity and integrity of homosexual persons came in the period after World War II, the argument that gays and lesbians had a just claim to dignity was in conflict with both law and widespread social conventions. Same-sex intimacy remained a crime in many States. Gays and lesbians were prohibited from most government employment, barred from military service, excluded under immigration laws, targeted

by police, and burdened in their rights to associate. See Brief for Organization of American Historians as *Amicus Curiae* 5-28.

For much of the 20th century, moreover, homosexuality was treated as an illness. When the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, homosexuality was classified as a mental disorder, a position adhered to until 1973. See Position Statement on Homosexuality and Civil Rights, 1973, in 131 *Am. J. Psychiatry* 497 (1974). Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable. See Brief for American Psychological Association et al. as *Amici Curiae* 7-17.

In the late 20th century, following substantial cultural and political developments, same-sex couples began to lead more open and public lives and to establish families. This development was followed by a quite extensive discussion of the issue in both governmental and private sectors and by a shift in public attitudes toward greater tolerance. As a result, questions about the rights of gays and lesbians soon reached the courts, where the issue could be discussed in the formal discourse of the law.

This Court first gave detailed consideration to the legal status of homosexuals in *Bowers v. Hardwick*, 478 U. S. 186 (1986). There it upheld the constitutionality of a Georgia law deemed to criminalize certain homosexual acts. Ten years later, in *Romer v. Evans*, 517 U. S. 620 (1996), the Court invalidated an amendment to Colorado's Constitution that sought to foreclose any branch or political subdivision of the State from protecting persons against discrimination based on sexual orientation. Then, in 2003, the Court overruled *Bowers*, holding that laws making same-sex intimacy a crime "demea[n] the lives of homosexual persons." *Lawrence v. Texas*, 539 U. S. 558, 575.

Against this background, the legal question of same-sex marriage arose. In 1993, the Hawaii Supreme Court held Hawaii's law restricting marriage to opposite-sex couples constituted a classification on the basis of sex and was therefore subject to strict scrutiny under the Hawaii Constitution. *Baehr v. Lewin*, 74 Haw. 530, 852 P. 2d 44. Although this decision did not mandate that same-sex marriage be allowed, some States were concerned by its implications and reaffirmed in their laws that marriage is defined as a union between opposite-sex partners. So too in 1996, Congress passed the Defense of Marriage Act (DOMA), 110 Stat. 2419, defining marriage for all federal law purposes as "only a legal union between one man and one woman as husband and wife." 1 U. S. C. §7.

The new and widespread discussion of the subject led other States to a different conclusion. In 2003, the Supreme Judicial Court of Massachusetts held the State's Constitution guaranteed same-sex couples the right to marry. See *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N. E. 2d 941 (2003). After that ruling, some additional States granted marriage rights to same-sex couples, either through judicial or legislative processes. These decisions and statutes are cited in Appendix B, *infra*. Two Terms ago, in *United States v. Windsor*, 570 U. S. \_\_\_\_ (2013), this Court invalidated DOMA to the extent it barred the Federal Government from treating same-sex marriages as valid even when they were lawful in the State where they were licensed. DOMA, the Court held, impermissibly disparaged those same-sex couples "who wanted to affirm their commitment to one another before their children, their family, their friends, and their community." *Id.*, at \_\_\_\_ (slip op., at 14).

Numerous cases about same-sex marriage have reached the United States Courts of Appeals in recent years. In accordance with the judicial duty to base their decisions on principled reasons and neutral discussions, without scornful or disparaging commentary, courts have written a substantial body of law considering all sides of these issues. That case law helps to explain and formulate the underlying principles this Court now must consider. With the exception of the opinion here under review and one other, see *Citizens for Equal Protection v. Bruning*, 455 F. 3d 859, 864-868 (CA8 2006), the Courts of Appeals have held that excluding same-sex couples from marriage violates the Constitution. There also have been many thoughtful District Court decisions addressing same-sex marriage—and most of them, too, have concluded same-sex couples must be allowed to marry. In addition the highest courts of many States have contributed to this ongoing dialogue in decisions interpreting their own State Constitutions. These state and federal judicial opinions are cited in Appendix A, *infra*.

After years of litigation, legislation, referenda, and the discussions that attended these public acts, the States are now

divided on the issue of same-sex marriage. See Office of the Atty. Gen. of Maryland, *The State of Marriage Equality in America, State-by-State Supp.* (2015).

### III

Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. See *Duncan v. Louisiana*, 391 U. S. 145, 147-149 (1968). In addition these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U. S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U. S. 479, 484-486 (1965).

The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. That responsibility, however, "has not been reduced to any formula." *Poe v. Ullman*, 367 U. S. 497, 542 (1961) (Harlan, J., dissenting). Rather, it requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. See *ibid.* That process is guided by many of the same considerations relevant to analysis of other constitutional provisions that set forth broad principles rather than specific requirements. History and tradition guide and discipline this inquiry but do not set its outer boundaries. See *Lawrence*, *supra*, at 572. That method respects our history and learns from it without allowing the past alone to rule the present.

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these established tenets, the Court has long held the right to marry is protected by the Constitution. In *Loving v. Virginia*, 388 U. S. 1, 12 (1967), which invalidated bans on interracial unions, a unanimous Court held marriage is "one of the vital personal rights essential to the orderly pursuit of happiness by free men." The Court reaffirmed that holding in *Zablocki v. Redhail*, 434 U. S. 374, 384 (1978), which held the right to marry was burdened by a law prohibiting fathers who were behind on child support from marrying. The Court again applied this principle in *Turner v. Safley*, 482 U. S. 78, 95 (1987), which held the right to marry was abridged by regulations limiting the privilege of prison inmates to marry. Over time and in other contexts, the Court has reiterated that the right to marry is fundamental under the Due Process Clause. See, e.g., *M. L. B. v. S. L. J.*, 519 U. S. 102, 116 (1996); *Cleveland Bd. of Ed. v. LaFleur*, 414 U. S. 632, 639-640 (1974); *Griswold*, *supra*, at 486; *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942); *Meyer v. Nebraska*, 262 U. S. 390, 399 (1923).

It cannot be denied that this Court's cases describing the right to marry presumed a relationship involving opposite-sex partners. The Court, like many institutions, has made assumptions defined by the world and time of which it is a part. This was evident in *Baker v. Nelson*, 409 U. S. 810, a one-line summary decision issued in 1972, holding the exclusion of same-sex couples from marriage did not present a substantial federal question.

Still, there are other, more instructive precedents. This Court's cases have expressed constitutional principles of broader reach. In defining the right to marry these cases have identified essential attributes of that right based in history, tradition, and other constitutional liberties inherent in this intimate bond. See, e.g., *Lawrence*, 539 U. S. at 574; *Turner*, *supra*, at 95; *Zablocki*, *supra*, at 384; *Loving*, *supra*, at 12; *Griswold*, *supra*, at 486. And in assessing whether the force and rationale of its cases apply to same-sex couples, the Court must respect the basic reasons why the right to marry has been long protected. See, e.g., *Eisenstadt*, *supra*, at 453-454; *Poe*, *supra*, at 542-553 (Harlan, J., dissenting).

This analysis compels the conclusion that same-sex couples may exercise the right to marry. The four principles and traditions to be discussed demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.

A first premise of the Court's relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why *Loving* invalidated interracial marriage bans under the Due Process Clause. See 388 U. S., at 12, see also *Zablocki, supra*, at 384 (observing *Loving* held "the right to marry is of fundamental importance for all individuals"). Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make. See *Lawrence, supra*, at 574. Indeed, the Court has noted it would be contradictory "to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society." *Zablocki, supra*, at 386.

Choices about marriage shape an individual's destiny. As the Supreme Judicial Court of Massachusetts has explained, because "it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition." *Goodridge*, 440 Mass., at 322, 798 N. E. 2d, at 955.

The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation. See *Windsor*, 570 U. S., at \_\_\_\_ (slip op., at 22-23). There is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices. Cf. *Loving, supra*, at 12 ("[T]he freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State").

A second principle in this Court's jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. This point was central to *Griswold v. Connecticut*, which held the Constitution protects the right of married couples to use contraception. 381 U. S., at 485. Suggesting that marriage is a right "older than the Bill of Rights," *Griswold* described marriage this way

"Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths, a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions." *Id.*, at 486.

And in *Turner*, the Court again acknowledged the intimate association protected by this right, holding prisoners could not be denied the right to marry because their committed relationships satisfied the basic reasons why marriage is a fundamental right. See 482 U. S., at 95-96. The right to marry thus dignifies couples who "wish to define themselves by their commitment to each other." *Windsor, supra*, at \_\_\_\_ (slip op., at 14). Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other.

As this Court held in *Lawrence*, same-sex couples have the same right as opposite-sex couples to enjoy intimate association. *Lawrence* invalidated laws that made same-sex intimacy a criminal act. And it acknowledged that "[w]hen sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring." 539 U. S., at 567. But while *Lawrence* confirmed a dimension of freedom that allows individuals to engage in intimate association without criminal liability, it does not follow that freedom stops there. Outlaw to outcast may be a step forward, but it does not achieve the full promise of liberty.

A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. See *Pierce v. Society of Sisters*, 268 U. S. 510 (1925), *Meyer*, 262 U. S., at 399. The Court has recognized these connections by describing the varied rights as a unified whole "[T]he right to 'marry, establish a home and bring up children' is a central part of the liberty protected by the Due Process Clause." *Zablocki*, 434 U. S., at 384 (quoting *Meyer, supra*, at 399). Under the laws of the several States, some of marriage's protections for children and families are material. But marriage also confers more profound benefits. By giving recognition and legal structure to their parents' relationship, marriage allows children "to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Windsor*,

*supra*, at \_\_\_\_ (slip op., at 23). Marriage also affords the permanency and stability important to children's best interests. See Brief for Scholars of the Constitutional Rights of Children as *Amici Curiae* 22-27.

As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. See Brief for Gary J. Gates as *Amicus Curiae* 4. Most States have allowed gays and lesbians to adopt, either as individuals or as couples, and many adopted and foster children have same-sex parents, see *id.*, at 5. This provides powerful confirmation from the law itself that gays and lesbians can create loving, supportive families.

Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser. They also suffer the significant material costs of being raised by unmarried parents, relegated through no fault of their own to a more difficult and uncertain family life. The marriage laws at issue here thus harm and humiliate the children of same-sex couples. See *Windsor, supra*, at \_\_\_\_ (slip op., at 23).

That is not to say the right to marry is less meaningful for those who do not or cannot have children. An ability, desire, or promise to procreate is not and has not been a prerequisite for a valid marriage in any State. In light of precedent protecting the right of a married couple not to procreate, it cannot be said the Court or the States have conditioned the right to marry on the capacity or commitment to procreate. The constitutional marriage right has many aspects, of which childbearing is only one.

Fourth and finally, this Court's cases and the Nation's traditions make clear that marriage is a keystone of our social order. Alexis de Tocqueville recognized this truth on his travels through the United States almost two centuries ago:

"There is certainly no country in the world where the tie of marriage is so much respected as in America . . . [W]hen the American retires from the turmoil of public life to the bosom of his family, he finds in it the image of order and of peace. . . . [H]e afterwards carries [that image] with him into public affairs." 1 Democracy in America 309 (H. Reeve transl., rev. ed. 1990)

In *Maynard v. Hill*, 125 U. S. 190, 211 (1888), the Court echoed de Tocqueville, explaining that marriage is "the foundation of the family and of society, without which there would be neither civilization nor progress." Marriage, the *Maynard* Court said, has long been "'a great public institution, giving character to our whole civil polity.'" *Id.*, at 213. This idea has been reiterated even as the institution has evolved in substantial ways over time, superseding rules related to parental consent, gender, and race once thought by many to be essential. See generally N. Cott, *Public Vows*. Marriage remains a building block of our national community.

For that reason, just as a couple vows to support each other, so does society pledge to support the couple, offering symbolic recognition and material benefits to protect and nourish the union. Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities. These aspects of marital status include: taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decisionmaking authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers' compensation benefits; health insurance; and child custody, support, and visitation rules. See Brief for United States as *Amicus Curiae* 6-9; Brief for American Bar Association as *Amicus Curiae* 8-29. Valid marriage under state law is also a significant status for over a thousand provisions of federal law. See *Windsor*, 570 U. S., at \_\_\_\_ - \_\_\_\_ (slip op., at 15-16). The States have contributed to the fundamental character of the marriage right by placing that institution at the center of so many facets of the legal and social order.

There is no difference between same- and opposite-sex couples with respect to this principle. Yet by virtue of their exclusion from that institution, same-sex couples are denied the constellation of benefits that the States have linked to marriage. This harm results in more than just material burdens. Same-sex couples are consigned to an instability many opposite-sex couples would deem intolerable in their own lives. As the State itself makes marriage all the more precious



by the significance it attaches to it, exclusion from that status has the effect of teaching that gays and lesbians are unequal in important respects. It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society. Same-sex couples, too, may aspire to the transcendent purposes of marriage and seek fulfillment in its highest meaning.

The limitation of marriage to opposite-sex couples may long have seemed natural and just, but its inconsistency with the central meaning of the fundamental right to marry is now manifest. With that knowledge must come the recognition that laws excluding same-sex couples from the marriage right impose stigma and injury of the kind prohibited by our basic charter.

Objecting that this does not reflect an appropriate framing of the issue, the respondents refer to Washington v. Glucksberg, 521 U. S. 702, 721 (1997), which called for a "careful description" of fundamental rights. They assert the petitioners do not seek to exercise the right to marry but rather a new and nonexistent "right to same-sex marriage." Brief for Respondent in No. 14-556, p. 8. Glucksberg did insist that liberty under the Due Process Clause must be defined in a most circumscribed manner, with central reference to specific historical practices. Yet while that approach may have been appropriate for the asserted right there involved (physician-assisted suicide), it is inconsistent with the approach this Court has used in discussing other fundamental rights, including marriage and intimacy. Loving did not ask about a "right to interracial marriage", Turner did not ask about a "right of inmates to marry", and Zablocki did not ask about a "right of fathers with unpaid child support duties to marry." Rather, each case inquired about the right to marry in its comprehensive sense, asking if there was a sufficient justification for excluding the relevant class from the right. See also Glucksberg, 521 U. S., at 752-773 (Souter, J., concurring in judgment); *id.*, at 789-792 (BREYER, J., concurring in judgments).

That principle applies here. If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians. See Loving 388 U. S., at 12, Lawrence, 539 U. S., at 566-567.

The right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources alone. They rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era. Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here. But when that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied. Under the Constitution, same-sex couples seek in marriage the same legal treatment as opposite-sex couples, and it would disparage their choices and diminish their personhood to deny them this right.

The right of same-sex couples to marry that is part of the liberty promised by the Fourteenth Amendment is derived, too, from that Amendment's guarantee of the equal protection of the laws. The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always coextensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way, even as the two Clauses may converge in the identification and definition of the right. See M. L. B., 519 U. S., at 120-121; *id.*, at 128-129 (KENNEDY, J., concurring in judgment); Bearden v. Georgia, 461 U. S. 660, 665 (1983). This interrelation of the two principles furthers our understanding of what freedom is and must become.

The Court's cases touching upon the right to marry reflect this dynamic. In Loving the Court invalidated a prohibition on interracial marriage under both the Equal Protection Clause and the Due Process Clause. The Court first declared the prohibition invalid because of its unequal treatment of interracial couples. It stated: "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." 388 U. S., at 12. With this link to equal protection the Court proceeded to hold the prohibition

offended central precepts of liberty: "To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law." *Ibid.* The reasons why marriage is a fundamental right became more clear and compelling from a full awareness and understanding of the hurt that resulted from laws barring interracial unions.

The synergy between the two protections is illustrated further in *Zablocki*. There the Court invoked the Equal Protection Clause as its basis for invalidating the challenged law, which, as already noted, barred fathers who were behind on child-support payments from marrying without judicial approval. The equal protection analysis depended in central part on the Court's holding that the law burdened a right "of fundamental importance." 434 U. S. at 383. It was the essential nature of the marriage right, discussed at length in *Zablocki*, see *id.*, at 383-387, that made apparent the law's incompatibility with requirements of equality. Each concept—liberty and equal protection—leads to a stronger understanding of the other.

Indeed, in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged. To take but one period, this occurred with respect to marriage in the 1970's and 1980's. Notwithstanding the gradual erosion of the doctrine of coverture, see *supra*, at 6, invidious sex-based classifications in marriage remained common through the mid-20th century. See App. to Brief for Appellant in *Reed v. Reed*, O. T. 1971, No. 70-4, pp. 69-88 (an extensive reference to laws extant as of 1971 treating women as unequal to men in marriage). These classifications denied the equal dignity of men and women. One State's law, for example, provided in 1971 that "the husband is the head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit." Ga. Code Ann. §53-501 (1935). Responding to a new awareness, the Court invoked equal protection principles to invalidate laws imposing sex-based inequality on marriage. See, e.g., *Kirchberg v. Feenstra*, 450 U. S. 455 (1981); *Wengler v. Druggists Mut. Ins. Co.*, 446 U. S. 142 (1980); *Califano v. Westcott*, 443 U. S. 76 (1979); *Orr v. Orr*, 440 U. S. 268 (1979); *Califano v. Goldfarb*, 430 U. S. 199 (1977) (plurality opinion); *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975); *Frontiero v. Richardson*, 411 U. S. 677 (1973). Like *Loving* and *Zablocki*, these precedents show the Equal Protection Clause can help to identify and correct inequalities in the institution of marriage, vindicating precepts of liberty and equality under the Constitution.

Other cases confirm this relation between liberty and equality. In *M. L. B. v. S. L. J.*, the Court invalidated under due process and equal protection principles a statute requiring indigent mothers to pay a fee in order to appeal the termination of their parental rights. See 519 U. S. at 119-124. In *Eisenstadt v. Baird*, the Court invoked both principles to invalidate a prohibition on the distribution of contraceptives to unmarried persons but not married persons. See 405 U. S. at 446-454. And in *Skinner v. Oklahoma ex rel. Williamson*, the Court invalidated under both principles a law that allowed sterilization of habitual criminals. See 316 U. S. at 538-543.

In *Lawrence* the Court acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. See 539 U. S. at 575. Although *Lawrence* elaborated its holding under the Due Process Clause, it acknowledged, and sought to remedy, the continuing inequality that resulted from laws making intimacy in the lives of gays and lesbians a crime against the State. See *ibid.* *Lawrence* therefore drew upon principles of liberty and equality to define and protect the rights of gays and lesbians, holding the State "cannot demean their existence or control their destiny by making their private sexual conduct a crime." *Id.*, at 578.

This dynamic also applies to same-sex marriage. It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry. See, e.g., *Zablocki*, *supra*.

These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. *Baker v. Nelson* must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as oppositesex couples.

#### IV

There may be an initial inclination in these cases to proceed with caution—to await further legislation, litigation, and debate. The respondents warn there has been insufficient democratic discourse before deciding an issue so basic as the definition of marriage. In its ruling on the cases now before this Court, the majority opinion for the Court of Appeals made a cogent argument that it would be appropriate for the respondents' States to await further public discussion and political measures before licensing same-sex marriages. See *DeBoer*, 772 F. 3d, at 409.

Yet there has been far more deliberation than this argument acknowledges. There have been referenda, legislative debates, and grassroots campaigns, as well as countless studies, papers, books, and other popular and scholarly writings. There has been extensive litigation in state and federal courts. See Appendix A, *infra*. Judicial opinions addressing the issue have been informed by the contentions of parties and counsel, which, in turn, reflect the more general, societal discussion of same-sex marriage and its meaning that has occurred over the past decades. As more than 100 *amici* make clear in their filings, many of the central institutions in American life—state and local governments, the military, large and small businesses, labor unions, religious organizations, law enforcement, civic groups, professional organizations, and universities—have devoted substantial attention to the question. This has led to an enhanced understanding of the issue—an understanding reflected in the arguments now presented for resolution as a matter of constitutional law.

Of course, the Constitution contemplates that democracy is the appropriate process for change, so long as that process does not abridge fundamental rights. Last Term, a plurality of this Court reaffirmed the importance of the democratic principle in *Schuette v. BAMN*, 572 U. S. \_\_\_\_ (2014), noting the "right of citizens to debate so they can learn and decide and then, through the political process, act in concert to try to shape the course of their own times" *Id.*, at \_\_\_\_ (slip op., at 15-16). Indeed, it is most often through democracy that liberty is preserved and protected in our lives. But as *Schuette* also said, "[t]he freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power" *Id.*, at \_\_\_\_ (slip op., at 15). Thus, when the rights of persons are violated, "the Constitution requires redress by the courts," notwithstanding the more general value of democratic decisionmaking. *Id.*, at \_\_\_\_ (slip op., at 17). This holds true even when protecting individual rights affects issues of the utmost importance and sensitivity.

The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act. The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 638 (1943). This is why "fundamental rights may not be submitted to a vote, they depend on the outcome of no elections." *Ibid.* It is of no moment whether advocates of same-sex marriage now enjoy or lack momentum in the democratic process. The issue before the Court here is the legal question whether the Constitution protects the right of samesex couples to marry.

This is not the first time the Court has been asked to adopt a cautious approach to recognizing and protecting fundamental rights. In *Bowers*, a bare majority upheld a law criminalizing same-sex intimacy. See 478 U. S., at 186, 190-

195. That approach might have been viewed as a cautious endorsement of the democratic process, which had only just begun to consider the rights of gays and lesbians. Yet, in effect, *Bowers* upheld state action that denied gays and lesbians a fundamental right and caused them pain and humiliation. As evidenced by the dissents in that case, the facts and principles necessary to a correct holding were known to the *Bowers* Court. See *id.*, at 199 (Blackmun, J., joined by Brennan, Marshall, and Stevens, JJ., dissenting), *id.*, at 214 (Stevens, J., joined by Brennan and Marshall, JJ., dissenting). That is why *Lawrence* held *Bowers* was "not correct when it was decided." 539 U.S. at 578. Although *Bowers* was eventually repudiated in *Lawrence*, men and women were harmed in the interim, and the substantial effects of these injuries no doubt lingered long after *Bowers* was overruled. Dignitary wounds cannot always be healed with the stroke of a pen.

A ruling against same-sex couples would have the same effect—and, like *Bowers*, would be unjustified under the Fourteenth Amendment. The petitioners' stories make clear the urgency of the issue they present to the Court. James Obergefell now asks whether Ohio can erase his marriage to John Arthur for all time. April DeBoer and Jayne Rowse now ask whether Michigan may continue to deny them the certainty and stability all mothers desire to protect their children, and for them and their children the childhood years will pass all too soon. Ijpe DeKoe and Thomas Kostura now ask whether Tennessee can deny to one who has served this Nation the basic dignity of recognizing his New York marriage. Properly presented with the petitioners' cases, the Court has a duty to address these claims and answer these questions.

Indeed, faced with a disagreement among the Courts of Appeals—a disagreement that caused impermissible geographic variation in the meaning of federal law—the Court granted review to determine whether same-sex couples may exercise the right to marry. Were the Court to uphold the challenged laws as constitutional, it would teach the Nation that these laws are in accord with our society's most basic compact. Were the Court to stay its hand to allow slower, case-by-case determination of the required availability of specific public benefits to same-sex couples, it still would deny gays and lesbians many rights and responsibilities intertwined with marriage.

The respondents also argue allowing same-sex couples to wed will harm marriage as an institution by leading to fewer opposite-sex marriages. This may occur, the respondents contend, because licensing same-sex marriage severs the connection between natural procreation and marriage. That argument, however, rests on a counterintuitive view of opposite-sex couple's decisionmaking processes regarding marriage and parenthood. Decisions about whether to marry and raise children are based on many personal, romantic, and practical considerations; and it is unrealistic to conclude that an opposite-sex couple would choose not to marry simply because same-sex couples may do so. See *Kitchen v. Herbert*, 755 F.3d 1193, 1223 (CA10 2014) ("[I]t is wholly illogical to believe that state recognition of the love and commitment between same-sex couples will alter the most intimate and personal decisions of opposite-sex couples"). The respondents have not shown a foundation for the conclusion that allowing same-sex marriage will cause the harmful outcomes they describe. Indeed, with respect to this asserted basis for excluding same-sex couples from the right to marry, it is appropriate to observe these cases involve only the rights of two consenting adults whose marriages would pose no risk of harm to themselves or third parties.

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same-sex marriage is proper or indeed essential, whether as a matter of religious conviction or secular belief, may engage those who disagree with their view in an open and searching debate. The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

V

These cases also present the question whether the Constitution requires States to recognize same-sex marriages validly performed out of State. As made clear by the case of Obergefell and Arthur, and by that of DeKoe and Kostura, the recognition bans inflict substantial and continuing harm on same-sex couples.

Being married in one State but having that valid marriage denied in another is one of "the most perplexing and distressing complication[s]" in the law of domestic relations Williams v. North Carolina, 317 U. S. 287, 299 (1942) (internal quotation marks omitted). Leaving the current state of affairs in place would maintain and promote instability and uncertainty. For some couples, even an ordinary drive into a neighboring State to visit family or friends risks causing severe hardship in the event of a spouse's hospitalization while across state lines. In light of the fact that many States already allow same-sex marriage—and hundreds of thousands of these marriages already have occurred—the disruption caused by the recognition bans is significant and ever-growing.

As counsel for the respondents acknowledged at argument, if States are required by the Constitution to issue marriage licenses to same-sex couples, the justifications for refusing to recognize those marriages performed elsewhere are undermined. See Tr. of Oral Arg. on Question 2, p. 44. The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

\* \* \*

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

The judgment of the Court of Appeals for the Sixth Circuit is reversed.

*It is so ordered.*

## **APPENDICES**

### **A**

## **State and Federal Judicial Decisions Addressing Same-Sex Marriage**

### **United States Courts of Appeals Decisions**

Adams v. Howerton, 673 F. 2d 1036 (CA9 1982)

Smelt v. County of Orange, 447 F. 3d 673 (CA9 2006)

Citizens for Equal Protection v. Bruning, 455 F. 3d 859 (CA8 2006)

Windsor v. United States, 699 F. 3d 169 (CA2 2012)

Massachusetts v. Department of Health and Human Services, 682 F. 3d 1 (CA1 2012)

Perry v. Brown, 671 F. 3d 1052 (CA9 2012)

Latta v. Otter, 771 F. 3d 456 (CA9 2014)

Baskin v. Bogan, 766 F. 3d 648 (CA7 2014)

Bishop v. Smith, 760 F. 3d 1070 (CA10 2014)

Bostic v. Schaefer, 760 F. 3d 352 (CA4 2014)

Kitchen v. Herbert, 755 F. 3d 1193 (CA10 2014)

DeBoer v. Snyder, 772 F. 3d 388 (CA6 2014)

Latta v. Otter, 779 F. 3d 902 (CA9 2015) (O'Scannlain, J., dissenting from the denial of rehearing en banc)

## United States District Court Decisions

Adams v. Howerton, 486 F. Supp. 1119 (CD Cal. 1980)

Citizens for Equal Protection, Inc. v. Bruning, 290 F. Supp. 2d 1004 (Neb. 2003)

Citizens for Equal Protection v. Bruning, 368 F. Supp. 2d 980 (Neb. 2005)

Wilson v. Ake, 354 F. Supp. 2d 1298 (MD Fla. 2005)

Smelt v. County of Orange, 374 F. Supp. 2d 861 (CD Cal. 2005)

Bishop v. Oklahoma ex rel. Edmondson, 447 F. Supp. 2d 1239 (ND Okla. 2006)

Massachusetts v. Department of Health and Human Services, 698 F. Supp. 2d 234 (Mass. 2010)

Gill v. Office of Personnel Management, 699 F. Supp. 2d 374 (Mass. 2010)

Perry v. Schwarzenegger, 704 F. Supp. 2d 921 (ND Cal. 2010)

Dragovich v. Department of Treasury, 764 F. Supp. 2d 1178 (ND Cal. 2011)

Golinski v. Office of Personnel Management, 824 F. Supp. 2d 968 (ND Cal. 2012)

Dragovich v. Department of Treasury, 872 F. Supp. 2d 944 (ND Cal. 2012)

Windsor v. United States, 833 F. Supp. 2d 394 (SDNY 2012)

Pedersen v. Office of Personnel Management, 881 F. Supp. 2d 294 (Conn. 2012)

Jackson v. Abercrombie, 884 F. Supp. 2d 1065 (Haw. 2012)

Sevcik v. Sandoval, 911 F. Supp. 2d 996 (Nev. 2012)

Merritt v. Attorney General, 2013 WL 6044329 (MD La., Nov. 14, 2013)

Gray v. Orr, 4 F. Supp. 3d 984 (ND Ill. 2013)

Lee v. Orr, 2013 WL 6490577 (ND Ill., Dec. 10, 2013)

Kitchen v. Herbert, 961 F. Supp. 2d 1181 (Utah 2013)

Obergefell v. Wymyslo, 962 F. Supp. 2d 968 (SD Ohio 2013)

Bishop v. United States ex rel. Holder, 962 F. Supp. 2d 1252 (ND Okla. 2014)

Bourke v. Beshear, 996 F. Supp. 2d 542 (WD Ky. 2014)

Lee v. Orr, 2014 WL 683680 (ND Ill., Feb. 21, 2014)

Bostic v. Rainey, 970 F. Supp. 2d 456 (ED Va. 2014)

De Leon v. Perry, 975 F. Supp. 2d 632 (WD Tex. 2014)

Tanco v. Haslam, 7 F. Supp. 3d 759 (MD Tenn. 2014)

DeBoerv. Snyder, 973 F. Supp. 2d 757 (ED Mich. 2014)

Henry v. Himes, 14 F. Supp. 3d 1036 (SD Ohio 2014)

Latta v. Otter, 19 F. Supp. 3d 1054 (Idaho 2014)

Geiger v. Kitzhaber, 994 F. Supp. 2d 1128 (Ore. 2014)

Evans v. Utah, 21 F. Supp. 3d 1192 (Utah 2014)

Whitewood v. Wolf, 992 F. Supp. 2d 410 (MD Pa. 2014)

Wolf v. Walker, 986 F. Supp. 2d 982 (WD Wis. 2014)

Baskin v. Bogan, 12 F. Supp. 3d 1144 (SD Ind. 2014)

Love v. Beshear, 989 F. Supp. 2d 536 (WD Ky. 2014)

Burns v. Hickenlooper, 2014 WL 3634834 (Colo., July 23, 2014)

Bowling v. Pence, 39 F. Supp. 3d 1025 (SD Ind. 2014)

Brenner v. Scott, 999 F. Supp. 2d 1278 (ND Fla. 2014)

Robicheaux v. Caldwell, 2 F. Supp. 3d 910 (ED La. 2014)

General Synod of the United Church of Christ v. Resinger, 12 F. Supp. 3d 790 (WDNC 2014)

Hamby v. Parnell, 56 F. Supp. 3d 1056 (Alaska 2014)

Fisher-Borne v. Smith, 14 F. Supp. 3d 695 (MDNC 2014)

Majors v. Horne, 14 F. Supp. 3d 1313 (Ariz. 2014)

Connolly v. Jeanes, \_\_\_ F. Supp. 3d \_\_\_, 2014 WL 5320642 (Ariz., Oct. 17, 2014)

Guzzo v. Mead, 2014 WL 5317797 (Wyo., Oct. 17, 2014)

Conde-Vidal v. Garcia-Padilla, 54 F. Supp. 3d 157 (PR 2014)

Marie v. Moser, \_\_\_ F. Supp. 3d \_\_\_, 2014 WL 5598128 (Kan., Nov. 4, 2014)

Lawson v. Kelly, 58 F. Supp. 3d 923 (WD Mo. 2014)

McGee v. Cole, \_\_\_ F. Supp. 3d \_\_\_, 2014 WL 5802665 (SD W. Va., Nov. 7, 2014)

Condon v. Haley, 21 F. Supp. 3d 572 (S. C. 2014)

*Bradacs v. Haley*, 58 F. Supp. 3d 514 (S. C. 2014)

*Rolando v. Fox*, 23 F. Supp. 3d 1227 (Mont. 2014)

*Jernigan v. Crane*, \_\_\_\_ F. Supp. 3d \_\_\_\_, 2014 WL 6685391 (ED Ark., Nov. 25, 2014)

*Campaign for Southern Equality v. Bryant*, \_\_\_\_ F. Supp. 3d \_\_\_\_, 2014 WL 6680570 (SD Miss., Nov. 25, 2014)

*Inniss v. Aderhold*, \_\_\_\_ F. Supp. 3d \_\_\_\_, 2015 WL 300593 (ND Ga., Jan. 8, 2015)

*Rosenbrahn v. Daugaard*, 61 F. Supp. 3d 862 (S. D., 2015)

*Gaspar v. Snyder*, \_\_\_\_ F. Supp. 3d \_\_\_\_, 2015 WL 224741 (ED Mich., Jan. 15, 2015)

*Searcey v. Strange*, 2015 U. S. Dist. LEXIS 7776 (SD Ala., Jan. 23, 2015)

*Strawser v. Strange*, 44 F. Supp. 3d 1206 (SD Ala. 2015)

*Waters v. Ricketts*, 48 F. Supp. 3d 1271 (Neb. 2015)

## State Highest Court Decisions

*Baker v. Nelson*, 291 Minn. 310, 191 N. W. 2d 185 (1971)

*Jones v. Hallahan*, 501 S. W. 2d 588 (Ky. 1973)

*Baehr v. Lewin*, 74 Haw. 530, 852 P. 2d 44 (1993)

*Dean v. District of Columbia*, 653 A. 2d 307 (D. C. 1995)

*Baker v. State*, 170 Vt. 194, 744 A. 2d 864 (1999)

*Brause v. State*, 21 P. 3d 357 (Alaska 2001) (ripeness)

*Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N. E. 2d 941 (2003)

*In re Opinions of the Justices to the Senate*, 440 Mass. 1201, 802 N. E. 2d 565 (2004)

*Li v. State*, 338 Or. 376, 110 P. 3d 91 (2005)

*Cote-Whitacre v. Department of Public Health*, 446 Mass. 350, 844 N. E. 2d 623 (2006)

*Lewis v. Harris*, 188 N. J. 415, 908 A. 2d 196 (2006)

*Andersen v. King County*, 158 Wash. 2d 1, 138 P. 3d 963 (2006)

*Hernandez v. Robles*, 7 N. Y. 3d 338, 855 N. E. 2d 1 (2006)

*Conaway v. Deane*, 401 Md. 219, 932 A. 2d 571 (2007)

*In re Marriage Cases*, 43 Cal. 4th 757, 183 P. 3d 384 (2008)

*Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 957 A. 2d 407 (2008)

*Strauss v. Horton*, 46 Cal. 4th 364, 207 P. 3d 48 (2009)

*Varnum v. Brien*, 763 N. W. 2d 862 (Iowa 2009)

*Griego v. Oliver*, 2014-NMSC-003, \_\_\_\_ N. M. \_\_\_\_, 316 P. 3d 865 (2013)



Garden State Equality v. Dow, 216 N. J. 314, 79 A. 3d 1036 (2013)

Ex parte State ex rel. Alabama Policy Institute, So. 3d , 2015 WL 892752 (Ala., Mar. 3, 2015)

## B

### State Legislation and Judicial Decisions Legalizing Same-Sex Marriage

#### Legislation

Del. Code Ann., Tit. 13, §129 (Cum. Supp. 2014)

D. C. Act No. 18-248, 57 D. C. Reg. 27 (2010)

Haw. Rev. Stat. §572-1 (2006) and 2013 Cum. Supp.)

Ill. Pub. Act No. 98-597

Me. Rev. Stat. Ann., Tit. 19, §650-A (Cum. Supp. 2014)

2012 Md. Laws p. 9

2013 Minn Laws p. 404

2009 N. H. Laws p. 60

2011 N. Y Laws p. 749

2013 R. I. Laws p. 7

2009 Vt. Acts & Resolves p. 33

2012 Wash. Sess. Laws p. 199

#### Judicial Decisions

Goodridge v. Department of Public Health, 440 Mass. 309, 798 N. E. 2d 941 (2003)

Kernan v. Commissioner of Public Health, 289 Conn. 135, 957 A. 2d 407 (2008)

Varnum v. Brien, 763 N. W. 2d 862 (Iowa 2009)

Griego v. Oliver, 2014-NMSC-003, N. M. , 316 P. 3d 865 (2013)

Garden State Equality v. Dow, 216 N. J. 314, 79 A. 3d 1036 (2013)

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

Petitioners make strong arguments rooted in social policy and considerations of fairness. They contend that same-sex couples should be allowed to affirm their love and commitment through marriage, just like opposite-sex couples. That position has undeniable appeal, over the past six years, voters and legislators in eleven States and the District of Columbia have revised their laws to allow marriage between two people of the same sex.

But this Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us. Under the Constitution, judges have power to say what the law is, not what it should be. The people who ratified the Constitution

authorized courts to exercise "neither force nor will but merely judgment." The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered).

Although the policy arguments for extending marriage to same-sex couples may be compelling, the legal arguments for requiring such an extension are not. The fundamental right to marry does not include a right to make a State change its definition of marriage. And a State's decision to maintain the meaning of marriage that has persisted in every culture throughout human history can hardly be called irrational. In short, our Constitution does not enact any one theory of marriage. The people of a State are free to expand marriage to include same-sex couples, or to retain the historic definition.

Today, however, the Court takes the extraordinary step of ordering every State to license and recognize same-sex marriage. Many people will rejoice at this decision, and I begrudge none their celebration. But for those who believe in a government of laws, not of men, the majority's approach is deeply disheartening. Supporters of same-sex marriage have achieved considerable success persuading their fellow citizens—through the democratic process—to adopt their view. That ends today. Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law. Stealing this issue from the people will for many cast a cloud over same-sex marriage, making a dramatic social change that much more difficult to accept.

The majority's decision is an act of will, not legal judgment. The right it announces has no basis in the Constitution or this Court's precedent. The majority expressly disclaims judicial "caution" and omits even a pretense of humility, openly relying on its desire to remake society according to its own "new insight" into the "nature of injustice." *Ante*, at 11, 23. As a result, the Court invalidates the marriage laws of more than half the States and orders the transformation of a social institution that has formed the basis of human society for millennia, for the Kalahari Bushmen and the Han Chinese, the Carthaginians and the Aztecs. Just who do we think we are?

It can be tempting for judges to confuse our own preferences with the requirements of the law. But as this Court has been reminded throughout our history, the Constitution "is made for people of fundamentally differing views." *Lochner v. New York*, 198 U. S. 45, 76 (1905) (Holmes, J., dissenting). Accordingly, "courts are not concerned with the wisdom or policy of legislation." *Id.*, at 69 (Harlan, J., dissenting). The majority today neglects that restrained conception of the judicial role. It seizes for itself a question the Constitution leaves to the people, at a time when the people are engaged in a vibrant debate on that question. And it answers that question based not on neutral principles of constitutional law, but on its own "understanding of what freedom is and must become." *Ante*, at 19. I have no choice but to dissent.

Understand well what this dissent is about: It is not about whether, in my judgment, the institution of marriage should be changed to include same-sex couples. It is instead about whether, in our democratic republic, that decision should rest with the people acting through their elected representatives, or with five lawyers who happen to hold commissions authorizing them to resolve legal disputes according to law. The Constitution leaves no doubt about the answer.

I

Petitioners and their *amici* base their arguments on the "right to marry" and the imperative of "marriage equality." There is no serious dispute that, under our precedents, the Constitution protects a right to marry and requires States to apply their marriage laws equally. The real question in these cases is what constitutes "marriage," or—more precisely—who decides what constitutes "marriage"?

The majority largely ignores these questions, relegating ages of human experience with marriage to a paragraph or two. Even if history and precedent are not "the end" of these cases, *ante*, at 4, I would not "sweep away what has so long been settled" without showing greater respect for all that preceded us. *Town of Greece v. Galloway*, 572 U. S. \_\_\_\_ (2014) (slip op., at 8).

A

As the majority acknowledges, marriage "has existed for millennia and across civilizations." *Ante*, at 3. For all those millennia, across all those civilizations, "marriage" referred to only one relationship: the union of a man and a woman. See *ante*, at 4, Tr. of Oral Arg. on Question 1, p. 12 (petitioners conceding that they are not aware of any society that permitted same-sex marriage before 2001). As the Court explained two Terms ago, "until recent years, . . . marriage between a man and a woman no doubt had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization." *United States v. Windsor*, 570 U. S. \_\_\_\_ (2013) (slip op., at 13).

This universal definition of marriage as the union of a man and a woman is no historical coincidence. Marriage did not come about as a result of a political movement, discovery, disease, war, religious doctrine, or any other moving force of world history—and certainly not as a result of a prehistoric decision to exclude gays and lesbians. It arose in the nature of things to meet a vital need—ensuring that children are conceived by a mother and father committed to raising them in the stable conditions of a lifelong relationship. See G. Quale, *A History of Marriage Systems* 2 (1988); cf. M. Cicero, *De Officiis* 57 (W. Miller transl. 1913) ("For since the reproductive instinct is by nature's gift the common possession of all living creatures, the first bond of union is that between husband and wife; the next, that between parents and children, then we find one home, with everything in common.").

The premises supporting this concept of marriage are so fundamental that they rarely require articulation. The human race must procreate to survive. Procreation occurs through sexual relations between a man and a woman. When sexual relations result in the conception of a child, that child's prospects are generally better if the mother and father stay together rather than going their separate ways. Therefore, for the good of children and society, sexual relations that can lead to procreation should occur only between a man and a woman committed to a lasting bond.

Society has recognized that bond as marriage. And by bestowing a respected status and material benefits on married couples, society encourages men and women to conduct sexual relations within marriage rather than without. As one prominent scholar put it, "Marriage is a socially arranged solution for the problem of getting people to stay together and care for children that the mere desire for children, and the sex that makes children possible, does not solve." J. Q. Wilson, *The Marriage Problem* 41 (2002).

This singular understanding of marriage has prevailed in the United States throughout our history. The majority accepts that at "the time of the Nation's founding [marriage] was understood to be a voluntary contract between a man and a woman." *Ante*, at 6. Early Americans drew heavily on legal scholars like William Blackstone, who regarded marriage between "husband and wife" as one of the "great relations in private life," and philosophers like John Locke, who described marriage as "a voluntary compact between man and woman" centered on "its chief end, procreation" and the "nourishment and support" of children. 1 W. Blackstone, *Commentaries* \*410, J. Locke, *Second Treatise of Civil Government* §§78-79, p. 39 (J. Gough ed. 1947). To those who drafted and ratified the Constitution, this conception of marriage and family "was a given: its structure, its stability, roles, and values accepted by all." Forte, *The Framers' Idea of Marriage and Family*, in *The Meaning of Marriage* 100, 102 (R. George & J. Elstain eds. 2006).

The Constitution itself says nothing about marriage, and the Framers thereby entrusted the States with "[t]he whole subject of the domestic relations of husband and wife." *Windsor*, 570 U. S., at \_\_\_\_ (slip op., at 17) (quoting *In re Burrus*, 136 U. S. 586, 593-594 (1890)). There is no dispute that every State at the founding—and every State throughout our history until a dozen years ago—defined marriage in the traditional, biologically rooted way. The four States in these cases are typical. Their laws, before and after statehood, have treated marriage as the union of a man and a woman. See *DeBoer v. Snyder*, 772 F. 3d 388, 396-399 (CA6 2014). Even when state laws did not specify this definition expressly, no one doubted what they meant. See *Jones v. Hallahan*, 501 S. W. 2d 588, 589 (Ky. App. 1973). The meaning of "marriage" went without saying.

Of course, many did say it. In his first American dictionary, Noah Webster defined marriage as "the legal union of a man and woman for life," which served the purposes of "preventing the promiscuous intercourse of the sexes, . . . promoting domestic felicity, and . . . securing the maintenance and education of children." 1 *An American Dictionary of the English Language* (1828). An influential 19th-century treatise defined marriage as "a civil status, existing in one man and one

woman legally united for life for those civil and social purposes which are based in the distinction of sex." J. Bishop, Commentaries on the Law of Marriage and Divorce 25 (1852). The first edition of Black's Law Dictionary defined marriage as "the civil status of one man and one woman united in law for life." Black's Law Dictionary 756 (1891) (emphasis deleted). The dictionary maintained essentially that same definition for the next century.

