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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058638
Party	Defendant Southern Land Company, LLC
Correspondence Address	MARI=ELISE TAUBE STITES & HARBISON PLLC 401 COMMERCE STREET, SUITE 800 NASHVILLE, TN 37219 UNITED STATES randy.michels@stites.com, mtaube@stites.com
Submission	Reply in Support of Motion
Filer's Name	James R. Michels
Filer's e-mail	randy.michels@stites.com
Signature	/James R. Michels/
Date	11/05/2014
Attachments	NASHVILLE-#1082947-v4-Southern_Land_Alyn_Reply_in_Support_of_Motion_to_Compel.pdf(187120 bytes) NASHVILLE-#1083305-v1-Exhibit_A_to_Reply_-_Petitioner_s_Discovery_Requests.PDF(111302 bytes) NASHVILLE-#1083312-v1-Exhibit_B_to_Reply_-_Specimen.PDF(2521966 bytes) NASHVILLE-#1083311-v1-Exhibit_C_to_Reply_-_Lisa_Alyn_s_westhavenfranklin_com_as_of_11-_04_-2014.PDF(480889 bytes) NASHVILLE-#1084264-v1-Exhibit_D_to_Reply_-_Lisa_Alyn_Transactions.PDF(67883 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
IN THE TRADEMARK TRIAL AND APPEAL BOARD

LISA ALYN,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92058638
	)	U.S. Registration Nos. 3,101,150
	)	3,101,151
SOUTHERN LAND COMPANY, LLC	)	
	)	
Registrant	)	
	)	
_____	)	

REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO COMPEL DISCOVERY

Petitioner's response to Southern Land Company's Motion to Compel Discovery lays bare a strategic misstep made by Petitioner in initiating this proceeding. Petitioner filed her Petition For Cancellation in response to a cease and desist letter from Southern Land Company that accused her of trademark infringement. Petition For Cancellation ("Petition"), ¶ 3. Petitioner pleaded that she would "be damaged by the continued existence of United States Trademark Registration No. 3,101,151 and No. 3,101,150 because they will give color of rights to the Respondent and will continue to be an impediment to Petitioner's ability to use 'Westhaven' in regard to her business services and advertising." *Id*. at ¶ 14. Southern Land Company directed discovery to this pleaded matter, but Petitioner refuses to respond. The motive is obvious: Petitioner now realizes that producing responsive discovery will potentially expose her to liability for trademark infringement. Petitioner's stonewalling left Southern Land Company with no choice but to file its Motion to Compel Discovery.

I. PETITIONER SHOULD BE COMPELLED TO RESPOND

Petitioner is caught in a trap of her own making. She pleaded that the WESTHAVEN trademark registrations are an "impediment to Petitioner's ability to use 'Westhaven' in regard to her business services and advertising." *Id*. at ¶ 14. A party may take discovery as to matters specifically raised in the pleadings. *See* TBMP ¶ 402.01. Southern Land Company directed discovery to this pleaded matter, but Petitioner refuses to respond on the basis that this discovery is irrelevant to the issue of fraud. Petitioner cannot have it both ways. If the pleaded matter is irrelevant, then it should be stricken from the pleadings. If on the other hand it is relevant, then Petitioner cannot refuse to respond to the discovery requests. Since Petitioner is unwilling to concede that the pleaded matter is irrelevant, she should be compelled to respond to Southern Land Company's discovery requests.

II. PETITIONER'S FRAUD CLAIM IS BOGUS

The motive for Petitioner's refusal to provide responsive discovery is obvious: she is concerned about the broader question of whether or not she infringes Southern Land Company's WESTHAVEN trademark registrations. Her concern is understandable since her fraud claim is bogus.

The Federal Circuit set a high bar for *inter partes* litigants claiming fraud in *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009). Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with its application with intent to deceive the USPTO. *Id.*, 580 F.3d at 1245, 91 USPQ2d at 1941; *see also Swiss Watch Int'l Inc. v. Fed'n of the Swiss Watch Indus.*, 101 USPQ2d 1731, 1745 (TTAB 2012). A party alleging fraud in the procurement of a registration bears the heavy burden of proving fraud with clear and convincing evidence. *Bose*, 91 USPQ2d

at 1243 (quoting *Smith Int'l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (TTAB 1981)). " There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party." *Smith Int'l*, 209 USPQ at 1044. For example, the Board will not find fraud if the evidence shows that a false statement was made with a reasonable and honest belief that it was true, rather than intent to mislead the USPTO into issuing a registration to which the applicant was not otherwise entitled. *Bose*, 91 USPQ2d at 1243; *see also Woodstock's Enters. Inc. (Cal.) v. Woodstock's Enters. Inc. (Or.)*, 43 USPQ2d 1440, 1443 (TTAB 1997), *aff'd (unpub'd)*, Appeal No. 97-1580 (Fed. Cir. Mar. 5, 1998).

