188698

STATE OF SOUTH CAROLINA

(Caption of Case)

Transfer Request of the Shoals Sewer Company to Jacabb Utilities LLC

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2007 - 368 - S

(Please type or print)
Submitted by: JACABB Utilities

Address: 210 WN 2nd St
Seneca SC 29678
Stephen R. Goldie

SC Bar Number:
Telephone: 864-882-8194
Fax: 864-882-0851
Other:

Email:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition**

☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:**

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☐ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Electric/Telecommunications	☐ Answer	☐ Motion	☐ Request for Investigation
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☑ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☐ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☐ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☑ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☑ Other: TRANSFER
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

JACABB UTILITIES, LLC

October 1, 2007

VIA – ~~FIRST CLASS MAIL~~ Federal Express

Mr. Charles Terreni
Chief Clerk of the Commission
SC Public Service Commission
P.O. Box 11649
Columbia, SC 29211

RE: Transfer Request of the Shoals Sewer Company to Jacabb Utilities, LLC

Dear Mr. Terreni:

Jacabb Utilities, LLC requests the Public Service Commission (PSC) of South Carolina approve the transfer of the wastewater treatment facility serving The Shoals and Anchor Point to Jacabb Utilities, LLC. The Utility also requests that the current rates, see attachment, already in place and approved by the PSC for the Shoals Sewer Company be transferred to Jacabb Utilities, LLC.

Jacabb Utilities, LLC does not see a need for a hearing; however the Utility will notify the customers of the transfer as directed by the PSC.

A signed copy of the purchase agreement between Shoals of Anderson, Inc and Jacabb Utilities, LLC for sell and transfer of properties, assets and rights to the Shoals wastewater treatment facility is enclosed.

Please do not hesitate to contact me if you have any questions or if I may provide you with additional information. Thank you in advance for your assistance.

Sincerely,

JACABB UTILITIES, LLC

Stephen R. Goldie
Managing Member

Enclosure

cc: Scott Dukes, Office of Regulatory Staff
James S. Eakes, Esquire

210 W.N. Second Street · Seneca · SC · 29678 · phone · 864-882-8194 · fax · 864-882-0851

RECEIVED 2003 MAR -4 AM 11:02 SC PUBLIC SERVICE COMMISSION

IT IS THEREFORE ORDERED THAT:

1. The proposed schedule of rates and charges as filed in the Company's Application is found to be reasonable, and is hereby granted.

2. The schedule of rates and charges attached hereto as Appendix A is hereby approved for service rendered on or after the date of this Order. The schedule is deemed to be filed with the Commission pursuant to S.C. Code Ann. Section 58-5-240 (Supp. 2002).

3. The Company shall maintain its books and records in accordance with the NARUC Uniform System of Accounts as adopted by the Commission.

4. The Company shall notify each customer of the customers' increase in rates with the first bill that includes the new increase in rates made subject to this Order.

5. If the approved schedule is not placed in effect within three (3) months after the date of this Order, the approved schedule shall not be charged without written permission of the Commission.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director
(SEAL)

APPENDIX A

SHOALS SEWER COMPANY
99 HARBOR DRIVE
ANDERSON, SC 29625

FILED PURSUANT TO DOCKET NO. 2002-341-S - ORDER NO. 2003-141
EFFECTIVE DATE: MARCH 17, 2003

CLASS OF CUSTOMER	CHARGE
The Shoals (per unit)	$ 35.00 Monthly
Anchor Point	$1,260.00 Monthly
Late Fee Notice	$ 10.00
Tap Fee (per unit)	$ 500.00

STATE OF SOUTH CAROLINA	)	SANITARY SEWERAGE ASSET
	)	PURCHASE AGREEMENT
COUNTY OF ANDERSON	)	

This agreement is entered into on September 29th, 2007, between Shoals of Anderson, Inc., a corporation organized and existing under the laws of South Carolina, hereinafter referred to as Seller, and JACABB Utilities, LLC, a South Carolina limited liability company, hereinafter referred to as Purchaser or Buyer.

RECITALS

1. The Seller owns and is the licensed operator of a waste water treatment facility ("WWTF") known as the Shoals Sewer Company Wastewater treatment facility serving customers in Anderson County, South Carolina. This is a sewer collection and treatment facility and national pollution discharge elimination system ("NPDES").

2. The Seller has entered into a consent order (07-014-W) with the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") agreeing to certain conditions and requirements as contained in the consent order. A copy of the consent order is attached hereto as Exhibit "A".