This Court's precedents have repeatedly described marriage in ways that are consistent only with its traditional meaning. Early cases on the subject referred to marriage as "the union for life of one man and one woman," Murphy v. Ramsey, 114 U. S. 15, 45 (1885), which forms "the foundation of the family and of society, without which there would be neither civilization nor progress," Maynard v. Hill, 125 U. S. 190, 211 (1888). We later described marriage as "fundamental to our very existence and survival," an understanding that necessarily implies a procreative component. Loving v. Virginia, 388 U. S. 1, 12 (1967), see Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535, 541 (1942). More recent cases have directly connected the right to marry with the "right to procreate." Zablocki v. Redhail, 434 U. S. 374, 386 (1978).

As the majority notes, some aspects of marriage have changed over time. Arranged marriages have largely given way to pairings based on romantic love. States have replaced coverture, the doctrine by which a married man and woman became a single legal entity, with laws that respect each participant's separate status. Racial restrictions on marriage, which "arose as an incident to slavery" to promote "White Supremacy," were repealed by many States and ultimately struck down by this Court. Loving, 388 U. S., at 6-7.

The majority observes that these developments "were not mere superficial changes" in marriage, but rather "worked deep transformations in its structure." *Ante*, at 6-7. They did not, however, work any transformation in the core structure of marriage as the union between a man and a woman. If you had asked a person on the street how marriage was defined, no one would ever have said, "Marriage is the union of a man and a woman, where the woman is subject to coverture." The majority may be right that the "history of marriage is one of both continuity and change," but the core meaning of marriage has endured. *Ante*, at 6.

## B

Shortly after this Court struck down racial restrictions on marriage in *Loving*, a gay couple in Minnesota sought a marriage license. They argued that the Constitution required States to allow marriage between people of the same sex for the same reasons that it requires States to allow marriage between people of different races. The Minnesota Supreme Court rejected their analogy to *Loving*, and this Court summarily dismissed an appeal. Baker v. Nelson, 409 U. S. 810 (1972).

In the decades after *Baker*, greater numbers of gays and lesbians began living openly, and many expressed a desire to have their relationships recognized as marriages. Over time, more people came to see marriage in a way that could be extended to such couples. Until recently, this new view of marriage remained a minority position. After the Massachusetts Supreme Judicial Court in 2003 interpreted its State Constitution to require recognition of same-sex marriage, many States—including the four at issue here—enacted constitutional amendments formally adopting the longstanding definition of marriage.

Over the last few years, public opinion on marriage has shifted rapidly. In 2009, the legislatures of Vermont, New Hampshire, and the District of Columbia became the first in the Nation to enact laws that revised the definition of marriage to include same-sex couples, while also providing accommodations for religious believers. In 2011, the New York Legislature enacted a similar law. In 2012, voters in Maine did the same, reversing the result of a referendum just three years earlier in which they had upheld the traditional definition of marriage.

In all, voters and legislators in eleven States and the District of Columbia have changed their definitions of marriage to include same-sex couples. The highest courts of five States have decreed that same result under their own Constitutions. The remainder of the States retain the traditional definition of marriage.

Petitioners brought lawsuits contending that the Due Process and Equal Protection Clauses of the Fourteenth

Amendment compel their States to license and recognize marriages between same-sex couples. In a carefully reasoned decision, the Court of Appeals acknowledged the democratic "momentum" in favor of "expand[ing] the definition of marriage to include gay couples," but concluded that petitioners had not made "the case for constitutionalizing the definition of marriage and for removing the issue from the place it has been since the founding in the hands of state voters." 772 F.3d, at 396, 403. That decision interpreted the Constitution correctly, and I would affirm.

## II

Petitioners first contend that the marriage laws of their States violate the Due Process Clause. The Solicitor General of the United States, appearing in support of petitioners, expressly disowned that position before this Court. See Tr. of Oral Arg. on Question 1, at 38-39. The majority nevertheless resolves these cases for petitioners based almost entirely on the Due Process Clause.

The majority purports to identify four "principles and traditions" in this Court's due process precedents that support a fundamental right for same-sex couples to marry. *Ante*, at 12. In reality, however, the majority's approach has no basis in principle or tradition, except for the unprincipled tradition of judicial policymaking that characterized discredited decisions such as *Lochner v. New York*, 198 U. S. 45. Stripped of its shiny rhetorical gloss, the majority's argument is that the Due Process Clause gives same-sex couples a fundamental right to marry because it will be good for them and for society. If I were a legislator, I would certainly consider that view as a matter of social policy. But as a judge, I find the majority's position indefensible as a matter of constitutional law.

## A

Petitioners' "fundamental right" claim falls into the most sensitive category of constitutional adjudication. Petitioners do not contend that their States' marriage laws violate an *enumerated* constitutional right, such as the freedom of speech protected by the First Amendment. There is, after all, no "Companionship and Understanding" or "Nobility and Dignity" Clause in the Constitution. See *ante*, at 3, 14. They argue instead that the laws violate a right *implied* by the Fourteenth Amendment's requirement that "liberty" may not be deprived without "due process of law."

This Court has interpreted the Due Process Clause to include a "substantive" component that protects certain liberty interests against state deprivation "no matter what process is provided." *Reno v. Flores*, 507 U. S. 292, 302 (1993). The theory is that some liberties are "so rooted in the traditions and conscience of our people as to be ranked as fundamental," and therefore cannot be deprived without compelling justification. *Snyder v. Massachusetts*, 291 U. S. 97, 105 (1934).

Allowing unelected federal judges to select which unenumerated rights rank as "fundamental"—and to strike down state laws on the basis of that determination—raises obvious concerns about the judicial role. Our precedents have accordingly insisted that judges "exercise the utmost care" in identifying implied fundamental rights, "lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." *Washington v. Glucksberg*, 521 U. S. 702, 720 (1997) (internal quotation marks omitted); see Kennedy, Unenumerated Rights and the Dictates of Judicial Restraint 13 (1986) (Address at Stanford) ("One can conclude that certain essential, or fundamental, rights should exist in any just society. It does not follow that each of those essential rights is one that we as judges can enforce under the written Constitution. The Due Process Clause is not a guarantee of every right that should inhere in an ideal system.").

The need for restraint in administering the strong medicine of substantive due process is a lesson this Court has learned the hard way. The Court first applied substantive due process to strike down a statute in *Dred Scott v. Sandford*, 19 How. 393 (1857). There the Court invalidated the Missouri Compromise on the ground that legislation restricting the institution of slavery violated the implied rights of slaveholders. The Court relied on its own conception of liberty and property in doing so. It asserted that "an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States . . . could hardly

be dignified with the name of due process of law." *Id.*, at 450. In a dissent that has outlasted the majority opinion, Justice Curtis explained that when the "fixed rules which govern the interpretation of laws [are] abandoned, and the theoretical opinions of individuals are allowed to control" the Constitution's meaning, "we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean." *Id.*, at 621.

*Dred Scott's* holding was overruled on the battlefields of the Civil War and by constitutional amendment after Appomattox, but its approach to the Due Process Clause reappeared in a series of early 20th-century cases, most prominently *Lochner v. New York*, this Court invalidated state statutes that presented "meddlesome interferences with the rights of the individual," and "undue interference with liberty of person and freedom of contract." 198 U. S. at 60, 61. In *Lochner* itself, the Court struck down a New York law setting maximum hours for bakery employees, because there was "in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law." *Id.*, at 58.

The dissenting Justices in *Lochner* explained that the New York law could be viewed as a reasonable response to legislative concern about the health of bakery employees, an issue on which there was at least "room for debate and for an honest difference of opinion." *Id.*, at 72 (opinion of Harlan, J.). The majority's contrary conclusion required adopting as constitutional law "an economic theory which a large part of the country does not entertain." *Id.*, at 75 (opinion of Holmes, J.). As Justice Holmes memorably put it, "The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics," a leading work on the philosophy of Social Darwinism. *Ibid.* The Constitution "is not intended to embody a particular economic theory. . . . It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution." *Id.*, at 75-76.

In the decades after *Lochner*, the Court struck down nearly 200 laws as violations of individual liberty, often over strong dissents contending that "[t]he criterion of constitutionality is not whether we believe the law to be for the public good." *Adkins v. Children's Hospital of D. C.*, 261 U. S. 525, 570 (1923) (opinion of Holmes, J.). By empowering judges to elevate their own policy judgments to the status of constitutionally protected "liberty," the *Lochner* line of cases left "no alternative to regarding the court as a . . . legislative chamber." L. Hand, *The Bill of Rights* 42 (1958).

Eventually, the Court recognized its error and vowed not to repeat it. "The doctrine that . . . due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely," we later explained, "has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U. S. 726, 730 (1963), see *Day-Brite Lighting, Inc. v. Missouri*, 342 U. S. 421, 423 (1952) ("we do not sit as a super-legislature to weigh the wisdom of legislation"). Thus, it has become an accepted rule that the Court will not hold laws unconstitutional simply because we find them "unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical of Okla., Inc.*, 348 U. S. 483, 488 (1955).

Rejecting *Lochner* does not require disavowing the doctrine of implied fundamental rights, and this Court has not done so. But to avoid repeating *Lochner's* error of converting personal preferences into constitutional mandates, our modern substantive due process cases have stressed the need for "judicial self-restraint." *Collins v. Harker Heights*, 503 U. S. 115, 125 (1992). Our precedents have required that implied fundamental rights be "objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Glucksberg*, 521 U. S. at 720-721 (internal quotation marks omitted).

Although the Court articulated the importance of history and tradition to the fundamental rights inquiry most precisely in *Glucksberg*, many other cases both before and after have adopted the same approach. See, e.g., *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U. S. 52, 72 (2009); *Flores*, 507 U. S. at 303; *United States v. Salerno*, 481 U. S. 739, 751 (1987); *Moore v. East Cleveland*, 431 U. S. 494, 503 (1977) (plurality opinion); see also *id.*, at 544 (White, J., dissenting) ("The Judiciary, including this Court, is the most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or even the design of the

Constitution."); Troxel v. Granville, 530 U. S. 57, 96-101 (2000) (KENNEDY, J., dissenting) (consulting "[o]ur Nation's history, legal traditions, and practices" and concluding that "[w]e owe it to the Nation's domestic relations legal structure . . . to proceed with caution" (quoting Glucksberg, 521 U. S., at 721)).

Proper reliance on history and tradition of course requires looking beyond the individual law being challenged, so that every restriction on liberty does not supply its own constitutional justification. The Court is right about that. *Ante*, at 18. But given the few "guideposts for responsible decisionmaking in this uncharted area," Collins, 503 U. S., at 125, "an approach grounded in history imposes limits on the judiciary that are more meaningful than any based on [an] abstract formula," Moore, 431 U. S., at 504, n. 12 (plurality opinion). Expanding a right suddenly and dramatically is likely to require tearing it up from its roots. Even a sincere profession of "discipline" in identifying fundamental rights, *ante*, at 10-11, does not provide a meaningful constraint on a judge, for "what he is really likely to be 'discovering,' whether or not he is fully aware of it, are his own values," J. Ely, *Democracy and Distrust* 44 (1980). The only way to ensure restraint in this delicate enterprise is "continual insistence upon respect for the teachings of history, solid recognition of the basic values that underlie our society, and wise appreciation of the great roles [of] the doctrines of federalism and separation of powers." Griswold v. Connecticut, 381 U. S. 479, 501 (1965) (Harlan, J., concurring in judgment).

## B

The majority acknowledges none of this doctrinal background, and it is easy to see why: Its aggressive application of substantive due process breaks sharply with decades of precedent and returns the Court to the unprincipled approach of *Lochner*.

## 1

The majority's driving themes are that marriage is desirable and petitioners desire it. The opinion describes the "transcendent importance" of marriage and repeatedly insists that petitioners do not seek to "demean," "devalue," "denigrate," or "disrespect" the institution. *Ante*, at 3, 4, 6, 28. Nobody disputes those points. Indeed, the compelling personal accounts of petitioners and others like them are likely a primary reason why many Americans have changed their minds about whether same-sex couples should be allowed to marry. As a matter of constitutional law, however, the sincerity of petitioners' wishes is not relevant.

When the majority turns to the law, it relies primarily on precedents discussing the fundamental "right to marry." Turner v. Safley, 482 U. S. 78, 95 (1987), Zablocki, 434 U. S., at 383, see Loving, 388 U. S., at 12. These cases do not hold, of course, that anyone who wants to get married has a constitutional right to do so. They instead require a State to justify barriers to marriage as that institution has always been understood. In *Loving*, the Court held that racial restrictions on the right to marry lacked a compelling justification. In *Zablocki*, restrictions based on child support debts did not suffice. In *Turner*, restrictions based on status as a prisoner were deemed impermissible.

None of the laws at issue in those cases purported to change the core definition of marriage as the union of a man and a woman. The laws challenged in *Zablocki* and *Turner* did not define marriage as "the union of a man and a woman, where neither party owes child support or is in prison." Nor did the interracial marriage ban at issue in *Loving* define marriage as "the union of a man and a woman of the same race." See Tragen, Comment, *Statutory Prohibitions Against Interracial Marriage*, 32 Cal. L. Rev. 269 (1944) ("at common law there was no ban on interracial marriage"), *post*, at 11-12, n. 5 (THOMAS, J., dissenting). Removing racial barriers to marriage therefore did not change what a marriage was any more than integrating schools changed what a school was. As the majority admits, the institution of "marriage" discussed in every one of these cases "presumed a relationship involving opposite-sex partners." *Ante*, at 11.

In short, the "right to marry" cases stand for the important but limited proposition that particular restrictions on access to marriage as *traditionally defined* violate due process. These precedents say nothing at all about a right to make a State change its definition of marriage, which is the right petitioners actually seek here. See *Windsor*, 570 U. S., at \_\_\_\_ (ALITO, J., dissenting) (slip op., at 8) ("What *Windsor* and the United States seek . . . is not the protection of a deeply rooted right

but the recognition of a very new right"). Neither petitioners nor the majority cites a single case or other legal source providing any basis for such a constitutional right. None exists, and that is enough to foreclose their claim.

## 2

The majority suggests that "there are other, more instructive precedents" informing the right to marry. *Ante*, at 12. Although not entirely clear, this reference seems to correspond to a line of cases discussing an implied fundamental "right of privacy." Griswold, 381 U. S., at 486. In the first of those cases, the Court invalidated a criminal law that banned the use of contraceptives. *Id.*, at 485-486. The Court stressed the invasive nature of the ban, which threatened the intrusion of "the police to search the sacred precincts of marital bedrooms." *Id.*, at 485. In the Court's view, such laws infringed the right to privacy in its most basic sense, the "right to be let alone." Eisenstadt v. Baird, 405 U. S. 438, 453-454, n. 10 (1972) (internal quotation marks omitted); see Olmstead v. United States, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

The Court also invoked the right to privacy in Lawrence v. Texas, 539 U. S. 558 (2003), which struck down a Texas statute criminalizing homosexual sodomy. *Lawrence* relied on the position that criminal sodomy laws, like bans on contraceptives, invaded privacy by inviting "unwarranted government intrusions" that "touc[h] upon the most private human conduct, sexual behavior . . . in the most private of places, the home." *Id.*, at 562, 567.

Neither *Lawrence* nor any other precedent in the privacy line of cases supports the right that petitioners assert here. Unlike criminal laws banning contraceptives and sodomy, the marriage laws at issue here involve no government intrusion. They create no crime and impose no punishment. Same-sex couples remain free to live together, to engage in intimate conduct, and to raise their families as they see fit. No one is "condemned to live in loneliness" by the laws challenged in these cases—no one. *Ante*, at 28. At the same time, the laws in no way interfere with the "right to be let alone."

The majority also relies on Justice Harlan's influential dissenting opinion in Poe v. Ullman, 367 U. S. 497 (1961). As the majority recounts, that opinion states that "[d]ue process has not been reduced to any formula." *Id.*, at 542. But far from conferring the broad interpretive discretion that the majority discerns, Justice Harlan's opinion makes clear that courts implying fundamental rights are not "free to roam where unguided speculation might take them." *Ibid.* They must instead have "regard to what history teaches" and exercise not only "judgment" but "restraint." *Ibid.* Of particular relevance, Justice Harlan explained that "laws regarding marriage which provide both when the sexual powers may be used and the legal and societal context in which children are born and brought up . . . form a pattern so deeply pressed into the substance of our social life that any Constitutional doctrine in this area must build upon that basis." *Id.*, at 546.

In sum, the privacy cases provide no support for the majority's position, because petitioners do not seek privacy. Quite the opposite, they seek public recognition of their relationships, along with corresponding government benefits. Our cases have consistently refused to allow litigants to convert the shield provided by constitutional liberties into a sword to demand positive entitlements from the State. See DeShaney v. Winnebago County Dept. of Social Servs., 489 U. S. 189, 196 (1989); San Antonio Independent School Dist. v. Rodriguez, 411 U. S. 1, 35-37 (1973); *post*, at 9-13 (THOMAS, J., dissenting). Thus, although the right to privacy recognized by our precedents certainly plays a role in protecting the intimate conduct of same-sex couples, it provides no affirmative right to redefine marriage and no basis for striking down the laws at issue here.

## 3

Perhaps recognizing how little support it can derive from precedent, the majority goes out of its way to jettison the "careful" approach to implied fundamental rights taken by this Court in *Glucksberg*. *Ante*, at 18 (quoting 521 U. S. at 721). It is revealing that the majority's position requires it to effectively overrule *Glucksberg*, the leading modern case setting the bounds of substantive due process. At least this part of the majority opinion has the virtue of candor. Nobody could rightly accuse the majority of taking a careful approach.



Ultimately, only one precedent offers any support for the majority's methodology. *Lochner v. New York*, 198 U. S. 45. The majority opens its opinion by announcing petitioners' right to "define and express their identity." *Ante*, at 1-2. The majority later explains that "the right to personal choice regarding marriage is inherent in the concept of individual autonomy." *Ante*, at 12. This freewheeling notion of individual autonomy echoes nothing so much as "the general right of an individual to be *free in his person* and in his power to contract in relation to his own labor" *Lochner*, 198 U. S., at 58 (emphasis added).

To be fair, the majority does not suggest that its individual autonomy right is entirely unconstrained. The constraints it sets are precisely those that accord with its own "reasoned judgment," informed by its "new insight" into the "nature of injustice," which was invisible to all who came before but has become clear "as we learn [the] meaning" of liberty. *Ante*, at 10, 11. The truth is that today's decision rests on nothing more than the majority's own conviction that same-sex couples should be allowed to marry because they want to, and that "it would disparage their choices and diminish their personhood to deny them this right." *Ante*, at 19. Whatever force that belief may have as a matter of moral philosophy, it has no more basis in the Constitution than did the naked policy preferences adopted in *Lochner*. See 198 U. S., at 61 ("We do not believe in the soundness of the views which uphold this law," which "is an illegal interference with the rights of individuals . . . to make contracts regarding labor upon such terms as they may think best").

The majority recognizes that today's cases do not mark "the first time the Court has been asked to adopt a cautious approach to recognizing and protecting fundamental rights." *Ante*, at 25. On that much, we agree. The Court was "asked"—and it agreed—to "adopt a cautious approach" to implying fundamental rights after the debacle of the *Lochner* era. Today, the majority casts caution aside and revives the grave errors of that period.

One immediate question invited by the majority's position is whether States may retain the definition of marriage as a union of two people. Cf. *Brown v. Buhman*, 947 F. Supp. 2d 1170 (Utah 2013), appeal pending, No. 14-4117 (CA10). Although the majority randomly inserts the adjective "two" in various places, it offers no reason at all why the two-person element of the core definition of marriage may be preserved while the man-woman element may not. Indeed, from the standpoint of history and tradition, a leap from opposite-sex marriage to same-sex marriage is much greater than one from a two-person union to plural unions, which have deep roots in some cultures around the world. If the majority is willing to take the big leap, it is hard to see how it can say no to the shorter one.

It is striking how much of the majority's reasoning would apply with equal force to the claim of a fundamental right to plural marriage. If "[t]here is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices," *ante*, at 13, why would there be any less dignity in the bond between three people who, in exercising their autonomy, seek to make the profound choice to marry? If a same-sex couple has the constitutional right to marry because their children would otherwise "suffer the stigma of knowing their families are somehow lesser," *ante*, at 15, why wouldn't the same reasoning apply to a family of three or more persons raising children? If not having the opportunity to marry "serves to disrespect and subordinate" gay and lesbian couples, why wouldn't the same "imposition of this disability," *ante*, at 22, serve to disrespect and subordinate people who find fulfillment in polyamorous relationships? See Bennett, Polyamory: The Next Sexual Revolution? *Newsweek*, July 28, 2009 (estimating 500,000 polyamorous families in the United States); Li, Married Lesbian "Throuple" Expecting First Child, *N. Y. Post*, Apr. 23, 2014; Otter, Three May Not Be a Crowd: The Case for a Constitutional Right to Plural Marriage, 64 *Emory L. J.* 1977 (2015).

I do not mean to equate marriage between same-sex couples with plural marriages in all respects. There may well be relevant differences that compel different legal analysis. But if there are, petitioners have not pointed to any. When asked about a plural marital union at oral argument, petitioners asserted that a State "doesn't have such an institution." *Tr. of Oral Arg. on Question 2*, p. 6. But that is exactly the point: the States at issue here do not have an institution of same-sex marriage, either.

4

Near the end of its opinion, the majority offers perhaps the clearest insight into its decision. Expanding marriage to

include same-sex couples, the majority insists, would "pose no risk of harm to themselves or third parties" *Ante*, at 27. This argument again echoes *Lochner*, which relied on its assessment that "we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act." 198 U. S., at 57

Then and now, this assertion of the "harm principle" sounds more in philosophy than law. The elevation of the fullest individual self-realization over the constraints that society has expressed in law may or may not be attractive moral philosophy. But a Justice's commission does not confer any special moral, philosophical, or social insight sufficient to justify imposing those perceptions on fellow citizens under the pretense of "due process." There is indeed a process due the people on issues of this sort—the democratic process. Respecting that understanding requires the Court to be guided by law, not any particular school of social thought. As Judge Henry Friendly once put it, echoing Justice Holmes's dissent in *Lochner*, the Fourteenth Amendment does not enact John Stuart Mill's *On Liberty* any more than it enacts Herbert Spencer's *Social Statics*. See Randolph, Before *Roe v. Wade*: Judge Friendly's Draft Abortion Opinion, 29 Harv. J. L. & Pub. Pol'y 1035, 1036-1037, 1058 (2006). And it certainly does not enact any one concept of marriage.

The majority's understanding of due process lays out a tantalizing vision of the future for Members of this Court: If an unvarying social institution enduring over all of recorded history cannot inhibit judicial policymaking, what can? But this approach is dangerous for the rule of law. The purpose of insisting that implied fundamental rights have roots in the history and tradition of our people is to ensure that when unelected judges strike down democratically enacted laws, they do so based on something more than their own beliefs. The Court today not only overlooks our country's entire history and tradition but actively repudiates it, preferring to live only in the heady days of the here and now. I agree with the majority that the "nature of injustice is that we may not always see it in our own times." *Ante*, at 11. As petitioners put it, "times can blind." Tr. of Oral Arg. on Question 1, at 9, 10. But to blind yourself to history is both prideful and unwise. "The past is never dead. It's not even past." W. Faulkner, *Requiem for a Nun* 92 (1951).

### III

In addition to their due process argument, petitioners contend that the Equal Protection Clause requires their States to license and recognize same-sex marriages. The majority does not seriously engage with this claim. Its discussion is, quite frankly, difficult to follow. The central point seems to be that there is a "synergy between" the Equal Protection Clause and the Due Process Clause, and that some precedents relying on one Clause have also relied on the other. *Ante*, at 20. Absent from this portion of the opinion, however, is anything resembling our usual framework for deciding equal protection cases. It is casebook doctrine that the "modern Supreme Court's treatment of equal protection claims has used a means-ends methodology in which judges ask whether the classification the government is using is sufficiently related to the goals it is pursuing." G. Stone, L. Seidman, C. Sunstein, M. Tushnet, & P. Karlan, *Constitutional Law* 453 (7th ed. 2013). The majority's approach today is different:

"Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way, even as the two Clauses may converge in the identification and definition of the right." *Ante*, at 19.

The majority goes on to assert in conclusory fashion that the Equal Protection Clause provides an alternative basis for its holding. *Ante*, at 22. Yet the majority fails to provide even a single sentence explaining how the Equal Protection Clause supplies independent weight for its position, nor does it attempt to justify its gratuitous violation of the canon against unnecessarily resolving constitutional questions. See *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U. S. 193, 197 (2009). In any event, the marriage laws at issue here do not violate the Equal Protection Clause, because distinguishing between opposite-sex and same-sex couples is rationally related to the States' "legitimate state interest" in "preserving the traditional institution of marriage." *Lawrence*, 539 U. S., at 585 (O'Connor, J., concurring in judgment).

It is important to note with precision which laws petitioners have challenged. Although they discuss some of the ancillary

legal benefits that accompany marriage, such as hospital visitation rights and recognition of spousal status on official documents, petitioners' lawsuits target the laws defining marriage generally rather than those allocating benefits specifically. The equal protection analysis might be different, in my view, if we were confronted with a more focused challenge to the denial of certain tangible benefits. Of course, those more selective claims will not arise now that the Court has taken the drastic step of requiring every State to license and recognize marriages between same-sex couples.

#### IV

The legitimacy of this Court ultimately rests "upon the respect accorded to its judgments." Republican Party of Minn. v. White, 536 U. S. 765, 793 (2002) (KENNEDY, J., concurring). That respect flows from the perception—and reality—that we exercise humility and restraint in deciding cases according to the Constitution and law. The role of the Court envisioned by the majority today, however, is anything but humble or restrained. Over and over, the majority exalts the role of the judiciary in delivering social change. In the majority's telling, it is the courts, not the people, who are responsible for making "new dimensions of freedom . . . apparent to new generations," for providing "formal discourse" on social issues, and for ensuring "neutral discussions, without scornful or disparaging commentary." *Ante*, at 7-9.

Nowhere is the majority's extravagant conception of judicial supremacy more evident than in its description—and dismissal—of the public debate regarding same-sex marriage. Yes, the majority concedes, on one side are thousands of years of human history in every society known to have populated the planet. But on the other side, there has been "extensive litigation," "many thoughtful District Court decisions," "countless studies, papers, books, and other popular and scholarly writings," and "more than 100" *amicus* briefs in these cases alone. *Ante*, at 9, 10, 23. What would be the point of allowing the democratic process to go on? It is high time for the Court to decide the meaning of marriage, based on five lawyers' "better informed understanding" of "a liberty that remains urgent in our own era." *Ante*, at 19. The answer is surely there in one of those *amicus* briefs or studies.

Those who founded our country would not recognize the majority's conception of the judicial role. They after all risked their lives and fortunes for the precious right to govern themselves. They would never have imagined yielding that right on a question of social policy to unaccountable and unelected judges. And they certainly would not have been satisfied by a system empowering judges to override policy judgments so long as they do so after "a quite extensive discussion." *Ante*, at 8. In our democracy, debate about the content of the law is not an exhaustion requirement to be checked off before courts can impose their will. "Surely the Constitution does not put either the legislative branch or the executive branch in the position of a television quiz show contestant so that when a given period of time has elapsed and a problem remains unresolved by them, the federal judiciary may press a buzzer and take its turn at fashioning a solution." Rehnquist, *The Notion of a Living Constitution*, 54 Texas L. Rev. 693, 700 (1976). As a plurality of this Court explained just last year, "It is demeaning to the democratic process to presume that voters are not capable of deciding an issue of this sensitivity on decent and rational grounds." Schuette v. BAMN, 572 U. S. \_\_\_\_\_ (2014) (slip op., at 16-17).

The Court's accumulation of power does not occur in a vacuum. It comes at the expense of the people. And they know it. Here and abroad, people are in the midst of a serious and thoughtful public debate on the issue of same-sex marriage. They see voters carefully considering same-sex marriage, casting ballots in favor or opposed, and sometimes changing their minds. They see political leaders similarly reexamining their positions, and either reversing course or explaining adherence to old convictions confirmed anew. They see governments and businesses modifying policies and practices with respect to same-sex couples, and participating actively in the civic discourse. They see countries overseas democratically accepting profound social change, or declining to do so. This deliberative process is making people take seriously questions that they may not have even regarded as questions before.

When decisions are reached through democratic means, some people will inevitably be disappointed with the results. But those whose views do not prevail at least know that they have had their say, and accordingly are—in the tradition of our political culture—reconciled to the result of a fair and honest debate. In addition, they can gear up to raise the issue later, hoping to persuade enough on the winning side to think again. "That is exactly how our system of government is supposed to work." *Post*, at 2-3 (SCALIA, J., dissenting).

But today the Court puts a stop to all that. By deciding this question under the Constitution, the Court removes it from the realm of democratic decision. There will be consequences to shutting down the political process on an issue of such profound public significance. Closing debate tends to close minds. People denied a voice are less likely to accept the ruling of a court on an issue that does not seem to be the sort of thing courts usually decide. As a thoughtful commentator observed about another issue, "The political process was moving . . . not swiftly enough for advocates of quick, complete change, but majoritarian institutions were listening and acting. Heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict." Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N. C. L. Rev. 375, 385-386 (1985) (footnote omitted). Indeed, however heartened the proponents of same-sex marriage might be on this day, it is worth acknowledging what they have lost, and lost forever: the opportunity to win the true acceptance that comes from persuading their fellow citizens of the justice of their cause. And they lose this just when the winds of change were freshening at their backs.

Federal courts are blunt instruments when it comes to creating rights. They have constitutional power only to resolve concrete cases or controversies; they do not have the flexibility of legislatures to address concerns of parties not before the court or to anticipate problems that may arise from the exercise of a new right. Today's decision, for example, creates serious questions about religious liberty. Many good and decent people oppose same-sex marriage as a tenet of faith, and their freedom to exercise religion is—unlike the right imagined by the majority—actually spelled out in the Constitution. Amdt. 1.

Respect for sincere religious conviction has led voters and legislators in every State that has adopted same-sex marriage democratically to include accommodations for religious practice. The majority's decision imposing same-sex marriage cannot, of course, create any such accommodations. The majority graciously suggests that religious believers may continue to "advocate" and "teach" their views of marriage. *Ante*, at 27. The First Amendment guarantees, however, the freedom to "exercise" religion. Ominously, that is not a word the majority uses.

Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage—when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples. Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage. See Tr. of Oral Arg. on Question 1, at 36-38. There is little doubt that these and similar questions will soon be before this Court. Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today.

Perhaps the most discouraging aspect of today's decision is the extent to which the majority feels compelled to sully those on the other side of the debate. The majority offers a cursory assurance that it does not intend to disparage people who, as a matter of conscience, cannot accept same-sex marriage. *Ante*, at 19. That disclaimer is hard to square with the very next sentence, in which the majority explains that "the necessary consequence" of laws codifying the traditional definition of marriage is to "demea[n] or stigmatiz[e]" same-sex couples. *Ante*, at 19. The majority reiterates such characterizations over and over. By the majority's account, Americans who did nothing more than follow the understanding of marriage that has existed for our entire history—in particular, the tens of millions of people who voted to reaffirm their States' enduring definition of marriage—have acted to "lock . . . out," "disparage," "disrespect and subordinate," and inflict "[d]ignitary wounds" upon their gay and lesbian neighbors. *Ante*, at 17, 19, 22, 25. These apparent assaults on the character of fairminded people will have an effect, in society and in court. See *post*, at 6-7 (ALITO, J., dissenting). Moreover, they are entirely gratuitous. It is one thing for the majority to conclude that the Constitution protects a right to same-sex marriage; it is something else to portray everyone who does not share the majority's "better informed understanding" as bigoted. *Ante*, at 19.

In the face of all this, a much different view of the Court's role is possible. That view is more modest and restrained. It is more skeptical that the legal abilities of judges also reflect insight into moral and philosophical issues. It is more sensitive to the fact that judges are unelected and unaccountable, and that the legitimacy of their power depends on confining it to the exercise of legal judgment. It is more attuned to the lessons of history, and what it has meant for the country and Court when Justices have exceeded their proper bounds. And it is less pretentious than to suppose that

while people around the world have viewed an institution in a particular way for thousands of years, the present generation and the present Court are the ones chosen to burst the bonds of that history and tradition.

\* \* \*

If you are among the many Americans—of whatever sexual orientation—who favor expanding same-sex marriage, by all means celebrate today's decision. Celebrate the achievement of a desired goal. Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it.

I respectfully dissent.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

I join THE CHIEF JUSTICE's opinion in full. I write separately to call attention to this Court's threat to American democracy.

The substance of today's decree is not of immense personal importance to me. The law can recognize as marriage whatever sexual attachments and living arrangements it wishes, and can accord them favorable civil consequences, from tax treatment to rights of inheritance. Those civil consequences—and the public approval that conferring the name of marriage evidences—can perhaps have adverse social effects, but no more adverse than the effects of many other controversial laws. So it is not of special importance to me what the law says about marriage. It is of overwhelming importance, however, who it is that rules me. Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact—and the furthest extension one can even imagine—of the Court's claimed power to create "liberties" that the Constitution and its Amendments neglect to mention. This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves.

I

Until the courts put a stop to it, public debate over same-sex marriage displayed American democracy at its best. Individuals on both sides of the issue passionately, but respectfully, attempted to persuade their fellow citizens to accept their views. Americans considered the arguments and put the question to a vote. The electorates of 11 States, either directly or through their representatives, chose to expand the traditional definition of marriage. Many more decided not to.<sup>[1]</sup> Win or lose, advocates for both sides continued pressing their cases, secure in the knowledge that an electoral loss can be negated by a later electoral win. That is exactly how our system of government is supposed to work.<sup>[2]</sup>

The Constitution places some constraints on self-rule—constraints adopted *by the People themselves* when they ratified the Constitution and its Amendments. Forbidden are laws "impairing the Obligation of Contracts,"<sup>[3]</sup> denying "Full Faith and Credit" to the "public Acts" of other States,<sup>[4]</sup> prohibiting the free exercise of religion,<sup>[5]</sup> abridging the freedom of speech,<sup>[6]</sup> infringing the right to keep and bear arms,<sup>[7]</sup> authorizing unreasonable searches and seizures,<sup>[8]</sup> and so forth. Aside from these limitations, those powers "reserved to the States respectively, or to the people"<sup>[9]</sup> can be exercised as the States or the People desire. These cases ask us to decide whether the Fourteenth Amendment contains a limitation that requires the States to license and recognize marriages between two people of the same sex. Does it remove *that* issue from the political process?

Of course not. It would be surprising to find a prescription regarding marriage in the Federal Constitution since, as the author of today's opinion reminded us only two years ago (in an opinion joined by the same Justices who join him

today):

"[R]egulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States."<sup>[10]</sup>

"[T]he Federal Government, through our history, has deferred to state-law policy decisions with respect to domestic relations."<sup>[11]</sup>

But we need not speculate. When the Fourteenth Amendment was ratified in 1868, every State limited marriage to one man and one woman, and no one doubted the constitutionality of doing so. That resolves these cases. When it comes to determining the meaning of a vague constitutional provision—such as "due process of law" or "equal protection of the laws"—it is unquestionable that the People who ratified that provision did not understand it to prohibit a practice that remained both universal and uncontroversial in the years after ratification.<sup>[12]</sup> We have no basis for striking down a practice that is not expressly prohibited by the Fourteenth Amendment's text, and that bears the endorsement of a long tradition of open, widespread, and unchallenged use dating back to the Amendment's ratification. Since there is no doubt whatever that the People never decided to prohibit the limitation of marriage to opposite-sex couples, the public debate over same-sex marriage must be allowed to continue.

But the Court ends this debate, in an opinion lacking even a thin veneer of law. Buried beneath the mummeries and straining-to-be-memorable passages of the opinion is a candid and startling assertion. No matter *what* it was the People ratified, the Fourteenth Amendment protects those rights that the Judiciary, in its "reasoned judgment," thinks the Fourteenth Amendment ought to protect.<sup>[13]</sup> That is so because "[t]he generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions."<sup>[14]</sup> One would think that sentence would continue: "... and therefore they provided for a means by which the People could amend the Constitution," or perhaps "... and therefore they left the creation of additional liberties, such as the freedom to marry someone of the same sex, to the People, through the never-ending process of legislation." But no. What logically follows, in the majority's judge-empowering estimation, is "and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning."<sup>[15]</sup> The "we," needless to say, is the nine of us. "History and tradition guide and discipline [our] inquiry but do not set its outer boundaries."<sup>[16]</sup> Thus, rather than focusing on *the People's* understanding of "liberty"—at the time of ratification or even today—the majority focuses on four "principles and traditions" that, *in the majority's view*, prohibit States from defining marriage as an institution consisting of one man and one woman.<sup>[17]</sup>

This is a naked judicial claim to legislative—indeed, *super-legislative*—power, a claim fundamentally at odds with our system of government. Except as limited by a constitutional prohibition agreed to by the People, the States are free to adopt whatever laws they like, even those that offend the esteemed Justices' "reasoned judgment." A system of government that makes the People subordinate to a committee of nine unelected lawyers does not deserve to be called a democracy.

Judges are selected precisely for their skill as lawyers; whether they reflect the policy views of a particular constituency is not (or should not be) relevant. Not surprisingly then, the Federal Judiciary is hardly a cross-section of America. Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers<sup>[18]</sup> who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner (California does not count). Not a single evangelical Christian (a group that comprises about one quarter of Americans<sup>[19]</sup>), or even a Protestant of any denomination. The strikingly unrepresentative character of the body voting on today's social upheaval would be irrelevant if they were functioning as *judges*, answering the legal question whether the American people had ever ratified a constitutional provision that was understood to proscribe the traditional definition of marriage. But of course the Justices in today's majority are not voting on that basis; *they say they are not*. And to allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without

## II

But what really astounds is the hubris reflected in today's judicial Putsch. The five Justices who compose today's majority are entirely comfortable concluding that every State violated the Constitution for all of the 135 years between the Fourteenth Amendment's ratification and Massachusetts' permitting of same-sex marriages in 2003.<sup>[20]</sup> They have discovered in the Fourteenth Amendment a "fundamental right" overlooked by every person alive at the time of ratification, and almost everyone else in the time since. They see what lesser legal minds—minds like Thomas Cooley, John Marshall Harlan, Oliver Wendell Holmes, Jr., Learned Hand, Louis Brandeis, William Howard Taft, Benjamin Cardozo, Hugo Black, Felix Frankfurter, Robert Jackson, and Henry Friendly—could not. They are certain that the People ratified the Fourteenth Amendment to bestow on them the power to remove questions from the democratic process when that is called for by their "reasoned judgment." These Justices *know* that limiting marriage to one man and one woman is contrary to reason, they *know* that an institution as old as government itself, and accepted by every nation in history until 15 years ago,<sup>[21]</sup> cannot possibly be supported by anything other than ignorance or bigotry. And they are willing to say that any citizen who does not agree with that, who adheres to what was, until 15 years ago, the unanimous judgment of all generations and all societies, stands against the Constitution.

The opinion is couched in a style that is as pretentious as its content is egotistic. It is one thing for separate concurring or dissenting opinions to contain extravagances, even silly extravagances, of thought and expression; it is something else for the official opinion of the Court to do so.<sup>[22]</sup> Of course the opinion's showy profundities are often profoundly incoherent. "The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality."<sup>[23]</sup> (Really? Who ever thought that intimacy and spirituality [whatever that means] were freedoms? And if intimacy is, one would think Freedom of Intimacy is abridged rather than expanded by marriage. Ask the nearest hippie. Expression, sure enough, *is* a freedom, but anyone in a long-lasting marriage will attest that that happy state constricts, rather than expands, what one can prudently say.) Rights, we are told, can "rise . . . from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era."<sup>[24]</sup> (Huh? How can a better informed understanding of how constitutional imperatives [whatever that means] define [whatever that means] an urgent liberty [never mind], give birth to a right?) And we are told that, "[i]n any particular case," either the Equal Protection or Due Process Clause "may be thought to capture the essence of [a] right in a more accurate and comprehensive way," than the other, "even as the two Clauses may converge in the identification and definition of the right."<sup>[25]</sup> (What say? What possible "essence" does substantive due process "capture" in an "accurate and comprehensive way"? It stands for nothing whatever, except those freedoms and entitlements that this Court *really* likes. And the Equal Protection Clause, as employed today, identifies nothing except a difference in treatment that this Court *really* dislikes. Hardly a distillation of essence. If the opinion is correct that the two clauses "converge in the identification and definition of [a] right," that is only because the majority's likes and dislikes are predictably compatible.) I could go on. The world does not expect logic and precision in poetry or inspirational popphilosophy; it demands them in the law. The stuff contained in today's opinion has to diminish this Court's reputation for clear thinking and sober analysis.

\* \* \*

Hubris is sometimes defined as o'erweening pride; and pride, we know, goeth before a fall. The Judiciary is the "least dangerous" of the federal branches because it has "neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm" and the States, "even for the efficacy of its judgments."<sup>[26]</sup> With each decision of ours that takes from the People a question properly left to them—with each decision that is unabashedly based not on law, but on the "reasoned judgment" of a bare majority of this Court—we move one step closer to being reminded of our impotence.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

The Court's decision today is at odds not only with the Constitution, but with the principles upon which our Nation was built. Since well before 1787, liberty has been understood as freedom from government action, not entitlement to government benefits. The Framers created our Constitution to preserve that understanding of liberty. Yet the majority invokes our Constitution in the name of a "liberty" that the Framers would not have recognized, to the detriment of the liberty they sought to protect. Along the way, it rejects the idea—captured in our Declaration of Independence—that human dignity is innate and suggests instead that it comes from the Government. This distortion of our Constitution not only ignores the text, it inverts the relationship between the individual and the state in our Republic. I cannot agree with it.

I

The majority's decision today will require States to issue marriage licenses to same-sex couples and to recognize same-sex marriages entered in other States largely based on a constitutional provision guaranteeing "due process" before a person is deprived of his "life, liberty, or property." I have elsewhere explained the dangerous fiction of treating the Due Process Clause as a font of substantive rights. McDonald v. Chicago, 561 U. S. 742, 811-812 (2010) (THOMAS, J., concurring in part and concurring in judgment). It distorts the constitutional text, which guarantees only whatever "process" is "due" before a person is deprived of life, liberty, and property. U. S. Const., Amdt. 14, §1. Worse, it invites judges to do exactly what the majority has done here—"roa[m] at large in the constitutional field" guided only by their personal views" as to the "fundamental rights" protected by that document. Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833, 953, 965 (1992) (Rehnquist, C. J., concurring in judgment in part and dissenting in part) (quoting Griswold v. Connecticut, 381 U. S. 479, 502 (1965) (Harlan, J., concurring in judgment)).

By straying from the text of the Constitution, substantive due process exalts judges at the expense of the People from whom they derive their authority. Petitioners argue that by enshrining the traditional definition of marriage in their State Constitutions through voter-approved amendments, the States have put the issue "beyond the reach of the normal democratic process." Brief for Petitioners in No. 14-562, p. 54. But the result petitioners seek is far less democratic. They ask nine judges on this Court to enshrine their definition of marriage in the Federal Constitution and thus put it beyond the reach of the normal democratic process for the entire Nation. That a "bare majority" of this Court, *ante*, at 25, is able to grant this wish, wiping out with a stroke of the keyboard the results of the political process in over 30 States, based on a provision that guarantees only "due process" is but further evidence of the danger of substantive due process.<sup>[1]</sup>

II

Even if the doctrine of substantive due process were somehow defensible—it is not—petitioners still would not have a claim. To invoke the protection of the Due Process Clause at all—whether under a theory of "substantive" or "procedural" due process—a party must first identify a deprivation of "life, liberty, or property." The majority claims these state laws deprive petitioners of "liberty," but the concept of "liberty" it conjures up bears no resemblance to any plausible meaning of that word as it is used in the Due Process Clauses.