The parties have known since February 6, 2014 that fact discovery would conclude on October 14, 2014. Southern Land Company timely propounded written discovery on June 6, 2014. *See* Motion to Compel Discovery at p. 3. Southern Land Company has diligently sought to obtain complete discovery responses from Petitioner ever since. In contrast, Petitioner waited until August 22, 2014 to propound discovery. *See* Discovery Requests attached as Exhibit A hereto. Moreover, despite the significant evidentiary hurdle facing Petitioner to prove fraud, she waited until October 1 to broach the subject of depositions – **a mere 13 days before the discovery cut-off**. *See* Exhibit 1 to Memorandum in Opposition to Respondent's Motion to Compel ("Memorandum"). Southern Land Company provided Petitioner with deposition dates prior to the October 14 deadline. *See* Exhibit 3 to Memorandum. After hearing no response, Southern Land Company filed its Motion to Compel Discovery. It was only *after* the filing of the Motion to Compel Discovery that Petitioner inquired about alternative deposition dates. *See id*. Of course, it was too late to issue discovery notices at that point since the filing of a motion to compel leads to a suspension of proceedings. *See* TBMP § 510.03(a).

Petitioner's failure to timely issue deposition notices is not surprising. She will be unable to sustain this meritless proceeding if she takes the depositions. Petitioner's fraud claim is based on a statement that Southern Land Company made during the prosecution of the applications that matured into the WESTHAVEN trademark registrations. Specifically, the examining attorney inquired as to whether WESTHAVEN "has significance in the relevant trade, or any geographical significance." Petition, ¶ 8. In response, Southern Land Company truthfully stated that WESTHAVEN "does not have any significance in the relevant trade, or any geographical significance." *Id*. at ¶ 9. The deposition testimony will establish that Southern Land Company coined the term WESTHAVEN for a mixed-use community that it has been developing in Franklin, Tennessee since 2002. The city of Franklin has geographical significance. The state of Tennessee has geographical significance. Southern Land Company's WESTHAVEN community has no geographical significance.

Even if the Board disagrees with Southern Land Company about whether the term WESTHAVEN has geographical significance, the statement was not material. Courts and the Board alike have long held that materiality in the trademark prosecution context requires a showing that the registration in question would not have issued had the statement in question not been made. *See, e.g., Modern Fence Techs., Inc. v. Qualipac Home Improvement Corp.*, 726 F. Supp. 2d 975, 991 (E.D. Wis. 2010) (denying defense motion for summary judgment on ground that "it is not clear . . . that, but for the misrepresentation regarding advertising, the federal registrations would not or should not have issued"). Petitioner has pleaded that "[i]f Respondent had advised the USPTO that WESTHAVEN had geographical significance, both registrations would have been refused under 15 U.S.C. § 1052(e)." Petition, ¶ 12. The Trademark Manual of Examining Procedure is clear, however, that "[t]he mere fact that a term may be the name of a

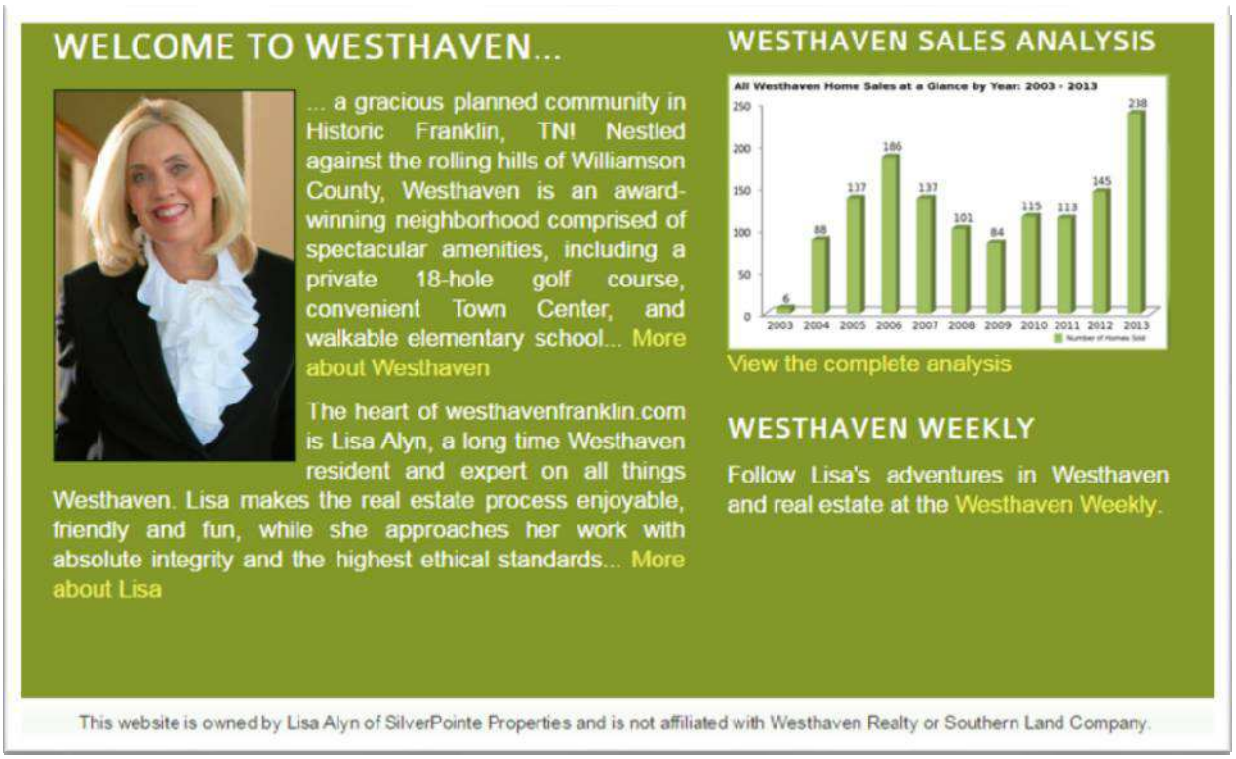
place that has a physical location does not necessarily make that term geographic under §2(e)(2)." TMEP § 1210.02(a). Moreover, "names of amusement parks, *residential communities*, and business complexes which are coined by the applicant, must not be refused. *In re Pebble Beach Co.*, 19 USPQ2d 1687 (TTAB 1991) (17 MILE DRIVE not a geographic term, where it refers to a specific location wholly owned by applicant, and was coined by applicant to refer both to applicant's services and the place where the services were performed)." TMEP § 1210.02(a) (emphasis added).