3. The Buyer desires to acquire all of the properties, assets, and rights of the seller in and to the waste water treatment facility located in Anderson County, South Carolina, subject to the prior approval by the South Carolina Department

of Health and Environmental Control and the South Carolina Public Service Commission.

4. The Seller is willing to sell and to transfer such properties, assets, and rights to the Buyer in consideration of the Buyer assuming and agreeing to be responsible for the operation of the waste water treatment facility. The Seller shall remain responsible for any civil penalties as contained in the consent order attached as Exhibit "A".

In consideration of the mutual covenants and promises contained in this agreement, the parties agree as follows:

SECTION ONE
SUBJECT MATTER

Subject to the terms and conditions of this agreement and the recitals hereinabove, the Seller agrees to sell and deliver to the Buyer, and the Buyer agrees to accept and to take from the Seller at closing:

a.) All of the properties, assets, licenses and permits, contracts, accounts receivable, and other rights of Seller of every kind and description, real, personal, mixed, tangible, and intangible, wherever situate, utilized in the operation of the Shoals WWTF in Anderson County, South Carolina, and as listed on the attached Exhibit "B", which is incorporated herein by reference

b.)Upon closing, the Buyer shall assume and be

responsible to operate the WWTF. However, any civil penalty incurred prior to closing will be the responsibility of the Seller.

c.) The Seller shall be responsible for the continued operation of the waste water treatment facility pending closing.

SECTION TWO
CONSIDERATION

Upon closing, as consideration for the sale and transfer of the assets to the Purchaser, the Purchaser agrees to pay Forty-Two Thousand, Five Hundred and no/100 ($42,500.00) Dollars to the Seller. Any monetary civil penalty due at closing will be the obligation of the Seller.

SECTION THREE
CONTINGENCIES

This contract is made subject to the following contingencies:

a.) This agreement is specifically conditioned upon, and expressly subject to, the final approval of this sale prior to closing by both the South Carolina Public Service Commission and the South Carolina Department of Health and Environmental Control. If the approvals have not been obtained within ninety (90) days from the execution of this contract, then either party may, at its option, elect to terminate this agreement, and in that event, the obligations of all parties under this agreement shall be null and void.

b.) The conveyance to the Buyer of the sewer lagoon and

real estate shown on Exhibit "C" by a general warranty deed free and clear of all encumbrances and all easements and rights-of-way necessary for the operation of the WWTF.

c.) The conveyance of all assets free and clear of all liens and encumbrances.

d.) This contract is, also, contingent upon Buyer obtaining a new five (5) year NPDES discharge permit from DHEC with revised limits acceptable to purchase.

e.) Immediately after the execution of this agreement, the Buyer, or its authorized representative, shall have access to all books and records of the Seller for the purpose of reviewing, copying, inspecting, and auditing those books and records.

f.) This agreement is contingent upon the Buyer being able to obtain all permits and licenses necessary for the operation of the WWTF, including a five (5) year NPDES discharge permit with acceptable limits as specified hereinabove.

g.) This agreement is further conditioned upon, not only approval by DHEC, but a release of the Seller by DHEC from any further obligation or responsibility under the consent order.

SECTION FOUR
CLOSING

a.) Closing Date. Unless the closing date is extended

by the mutual consent of the parties, the Closing will be held within ninety (90) days after the execution of this agreement, or sooner if the required approvals are obtained and the other conditions and contingencies are met. The parties may mutually agree to extend the closing date by written agreement.

b.) Closing. On the closing date, the closing shall occur as follows, subject to the satisfaction of the terms and conditions of this agreement.

i.) The Seller shall convey to the Buyer the real property where the sewer facilities are located and all rights-of-way and easements necessary for the operation of the WWTF by a general warranty deed, duly executed, in recordable form in fee simple without liens or encumbrances.

ii.) The Seller shall execute and deliver to the Buyer an assignment of leases or rental agreements affecting the assets (if any).

iii.) The Seller shall execute and deliver a bill of sale transferring all other assets of the WWTF to the Buyer free and clear of all liens and encumbrances.

iv.) The Seller shall deliver possession and access of the WWTF and all of its assets to Buyer at closing.

v.) The closing costs shall be paid by the parties as follows:

Seller: To pays its own attorney's fees; pro-rata real estate taxes; stamps on the deed; and cost of preparation of the deed.

Buyer: To pay its own attorney's fees; recording fees; and any other acquisition costs which it incurs.

vi.) The Seller shall deliver to Buyer at closing all customer records; all records pertaining to and necessary for the operation of the WWTF; all records for the assets; and all other information on file regarding the WWTF.

vii.) An assignment of the right to service all customers of the Shoals WWTF.