A

1

As used in the Due Process Clauses, "liberty" most likely refers to "the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law." 1 W. Blackstone, *Commentaries on the Laws of England* 130 (1769) (Blackstone). That definition is drawn from the historical roots of the Clauses and is consistent with our Constitution's text and structure.

Both of the Constitution's Due Process Clauses reach back to Magna Carta. See Davidson v. New Orleans, 96 U. S. 97,



101-102 (1878). Chapter 39 of the original Magna Carta provided, "No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land." Magna Carta, ch. 39, in A. Howard, *Magna Carta: Text and Commentary* 43 (1964). Although the 1215 version of Magna Carta was in effect for only a few weeks, this provision was later reissued in 1225 with modest changes to its wording as follows: "No freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers or by the law of the land." 1 E. Coke, *The Second Part of the Institutes of the Laws of England* 45 (1797). In his influential commentary on the provision many years later, Sir Edward Coke interpreted the words "by the law of the land" to mean the same thing as "by due proces of the common law." *Id.*, at 50.

After Magna Carta became subject to renewed interest in the 17th century, see, e.g., *ibid.*, William Blackstone referred to this provision as protecting the "absolute rights of every Englishman." 1 Blackstone 123. And he formulated those absolute rights as "the right of personal security," which included the right to life, "the right of personal liberty", and "the right of private property." *Id.*, at 125. He defined "the right of personal liberty" as "the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law." *Id.*, at 125, 130.<sup>[2]</sup>

The Framers drew heavily upon Blackstone's formulation, adopting provisions in early State Constitutions that replicated Magna Carta's language, but were modified to refer specifically to "life, liberty, or property."<sup>[3]</sup> State decisions interpreting these provisions between the founding and the ratification of the Fourteenth Amendment almost uniformly construed the word "liberty" to refer only to freedom from physical restraint. See Warren, *The New "Liberty" Under the Fourteenth Amendment*, 39 Harv. L. Rev. 431, 441-445 (1926). Even one case that has been identified as a possible exception to that view merely used broad language about liberty in the context of a habeas corpus proceeding—a proceeding classically associated with obtaining freedom from physical restraint. Cf. *id.*, at 444-445.

In enacting the Fifth Amendment's Due Process Clause, the Framers similarly chose to employ the "life, liberty, or property" formulation, though they otherwise deviated substantially from the States' use of Magna Carta's language in the Clause. See Shattuck, *The True Meaning of the Term "Liberty" in Those Clauses in the Federal and State Constitutions Which Protect "Life, Liberty, and Property,"* 4 Harv. L. Rev. 365, 382 (1890). When read in light of the history of that formulation, it is hard to see how the "liberty" protected by the Clause could be interpreted to include anything broader than freedom from physical restraint. That was the consistent usage of the time when "liberty" was paired with "life" and "property." See *id.*, at 375. And that usage avoids rendering superfluous those protections for "life" and "property."

If the Fifth Amendment uses "liberty" in this narrow sense, then the Fourteenth Amendment likely does as well. See *Hurtado v. California*, 110 U. S. 516, 534-535 (1884). Indeed, this Court has previously commented, "The conclusion is . . . irresistible, that when the same phrase was employed in the Fourteenth Amendment [as was used in the Fifth Amendment], it was used in the same sense and with no greater extent." *Id.* And this Court's earliest Fourteenth Amendment decisions appear to interpret the Clause as using "liberty" to mean freedom from physical restraint. In *Munn v. Illinois*, 94 U. S. 113 (1877), for example, the Court recognized the relationship between the two Due Process Clauses and Magna Carta, see *id.*, at 123-124, and implicitly rejected the dissent's argument that "'liberty' encompassed 'something more . . . than mere freedom from physical restraint or the bounds of a prison,'" *id.*, at 142 (Field, J., dissenting). That the Court appears to have lost its way in more recent years does not justify deviating from the original meaning of the Clauses

## 2

Even assuming that the "liberty" in those Clauses encompasses something more than freedom from physical restraint, it would not include the types of rights claimed by the majority. In the American legal tradition, liberty has long been understood as individual freedom *from* governmental action, not as a right to a particular governmental entitlement.

The founding-era understanding of liberty was heavily influenced by John Locke, whose writings "on natural rights and on the social and governmental contract" were cited "[i]n pamphlet after pamphlet" by American writers. B. Bailyn, *The Ideological Origins of the American Revolution* 27 (1967). Locke described men as existing in a state of nature, possessed of the "perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man." J. Locke, *Second Treatise of Civil Government*, §4, p. 4 (J. Gough ed. 1947) (Locke). Because that state of nature left men insecure in their persons and property, they entered civil society, trading a portion of their natural liberty for an increase in their security. See *id.*, §97, at 49. Upon consenting to that order, men obtained civil liberty, or the freedom "to be under no other legislative power but that established by consent in the commonwealth; nor under the dominion of any will or restraint of any law, but what that legislative shall enact according to the trust put in it." *Id.*, §22, at 13 <sup>141</sup>

This philosophy permeated the 18th-century political scene in America. A 1756 editorial in the *Boston Gazette*, for example, declared that "Liberty in the *State of Nature*" was the "inherent natural Right" "of each Man" "to make a free Use of his Reason and Understanding, and to chuse that Action which he thinks he can give the best Account of," but that, "in Society, every Man parts with a Small Share of his *natural* Liberty, or lodges it in the publick Stock, that he may possess the Remainder without Controul." *Boston Gazette and Country Journal*, No. 58, May 10, 1756, p. 1. Similar sentiments were expressed in public speeches, sermons, and letters of the time. See 1 C. Hyneman & D. Lutz, *American Political Writing During the Founding Era 1760-1805*, pp. 100, 308, 385 (1983).

The founding-era idea of civil liberty as natural liberty constrained by human law necessarily involved only those freedoms that existed *outside of* government. See Hamburger, *Natural Rights, Natural Law, and American Constitutions*, 102 *Yale L. J.* 907, 918-919 (1993). As one later commentator observed, "[L]iberty in the eighteenth century was thought of much more in relation to 'negative liberty'; that is, freedom *from*, not freedom *to*, freedom from a number of social and political evils, including arbitrary government power." J. Reid, *The Concept of Liberty in the Age of the American Revolution* 56 (1988). Or as one scholar put it in 1776, "[T]he common idea of liberty is merely negative, and is only the *absence of restraint*." R. Hey, *Observations on the Nature of Civil Liberty and the Principles of Government* §13, p. 8 (1776) (Hey). When the colonists described laws that would infringe their liberties, they discussed laws that would prohibit individuals "from walking in the streets and highways on certain saints days, or from being abroad after a certain time in the evening, or . . . restrain [them] from working up and manufacturing materials of [their] own growth." Downer, *A Discourse at the Dedication of the Tree of Liberty*, in 1 Hyneman, *supra*, at 101. Each of those examples involved freedoms that existed outside of government.

## B

Whether we define "liberty" as locomotion or freedom from governmental action more broadly, petitioners have in no way been deprived of it.

Petitioners cannot claim, under the most plausible definition of "liberty," that they have been imprisoned or physically restrained by the States for participating in same-sex relationships. To the contrary, they have been able to cohabit and raise their children in peace. They have been able to hold civil marriage ceremonies in States that recognize same-sex marriages and private religious ceremonies in all States. They have been able to travel freely around the country, making their homes where they please. Far from being incarcerated or physically restrained, petitioners have been left alone to order their lives as they see fit.

Nor, under the broader definition, can they claim that the States have restricted their ability to go about their daily lives as they would be able to absent governmental restrictions. Petitioners do not ask this Court to order the States to stop restricting their ability to enter same-sex relationships, to engage in intimate behavior, to make vows to their partners in public ceremonies, to engage in religious wedding ceremonies, to hold themselves out as married, or to raise children. The States have imposed no such restrictions. Nor have the States prevented petitioners from approximating a number of incidents of marriage through private legal means, such as wills, trusts, and powers of attorney.

Instead, the States have refused to grant them governmental entitlements. Petitioners claim that as a matter of "liberty," they are entitled to access privileges and benefits that exist solely *because of* the government. They want, for example, to receive the State's *imprimatur* on their marriages—on state issued marriage licenses, death certificates, or other official forms. And they want to receive various monetary benefits, including reduced inheritance taxes upon the death of a spouse, compensation if a spouse dies as a result of a work-related injury, or loss of consortium damages in tort suits. But receiving governmental recognition and benefits has nothing to do with any understanding of "liberty" that the Framers would have recognized.

To the extent that the Framers would have recognized a natural right to marriage that fell within the broader definition of liberty, it would not have included a right to governmental recognition and benefits. Instead, it would have included a right to engage in the very same activities that petitioners have been left free to engage in—making vows, holding religious ceremonies celebrating those vows, raising children, and otherwise enjoying the society of one's spouse—without governmental interference. At the founding, such conduct was understood to predate government, not to flow from it. As Locke had explained many years earlier, "The first society was between man and wife, which gave beginning to that between parents and children." Locke §77, at 39; see also J. Wilson, Lectures on Law, in 2 Collected Works of James Wilson 1068 (K. Hall and M. Hall eds. 2007) (concluding "that to the institution of marriage the true origin of society must be traced"). Petitioners misunderstand the institution of marriage when they say that it would "mean little" absent governmental recognition. Brief for Petitioners in No. 14-556, p. 33

Petitioners' misconception of liberty carries over into their discussion of our precedents identifying a right to marry, not one of which has expanded the concept of "liberty" beyond the concept of negative liberty. Those precedents all involved absolute prohibitions on private actions associated with marriage. Loving v. Virginia, 388 U. S. 1 (1967), for example, involved a couple who was criminally prosecuted for marrying in the District of Columbia and cohabiting in Virginia, *id.*, at 2-3.<sup>[5]</sup> They were each sentenced to a year of imprisonment, suspended for a term of 25 years on the condition that they not reenter the Commonwealth together during that time. *Id.*, at 3.<sup>[6]</sup> In a similar vein, Zablocki v. Redhail, 434 U. S. 374 (1978), involved a man who was prohibited, on pain of criminal penalty, from "marry[ing] in Wisconsin or elsewhere" because of his outstanding child-support obligations, *id.*, at 387, see *id.*, at 377-378. And Turner v. Safley, 482 U. S. 78 (1987), involved state inmates who were prohibited from entering marriages without the permission of the superintendent of the prison, permission that could not be granted absent compelling reasons, *id.*, at 82. In *none* of those cases were individuals denied solely governmental recognition and benefits associated with marriage.

In a concession to petitioners' misconception of liberty, the majority characterizes petitioners' suit as a quest to "find . . . liberty by marrying someone of the same sex and having their marriages deemed lawful on the same terms and conditions as marriages between persons of the opposite sex." *Ante*, at 2. But "liberty" is not lost, nor can it be found in the way petitioners seek. As a philosophical matter, liberty is only freedom from governmental action, not an entitlement to governmental benefits. And as a constitutional matter, it is likely even narrower than that, encompassing only freedom from physical restraint and imprisonment. The majority's "better informed understanding of how constitutional imperatives define . . . liberty," *ante*, at 19,—better informed, we must assume, than that of the people who ratified the Fourteenth Amendment—runs headlong into the reality that our Constitution is a "collection of 'Thou shalt nots,'" Reid v. Covert, 354 U. S. 1, 9 (1957) (plurality opinion), not "Thou shalt provides."

### III

The majority's inversion of the original meaning of liberty will likely cause collateral damage to other aspects of our constitutional order that protect liberty.

### A

The majority apparently disregards the political process as a protection for liberty. Although men, in forming a civil society, "give up all the power necessary to the ends for which they unite into society, to the majority of the community,"

Locke §99, at 49, they reserve the authority to exercise natural liberty within the bounds of laws established by that society, *id.*, §22, at 13; see also Hey §§52, 54, at 30-32. To protect that liberty from arbitrary interference, they establish a process by which that society can adopt and enforce its laws. In our country, that process is primarily representative government at the state level, with the Federal Constitution serving as a backstop for that process. As a general matter, when the States act through their representative governments or by popular vote, the liberty of their residents is fully vindicated. This is no less true when some residents disagree with the result; Indeed, it seems difficult to imagine *any* law on which all residents of a State would agree. See Locke §98, at 49 (suggesting that society would cease to function if it required unanimous consent to laws). What matters is that the process established by those who created the society has been honored

That process has been honored here. The definition of marriage has been the subject of heated debate in the States. Legislatures have repeatedly taken up the matter on behalf of the People, and 35 States have put the question to the People themselves. In 32 of those 35 States, the People have opted to retain the traditional definition of marriage. Brief for Respondents in No. 14-571, pp. 1a-7a. That petitioners disagree with the result of that process does not make it any less legitimate. Their civil liberty has been vindicated.

## B

Aside from undermining the political processes that protect our liberty, the majority's decision threatens the religious liberty our Nation has long sought to protect.

The history of religious liberty in our country is familiar. Many of the earliest immigrants to America came seeking freedom to practice their religion without restraint. See McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1422-1425 (1990). When they arrived, they created their own havens for religious practice. *Ibid.* Many of these havens were initially homogenous communities with established religions. *Ibid.* By the 1780's, however, "America was in the wake of a great religious revival" marked by a move toward free exercise of religion. *Id.*, at 1437. Every State save Connecticut adopted protections for religious freedom in their State Constitutions by 1789, *id.*, at 1455, and, of course, the First Amendment enshrined protection for the free exercise of religion in the U. S. Constitution. But that protection was far from the last word on religious liberty in this country, as the Federal Government and the States have reaffirmed their commitment to religious liberty by codifying protections for religious practice. See, e.g., Religious Freedom Restoration Act of 1993, 107 Stat. 1488, 42 U. S. C. §2000bb *et seq.*; Conn. Gen. Stat. §52-571b.(2015).

Numerous *amici*—even some not supporting the States—have cautioned the Court that its decision here will "have unavoidable and wide-ranging implications for religious liberty." Brief for General Conference of Seventh-Day Adventists et al. as *Amici Curiae* 5. In our society, marriage is not simply a governmental institution; it is a religious institution as well. *Id.*, at 7. Today's decision might change the former, but it cannot change the latter. It appears all but inevitable that the two will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples.

The majority appears unmoved by that inevitability. It makes only a weak gesture toward religious liberty in a single paragraph, *ante*, at 27. And even that gesture indicates a misunderstanding of religious liberty in our Nation's tradition. Religious liberty is about more than just the protection for "religious organizations and persons . . . as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." *Ibid.* Religious liberty is about freedom of action in matters of religion generally, and the scope of that liberty is directly correlated to the civil restraints placed upon religious practice.<sup>[7]</sup>

Although our Constitution provides some protection against such governmental restrictions on religious practices, the People have long elected to afford broader protections than this Court's constitutional precedents mandate. Had the majority allowed the definition of marriage to be left to the political process—as the Constitution requires—the People could have considered the religious liberty implications of deviating from the traditional definition as part of their

deliberative process. Instead, the majority's decision short-circuits that process, with potentially ruinous consequences for religious liberty.

#### IV

Perhaps recognizing that these cases do not actually involve liberty as it has been understood, the majority goes to great lengths to assert that its decision will advance the "dignity" of same-sex couples. *Ante*, at 3, 13, 26, 28.<sup>[8]</sup> The flaw in that reasoning, of course, is that the Constitution contains no "dignity" Clause, and even if it did, the government would be incapable of bestowing dignity.

Human dignity has long been understood in this country to be innate. When the Framers proclaimed in the Declaration of Independence that "all men are created equal" and "endowed by their Creator with certain unalienable Rights," they referred to a vision of mankind in which all humans are created in the image of God and therefore of inherent worth. That vision is the foundation upon which this Nation was built.

The corollary of that principle is that human dignity cannot be taken away by the government. Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved. Those held in internment camps did not lose their dignity because the government confined them. And those denied governmental benefits certainly do not lose their dignity because the government denies them those benefits. The government cannot bestow dignity, and it cannot take it away.

The majority's musings are thus deeply misguided, but at least those musings can have no effect on the dignity of the persons the majority demeans. Its mischaracterization of the arguments presented by the States and their *amici* can have no effect on the dignity of those litigants. Its rejection of laws preserving the traditional definition of marriage can have no effect on the dignity of the people who voted for them. Its invalidation of those laws can have no effect on the dignity of the people who continue to adhere to the traditional definition of marriage. And its disdain for the understandings of liberty and dignity upon which this Nation was founded can have no effect on the dignity of Americans who continue to believe in them.

\* \* \*

Our Constitution—like the Declaration of Independence before it—was predicated on a simple truth: One's liberty, not to mention one's dignity, was something to be shielded from—not provided by—the State. Today's decision casts that truth aside. In its haste to reach a desired result, the majority misapplies a clause focused on "due process" to afford substantive rights, disregards the most plausible understanding of the "liberty" protected by that clause, and distorts the principles on which this Nation was founded. Its decision will have inestimable consequences for our Constitution and our society. I respectfully dissent.

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

Until the federal courts intervened, the American people were engaged in a debate about whether their States should recognize same-sex marriage.<sup>[1]</sup> The question in these cases, however, is not what States *should* do about same-sex marriage but whether the Constitution answers that question for them. It does not. The Constitution leaves that question to be decided by the people of each State

I

The Constitution says nothing about a right to same-sex marriage, but the Court holds that the term "liberty" in the Due Process Clause of the Fourteenth Amendment encompasses this right. Our Nation was founded upon the principle that every person has the unalienable right to liberty, but liberty is a term of many meanings. For classical liberals, it may

include economic rights now limited by government regulation. For social democrats, it may include the right to a variety of government benefits. For today's majority, it has a distinctively postmodern meaning.

To prevent five unelected Justices from imposing their personal vision of liberty upon the American people, the Court has held that "liberty" under the Due Process Clause should be understood to protect only those rights that are "deeply rooted in this Nation's history and tradition." Washington v. Glucksberg, 521 U. S. 701, 720-721 (1997). And it is beyond dispute that the right to same-sex marriage is not among those rights. See United States v. Windsor, 570 U. S. (2013) (ALITO, J., dissenting) (slip op., at 7). Indeed:

"In this country, no State permitted same-sex marriage until the Massachusetts Supreme Judicial Court held in 2003 that limiting marriage to opposite-sex couples violated the State Constitution. See Goodridge v. Department of Public Health, 440 Mass. 309, 798 N. E. 2d 941. Nor is the right to same-sex marriage deeply rooted in the traditions of other nations. No country allowed same-sex couples to marry until the Netherlands did so in 2000.

"What [those arguing in favor of a constitutional right to same sex marriage] seek, therefore, is not the protection of a deeply rooted right but the recognition of a very new right, and they seek this innovation not from a legislative body elected by the people, but from unelected judges. Faced with such a request, judges have cause for both caution and humility." *Id.*, at \_\_\_\_ (slip op., at 7-8) (footnote omitted).

For today's majority, it does not matter that the right to same-sex marriage lacks deep roots or even that it is contrary to long-established tradition. The Justices in the majority claim the authority to confer constitutional protection upon that right simply because they believe that it is fundamental.

## II

Attempting to circumvent the problem presented by the newness of the right found in these cases, the majority claims that the issue is the right to equal treatment. Noting that marriage is a fundamental right, the majority argues that a State has no valid reason for denying that right to same-sex couples. This reasoning is dependent upon a particular understanding of the purpose of civil marriage. Although the Court expresses the point in loftier terms, its argument is that the fundamental purpose of marriage is to promote the well-being of those who choose to marry. Marriage provides emotional fulfillment and the promise of support in times of need. And by benefiting persons who choose to wed, marriage indirectly benefits society because persons who live in stable, fulfilling, and supportive relationships make better citizens. It is for these reasons, the argument goes, that States encourage and formalize marriage, confer special benefits on married persons, and also impose some special obligations. This understanding of the States' reasons for recognizing marriage enables the majority to argue that same-sex marriage serves the States' objectives in the same way as opposite-sex marriage.

This understanding of marriage, which focuses almost entirely on the happiness of persons who choose to marry, is shared by many people today, but it is not the traditional one. For millennia, marriage was inextricably linked to the one thing that only an opposite-sex couple can do: procreate.

Adherents to different schools of philosophy use different terms to explain why society should formalize marriage and attach special benefits and obligations to persons who marry. Here, the States defending their adherence to the traditional understanding of marriage have explained their position using the pragmatic vocabulary that characterizes most American political discourse. Their basic argument is that States formalize and promote marriage, unlike other fulfilling human relationships, in order to encourage potentially procreative conduct to take place within a lasting unit that has long been thought to provide the best atmosphere for raising children. They thus argue that there are reasonable secular grounds for restricting marriage to opposite-sex couples.

If this traditional understanding of the purpose of marriage does not ring true to all ears today, that is probably because the tie between marriage and procreation has frayed. Today, for instance, more than 40% of all children in this country

are born to unmarried women.<sup>121</sup> This development undoubtedly is both a cause and a result of changes in our society's understanding of marriage.

While, for many, the attributes of marriage in 21st century America have changed, those States that do not want to recognize same-sex marriage have not yet given up on the traditional understanding. They worry that by officially abandoning the older understanding, they may contribute to marriage's further decay. It is far beyond the outer reaches of this Court's authority to say that a State may not adhere to the understanding of marriage that has long prevailed, not just in this country and others with similar cultural roots, but also in a great variety of countries and cultures all around the globe.

As I wrote in *Windsor*.

"The family is an ancient and universal human institution. Family structure reflects the characteristics of a civilization, and changes in family structure and in the popular understanding of marriage and the family can have profound effects. Past changes in the understanding of marriage—for example, the gradual ascendance of the idea that romantic love is a prerequisite to marriage—have had far-reaching consequences. But the process by which such consequences come about is complex, involving the interaction of numerous factors, and tends to occur over an extended period of time.

"We can expect something similar to take place if same-sex marriage becomes widely accepted. The long-term consequences of this change are not now known and are unlikely to be ascertainable for some time to come. There are those who think that allowing same-sex marriage will seriously undermine the institution of marriage. Others think that recognition of same-sex marriage will fortify a now-shaky institution.

"At present, no one—including social scientists, philosophers, and historians—can predict with any certainty what the long-term ramifications of widespread acceptance of same-sex marriage will be. And judges are certainly not equipped to make such an assessment. The Members of this Court have the authority and the responsibility to interpret and apply the Constitution. Thus, if the Constitution contained a provision guaranteeing the right to marry a person of the same sex, it would be our duty to enforce that right. But the Constitution simply does not speak to the issue of same-sex marriage. In our system of government, ultimate sovereignty rests with the people, and the people have the right to control their own destiny. Any change on a question so fundamental should be made by the people through their elected officials." 570 U. S., at \_\_\_\_ (dissenting opinion) (slip op., at 8-10) (citations and footnotes omitted).

### III

Today's decision usurps the constitutional right of the people to decide whether to keep or alter the traditional understanding of marriage. The decision will also have other important consequences.

It will be used to vilify Americans who are unwilling to assent to the new orthodoxy. In the course of its opinion, the majority compares traditional marriage laws to laws that denied equal treatment for African-Americans and women. *E.g., ante*, at 11-13. The implications of this analogy will be exploited by those who are determined to stamp out every vestige of dissent.

Perhaps recognizing how its reasoning may be used, the majority attempts, toward the end of its opinion, to reassure those who oppose same-sex marriage that their rights of conscience will be protected. *Ante*, at 26-27. We will soon see whether this proves to be true. I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.

The system of federalism established by our Constitution provides a way for people with different beliefs to live together

in a single nation. If the issue of same-sex marriage had been left to the people of the States, it is likely that some States would recognize same-sex marriage and others would not. It is also possible that some States would tie recognition to protection for conscience rights. The majority today makes that impossible. By imposing its own views on the entire country, the majority facilitates the marginalization of the many Americans who have traditional ideas. Recalling the harsh treatment of gays and lesbians in the past, some may think that turnabout is fair play. But if that sentiment prevails, the Nation will experience bitter and lasting wounds.

Today's decision will also have a fundamental effect on this Court and its ability to uphold the rule of law. If a bare majority of Justices can invent a new right and impose that right on the rest of the country, the only real limit on what future majorities will be able to do is their own sense of what those with political power and cultural influence are willing to tolerate. Even enthusiastic supporters of same-sex marriage should worry about the scope of the power that today's majority claims.

Today's decision shows that decades of attempts to restrain this Court's abuse of its authority have failed. A lesson that some will take from today's decision is that preaching about the proper method of interpreting the Constitution or the virtues of judicial self-restraint and humility cannot compete with the temptation to achieve what is viewed as a noble end by any practicable means. I do not doubt that my colleagues in the majority sincerely see in the Constitution a vision of liberty that happens to coincide with their own. But this sincerity is cause for concern, not comfort. What it evidences is the deep and perhaps irremediable corruption of our legal culture's conception of constitutional interpretation.

Most Americans—understandably—will cheer or lament today's decision because of their views on the issue of same-sex marriage. But all Americans, whatever their thinking on that issue, should worry about what the majority's claim of power portends.

[\*] Together with No. 14-562, *Tanco et al. v. Haslam, Governor of Tennessee, et al.*, No. 14-571, *DeBoer et al. v. Snyder, Governor of Michigan, et al.*, and No. 14-574, *Bourke et al. v. Beshear, Governor of Kentucky*, also on certiorari to the same court.

[1] Brief for Respondents in No. 14-571, p. 14.

[2] Accord, *Schuetz v. BAMN*, 572 U. S. \_\_\_\_ (2014) (plurality opinion) (slip op., at 15-17).

[3] U. S. Const., Art. I, §10.

[4] Art. IV, §1.

[5] Amdt. 1.

[6] *Ibid*.

[7] Amdt. 2.

[8] Amdt. 4.

[9] Amdt. 10.

[10] *United States v. Windsor*, 570 U. S. \_\_\_\_ (2013) (slip op., at 16) (internal quotation marks and citation omitted).

[11] *Id.*, at \_\_\_\_ (slip op., at 17).

[12] See *Town of Greece v. Galloway*, 572 U. S. \_\_\_\_ (2014) (slip op., at 7-8).

[13] *Ante*, at 10.

[14] *Ante*, at 11.

[15] *Ibid*.

[16] *Ante*, at 10-11.

[17] *Ante*, at 12-18.



[18] The predominant attitude of tail-building lawyers with respect to the questions presented in these cases is suggested by the fact that the American Bar Association deemed it in accord with the wishes of its members to file a brief in support of the petitioners. See Brief for American Bar Association as *Amicus Curiae* in Nos. 14-571 and 14-574, pp. 1-5.

[19] See Pew Research Center, *America's Changing Religious Landscape 4* (May 12, 2015)

[20] *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N. E. 2d 941 (2003)

[21] *Windsor*, 570 U. S. at \_\_\_\_ (ALITO, J., dissenting) (slip op., at 7).

[22] If, even as the price to be paid for a fifth vote, I ever joined an opinion for the Court that began "The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity," I would hide my head in a bag. The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie.

[23] *Ante*, at 13.

[24] *Ante*, at 19.

[25] *Ibid*

[26] The Federalist No. 78, pp. 522, 523 (J. Cooke ed. 1961) (A. Hamilton).

[1] The majority states that the right it believes is "part of the liberty promised by the Fourteenth Amendment is derived, too, from that Amendment's guarantee of the equal protection of the laws." *Ante*, at 19. Despite the "synergy" it finds "between th[ese] two protections," *ante*, at 20, the majority clearly uses equal protection only to shore up its substantive due process analysis, an analysis both based on an imaginary constitutional protection and revisionist view of our history and tradition.

[2] The seeds of this articulation can also be found in Henry Care's influential treatise, *English Liberties*. First published in America in 1721, it described the "three things, which the Law of *England* . . . principally regards and taketh Care of," as "*Life, Liberty and Estate*," and described habeas corpus as the means by which one could procure one's "Liberty" from imprisonment. The Habeas Corpus Act, comment., in *English Liberties*, or the Free-born Subject's Inheritance 185 (H. Care comp. 5th ed. 1721). Though he used the word "Liberties" by itself more broadly, see, e.g., *id.*, at 7, 34, 56, 58, 60, he used "Liberty" in a narrow sense when placed alongside the words "Life" or "Estate," see, e.g., *id.*, at 185, 200.

[3] Maryland, North Carolina, and South Carolina adopted the phrase "life, liberty, or property" in provisions otherwise tracking Magna Carta. "That no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land." Md. Const., Declaration of Rights, Art. XXI (1776), in 3 Federal and State Constitutions, Colonial Charters, and Other Organic Laws 1688 (F. Thorpe ed. 1909), see also S. C. Const., Art. XLI (1778), in 6 *id.*, at 3257, N. C. Const., Declaration of Rights, Art. XII (1776), in 5 *id.*, at 2788. Massachusetts and New Hampshire did the same, albeit with some alterations to Magna Carta's framework: "[N]o subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land." Mass. Const., pt. I, Art. XII (1780), in 3 *id.*, at 1891, see also N. H. Const., pt. I, Art. XV (1784), in 4 *id.*, at 2455.

[4] Locke's theories heavily influenced other prominent writers of the 17th and 18th centuries. Blackstone, for one, agreed that "natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature" and described civil liberty as that "which leaves the subject entire master of his own conduct," except as "restrained by human laws." 1 Blackstone 121-122. And in a "treatise routinely cited by the Founders," *Zivotofsky v. Kerry*, *ante*, at 5 (THOMAS, J., concurring in judgment in part and dissenting in part), Thomas Rutherford wrote, "By liberty we mean the power, which a man has to act as he thinks fit, where no law restrains him; it may therefore be called a man's right over his own actions." 1 T. Rutherford, *Institutes of Natural Law* 146 (1754). Rutherford explained that "[t]he only restraint, which a man's right over his own actions is originally under, is the obligation of governing himself by the law of nature, and the law of God," and that "[w]hatever right those of our own species may have . . . to restrain [those actions] within certain bounds, beyond what the law of nature has prescribed, arises from some after-act of our own, from some consent either express or tacit, by which we have alienated our liberty, or transferred the right of directing our actions from ourselves to them." *Id.*, at 147-148.

[5] The suggestion of petitioners and their amici that antimiscegenation laws are akin to laws defining marriage as between one man and one woman is both offensive and inaccurate. "America's earliest laws against interracial sex and marriage were spawned by slavery." P. Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* 19 (2009). For instance, Maryland's 1664 law prohibiting marriages between "freeborne English women" and "Negro Sla[v]es" was passed as part of the very act that authorized

lifelong slavery in the colony. *Id.*, at 19-20. Virginia's antimiscegenation laws likewise were passed in a 1691 resolution entitled "An act for suppressing outlying Slaves." Act of Apr. 1691, Ch. XVI, 3 Va. Stat. 86 (W. Hening ed. 1823) (reprint 1969) (italics deleted). "It was not until the Civil War threw the future of slavery into doubt that lawyers, legislators, and judges began to develop the elaborate justifications that signified the emergence of miscegenation law and made restrictions on interracial marriage the foundation of post-Civil War white supremacy." Pascoe, *supra*, at 27-28.

Laws defining marriage as between one man and one woman do not share this sordid history. The traditional definition of marriage has prevailed in every society that has recognized marriage throughout history. Brief for Scholars of History and Related Disciplines as *Amici Curiae* 1. It arose not out of a desire to shore up an invidious institution like slavery, but out of a desire "to increase the likelihood that children will be born and raised in stable and enduring family units by both the mothers and the fathers who brought them into this world." *Id.*, at 8. And it has existed in civilizations containing all manner of views on homosexuality. See Brief for Ryan T. Anderson as *Amicus Curiae* 11-12 (explaining that several famous ancient Greeks wrote approvingly of the traditional definition of marriage, though same-sex sexual relations were common in Greece at the time).

[6] The prohibition extended so far as to forbid even religious ceremonies, thus raising a serious question under the First Amendment's Free Exercise Clause, as at least one *amicus* brief at the time pointed out. Brief for John J. Russell et al. as *Amici Curiae* in *Loving v. Virginia*, O.T. 1966, No. 395, pp. 12-16.

[7] Concerns about threats to religious liberty in this context are not unfounded. During the hey-day of antimiscegenation laws in this country, for instance, Virginia imposed criminal penalties on ministers who performed marriage in violation of those laws, though their religions would have permitted them to perform such ceremonies. Va. Code Ann. §20-60 (1960).

[8] The majority also suggests that marriage confers "nobility" on individuals. *Ante*, at 3. I am unsure what that means. People may choose to marry or not to marry. The decision to do so does not make one person more "noble" than another. And the suggestion that Americans who choose not to marry are inferior to those who decide to enter such relationships is specious.

[1] I use the phrase "recognize marriage" as shorthand for issuing marriage licenses and conferring those special benefits and obligations provided under state law for married persons.

[2] See, e.g., Dept. of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, D. Martin, B. Hamilton, M. Osterman, S. Curtin, & T. Matthews, Births: Final Data for 2013, 64 National Vital Statistics Reports, No. 1, p. 2 (Jan. 15, 2015), online at [http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64\\_01.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_01.pdf) (all Internet materials as visited June 24, 2015, and available in Clerk of Court's case file); cf. Dept. of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (NCHS), S. Ventura, Changing Patterns of Nonmarital Childbearing in the United States, NCHS Data Brief, No. 18 (May 2009), online at <http://www.cdc.gov/nchs/data/databrief/db18.pdf>.

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STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )  
Polly Thompson, )  
Plaintiff, )  
v. )  
Cathy Swicegood, )  
Defendant. )

IN THE FAMILY COURT OF  
THE TENTH JUDICIAL CIRCUIT

2014-CP-37-00143

PLAINTIFF'S REPLY TO  
DEFENDANT'S COUNTERCLAIM

FILED OCONEE, SC  
BEVERLY H. WHITEFIELD  
CLERK OF COURT  
2014 NOV 21 A 11:30

Plaintiff answering the Amended Counterclaim of Defendant Cathy Swicegood, would respectfully show unto the Court:

**REPLY**

1. Each and every allegation of the Answer and Counterclaim not hereinafter specifically admitted, modified, or explained is denied and strict proof demanded thereof.
2. Paragraph 1 of the Counterclaim is such that a reply is not necessary.
3. The allegations of paragraph 2 are admitted, inasmuch as jurisdiction is proper, but the remaining allegations are denied. Pursuant to Rule 12(h)(1)(A) of the South Carolina Rules of Civil Procedure, Defendant has waived any defense or objection of improper venue for the partition action sought against the 85 Folly Field Road property located in Beaufort County by failing to raise her objection to venue in her Motion to Dismiss filed with the Court on April 23, 2014.
4. The allegations of paragraph 3, 4, 5, 6, 7, and 8 are such that a reply is not necessary.
5. The allegations of paragraph 9 are admitted, inasmuch as to Plaintiff's counsel wrote defense counsel, but the remaining allegations are denied.
6. Paragraph 10 of the Counterclaim is such that a reply is not necessary.
7. Paragraph 11 of the Counterclaim is such that a reply is not necessary.
8. The allegations of paragraphs 12, 13, 14, 15, and 16 are admitted.
9. The allegations of paragraph 17 are admitted, inasmuch as Plaintiff paid the full purchase price for Lot #58, but the remaining allegations are denied.

Page 1 of 3

Copies to:  
Atty ☒ (P) ☐ (D)  
DSS ☐ other ☐  
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COMPUTER

10. The allegations of paragraphs 18 and 19 are denied.
11. The allegations of paragraph 20 are admitted.
12. The allegations of paragraph 21 are admitted, insomuch as Plaintiff and Defendant sold the log cabin property for \$50,000.00, but the remaining allegations are denied.
13. The allegations of paragraphs 22, 23, 24, 25, 26, and 27 are denied.
14. Paragraph 28 and 29 of the Counterclaim are such that a reply is not necessary.
15. The allegations of paragraph 30 are admitted.
16. The allegations of paragraph 31 are admitted, insomuch as the properties were purchased to serve as vacation homes, but the remaining allegations are denied.
17. The allegations of paragraphs 32, 33, 34, 35, and 36 are denied.
18. Paragraph 37 of the Counterclaim is such that a reply is not necessary.
19. The allegations of paragraphs 38, 39, 40, 41, and 42 are denied.
20. Paragraph 43 of the Counterclaim is such that a reply is not necessary.
21. The allegations of paragraphs 44, 45, 46, 47, 48 and 49 are denied.
22. Paragraph 50 of the Counterclaim is such that a reply is not necessary.
23. The allegations of paragraphs 51 and 52 are denied.

**FOR A FIRST DEFENSE TO COUNTERCLAIM**

**(Failure to state a claim)**

24. Defendant's Counterclaims fail to state a claim upon which relief can be granted and do not contain facts sufficient to support Defendant's claims.
25. Therefore, Plaintiff respectfully request that Defendant's Counterclaims be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A SECOND DEFENSE TO COUNTERCLAIM**

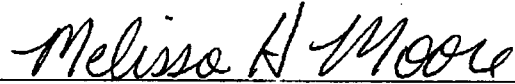
**(Reservation of Right to Add Additional Affirmative Defenses)**

10. Plaintiff alleges that because Defendant's Counterclaims are couched in conclusory terms, replying Plaintiff cannot fully anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

**WHEREFORE** having replied to the Counterclaim of the Defendant, Cathy J. Swicegood, Plaintiff respectfully prays as follows:

1. That the Counterclaim of the Defendant be dismissed.
2. That the Plaintiff be granted relief sought in the Complaint.

Respectfully submitted,



Margaret A. Chamberlain (SC Bar # 015226)  
Melissa H. Moore (SC Bar # 101315)  
CHAMBERLAIN LAW FIRM, LLC  
600 Pettigru Street  
Greenville, South Carolina 29601  
Telephone (864) 250-0505  
Facsimile (864) 271-8097  
ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina

November 21, 2014

STATE OF SOUTH CAROLINA )

COUNTY OF OCONEE )

Polly Thompson, )

Plaintiff, )

v. )

Cathy Swicegood, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

ANSWER AND COUNTERCLAIM

2014-CP-37-00143

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2014 NOV 17 AM 9 13

COMES NOW Defendant Cathy Swicegood by and through her undersigned legal counsel and files her Answer and Counterclaim to the Complaint as follows:

**FOR A FIRST DEFENSE**  
**(GENERAL DENIAL)**

1. That each and every allegation not specifically admitted is specifically denied and demand strict proof thereof
2. As to the allegations contained in Paragraphs 1 through 4, Defendant agrees that jurisdiction is proper. As to venue, Defendant agrees in part and denies in part. Defendant consents that venue is proper for the 505 Sheffield Drive Property located in Oconee County but denies that venue is proper for the partition action sought against the 85 Folly Field Road Property located in Beaufort County. Partition of real property must be tried in the county in which the subject of the action or some part of the property is situated. S.C. Code Ann. § 15-7-10.
3. Paragraphs 5, 6, 7, and 8 are admitted.
4. As to the allegations in Paragraph 9 and 10, the Defendant denies the same.
5. As to the allegations in Paragraph 11, the Defendant admits the same.

6. As to the allegations in Paragraph 12, the Defendant denies the same.
7. As to the allegations in Paragraph 13, the Defendant admits in part and denies in part. Defendant admits that Plaintiff has made most of the mortgage and tax payments on the properties in question and has paid most of the association and regime fees where applicable. Defendant lacks sufficient knowledge as to any other considerable expenditures Plaintiff has made to the benefit of these properties and demands strict proof thereof.
8. As to the allegations in Paragraphs 14 and 15, Defendant expressly denies the same.
9. As to the allegations in Paragraphs 16 through 24 relating to the Ouster claim, Defendant asserts that she was informed by Plaintiff's attorney to occupy this property after the couple's thirteen (13) year intimate relationship ended. (See Exhibit A – letter from Plaintiff's Attorney). Further, Defendant has not barred Plaintiff from entering this property. The property is and has been open for Plaintiff's enjoyment.
10. The remaining allegations of Plaintiff's complaint are denied and Defendant demands strict proof thereof.

**FOR A FIRST DEFENSE AND COUNTERCLAIM**

(For a First Cause of Action)

(Declaratory Judgment/Partition)

*Oconee County Property – 505 Sheffield Drive Property*

11. That each and every allegation is incorporated by reference as if fully restated verbatim.
12. By a Deed dated May 18, 2010 and recorded on May 28, 2010 in the Register of Deeds Office in Oconee County, Jay and Christine Hufnagel conveyed TMS NO.: 316-02-01-002 ("505 Sheffield Drive Property – Lot #59") to Plaintiff and Defendant as Joint Tenants with the Right of Survivorship for consideration in the amount of \$38,500.00.

13. In order to finance the purchase of the 505 Sheffield Drive Property – Lot #59, Plaintiff and Defendant executed a Mortgage through BB&T for the amount of \$28,875.00 that was recorded as the Oconee County Register of Deeds Office on May 28, 2010.
14. Plaintiff alleges to have paid approximately \$10,000.00 as a cash down payment on the 505 Sheffield Drive Property -- Lot #59.
15. On August 4, 2011, Defendant and Plaintiff took out a mortgage on the 505 Sheffield Property -- Lot 59 for \$152,000.00 from Oconee Federal Savings and Loan and used this money to pay off the existing BB&T loan and to build a house on the property. (See Exhibit B Deed and Mortgages for 505 Sheffield Drive Property Lot #59).
16. By a Deed dated July 27, 2012 and recorded on August 14, 2012 in the Register of Deeds Office of Oconee County, Gary and Betsy Vanover conveyed TMS NO.: 316-02-01-001 ("505 Sheffield Drive Property Lot #58") to Plaintiff and Defendant for consideration in the amount of \$35,000.00.
17. Plaintiff paid the full purchase price for Lot #58 and since Plaintiff and Defendant owned the two adjacent lots, Lot #59 and Lot #58, they decided to merge the properties under one tax map number and took title to the property as Joint Tenants with Right of Survivorship.
18. Despite Plaintiff making the down payment on both lots #59 and #58 and paying the mortgage payments, it can be implied from the parties actions that they intended to pool their resources for their common benefit during their thirteen (13) year intimate relationship.



19. In 2003, seven (7) years prior to the purchase of the 505 Sheffield Property, Defendant purchased lake lot 14 in Foxwood Hills, the same subdivision as the 505 Sheffield Property, through a tax foreclosure.
20. In 2004, Defendant and Plaintiff obtained a construction loan to build a log cabin on this lot. Defendant further insists that she made all the payments on this loan.
21. In September of 2010, Defendant and Plaintiff sold the log cabin property for \$50,000.00. These funds, which were in large part due to the efforts of Defendant, were then commingled with the funds used to purchase the 505 Sheffield Property. (See Exhibit C – purchase and sale of log cabin).
22. Neither the Plaintiff nor Defendant made any effort to keep separate accounts or to total their respective contributions to the 505 Sheffield Property for reimbursement purposes. Both Plaintiff and Defendant expended their own time, money, and labor in helping construct this home for the parties' joint benefit, and some expenditures for the property were made from the parties' joint banking account.
23. Further, although there is litigation pending in the South Carolina Court of Appeals (*Swicegood v. Thompson*; Case No.: 2014-001109) as to whether they were legally married, when they purchased this Property, they held themselves out as such which, in turn, invokes the presumption of a gift that arises when married couples take title jointly. (See Exhibit D – Defendant's Affidavits).
24. It was clearly the intent of the parties to share this home equally; hence, this Court should divide the proceeds of the home's sale equally notwithstanding the parties' unequal contributions to the cost to acquire the home.

25. Defendant seeks to compel severance and partition of the Property pursuant to South Carolina Code of Laws § 15-61-10 *et. seq*
26. Partition in kind or by allotment is not practicable, and cannot be fairly or equally made.
27. Therefore, Defendant respectfully requests that this Court issue an Order declaring that she owns 50% of the 505 Sheffield Drive Property and grant partition by sale of the property and division of the proceeds according to the parties' respective interests.