Even if the Board finds that Southern Land Company's statement was both false and material, Petitioner's fraud claim still fails because there was no intent to mislead the USPTO. When given the opportunity, Southern Land Company will testify that it made the statement with a reasonable and honest belief that it was true. After all, why would Southern Land Company have submitted a brochure for its WESTHAVEN community in connection with its Statements of Use if it had intended to deceive the USPTO? *See* brochure attached as Exhibit B.

III. PETITIONER'S LACK OF CANDOR IN HER RESPONSE

Petitioner accuses Southern Land Company of fraud yet it is Petitioner who fails to be candid with the Board in her response. Petitioner tries to justify her failure to admit or deny facts relating to twelve requests for admission because she contends that those facts are exclusively related to Southern Land Company's business. *See* Memorandum at p. 11. Specifically, she claims to have "no knowledge whether Southern Land offers real estate services and, if so, how those services are offered (for example, through an affiliate of Southern Land, by contracted agent (not employees) or through a myriad of other structural manners)." *Id*. at p. 12. This statement is contradicted by her Petitioner For Cancellation, her website where she advertises her real estate services, and her prior business dealings with Southern Land Company.

First of all, she pleaded "Petitioner lives in 'Westhaven' and both the Petitioner and Respondent conduct business in Westhaven." Petition, ¶ 11. Secondly, she boasts on her website about being a "long time Westhaven resident and expert on all things Westhaven". See webpage printout attached hereto as Exhibit C. Notably, the excerpt below from her website also includes a disclaimer that she is "not affiliated with Westhaven Realty or Southern Land Company."



Finally, Petitioner was the buyer's agent in twelve (12) real estate transactions with Southern Land Company's affiliated real estate brokerage, Westhaven Realty, since 2010. *See* chart attached as Exhibit D.

Petitioner cannot claim to be "without sufficient information or knowledge to enable her to admit or deny" Requests For Admission Nos. 12, 13, and 14 when her Petition For Cancellation, her website, and her prior business dealings demonstrate her familiarity with the real estate services provided under the WESTHAVEN mark by Southern Land Company and its affiliated real estate brokerage, Westhaven Realty. Moreover, as a self-described "long time

Westhaven resident and expert on all things Westhaven", it defies belief that Petitioner "does not have personal information required to admit or deny" Requests For Admission Nos. 17, 18, 19, 20, 21, 22, 23, 24, and 34. The "lack of knowledge" excuse is only available when the responding party has conducted a *reasonable inquiry* but the information that it knows or can readily obtain is insufficient to enable it to admit or deny. Fed. R. Civ. P. 36(a)(4). It is obvious that Petitioner has failed to conduct a reasonable inquiry and that her objections are insufficient. Therefore, Petitioner should be required to answer Request for Admission Nos. 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, and 34.

IV. CONCLUSION

For the foregoing reasons, Southern Land Company reiterates its request that the Board grant its Motion to Compel Discovery.

November 5, 2014

Respectfully submitted,

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Counsel for Respondent
Southern Land Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing were served on counsel for Petitioner, this 5th day of November, 2014, by sending it via e-mail to:

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James R. Michels

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Lisa Alyn Petitioner, v. Southern Land Company, LLC Registrant.	Opposition No. 92058638 U.S. Trademark Reg. Nos. 3,101,151 and 3,101,151

PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Registrant, Southern Land Company, LLC, ("Registrant") is requested pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, to respond to the following requests for production of documents and things separately and fully, in writing, and under penalty of perjury, within thirty (30) days after service.

DEFINITIONS AND INSTRUCTIONS

1. "Document" means the original and all non-identical copy of any written, printed, typed, recorded, computerized, electronic, taped, graphic, or other matter, in whatever form, whether in final or draft, including but not limited to all materials that constitute "writings" or "recordings" or "photographs" within the broadest meaning of Rule 34 of the Federal Rules of Civil Procedure.

2. "Communication" means any contact whether oral, documentary or electronically, formal or informal, at any place or under any circumstances whatsoever whereby information of any nature is transmitted or transferred, including without limitation, any note, memorandum or other record.

3. “Southern Land Company”, “Southern Land”, “Registrant”, “You”, or “Your” means Southern Land Company, LLC, their agents, servants, employees, investigators, attorneys and all other persons or entities representing either or acting on their behalf.

4. “Lisa Alyn”, “Ms. Alyn”, or “Petitioner” means Lisa Alyn, her agents, servants, employees, investigators, attorneys and all other persons or entities representing either her or acting on her behalf.