SECTION FIVE
SELLER'S REPRESENTATION AND WARRANTIES

Seller represents and warrants to, and agrees with, Buyer as follows:

a.) Seller is a corporation duly organized, validly existing, and in good standing under the laws of South Carolina, with full corporate power and authority to own its property and to conduct the business that it presently conducts.

b.) There are no actions, suits, claims, investigations, or legal or administrative or arbitration proceedings pending or threatened against, or for the benefit of, Seller, nor to Seller's knowledge any basis for any such claims, except for the amended consent order with DHEC attached hereto as Exhibit "A"

and existing orders of the PSC which are available to Buyer as public records.

c.) Other than the consent order, there have been no material adverse changes in business, operations, properties, assets, or liabilities of Seller, and until the closing. Seller's business will continue to be conducted in the usual, regular, and ordinary manner in all material respects, and on information and belief, no material adverse changes in the business, operations, properties, assets or liabilities are expected to the date of the closing.

d.) The Seller further warrants that it has paid any and all payroll, sales, use, workers' compensation, or other such taxes that the Seller would owe on or before the date and time of closing. The Seller further agrees to hold harmless the Purchaser in regard to any such claims which are made against the Purchaser for these items, including reasonable attorney's fees and costs.

e.) The Seller warrants and represents that the assets to be transferred are debt free and that, as of closing, there shall be no liens, encumbrances, or claims of any kind against said assets to be transferred, and that there are no other parties claiming an interest in said assets, except as contained in the amended consent order with DHEC.

f.) From that date of this agreement through the closing,

Seller shall keep all of the assets of Seller in a normal state or repair and operating efficiency, customary in the business, and shall use its best efforts to preserve the goodwill of Seller and its customers and others having business relations with Seller and the WWTF.

g.) The Seller has the legal power and right to enter into and perform this agreement. The consummation of the transactions contemplated by this agreement will not violate any provision of law, or any of Seller's articles of incorporation or by-laws.

h.) All financial statements of Seller furnished to Buyer under this agreement are true, correct, and complete statements of the financial condition and results of Seller's operations as, at, and for the period specified, and were prepared according to generally accepted accounting principles consistently applied. Seller has filed all federal, state, county and local income, withholding, FICA, excise, property, sales, use, and other tax returns that are required to be filed by it, and has paid all taxes due for periods prior to the date of this agreement. There are no facts in existence as of the date of this agreement and known to Seller that might serve as the basis of any material liabilities of Seller other than those disclosed by the financial statements or tax returns of Seller.

i.) Seller, as of closing, shall provide good and

marketable title as herinabove agreed to all the properties, assets, and rights to be delivered by it to Buyer free of all liens, charges, encumbrances except (1) taxes constituting a lien but not yet due and payable, (2) defects or irregularities of title or encumbrances that are not such as to interfere materially with the operation or use or materially reduce the value of any such property, asset, or right or materially affect title to the property, and (3) such other defects or irregularities of title or liens or encumbrances as Buyer may have waived in writing or as are contemplated above in Sections Three and Four and agreed to by Seller's and Buyer's execution hereby.

j.) Seller has not employed any broker or agent with respect to the sale and purchase contemplated in this agreement, nor taken any other action, nor will Seller take any such action, that would cause the Buyer to become liable for the payment of any finder's fee, broker's fee, or commission.

k.) As of the closing, Seller should hold all licenses and permits necessary or appropriate for the operation of its WWTF, and the licenses and permits shall be current and in good standing,

l.) The consummation of this agreement does not violate any agreement or agreements to which the Seller is subject.

m.) All assets being sold are believed to be in good

operating condition, subject only to normal wear and tear. However, all assets are sold and transferred in "as is" condition when closing is effected hereunder.

SECTION SIX
BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents, warrants to, and agrees with Seller as follows:

a.) Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of South Carolina and has full power to carry on its business as now being conducted.

b.) The execution of this agreement and all documents provided for in this agreement by Buyer and its delivery to Seller have been duly authorized by Buyer's members, and no further action is necessary on Buyer's part to make this agreement valid and binding on Buyer in accordance with its terms.

c.) It will be in a position financially to fulfill the terms of this agreement as of the date of closing.

d.) It will use its best efforts in the operation of the WWTF so as to meet all obligations required by this agreement.

e.) The Buyer will assume the operation of the WWTF at closing so as to meet all obligations required by this agreement and those continuing after closing.

f.) The Buyer shall indemnify and hold harmless the Seller against and in respect of all liabilities and obligations of, or claims against, Buyer resulting from its operation of said WWTF and properties purchased from the date of closing and thereafter, to include reasonable attorney's fees and costs.