**FOR A SECOND DEFENSE AND COUNTERCLAIM**  
**(For a Second Cause of Action)**  
**(Constructive Trust)**

28. That each and every allegation is incorporated by reference as if fully restated verbatim.
29. A constructive trust arises whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title.
30. At the time of purchasing the 505 Sheffield Property and Hilton Head properties, both Plaintiff and Defendant were involved in a confidential and intimate relationship that ultimately lasted for thirteen (13) years.
31. These properties were primarily purchased to serve as vacation homes and for investment purposes.
32. As a result of the love and devotion Plaintiff held for Defendant, these properties were jointly titled.
33. Plaintiff and Defendant agreed that Defendant would refurbish these properties at her own expense in return for her being able to share in Plaintiff's retirement funds. (Exhibit D – Defendant's Affidavits).

34. Plaintiff abused the confidential relationship she had with Defendant by using Defendant to refurbish these real estate properties in reliance of the promise that Plaintiff could share in her retirement.
35. Such false promise amounts to fraud, abuse of confidence, or a violation of a fiduciary duty.
36. Based upon the foregoing, a constructive trust should be placed in Defendant's favor.

**FOR A THIRD DEFENSE AND COUNTERCLAIM**  
**(For a Third Cause of Action)**  
**(Unjust Enrichment)**

37. That each and every allegation is incorporated by reference as if fully restated verbatim.
38. A benefit was conferred upon Plaintiff when Defendant devoted a substantial amount of her labor and money towards the Property.
39. It would be inequitable for Plaintiff to retain the benefit conferred by Defendant.
40. As a result, Plaintiff has breached her implied promises and duty to Defendant, and unjustly retained the benefit of Defendant's labor and money.
41. Defendant has been injured and damaged as a result of Plaintiff's actions as set forth herein.
42. Defendant is therefore entitled to a judgment against Plaintiff for the value of the benefit unjustly retained by Plaintiff plus the costs of this action.

**FOR A FOURTH DEFENSE AND COUNTERCLAIM**  
**(For a Fourth Cause of Action)**  
**(Quasi Contract/Quantum Meruit)**

43. That each and every allegation is incorporated by reference as if fully restated verbatim.
44. A benefit was conferred upon Plaintiff when Defendant put money toward the 505 Sheffield Drive Property.



45. Plaintiff realized the benefit conferred when Defendant put money toward this Property
46. That benefit implied a duty for Plaintiff to provide Defendant with ownership of the Property.
47. Plaintiff has retained the benefit conferred by Defendant under conditions that make it inequitable for Plaintiff to retain it without giving Defendant the reasonable value of that benefit.
48. As a result, Defendant has been injured and damaged in an amount to be proven during the trial of this action.
49. Also as a result of Plaintiff's conduct as set forth herein, Defendant is entitled to a judgment against Plaintiff for the benefits received plus costs of this action.

**FOR A FIFTH DEFENSE AND COUNTERCLAIM**  
**(For a Fifth Cause of Action)**  
**(Attorneys' Fees & Costs)**

50. That each and every allegation is incorporated by reference as if fully restated verbatim.
51. Defendant was compelled to bring these counterclaims as a direct and proximate result of Plaintiff's unjustifiable actions. Defendant has made repeated attempts to mediate these claims to no avail.
52. Therefore, Defendant seeks an Order that Plaintiff pay her attorneys' fees and costs of this action pursuant to South Carolina Code of Laws §§ 15-39-480 and 15-61-110.

**WHEREFORE**, having fully answered Plaintiff's Complaint and having asserted Counterclaims of her own, Defendant prays that Plaintiff's Complaint be dismissed with costs, the relief requested in her Counterclaim be granted, and for such further relief as this Court deems just and proper.

(SIGNATURE PAGE FOLLOWS)

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

*John G. Reckenbeil*

John G. Reckenbeil

Post Office Box 1633

Spartanburg, SC 29304

Phone: (864) 582-5472

Fax: (864) 582-7280

[john@johnreckenbeillaw.com](mailto:john@johnreckenbeillaw.com)

ATTORNEY FOR DEFENDANT

Dated: November 14, 2014  
Spartanburg, South Carolina

**Exhibit A – Letter from Plaintiff's Attorney**

# Chamberlain Law Firm

Margaret A. Chamberlain  
Attorney at Law

December 16, 2013

by facsimile transmission to (864) 232-5888 and by U.S. Mail

Mr. Bradley Bennett  
Salvini and Bennett, LLC  
101 West Park Avenue  
Greenville, South Carolina 29601

**RECEIVED**  
BY: 12.16.13  
DATE: mm

RE: *Cathy Swicegood*

Dear Mr. Bennett:

Please arrange for your client, Cathy Swicegood, to vacate the home located at 14 Woodhedge Court in the very near future. Having our clients living under the same roof is adding needless stress and complicating matters. The lake house is in both parties' names, and your client can easily live there.

I appreciate your attention to this matter before you leave for the Christmas holiday.

Sincerely yours,

*Margaret A. Chamberlain*

Margaret A. Chamberlain

MAC/mhm

December 11, 2013

\*\*\*\* EVICTIION NOTICE \*\*\*\*

By Hand Delivery

Ms. Cathy Jean Swicegood  
14 Woodhedge Court  
Mauldin, South Carolina 29640

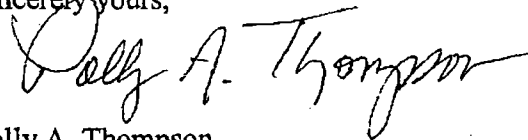
Re: Notice of termination of tenancy and to vacate premises

Dear Ms. Swicegood:

**PLEASE TAKE NOTICE**, that your tenancy at will under which you currently occupy the residence at 14 Woodhedge Court, Mauldin, South Carolina 29662 is hereby terminated as of twenty (20) days after your receiving this notice. **YOU MUST VACATE THE PREMISES** on or before twenty (20) days after you receive this letter.

THIS IS INTENDED AS A TWENTY (20) DAY LEGAL NOTICE FOR THE PURPOSE OF TERMINATING YOUR TENANCY AND YOUR VACATING THE PREMISES. THIS NOTICE IS IN ACCORDANCE WITH SOUTH CAROLINA CODE OF LAWS § 27-35-130.

Sincerely yours,



Polly A. Thompson



**Exhibit B – Deed and Mortgages for 505 Sheffield Drive Property**

Doc ID: 003678560004 Type: DEED  
BK 1776 Pg 262-265

FILED FOR RECORD  
OCONEE COUNTY REGISTER OF DEEDS  
Space at the end of this line for recording information

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE ) 2:54 TITLE TO REAL ESTATE  
DEED

Grantee's address: 14 Woodhedge Ct  
Mauldin, SC 29662

KNOW ALL MEN BY THESE PRESENTS THAT, JAY HUFNAGEL AND CHRISTINE HUFNAGEL A/K/A CHRISTINE FAYE HUFNAGEL, hereinafter, whether one or more, called Grantor, in the State aforesaid, in consideration of the sum of THIRTY EIGHT THOUSAND FIVE HUNDRED AND 00/100 (\$38,500.00) DOLLARS to Grantor in hand paid at and before the sealing of these presents by POLLY THOMPSON AND CATHY J. SWICEGOOD, as Joint Tenants, with rights of survivorship, and not as Tenants in Common, hereinafter, whether one or more, called Grantee, (the receipt whereof is hereby acknowledged), have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said Grantee, as Joint Tenants, with rights of survivorship, and not as Tenants in Common, their heirs and assigns, forever, in fee simple, the following described property, to wit:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Oconee, Center Township, being known and designated as Lot Number Fifty-Nine (59), Section M, of Foxwood Hills f/k/a Mountain Bay Estates, on a plat thereof prepared by Dean H. Teasley, RLS, dated October 5, 2000, of record in the Office of the Register of Deeds for Oconee County, South Carolina, in Plat Book 62 at Page 110, and having the metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto.

Recorded this 1 day of January  
Book 1776 Page 262-265  
Fee  
Auditors/Oconee County, S.C.

## DERIVATION:

The above described property was acquired by the Grantor herein by Deed of Jia-Ji Gu, said Deed dated November 30, 2005, and recorded January 23, 2006, in Deed Book 1475, at Page 85, re-recorded in Deed Book 1773 at Page 250, records of the Oconee County Register of Deeds Office.

TMS # 316-02-01-002

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions and restrictions, and zoning ordinances, or other land use regulations pertaining to the property herein conveyed, and in addition is subject to any of the foregoing which may appear from an inspection of the premises.

## FOR OFFICE USE ONLY

THIS PROPERTY DESIGNATED AS  
MAP 316 SUB 02 BLK 01 PARC 002  
ON OCONEE COUNTY TAX MAPS

OCONEE COUNTY ASSESSOR

## OCONEE COUNTY

STATE TAX 100.10  
COUNTY TAX 42.35  
EXEMPT

013967

10<sup>03</sup> Michael Benell  
608 N McDuffie St  
Anderson, SC 29621

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

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the said Grantee, as Joint Tenants, with rights of survivorship, and not as Tenants in Common, and to said Grantee's Heirs, Successors, and Assigns, FOREVER, in fee simple.

AND Grantor does hereby bind Grantor and Grantor's Heirs, Successors, and Personal Representative to warrant and forever defend, all and singular, the said Premises unto the said Grantee, as Joint Tenants, and Grantee's Heirs, Successors, and Assigns against Grantor and Grantor's Heirs, Successors, Personal Representative, and Assigns, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS Grantors' Hands and Seals this the 18th day of May, in the year of our Lord 2010

Michael B. Bueele

Denise C. Quibb

Jay Hufnagel  
 Jay Hufnagel  
 Christine Hufnagel a/k/a Christine Faye Hufnagel, her Attorney in Fact.  
 Christine Hufnagel a/k/a Christine Faye Hufnagel by Jay Donald Hufnagel, her Attorney in Fact

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that Jay Hufnagel and Christine Hufnagel a/k/a Christine Faye Hufnagel, by Jay Donald Hufnagel, her Attorney in Fact, personally appeared before me this day and acknowledged the due execution of foregoing instrument.

SWORN to before me this  
 18th day of May, 2010

Michael B. Bueele

Notary Public for South Carolina  
 My Commission Expires: 10-22-14

STATE OF SOUTH CAROLINA)  
COUNTY OF OCONEE )

AFFIDAVIT

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
Page 1 of 1  
2010 MAY 28 P 2:54

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

1 I have read the information on this affidavit and I understand such information

2 The property being transferred is located at Lot #59, Foxwood Hills  
bearing Oconee County Tax Map Number 316-02-01-002, was transferred  
by Jay Hufnagel and Christine Hufnagel a/k/a Christine Faye Hufnagel  
to Polly Thompson and Cathy J. Swicegood on May 18, 2010

3. Check one of the following: The deed is

- (a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary
- (c) exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes    or No   

4 Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$38,500.00
- (b) The fee is computed on the fair market value of the realty which is
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes    or No XX to the following. A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, @ the amount of the outstanding balance of this lien or encumbrance is:

6. The deed recording fee is computed as follows.

- (a) Place the amount listed in item 4 above here: \$38,500.00
- (b) Place the amount listed in item 5 above here: 0  
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$38,500.00

7 The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$142.45

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

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

Michael B. Burrell  
Responsible Person Connected with the Transaction

SWORN to before me this 18th  
day of May 2010

Michael B. Burrell  
Print or Type Name Here

Denise R. Whitford  
Notary Public for South Carolina

My Commission Expires: 4/24/18

#### INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A family partnership is a partnership whose partners are all members of the same family. A family trust is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Doc ID: 003678940005 Type: MTG  
BK 2870 pg 275-279

BB&T

Mail after recording to:

Susan M. Bishop  
2000 Woodruff Rd., Greenville, SC 29607  
2510621592 09004

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE

## MORTGAGE OF REAL ESTATE

THIS MORTGAGE, made this 18th day of May, 2010, by Polly Thompson and Cathy J. Swicegood (hereinafter referred to as "Mortgagor"), and granted and given to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is P O Box 1280, Whiteville, NC 28472

Whereas, POLLY THOMPSON and CATHY J SWICEGOOD (the "Borrower" if not the Mortgagee) is indebted to Mortgagee, as evidenced by a certain promissory note dated the 18th day of May, 2010, executed in favor of Mortgagee in the principal sum of TWENTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS & 00/100 Dollars (\$ 28,875.00), and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the note above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor or Borrower and payable to Mortgagee. The final maturity date of the Note is 05/18/2025

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also to secure in accordance with § 29-3-50, As Amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply

1. All future advances and readvances that may subsequently be made to the Mortgagor or Borrower evidenced by the Note(s) and by all renewals and extensions thereof; and
2. All other indebtedness of Mortgagor or Borrower to Mortgagee, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed \$ 28,875.00 plus interest thereon, all charges and expenses of collection incurred by Mortgagee including Court costs and reasonable attorneys' fees, has granted, bargained, sold, assigned, released and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property:

SEE ATTACHED SCHEDULE A

11<sup>th</sup> (2nd)  
Michael Burrell  
608 N. N.E. Duffie St  
Anderson SC 29621

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
2010 MAY 28 P 2:55

013968

Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining, all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagor shall be entitled to collect and retain the said rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Property").

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns forever

The Mortgagor covenants that he is lawfully seized of the premises herein above described in fee simple absolute (or such other estate: if any as is stated hereinbefore), that he has good, right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the premises as herein conveyed unto the Mortgagee, from and against all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor (and where more than one, each jointly and severally) covenants and agrees as follows:

1. That if he is a maker or obligor on the Note(s), he will promptly pay the principal of and interest on the indebtedness evidenced by the said Note(s) and any subsequent note or agreement evidencing additional advances, at the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.

1463SC (3/09)

Page 1 of 4

2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby

3. That he will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or imposition, assessed against the property hereby mortgaged. If the Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this mortgage.

4. That he will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof.

5. That he will continuously maintain fire, flood and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter constructed on the Property, and will pay promptly when due any premiums on the insurance. If it is determined at any time that any of the Property is located in a flood hazard area as defined in the Flood Disaster Protection Acts of 1973, the Mortgagor shall obtain and maintain flood insurance on Property at Mortgagor's expense for as long as this Mortgage is in effect. Flood insurance coverage shall be in an amount equal to the lesser of (i) the maximum amount secured as set forth herein or (ii) the maximum limit of coverage made available for the particular type of property under applicable law. If the Mortgagor shall fail to procure or maintain hazard or flood insurance coverage in the specified amount for the Property within a reasonable time of receiving notice from Mortgagee of either the requirement or of the lapse of an existing policy, Mortgagee may but shall not be obligated to, expend for the account of Mortgagor any sums which may be necessary to purchase the required hazard or flood insurance, which shall be fully secured by this Mortgage and which shall accrue interest from the time expended until paid at the rate set forth in the Note(s). Mortgagor shall cause all policies and renewals thereof to be delivered to the Mortgagee. All insurance shall be carried with companies approved by Mortgagee and shall contain a loss payable clause (New York long form) in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagee will give immediate written notice to Mortgagee, who may make proof of loss if such is not made promptly by the Mortgagor. Each insurer is hereby authorized and directed to make payment for such loss directly and solely to the Mortgagee, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration of the Property damaged, but Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagor.

6. That he hereby assigns all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note(s) in any manner as Mortgagee may desire.

7. That he will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If the Mortgagor fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this mortgage.

8. Mortgagor for itself, its successors, and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has used or installed any Hazardous Material (as hereinafter defined) on the Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Property; (b) neither Mortgagor or any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Property; (c) the Property is presently in compliance with all Environmental Laws, there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Property shall be kept free of Hazardous Materials, and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, or process Hazardous Materials; (e) Mortgagor shall not cause nor permit the installation of Hazardous Materials in the Property nor a release of Hazardous Material onto or from the Property or suffer the presence of Hazardous Materials on the Property; (f) Mortgagor shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and the Mortgagor is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) Mortgagor shall immediately give the Beneficiary oral and written notice in the event that Mortgagor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. The Mortgagor hereby agrees to indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, inquiries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (e) the presence, on, or under, or the escape, spillage, emission or release from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagor (b) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (c) the failure by Mortgagor to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by Mortgagor in this paragraph being false or untrue in any material respect. For purposes of this Mortgage, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purposes of) the Environmental Laws. For the purpose of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation, or decree regulating, relating to, or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material, as may now or at any time hereafter be in effect. The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation or release of record of this Mortgage or the payment and cancellation of the Note, or if otherwise expressly permitted in writing by the Mortgagee, the sale or alienation of any part of the Property.

9. Mortgagor shall be in default under this mortgage upon the occurrence of any of the following.

(a) Default in the payment or performance of any of the obligations, or of any covenant or warranty in this Mortgage, in the Note(s) or other document executed in connection herewith, or in any other note of Mortgagor or Borrower to Mortgagee or any contract between Mortgagor or Borrower and Mortgagee; or in any contract between any third party and Mortgagee made for the benefit of Mortgagor or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor or Borrower in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction to or of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) Death, dissolution, termination of existence, insolvency, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors by filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagor, Borrower or any co-maker, endorser, guarantor or surety for Mortgagor; or

(e) Failure of a corporate Mortgagor, Borrower or co-maker, endorser, guarantor or surety for Mortgagor to maintain its corporate existence in good standing; or

(f) Upon the entry of any monetary judgement of the assessment or filing of any tax lien against Mortgagor or Borrower, or upon the issuance of any writ of garnishment or attachment against any property debts due or rights of Mortgagor or Borrower or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of any corporate or partnership Mortgagor, without Mortgagee's prior written consent; or

(h) If Mortgagee should otherwise deem itself, its security interest, the Property or the indebtedness evidenced by the Note(s) unsafe or insecure, or should Mortgagee otherwise believe that the prospect of payment or other performance is impaired.

10. It is agreed that the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Note(s) secured hereby. If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Note(s) secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagor, all sums then owing by the Mortgagor or Borrower or any other obligor on the Note(s) to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against any Mortgagor or any Borrower or other obligor under the Note(s) under applicable provisions of South Carolina Law and of any other law governing the Note(s). This mortgage shall remain as security for full payment of all indebtedness evidenced by the Note(s) and for performance of any obligation evidenced by the Note(s) or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Note(s) or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note(s) or any one of same, or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note(s) and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this mortgage or impair the Mortgagee's right to any other remedies against the Mortgagor or any other obligors under the Note(s). Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Note(s) secured hereby. Time is of the essence in the payment or performance of any of the obligations, or of any covenant or warranty contained in this mortgage, or in any of the Note(s) or any other document related thereto.

11. Mortgagor understands that upon default hereunder, along with other remedies set out herein and in the above referenced Note(s), the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgement pursuant to § 29-3-680 of the South Carolina Code of Laws (1978). Mortgagor hereby expressly waives and relinquishes any appraisal rights which Mortgagor may have under § 29-3-680 et seq., South Carolina Code of Laws (1978), as Amended, and understands and agrees that a deficiency judgement, if pursued by Mortgagee, shall be determined by the highest priced bid at the judicial sale of the Property.

12. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of the Mortgagor hereunder shall, if more than one, be joint and several. The designations "corporate", "corporation" and "partnership" include limited liability companies and limited liability partnerships.

**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 thirty 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 FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR 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.

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered in the presence of:

If Mortgagor is an individual:

*Michael B. Bruce* (SEAL)  
*Denise R. Richard* (SEAL)  
 \_\_\_\_\_ (SEAL)  
 \_\_\_\_\_ (SEAL)

Polly Thompson  
*Polly Thompson* (SEAL)  
 Cathy J. Swicegood  
*Cathy J. Swicegood* (SEAL)



STATE OF SOUTH CAROLINA  
COUNTY OF \_\_\_\_\_

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named \_\_\_\_\_, a South Carolina corporation, by \_\_\_\_\_, its sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ Witness \_\_\_\_\_

Notary Public for South Carolina \_\_\_\_\_ (SEAL)  
My commission expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF \_\_\_\_\_

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named \_\_\_\_\_, a South Carolina general partnership by \_\_\_\_\_, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ Witness \_\_\_\_\_

Notary Public for South Carolina \_\_\_\_\_ (SEAL)  
My commission expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF \_\_\_\_\_

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw \_\_\_\_\_, a South Carolina limited liability company / limited partnership that by \_\_\_\_\_, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ Witness \_\_\_\_\_

Notary Public for South Carolina \_\_\_\_\_ (SEAL)  
My commission expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF Anderson

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named Polly Thompson and Cathy J. Swicegood, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 18 day of May, 2010. Genise R. Dickson Witness

Michael B. Burrell (SEAL)  
Notary Public for South Carolina  
My commission expires: 10-22-11

Michael B. Burrell  
Notary Public for  
South Carolina  
My Commission Expires:  
Oct. 22, 2011

EXHIBIT "A"

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Oconee, Center Township, being known and designated as Lot Number Fifty-Nine (59, Section M, of Foxwood Hills f/k/a Mountain Bay Estates, on a plat thereof prepared by Dean H. Teasley, RLS, dated October 5, 2000, of record in the Office of the Register of Deeds for Oconee County, South Carolina, in Plat Book 62 at Page 110, and having the metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto.

This being the same property conveyed unto the Mortgagor(s) herein by deed of Jay Hufnagel and Christine Hufnagel by Jay Donald Hufnagel, her Attorney in Fact, said deed dated May 18, 2010, and recorded May 28, 2010 in Deed Book 1776 at Page 262, Records of Oconee County, South Carolina.

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
2010 MAY 28 P. 2:55

After Recording Return To: Oconee Federal Savings and Loan Assoc.  
PO Box 1039  
Seneca SC, 29678

001306  
JW7  
20.00

Doc ID: 003917850014 Type: MTG  
BK 2994 PG 267-280

[Space Above This Line For Recording Data]

1701003677

## 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 **August 4, 2011**, together with all Riders to this document.
- (B) "Borrower" is **Cathy J Swicegood AND Polly A Thompson**

Borrower is the mortgagor under this Security Instrument

(C) "Lender" is **OCCONEE FEDERAL SAVINGS & LOAN ASSN.**

Lender is a  
the laws of

organized and existing under  
Lender's address is

**115 EN 2ND STREET, SENECA, SC 29678**

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **August 4, 2011** The Note states that Borrower owes Lender **One Hundred Fifty Two Thousand Dollars And No Cents**

Dollars (U.S. \$ **152,000.00**)

plus interest Borrower has promised

to pay this debt in regular Periodic Payments and to pay the debt in full not later than

**May 1, 2042**

(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]

- |                                                |                                                         |                                             |
|------------------------------------------------|---------------------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Biweekly Payment Rider         |                                             |

FILED FOR RECORD  
OCCONEE FEDERAL SAVINGS & LOAN ASSOCIATION  
RECEIVED  
2011 AUG - 8 A 8:53

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

ITEM 1959L1 (0011)

(Page 1 of 11 pages)

Form 3041 1/01

GREATLAND  
To Order Call 1-800-530-5353 Fax 615-791-1131

- (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

County  
[Type of Recording Jurisdiction]

of  
[Name of Recording Jurisdiction]

SEE SCHEDULE ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

605 W Sheffield Dr.,  
[Street]

Westminster, , South Carolina 29693 ("Property Address")  
[City] [Zip Code]

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-Pannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3041 L/01

TM 1995L2 (00-1)

(Page 2 of 11 pages)

To Order Call 1-800-530-5563 GREATLAND III  
Fax 813-781-7131

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

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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

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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

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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.

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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

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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.

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

ITEM 1955LD (6/11)

(Page 9 of 11 pages)

Form 3041 1/01

GREATLAND

To Order Call 1-800-530-9363 Fax 516-791-1131

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.

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

ITEM 1999L10 (001.1)

(Page 10 of 11 pages)

Form 3041 L01

GREATLAND  
To Order Call 1-800-630-6303 or Fax 616-761-1131

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.

Cathy J. Swicegood (Seal) Polly A. Thompson (Seal)  
Cathy J Swicegood -Borrower Polly A Thompson -Borrower

\_\_\_\_ (Seal) \_\_\_\_ (Seal)  
\_\_\_\_ -Borrower \_\_\_\_ -Borrower

\_\_\_\_ (Seal) \_\_\_\_ (Seal)  
\_\_\_\_ -Borrower \_\_\_\_ -Borrower

Signed, sealed and delivered in the presence of:

x

State of South Carolina  
County of Oconee

I, JOHN W. FIELDS, NOTARY PUBLIC OF SOUTH CAROLINA (name and title), do hereby certify that  
Cathy J Swicegood AND Polly A Thompson

, 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 4th day of August, 2011

John W. Fields  
Notary Public for South Carolina

My commission expires.

4/12/12

SOUTH CAROLINA—Single Family Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
(ITEM 1959L11 (0011) (Page 11 of 11 pages)

Form 3041 1/01  
GREATLAND ■  
To Order Call: 1-800-530-9833 Fax: 816-791-1121

EXHIBIT "A"  
LEGAL PROPERTY DESCRIPTION  
FOR MORTGAGE FROM  
CATHY J. SWICEGOOD AND POLLY A. THOMPSON  
TO OCONEE FEDERAL SAVINGS AND LOAN ASSOCIATION

Case Number 11-315

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Oconee, Center Township, being known and designated as Lot Number Fifty-Nine (59), Section M, of FOXWOOD HILLS &/k/a Mountain Bay Estates, on a plat thereof prepared by Dean H. Teasley, RLS, dated October 5, 2000, of record in the Office of the Register of Deeds for Oconee County, South Carolina, in Plat Book P-62, at page 110, and having the metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto.

It is mutually understood and agreed that this conveyance is made subject to the protective covenants and restrictions as to use of the lot herein conveyed as more fully set forth and enumerated in instrument of record in Deed Book 11-L, at Page 153, Deed Book 13-C, at page 365, and supplements thereto, records of the Register of Deeds Office for OCONEE County, South Carolina.

This conveyance is subject to those easements and/or rights-of-way as may appear on the premises and/or of record and all zoning and setback requirements.

Thus being the identical property conveyed unto the Mortgagors by Deed of Jay Hufnagel and Christine Hufnagel a/k/a Christine Faye Hufnagel, dated May 18, 2010, and recorded in Deed Book 1776, at Page 262, in the Office of the Register of Deeds for OCONEE County, South Carolina.

 (SEAL)  
CATHY J. SWICEGOOD

 (SEAL)  
POLLY A. THOMPSON

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
AUG - 8 - 2011

## SECOND HOME RIDER

THIS SECOND HOME RIDER is made this 4th day of August, 2011, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower," whether there are one or more persons undersigned) to secure Borrower's Note to

**Oconee Federal Savings & Loan Assn.**

(the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

505 W Sheffield Dr., Westminster, South Carolina, 29693  
[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following.

6. **Occupancy.** Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

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 second home.

MULTISTATE SECOND HOME RIDER—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3890 1/01

ITEM 7099L-1 (0011)

(Page 1 of 2 pages)

GREATLAND ■  
To Order Call: 1-800-530-6393 □ Fax: 610-791-1131

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in pages 1 and 2 of this Second Home Rider.

*Cathy J. Swicegood* (Seal) *Polly A. Thompson* (Seal)  
Cathy J. Swicegood -Borrower Polly A. Thompson -Borrower

\_\_\_\_ (Seal) \_\_\_\_ (Seal)  
\_\_\_\_ -Borrower \_\_\_\_ -Borrower

\_\_\_\_ (Seal) \_\_\_\_ (Seal)  
\_\_\_\_ -Borrower \_\_\_\_ -Borrower

MULTISTATE SECOND HOME RIDER—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3890 1/01

ITEM 709612 (0011)

(Page 2 of 2 pages)

GREATLAND ■  
To Order Call: 1-800-630-9383 Fax: 816-791-1131



FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS

2012 AUG 14 A 10:35

001545

Doc ID: 004107470003 Type: DEE  
BK 1912 PG 209-211

After Recording Mail to  
Guest and Brady, LLC  
900 E North Street, Suite 210  
Greenville, SC 29601

State of South Carolina )  
County of Oconee )

## TITLE TO REAL ESTATE

Know All Men By These Presents, that Gary Vanover and Betsy Vanover (hereinafter "Grantor(s)") in the State aforesaid, for and in consideration of Thirty Five Thousand Dollars and No Cents (\$35,000.00), to the Grantor(s) herein paid at and before the sealing of these presents by Grantee(s) in the State aforesaid, the receipt and sufficiency whereof is hereby acknowledged, have granted, bargained, sold and released, unto the said Polly Thompson and Cathy J Swicegood (hereinafter "Grantee(s)") his/her/their/it's heirs and assigns forever, all my right, title and interest in and to the following described property, to-wit

SEE EXHIBIT A ATTACHED HERETO

TMS No. 316-02-01-001  
Property Address 507 W Sheffield Dr, Westminster, SC 29693  
Grantee's Address 14 Woodhedge Court, Mauldin, SC 29662

Together With all and singular the rights, members, hereditaments and appurtenances to said premises or in any wise incident or appertaining,

To Have And To Hold all and singular the premises mentioned unto the grantee(s), and grantee's(s) heirs or successors and assigns, forever

And The Grantor(s), do(es) hereby bind the grantor(s) and the grantor's(s) heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s) heirs or successors and against every person whomsoever lawfully claiming the same or any part thereof.

### OCONEE COUNTY

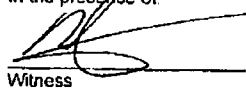
STATE TAX 91.00  
COUNTY TAX 38.50  
EXEMPT \_\_\_\_\_

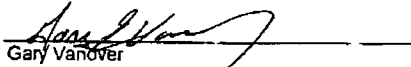
Recorded this 15 day of Aug  
Book 2012 Page 174-203  
Fee \_\_\_\_\_  
Kenneth E. Nye  
Auditors Oconee County, S.C.

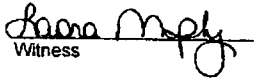
FOR OFFICE USE ONLY  
THIS PROPERTY DESIGNATED AS  
MAR 316 SUB 02 BLK D1 PARC 001  
ON OCONEE COUNTY TAX MAPS  
Grande Shugart  
OCONEE COUNTY ASSESSOR

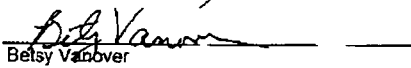
WITNESS the Grantor(s) hand(s) and seal(s) this 27th day of July 2012

SIGNED, sealed and delivered  
In the presence of

  
Witness

  
Gary Vandover

  
Witness

  
Betsy Vandover

State of South Carolina

County of Greenville

ACKNOWLEDGEMENT

I, Laona Murphy, a notary public for South Carolina, do hereby certify that the within named Grantor(s) did personally appear before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal  
this 27th day of July, 2012

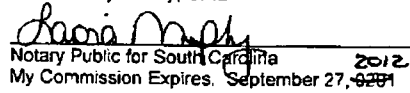
  
Notary Public for South Carolina  
My Commission Expires September 27, 2012

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

File No 2012-0314

All that piece or tract of land, situate, lying and being in the State of South Carolina, County of Oconee and Center Township and being designated as Lot Number Fifty-Eight (58), Section M, on plat of Mountain Bay Estates made by Alvin Freeman, RLS License No. 2991, dated August, 1972, recorded in the Office of the Clerk of Court for Oconee County in Plat Book P-34, Page 164 Reference is hereby made to said plat for a more detailed metes and bounds description thereof

THIS being the same property conveyed to Gary Vanover and Betsey Vanover by deed of Madge H. Robinson, Delinquent Tax Collector of Oconee County, dated September 18, 1989 and recorded September 25, 1989 in the ROD Office for Oconee County in Book 591, page 16

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
2012 AUG 14 A 10:35



**Exhibit C – Purchase and Sale of Log Cabin**

OCONEE COUNTY

STATE TAX 2.60

COUNTY TAX 1.10

DEED

STATE OF SOUTH CAROLINA  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS

FILED FOR RECORD

TITLE TO REAL ESTATE  
(No Title Examination)  
QUIT CLAIM DEED

2003 OCT 17 P 4:09

019400

COUNTY OF OCONEE

Grantee's Address:  
14 Woodhedge Court  
Mauldin SC 29662

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of SEVEN HUNDRED NINETY-FIVE DOLLARS (\$795.00), in hand paid by the Grantee, Cathy J Swicegood receipt of which is hereby acknowledged, the Grantor, Oconee County Forfeited Land Commission, has granted bargained, sold and released and by these presents does grant, bargain, sell and release unto the Grantee(s), his heirs, successors and assigns, the following described real property.

ALL that a certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Oconee, being known and designated as Lot 14, Section Kinston of Foxwood Hills as shown and more fully described on a plat thereof recorded in Plat Book 42, Page 132, records of Oconee County, South Carolina.

This being the identical property conveyed to the Forfeited Land Commission by deed from Mona Towe, Delinquent Tax Collector of Oconee County and recorded in Deed Book 1061, Page 0085, records of Oconee County, South Carolina.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property; if any.

TOGETHER with all and singular the Rights, Members, hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining, and the reversions, remainders, rents, issues and profits and any estate, right, title, interest, dower, possession, benefit, claim or demand of any and all parties to the levy and all persons claiming under or upon them.

Any reference in this instrument to the plural shall include the singular, and any reference to the neuter shall include the male and/or female, any reference to the male shall include the female, and vice versa. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

Recorded this 20<sup>th</sup> of Oct  
Book 2003 Page 304, 228  
Fee

Shirley R. Tye  
Auditors Oconee County, S.C.

AS PROPERTY DESIGNATED AS

MAR 3/6 SUB 05 BLK 01 PARC 014

ON OCONEE COUNTY TAX MAPS

Paul H. Williams  
TOWNE COUNTY ASSESSOR

IN WITNESS THEREOF, the Grantor has executed the deed and Affixed his/her seal thereto on this 9th of October, 2002.

IN THE PRESENCE OF:

FORFEITED LAND COMMISSION, by:

Elizabeth M. Pressley

Linda R. Nix  
Linda R. Nix, Chairman  
FORFEITED LAND COMMISSION

Alison C. Carter

Elizabeth M. Pressley

Sallie C. Smith  
Sallie C. Smith  
FORFEITED LAND COMMISSION

Alison C. Carter

Elizabeth M. Pressley

Anne C. Dodd  
Anne C. Dodd  
FORFEITED LAND COMMISSION

Alison C. Carter

BOOK 1307 PAGE 335

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE ) PROBATE

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

*Elizabeth M. Hussaleef*

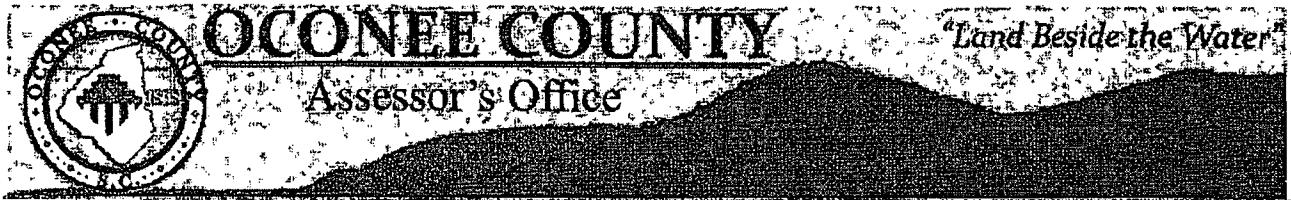
SWORN TO BEFORE ME THE 9th DAY OF October, 2008

*Debra C. Carter* (L.S.)

Notary Public for South Carolina

My Commission Expires: MY COMMISSION EXPIRES AUG. 27, 2011

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
2008 OCT 17 PM 4:09



|                                              |                                      |                                 |                             |                                   |                                       |                             |
|----------------------------------------------|--------------------------------------|---------------------------------|-----------------------------|-----------------------------------|---------------------------------------|-----------------------------|
| <a href="#">Recent Sales in Neighborhood</a> | <a href="#">Recent Sales in Area</a> | <a href="#">Previous Parcel</a> | <a href="#">Next Parcel</a> | <a href="#">Field Definitions</a> | <a href="#">Return to Main Search</a> | <a href="#">Oconee Home</a> |
|----------------------------------------------|--------------------------------------|---------------------------------|-----------------------------|-----------------------------------|---------------------------------------|-----------------------------|

**Owner and Parcel Information**

|                                       |                                                  |                          |                                 |
|---------------------------------------|--------------------------------------------------|--------------------------|---------------------------------|
| <b>Owner Name</b>                     | RUEGSEGGER KEITH & CATHY J/S                     | <b>Today's Date</b>      | October 22, 2014                |
| <b>Mailing Address</b>                | 412 NEW TARLETON WAY<br>GREER, SC 29650          | <b>Parcel Number</b>     | 316-05-01-014 Tax ID 46971      |
| <b>Location Address</b>               | 427 KINSTON LOOP                                 | <b>Tax District</b>      | (District 015)                  |
| <b>Legal Description</b>              | LOTS 14 & 15 KINSTON SEC FOXWOOD HILL (0.123 AC) | <b>2012 Millage Rate</b> |                                 |
| <b>Property Class / Property Type</b> | / Residential 1 Family                           | <b>Acres</b>             | 0.123                           |
| <b>Neighborhood</b>                   | 1102798                                          | <b>Parcel Map</b>        | <a href="#">Show Parcel Map</a> |

[Generate Owner List By Radius](#)

| Land Taxable Market Value | 2013 Tax Year Value Information               | Total Taxable Market Value |
|---------------------------|-----------------------------------------------|----------------------------|
| \$ 10,470                 | Improvement Taxable Market Value<br>\$ 17,070 | \$ 27,540                  |

| Land Information |          |                    |                 |       |                |
|------------------|----------|--------------------|-----------------|-------|----------------|
| Land Type        | Frontage | Effective Frontage | Effective Depth | Acres | Square Footage |
| 90               | 0        | 0                  | 0               | 0.123 | 5,358          |

| Residential Building Information |               |                              |            |              |                          |              |                                      |            |
|----------------------------------|---------------|------------------------------|------------|--------------|--------------------------|--------------|--------------------------------------|------------|
| Type                             | Occupancy     | Style                        | Make       | Model        | Serial #                 | Length/Width | Area                                 | Year Built |
| Mobile Home                      | Single family | 117 Single 2003 to 2004 <880 | CICLE J    |              | CICLE J                  | 29 x 12      | 348                                  | 2004       |
| Roof Material                    | Roof Type     | Roof Frame                   | Roof Pitch | Heating Type | Rooms/Bedrooms/Bathrooms | Grade        | Sketch                               |            |
| Metal                            | Gable         | Std for class                |            |              | 0/0/2.0                  | Avg          | <a href="#">Show Building Sketch</a> |            |

| Commercial and Miscellaneous Improvement Information |            |                |                     |       |       |                             |
|------------------------------------------------------|------------|----------------|---------------------|-------|-------|-----------------------------|
| Building Type                                        | Year Built | Eff Year Built | Length/Width/Height | Size  | Grade | Sketch                      |
| UTILROOM                                             | 2004       | 2004           | 8 / 6 / 0           | 48 SF | Avg   | <a href="#">Show Sketch</a> |

| Sale Information |            |           |           |                             |                                    |                                    |
|------------------|------------|-----------|-----------|-----------------------------|------------------------------------|------------------------------------|
| Sale Date        | Sale Price | Deed Book | Deed Page | Qualification Reason        | Grantor                            | Grantee                            |
| 2010-10-05       | \$ 50,000  | 1797      | 260       | Other Not Valid             | Multiple Owners                    | RUEGSEGGER KEITH & CATHY J/S       |
| 2010-09-22       | \$ 5       | 1795      | 247       | Transfer as gift for no or  | SWICEGOOD CATHY J & THOMPSON POLLY | SWICEGOOD CATHY J & THOMPSON POLLY |
| 2010-09-22       | \$ 5       | 1795      | 251       | Other Not Valid             | SWICEGOOD CATHY J & THOMPSON POLLY | SWICEGOOD CATHY J & THOMPSON POLLY |
| 2010-02-26       | \$ 1       | 1762      | 13        | Other Not Valid             | SWICEGOOD CATHY J                  | SWICEGOOD CATHY J & THOMPSON POLLY |
| 2003-10-09       | \$ 795     | 1307      | 333       | Valid Arms-length sale tran | OCONEE COUNTY FORFEITED LAND       | SWICEGOOD CATHY J                  |
| 1999-11-30       | \$ 353     | 1061      | 0085      | Valid Arms-length sale tran | COBUN MARSHALL E & MARY F          | OCONEE COUNTY FORFEITED LAND       |



**PURCHASE OF LOT 15**

**(Log Cabin)**

*who bought this? Polly*

STATE OF SOUTH CAROLINA  
COUNTY OF Oconee

Grantee's Address: 14 Wood Hedges Court  
Mauldin, S.C. 29662

KNOW ALL MEN BY THESE PRESENTS, that Erma C. Chandler

In consideration of Two Thousand Dollars and 00/100 \$2,000.00 Dollars,  
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell  
and release unto Polly Thompson and Cathy Swicegood

All that certain piece, parcel or lot of land situated, lying  
and being in Foxwood Hills Subdivision (previously known as  
Mountain Bay Estate, Oconee County, South Carolina, and being  
designated as Lot 15, Section Kinston on Plat, recorded in  
Plat Book 42 at Page 132 in the Office of The Recorder of Deeds  
for Oconee County, South Carolina. For a more detailed  
description as to courses, metes and bounds, reference is made  
to said Plat of record.

This being identical property conveyed to Erma C. Chandler by  
DEED OF DISTRIBUTION IN Deed Book 1415 at Page 144.

OCONEE COUNTY  
STATE TAX 5 20  
COUNTY TAX 2 20  
EXEMPT

THIS PROPERTY DESIGNATED AS  
MAINTENANCE SUBSIDIZED PARCEL 015  
ON OCONEE COUNTY TAX MAPS  
Erma C. Chandler  
OCONEE COUNTY ASSESSOR

Recorded this 3rd day of May  
Book 2005 Page 602142  
Fee  
Gloria R. Tipton  
Auditors Oconee County, S.C.

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
2005 MAY - 2 P 2 10

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or ap-  
pertaining, to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee(s)' heirs or successors and  
assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)' heirs or successors, executors and administrators  
to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs or successors and against every per-  
son whomsoever lawfully claiming or to claim the same or any part thereof  
WITNESS the grantor(s)' hand(s) and seal(s) this day of 20

SIGNED, sealed and delivered in the presence of  
Erma C. Chandler (SEAL)  
Gloria R. Tipton (SEAL)  
Gloria R. Tipton (SEAL)  
Gloria R. Tipton (SEAL)

STATE OF SOUTH CAROLINA  
COUNTY OF Georgia

PROBATE

Personally appeared the undersigned witness and made oath that she is the within named  
grantor(s) sign, seal and as the grantor(s)' act and deed, deliver the within written deed and that (s)he, with the other witness subscribed  
above, witnessed the execution thereof  
SWORN to before me this 25 day of April 2005  
Gloria R. Tipton (SEAL)  
My commission expires 8-15-06

STATE OF SOUTH CAROLINA  
COUNTY OF

RENUNCIATION OF DOWER

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the  
undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, upon being privately and  
separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person whomso-  
ever, renounce, release and forever relinquish unto the grantee(s) and the grantee(s)' heirs or successors and assigns, all her interest and es-  
tate, and all her right and claim of dower of, in and to all singular the premises within mentioned and released.

GIVEN under my hand and seal this  
day of 20

Notary Public for South Carolina Georgia (SEAL)  
My commission expires

RECORDED this day of 20 at M. No.