5. “WESTHAVEN Marks” means the marks for WESTHAVEN, U.S. Trademark Registration No. 3,101,151 and W WESTHAVEN and Design, U.S. Trademark Registration No. 3,101,150 granted to Respondent, Southern Land Company, LLC and are the subject of this petition of cancellation.

6. In responding to these requests, You are required to provide all Documents that are available to You or within Your control, including Documents in the possession of Your attorneys, employees, agents, representatives and any other person acting on Your behalf.

7. If You object to any of these requests, You must state the grounds for any objection and respond to the remainder of the request.

8. If You object to the production of any document on the grounds that it is protected from disclosure by the attorney-client privilege, work-product doctrine, or any other privilege, You are requested to identify each document for which the privilege is claimed and the following information: (a) name of the writer, sender, or initiator of the document; (b) name of the recipient(s), addressee(s), or any party to whom a copy of the document was sent; (c) the date of the document; and (d) a statement as to the basis for the privilege.

DISCOVERY

Request for Production No. 1:

Produce any and all Documents that You may use to support any defense in this cancellation proceeding.

Request for Production No. 2:

Produce any and all Documents that You may use or rely on to support Your position that the WESTHAVEN Marks are not geographically descriptive with the meaning of the U.S. Trademark Act.

Request for Production No. 3:

Produce any and all Documents associated with and evidencing Your creation and development of the WESTHAVEN Marks. Your answer should include but is not limited to interoffice communications and communications with outside consultants, advisors or other professionals providing services such as marketing surveys, legal opinions and expert opinions.

Request for Production No. 4:

Produce any and all Documents evidencing Your knowledge of Westhaven, Connecticut and Your use of that knowledge in Your creation and development of the WESTHAVEN Marks.

Request for Production No. 5:

Produce any and all Documents that evidence Your decision to use the WESTHAVEN Marks including but not limited to interoffice communications and communications with outside

consultants, advisors or other professionals providing services such as marketing services, legal opinions and expert opinions.

Request for Production No. 6:

Produce any and all documents related to any market research studies or surveys You may have conducted or You authorized to be conducted regarding the term WESTHAVEN as a potential mark for Your use.

Request for Production No. 7:

Produce any and all Documents that evidence Your first use of the WESTHAVEN Marks.

Request for Production No. 8:

Produce any and all Documents that evidence Your decision to apply for U.S. trademark registrations for the WESTHAVEN Marks.

Request for Production No. 9:

Produce any and all Documents surrounding the United States Trademark application filings of the WESTHAVEN Marks including but not limited to any and all communications between You and the U.S. Patent and Trademark Office and its examiners about the geographical significance of the WESTHAVEN Marks.

Request for Production No. 10:

On January 5, 2004, two Office Actions were issued by the examiner from the U.S. Patent and Trademark Office one for each of Your U.S. trademark application serial nos. 76/524,401 and 76/524,137 with both stating "The applicant must indicate whether 'WESTHAVEN' has any significance in the relevant trade, or any geographical significance. 37 C.F.R. §2.61(b)."

On July 6, 2004, You submitted the following response to both Office Actions: "Applicant submits that 'WESTHAVEN' does not have any significance in the relevant trade, or any geographical significance."

Produce any and all Documents that evidence Your decision to submit those July 6, 2004 responses to the January 5, 2004 Office Actions including but not limited to all interoffice communications and communications with outside individuals or entities that provided advice or guidance regarding the decision.

Request for Production No. 11:

Produce any and all documents relating to legal or non-legal opinions regarding the U.S. trademark applications and subsequent communications and proceedings leading up to the approval of the U.S. trademark registrations of the WESTHAVEN Marks.

Request for Production No. 12:

Produce any and all documents relating to any other marks You considered using instead of the WESTHAVEN Marks.

Request for Production No. 13:

Produce Documents evidencing Your annual expenditures on marketing, branding, advertising, and promoting the WESTHAVEN Marks from January 1, 2002 through July 31, 2014.

Request for Production No. 14:

Produce illustrative samples of Your advertising using the WESTHAVEN Marks services since January 1, 2002.

Request for Production No. 15:

Produce any Documents evidencing all Your sales using the WESTHAVEN Marks to offer your land development and real estate brokerage services since January 1, 2002.

Request for Production No. 16:

Produce any and all Documents including communications and correspondence that evidence the authorized use of the WESTHAVEN Marks by third-parties other than You.

Request for Production No. 17:

Produce any and all agreements between You and any third-parties that you authorized to use or license the WESTHAVEN Marks, in any way, including but not limited to advertising, marketing, sublicensing, or promotionally.

Request for Production No. 18:

Produce any and all Documents including communications and correspondence that evidence Your knowledge of unauthorized use of the WESTHAVEN Marks by third-parties.

Request for Production No. 19:

Produce any and all Documents that evidence Your demands to stop any third-party's un-authorized use of the WESTHAVEN Marks.

Request for Production No 20:

Produce any and all Documents that evidence Your protection of the WESTHAVEN Marks from unauthorized third-party users.

Request for Production No. 21:

Produce any and all Documents that evidence a challenge to the WESTHAVEN Marks or any litigation against the validity of the WESTHAVEN Marks by a third-party.