SECTION SEVEN
OTHER AGREEMENTS

a.) The Buyer is not assuming any liabilities in connection with the WWTF.

b.) Pending closing, the Seller shall have the sole responsibility for the operation and management of the WWTF as a going concern. The Seller shall indemnify and hold the Buyer harmless from and against any and all claims or actions which may be brought against the Buyer arising out of the ownership or operation of the WWTF prior to the date of closing, including reasonable attorney's fees and costs. The Buyer shall indemnify and hold the Seller harmless from and against any and all claims or actions which may be brought against the Seller arising out of the ownership or operation of the WWTF by the Buyer after the date of closing, including reasonable attorney's fees and costs.

c.) Seller further agrees to indemnify and hold the

Buyer and its successors and assigns harmless against any and all liabilities, claims, actions, suits, and judgements existing prior to the closing and not expressly assumed by the Buyer in writing, and any costs, expenses, and reasonable attorney's fees incident to same, and incurred by the Buyer in defense of same. The Buyer agrees to provide notice of any such claim to the Seller within (10) days of it being made, and to allow the Seller the right to defend the claim prior to paying it or making any claim to the Seller regarding it. This indemnification and agreement to hold the Buyer harmless shall apply to, but not be limited to, the following:

i.) All liabilities of the Seller and WWTF, of any kind or nature, whether accrued, absolute, contingent, or otherwise existing at the closing date.

ii.) Any damage or deficiency arising from any misrepresentation or breach of warranty;

iii.) Any tort liability of any kind or nature arising from a tort or legal wrong committed by Seller or said business or its employees or agents, prior to the date of closing.

iv.) Any violations by Seller or Seller's agents of any laws, statutes, rules, regulations, including those related to toxic or hazardous substances prior to the date of closing (except for the requirements of the consent order); and

v.) All actions, suits, proceedings, demands, assessments,

judgements, reasonable costs and expenses incident to any of the foregoing.

C.) Pending the closing of this transaction, Buyer shall exercise no control over the operation of the WWTF. The operations of Seller shall be Seller's sole responsibility up to and including the date of closing, or any extension of it, all risks of loss of Seller during that time to be borne by Seller.

SECTION EIGHT
EXHIBITS INCORPORATED BY REFERENCE

All exhibits referred to in this agreement are incorporated for all purposes.

SECTION NINE
ADDITIONAL DOCUMENTS

The parties agree to execute all documents as may be necessary to carry out the intent and provisions of this agreement.

SECTION TEN
MISCELLANEOUS

a.) No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

b.) In the event of the bringing of any action or suit by

a party hereto against another party by reason of any breach of any of the covenants, agreements, or provisions on the part of any party arising out of this agreement, then, in that event, the prevailing party shall be entitled to have and to recover of and from the other party all costs and expenses of the action or suit, including reasonable attorney's fees and any other professional fees resulting therefrom.

c.) The parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof and that failure to perform timely any of the terms, conditions, obligations or provisions hereof by any party shall constitute a material breach hereof and a noncurable (but waivable) default under this agreement by the parties so failing to perform.

d.) The parties hereto acknowledge that this agreement has been negotiated and entered into in the State of South Carolina. The parties expressly agree that this agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of South Carolina.

e.) The representations, warranties, rights, duties, agreements and obligations of the parties provided in this agreement shall survive the closing, and this agreement shall specifically survive the closing.

f.) This agreement may be executed simultaneously in two

or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

g.) This agreement can only be amended or supplemented by a written agreement, and it may not be orally modified or changed.

The Remainder of this page intentionally left blank.

Witnesses as to Seller:

Shoals of Anderson, Inc:

BY: _____

ITS: President

ATTEST: _____

ITS: _____

SELLER

Witnesses as to Buyer:

Sheila Sinsley

JACABB UTILITIES, LLC.

BY:

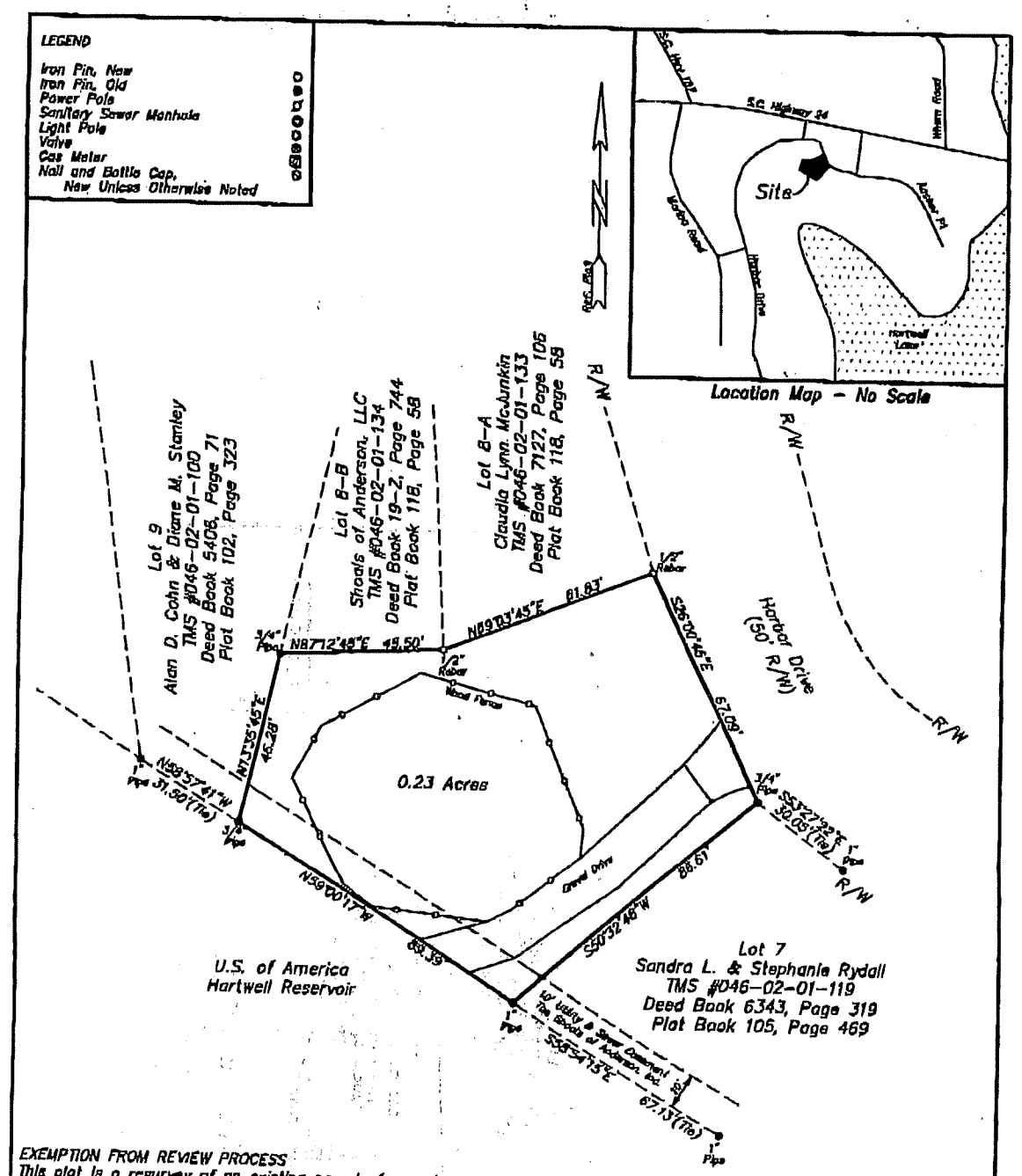
ITS: Member
BUYER

Received Time Sep. 14. 3:09PM

EXHIBIT "C"

(REAL ESTATE)

All that certain piece, parcel, or tract of land situate, lying, and being in Pendleton Township, County of Anderson, and State of South Carolina, as shown on the attached plat by T. Scott Richey, PLS 22364, of F & S Surveyors, Engineers, Planners, Inc., dated July 26, 2006.



EXEMPTION FROM REVIEW PROCESS
This plat is a resurvey of an existing parcel of record.

I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than those shown.

T. Scott Richey PLS 22364

This survey is subject to any rights of way and easements of record, and any facts which may be disclosed by a full and accurate title search.

This property does not lie in a designated flood hazard area.

7-26-2006

SOUTH CAROLINA
F&S SURVEYORS, ENGINEERS & PLANNERS, INC.
No. C03052
CERTIFICATE OF AUTHORIZATION

References:
TMS #046-02-01-109
Plat Book 78, Page 427
Deed Book 19-Z, Page 744

State of South Carolina
County of Anderson
Pendleton Township

Plat of 0.23 Acres
Harbor Drive
Surveyed at the Request of
Fred Allen

Surveyors Engineers & Planners, Inc.
211 Society Street
Anderson, S.C. 29621
864-226-0980

Scale: 1"=30' 0' FS.06107 30' TSR 60' July 26, 2006