STATE OF SOUTH CAROLINA  
COUNTY OF Oconee

Erma C. Chandler

028931

Ret

TO  
Polly Thompson and Cathy Swicegood  
14 Wood Hedge Court  
Mauldin, S.C. 29662

TITLE TO REAL ESTATE

I hereby certify that the within Deed has been this

2 day of May 2005

at M. recorded in Book 1415 of

Deeds page 146

Dee A. Butts  
Register of Meme Conveyance Oconee County

I hereby certify that the within Deed has been this

day of

20 recorded in Book page

Auditor County



Doc ID: 003688970004 Type: DEE

BK 1762 PG 13-16

## QUITCLAIM DEED

THIS QUITCLAIM DEED EXECUTED THIS FEBRUARY 24, 2010.BY FIRST PARTY, CATHY J. SWICEGOODWHOSE ADDRESS IS 14 WOODHEDGE COURT MAULDIN SC 2966212/15  
1000 — TO SECOND PARTY CATHY J. SWICEGOOD AND POLLY THOMPSONWHOSE ADDRESS IS 14 WOODHEDGE COURT MAULDIN SC 29662

WITNESSETH, THAT THE SAID FIRST PARTY, FOR THE SUM OF \$1.00 (ONE) AND LOVE AND AFFECTION HEREBY REMISE, RELEASE AND QUITCLAIM UNTO THE SAID SECOND PARTY FOREVER, ALL THE RIGHTS, TITLE, INTEREST AND CLAIM WHICH THE SAID FIRST PARTY HAS IN AND TO THE FOLLOWING DESCRIBED PARCEL OF LAND, AND IMPROVEMENTS AND APPURTENANCES THERETO IN THE COUNTY OF OCONEE, STATE OF SC TO WIT

ALL THAT CERTAIN, PIECE, PARCEL OR TRACT OF LAND SITUATED, LYING AND BEING IN OCONEE COUNTY, SC, AND SHOWN AND DESIGNATED AS LOT 14 SECTION KINSTON OF FOXWOOD HILLS SUBDIVISION (PREVIOUS KNOWN AS MOUNTAIN BAY ESTATES) IN PLAT BOOK NUMBER 42 PAGE 132 IN THE OFFICE OF CLERK OF COURT FOR OCONEE COUNTY, SC. FOR A MORE DETAILED DESCRIPTION AS TO THE COURSES, METES AND BOUNDS REFERENCE IS MADE TO SAID PLAT OF RECORD. THIS CONVEYANCE IS SUBJECT TO ALL RESTRICTIONS AND EASEMENTS OF RECORD IN THE OFFICE OF THE CLERK OF COURT OF OCONEE COUNTY

THIS CONVEYANCE IS SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS, CONVENANTS, CONDITIONS, RIGHT OF WAY, ZONING RULES AND LAWS AND REGULATIONS, ANY OF WHICH MAY BE FOUND ON THE PREMISES OR OF RECORD IN THE OFFICE OF CLERK OF COURT FOR OCONEE COUNTY SOUTH CAROLINA, THIS BEING THE IDENTICAL PROPERTY CONVEYED UNTO THE GRANTOR(S) HERIN BY DEED RECORDED IN DEED 1307 PAGE 333 TAX MAP # 316-05-01-014

GRANTEE BY ACCEPTANCE HERE OF AND BY AGREEMENT WITH THE GRANTOR HEREBY EXPRESSLY ASSUMES AND AGREES TO BE BOUND AND COMPLY WITH ALL THE CONVEYANTS, TERMS, PROVISIONS AND CONDITIONS SET FORTH IN THE AFORESAID DECLARATIONS AND RULES AND REGULATIONS MADE THEREUNDER

IN WITNESS WHEREOF THE SAID FIRST PARTY HAS SIGNED AND SEALED THIS PRESENTS THE DAY AND YEAR FIRST ABOVE WRITTEN

SIGNED, SEALED, AND DELIVERED IN PRESENCE OF

[Signature]  
WITNESS

[Signature]  
WITNESS

[Signature]  
SELLER

SELLER

## FOR OFFICE USE ONLY

THIS PROPERTY DESIGNATED AS  
MAP 316 SUB 05 BLK 01 PARC 014  
ON OCONEE COUNTY TAX MAPS

[Signature]  
OCONEE COUNTY ASSESSOR

2010 FEB 26 A 11:37

RECORDED  
OCONEE COUNTY SC  
CLERK OF COURTS

## OCONEE COUNTY

STATE TAX \_\_\_\_\_

COUNTY TAX \_\_\_\_\_

EXEMPT Y ✓

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE

PERSONALLY APPEARED BEFORE ME THE UNDERSIGNED WITNESS AND MADE OATH THAT  
(S)HE WITH THE OTHER WITNESS WHOSE NAME IS SUBSCRIBED ABOVE WITNESSED THE  
EXECUTION THEREOF.

SWORN TO BEFORE ME THIS 24th DAY  
OF February 2010

James K. Malappu (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES \_\_\_\_\_

Signatures  
WITNESSES

# **FOXWOOD HILLS PROPERTY OWNER ASSOCIATION, INC. ADJOINING LOTS AGREEMENT**

THIS AGREEMENT WILL BE APPROVED OR REJECTED AT THE DISCRETION OF THE FOXWOOD HILLS PROPERTY OWNERS ASSOCIATION, INC. BOARD OF DIRECTORS.

Account number(s) 4796 + 4203

I, Cathy Swicegood + Polly Thompson, own lots 14 and 15 in the Kinston section of Foxwood Hills Subdivision.

I agree to the terms listed below:

1. To utilize these as one lot and in compliance with the section's and lot's restrictions.
2. To sign an addendum to increase dues (if applicable) to the Foxwood Hills P.O.A. dues and assessment structure. If both of these lots are sold as a package to one owner, this agreement will be transferred to the new owner. If one of the lots is sold or the two lots sold to different new owners, this agreement becomes null and void and the dues and assessments billing reverts back to the billing rates of the Foxwood Hills P.O.A. dues and assessment structure at a per lot basis.
- 3 To submit plans to the Foxwood Hills P.O.A. Architectural Control Committee for approval before any new construction is to begin.

Upon meeting the terms above and approval of this agreement, Foxwood Hills P.O.A. agrees to the following:

The membership dues and assessments will be considered as one at the Foxwood Hills P.O.A. dues and assessment structure

Witness my signature on this 24th day of February, 2010 at Westminster, SC.

A. Lynn Arterburn  
Witness

Cathy A. Swicegood  
Owner

B. Catherine Dwyer  
Witness

Polly A. Thompson  
Owner

State of South Carolina

County of Oconee

Personally appeared (a) Lynn Arterburn who being duly sworn  
Says that he saw the within named Cathy Swicegood + Polly Thompson  
Sign, seal, and as their act and deed deliver the within written instrument for  
The uses and purposes therein mentioned, and that the deponent witnesses the execution thereof.

Sworn to before me this 24th day of February, 2010.

(a) Lynn Arterburn

Janice K. Malaffey  
Notary Public of South Carolina

My commission expires: 11/16/19

Approved by \_\_\_\_\_  
Foxwood Hills P.O.A. Representative Date

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

AGREEMENT TO BE BOUND TO THE JURISDICITON  
OF FOXWOOD HILLS PROPERTY OWNERS ASSOCIATION  
AND TO BE SUBJECTED TO A LIEN  
SECURING ASSOCIATION DUES AND ASSESSMENTS

I, Cathy Swicegood + Polly Thompson own Lot 14+15 which was purchased by me from  
Forfeited Land Commission + Erma Chandler

I hereby understand that I have voting membership in the Foxwood Hills Property Owners Association  
appurtenant to the assessments that are on record for the purchasers who purchase from the Foxwood Hills  
Corporation. It is my understanding that this assessment is presently stated at the dollar amount of  
\$387.00 Three Hundred + Eight Seven + No/100

I further understand that I have voting membership in the Foxwood Hills Property Owners Association which  
election shall subject me to such dues and assessments as may be required from time to time pursuant to  
Article XIV, Section 1 and Section 2 of the bylaws of the Foxwood Hills Property Owners Associations. I further  
agree that such charges shall be a lien which shall attach to my property subject only to any existing lien  
against the property or any lien which may hereafter be placed on the property, the proceeds of which are  
used for improvements to the property. This agreement runs with the land and inures to the benefits and  
burdens of any heirs, successors, or assignees to the title to this lot.

My signature on this agreement binds me, any co-owner, and successors of my property to those matters  
contained in the Articles of Incorporation of the Property Owners Association which are a matter of public  
record.

Witness my signature on this 24th day of February, 2010 at  
Westminster, SC

1. Lynn Arterburn  
Witness

Polly A Thompson

2. Catherine Wylie  
Witness

Cathy J. Swicegood  
Owner

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE

PROBATE

PERSONALLY appeared (1) Lynn Arterburn who being duly sworn says that  
She (s) he saw the within named Polly A Thompson + Cathy J. Swicegood sign, seal and as  
his/her act and deed deliver the within written instrument for the uses and purposes therein  
mentioned, and that the Deponent, together with (2) Catherine Wylie witnessed the  
execution thereof

Sworn before me this 24th day of February, 2010

Janet K. Malappes  
NOTARY PUBLIC OF SOUTH CAROLINA  
My Commission expires 11-16-19

1. Lynn Arterburn  
WITNESS

Doc ID: 003751300005 Type: DEE

BK 1797 PG 260-264

BK 1795 PG 257-258

RECORDED  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS

2010 SEP 22 P 2:23

Return To:

Tony DiPasquale Law Firm  
1225 S. Church Street  
Greenville, SC 29605  
(803) 239-1460  
File #10SC0303

## STATE OF SOUTH CAROLINA

## COUNTY OF Oconee

## TITLE TO REAL ESTATE

Corrective Deed  
adding Lot 15 to description  
Previously omitted

KNOW ALL MEN BY THESE PRESENTS that we, Cathy J. Swicegood

AND Polly Thompson, for and in consideration of the sum of (\$50,000.00) and no other valuable consideration, to us in hand paid at and before the sealing and delivery of these presents, by Keith Ruegsegger AND Cathy Ruegsegger, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto Keith Ruegsegger AND Cathy Ruegsegger, as joint tenants with rights of survivorship, and not as tenants in common, their heirs and assigns, the following described property, to-wit:

ALL that certain piece, parcel or lot of land, lying in the State of South Carolina, County of Oconee being shown and designated as Lot 14, Section Kinston of Foxwood Hills as shown and more fully described on a plat thereof recorded in Plat Book 42, Page 132, records of Oconee County.

This being the same property conveyed to Cathy J. Swicegood and Polly Thompson by deed of Kathy Swicegood dated February 24, 2010 and recorded February 26, 2010 in Deed Book 1762 at Page 1316 in the RMC Office for Oconee County.

Grantee's Address. 427 Kingston Loop, Westminster, SC

TMS #316-05-01-014

GRANTEE'S ADDRESS: 427 Kinston Loop  
Westminster, SC2010 OCT -4 A 11:06  
CLERK OF COURT  
RECORDS & DEEDS

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Keith Ruegsegger AND Cathy Ruegsegger, their heirs and assigns forever

And Cathy J. Swicegood AND Polly Thompson, does hereby bind themselves and their heirs and assigns, to warrant and forever defend all and singular the said

FOR OFFICE USE ONLY  
THIS PROPERTY DESIGNATED AS  
MAP 316 SUB 25 BLK 21 PARC 214  
ON OCONEE COUNTY TAX MAPS

*Kendra Shugart*  
OCONEE COUNTY ASSESSOR

Recorded this 5 day of Oct  
Book 2010 Page 18012  
Fee

*Kendra Shugart*  
Auditors/Oconee County, S.C.

Book: 1797 Page: 260 Seq:



premises, unto the said Keith Ruegsegger AND Cathy Ruegsegger, their heirs and assigns, against Grantor, their heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS my Hand and Seal this 31 day of August, 2010

Signed, sealed and delivered  
in the presence of:

Dinger Thomas  
Witness #1

Cathy J. Swicegood  
Cathy J. Swicegood

[Signature]  
Witness #2/Notary Public

Polly Thompson for Cathy J. Swicegood, as agent  
Polly Thompson, for Cathy J. Swicegood, as agent  
her attorney in fact

STATE OF SOUTH CAROLINA  
COUNTY OF Oconee

Personally appeared before me, the undersigned witness, who, being first duly sworn, says that s/he saw the within named Cathy J. Swicegood AND Polly Thompson sign, seal and as his act and deed, deliver the within-written Title to Real Estate, and that s/he with the other subscribing witness, witnessed the execution thereof.

SWORN to before me this  
31 day of August, 2010

Dinger Thomas  
(Signature of Witness No 1)

[Signature] (I S.)  
Notary Public of South Carolina  
My Commission Expires: 10-16-2016



Exhibit "A" Legal Description

All that certain piece, parcel or lot of land, lying in the State of South Carolina, County of Oconee lying and being in Foxwood Hills Subdivision (previously known as Mountain Bay Estates Oconee County, South Carolina, and being designated as Lot No 15, Section Kingston on plat, recorded in Plat Book 42 at Page 132 in the Office of the recorder of deeds for Oconee County South Carolina. reference being made to said plat for a more complete metes and bounds description.

This being the same property conveyed to Polly Thompson andn Cathy Swicegood by deed of Erma C. Chandler dated 4/25/2005 and recorded 5/2/2005 in Deed Book 1415 at page 146 in the RMC Office for Oconee County South Carolina.

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

TMS #316-05-01-015

Address: Kingston Loop Lot 15 Oconee COunty

2000 OCT -4 A 11: 06  
 REC'D  
 OCT 4 2000  
 11: 06 AM  
 OCT 4 2000

STATE OF SOUTH CAROLINA

COUNTY OF Oconee

AFFIDAVIT

SEC. 12-24-70  
RECORDS  
2010 OCT -4 A 11:06  
S.C. DEEDS

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

1 I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 427 Kingston Loop Oconee SC

3. Bearing Laurens County Tax Map Number 316-05-01-014 and 316-05-01-015 was

Transferred by Cathy J Swicegood and Polly Thompson to Keith Ruegsegger and Cathy Ruegsegger

On 8/31/2010

3. Check one of the following: The deed is

(a) \_\_\_\_\_ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or moneys worth

(b) \_\_\_\_\_ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary

© X exempt from the deed recording fee because (See Information section of affidavit): 12

(If exempt, please skip items 4- 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes \_\_\_\_\_ or No \_\_\_\_\_

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or monies worth in the amount of \_\_\_\_\_

(b) \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \_\_\_\_\_

(c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_

5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is. \_\_\_\_\_

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \_\_\_\_\_

(b) Place the amount listed in item 5 above here: \_\_\_\_\_  
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: \_\_\_\_\_

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: 0

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: **Tony DiPasquale, Attorney At Law**

9. I understand that a person required to furnish this affidavit who willfully furnishes a false

1

or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction  
Signature

Tony DiPasquale, Attorney At Law  
Print or Type Name Here

SWORN to before me this 1 day of October 2010

Notary Public for SC

My Commission Expires: 12/15/2015

Dwight Shores  
Notary

**INFORMATION**

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or monies worth for the realty. Consideration paid or to be paid in monies worth includes, but is not limited to: other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in monies worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, A value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership is a partnership whose partners are all members of the same family. A family trust is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

**Exhibit D – Defendant's Affidavits**

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
Cathy J. Swicegood, )  
Plaintiff, )  
vs. )  
Polly A. Thompson, )  
Defendant. )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

**AFFIDAVIT OF CATHY SWICEGOOD**

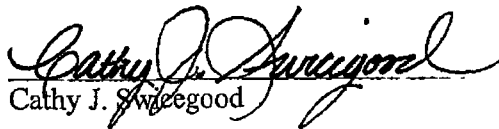
C.A. NO.: 2014-DR-23-1184

I, Cathy Swicegood, being duly sworn, depose and state that . . .

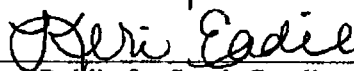
1. I am over twenty-one (21) years of age and am competent to testify to the matters contained herein. This affidavit is based on my personal knowledge of the facts contained herein.
2. That on September 16, 2008, Polly Thompson, the above named Defendant, proposed marriage, and I gladly accepted her proposal.
3. On February 12, 2011, Ms. Thompson and I were declared married during a marital ceremony in Las Vegas, Nevada.
4. Ms. Thompson and I assumed martial roles and cohabitated together from August 22, 2000 to November 7, 2013.
5. On November 8, 2013, Ms. Thompson informed me that she had met another woman whom she had intimate feelings for and that I needed to move out of "her" house.
6. I was forced to move all my personal belongings to 505 W. Sheffield Drive, Westminister, SC, ("lake house") a property that Ms. Thompson and I own jointly. On or about December 16, 2013, I moved out of our marital home and Ms. Thompson and I have not spent another night under the same roof since that date.

7. Ms. Thompson's pursuit of another relationship was the sole contributing factor to the breakdown of our marriage.
8. During our marriage, Ms. Thompson assumed the role of providing for us financially while I assumed more of a homemaker role.
9. In 2001, Ms. Thompson and I created reciprocal wills at an attorney's office in Greenville, South Carolina.
10. For the last 13 ½ years, I have owned and operated a small interior design business that has generated minimal profits. (See attached financial declaration).
11. Ms. Thompson is a Vice President at Multi-Pack Solutions and earns a yearly salary of \$135,000.00.
12. My earning potential is far less of Ms. Thompson as I only hold a high school diploma and my employment background is limited to interior design.
13. Currently, my monthly expenses far exceed my monthly income; therefore, I cannot afford to hire legal counsel to pursue the pending matter.
14. A large part of my monthly expenses is debt that I incurred for improvements made properties that Ms. Thompson and I jointly own.
15. Further, Ms. Thompson has filed a partition and ouster action to divide the lake house which I currently occupy and have me removed from the house and thus make me homeless. (See attached complaint).
16. If said action is not successful I will not be able to afford any comparable living accommodations that I currently enjoy.
17. I declare under penalty of perjury that the foregoing is true and accurate based upon my own personal knowledge.

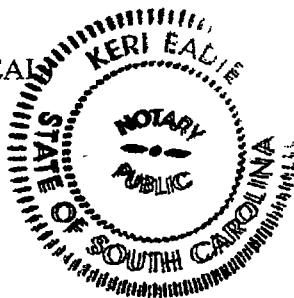
FURTHER THE AFFIANT SAYETH NOT.

  
Cathy J. Swizegood

SWORN to before me this 2nd  
day of May, 2014.

  
Notary Public for South Carolina  
My Commission expires: 8/28/22

(SEAL)





STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
Cathy J. Swicegood, )  
Plaintiff, )  
vs. )  
Polly A. Thompson, )  
Defendant. )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

**AFFIDAVIT OF CATHY SWICEGOOD**

C.A. NO.: 2014-DR-23-1184

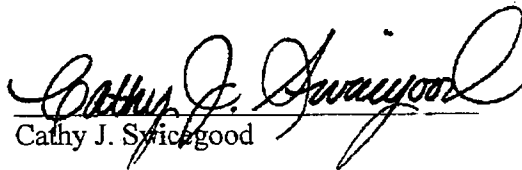
I, Cathy Swicegood, being duly sworn, depose and state that . . .

1. I am over twenty-one (21) years of age and am competent to testify to the matters contained herein. This affidavit is based on my personal knowledge of the facts contained herein.
2. For the last 13½ years I have owned and operate an interior design business, Swicegood by Design.
3. Using my background in interior design, I made substantial improvements to the home Ms. Thompson and I shared together located at 14 Woodhedge Court in Mauldin, South Carolina.
4. These improvements were both cosmetic and functional in nature and included things such as adding awnings, building steps, replacing floors, and redecorating the entire house.
5. In order to accumulate wealth for our future together, we decided to start investing in real estate whereby I would undertake the majority task of renovating and refurbishing the properties to later sell for a profit.

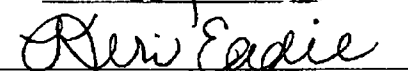
6. Ms. Thompson and I bought a total of three properties together: one in Hilton Head, South Carolina and two in Westminister, South Carolina. The two Westminister properties were merged into one property which is now owned by Ms. Thompson and I as joint tenants with the right of survivorship.
7. Prior to purchasing the aforementioned properties together, Ms. Thompson alone purchased a property in Hilton Head, 45 Folly Field Road.
8. For ten years, I managed and rented 45 Folly Field Road through VRBO (Vacation Rentals By Owners), a online service that allows owners to rent out their property. The property rented for \$800.00 a week during its peak months. Ms. Thompson would occasionally pay me an amount of no more than \$100.00 for managing this property.
9. In addition to managing this property, I also made substantial improvements to the property which included upgrading the fixtures, appliances, and furnishings.
10. The sale of 45 Folly Field Road netted Ms. Thompson approximately \$87,000.00. I was never paid any money generated for the sale of 45 Folly Field Road.
11. In 2010, Ms. Thompson and I purchased a lake front property located at 505 W. Sheffield Drive in Westminister, South Carolina.
12. While I could not afford to purchase the property on my own and needed Ms. Thompson's income to obtain financing, I did put \$42,000.00 of monies I received from the sale of a log cabin into the property as a down payment.
13. I put this money into the property in reliance of a promise made by Ms. Thompson that I would be taken care of financially; specifically, that I could share in her accumulated retirement funds.

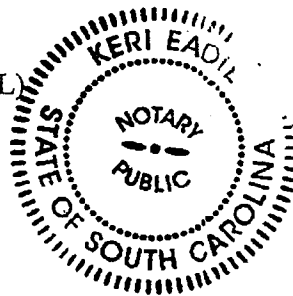
14. After purchasing the property together and taking title as joint tenants with right of survivorship, I decided to build a house on the property, a process that took me and a hired general contractor 3½ months.
15. I was told by Mitchell Bruce, a licensed general contractor, that I saved over \$23,000.00 in labor costs by performing the work myself.
16. Ms. Thompson and I currently owe approximately \$147,000.00 on the property that has a taxable market value of \$211,150.00.
17. In June of 2013, Ms. Thompson and I purchased 85 Folly Field Road and hold title as joint tenants with the right of survivorship.
18. The 85 Folly Field Road property has a taxable market value of \$333,900.00.
19. I declare under penalty of perjury that the foregoing is true and accurate based upon my own personal knowledge.

FURTHER THE AFFIANT SAYETH NOT.

  
Cathy J. Swicegood

SWORN to before me this 2nd  
day of May, 2014.

  
Notary Public for South Carolina  
My Commission expires: 8/28/22 (SEAL)



STATE OF SOUTH CAROLINA )

COUNTY OF OCONEE )

Polly Thompson, )

Petitioner, )

v. )

Cathy Swicegood and Wells Fargo, )

Respondents. )

IN THE COURT OF COMMON PLEAS  
THE TENTH JUDICIAL CIRCUIT

**MOTION TO DISMISS OR IN THE  
ALTERNATIVE, MOTION TO  
STAY PROCEEDINGS**

2014-CP-37-00143

2014 APR 23 AM 10 08

CLERK OF COURT

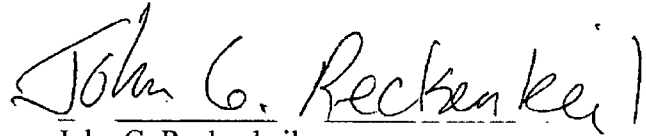
The Respondent, Cathy Swicegood, through her undersigned counsel, hereby moves this Honorable Court pursuant to Rule 12 (b)(8) of the South Carolina Rules of Civil Procedure to dismiss Plaintiff's Lis Pendens and petition as another action is pending between the same parties and the same claim (see Exhibit #1) in the Family Court of Greenville County.

Respondent Swicegood respectfully submits that this Court lacks the proper remedial and adjudication powers for the facts and circumstances that have occurred between the parties in the last thirteen (13) years (see Exhibit 2). The Respondent is seeking an order from the Family Court that the parties are in fact married by common law under South Carolina; and therefore, this case is better suited for the Family Court. In a Petitioner Action for Partition, Ouster, and Accounting, this Court is called upon to remove Cathy Swicegood from the residence she agreed to reside in after she was "quasi-evicted" from the marital home after cohabitation there with Petitioner for more than thirteen (13) years. Cathy Swicegood spent great efforts to make her current residence in Oconee County a "lake home" for her to share with her spouse, Ms. Thompson. For this Court to demand Cathy Swicegood to sell her home would be an irreparable harm, which once done could never be undone. Furthermore, the Family Court is the only Court in our state that is empowered by the laws of South

ENTERED  
COMPUTER

Carolina to handle the holistic bond that the Petitioner and Respondent shared for thirteen (13) years. The Master in Equity does not consider the economic dependency that has resulted from the roles assumed during the marriage nor does a Master in Equity consider any vested special equity in marital property that one spouse may accrue.

For these reasons, Respondent Cathy Swicegood respectfully requests that this Court enter an Order granting Respondent's Motion to Dismiss, dismissing the action in its entirety without prejudice, as this case is better suited for the Family Court of the Thirteenth Judicial Circuit.



John G. Reckenbeil  
215 Magnolia Street  
Post Office Box 1633  
Spartanburg, SC 29304  
Phone: (864) 582-5472  
Fax: (864) 582-7280  
[john@johnreckenbeillaw.com](mailto:john@johnreckenbeillaw.com)

ATTORNEY FOR RESPONDENT  
CATHY SWICEGOOD

Dated: April 16, 2014  
Spartanburg, South Carolina

March 13, 2014

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

The Honorable Alan Wilson  
South Carolina Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

**RE: Constitutional Challenge to a Statute of South Carolina  
Swicegood v. Thompson, Family Court 13<sup>th</sup> Judicial Circuit**

Dear Attorney General Wilson:

This letter is to put you on formal notice that I am the attorney for the Plaintiff, Ms. Cathy J. Swicegood, in regards to the above referenced case. Enclosed is a draft of the lawsuit which will be filed with the 13<sup>th</sup> Judicial Circuit of the Family Court in Greenville County.

We are hereby serving notice to the Attorney General of the state of South Carolina that we will question the Constitutionality of South Carolina Code annotated 20-1-10 subsection B, subsection C, and South Carolina Code annotated 20-1-15. It is the intent of Ms. Swicegood to raise the Constitutionality on the ban on same-sex marriages. More specifically, Ms. Swicegood will pose the Constitutional question as to whether her South Carolina Constitutional rights to due process, equal protection, and privileges and immunities are violated by the above referenced statutes.

Respectfully submitted,

*John G. Reckenbeil*

John G. Reckenbeil

Attorney for Cathy J. Swicegood, Plaintiff

JGR/kae

Enclosure

215 Magnolia St • PO Box 1633 • Spartanburg, SC 29304  
Phone: (864) 582-5472 • Fax: (864) 582-7280  
Keri A. Eadie, Legal Assistant  
keri@johnreckenbeillaw.com



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Cathy J. Swicegood

Plaintiff,

vs.

Polly A. Thompson

Defendant.

**APPENDIX PAGE 224**

THIRTEENTH JUDICIAL CIRCUIT

FILED CLERK OF COURT  
GREENVILLE, S.C.

SUMMONS 13 A 11:50

FAMILY COURT

**2014-DR-23- 1184**

Docket No. \_\_\_\_\_

TO THE DEFENDANT ABOVE-NAMED: Polly A. Thompson

YOU ARE HEREBY SUMMONED and notified that an action has been filed against you in this court. Within thirty (30) days of the day you receive this Summons, you must respond in writing to this Complaint by filing an Answer with this court. You must also serve a copy of your Answer to this Complaint upon the Plaintiff or the Plaintiff's Attorney at the address shown below. If you fail to answer the Complaint, judgment by default could be rendered against you for the relief requested in the Complaint.

Written request for a final hearing in this case must be delivered by a party or his/her attorney to the Clerk of Court's office within 365 days of the filing date. Failure to comply with this rule shall result in the dismissal of the case by the court.

Date: 3/13, 2014

Spartanburg, S.C.

John G. Reckenbeil  
Plaintiff/Attorney for Plaintiff Signature

Print Name: John G. Reckenbeil

Address: P.O. Box 1633

Spartanburg, SC 29304

SCCA 401F (12/2009)

**ROA PAGE 135**

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Cathy J. Swicegood, )

Plaintiff, )

vs. )

Polly A. Thompson, )

Defendant. )

FILED CLERK OF COURT  
IN THE FAMILY COURT GREENVILLE, S.C.  
THIRTEENTH JUDICIAL CIRCUIT  
2014 MAR 13 A 11:50

2014-DR-23- 1184

FAMILY COURT

COMPLAINT

Plaintiff complaining of the above-named Defendant would respectfully show unto this  
Honorable Court as follows:

1. That the Plaintiff and Defendant are both citizens and residents of the County of Greenville, State of South Carolina, have been for more than one (1) year prior to the commencement of this action. That this Court has jurisdiction over the Parties and subject matter herein, and venue is proper.
2. That both the Plaintiff and Defendant are female and are natural born citizens of the United States of America. No children have been born of this marriage and none are expected from this marriage. Neither Plaintiff nor Defendant are related to each other by blood or adoption.
3. Plaintiff and Defendant are both over sixteen (16) years of age and have been the sole domestic partner of each other for the last thirteen (13) years during which time neither were married to any other parties.
4. The issues raised in this Complaint are within the jurisdiction of this Court pursuant to South Carolina Code Annotated § 20-1-510 which grants this Court exclusive jurisdiction to hear



and determine the validity of marriages.

5. Plaintiff and Defendant have no other barriers to marriage except for South Carolina Code Annotated § 20-1-15 which deems same sex marriages *void ab initio*.<sup>1</sup>

6. There is currently an allegation of justifiable or actual controversy between the parties which have adverse interest in this matter.

7. Both Plaintiff and Defendant have cohabitated at 14 Woodhedge Court in Mauldin, South Carolina, located in Greenville County, for the last thirteen (13) years until December 10, 2013 when the Defendant informed Plaintiff she wanted to separate.

8. Plaintiff and Defendant agreed to be married while cohabitating and held themselves out to their friends, family and the public as a married couple. (See Exhibit A - Expression of endearment to Plaintiff regarding their marriage).

9. As a result of the foregoing, the parties' friends, families and community considered Plaintiff and Defendant to be married.

10. Plaintiff and Defendant exchanged and wore wedding rings; they currently own real property together as joint tenants with the right of survivorship; both Plaintiff and Defendant are devisees in each other's wills; and they also shared a joint banking account. (See Exhibit B (Lake House) and Exhibit C (Hilton Head) – Titles to Real Property; and Exhibit D – joint BB&T banking account of parties).

11. That Plaintiff was twice allowed to be placed on Defendant's employment based health insurance as a domestic partner/qualified beneficiary and is currently a beneficiary of

---

<sup>1</sup> A copy of the summons and complaint has been mailed to the South Carolina Attorney General in accordance with the South Carolina Rules of Civil Procedure 4(d)(4)(B) When Unconstitutionality of a Statute is Asserted. Plaintiff asserts that S.C. Code Ann. § 20-1-10 and § 20-1-15 Persons who may marry and ban on same sex marriage is unconstitutional.

Defendant's retirement account and the sole devisee of Defendant's will. (See Exhibit E – IRA).

12. Plaintiff is informed and believes she is entitled to an Order confirming that the parties were married spouses and that a common law marriage has existed between the parties.

13. That during the course of the marriage, various difficulties have arisen culminating in a separation of the Parties on or about December 10, 2013, whereby the parties have been living separate and apart and, that by reason thereof, the Plaintiff would request that this Court recognize the separation of the Parties.

14. The Plaintiff is informed, alleges, and believes that she is entitled to an Order equitably dividing all marital property, both pendente lite and permanently.

15. The Plaintiff would show unto the Court that the Parties do not have comparable incomes and Plaintiff is not capable of supporting herself independently of the other, and given the length of this common law marriage believes that the Defendant should award to the Plaintiff alimony, both pendente lite and permanently.

16. That the Plaintiff has incurred substantial attorney's fees for the bringing of this action and she is informed, alleges, and believes that should the Defendant contest any portion of this action that she is entitled to an award from the Defendant of attorney's fees and costs, both pendente lite and permanently.

17. Plaintiff is informed and believes that she is entitled to an Order restraining and enjoining the Defendant from harassing, intimidating, threatening, or engaging in any acts of violence towards her, both pendente lite and permanently.

18. The Plaintiff is informed, alleges, and believes that she is entitled to a discovery Order during the pendency of this action.

19. Plaintiff is informed and believes that until such time as the marital property is equitably divided that the Plaintiff should be temporarily awarded sole possession of the "Lake House Property" and Defendant be required to be responsible for the mortgage, taxes, insurance, maintenance, and other associated costs.

20. Plaintiff is informed and believes the Defendant should remain in the marital home, 14 Woodhedge Court, and be solely responsible for the mortgage, taxes, insurance, maintenance, and other associated costs. In the event the Defendant does not wish to remain in the marital home located at 14 Woodhedge Court, Plaintiff is informed, alleges, and believes that the marital home should be placed on the market for sale immediately with a licensed real estate agent in a commercially reasonable manner at a price to be agreed upon by the Parties, or at a price recommended by a licensed real estate appraiser. In this instance, the Plaintiff believes that Defendant should be responsible for all costs and actions for the same until such time as the home is sold.

21. The Plaintiff is informed, alleges, and believes that she should be entitled to the use of her personal property currently in her possession as well as her automobile, and that Plaintiff should be responsible for the taxes, liens, maintenance, and other related cost associated therewith.

22. Plaintiff is informed, alleges, and believes that the Defendant should be temporarily awarded the possession and use of her personal items and automobile, and she should be responsible for the taxes, liens, maintenance, and other related cost associated therewith.

23. The Plaintiff is informed, alleges, and believes that she is entitled to an Order restraining and enjoining the Defendant from disposing, encumbering, or liquidating the marital assets in any manner whatsoever, both pendente lite and permanently.

24. That this action is brought in good faith by and between the Parties without fraud or collusion for the purpose of obtaining a decree of separate support and maintenance.

WHEREFORE, having set forth her Complaint the Plaintiff prays as follows:

1. For an Order decreeing the existence of common law marriage between the Parties<sup>2</sup>;
2. For the Court to recognize the separation of the Parties;
3. For the Court to grant Plaintiff a decree of Separate Support and Maintenance;
4. That all marital property be equitably divided, both pendente lite and permanently;
5. For an award of attorney's fees and costs for the bringing of this action should the Defendant contest any portion of this action, both pendente lite and permanently;
6. For an Order of Discovery, both pendente lite and permanently;
7. For a restraining Order restraining and enjoining the Defendant from bothering, harassing, intimidating, threatening, or engaging in any acts of violence against her, both pendente lite and permanently;
8. For the Court to follow the suggestion of the Plaintiff with regard to the martial home, properties and the Parties' personal possessions and automobiles;
9. For the Plaintiff to be awarded alimony, both pendente lite and permanently;
10. For a restraining Order restraining and enjoining the Defendant from disposing, encumbering, or liquidating the marital assets in any manner whatsoever, both pendente lite and permanently; and

<sup>2</sup> See Exhibit F – Plaintiff needs a “Qualifying Event” so that she can be able to remain on Defendant's employment based health coverage.

11. For such other and further relief as the Court may deem just and proper.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

*John G. Reckenbeil*

John G. Reckenbeil  
215 Magnolia Street (29306)  
P.O. Box 1633  
Spartanburg, SC 29304  
(864) 582-5472  
Fax (864) 582-7280  
[john@johnreckenbeillaw.com](mailto:john@johnreckenbeillaw.com)

ATTORNEY FOR PLAINTIFF

March 13, 2014  
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Cathy J. Swicegood

Plaintiff,

vs.

Polly A. Thompson

Defendant.

**APPENDIX PAGE 231**

IN THE FAMILY COURT

THIRTEENTH JUDICIAL CIRCUIT

FILED CLERK OF COURT  
GREENVILLE, SC

VERIFICATION 2014 MAR 13 A 11:50

FAMILY COURT

Docket No. **2014-DR-23-1184**

I, Cathy Swicegood, appearing first before the Notary Public, state that I am the (☒  
Plaintiff/☐Defendant) in this matter. I have read the attached (☒Complaint/☐Answer/☐  
Counterclaim) and know or believe the contents and allegations are true to the best of my  
knowledge, except for those matters stated which are alleged on information and belief.

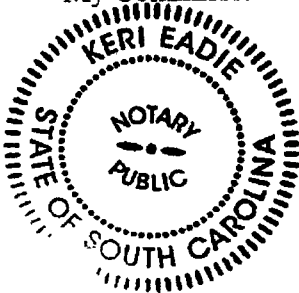
Sworn to before me this

13<sup>th</sup> day of March, 2014

Keri Eadie

Notary Public of South Carolina

My Commission expires: 8/28/22



Cathy J. Swicegood  
(☒Plaintiff/☐Defendant)

March 13, 2014

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

The Honorable Alan Wilson  
South Carolina Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

RE: Constitutional Challenge to a Statute of South Carolina  
Swicegood v. Thompson, Family Court 13<sup>th</sup> Judicial Circuit

Dear Attorney General Wilson:

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We are hereby serving notice to the Attorney General of the state of South Carolina that we will question the Constitutionality of South Carolina Code annotated 20-1-10 subsection B, subsection C, and South Carolina Code annotated 20-1-15. It is the intent of Ms. Swicegood to raise the Constitutionality on the ban on same-sex marriages. More specifically, Ms. Swicegood will pose the Constitutional question as to whether her South Carolina Constitutional rights to due process, equal protection, and privileges and immunities are violated by the above referenced statutes.

Respectfully submitted,

John G. Reckenbeil

John G. Reckenbeil  
Attorney for Cathy J. Swicegood, Plaintiff

JGR/kae

Enclosure

215 Magnolia St. • PO Box 1633 • Spartanburg, SC 29304  
Phone: (864) 582-5472 • Fax: (864) 582-7280  
Keri A. Eadie, Legal Assistant  
keri@johnreckenbeillaw.com

# PATRICIA CORNWELL

# RED WIST

A  
SCARPETTA  
NOVEL

THE OHIO LEGAL BLANK CO.  
PLAINTIFFS  
EXHIBIT  
A  
CLEVELAND OHIO



U.S.A. \$27.95 CANADA \$32.50

FROM THE WORLD'S NUMBER-ONE  
BESTSELLING CRIME WRITER COMES  
THE EXTRAORDINARY-NEW  
KAY SCARPETTA NOVEL

"When it comes to the forensic sciences,  
nobody can touch Cornwell."

As Patricia Cornwell's remarkable nineteenth novel featuring chief medical examiner Dr. Kay Scarpetta opens, Scarpetta is driving through Savannah's Lowcountry, on her way to the Georgia Prison for Women. She has agreed to meet with an inmate there, a convicted sex offender and the mother of a vicious and diabolically brilliant killer. Against the advice of her FBI criminal intelligence agent husband, Benton Wesley, Scarpetta is determined to hear this woman out and to continue on her quest to find out exactly what happened to her former deputy chief, Jack Fielding, murdered six months before.

The quest is personal, but also professional. As the director of the new Cambridge Forensic Center in Cambridge, Massachusetts, and with her connection to the Department of Defense, Scarpetta has urgent reasons to learn more about a string of grisly killings that she feels are somehow linked to Fielding's death. The murder of a Savannah family years earlier, a young woman on death row, and then other inexplicable deaths that begin to occur at a breathtaking pace—all of these are related, but who is behind them, and why? Driven by inner forces, Scarpetta discovers connections that compel her to conclude that what she thought ended with Fielding's death and an attempt on her own life, is only the beginning of something far more destruc-



Dec. 16, 2011

To: Cathy  
From: Polly

After all these years - (12 Christmases)  
I hope you are excited about this gift...  
+ I hope I "got it right"...

You've put so much into designing,  
planning + building "The Lake House"  
and it is more unique + beautiful -  
than I ever dreamed. Thank you -  
doesn't seem enough.

I would like to see you sitting on that  
peaceful, beautiful deck - facing that  
gorgeous view - and sitting, relaxed -  
Reading this book.

RED MIST

I Love  
you  
+  
"That Lil' Br  
Puppy"!

Polly

## Named Insured

AT1

003349 0045

O-27-1909-FA1F

H F

SWICEGOOD, CATHY &  
THOMPSON, POLLY  
505 W SHEFFIELD DR  
WESTMINSTER SC 29693

## APPENDIX PAGE 236

Expiration Date  
12 Months AUG 5 2013 AUG 5 2014  
The policy period begins and ends at 12:01 am  
standard time at the residence premises.

Loan # [REDACTED] 8279  
Mortgages

WELLS FARGO BANK NA #936  
ITS SUCCESSORS AND/OR ASSIGNS  
PO BOX 100515  
FLORENCE SC 29502-0515



0101-0004

## HOMEOWNERS POLICY

**Automatic Renewal** - If the policy period is shown as 12 months, this policy will be renewed automatically subject to the premiums, rules and forms in effect for each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.

Location of Residence Premises  
Same as Insured's Address

Your policy is amended FEB 21 2014  
INSURED NAME AND/OR ADDRESS CHANGE

COUNTY: OCONEE - - Zone: 58

## Coverages &amp; Property

## Limits of Liability

Inflation Coverage Index: 202.9

## Deductibles - Section I

## SECTION I

|                          |                       |
|--------------------------|-----------------------|
| A Dwelling               | \$ 155,400            |
| Dwelling Extension up to | \$ 15,540             |
| B Personal Property      | \$ 116,550            |
| C Loss of Use            | Actual Loss Sustained |

|            |          |
|------------|----------|
| All Losses | \$ 1,000 |
|------------|----------|

## SECTION II

|                                            |            |
|--------------------------------------------|------------|
| L Personal Liability (Each Occurrence)     | \$ 500,000 |
| Damage to Property of Others               | \$ 500     |
| M Medical Payments to Others (Each Person) | \$ 5,000   |

In case of loss under this policy, the deductibles will be applied per occurrence and will be deducted from the amount of the loss. Other deductibles may apply - refer to policy.

## Loss Settlement Provision (See Policy)

A1 Replacement Cost - Similar Construction  
B1 Limited Replacement Cost - Coverage B

## Endorsement Premium

NONE

## Forms, Options, &amp; Endorsements

|                               |           |
|-------------------------------|-----------|
| Homeowners Policy             | FP-7955   |
| Back-Up Dwell/Listed Property | FE-5706.4 |
| Homeowners Policy Endorsement | FE-3524   |
| Amendatory Endorsement        | FE-2340   |
| Jewelry and Furs \$1,500 Each | Option JF |
| Article/\$2,500 Aggregate     |           |
| Increase Dwig Up to \$ 31,080 | Option ID |
| Ordinance/Law 10%/\$ 15,540   | Option OL |

Discounts Applied  
Home/Auto  
Utility Rating Or  
Claim Record

Other limits and exclusions may apply - refer to your policy

Your policy consists of this page, any endorsements  
and the policy form. Please keep these together.

FP-7001.6C

9575 251 I

N

Prepared FEB 24 2014

MICHAEL OLIVER  
864-233-7779

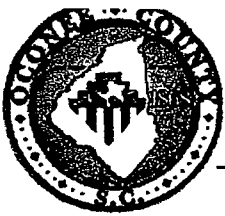
555-7020

555-7020 1 Rev 10-2002 (0110391c)



[illegible]

|                                     |  |                                                                              |  |                           |  |
|-------------------------------------|--|------------------------------------------------------------------------------|--|---------------------------|--|
| PROPERTY NUMBER: 053928-09-30       |  | PROPERTY LOCATION: 320 215 3                                                 |  | PROPERTY TAX: 68.90       |  |
| ADDRESS: 1405 RD 1015               |  |                                                                              |  |                           |  |
| DISTRICT: 000000                    |  | LAND APPRAISAL: 5,330.68                                                     |  | LAND ASSESSMENT: 320      |  |
| THEORETICAL APPRAISAL: 5,330.68     |  | LAND APPRAISAL: 5,330.68                                                     |  | LAND ASSESSMENT: 320      |  |
| LAND: PERSONAL ASSESSMENT: 5,330.68 |  | TOTAL APPRAISAL: 5,330.68                                                    |  | TOTAL ASSESSED VALUE: 320 |  |
| PROPERTY TAX: 68.90                 |  | COUNTY: 68.90                                                                |  | TOTAL: 68.90              |  |
| TAX EXEMPTION: 0.00                 |  |                                                                              |  |                           |  |
| TAXES ON LIABILITIES: 0.00          |  |                                                                              |  |                           |  |
| NET DUE: 68.90                      |  |                                                                              |  | PAY THIS AMOUNT: 68.90    |  |
| PAY THIS AMOUNT BY: 01/15/2010      |  |                                                                              |  |                           |  |
| DESCRIPTION OF THE PROPERTY         |  | THE INFORMATION BELOW IS A BREAKDOWN OF HOW YOUR TAX DOLLARS ARE DISTRIBUTED |  |                           |  |
| REAL ESTATE BOOK 1215 PAGE 144      |  | SCHOOL: 35.65                                                                |  |                           |  |
| LT 15 KENSTON SEC FOXWOOD HILL      |  | SCHOOL BOND: 2.92                                                            |  |                           |  |
| 0.00 @ 5.33068                      |  | COUNTY FEE: 22.02                                                            |  |                           |  |
|                                     |  | COUNTY BOND: 4.45                                                            |  |                           |  |
|                                     |  | TIN COUNTY FEE: 6.70                                                         |  |                           |  |
|                                     |  | TIN COUNTY BOND: 1.90                                                        |  |                           |  |
| NAME AND ADDRESS                    |  | FIRE DISTRICT                                                                |  |                           |  |
| THOMPSON, POLLY & GARY              |  | MUNICIPALITY                                                                 |  |                           |  |
| SUTHERLAND                          |  |                                                                              |  |                           |  |
| 14 WOOD HEDGES COURT                |  |                                                                              |  |                           |  |
| MAULDEN SC 29662                    |  |                                                                              |  |                           |  |



**Oconee County**  
Assessor's Office

415 S. Peachtree St., Suite 201  
Tel: (864) 638-4150 / Fax: (864) 638-4156  
Email: [assessor@oconeesc.com](mailto:assessor@oconeesc.com)

**APPENDIX PAGE 239**

February 7, 2013

Polly Thompson &  
Cathy J. Swicegood  
14 Woodhedge Ct.  
Mauldin, S.C. 29662

Re: Request for Merge of Property for 2013 Tax Year  
Tax Map Numbers: 316-02-01-001  
316-02-01-002

As requested, this office has reviewed your application for *REQUEST FOR MERGE OF PROPERTY* on the above referenced properties.