Request for Production No. 22:

Produce any and all Documents that You submitted to or filed with the City of Franklin or the City of Franklin Planning Commission related to the development of multi-residential projects, neighborhoods, communities, or homes including but not limited to site plans, permit applications, and zoning and zone change applications from January 1, 2001 through July 31, 2004.

Request for Production No. 23:

Produce any and all Documents that You submitted to or filed with the City of Franklin or the City of Franklin Planning Commission related to the development of commercial shopping centers or malls including but not limited to site plans, permit applications, and zoning and zone change applications from January 1, 2001 through July 31, 2004.

Request for Production No. 24:

Produce a document listing all of Your active and inactive employees and their contact information of record that worked for You from January 1, 2002 through present including any executives, directors, officers, managers or members of the limited liability company.

Respectfully submitted,

Dated: August 22, 2014

/s/ *Greg Latham*

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- and -

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Attorneys for Petitioner, Lisa Alyn

CERTIFICATE OF SERVICE

I certify that on this 22nd day of August, a true copy of the above Petitioner's First Set of Requests for Production were served via e-mail and via First Class Mail on Respondent's counsel:

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By: *Greg Latham*
Gregory D. Latham

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Lisa Alyn Petitioner, v. Southern Land Company, LLC Registrant.	Opposition No. 92058638 U.S. Trademark Reg. Nos. 3,101,151 and 3,101,151

PETITIONER'S FIRST SET OF INTERROGATORIES

Registrant, Southern Land Company, LLC, ("Registrant") is requested pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, to respond to the following requests for production of documents and things separately and fully, in writing, and under penalty of perjury, within thirty (30) days after service.

DEFINITIONS AND INSTRUCTIONS

1. "Document" means the original and all non-identical copy of any written, printed, typed, recorded, computerized, electronic, taped, graphic, or other matter, in whatever form, whether in final or draft, including but not limited to all materials that constitute "writings" or "recordings" or "photographs" within the broadest meaning of Rule 34 of the Federal Rules of Civil Procedure.

2. "Communication" means any contact whether oral, documentary or electronically, formal or informal, at any place or under any circumstances whatsoever whereby information of any nature is transmitted or transferred, including without limitation, any note, memorandum or other record.

3. “Southern Land Company”, “Southern Land”, “Registrant”, “You”, or “Your” means Southern Land Company, LLC, their agents, servants, employees, investigators, attorneys and all other persons or entities representing either or acting on their behalf.

4. “Lisa Alyn”, “Ms. Alyn”, or “Petitioner” means Lisa Alyn, her agents, servants, employees, investigators, attorneys and all other persons or entities representing either her or acting on her behalf.

5. “WESTHAVEN Marks” means the marks for WESTHAVEN, U.S. Trademark Registration No. 3,101,151 and W WESTHAVEN and Design, U.S. Trademark Registration No. 3,101,150 granted to Respondent, Southern Land Company, LLC and are the subject of this petition of cancellation.

6. In responding to these requests, You are required to provide all Documents that are available to You or within Your control, including Documents in the possession of Your attorneys, employees, agents, representatives and any other person acting on Your behalf.

7. If You object to any of these requests, You must state the grounds for any objection and respond to the remainder of the request.

8. If You object to the production of any document on the grounds that it is protected from disclosure by the attorney-client privilege, work-product doctrine, or any other privilege, You are requested to identify each document for which the privilege is claimed and the following information: (a) name of the writer, sender, or initiator of the document; (b) name of the recipient(s), addressee(s), or any party to whom a copy of the document was sent; (c) the date of the document; and (d) a statement as to the basis for the privilege.

DISCOVERY

Interrogatory No. 1:

State the name, address and telephone number of each individual likely to have discoverable information that You may use to support any defense in this litigation.

Interrogatory No. 2:

Identify each expert by name and address that You intend to use in support of any defense in this litigation.

Interrogatory No. 3:

Identify every claim, demand or lawsuit which has alleged in any fashion that Your rights in any trademark are not valid and enforceable or in which You have alleged in any fashion that another's trademark(s) is(are) not valid and enforceable.

Interrogatory No. 4:

List by date and registration number any Trademark Registration issued to You by the United States Patent and Trademark Office.

Interrogatory No. 5:

List by application date and serial number any trademark applications You have submitted and been refused a trademark by the United States Patent and Trademark Office.

Interrogatory No. 6:

Identify each and every person or source including employees who participated in the creation and development of the WESTHAVEN Marks.

Interrogatory No. 7:

Describe in detail the process used by You and the individuals identified in Interrogatory No. 6 to create and develop the WESTHAVEN Marks.

Interrogatory No. 8:

Identify each and every person including but not limited to employees and outside persons and entities who participated in the decision for You to adopt the WESTHAVEN Marks.

Interrogatory No. 9:

Identify any employees, individuals or entities that may have worked on any market research studies or surveys You may have conducted or You authorized to be conducted regarding the term WESTHAVEN.

Interrogatory No. 10:

Identify any individuals or entities that participated in Your decision to apply for U.S. trademark registrations for the WESTHAVEN Marks.

Interrogatory No. 11:

State the reasons for Your decision to adopt and use the WESTHAVEN Marks and to apply for U.S. trademark registrations of the WESTHAVEN Marks.

Interrogatory No. 12:

Provide a description of the process used to determine whether "WESTHAVEN" was available for U.S. trademark registration by You and would not conflict with any requirements for registration such as prior used or registered mark or name or geographical significance.

Interrogatory No. 13:

Identify the three persons who have the most knowledge about the adoption WESTHAVEN as Your mark and the decision to apply for a trademark registration.

Interrogatory No. 14:

Identify any individuals or entities that participated in the United States Trademark application filings and subsequent communications with U.S. Patent and Trademark Office's examiners and employees regarding the WESTHAVEN Marks under U.S. trademark application serial nos. 76/524,401 and 76/524,137.

Interrogatory No. 15:

On January 5, 2004, two Office Actions were issued by the examiner from the U.S. Patent and Trademark Office one for each of Your U.S. trademark application serial nos. 76/524,401 and 76/524,137 with both stating "The applicant must indicate whether

'WESTHAVEN' has any significance in the relevant trade, or any geographical significance. 37 C.F.R. §2.61(b)."

On July 6, 2004, You submitted the following response to both Office Actions: "Applicant submits that 'WESTHAVEN' does not have any significance in the relevant trade, or any geographical significance."

Identify any and all individuals, whether employees or not, that participated in the decision to submit those July 6, 2004 responses to the Office Actions dated January 5, 2004.

Interrogatory No 16:

Explain the basis for and identify all facts which evidence, support, refer or relate to your contention that the term WESTHAVEN has no geographical significance.

Interrogatory No. 17:

Explain the basis for and identify all facts which evidence, support, refer or relate to your contention that the term WESTHAVEN was coined by You.

Interrogatory No. 18:

State whether You have requested, received, or have knowledge of any opinions, legal or otherwise, of any type regarding the right to register the WESTHAVEN Marks.

Interrogatory No. 19:

If you stated anything but "No" in Interrogatory No 18, then, identify each person who made the request(s), each person who fulfilled the request(s), and identify any documents relating to the opinion(s).

Interrogatory No. 20:

Identify any individuals or entities authorized by You to use the WESTHAVEN Marks.

Interrogatory No. 21:

For each individual or entity identified in Interrogatory 20, provide contact information, including an address and phone number for each and the date You first authorized the use of the WESTHAVEN Marks.

Interrogatory No. 22:

Identify any individuals or entities that are using the WESTHAVEN Marks without Your authorization.

Interrogatory No. 23:

Identify any individuals or entities that you have contacted about using the WESTHAVEN Marks without Your authorization.

Interrogatory No. 24:

Identify all persons who participated in any way in the preparation of these interrogatories.

Respectfully submitted,

Dated: August 22, 2014

/s/ *Greg Latham*

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Attorneys for Petitioner, Lisa Alyn

CERTIFICATE OF SERVICE

I certify that on this 22nd day of August, a true copy of the above Petitioner's First Set of Interrogatories were served via e-mail and via First Class Mail on Respondent's counsel:

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E-mail: randy.michels@stites.com

Mari-Elise Taube
Stites & Harbison PLLC
1199 North Fairfax St., Suite 900
Alexandria, VA 22314
E-mail: mtaube@stites.com

By: *Greg Latham*
Gregory D. Latham

EXHIBIT B

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

TO THE COMMISSIONER FOR TRADEMARKS:

Applicant:	Southern Land Company, LLC	)	Law Office 116
Serial No.:	76/524,401	)	Examining Attorney: Jennifer M. Martin
Filing Date:	June 20, 2003	)	
Mark:	WESTHAVEN	)	

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on January 27, 2006.

Francine VanAelst

Francine M. VanAelst

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:

Applicant Southern Land Company, LLC, through its duly appointed counsel, acknowledges receipt of the Office Action dated August 16, 2005 and for its Response, states as follows:

RESPONSE

The Examining Attorney found the specimen submitted with Applicant's statement of use unacceptable as evidence of actual service mark use in class 36. Applicant respectfully submits a substitute specimen, which is attached hereto as Exhibit A. The substitute specimen consists of a photocopy of a brochure showing the mark as it is used in commerce in the sale or advertising of the services listed in class 36 and should therefore be acceptable.

01-31-2006
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #34

The substitute specimen was in use in commerce prior to the expiration of the time allowed to the Applicant for filing a statement of use. Applicant supports this statement with a declaration, which is attached hereto as Exhibit B.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that its Application is in condition for allowance, and requests that it be promptly passed to publication.

Respectfully submitted,

James R. Michels
STITES & HARBISON, PLLC
424 Church Street, Suite 1800
Nashville, Tennessee 37219
Phone: (615) 782-2234
Fax: (615) 742-7215