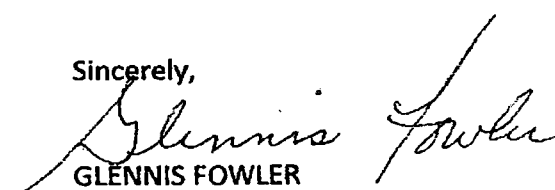
As of this date, it has been determined that parcels do not meet the requirements for merging properties for the 2013 tax year for the following reasons.

Properties must have identical ownership of record as of December 31, 2012 in order to merge for the 2013 tax year. However, tax map number 316-02-01-001 is in the ownership of Polly Thompson & Cathy J. Swicegood. Tax map number 316-02-01-002 is deeded as Polly Thompson & Cathy J. Swicegood w/joint Survivorship. All properties must be in the exact same name(s) to be merged.

For this reason, we are unable to merge these properties for the 2013 tax year.

Should you have any questions or need further assistance, please do not hesitate to contact this office @ (864) 638-4150.

Sincerely,

  
GLENNIS FOWLER  
CLERK

CC: FILE

Doc ID: 004107470003 Type: DEE

BK 1912 Pg 209-211

After Recording Mail to:  
Guest and Brady, LLC  
900 E. North Street, Suite 210  
Greenville, SC 29601

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS

2012 AUG 14 A 10:35

U01545

Bk  
10

Copy

State of South Carolina )

County of Oconee )

## TITLE TO REAL ESTATE

Know All Men By These Presents, that Gary Vanover and Betsy Vanover (hereinafter "Grantor(s)") in the State aforesaid, for and in consideration of Thirty Five Thousand Dollars and No Cents (\$35,000.00), to the Grantor(s) herein paid at and before the sealing of these presents by Grantee(s) in the State aforesaid, the receipt and sufficiency whereof is hereby acknowledged, have granted, bargained, sold and released, unto the said Polly Thompson and Cathy J. Swicegood (hereinafter "Grantee(s)") his/her/their/its heirs and assigns forever, all my right, title and interest in and to the following described property, to-wit:

SEE EXHIBIT A ATTACHED HERETO

TMS No: 318-02-01-001

Property Address: 507 W Sheffield Dr., Westminster, SC 29693

Grantee's Address: 14 Woodhedge Court, Mauldin, SC 29662

Together With all and singular the rights, members, hereditaments and appurtenances to said premises or in any wise incident or appertaining;

To Have And To Hold all and singular the premises mentioned unto the grantee(s), and grantee's(s) heirs or successors and assigns, forever.

And The Grantor(s), do(es) hereby bind the grantor(s) and the grantor's(s) heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s) heirs or successors and against every person whomsoever lawfully claiming the same or any part thereof.

## OCONEE COUNTY

STATE TAX 91.00COUNTY TAX 38.50EXEMPT           

Recorded this 15 day of Aug  
Book 5012 Page 171-203  
Fee

Kenneth E. Nix  
Auditor Oconee County, S.C.

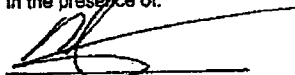
## FOR OFFICE USE ONLY

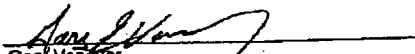
THIS PROPERTY DESIGNATED AS  
MAR 316 SUB 22 BLK 1 PARC 001  
ON OCONEE COUNTY TAX MAPS

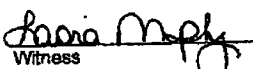
Heather Shugart  
OCONEE COUNTY ASSESSOR

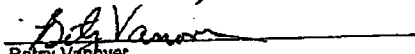
WITNESS the Grantor(s) hand(s) and seal(s) this 27th day of July, 2012.

SIGNED, sealed and delivered  
In the presence of:

  
Witness

  
Gary Vander

  
Witness

  
Betsy Vander

State of South Carolina

ACKNOWLEDGEMENT

County of Greenville

I, Laoria Murphy, a notary public for South Carolina, do hereby certify that the within named Grantor(s) did personally appear before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal  
this 27th day of July, 2012.

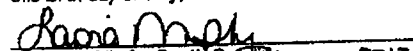
  
Notary Public for South Carolina  
My Commission Expires: September 27, 2012



EXHIBIT "A"  
LEGAL DESCRIPTION

File No. 2012-0314

All that piece or tract of land, situate, lying and being in the State of South Carolina, County of Oconee and Center Township, and being designated as Lot Number Fifty-Eight (58), Section M, on plat of Mountain Bay Estates made by Alvin Freeman, RLS License No. 2991, dated August, 1972, recorded in the Office of the Clerk of Court for Oconee County in Plat Book P-34, Page 164. Reference is hereby made to said plat for a more detailed metes and bounds description thereof.

THIS being the same property conveyed to Gary Vanover and Betsey Vanover by deed of Madge H. Robinson, Delinquent Tax Collector of Oconee County, dated September 18, 1989 and recorded September 25, 1989 in the ROD Office for Oconee County in Book 591, page 16.

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
2012 AUG 14 A 10:35

Doc ID: 003978580004 Type: DEE  
BK 1776 PG 262-265FILED FOR RECORD  
OCONEE COUNTY Register of Deeds  
Space also available for recording informationSTATE OF SOUTH CAROLINA )  
200 MAY 28 ) P 2:54 TITLE TO REAL ESTATE  
COUNTY OF OCONEE ) DEEDGrantee's address: 14 Woodhedge Ct.  
Mauldin, SC 29662

KNOW ALL MEN BY THESE PRESENTS THAT, JAY HUFNAGEL AND CHRISTINE HUFNAGEL A/K/A CHRISTINE FAYE HUFNAGEL, hereinafter, whether one or more, called Grantor, in the State aforesaid, in consideration of the sum of THIRTY EIGHT THOUSAND FIVE HUNDRED AND 00/100 (\$38,500.00) DOLLARS to Grantor in hand paid at and before the sealing of these presents by POLLY THOMPSON AND CATHY J. SWICEGOOD, as Joint Tenants, with rights of survivorship, and not as Tenants in Common, hereinafter, whether one or more, called Grantee, (the receipt whereof is hereby acknowledged), have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said Grantee, as Joint Tenants, with rights of survivorship, and not as Tenants in Common, their heirs and assigns, forever, in fee simple, the following described property, to wit:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Oconee, Center Township, being known and designated as Lot Number Fifty-Nine (59), Section M, of Foxwood Hills f/k/a Mountain Bay Estates, on a plat thereof prepared by Dean H. Teasley, RLS, dated October 5, 2000, of record in the Office of the Register of Deeds for Oconee County, South Carolina, in Plat Book 62 at Page 110, and having the metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto.

Recorded this 1 day of May 2006  
Book 1776 Page 262-265  
Fee  
Auditors Oconee County, S.C.

## DERIVATION:

The above described property was acquired by the Grantor herein by Deed of Jia-Ji Gu, said Deed dated November 30, 2005, and recorded January 23, 2006, in Deed Book 1475, at Page 85, re-recorded in Deed Book 1773 at Page 250, records of the Oconee County Register of Deeds Office.

TMS # 316-02-01-002

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions and restrictions, and zoning ordinances, or other land use regulations pertaining to the property herein conveyed, and in addition is subject to any of the foregoing which may appear from an inspection of the premises.

## FOR OFFICE USE ONLY

THIS PROPERTY DESIGNATED AS  
MAP 316 SUB 02 BLK 01 PARC 002  
ON OCONEE COUNTY TAX MAPS

OCONEE COUNTY ASSESSOR

## OCONEE COUNTY

STATE TAX 100.10

COUNTY TAX 42.35

EXEMPT

013697

10<sup>3</sup> Michael Burrell  
608 N McDuffie St  
Anderson, SC 29621

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

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the said Grantee, as Joint Tenants, with rights of survivorship, and not as Tenants in Common, and to said Grantee's Heirs, Successors, and Assigns, FOREVER, in fee simple.

AND Grantor does hereby bind Grantor and Grantor's Heirs, Successors, and Personal Representative to warrant and forever defend, all and singular, the said Premises unto the said Grantee, as Joint Tenants, and Grantee's Heirs, Successors, and Assigns against Grantor and Grantor's Heirs, Successors, Personal Representative, and Assigns, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS Grantors' Hands and Seals this the 18th day of May, in the year of our Lord 2010.

Michael B. Buell  
Deane R. Duval

Jay Hufnagel  
Jay Hufnagel  
Christine Hufnagel a/k/a Christine Faye Hufnagel by Jay Donald Hufnagel, her Attorney in Fact.  
Christine Hufnagel a/k/a Christine Faye Hufnagel by Jay Donald Hufnagel, her Attorney in Fact

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that Jay Hufnagel and Christine Hufnagel a/k/a Christine Faye Hufnagel, by Jay Donald Hufnagel, her Attorney in Fact, personally appeared before me this day and acknowledged the due execution of foregoing instrument.

SWORN to before me this  
18th day of May, 2010.

Michael B. Buell  
Notary Public for South Carolina  
My Commission Expires: 10-22-11

STATE OF SOUTH CAROLINA)  
COUNTY OF OCONEE )

## AFFIDAVIT

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
Page 156

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

2010 MAY 28 P 2:54

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Lot #59, Foxwood Hills  
bearing Oconee County Tax Map Number 316-02-01-002, was transferred  
by Jay Hufnagel and Christine Hufnagel a/k/a Christine Faye Hufnagel to  
Polly Thompson and Cathy J. Swicegood on May 18, 2010

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.  
(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.  
(c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$38,500.00  
(b) ☐ The fee is computed on the fair market value of the realty which is  
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, @ the amount of the outstanding balance of this lien or encumbrance is:

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$38,500.00  
(b) Place the amount listed in item 5 above here: 0  
(If no amount is listed, place zero here.)  
(c) Subtract Line 6(b) from Line 6(a) and place result here: \$38,500.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$142.45

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

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

Michael B. Burrell  
Responsible Person Connected with the Transaction

Michael B. Burrell  
Print or Type Name Here

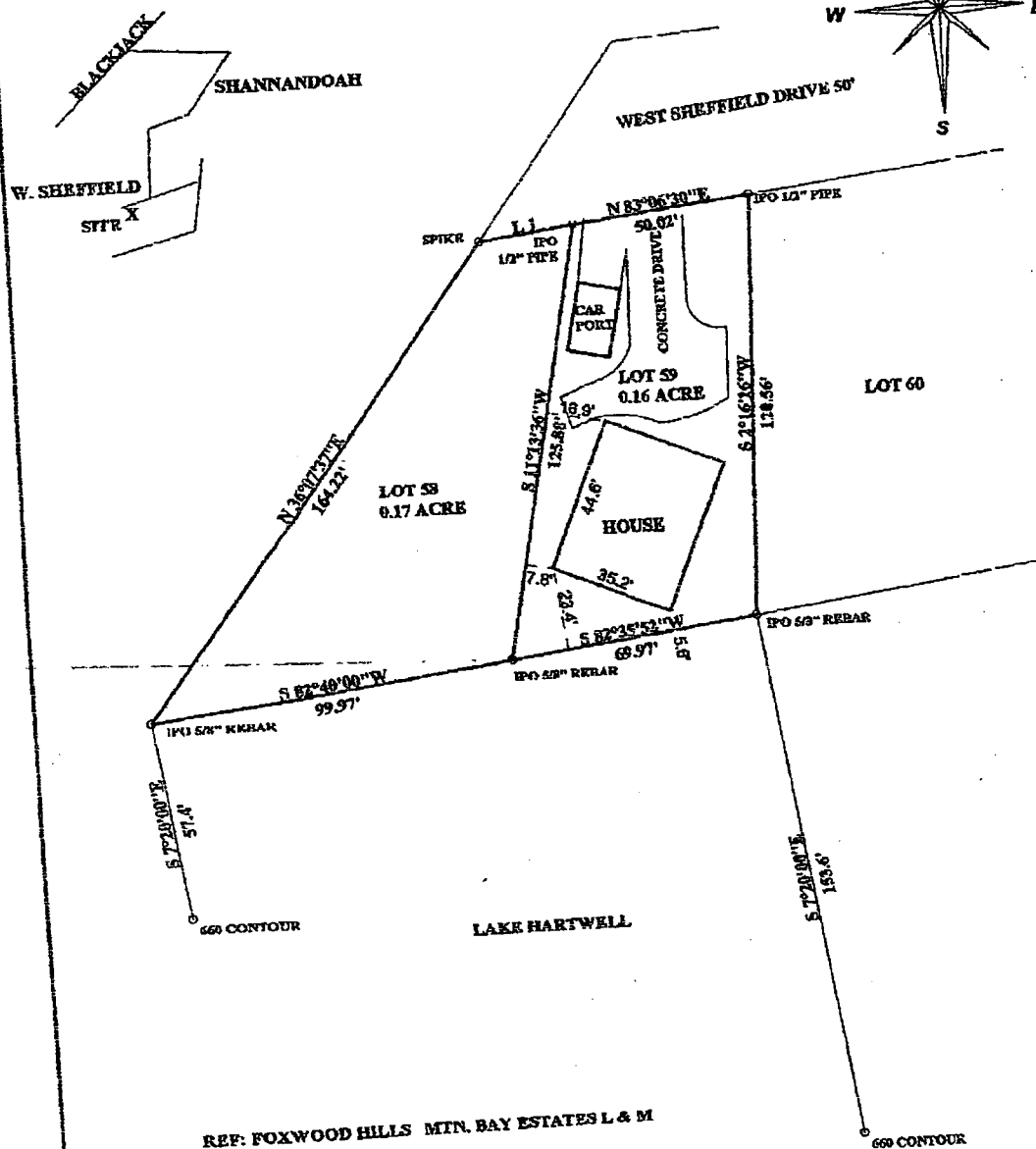
SWORN to before me this 18th  
day of May 2010  
James R. Burrell  
Notary Public for South Carolina  
My Commission Expires: 4/21/18

#### INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, a value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A family partnership is a partnership whose partners are all members of the same family. A family trust is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(e)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.



NOTES / REFERENCES  
 DEED BOOK NO. 1778-262, 1912-209  
 PLAT BOOK NO. P34-164  
 TAX MAP NO. 316-02-01-001, 002  
 BEARING BASIS P34-164

| Line | Bearing      | Distance |
|------|--------------|----------|
| 1    | N 82°22'22"E | 27.08'   |

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS C SURVEY AS SPECIFIED THEREIN, ALSO THERE ARE NO ENCROACHMENTS OTHER THAN SHOWN HEREON.

PROFESSIONAL LAND SURVEYOR NO. 6067

Graphic Scale



1" = 40'  
 THIS PROPERTY IS NOT PRONE TO FLOODING

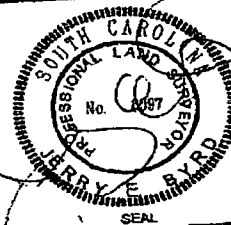
PLAT PREPARED FOR:  
**POLLY THOMPSON &  
 CATHY J. SWICEGOOD**  
 WAGENER TOWNSHIP, OCONEE COUNTY, SOUTH CAROLINA

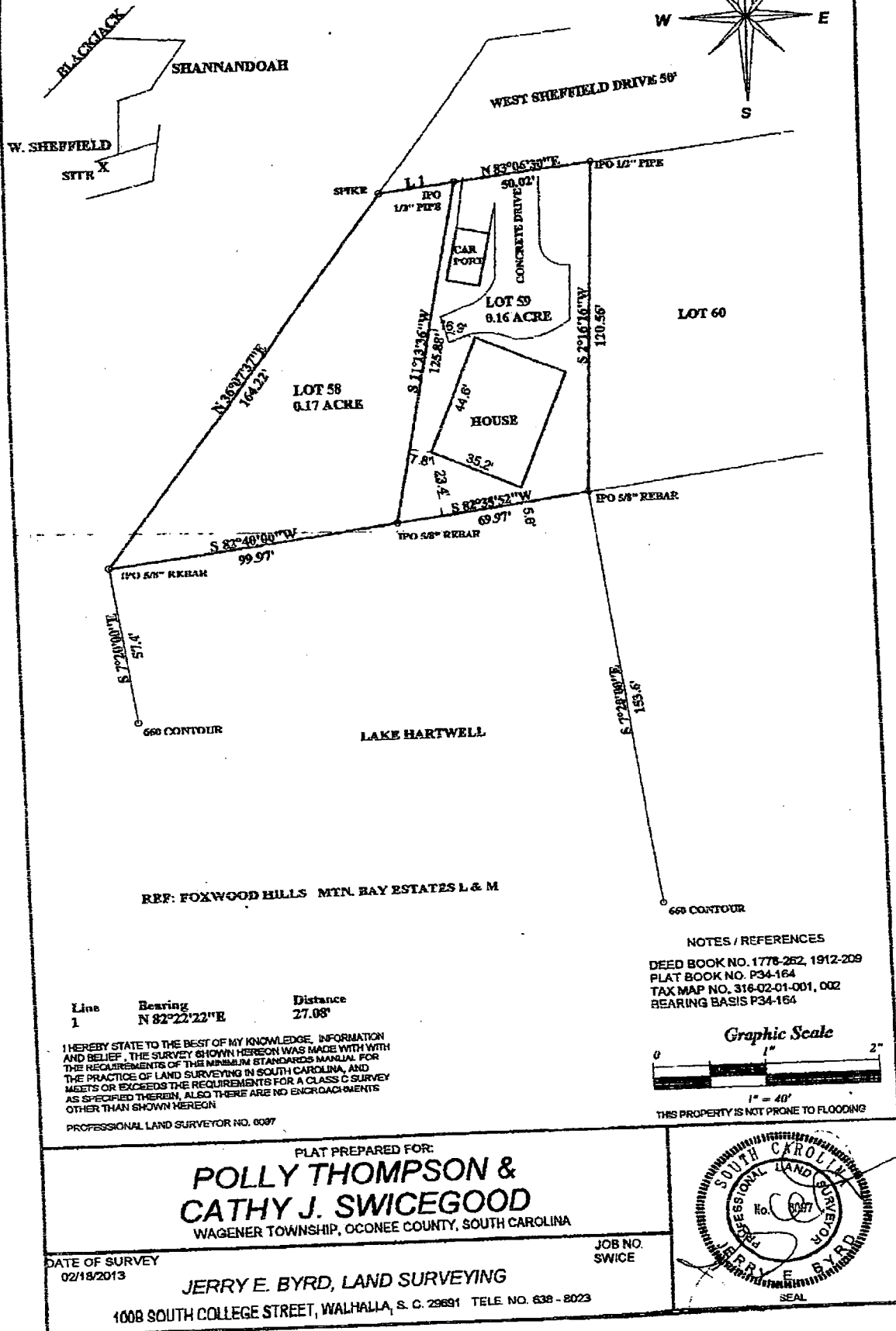
DATE OF SURVEY  
 02/18/2013

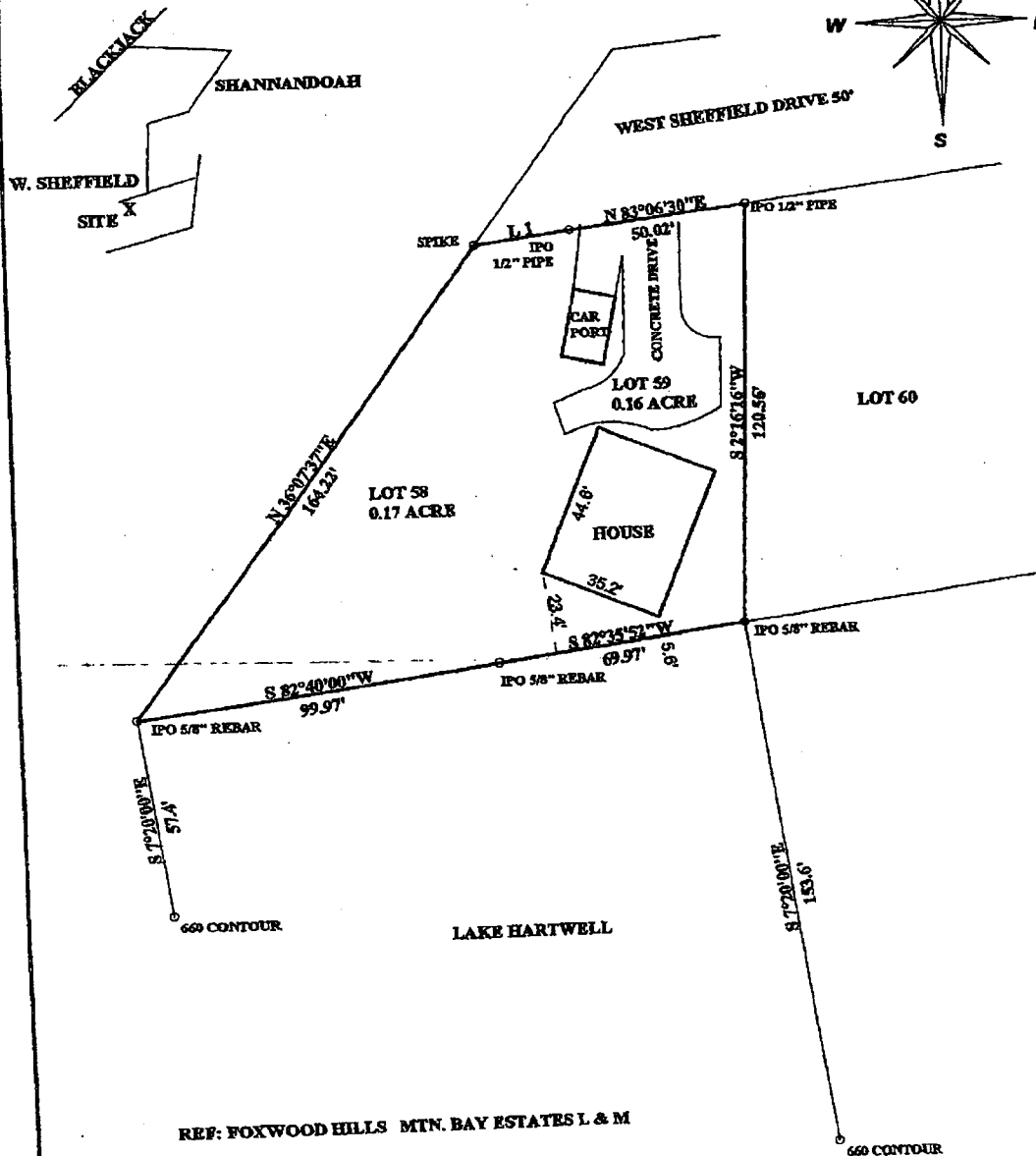
**JERRY E. BYRD, LAND SURVEYING**

1008 SOUTH COLLEGE STREET, WALHALLA, S.C. 29691 TELE. NO. 638 - 8023

JOB NO.  
 SWICE







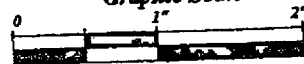
| Line | Bearing      | Distance |
|------|--------------|----------|
| 1    | N 82°22'22"E | 27.08'   |

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS C SURVEY AS SPECIFIED THEREIN, ALSO THERE ARE NO ENCROACHMENTS OTHER THAN SHOWN HEREON.

PROFESSIONAL LAND SURVEYOR NO. 8097

NOTES / REFERENCES  
DEED BOOK NO. 1778-282, 1812-209  
PLAT BOOK NO. P34-164  
TAX MAP NO. 318-02-01-001, 002  
BEARING BASIS P34-164

Graphic Scale



1" = 40'

THIS PROPERTY IS NOT PRONE TO FLOODING

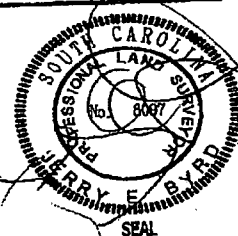
PLAT PREPARED FOR:  
**POLLY THOMPSON &  
CATHY J. SWICEGOOD**  
WAGENER TOWNSHIP, OCONEE COUNTY, SOUTH CAROLINA

DATE OF SURVEY  
02/18/2013

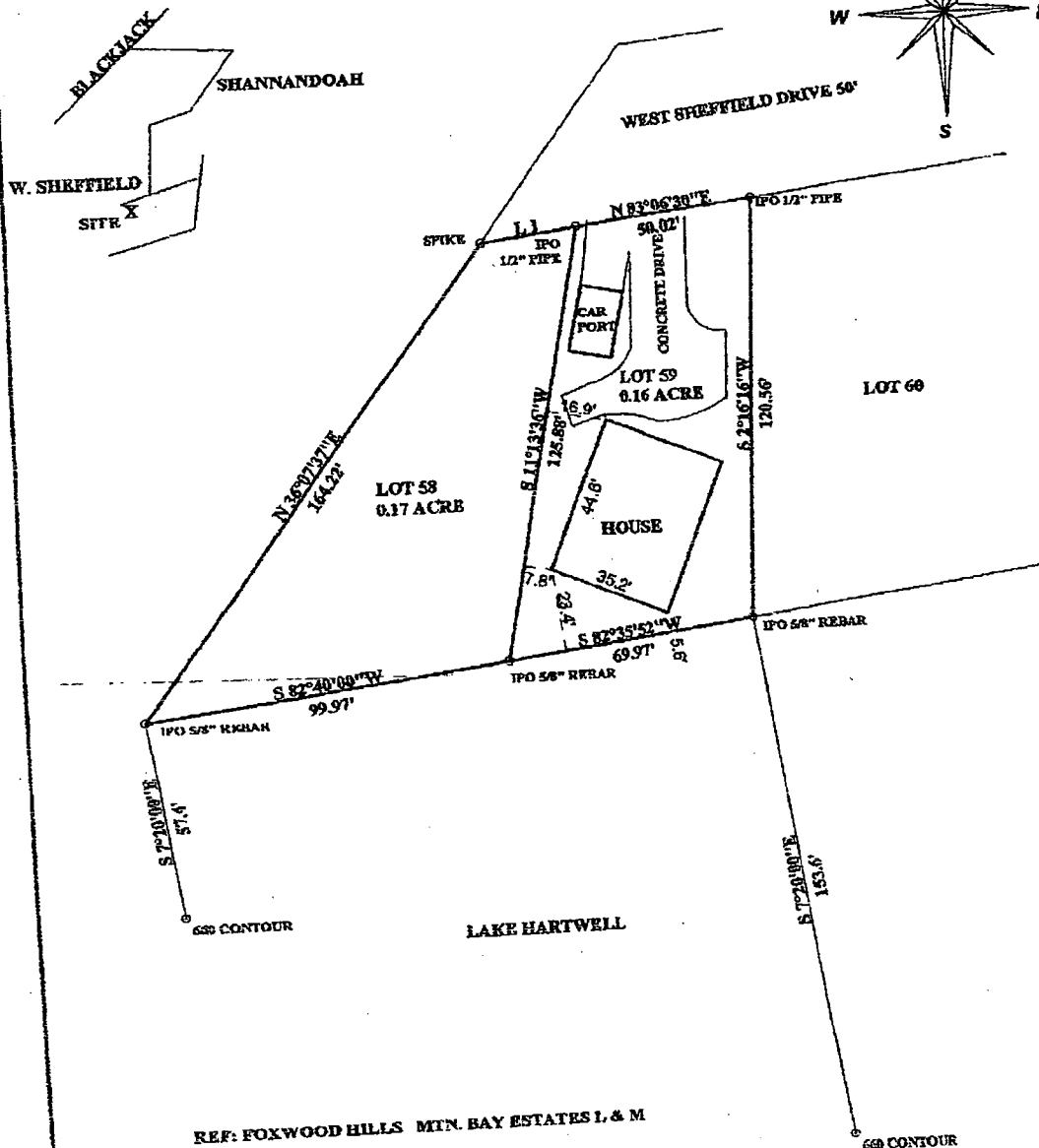
JOB NO.  
SWICE

**JERRY E. BYRD, LAND SURVEYING**

100B SOUTH COLLEGE STREET, WALHALLA, S. C. 29691 TELE. NO. 638 - 8023







| Line | Bearing       | Distance |
|------|---------------|----------|
| 1    | N 82°22'22" E | 27.08'   |

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS C SURVEY AS SPECIFIED THEREIN, ALSO THERE ARE NO ENCROACHMENTS OTHER THAN SHOWN HEREON.

PROFESSIONAL LAND SURVEYOR NO. 8097

NOTES / REFERENCES  
 DEED BOOK NO. 1778-262, 1912-209  
 PLAT BOOK NO. P34-164  
 TAX MAP NO. 316-02-01-001, 002  
 BEARING BASIS P34-164



THIS PROPERTY IS NOT PRONE TO FLOODING

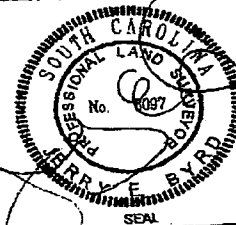
PLAT PREPARED FOR:  
**POLLY THOMPSON &  
 CATHY J. SWICEGOOD**  
 WAGENER TOWNSHIP, OCONEE COUNTY, SOUTH CAROLINA

DATE OF SURVEY  
 02/18/2013

**JERRY E. BYRD, LAND SURVEYING**

1008 SOUTH COLLEGE STREET, WALHALLA, S.C. 29691 TELE. NO. 638-8023

JOB NO.  
 SWICE



~~ROA PAGE 162~~

(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]:

|                                                |                                                         |                                                      |
|------------------------------------------------|---------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input checked="" type="checkbox"/> Condominium Rider   | <input type="checkbox"/> Second Home Rider           |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input checked="" type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider         | <input type="checkbox"/> Other(s) [specify]          |

(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

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS  
6A(SC) (0811)

Page 2 of 16

Form 364 1/01

Initials:

*[Handwritten initials]*

Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County [Type of Recording Jurisdiction] of **BEAUFORT** [Name of Recording Jurisdiction]:

**SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.**

Parcel ID Number: **R510 009 000 0775 0029**

which currently has the address of

**85 FOLLY FIELD ROAD #3203** [Street] **HILTON HEAD ISLAND** [City], South Carolina **29928** [Zip Code]  
("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, 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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

**BORROWER COVENANTS** that Borrower is lawfully seised 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

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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

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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

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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

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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

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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

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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 Homeowner's 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

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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

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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.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS  
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Initials:

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*200*

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.

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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

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6A(SC) (0811)

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Initials:

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*edd*

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 Section 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.

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Initials:

*[Handwritten signature]*  
*[Handwritten initials]*

BY SIGNING 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.

Signed, sealed and delivered in the presence of:

Budford Wilson

Polly A. Thompson (Seal)  
POLLY A. THOMPSON -Borrower

[Signature]

Cathy J. Swicegood (Seal)  
CATHY J SWICEGOOD -Borrower

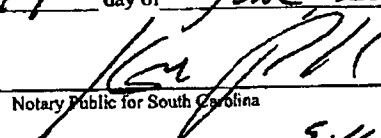
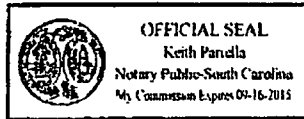
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STATE OF SOUTH CAROLINA, DEAFORT County ss:I, KEITH Pannella do hereby certify that  
POLLY A. THOMPSON and CATHY J SWICEGOOD,  
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.Witness my hand and official seal this 14<sup>th</sup> day of June 2013.  
Notary Public for South CarolinaMy Commission Expires: 9-16-15SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS  
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## CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 14th day of June, 2013, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to HOMEOWNERS MORTGAGE ENTERPRISES, INC. NMLS #154698 (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

**85 FOLLY FIELD ROAD #3203, HILTON HEAD ISLAND, SOUTH CAROLINA 29928**  
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

**ISLAND CLUB VILLAS**

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

**CONDOMINIUM COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. Condominium Obligations.** Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**MULTISTATE CONDOMINIUM RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT**  
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Initials:

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**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or

MULTISTATE CONDOMINIUM RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
8R (0810)

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eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

MULTISTATE CONDOMINIUM RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM  
INSTRUMENT  
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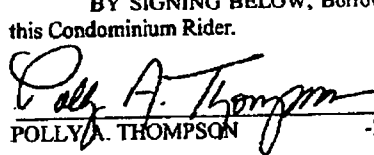
Form 3140 1/01

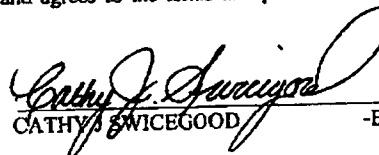
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

 (Seal)  
POLLY A. THOMPSON -Borrower

 (Seal)  
CATHY J. SWICEGOOD -Borrower

MULTISTATE CONDOMINIUM RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM  
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# **1-4 FAMILY RIDER** (Assignment of Rents)

THIS 1-4 FAMILY RIDER is made this 14th day of June, 2013, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to HOMEOWNERS MORTGAGE ENTERPRISES, INC. NMLS #154698 (the "Lender") of the same date and covering the Property described in the and located at:

**85 FOLLY FIELD ROAD #3203, HILTON HEAD ISLAND, SOUTH CAROLINA 29928**  
[Property Address]

**1-4 FAMILY COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT.** In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

**B. USE OF PROPERTY; COMPLIANCE WITH LAW.** Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

**C. SUBORDINATE LIENS.** Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

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Initials: *[Signature]*

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E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs.

MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
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Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

**I. CROSS-DEFAULT PROVISION.** Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
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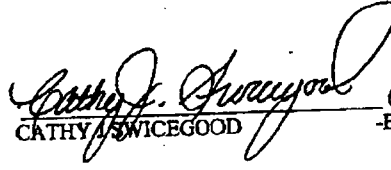
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this  
1-4 Family Rider.

 (Seal)  
POLLY A. THOMPSON -Borrower

 (Seal)  
CATHY J. SWICEGOOD -Borrower

MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
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## EXHIBIT "A"

All that certain condominium unit lying and being on Hilton Head Island, Beaufort County, South Carolina, and being known as UNIT NO. 1CS 203(S) of the ISLAND CLUB HORIZONTAL PROPERTY REGIME II, and being more fully described by reference to the Master Deed of Andrick Development Corporation, establishing said Horizontal Property Regime, said Deed being dated the 2nd day of September, 1977, and being recorded in the Beaufort County Records in Deed Book 254 at Page 1056.

ALSO, all the rights, privileges and common elements appertaining to the above described unit, as set forth in the By Laws of the Island Club Horizontal Property Regime II.

AND ALSO, a 1/196 interest in that certain 2.834 acre tract designated as "Tennis Facilities to be Constructed" on a plat thereof recorded in Plat Book 26 at Page 97 in the Beaufort County Records, which said property is conveyed subject to restrictions recorded in the Beaufort County Records in Deed Book 254 at Page 1053.

This being the same property conveyed to the within Mortgagors by that deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3248 at Page 2985.

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Sharon D. Burns  
BEAUFORT COUNTY AUDITOR

Prepared By:  
Robert L. Going, Esq.  
8 Lafayette Place, Suite 103  
Hilton Head, SC 29926  
The Going Law Firm  
File No.: 0809.01

BEAUFORT COUNTY SC - ROD  
BK 03248 PGS 2985-2987  
FILE NUM 2013034775  
06/18 2013 03:20:05 PM  
REC'D BY C WARREN RCPT# 714312  
RECORDING FEES 10.00  
County Tax 409.75  
State Tax 968.50  
Transfer Tax 931.25

ADD DMP Record 6/28/2013 10:57:55 AM  
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|------|-----|------|--------|-------|------|
| R510 | 009 | 000  | 0775   | 0029  | 00   |

(Please do not write above this line - Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that MONICA M. LANDINO, TRUSTEE OF THE MONICA M. LANDINO REVOCABLE TRUST DATED APRIL 16, 2001 (the "Grantor"), in the State aforesaid, for and in consideration of the sum of Three Hundred Seventy-Two Thousand Five Hundred and 00/100 Dollars (\$372,500.00), unto me paid by POLLY A. THOMPSON AND CATHY J. SWICEGOOD (the "Grantee(s)"), in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell, and release, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said Polly A. Thompson and Cathy J. Swicegood, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

All that certain condominium unit lying and being on Hilton Head Island, Beaufort County, South Carolina, and being known as UNIT NO. 1CS 203(S) of the ISLAND CLUB HORIZONTAL PROPERTY REGIME II, and being more fully described by reference to the Master Deed of Andrick Development Corporation, establishing said Horizontal Property Regime, said Deed being dated the 2<sup>nd</sup> day of September, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 254 at Page 1056.

ALSO, all the rights, privileges and common elements appertaining to the above described unit, as set forth in the By-Laws of the Island Club Horizontal Property Regime II.

AND ALSO, a 1/196 interest in that certain 2.834 acre tract designated as "Tennis Facilities to be constructed" on a plat thereof recorded in Plat Book 26 at Page 97 in the Office of the Register of Deeds for Beaufort County, South Carolina.

**BEACH PROTECTION ACT DISCLOSURE**

The property which is the subject of this Deed is located, in whole or in part, seaward of the Setback Line as established by the South Carolina Coastal Council and S.C. Code Sections 48-39-

270 through 360, as amended effective June 25, 1990 ("Beach Protection Act" or "the Act"). As required by Section 48-39-3360 of the Act, the following information concerning the location and circumstances of the Property is hereby disclosed:

The proximity and location of the Setback Line, the Base Line and the Velocity Zone applicable to the Property area as shown on that certain plat of survey of Island Club Regimes I, II & III, dated November, 1988, prepared by T-Square Group, Inc., South Carolina Registered Land Surveyor No. 4922, bearing job number 88-288 CCL, which plat depicts the disclosure information required by the Act, a copy of said plat having been given to the Grantee, which is acknowledged by Grantee's acceptance of this deed. The seaward corners of habitable structures upon the property, if any and the most recently published annual erosion rate made available by the South Carolina Coastal Council are also depicted upon such plat. Reference must be made to the Act itself regarding the significance of these lines and disclosures, as well as the potential for movement and relocation of the lines in the future.

SUBJECT to those certain Protective Covenants and Restrictions recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 254 at Page 1053.

THIS being the same property conveyed to Monica M. Landino, Trustee of The Monica M. Landino Revocable Trust, dated April 16, 2001, by Deed of Monica M. Landino dated \_\_\_\_\_ and recorded on 6-19-13 in the Office of the Register of Deeds for Beaufort County in Book 3248 at Page 2982.

Tax Map #: R510 009 000 0775 0029

Property Address: 85 Folly Field #3203, Hilton Head Island, SC 29928

Grantee(s) Address: 14 Woodhedge Court, Mauldin, SC 29662

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Polly A. Thompson and Cathy J. Swicegood, as joint tenants with right of survivorship and not as tenancy in common, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND Grantor does hereby bind herself and her heirs and assigns, to warrant and forever defend all and singular the said premises unto the said Polly A. Thompson and Cathy J. Swicegood, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, against the Grantor's heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF my Hand and Seal this 13 day of June, 2013.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Monica M. Landino  
1st Witness

Monica M. Landino {L.S.}  
Monica M. Landino, Trustee of the Monica M.  
Landino Revocable Trust Dated April 16, 2001

Amanda R. Ptasik  
2nd Witness/Notary Public

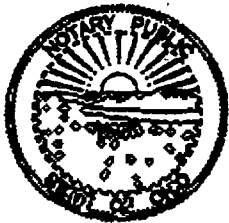
STATE OF Ohio )  
COUNTY OF Cuyahoga )

**ACKNOWLEDGMENT**  
under S.C. Code § 30-5-30(c)

I, the undersigned notary public, do hereby certify that the within Monica M. Landino, Trustee of the Monica M. Landino Revocable Trust dated April 16, 2001, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness to before me this  
13 day of June, 2013.

Amanda R. Ptasik  
Notary Public for Ohio  
My Commission Expires: Nov. 21st, 2015



AMANDA R PTASIK  
Notary Public, State of Ohio  
My Commission Expires  
November 21, 2015

(SEAL)

File # 0809.01

900-10-01-00 15110 0 C 001 14 50 002  
 POLLY THOMPSON  
 CATHY J SWICEGOOD  
 14 WOODHEDGE CT  
 MAULDIN SC 29662-2637

## Your account statement

For 05/23/2013

Contact us



BBT.com



(800) BANK-BBT or  
 (800) 226-5228

Pay your bills online. It's fast, easy and secure.

Are you uncomfortable sharing your bank information with multiple billers? Peace of mind is just a few clicks away. With BB&T OnLine® Bill Payment, you can efficiently pay all your bills from one secure site, and you'll enjoy these other benefits too:

- You're protected from unauthorized transactions
- Your payments will arrive on time
- You can receive email or text alerts on account activity

Go to BBT.com/billpayment to get started.

ELITE GOLD-MM [REDACTED] 2501

### Account summary

|                                               |              |
|-----------------------------------------------|--------------|
| Our previous balance as of 04/23/2013         | \$55,789.02  |
| Checks                                        | - 53,095.88  |
| Other withdrawals, debits and service charges | - 6,248.79   |
| Deposits, credits and interest                | + 10,880.00  |
| Our new balance as of 05/23/2013              | = \$7,324.35 |

### Interest summary

|                                      |        |
|--------------------------------------|--------|
| Interest paid this statement period  | \$0.30 |
| 2013 interest paid year-to-date      | \$0.84 |
| Interest rate                        | 0.01%  |
| Annual percentage yield (APY) earned | 0.01%  |

### Checks

| DATE  | CHECK # | AMOUNT(\$) | DATE  | CHECK # | AMOUNT(\$) |
|-------|---------|------------|-------|---------|------------|
| 05/03 | 3165    | 382.04     | 05/06 | 3170    | 13,000.00  |
| 05/06 | 3166    | 726.51     | 05/06 | 3171    | 450.00     |
| 05/01 | *3168   | 620.33     | 05/07 | 3172    | 85.00      |
| 05/03 | 3169    | 337.00     | 05/07 | 3173    | 80.00      |

\* indicates a skip in sequential check numbers above this item

| DATE  | CHECK # | AMOUNT(\$) |
|-------|---------|------------|
| 05/08 | 3174    | 125.00     |
| 05/14 | 3175    | 37,000.00  |
| 05/06 | *986025 | 290.00     |

Total checks = \$53,095.88

### Other withdrawals, debits and service charges

| DATE  | DESCRIPTION                                                          | AMOUNT(\$) |
|-------|----------------------------------------------------------------------|------------|
| 04/24 | BB&T ONLINE BILL PAYMENT ONLINE PMT VERIZON CKF143130378POS          | 49.6       |
| 04/24 | BB&T 24 CASH WITHDRAWAL 04-24-13 7658 GREENVILLE/SC-MAULDIN SC       | 420.00     |
| 04/25 | BB&T ONLINE BILL PAYMENT ONLINE PMT AT&T CKF143130378POS             | 56.72      |
| 04/26 | BB&T ONLINE BILL PAYMENT ONLINE PMT AMERICAN EXPRESS CKF143130378POS | 500.0      |
| 04/29 | BB&T ONLINE BILL PAYMENT ONLINE PMT GREENVILLE WATER CKF143130378POS | 6.2        |
| 04/29 | BB&T ONLINE BILL PAYMENT ONLINE PMT GREENVILLE WATER CKF143130378POS | 44.28      |
| 04/29 | BB&T ONLINE BILL PAYMENT ONLINE PMT MACYS CKF143130378POS            | 63.24      |
| 04/29 | BB&T ONLINE BILL PAYMENT ONLINE PMT BELK CKF143130378POS             | 71.1       |
| 04/29 | BB&T ONLINE BILL PAYMENT ONLINE PMT WELLS FARGO MTG CKF143130378POS  | 831.1      |



continued

990-10-01-00 15110 0 C 001 14 50 002  
POLLY THOMPSON  
CATHY J SWICEGOOD  
14 WOODHEDGE CT  
MAULDIN SC 29662-2637

2012

# Your account statement For 01/24/2013

Contact us



BBT.com



(800) BANK-BBT or  
(800) 226-5228

Do you know someone receiving one of the following benefits?