ATTORNEY FOR APPLICANT

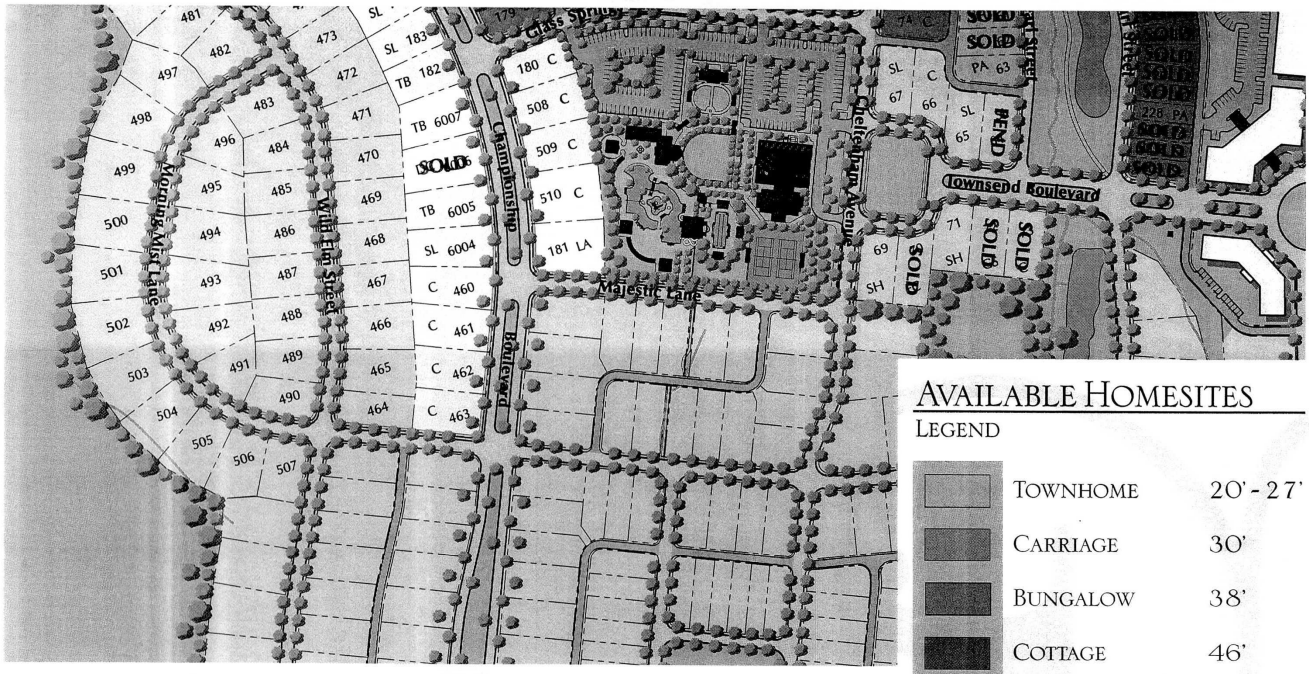
EXHIBIT A

(attached)

Available Homesites

WESTHAVEN

Wire Grass Lane
Addison Avenue
White Moss Place
Jasper Avenue
Gladstone Lane
Starling Lane
State Boulevard
Prospect Avenue
Addison Avenue
Cheltenham Avenue
Pearl Street
Westhaven Boulevard
Discovery Center



AVAILABLE HOMESITES

LEGEND

TOWNHOME	20' - 27'
CARRIAGE	30'
BUNGALOW	38'
COTTAGE	46'
VILLAGE	56'
MANOR	66'
MANOR	75'
ESTATE	85'
GRAND MANOR	105' +
FUTURE DEVELOPMENT	

BUILDER KEY

CD -	CLASSIC DESIGN HOMES	PA -	PRATT & ASSOCIATES
JW -	JOHN WIELAND HOMES	RB -	RIVERBIRCH HOMES
DC -	DEER CREEK CONSTRUCTION	SL -	SOUTHERN LAND COMPANY
FC -	FORD CUSTOM CLASSICS	SH -	STEVE HULEN CONSTRUCTION
GS -	GREAT SOUTHERN HOMES	TB -	TURNBERRY HOMES
LA -	LANGFITT & ASSOCIATES	BP -	BUILDER POOL
LP -	LESLIE PROPERTIES	C -	CUSTOM HOMESITE
MB -	MAJESTIC BUILDING GROUP	M -	MODEL HOME

Site plan is only conceptual in nature and purpose and is not offered as a representation or warranty of the developer concerning the development of the real estate shown thereon and should not be relied upon by any interestparties. The developer shall not be liable for any discrepancies between the site plan and the actual development of real estate. The developer reserves the right to modify this plan at its sole discretion. Artist rendering is for demonstration and illustrative purpose only.

March 10, 2004

The design for downtown Franklin still functions today as it was intended to do 200 years ago. It brings people together. There are tight-knit neighborhoods and streets that encourage safe pedestrian traffic and most homes are within walking distance of bustling shops and restaurants.

The design of Westhaven reflects these same elements of community design that work so well, but have been forgotten with new development. Westhaven integrates housing, shops, workplaces, schools, parks, and civic facilities, yet also incorporates more than 50 percent open space.

Westhaven is designed to bring people together - in a way that has proven to be desirable and sustainable. Downtown Franklin confirms the long-term benefits of mixed-use design principles.

Westhaven represents a viable alternative to accomodate growth. It offers options that are attractive to younger residents just starting out and to older persons wishing to retire.

These elements are the reason why other communities around the country have embraced the return to traditional community design represented by Westhaven to help them effectively manage growth.

Southern Land Company has assembled one of the most talented and experienced design teams in the country to create the plan for Westhaven. From the very beginning, we have welcomed public input about the project through open meetings.

Ultimately, we strongly believe that Westhaven will prove to benefit the quality of life in Franklin and Williamson County.

To schedule your one-on-one appointment today, call

(615) 599-1764

Discovery Center Hours:

Monday - Saturday	**10 a.m. - 5 p.m.**
Sunday	**1 p.m. - 5 p.m.**

Lisa Cahalan **Angela Grimes**
Erin M. Davis **PJ Littleton**

WESTHAVEN REALTY

111 WESTHAVEN BOULEVARD • FRANKLIN, TENNESSEE 37064 • (615) 599-1764 • FAX (615) 599-1763

Site plan contained herein is only conceptual in nature and purpose and is not offered as a representation or warranty of the developer concerning the development of the real estate shown thereon and should not be relied upon by any interested parties. The developer shall not be liable for any discrepancies between the site plan and the actual development of real estate. The developer reserves the right to modify this plan at its sole discretion.

The features and amenities described and depicted herein are based upon current development plans, which are subject to change without notice. Actual development may not be as currently proposed. No guarantee is made that the features, amenities and facilities depicted by artist's renderings or otherwise described herein will be built, or, if built will be the same type, size, or nature as depicted or described.

Access to and rights to use recreational amenities within the development may be subject to payment of use fees, membership requirements or other limitations.

All artist renderings are for demonstration and illustrative purposes only.

EXHIBIT B

(attached)

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

TO THE COMMISSIONER FOR TRADEMARKS:

Applicant:	Southern Land Company, LLC	)	Law Office 116
		)	
Serial No.:	76/524,401	)	Examining Attorney:
		)	Jennifer M. Martin
Filing Date:	June 20, 2003	)	
		)	
Mark:	WESTHAVEN	)	

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares the substitute specimen was in use in commerce prior to the expiration of the time allowed to the applicant for filing a statement of use; the facts set forth in this application are true; all statements made of his own knowledge are true; and that all statements made on information and belief are believed to be true.

Southern Land Company, LLC

By: _____

Title: V.P.

Date: 1/20/06

EXHIBIT C

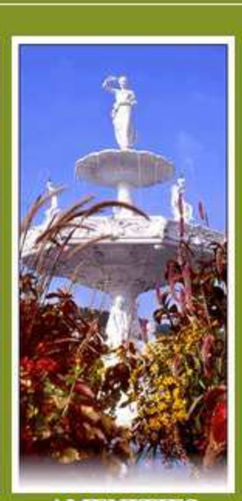
SilverPointe properties

WESTHAVEN WF FRANKLIN

Lisa Alyn
615.708.0445

PROPERTIES

GOLF CLUB


AMENITIES

COMMUNITY

TOWN CENTER

FEATURED PROPERTY

See more...

WHAT OTHERS ARE SAYING

Lisa's real estate knowledge and expertise in Westhaven and surrounding communities was so greatly superior to that of other realtors with whom we have worked that, ... See more

We followed Lisa's marketing advice and sold our home quickly and for a profit! ... See more

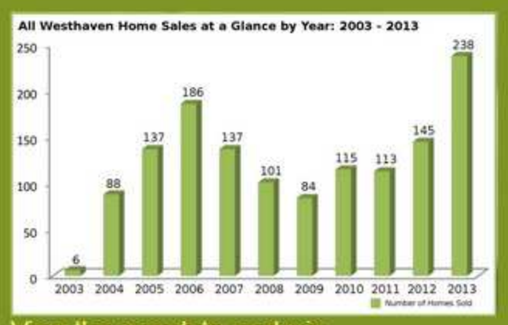
More Testimonials

WELCOME TO WESTHAVEN...

... a gracious planned community in Historic Franklin, TN! Nestled against the rolling hills of Williamson County, Westhaven is an award-winning neighborhood comprised of spectacular amenities, including a private 18-hole golf course, convenient Town Center, and walkable elementary school... More about Westhaven

The heart of westhavenfranklin.com is Lisa Alyn, a long time Westhaven resident and expert on all things Westhaven. Lisa makes the real estate process enjoyable, friendly and fun, while she approaches her work with absolute integrity and the highest ethical standards... More about Lisa

WESTHAVEN SALES ANALYSIS



View the complete analysis

WESTHAVEN WEEKLY

Follow Lisa's adventures in Westhaven and real estate at the Westhaven Weekly.

This website is owned by Lisa Alyn of SilverPointe Properties and is not affiliated with Westhaven Realty or Southern Land Company.

LISA ALYN, Realtor® C-RCS | C 615.708.0445 | F 615.371.6310 | License # 304 4111
SilverPointe Properties | 7105 Crossroads Blvd. Suite 102 Brentwood, TN 37027 | P 615.771.7877 | F 615.377.3219 Fair Housing Statement

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EXHIBIT D

Lisa Alyn Transactions

Year	Lot	Month	Buyer	Price
2010	1131	August	Colleen and Rob Boldon	$335,131
2010	1001	October	Tom and Lisa Jacobs	$$319,000
2012	1213	July	Tom and Lisa Jacobs	$520,000
2012	1053	October	Chris and Holly Baumgartner	$579,625
2012	813	November	Wade and Jennifer Morreli	$875,000
2013	1358	April	Kenneth and Aimee Banks	$480,250
2013	1080	June	Rod Ballard	$679,900
2014	1111	February	Eric and Crista Stewart	$699,900
2014	1321	May	Sandeep and Rodina Chauhan	$814,900
2014	1433	June	Tom and Jan Weatherman	$336,400
2014	1103	September	Chris and Ashlea Pflug	$849,000
2014	1091	October	Joseph and Patricia Dwyer	$878,150