- Social Security • Railroad Retirement Board • Office of Personnel Management
- Veterans Affairs • Supplemental Security Income • Department of Labor (Black Lung)

The U.S. Treasury requires anyone receiving federal benefits listed above switch from paper checks to electronic payments by March 1, 2013. If you know someone that is currently receiving any of the above mentioned benefits and is in need of an account and direct deposit setup, please send them to BB&T. We will gladly assist.

Switch today in three simple steps.

Items needed:

- Social Security number or claim number
- Amount of most recent federal benefit check
- BB&T account routing transit number\*
- Account number\* and type of account

This information is on the personal checks

1. Make the switch today:

- Ask about direct deposit at your local BB&T financial center
- Call GoDirect at 800-333-1795
- Go online at [www.GoDirect.org](http://www.GoDirect.org)

2. Direct deposit will be sent to the respective BB&T checking account on payment day.

ELITE GOLD-MM [redacted] 2501

## Account summary

|                                               |              |
|-----------------------------------------------|--------------|
| Our previous balance as of 12/20/2012         | \$7,241.78   |
| Checks                                        | - 2,284.49   |
| Other withdrawals, debits and service charges | - 7,724.15   |
| Deposits, credits and interest                | + 5,847.57   |
| Our new balance as of 01/24/2013              | = \$3,080.71 |

## Interest summary

|                                      |        |
|--------------------------------------|--------|
| Interest paid this statement period  | \$0.05 |
| 2012 interest paid year-to-date      | \$4.35 |
| Interest rate                        | 0.01%  |
| Annual percentage yield (APY) earned | 0.01%  |

## Checks

| DATE | CHECK # | AMOUNT(\$) |
|------|---------|------------|
| 1/24 | 3143    | 30.00      |
|      | 3144    | 16.00      |
| 2/24 | *3152   | 228.49     |

Indicates a skip in sequential check numbers above this item

| DATE  | CHECK # | AMOUNT(\$) |
|-------|---------|------------|
| 12/21 | 3153    | 500.00     |
| 01/11 | *3155   | 220.00     |

| DATE  | CHECK # | AMOUNT(\$) |
|-------|---------|------------|
| 01/10 | 3156    | 1,000.00   |
| 01/09 | *985951 | 290.00     |

Total checks = \$2,284.49



PO 14411  
Des Moines, IA 50306-3411

# APPENDIX PAGE 281

Loan number 8279  
605 W. SHEFFIELD DR.  
WESTMINSTER SC 29693

#505 W. SHEFFIELD DR.  
WESTMINSTER, S.C. 29693

LAKE



1AT 00320/016320/000320 0049 1 ACQWFP 936

POLLY THOMPSON  
14 WOODHEDGE CT  
MAULDIN, SC 29662-2637

Customer Service Online  
wellsfargo.com  
Fax 1-866-278-1179  
Telephone 1-800-222-0238

Correspondence  
PO Box 10335  
Des Moines, IA 50306

Hours of operation  
Mon - Fri 6 a.m. - 10 p.m.  
Sat 8 a.m. - 2 p.m. CT

Payments  
PO Box 660278  
Dallas TX 75266

Purchase or refinance  
1-866-867-3026

We accept telecommunications relay service calls.

## Important messages

Conduct a home energy audit  
The average household spends about \$1,900 per year on energy costs. A home energy audit can help you identify ways to reduce those costs. Learn how by reading the Department of Energy instructions on how to conduct a do-it-yourself home energy audit. Visit [energysavers.gov/your\\_home/energy\\_audit](http://energysavers.gov/your_home/energy_audit) to learn more.

## Summary

|                                             |          |                            |              |
|---------------------------------------------|----------|----------------------------|--------------|
| Payment (principal and/or interest, escrow) | \$800.68 | Unpaid principal balance   | \$147,325.97 |
| Total payment due 12/01/13                  | \$800.68 | Interest rate              | 3.875%       |
|                                             |          | Interest paid year-to-date | \$4,804.19   |
|                                             |          | Escrow balance             | \$490.48     |

## Activity since your last statement

| Date  | Description       | Total    | Principal | Interest | Escrow  | Other |
|-------|-------------------|----------|-----------|----------|---------|-------|
| 10/29 | Payment           | \$800.68 | \$235.81  | \$476.60 | \$88.27 |       |
|       | Principal payment | \$30.73  | \$30.73   |          |         |       |

13A13 H-016320/000320 ACQWFP ST E T-M1 C003



Please detach and return with your payment.

Loan number 8279  
Current monthly payment due \$800.68  
Total payment due 12/01/13 \$800.68  
After 12/16/13 a late charge may apply \$35.62

Monthly payment \$

Additional principal \$

Late charges \$

Other charges \$

Additional escrow \$

Check here and see reverse for address correction.

POLLY THOMPSON

00320/016320/000320 0049 1 ACQWFP 936



WELLS FARGO HOME MORTGAGE  
PO BOX 660278  
DALLAS TX 75266-0278



Total amount enclosed \$  
(Please do not send cash)



CUSTOMER NAME: THOMPSON, POLLY A  
ACCOUNT NUMBER: 1-19101

DESTINATION: ESTATES  
BRANCH #: 27608 DATE: 02/18/2013

**EDWARD JONES TRANSFER ON DEATH BENEFICIARY ACKNOWLEDGEMENT FORM**

The undersigned Holder(s) acknowledge(s) and confirm(s) the following:

1. I/We have been furnished with and given the opportunity to review, and retained a copy of the Edward Jones Transfer on Death Agreement, (the "Agreement").
2. I/We have designated beneficiaries on the attached Edward Jones Beneficiary Designation Form ("Beneficiary Form")
3. The Beneficiary(ies) indicated on the attached Beneficiary Form are eligible to receive assets under the terms of the Agreement.
4. I/We have reviewed the Beneficiary Form for accuracy, confirmed it is attached hereto and incorporate it by reference.
5. **THE EDWARD JONES TRANSFER ON DEATH AGREEMENT CONTAINS BINDING ARBITRATION PROVISIONS THAT MAY BE ENFORCED BY THE PARTIES IN SECTION 4 ON PAGE 7, PARAGRAPH 3 TITLED "ARBITRATION DISCLOSURE," OF THE AGREEMENT.**

(Please retain this copy for your records)  
Signature of Account Holder

POLLY A THOMPSON  
Account Holder's Name

Date

**BENEFICIARY DESIGNATION FORM IS ATTACHED**



Page 1 of 2  
(Rev. Aug 2011)

CUSTOMER NAME: THOMPSON, POLLY

ACCOUNT NUMBER: 19101

BRANCH #: 27608

DATE: 02/18/2013

## EDWARD JONES BENEFICIARY DESIGNATION FORM

An authorized representative for the Account Holder (such as a guardian, conservator, or attorney-in-fact), may not have authority to designate, change or revoke the beneficiaries of this Account without a court order, or documentation specifically granting the authority to do so. If it is determined that said authorized representative did not have the authority to designate, change or revoke the beneficiaries of this Account, then said designation, change or revocation shall be invalid.

## PRIMARY BENEFICIARY DESIGNATIONS:

A 100.00%

Name: CATHY J SWICEGOOD  
Relationship: Domestic Partner  
Tax ID/SSN: On file  
Address: 14 WOODHEDGE COURT  
MAULDIN, SC 29662-2637

DOB:   
Phone: 864-458-7123

## CONTINGENT BENEFICIARY DESIGNATIONS:

No Contingent Beneficiary will be entitled to a distribution unless the Corresponding  
Primary Beneficiary predeceases the Account Holder or disclaims.

A Equal%

Name: JONATHAN EVANS  
Tax ID/SSN: On file

DOB: 

A Equal%

Name: JUSTEN EVANS  
Tax ID/SSN: On file

DOB: 

END OF BENEFICIARY DESIGNATION

00013521 02 AV 0.357 02 TR 00057 EJADD041 010100

POLLY A THOMPSON  
14 WOODHEDGE CT  
MAULDIN SC 29662-2637

## Portfolio Summary

| Total Portfolio Value |              |
|-----------------------|--------------|
| <b>\$115,022.17</b>   |              |
| 1 Month Ago           | \$108,179.28 |
| 1 Year Ago            | \$0.00       |
| 3 Years Ago           | \$0.00       |

## Your Financial Future is Important

With the end of the year in sight, there are several tax-advantaged opportunities you may want to consider soon, such as contributing to an IRA or a 529 college savings plan for a loved one and reviewing your investments to determine if you should claim any gains or losses. Although your Edward Jones financial advisor isn't a tax or legal professional, he or she can discuss a list of items that you may want to consider before 2013 draws to a close. Call him or her today.

## Stay Connected Anytime, Anywhere

Online Account Access enables you to keep in touch with your accounts and investments when the time is right for you. With account access, you can review your current account balance and recent activity from anywhere via smartphone, tablet or computer. You can also access the latest market news and research from Edward Jones analysts, transfer funds and pay bills online, protect your financial information with enhanced security features, and send messages to your financial advisor. Call for details.

## Overview of Accounts

| Accounts                                                       | Account Holder   | Account Number | Value 1 Year Ago | Current Value       |
|----------------------------------------------------------------|------------------|----------------|------------------|---------------------|
| Single Account                                                 | Polly A Thompson | 101-1-5        | \$0.00           | \$13,574.58         |
| Individual Retirement Account<br>Advisory Solutions Fund Model | Polly A Thompson | 396-1-1        | \$0.00           | \$101,447.59        |
| <b>Total Accounts</b>                                          |                  |                | <b>\$0.00</b>    | <b>\$115,022.17</b> |

Although account information is provided on this page, it does not guarantee an actual statement was produced. Refer to your account statement for the exact registration and more specific details regarding each account.

## Overview of Other Products and Services

| Loans and Credit                                    | Account Number | Balance | Approved Credit | Available Credit | Interest Rate |
|-----------------------------------------------------|----------------|---------|-----------------|------------------|---------------|
| Amount of money you can borrow for Polly A Thompson | 101-1-5        | \$0.00  | \$6,700*        | \$6,700          | 6.00%         |

\* Your approved credit is not a commitment to loan funds. It is based on the value of your investment account which could change daily. The amount you may be eligible to borrow may differ from your approved credit. Borrowing against securities has its risks and is not appropriate for everyone. If the value of your collateral declines, you may be required to deposit cash or additional securities, or the securities in your account may be sold to meet the margin call. The interest rate will vary depending on the amount you borrowed and will begin to accrue from the date of the loan and be charged to the account. A minimum account value is required if you have loan features on your account. Call your financial advisor today.

Important disclosures, such as Statement of Financial Condition, Conditions that Govern Your Account, Account Safety, Errors, Complaints, Withholding, Free Credit Balance, Fair Market Value or Terminology, relating to your account(s) are available on the last page of this package or at [www.edwardjones.com/statementdisclosures](http://www.edwardjones.com/statementdisclosures).

# AMERICAN FUNDS®

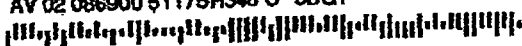
From Capital Group

PO Box 2560  
Norfolk VA 23501-2560

## APPENDIX PAGE 285

Primary account number 30232

AV 02 086900 51175H348 C\*\*5DGT



CB&T CUST IRA/ROLLOVER  
POLLY ANN THOMPSON  
14 WOODHEDGE CT  
MAULDIN SC 29662-2637

### Annual custodial fee due

A \$10 annual fee will be deducted in December from traditional, Roth, SEP and SIMPLE IRAs, 403(b), 457, Coverdell ESA and 529 accounts. A \$10 fee per fund will be deducted for money-purchase and profit-sharing plans. If you prefer to pay by check, we must receive it by Nov. 29.

**Continued improvements to your statement**  
In addition to a refreshed look, we have added new, valuable content to your statement based upon input from investors like you and financial advisors. Learn more from the enclosed insert, "How to Read Your Quarterly Statement."

### Portfolio value of all accounts \$167,011.19

|                              | Since initial investment on<br>12/17/2004 | Year-to-date since<br>1/1/2013 |
|------------------------------|-------------------------------------------|--------------------------------|
| Beginning value              | \$92,511.64                               | \$140,023.25                   |
| + Additions                  | \$817.43                                  | \$0.00                         |
| - Withdrawals and fees       | -\$90.00                                  | \$0.00                         |
| +/- Investment gain/decline  | \$73,772.12                               | \$26,987.94                    |
| Ending value as of 9/30/2013 | \$167,011.19                              | \$167,011.19                   |

Questions about your statement? For a description of what's included in the above numbers, go to [americanfunds.com/statement](http://americanfunds.com/statement).

### Portfolio allocation

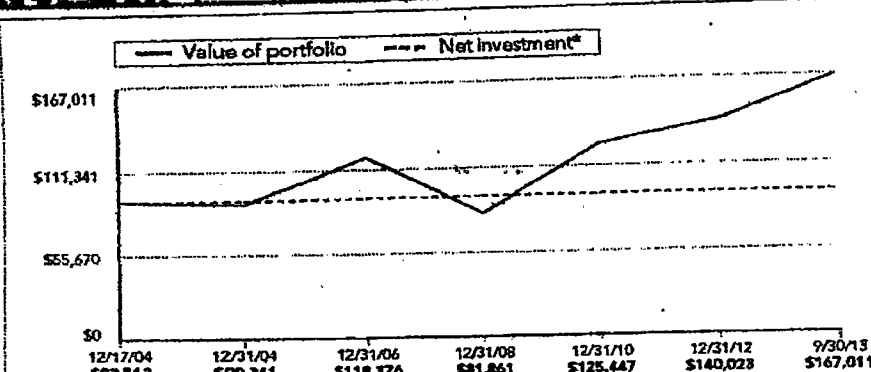


|                                                       |         |
|-------------------------------------------------------|---------|
| <input checked="" type="checkbox"/> Growth            | 74.06%  |
| <input checked="" type="checkbox"/> Growth-and-income | 25.94%  |
|                                                       | 100.00% |

### Portfolio rate of return

|                                                   |        |
|---------------------------------------------------|--------|
| Annualized since initial investment on 12/17/2004 | 6.85%  |
| Year-to-date since 1/1/2013                       | 19.27% |

### Portfolio value history



\* Net investment is the total amount you invested minus the total amount you withdrew (including any dividends and capital gains paid to you in cash).

### How to contact us

Through your financial advisor  
Scott Bethel  
(864) 282-3655  
BB&T INVESTMENT SERVICES, INC.  
200 S COLLEGE ST  
CHARLOTTE NC 28202-2012

[americanfunds.com](http://americanfunds.com)

**FundsLine® 24-hour automated service**  
(800) 325-3590

**Shareholder Services Representative**  
(800) 421-4225 (M-F 8 a.m. to 8 p.m. Eastern time)

#### Mail

Capital Bank and Trust Company  
PO Box 2560  
Norfolk VA 23501-2560

#### Overnight courier

Capital Bank and Trust Company  
5300 Robin Hood Rd  
Norfolk, VA 23513-2430

Questions about your statement  
[americanfunds.com/statement](http://americanfunds.com/statement)

**Thompson, Polly**

From: Reed, Megan <mreed@nfp.com>  
 Sent: Wednesday, December 11, 2013 9:24 AM  
 To: Thompson, Polly  
 Subject: RE: Insurance Questions

Hi Polly,

I understand the confidentiality of this email and have answered the question below each question. If you have any follow up questions or need additional information, please let me know.

1. I know we only have open enrollment once a year Jan. 1 – unless there is a qualifying event. Can you provide me with the insurance company's definition of Qualifying event please? Qualifying Event is a marriage, divorce, birth of a child or change in spouse's employment/insurance eligibility. If you elect to cover your partner as of January 1, 2014 – you would have to produce a legal document showing that the relationship has dissolved in order for a mid-year change to be made for her to be removed from the plan after January 1<sup>st</sup>.
2. What is the definition of who I can have/carry on my insurance. For example: Domestic partner – what is the insurance company's definition of that. Spouse, Domestic Partner and child. I pulled the definition of domestic partner from the Blue Choice Contract and it is listed below:

**Domestic Partner - a Dependent of the Subscriber who:**

1. Is unmarried, at least 18 years of age, mentally competent, resides with the Subscriber and intends to reside with the Subscriber for an indefinite amount of time; and;
2. Is not related to the Subscriber by adoption or blood; and;
3. Is the sole Domestic Partner of the Subscriber, with whom he/she has a close committed and personal relationship, and has been a member of this domestic partnership for the last 12 months; and;
4. Agrees to be jointly responsible for the basic living expenses and welfare of the Subscriber; and;
5. Is financially interdependent. Financial interdependence is demonstrated by submission of three or more of the following documents:

- A. a joint mortgage or lease; or;
- B. a designation of one of the partners as beneficiary in the other partner's Will or life insurance policy; or;
- C. a durable property and health care powers of attorney; or;
- D. a joint title to an automobile; or;
- E. a joint bank account or credit account; or;
- F. such other proof as is sufficient to establish economic interdependency under the circumstances of the particular case.

Thank you,

Megan

Megan Reed  
 Account Manager  
 NFP Corporate Benefits, Inc.  
 864-271-6430 ext 206  
 864-271-6444 (fax)



# APPENDIX PAGE 287

South Carolina CVS Pharmacy, L.L.C. # 04693

Page 1 of 1

## PATIENT PRESCRIPTION RECORD

Date: 03/05/2014 Time: 11:01:56 AM

08/01/2013 THRU 03/05/2014

PHARMACY NAME: 04693 # 04693  
ADDRESS: 1504 BLUE RIDGE BLVD  
CITY, ST, ZIP: SENECA, SC, 29672

PATIENT KEY: 6215210440  
PATIENT NAME: SWICEGOOD, CATHY J  
ADDRESS: 505 WEST SHEPHERD  
CITY, ST, ZIP: WESTMINSTER, SC, 29693

TELEPHONE: (864) 979-0048  
BIRTHDATE:    
GENDER: F  
RELATIONSHIP: Not Specified

| STORE NO # | RX NUMBER | RFL | NDC NUMBER  | DRUG DESCRIPTION               | PRESCRIBER NAME | DATE FILLED | QUANT DISP | PATIENT PD AMT |
|------------|-----------|-----|-------------|--------------------------------|-----------------|-------------|------------|----------------|
| 04172      | 1212277   | 003 | 31722023790 | AMLODIPINE BESYLATE 2.5 MG TAB | TERUEL, JUAN    | 08/08/2013  | 30.00      | 41.89          |
| 04172      | 1212277   | 004 | 31722023790 | AMLODIPINE BESYLATE 2.5 MG TAB | TERUEL, JUAN    | 09/10/2013  | 30.00      | 1.15           |
| 04172      | 1212277   | 005 | 31722023790 | AMLODIPINE BESYLATE 2.5 MG TAB | TERUEL, JUAN    | 10/09/2013  | 30.00      | 3.52           |
| 04172      | 1253627   | 000 | 31722023790 | AMLODIPINE BESYLATE 2.5 MG TAB | TERUEL, JUAN    | 11/08/2013  | 30.00      | 3.52           |
| 04172      | 1253627   | 001 | 31722023790 | AMLODIPINE BESYLATE 2.5 MG TAB | TERUEL, JUAN    | 12/08/2013  | 30.00      | 3.52           |
| 04172      | 1253627   | 002 | 31722023790 | AMLODIPINE BESYLATE 2.5 MG TAB | TERUEL, JUAN    | 01/04/2014  | 30.00      | 3.65           |
| 04693      | 0323444   | 000 | 31722023790 | AMLODIPINE BESYLATE 2.5 MG TAB | TERUEL, JUAN    | 02/08/2014  | 30.00      | 3.65           |
| 04172      | 1254137   | 000 | 00093083301 | CLONAZEPAM 1 MG TABLET         | BENSON, KATHRYN | 11/12/2013  | 30.00      | 2.50           |
| 04172      | 1254137   | 001 | 00093083301 | CLONAZEPAM 1 MG TABLET         | BENSON, KATHRYN | 12/17/2013  | 30.00      | 2.50           |
| 04693      | 0322171   | 000 | 00093083301 | CLONAZEPAM 1 MG TABLET         | HOOD, JASON     | 01/31/2014  | 30.00      | 2.58           |
| 04172      | 1244301   | 000 | 00310075430 | CRESTOR 40 MG TABLET           | HOOD, JASON     | 09/26/2013  | 30.00      | 18.00          |
| 04172      | 1244301   | 001 | 00310075430 | CRESTOR 40 MG TABLET           | HOOD, JASON     | 10/23/2013  | 30.00      | 35.00          |
| 04172      | 1244301   | 002 | 00310075430 | CRESTOR 40 MG TABLET           | HOOD, JASON     | 12/17/2013  | 30.00      | 18.00          |
| 04172      | 1198449   | 006 | 00555088602 | ESTRADIOL 1 MG TABLET          | HOOD, JASON     | 08/29/2013  | 30.00      | 13.49          |
| 04172      | 1233032   | 001 | 62559015001 | ESTROGEN-METHYLTESTOS H.S. TAB | HOOD, JASON     | 08/30/2013  | 30.00      | 38.79          |
| 04172      | 1244302   | 000 | 62559015001 | ESTROGEN-METHYLTESTOS H.S. TAB | HOOD, JASON     | 10/01/2013  | 30.00      | 15.00          |
| 04172      | 1244302   | 001 | 62559015001 | ESTROGEN-METHYLTESTOS H.S. TAB | HOOD, JASON     | 11/01/2013  | 30.00      | 15.00          |
| 04172      | 1244302   | 002 | 62559015001 | ESTROGEN-METHYLTESTOS H.S. TAB | HOOD, JASON     | 11/30/2013  | 30.00      | 15.00          |
| 04172      | 1244302   | 003 | 62559015001 | ESTROGEN-METHYLTESTOS H.S. TAB | HOOD, JASON     | 12/29/2013  | 30.00      | 15.00          |
| 04693      | 0322169   | 000 | 62559015001 | ESTROGEN-METHYLTESTOS H.S. TAB | HOOD, JASON     | 01/31/2014  | 30.00      | 15.00          |
| 04693      | 0322169   | 001 | 62559015001 | ESTROGEN-METHYLTESTOS H.S. TAB | HOOD, JASON     | 02/28/2014  | 30.00      | 55.59          |
| 04172      | 1254123   | 000 | 50111064801 | FLUOXETINE HCL 20 MG CAPSULE   | BENSON, KATHRYN | 11/12/2013  | 30.00      | 3.89           |
| 04172      | 1254123   | 001 | 50111064801 | FLUOXETINE HCL 20 MG CAPSULE   | BENSON, KATHRYN | 12/08/2013  | 30.00      | 3.89           |
| 04172      | 1254123   | 002 | 50111064801 | FLUOXETINE HCL 20 MG CAPSULE   | BENSON, KATHRYN | 01/08/2014  | 30.00      | 1.90           |
| 04693      | 0322170   | 000 | 50111064801 | FLUOXETINE HCL 20 MG CAPSULE   | HOOD, JASON     | 01/31/2014  | 30.00      | 1.90           |
| 04172      | 1244299   | 000 | 00046110281 | PREMARIN 0.625 MG TABLET       | HOOD, JASON     | 09/26/2013  | 30.00      | 17.68          |
| 04172      | 1244299   | 001 | 00046110281 | PREMARIN 0.625 MG TABLET       | HOOD, JASON     | 10/23/2013  | 30.00      | 35.00          |
| 04172      | 1244299   | 002 | 00046110281 | PREMARIN 0.625 MG TABLET       | HOOD, JASON     | 11/27/2013  | 30.00      | 35.00          |
| 04172      | 1244299   | 003 | 00046110281 | PREMARIN 0.625 MG TABLET       | HOOD, JASON     | 12/27/2013  | 30.00      | 35.00          |
| 04693      | 0322172   | 000 | 00046110281 | PREMARIN 0.625 MG TABLET       | HOOD, JASON     | 01/31/2014  | 30.00      | 35.00          |
| 04693      | 0322172   | 001 | 00046110281 | PREMARIN 0.625 MG TABLET       | HOOD, JASON     | 02/28/2014  | 30.00      | 118.99         |

TOTAL # OF PRESCRIPTIONS: 31 TOTAL PATIENT PAID AMOUNT: 610.40

For customers who require additional information please contact the CVS privacy office at 800-287-2414.

Private and Confidential Intended for Addressee Only

POLLY THOMPSON

ZCL35619164

Plan PPO  
Plan Code 388.04  
RxBIN 004336  
PCN/GRP CHC

Health Benefits



**CVS/pharmacy**

1504 BLUE RIDGE BLVD, SENECA, SC  
PHARMACY 888-4022 STORE: -

REG#20 TRN#6636 CSHR#1021258 STR#4693

Helped by: NICHOLE

F I RX #: \*\*\*\*1690010 55 59N  
F I RX #: \*\*\*\*1720010 118.99N

2 ITEMS  
TOTAL 174.58  
VISA 174.58  
\*\*\*\*\*4104 MS  
CHANGE .00



2504 6934 0596 6362 06  
RETURNS WITH RECEIPT THRU 01/29/2014

FEBRUARY 28, 2014 3.03 PM

F=FLEXIBLE SPENDING ACCT SUMMARY (FSA)  
Prescription Eligible Total 174.58

\*\*\*\*\*  
FSA summary above includes items  
(and tax) that may be eligible for plan  
reimbursement. Restrictions may apply.  
\*\*\*\*\*

GET YOUR CVS EXTRACARE CARD

THANK YOU SHOP 24 HOURS A

**SW**  
02/28/2014

PROMISED: 02:56p  
RdyFillElig 02-28-2014  
# Scripts: 02

CVS/pharmacy #4693 Ph: 864.888-4022 CUSTOMER RECEIPT

1504 BLUE RIDGE BLVD  
SENECA, SC  
29872



SWICEGOOD, CATHY J  
505 WEST SHEPHERD, WESTMINSTER, SC 29693  
Ph: 864.979-0048 DOB: 01-54  
ESTROGEN-METHYLTESTOS H.S. TAB  
AND PHARMACEUTICAL  
TAKE 1 TABLET BY MOUTH EVERY DAY

Date: 02/28/2014 DAW: 0  
Rx: C 0322169 01

PRICE: \$55.59

NDC: 62559-0150-01 Days Supply: 30 Refills: 4 Qty: 30 EA  
Prschr: JASON ALEXANDER HOOD  
TP: 1

PAY: \$55.59

Caps: N

Thank you for using a cost-saving generic

**SW**  
02/28/2014

PROMISED: 02:56p  
02-28-2014  
# Scripts: 02

CVS/pharmacy #4693 Ph: 864.888-4022 CUSTOMER RECEIPT

1504 BLUE RIDGE BLVD  
SENECA, SC  
29872



SWICEGOOD, CATHY J  
505 WEST SHEPHERD, WESTMINSTER, SC 29693  
Ph: 864.979-0048 DOB: 01-54  
PREMARIN 0.625 MG TABLET  
WITH PEARL  
TAKE 1 TABLET BY MOUTH EVERY DAY

Date: 02/28/2014 DAW: 0  
Rx: 0322172 01

PRICE: \$118.99

NDC: 00045-1102-01 Days Supply: 30 Refills: 10 Qty: 30 EA  
Prschr: JASON ALEXANDER HOOD  
TP: 1

PAY: \$118.99

Caps: N

03/06/2014

Receipt File 03-06-2014  
# Scripts: 01

APPENDIX PAGE 289

VS/pharmacy #4693 Ph: 864.888.4022

CUSTOMER RECEIPT

504 BLUE RIDGE BLVD  
ENDEA, SC  
29527



27 0323444 001 001 00 0004189

Date: 03/06/2014 DAW: 0  
Rx: 0323444 01

SWICEGOOD, CATHY J  
AMLODIPINE BESYLATE 2.5 MG TAB  
CUMBER PHARMACY  
TAKE 1 TABLET BY MOUTH EVERY DAY

OC:31722-0237-80 Days Supply: 30 Refills: 1 Qty:30 EA  
rscrbr: JUAN JOSE TERUEL  
-1

Thank you for using a cost-saving generic

LOVE YOUR COLON  
GET TESTED

Fill in the blank to find out if you have a healthy colon.  
Colonoscopy is the best way to find out if you have a healthy colon.  
Could you have a healthy colon?



Sign up now  
for text alerts!

Find out the instant your  
prescription is ready

Quick, Easy, Convenient. No need to be a member  
of the pharmacy team you'd like to sign up.

Standard text message and data rates may apply.

SWICEGOOD, CATHY J  
505 WEST SHREVE  
WESTMINSTER, SC 29893

DOB: 01-12



SWICEGOOD, CATHY J  
505 WEST SHREVE  
WESTMINSTER, SC 29893  
Rx# 0323444 01  
SWICEGOOD, CATHY J  
AMLODIPINE BESYLATE 2.5 MG TAB

Rx# 0323444 01 Tp: 1  
Date: 03/06/2014  
1/fragrant a Bonosafety Cap

ROA PAGE 200



# APPENDIX PAGE 290

corporation

Health Plan (80840) 911-87726-04

Member ID: 908482615

Group Number: 714788

Member:  
POLLY THOMPSON

JARDEN CORPORATION  
PLATINUM PLAN

Dependents  
CATHY J SWICEGOOD

Payer ID 87726

OPTUMRx  
Rx Bin: 610279  
Rx PCN: 9999  
Rx Grp: UHEALTH

0501

UnitedHealthcare Choice Plus-HRA  
Administered by United HealthCare Services, Inc.



ADVANTAGE  
PLUS

POLLY THOMPSON

ZCL35619164

Plan PPO  
Plan Code 38004  
RxBIN 00A336  
PCN/GRP CHC

Health Benefits

Rx PPO

## APPENDIX PAGE 201

This card does not guarantee coverage. To verify benefits, view claims, or a provider, visit the websites or call.  
For Members: [www.myuhc.com](http://www.myuhc.com) 866-314-97

For Providers: [www.unitedhealthcareonline.com](http://www.unitedhealthcareonline.com) 877-842-32  
Medical Claims: PO Box 740800, Atlanta GA 30374-0800

shared savings

MultiPlan

Pharmacy Claims: OptumRx PO Box 29044 Hot Springs, AR 71903  
For Pharmacists: 888-290-5416



Members, see your benefits booklet for covered services. Possession of this card does not guarantee eligibility for services. Residents file claims with the local Blue Cross and/or Blue Shield Plan where member received services.

[www.BlueChoiceSC.com](http://www.BlueChoiceSC.com)  
Customer Service: 800-868-2528  
In Columbia: 803-796-6476  
Out of Area: 800-610-2583  
Mental Health: 800-868-1032  
Pharmacist Line: 800-384-6331

**BlueChoice HealthPlan**  
P.O. Box 6170  
Columbia, SC 29260-6170  
BlueChoice HealthPlan is an independent licensee of the Blue Cross and Blue Shield Association.

0000

CAREMARK

Pharmacy benefits manager

UnitedHealthcare

UnitedHealthcare - HIPAA CERT  
P.O. Box 30431  
Salt Lake City, UT 84130-0431

338CECDSA1003001-08750-01  
December 2, 2013

*This  
Copy provided  
to Cathy  
12-16-2013*

|            |                    |
|------------|--------------------|
| Member:    | Polly Thompson     |
| Member ID: | XXXXX2615          |
| Group:     | JARDEN CORPORATION |
| Group #:   | 0714788            |
| Letter ID: | COCC101            |

POLLY THOMPSON  
14 WOODHEDGE CT  
MAULDIN SC 29662

Dear Polly Thompson,

We have enclosed a Certificate of Creditable Coverage (COCC). This shows the date coverage ended for you and/or your dependent(s). If your coverage lasted less than 18 months, we also show when coverage began. We automatically send out a COCC when a member's health insurance coverage ends.

It's important that you have your COCC when you change to a group health plan. You may need to show it to your new employer or plan administrator when you enroll in a new group plan.

Please keep this certificate for your records.

**Coverage information**

This certificate verifies that the people listed below were covered by a health benefit plan provided or administered by UnitedHealthcare or one of its affiliated companies.

Group: JARDEN CORPORATION Welfare Benefit Plan  
Group #: 0714788  
Employee Name: POLLY THOMPSON  
Employee ID: XXXXX2615

| Member First Name | Member Last Name | Date of birth                                                                       | Waiting period begin date | Coverage period begin date | Coverage period end date |
|-------------------|------------------|-------------------------------------------------------------------------------------|---------------------------|----------------------------|--------------------------|
| POLLY             | THOMPSON         |  | 08202012                  | 11182012                   | 09302013                 |
| CATHY             | SWICEGOOD        |  | 08202012                  | 11182012                   | 09302013                 |

UnitedHealthcare, and other companies offering health benefit plans, are required to provide you a certificate of coverage according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

If you have questions about this letter, please call Customer Care at 1-866-527-9597 or the toll-free number on your member ID card.

Sincerely,  
UnitedHealthcare

Enclosures: Understanding Your HIPAA Portability Rights

## JARDEN FULL-TIME BENEFITS CONFIRMATION OF 2012 ELECTIONS - New Hire

Thompson, Polly  
14 Woodhedge Ct.  
Mauldin, SC 29662

Employee ID: 312548  
Date of Birth:   
Event ID: 1  
Paygroup: NNY

Benefit Pgm: JFT  
Service Date: 08/20/2012  
Event Class: HIR

This statement confirms your recent elections. These coverages will remain in effect until you experience a change in family status or next open enrollment. If an error has been made in your elections, please make the necessary corrections on this form, sign it, and return it to Human Resources by 09/13/2012.

### YOUR BENEFIT CHOICES

|                          | Effdt      | Benefit Option  | Coverage Category/Base | Pay Period PreTax Deduction | Pay Period AfterTax Deduction |
|--------------------------|------------|-----------------|------------------------|-----------------------------|-------------------------------|
| Medical                  | 11/18/2012 | (15) Plat Med   | 12 EE+DP               | \$ 57.69                    | \$ 58.15                      |
| Dental                   | 11/18/2012 | (15) Dental - F | 12 EE+DP               | \$ 13.38                    | \$ 14.77                      |
| Tobacco-Free Credit      | 11/18/2012 | (15) Tobac-Free | 12 EE+DP               |                             | \$ -9.23                      |
| Health Assessment Credit | 11/18/2012 | (15) Hlth Asmnt | 12 EE+DP               |                             | \$ -9.23                      |
| Basic Life & AD&D        | 10/01/2012 | (01) Basic Life | \$ 250,000             |                             |                               |
| Supplemental Life        | 11/18/2012 | (99) Waive      |                        |                             |                               |
| Supplemental AD&D        | 11/18/2012 | (99) Waive      |                        |                             |                               |
| Spouse Life              | 11/18/2012 | (99) Waive      |                        |                             |                               |
| Dependent Life           | 11/18/2012 | (99) Waive      |                        |                             |                               |
| Short-Term Disability    | 10/01/2012 | (31) STD        |                        |                             |                               |
| Non-Contributory LTD     | 10/01/2012 | (11) LTD        | \$ 10,417              |                             |                               |
| FSA - Health Care        | 11/18/2012 | (99) Waive      |                        |                             |                               |
| FSA - Dependent Care     | 11/18/2012 | (99) Waive      |                        |                             |                               |
| Health Savings Account   | 11/18/2012 | (99) Waive      |                        |                             |                               |

Total Pay Period Deduction From Pay \$ 71.07 \$ 54.46

Please contact Farmington Administrative Services at 1-866-251-9528 to enroll in (or make changes to) the Universal Life, Cancer Assistance, Long Term Care, Critical Illness or Accidental Indemnity plans. Please contact MetLife at 1-800-438-6388 to enroll in (or make changes to) Auto, Homeowners (if applicable) and Hyatt legal plans.

### YOUR APPROVAL OF CHANGES

Please make the above corrections (if any) to my 2012 Benefit Elections.

Signature:

*Polly Thompson*

Date:

9/6/2012

Thompson, Polly

Page 1

Print date:

09/06/2012

## JARDEN FULL-TIME BENEFITS CONFIRMATION OF 2012 ELECTIONS - New Hire

### DEPENDENTS/BENEFICIARIES

#### Medical/Dental

Dependent Name/  
Social Security/  
Address

Medical

Dental

#### Dependent Information

Relatn Sex F/T Stndt? Disab? Birthdate

01 Cathy Swicegood

Yes

Yes

DPAdult

F

N

N

Same address as Employee

#### Life Insurance

#### Beneficiary Information

#### Basic Life/AD&D/Business Travel Accident

Beneficiary Name/  
Social Security/  
Address

Relationship Birthdate

Excess

Flat Amount % of Benefit

Contingent

01 Cathy Swicegood

DPAdult

0

100

Same address as Employee

02 Jonathan Evans

Oth Relat

0

50

607 Concord Ave.

Anderson

SC 29621

03 Justen Evans

Oth Relat

0

50

18924 Hwy. 76 West

Honea Path

SC 29654

*Polly Thompson* 9-6-2012  
Thompson, Polly

Page 2

Print date:

09/06/2012

# Chamberlain Law Firm

Margaret A. Chamberlain  
Attorney at Law

December 16, 2013

by facsimile transmission to (864) 232-5888 and by U.S. Mail

Mr. Bradley Bennett  
Salvini and Bennett, LLC  
101 West Park Avenue  
Greenville, South Carolina 29601

**RECEIVED**  
BY: 12.16.13  
DATE: Jmm

RE: *Cathy Swicegood*

Dear Mr. Bennett:

Please arrange for your client, Cathy Swicegood, to vacate the home located at 14 Woodhedge Court in the very near future. Having our clients living under the same roof is adding needless stress and complicating matters. The lake house is in both parties' names, and your client can easily live there.

I appreciate your attention to this matter before you leave for the Christmas holiday.

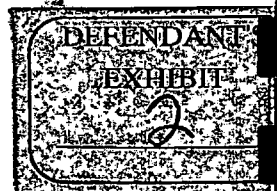
Sincerely yours,

*Margaret A. Chamberlain*

Margaret A. Chamberlain

MAC/mhm

600 Pettigru Street • Post Office Box 10184 • Greenville, South Carolina 29603  
Telephone (864) 250-0505 • Facsimile (864) 271-8097



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Polly Thompson, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Cathy Swicegood and )  
 Wells Fargo, )  
 )  
 Respondents )

IN THE COURT OF COMMON PLEAS  
 THE TENTH JUDICIAL CIRCUIT

2014- CP-37- 00143

LIS PENDENS

2014 LP-37-00033

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2014 MAR 11 A 11:05

NOTICE IS HEREBY GIVEN that an action has been or will be commenced by the  
 Petitioner in the above captioned matter to Partition the below described real properties:

1. ALL THAT CERTAIN, piece, parcel, or tract of land situated, lying and being in Oconee County, SC, and shown and designated as Lot 58 Section 'M' of Foxwood Hills subdivision (previously known as Mountain Bay Estates) in Plat Book number 34 Page 164 in the Office of Clerk of Court for Oconee County, SC. for more detailed description as to the courses and metes and bounds reference is made said plat of record.
2. ALL THAT CERTAIN, piece, parcel, or tract of land situated, lying and being in the State of South Carolina, County of Oconee, Center of Township, being known and designated as Lot Number Fifty-Nine (59), Section 'M' of Foxwood Hills subdivision f/k/a as Mountain Bay Estates, on a plat thereof prepared by Dean H. Teasley, RLS, dated October 5, 2000, of record in the Office of Clerk of Court for Oconee County, South Carolina, in Plat Book number 60 at Page 110, and having the metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto.
3. All certain condominium unit lying and being on Hilton Head Island, Beaufort County, South Carolina, and being known as Unit No. 1CS 203(S) of the Island Club Horizontal Property Regime II, and being more fully described by reference to the Master Deed of Andrick Development Corporation, establishing said Horizontal Property Regime, said Deed being dated the 2<sup>nd</sup> day of September, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 254 at Page 1056.

Also, all the rights, privileges and common elements appertaining to the above described unit, as set forth in the By-Laws of the Island Club Horizontal Property Regime II.

END  
 2  
 COME

AND ALSO, a 1/196 interest in that certain 2.834 acre tract designated as "Tennis Facilities to be constructed" on a plat thereof recorded in Plat Book 26 at Page 97 in the Office of the Register of Deeds for Beaufort County, South Carolina.

*Margaret A. Chamberlain*

Margaret A. Chamberlain (SC Bar # 0015226)

Melissa H. Moore (SC Bar # 101315)

CHAMBERLAIN LAW FIRM, LLC

600 Pettigru Street

Greenville, South Carolina 29601

Telephone (864) 250-0505

Facsimile (864) 271-8097

ATTORNEYS FOR PETITIONER

Greenville, South Carolina

March 10, 2014



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Polly Thompson, )  
 )  
 Petitioner, )  
 )  
 v. / )  
 )  
 Cathy Swicegood and )  
 Wells Fargo, )  
 )  
 Respondents. )

IN THE COURT OF COMMON PLEAS  
 THE TENTH JUDICIAL CIRCUIT

2014- CP-37- 00143

SUMMONS

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2014 MAR 11 A 11:05

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the *Petition* in the above entitled action, a copy of which is herewith served upon you (and which has been filed in the Office of the Clerk of Court) and to serve a copy of your *Answer* upon the attorney for Petitioner, by mailing a copy to 600 Pettigru Street, Greenville, South Carolina 29601, within thirty (30) days after the date of such service, exclusive of the day of service, and if you fail to answer the *Petition* within that time, judgment by default will be rendered against you for the relief demanded in the *Petition*.

Margaret A. Chamberlain  
 Margaret A. Chamberlain (SC Bar # 0015226)  
 Melissa H. Moore (SC Bar # 101315)  
 CHAMBERLAIN LAW FIRM, LLC  
 600 Pettigru Street  
 Greenville, South Carolina 29601  
 Telephone (864) 250-0505  
 Facsimile (864) 271-8097  
 ATTORNEYS FOR PETITIONER

Greenville, South Carolina

March 10, 2014

ENTERED  
 N.J.  
 COMPUTER

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Polly Thompson, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Cathy Swicegood and )  
 Wells Fargo, )  
 )  
 Respondents )

IN THE COURT OF COMMON PLEAS  
 THE TENTH JUDICIAL CIRCUIT

2014- CP-37- 00143

**PETITION**  
**(Partition, Ouster and Accounting)**  
**(Non-Jury)**

FILED OCONEE, SC  
 BEVERLY H. WHITEFIELD  
 CLERK OF COURT  
 2014 MAR 11 A 11:05

The Petitioner would respectfully show unto the Court the following:

**FOR A FIRST CAUSE OF ACTION**  
**(Partition by Allotment)**

1. Petitioner, Polly Thompson, is a citizen and resident of Greenville County, South Carolina.
  2. Respondent Cathy Swicegood is a citizen and resident of Oconee County, South Carolina.
  3. Respondent Wells Fargo is a corporation organized and existing under the laws of South Carolina.
  4. This Court has jurisdiction over the parties and subject matter of this action.
- Venue is proper in this action pursuant to S.C. Code Ann. § 15-7-10.
5. Petitioner and Respondent Swicegood are owners of real property located in the State of South Carolina, County of Oconee, known as 505 West Sheffield Drive, Westminster, South Carolina.
  6. Petitioner and Respondent Swicegood are also the owners of real property located in the State of South Carolina, County of Beaufort, known as 85 Folly Field Road, Hilton Head, South Carolina.

ENTERED  
 N.J.  
 COMPUTER

7. The titles to the properties are held by Petitioner and Respondent Swicegood as joint tenants.

8. Respondent Wells Fargo holds a mortgage lien interest on both properties described above. The promissory notes to both properties are solely in Petitioner's name.

9. Petitioner is informed and believes she is entitled to partition by allotment of the above-described properties, or in the alternative, she is entitled to a partition by private sale with the proceeds being equitably divided.

10. Petitioner alleges and believes that she is entitled to have such partition made in proportion to the amount of the parties' contributions to the properties.

11. Petitioner is informed and believes the properties cannot be reasonably partitioned in kind.

12. Petitioner requests that this Court dispense with the writ of partition as it would be unreasonably expensive to require it in this case.

13. Petitioner alleges she made the down payment on both properties, and has paid all mortgage payments, taxes, association fees, regime fees, as well as other considerable expenditures to the benefit of both properties. Petitioner has not been reimbursed by Defendant Swicegood her expenditures.

14. Petitioner is informed and believes that her contributions to both properties far exceed the amount of equity in the properties. For this reason, Petitioner believes it would be fair and equitable for this Court to grant her sole ownership and title to both properties.

15. Petitioner alleges that Defendant Swicegood necessitated the bringing of these actions. Therefore, Petitioner alleges that she is entitled to a Court Order directing Defendant Swicegood to pay Petitioner's attorney's fees and costs.

**FOR A SECOND CAUSE OF ACTION**  
(Ouster and Accounting)

16. Paragraphs 1 through 15 are hereby incorporated by reference.
17. Petitioner alleges that Defendant Swicegood has wrongfully dispossessed Petitioner of and denied her access to the Oconee County property located at 505 West Sheffield Drive, Westminster, South Carolina.
18. Petitioner alleges that on or before January 26, 2014, Respondent Swicegood changed the locks on the Oconee County Property without providing Petitioner with notice or a means to access the property.
19. On January 28, 2014, Petitioner requested the keys and access code from Respondent Swicegood, but as of the date of this Petition has not received them.
20. Petitioner is informed and believes that she is entitled to an Order of this Court requiring Respondent Swicegood to provide Petitioner with the keys and access code to the Oconee County property so that Petitioner may access the property.
21. Respondent Swicegood has occupied the property to the exclusion of Petitioner without payments of any rent or reimbursement of Petitioner's expenditures.
22. Petitioner is informed and believes that she is entitled to an accounting for payments of rents for the exclusive use of the property by Respondent Swicegood and reimbursement for any costs Petitioner has incurred in the preservation of the property.
23. Petitioner request that this Court determine any amounts due to Petitioner from Respondent Swicegood and that Defendant Swicegood be ordered to pay that amount to Petitioner.
24. Petitioner alleges that Defendant Swicegood necessitated the bringing of this action. Therefore, Petitioner alleges that she is entitled to a Court Order directing Defendant Swicegood to pay Petitioner's attorney's fees and costs.

**WHEREFORE**, Petitioner, prays for the following relief:

1. For a Court Order partitioning the above-described real estate by allotment and granting Petitioner sole ownership and title to both properties; or in the alternative, partition by private sale with the proceeds being equitably divided in proportion to the parties' contributions;
2. For a Court Order dispensing with the writ of partition;
3. For a Court Order requiring Defendant Swicegood provide Petitioner with the keys and access code to the Oconee County property so that Petitioner may access the property;
4. For an accounting of amounts due to Petitioner from Respondent Swicegood;
5. For a Court Order requiring Defendant Swicegood to pay Petitioner's attorney's fees and costs; and
6. For such other relief as this Court finds just and equitable.

*Margaret A. Chamberlain*

Margaret A. Chamberlain (SC Bar # 0015226)

Melissa H. Moore (SC Bar # 101315)

CHAMBERLAIN LAW FIRM, LLC

600 Pettigru Street

Greenville, South Carolina 29601

Telephone (864) 250-0505

Facsimile (864) 271-8097

ATTORNEYS FOR PETITIONER

Greenville, South Carolina

March 10, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 Polly Thompson, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Cathy Swicegood and )  
 Wells Fargo, )  
 )  
 Respondents. )

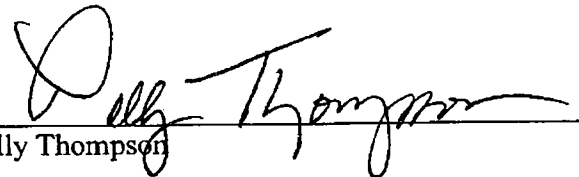
IN THE COURT OF COMMON PLEAS  
 THE TENTH JUDICIAL CIRCUIT

2014- CP-37-00143

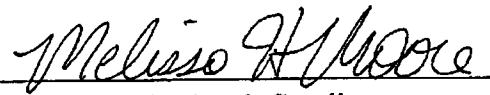
VERIFICATION

FILED OCONEE, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2014 MAR 11 A 11:05

PERSONALLY APPEARED before me Polly Thompson, who, after being duly sworn, states that she is the Petitioner in this action; that she has read the statements contained in the foregoing *Petition*, and the same are true and correct of her own knowledge, and as to those statements made upon information and belief, she believes them to be true.

  
 Polly Thompson

SWORN to before me this  
10<sup>th</sup> day of March, 2014.

  
 Notary Public for South Carolina  
 My Commission Expires: 10-19-2014

ENTER  
 N.  
 COMPU

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE ) IN THE COURT OF COMMON PLEAS

POLLY THOMPSON,

PETITIONER,

VS

CATHY SWICEGOOD,

RESPONDENT.

**ORIGINAL**

2014-CP-37-00143

ANDERSON SC  
MARCH 16, 2015

TRANSCRIPT OF TESTIMONY

BEFORE THE HONORABLE ELLIS B. DREW, JR.  
MASTER IN EQUITY FOR THE TENTH JUDICIAL CIRCUIT

APPEARANCES

FOR PETITIONER: MARGARET A. CHAMBERLAIN, ESQ.  
MELISSA H. MOORE, ESQ.  
CHAMBERLAIN LAW FIRM, LLC  
600 PETTIGRU STREET  
GREENVILLE, SC 29

FOR RESPONDENT: JOHN G. RECKENBEIL, ESQ.  
LAWRENCE E. MCNAIR, III, ESQ.  
ATTORNEY AT LAW  
PO BOX 1633  
SPARTANBURG, SC 29304

COURT REPORTER: KAREN T. SENN  
CIRCUIT COURT REPORTER  
PO BOX 8002  
ANDERSON, SC 29622  
864-260-4052

## I N D E X

WITNESSES:DIRECT   CROSS   REDIRECT   RECROSS

POLLY ANN THOMPSON  
MS. CHAMBERLAIN  
MR. RECKENBEIL

14                      71  
                    45

STEPHANIE CAMPUTARO  
MR. RECKENBEIL  
MS. CHAMBERLAIN

73                      83

CATHY JEAN SWICEGOOD  
MR. RECKENBEIL  
MS. CHAMBERLAIN

85                      123                      124  
                    112



EXHIBITSFOR PLAINTIFF/PETITIONER:

|                                                               | <u>ID.</u> | <u>IN EVD.</u> |
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FOR DEFENDANT/RESPONDENT

|                                                                         |     |     |
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| 2. RECORD ON APPEAL                                                     | *   |     |
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\* PLAINTIFF/PETITIONER EXHIBITS 1-11 PREMARKED BEFORE GOING ON THE RECORD

\* DEFENDANT/RESPONDENT EXHIBITS 1 & 2 PREMARKED BEFORE GOING ON THE RECORD

NOTE: THE PARTIES ARE REFERRED TO AS PLAINTIFF OR PETITIONER AND DEFENDANT OR RESPONDENT THROUGHOUT THIS PROCEEDING.

1 THE COURT: THIS IS CASE 2014-CP-37-143 ENTITLED  
2 POLLY THOMPSON VERSUS CATHY SWICEGOOD AND WELLS FARGO.  
3 THIS IS AN OCONEE COUNTY CASE BEING HELD IN ANDERSON COUNTY  
4 THAT'S WITH THE CONSENT OF THE PARTIES, IS THAT CORRECT?

5 MR. RECKENBEIL: THAT'S CORRECT, YOUR HONOR.

6 MS. CHAMBERLAIN: YES, YOUR HONOR.

7 THE COURT: THE MATTER WAS REFERRED ON OCTOBER  
8 23, 2014. A HEARING IS BEING HELD ON MARCH 16, 2015. I'M  
9 GOING TO ASK THE ATTORNEYS, PLEASE, TO STATE THEIR NAMES  
10 FOR THE RECORD AND WHO THEY REPRESENT.

11 MS. CHAMBERLAIN: GOOD MORNING, YOUR HONOR. MY  
12 NAME IS MARGARET CHAMBERLAIN. I PRACTICE IN GREENVILLE,  
13 SOUTH CAROLINA. PRESENT WITH ME TODAY IS MY ASSOCIATE IN  
14 THE LAW FIRM. HER NAME IS MELISSA MOORE. SHE IS MY  
15 ASSOCIATE ATTORNEY AND TO HER RIGHT IS MY CLIENT, POLLY  
16 THOMPSON.

17 THE COURT: THANK YOU.

18 MR. RECKENBEIL: GOOD MORNING. FOR THE  
19 RESPONDENT, JOHN RECKENBEIL, ALONG WITH LEE MCNAIR,  
20 REPRESENTING CATHY SWICEGOOD.

21 THE COURT: THANK YOU, SIR. ANYTHING FOR THE  
22 RECORD PRIOR TO STARTING THE TESTIMONY?

23 MS. CHAMBERLAIN: YES, YOUR HONOR. I HAVE TWO  
24 MOTIONS. THE FIRST MOTION IS TO EXCLUDE ALL EVIDENCE OF  
25 ANY ALLEGED MARRIAGE BETWEEN THESE TWO PARTIES, EXCLUDE ANY

1 ARGUMENTS CONCERNING ANY ALLEGED MARRIAGE BETWEEN THESE TWO  
2 PARTIES. THESE TWO WOMEN HAVE NOT BEEN AND WERE NEVER  
3 STATUTORILY MARRIED. THERE IS A DISPUTE AS TO THAT AND  
4 THIS CASE -- THE ISSUE ABOUT WHETHER OR NOT THEY WERE IN A  
5 COMMON LAW MARRIAGE WAS ADDRESSED BY THE FAMILY COURT IN  
6 GREENVILLE SO I WOULD MOVE TO EXCLUDE ANY EVIDENCE OR  
7 ARGUMENTS ABOUT THEIR BEING MARRIED.

8 THE COURT: SECOND MOTION?

9 MS. CHAMBERLAIN: THE SECOND MOTION, YOUR HONOR,  
10 IS I MOVE TO EXCLUDE ALL ISSUES, ALL EVIDENCE REGARDING  
11 SWEAT EQUITY IN ANY PROPERTY OTHER THAN THE TWO PROPERTIES  
12 THAT ARE THE SUBJECT OF THIS PARTITION ACTION. THOSE TWO  
13 PROPERTIES ARE HILTON HEAD ISLAND CLUB PROPERTY AND THE  
14 LAKE HARTWELL PROPERTY. I WOULD MOVE TO EXCLUDE ANY  
15 EVIDENCE OF OR OTHER ARGUMENTS ABOUT SWEAT EQUITY IN THE  
16 OTHER PROPERTIES OR ANY OTHER EVIDENCE REGARDING THOSE  
17 OTHER TWO PROPERTIES.

18 THE COURT: HOW DO YOU DEFINE SWEAT EQUITY?

19 MS. CHAMBERLAIN: SWEAT EQUITY IS RELEVANT ONLY  
20 WHEN IT CONCERNS THE COMMON PROPERTY OF THE PARTIES. THAT  
21 WOULD BE THE JOINTLY TITLED PROPERTY ---

22 THE COURT: HOW DO YOU DEFINE SWEAT EQUITY?

23 MS. CHAMBERLAIN: I BEG YOUR PARDON, YOUR HONOR.  
24 IT IS WORK DONE ON THE PROPERTY FOR THE BENEFIT OF THE  
25 PROPERTY. LABOR.

1 THE COURT: OKAY.

2 MS. CHAMBERLAIN: AND ASIDE FROM THE FACT THAT  
3 IT'S NOT ANY ARGUMENT OR EVIDENCE OF SWEAT EQUITY OR LABOR  
4 DONE ON OTHER PROPERTIES, IT'S NOT RELEVANT BECAUSE ALSO,  
5 YOUR HONOR, THE ISSUE OF SWEAT EQUITY OR LABOR ON OTHER  
6 PROPERTIES IS NOT PROPERLY BEFORE THE COURT FOR ANOTHER  
7 REASON. IT WAS NOT RAISED BY OPPOSING COUNSEL IN HIS  
8 ANSWER AND COUNTERCLAIM AND THERE ARE NOT ---

9 THE COURT: YOU SAY OTHER PROPERTIES, WHAT ABOUT  
10 THE SUBJECT PROPERTIES?

11 MS. CHAMBERLAIN: YES, SIR, IT IS RELEVANT ABOUT  
12 THE SUBJECT PROPERTIES BUT NO OTHER PROPERTIES.

13 THE COURT: ALL RIGHT.

14 MS. CHAMBERLAIN: THOSE ARE MY TWO MOTIONS.

15 THE COURT: ALL RIGHT, WHAT'S YOUR RESPONSE, MR.  
16 RECKENBEIL?

17 MR. RECKENBEIL: YOUR HONOR, IF I COULD ---

18 THE COURT: AS TO THE FIRST MOTION.

19 MR. RECKENBEIL: AS TO THE FIRST MOTION, YOUR  
20 HONOR, RESPECTFULLY FOR THE RECORD, IF I COULD HAND UP TO  
21 MADAM COURT REPORTER, THIS IS RESPONDENT'S MEMORANDUM OF  
22 LAW IN SUPPORT OF MOTION TO STAY THE PROCEEDINGS THAT WE  
23 PREVIOUSLY FILED WITH THE ANDERSON COUNTY COURT OF COMMON  
24 PLEAS. IT IS THE RESPONDENT'S POSITION THAT THEY WERE  
25 MARRIED UNDER THE COMMON LAW MARRIAGE OF SOUTH CAROLINA LAW

1 BUT FOR THE SAME-SEX MARRIAGE BAN. WE HAD A HEARING IN  
2 FAMILY COURT WHICH IS EXHIBIT A THAT IS ATTACHED TO THE  
3 MEMORANDUM THAT JUDGE ROBERTSON FOUND THAT IT WAS MARITAL  
4 LITIGATION WHEN WE WERE BEFORE THE COURT BACK IN MAY OF  
5 2014. BUT FOR THE SAME-SEX MARRIAGE BAN IT DEPRIVED FAMILY  
6 COURT JURISDICTION. SINCE THE RULING, SINCE THE RULING BY  
7 JUDGE MADDOX THERE HAS BEEN AN OVERTURNING OF THE BAN ON  
8 SAME-SEX MARRIAGE HERE IN SOUTH CAROLINA. THERE HAVE BEEN  
9 TWO VERY WELL WRITTEN OPINIONS BY THE HONORABLE MICHELLE  
10 CHILDS AND RICHARD GERGEL.

11 THE COURT: ALL RIGHT, I'M FAMILIAR WITH THOSE.  
12 WHAT ELSE?

13 MR. RECKENBEIL: THOSE OPINIONS WERE UPHELD  
14 UNDERNEATH THE BOSTIC OPINION AND WOULD CERTAINLY ---

15 THE COURT: I NOTE YOUR MOTION AND I'M GOING TO  
16 DENY IT. I'LL EXPLAIN WHY IN A MINUTE. NOW WHAT ABOUT HER  
17 MOTION TO EXCLUDE ANY EVIDENCE OF MARRIAGE.

18 MR. RECKENBEIL: IF I COULD JUST HAVE THAT  
19 MARKED AS DEFENDANT'S EXHIBIT NUMBER 3. THAT'S THE  
20 MEMORANDUM THAT WE SUBMIT JUST FOR PROFFER PURPOSES.

21 (DEFENDANT'S EXHIBIT 3 PROFFERED)

22 MS. CHAMBERLAIN: IT'S NOT A PROPER ---

23 THE COURT: JUST A MINUTE, MA'AM. WHAT'S YOUR  
24 RESPONSE TO EXCLUDING ANY EVIDENCE OF COMMON LAW MARRIAGE?

25 MR. RECKENBEIL: WELL, YOUR HONOR, I THINK THAT

1 THIS COURT WOULD BE DEPRIVED OF JURISDICTION.

2 THE COURT: BECAUSE OF THE FAMILY COURT MATTER  
3 THAT'S ON APPEAL?

4 MR. RECKENBEIL: YES, SIR.

5 THE COURT: ALL RIGHT. AS TO THAT MOTION, I  
6 LOOK AT THIS AS A PARTITION ACTION. I EXPRESS NO OPINION  
7 AS TO WHETHER THERE IS A MARRIAGE OR NOT. THESE ARE TWO  
8 INDIVIDUALS THAT APPARENTLY JOINTLY OWN PROPERTY IN HILTON  
9 HEAD AT FOLLY FIELD ROAD AND SOME PROPERTY ON WEST  
10 SHEFFIELD DRIVE IN WESTMINSTER. THAT'S A PARTITION ACTION  
11 ACCORDING TO THE PLEADINGS. WHETHER OR NOT THERE IS A  
12 VALID MARRIAGE, I EXPRESS NO OPINION ON THAT. ASSUMING  
13 THERE IS, IT'S STILL A PARTITION ACTION. NOW SHE MADE A  
14 MOTION ALSO TO EXCLUDE SWEAT EQUITY ON ANY OTHER PROPERTY,  
15 OTHER THAN THESE TWO.

16 MR. RECKENBEIL: YOUR HONOR, WE WOULD SAY THAT,  
17 BEING THAT THIS IS A 13½ YEAR MARRIAGE RELATIONSHIP THERE  
18 WAS A SIGNIFICANT AMOUNT OF ASSETS AND SWEAT EQUITY THAT  
19 ROLLED INTO TO ULTIMATELY COME UP WITH THESE PROPERTIES.  
20 THEY WERE FLIPPED A SIGNIFICANT AMOUNT OF TIMES, INCREASING  
21 THE ASSETS, THUS ALLOWING THERE TO BE THE PURCHASE OF A  
22 BIGGER AND BETTER HOME. MORE SPECIFICALLY, IN HERE, IN  
23 OCONEE COUNTY, WAS ACTUALLY SEPARATE PIECES OF PROPERTY  
24 THAT WERE JOINED TOGETHER AND THEN ULTIMATELY LEADING TO  
25 THIS OCONEE COUNTY LAKE HARTWELL HOUSE. SO THERE WAS

1       SIGNIFICANT HISTORY THAT HAS BROUGHT IT TO THIS PRESENT DAY  
2       AND I THINK THAT THIS COURT NEEDS TO HEAR ALL THE ACTIONS  
3       THAT WERE TAKEN BY MY CLIENT AND OTHERS TO ACTUALLY BRING  
4       THE VALUE TO THESE PROPERTIES. IN FACT, IF IT'S THE  
5       POSITION THAT IS BEING ARGUED TODAY THAT MY CLIENT IS NOT  
6       ENTITLED TO SWEAT EQUITY, THAT MY CLIENT WOULD BE ENTITLED  
7       TO WAGES OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE  
8       15(B) TO CONFORM TO THE EVIDENCE. WE WOULD HAVE THE  
9       ABILITY I THINK TO ASSERT A WAGE PAYMENT IN THE CASE THAT  
10      GOES BACK THREE YEARS. THE FAIR LABOR STANDARDS ACT RULED  
11      A VIOLATION THAT GOES BACK THREE YEARS. WITH THE EVIDENCE  
12      WE CAN BRING FORTH A VERY STRONG ARGUMENT THAT MY CLIENT  
13      SHOULD BE ENTITLED TO WAGES BECAUSE SHE WOULD BE JUST AN  
14      EMPLOYEE IF IN FACT THEY ARE CATEGORIZING THAT SHE'S NOT  
15      ENTITLED TO SWEAT EQUITY. WHICHEVER WAY THEY ARE GOING TO  
16      PICK IS FINE BECAUSE WE THINK WE'VE GOT ARGUMENTS EITHER  
17      WAY.

18               THE COURT:     THE TWO PROPERTIES THAT ARE BEFORE  
19      THE COURT ARE, AS I SAID, THE WEST SHEFFIELD DRIVE PROPERTY  
20      IN WESTMINSTER AND THIS PROPERTY IN HILTON HEAD. NOW IF  
21      THERE ARE ANY OTHER PROPERTIES INVOLVED BETWEEN THE  
22      PETITIONER AND RESPONDENT, I HAVE NO INTEREST IN THOSE.  
23      NOW IF YOUR CLIENT, MR. RECKENBEIL, HAS PROVIDED BENEFITS  
24      TO THESE TWO PROPERTIES, I'LL BE GLAD TO CONSIDER WHAT  
25      BENEFITS SHE'S CONTRIBUTED.

1 MR. RECKENBEIL: WE WOULD PROPOSE THAT WE WILL  
2 PROVIDE EVIDENCE THAT THERE IS A HOME INVOLVED IN  
3 GREENVILLE COUNTY, SOUTH CAROLINA THAT SHE HAS PROVIDED  
4 SWEAT EQUITY TO.

5 THE COURT: NO, SIR. AT THIS TIME I'M GOING TO  
6 EXCLUDE EVIDENCE OF THAT. THAT PROPERTY IS NOT BEFORE THE  
7 COURT.

8 MR. RECKENBEIL: YES, SIR, UNDERSTOOD.

9 THE COURT: OKAY.

10 MR. RECKENBEIL: YES, SIR.

11 THE COURT: WHAT ELSE?

12 MS. CHAMBERLAIN: THOSE ARE MY ONLY TWO PRETRIAL  
13 MOTIONS, YOUR HONOR.

14 THE COURT: ALL RIGHT. ARE YOU READY TO  
15 PROCEED?

16 MS. CHAMBERLAIN: YES, YOUR HONOR. MAY IT  
17 PLEASE THE COURT, YOUR HONOR, DOES THE COURT WISH TO HEAR  
18 BRIEF OPENING STATEMENTS FROM THE ATTORNEYS?

19 THE COURT: WELL, VERY BRIEFLY.

20 MS. CHAMBERLAIN: THANK YOU.

21 THE COURT: Y'ALL HAVE FILED VERY AMPLE  
22 PLEADINGS IN THIS CASE BUT I'LL ALLOW A SHORT OPENING  
23 STATEMENT IF YOU PREFER.

24 MS. CHAMBERLAIN: THANK YOU, YOUR HONOR. YOUR  
25 HONOR, MAY IT PLEASE THE COURT, THIS CASE INVOLVES, AS YOU



1 HAVE NOTED, TWO AND ONLY TWO PROPERTIES; THE ISLAND CLUB  
2 PROPERTY ON HILTON HEAD ISLAND, A CONDOMINIUM ON HILTON  
3 HEAD AND A HOUSE AT LAKE HARTWELL. IT IS 505 SHEFFIELD  
4 DRIVE AT LAKE HARTWELL.

5 THE EVIDENCE WILL SHOW THAT MY CLIENT, POLLY  
6 THOMPSON, PAID EVERY DIME OF THE MONEY THAT'S GONE INTO THE  
7 ISLAND CLUB PROPERTY, THE CONDOMINIUM ON HILTON HEAD.  
8 EVERY DIME CAME FROM MY CLIENT. THE EVIDENCE WILL SHOW  
9 THAT IN ADDITION, AFTER THE PARTIES SEPARATED -- THE  
10 PARTIES SEPARATED AT THE END OF 2014 -- THAT IN ADDITION TO  
11 THE CONTRIBUTIONS MY CLIENT HAS MADE TO THE PROPERTY AFTER  
12 THE PARTIES SEPARATED, CATHY SWICEGOOD, THE DEFENDANT,  
13 CONTINUES TO USE THE ISLAND CLUB CONDOMINIUM ON HILTON HEAD  
14 AND THUS DEPRIVES MY CLIENT FROM RENTAL INCOME OF THAT  
15 PROPERTY. THIS IS THE CONDOMINIUM AT HILTON HEAD WHICH IS  
16 RENTAL ---

17 THE COURT: WHO OCCUPIES THE WEST SHEFFIELD  
18 DRIVE PROPERTY?

19 MS. CHAMBERLAIN: CURRENTLY THE DEFENDANT, CATHY  
20 SWICEGOOD, YOUR HONOR.

21 THE COURT: HOW DOES SHE OCCUPY BOTH PROPERTIES?

22 MS. CHAMBERLAIN: SHE LIVES AT LAKE HARTWELL AND  
23 SHE GOES DOWN TO THE HILTON HEAD CONDOMINIUM FROM TIME TO  
24 TIME TO ENJOY THE BENEFITS OF A CONDO AT THE BEACH. IT'S A  
25 RENTAL PROPERTY THAT SHE GOES DOWN AND USES WITHOUT PAYING

1 ANY RENT.

2 THE COURT: DOES THAT DEPRIVE YOUR CLIENT OF THE  
3 SAME PRIVILEGE?

4 MS. CHAMBERLAIN: IT DEPRIVES MY CLIENT OF  
5 RENTAL INCOME.

6 THE COURT: RENTAL INCOME.

7 MS. CHAMBERLAIN: AND IT DEPRIVES HER FROM BEING  
8 ABLE TO GO DOWN TO THE BEACH.

9 THE COURT: IT DOES?

10 MS. CHAMBERLAIN: THE OUSTER, WE ALSO HAVE A  
11 CLAIM FOR OUSTER, YOUR HONOR, BECAUSE OF THE LAKE HARTWELL  
12 PROPERTY.

13 THE COURT: OKAY.

14 MS. CHAMBERLAIN: WHEN THE PARTIES SEPARATED  
15 CATHY SWICEGOOD MOVED INTO THE LAKE HARTWELL PROPERTY.  
16 THAT'S NOT THE ISSUE. THE PROBLEM IS THAT SHE DEPRIVED MY  
17 CLIENT -- SHE REFUSED TO GIVE HER A KEY.

18 THE COURT: ALL RIGHT, I UNDERSTAND. NOW I'LL  
19 ASK YOU OR EACH OF YOU, APPARENTLY WELLS FARGO IS NAMED AS  
20 A PARTY IN THIS CASE. I ASSUME THEY HOLD A MORTGAGE ON THE  
21 PROPERTY.

22 MS. CHAMBERLAIN: YES, SIR.

23 THE COURT: DO YOU KNOW -- CONSIDERING THE  
24 MORTGAGE DEBT, DO EITHER OF YOU HAVE AN OPINION AS TO THE  
25 EQUITY IN THE PROPERTIES?

1 MS. CHAMBERLAIN: YES, YOUR HONOR, I DO. THE  
2 EQUITY IN THE HARTWELL PROPERTY, AS OF THIS MONTH, IT HAS  
3 \$67,742.25 EQUITY IN THE LAKE HOUSE PROPERTY.

4 THE COURT: AND WHAT'S THE BALANCE ON THE  
5 MORTGAGE?

6 MS. CHAMBERLAIN: THE BALANCE ON THE MORTGAGE AS  
7 OF TOMORROW'S DATE, THE MORTGAGE PAYOFF IS \$143,407.75.

8 THE COURT: SAY AGAIN?

9 MS. CHAMBERLAIN: \$143,407.75 IS THE PAYOFF ON  
10 THE MORTGAGE. SO THE EQUITY IN LAKE HARTWELL IS  
11 \$67,742.00.

12 THE COURT: ALL RIGHT, HOW ABOUT THE HILTON HEAD  
13 PROPERTY?

14 MS. CHAMBERLAIN: THE HILTON HEAD PROPERTY, IT  
15 HAS A BALANCE OF \$269,100.57.

16 THE COURT: SO THE EQUITY WOULD BE WHAT?

17 MS. CHAMBERLAIN: \$120,599.00.

18 THE COURT: THAT'S A \$400,000.00 CONDOMINIUM?

19 MS. CHAMBERLAIN: YES, YOUR HONOR. IT HAS A  
20 FAIR MARKET VALUE OF \$389,000.00.

21 THE COURT: ALL RIGHT. MR. RECKENBEIL, I'M  
22 ACCEPTING THIS JUST AS INFORMATION.

23 MR. RECKENBEIL: I'M SORRY, YOUR HONOR?

24 THE COURT: I'M ACCEPTING THIS AS INFORMATION  
25 ONLY.

1 MR. RECKENBEIL: WE WOULD AGREE BECAUSE WE'VE  
2 DONE OUR OWN RESEARCH. WE WOULD AGREE THAT THESE NUMBERS  
3 ARE ABOUT ACCURATE.

4 THE COURT: ALL RIGHT, CALL YOUR FIRST WITNESS.

5 MS. CHAMBERLAIN: THANK YOU, YOUR HONOR. I CALL  
6 MS. POLLY THOMPSON TO THE STAND.

7 POLLY ANN THOMPSON, PETITIONER'S WITNESS, SWORN:

8 MS. CHAMBERLAIN: YOUR HONOR, AT THIS TIME I MOVE  
9 TO INTRODUCE INTO EVIDENCE PLAINTIFF'S EXHIBIT NUMBER 1  
10 WHICH OPPOSING COUNSEL HAS CONSENTED TO PREVIOUSLY.

11 MR. RECKENBEIL: THAT'S CORRECT.

12 THE COURT: ALL RIGHT.

13 (PLAINTIFF'S EXHIBIT 1 IN EVIDENCE)

14 MS. CHAMBERLAIN: THIS CONCERNS THE HILTON HEAD  
15 CONDOMINIUM, ALL THESE DOCUMENTS. PLAINTIFF'S EXHIBIT 1 IS  
16 A NOTEBOOK CONTAINING ALL THE DOCUMENTS THAT REGARD THE  
17 CONDOMINIUM AT 85 FOLLY FIELD ROAD, HILTON HEAD.

18 THE COURT: ALL RIGHT.

19 DIRECT EXAMINATION

20 BY MS. CHAMBERLAIN:

21 Q. MS. THOMPSON, PLEASE STATE YOUR FULL NAME.

22 A. POLLY ANN THOMPSON.

23 Q. AND WHERE DO YOU LIVE, MA'AM?

24 A. 14 WOODHEDGE COURT, MAULDIN, SOUTH CAROLINA.

25 Q. WE ARE HERE TODAY ON AN ACTION FOR PARTITION AND

1 OUSTER. THE PARTITION CONCERNS TWO PROPERTIES, THE HILTON  
2 HEAD PROPERTY AND THE LAKE HARTWELL PROPERTY. I'M GOING TO  
3 START BY ASKING YOU QUESTIONS ABOUT THE HILTON HEAD  
4 PROPERTY NOW.

5 A. ALL RIGHT.

6 Q. YOU PURCHASED THE HILTON HEAD PROPERTY BACK IN JUNE OF  
7 2013, IS THAT CORRECT?

8 A. YES.

9 Q. AND THE PURCHASE PRICE WAS \$372,500.00, IS THAT  
10 CORRECT?

11 A. YES.

12 THE COURT: IS THAT TITLED IN BOTH PARTIES'  
13 NAMES?

14 MS. CHAMBERLAIN: YES, SIR. IT'S TITLED IN BOTH  
15 PARTIES' NAMES.

16 THE COURT: ALL RIGHT.

17 Q. THE MONEY THAT WAS PAID FOR A DOWN PAYMENT ON THIS  
18 PROPERTY, DID YOU PAY IT?

19 A. YES, I DID.

20 Q. AND IN PLAINTIFF'S 1 THERE IS A SUMMARY OF ---

21 MS. CHAMBERLAIN: MAY I APPROACH THE WITNESS,  
22 YOUR HONOR?

23 THE COURT: YES, MA'AM.

24 (APPROACHES WITNESS)

25 Q. AND THERE IS A SUMMARY OF THE MONIES PAID FOR THE DOWN

1 PAYMENT, IS THIS THE SUMMARY?

2 A. YES, IT IS.

3 Q. AND HOW MUCH DID YOU PUT DOWN AS A DOWN PAYMENT ON  
4 THAT PROPERTY?

5 A. \$102,361.65.

6 Q. DID CATHY SWICEGOOD MAKE ANY OF THE DOWN PAYMENT?

7 A. NOT ONE PENNY.

8 Q. WHAT WAS THE SOURCE OF THE FUNDS FOR THIS DOWN  
9 PAYMENT?

10 A. MY MOTHER AND FATHER WORKED HARD ALL THEIR LIVES AND  
11 THEY LEFT ME AN INHERITANCE. MY MOTHER PASSED AWAY IN 2012  
12 AND SHE LEFT ME THAT MONEY.

13 Q. AND ALSO IN PLAINTIFF'S 1 THERE IS AN APPRAISAL. THIS  
14 PROPERTY WAS APPRAISED BACK IN 2013 AND THIS PROPERTY  
15 APPRAISED FOR \$375,000.00, IS THAT CORRECT?

16 A. YES.

17 Q. ALSO IN PLAINTIFF'S 1 IS A COPY OF THE DEED TO THIS  
18 PROPERTY AND IT SHOWS THE DEED AS IN BOTH YOUR NAME AND  
19 CATHY SWICEGOOD'S NAME, IS THAT CORRECT?

20 A. CORRECT.

21 Q. YOU TOOK OUT A LOAN ON THIS PROPERTY AND THE LOAN  
22 AMOUNT WAS FOR \$279,375.00, IS THAT CORRECT?

23 A. YES.

24 Q. AND THE LOAN IS IN YOUR NAME ALONE, IS THAT CORRECT?

25 A. THAT'S CORRECT.

1 Q. AND YOU HAVE BEEN MAKING ALL THOSE MORTGAGE PAYMENTS  
2 ON THIS, CORRECT?

3 A. THAT'S CORRECT.

4 Q. HAS CATHY SWICEGOOD MADE ANY OF THE MORTGAGE PAYMENTS  
5 ON THIS PROPERTY?

6 A. NOT ONE PENNY.

7 Q. AND THE PAYOFF AS OF TOMORROW ON THIS LOAN OR ON THIS  
8 MORTGAGE ON THE HILTON HEAD PROPERTY, THE PAYOFF IS  
9 \$259,100.57, IS THAT CORRECT?

10 A. YES.

11 Q. AND THEREFORE, THIS PROPERTY HAS EQUITY OF  
12 APPROXIMATELY \$120,000.00, IS THAT CORRECT?

13 A. YES.

14 Q. PLAINTIFF'S 1 CONTAINS A SUMMARY OF ALL THE MORTGAGE  
15 PAYMENTS YOU'VE MADE, IS THAT CORRECT?

16 A. YES.

17 Q. AND IT SHOWS ALL THE CHECKS THAT YOU PAID?

18 A. YES.

19 Q. AND CATHY SWICEGOOD DIDN'T MAKE ANY OF THOSE PAYMENTS?

20 A. NO.

21 Q. ALSO, IN PLAINTIFF'S 1 THERE IS A SUMMARY SHOWING THE  
22 REGIME FEE PAYMENTS, IS THAT CORRECT?

23 A. YES.

24 Q. AND DID YOU MAKE ALL THE REGIME FEE PAYMENTS ON THIS  
25 PROPERTY?

1 A. YES, I HAVE.

2 Q. AND THE REGIME FEE PAYMENTS THAT WERE MADE IN 2013  
3 TOTALED \$1,568.00, IS THAT CORRECT?

4 A. YES.

5 Q. AND THE REGIME FEE PAYMENTS YOU'VE MADE FROM DECEMBER  
6 OF 2013 TO NOW IS A TOTAL OF \$6,030.00, IS THAT CORRECT?

7 A. YES.

8 Q. YOU HAVE PAID INSURANCE ON THIS PROPERTY, HAVE YOU  
9 NOT?

10 A. YES.

11 Q. AND ALSO IN PLAINTIFF'S 1 THERE IS A SUMMARY SHOWING  
12 ALL THE INSURANCE PAYMENTS YOU'VE MADE, IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND THOSE INSURANCE PAYMENTS TOTAL TO DATE \$4,547.00,  
15 IS THAT CORRECT?

16 A. YES.

17 Q. THIS CONDOMINIUM, WHAT WAS THE PURPOSE OF BUYING THE  
18 CONDOMINIUM?

19 A. I'VE ALWAYS LOVED THE WATER AND THE BEACH AND I HAVE A  
20 VERY STRESSFUL JOB AND I WANTED TO BE -- I'VE ALWAYS WANTED  
21 AND DREAMED OF HAVING A PLACE AT THE BEACH SO I COULD LOOK  
22 OUT AND SEE THE WATER SO THAT'S WHAT I WANTED IT FOR.

23 Q. DO YOU LIVE THERE?

24 A. NO, I CAN ONLY GO WHEN I'M NOT WORKING TO GO ENJOY IT.

25 Q. WHEN YOU ARE NOT VACATIONING THERE WHAT DO YOU DO WITH



1 THE PROPERTY?

2 A. I HAVE TO RENT IT TO HELP PAY FOR THE UNIT, THE  
3 PROPERTY.

4 Q. SO YOU USE IT AS A RENTAL PROPERTY AS WELL, IS THAT  
5 CORRECT?

6 A. YES.

7 Q. AND IN ORDER TO RENT OUT THE PROPERTY, DO YOU HAVE IT  
8 LISTED WITH A RENTAL AGENCY?

9 A. YES.

10 Q. AND DOES THE RENTAL AGENCY REQUIRE THAT THIS PROPERTY  
11 BE PART OF A TENNIS AND FITNESS CLUB ON THE ISLAND?

12 A. YES.

13 Q. AND SO IT IS A REQUIREMENT IN ORDER TO RENT IT WITH A  
14 RENTAL AGENCY, CORRECT?

15 A. YES.

16 Q. WHO HAS PAID THE TENNIS AND FITNESS FEES FOR THIS  
17 PROPERTY?

18 A. I HAVE PAID THEM ALL.

19 Q. AND SO IN 2014 YOU PAID ALL OF THE FEES?

20 A. YES.

21 Q. AND IN 2015 TO DATE YOU HAVE PAID ALL THE FEES?

22 A. YES.

23 Q. EVERY CLUB FEE THAT'S REQUIRED YOU HAVE HAD TO PAY, IS  
24 THAT CORRECT?

25 A. YES.

1 Q. AND THOSE TENNIS AND FITNESS FEES TOTAL \$2,807.00, IS  
2 THAT CORRECT?

3 A. YES.

4 Q. HOW ABOUT THE UTILITIES ON THIS CONDOMINIUM? WHO PAYS  
5 THE UTILITIES ON THIS CONDOMINIUM?

6 A. I'VE PAID THEM ALL.

7 Q. SAY AGAIN?

8 A. I HAVE PAID THEM ALL.

9 Q. CATHY SWICEGOOD HAS NOT PAID ANY UTILITY BILLS?

10 A. NO.

11 Q. AFTER YOU PURCHASED -- TELL ME AGAIN, WHEN DID YOU  
12 PURCHASE THIS PROPERTY?

13 A. IN JUNE OF 2013.

14 Q. AFTER YOU PURCHASED THIS PROPERTY DID YOU HAVE TO --  
15 DID THIS PROPERTY REQUIRE SOME LABOR AND CONSTRUCTION AND  
16 IMPROVEMENTS?

17 A. YES.

18 Q. AND I'M GOING TO SHOW YOU A SUMMARY THAT IS INCLUDED  
19 IN PLAINTIFF'S 1 FOR MAINTENANCE AND LABOR ON THE PROPERTY.  
20 IS THIS AN ACCURATE SUMMARY OF ALL THE MAINTENANCE AND  
21 LABOR THAT WAS DONE ON THIS PROPERTY?

22 A. YES.

23 Q. AND WHO PAID FOR ALL THIS MAINTENANCE AND LABOR?

24 A. I DID.

25 Q. AND CAN YOU DESCRIBE FOR THE COURT THE NATURE OF THE

1 WORK DONE ON THE PROPERTY?

2 A. THERE WAS REMOVAL OF WALLPAPER, PAINTING, NEW LIGHT  
3 FIXTURES, UPDATING OF SOME OF THE LIGHT SWITCHES AND  
4 PLUMBING AND JUST RECENTLY THE WASHER AND DRYER GAVE OUT  
5 AND I BOUGHT A NEW WASHER AND DRYER FOR THE UNIT.

6 Q. TO WHOM DID YOU GIVE PAYMENT FOR THIS LABOR, FOR THIS  
7 WORK? WHO DID YOU CUT CHECKS TO?

8 A. I HAVE PROOF OF CUTTING CHECKS TO MS. SWICEGOOD AND TO  
9 A COUPLE OF CONTRACTORS AND I HIRED TWO GENTLEMEN TO ALSO  
10 GO WITH US FOR ONE WEEK THAT THE WORK WAS DONE AND PAID  
11 THEM IN CASH TO DO IT.

12 Q. DID CATHY SWICEGOOD PAY ANY OF THESE LABOR COSTS?

13 A. NO.

14 Q. BUT CATHY SWICEGOOD DID DO SOME WORK AT THAT  
15 CONDOMINIUM?

16 A. YES.

17 Q. AND ACCORDING TO THIS SUMMARY YOU PAID HER FOR THAT  
18 WORK?

19 A. YES.

20 Q. YOU TESTIFIED THAT YOU RENT OUT THAT CONDOMINIUM  
21 WHENEVER YOU CAN WHEN YOU'RE NOT THERE, IS THAT CORRECT?

22 A. YES.

23 Q. WHO IS THE COMPANY THAT HANDLES THE RENTAL OF THE  
24 CONDOMINIUM?

25 A. HILTON HEAD VACATIONS AND GOLF, RENTALS AND GOLF.

1 Q. IN PLAINTIFF'S 1 THERE IS A SUMMARY OF ALL RENTAL  
2 INCOME YOU'VE RECEIVED ON THIS UNIT. CAN YOU TELL ME HOW  
3 MUCH RENTAL INCOME YOU'VE RECEIVED?

4 A. SINCE I PURCHASED THE PROPERTY I'VE RECEIVED  
5 \$22,002.83 IN RENTAL INCOME.

6 Q. ALSO IN PLAINTIFF'S 1 THERE IS A PRINTOUT FROM A  
7 WEBSITE. IS THIS THE PRINTOUT TO A WEBSITE SHOWING YOUR  
8 CONDOMINIUM AT HILTON HEAD WITH RENTAL INFORMATION?

9 A. YES.

10 Q. CAN YOU PLEASE TELL THE COURT HOW MUCH YOU RENT OUT  
11 THAT CONDOMINIUM FOR, HOW MUCH DOES IT RENT FOR?

12 A. THE WEEKLY RATE STARTS AT \$1,035.00 A WEEK TO  
13 \$1,882.00 A WEEK.

14 Q. SO TAKING THE LOWEST, BECAUSE THE CONDO RENTS ANYWHERE  
15 FROM \$1,035.00 A WEEK UP TO \$1,882.00 A WEEK, TAKING THE  
16 LOW RATE OF \$1,035.00 A WEEK, THAT WOULD MEAN THE  
17 CONDOMINIUM RENTS OUT FOR A \$147.86 A NIGHT, IS THAT  
18 CORRECT?

19 A. THAT'S CORRECT. ON THE LOW END.

20 Q. ALSO IN PLAINTIFF'S EXHIBIT 1 IS A BOOKING SUMMARY FOR  
21 THE CONDOMINIUM. DOES THIS BOOKING SUMMARY SHOW ALL THE  
22 BOOKINGS IN YOUR CONDOMINIUM FROM THE DATE YOU AND CATHY  
23 SWICEGOOD SEPARATED THROUGH THE END OF THIS YEAR?

24 A. YES.

25 Q. AND WHEN DID YOU AND CATHY SWICEGOOD SEPARATE?