

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas for the Thirteenth Judicial Circuit

The Honorable Charles B. Simmons, Jr. Master-in-Equity

Civil Action Case Nos.: 2019-CP-23-05954 & 2020-CP-23-04351
Appellate Case No.: 2022-000897

Crescent Homes SC, LLC,

Appellant,

v.

CJN, LLC,

Respondent.

RECORD ON APPEAL

Volume 2 of 2

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INDEX

ORDERS

Order dated April 20, 2021	3
Order dated October 22, 2021	6
Order dated May 27, 2022	9
Order dated June 10, 2022	19

PLEADINGS

Crescent's Complaint filed October 11, 2019.....	21
CJN's Answer and Counterclaim filed October 9, 2020	77
Crescent's Reply to Answer and Counterclaim filed November 6, 2020.....	123
CJN's Complaint filed September 18, 2020	132
CJN's Amended Complaint filed October 19, 2021	192
Crescent's Answer to Amended Complaint filed November 16, 2021	278
Affidavit of Ted Terry	289
CJN's Motion for Partial Summary Judgment filed March 19, 2021	293
Crescent's Motion to Alter or Amend filed June 10, 2022	295
Notice of Excerpts of the Deposition of Nicholas Franchina to be Offered at Trial Pursuant to Rule 32(a)(5), SCRCP filed May 3, 2022.....	301

TRANSCRIPTS

Transcript of May 4, 2022 Trial.....	323

EXHIBITS

CJN's Exhibits

2.....	509
3.....	510
4.....	511
5.....	514
6.....	540
7.....	553

8.....	560
9.....	571
10.....	591
11.....	594
Crescent's Exhibits	
4.....	597
5.....	611
6.....	615
7.....	618
10.....	620
12.....	624
Certificate of Counsel	634

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Crescent Homes SC, LLC,)
Plaintiff,)
vs.) 2019-CP-23-05954
CJN, LLC,)
Defendant.)
) TRIAL TRANSCRIPT

May 4, 2022
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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W I T N E S S L I S T

Direct Cross Redirect Recross

Nicholas Michael Franchina

F. James Warmoth

7

70

Ellis R. Lesemann

49

Edward Matthew Terry

Ellis R. Lesemann

74

172

F. James Warmoth

138

EXHIBITS**CJN, LLC EXHIBITS**

NO	DESCRIPTION	ID	EV
P-1	Color copy of plat of subdivision	5	9
P-2	Final Plat of River Springs Phase I	5	10
P-3	Overall Stake-out Plan of River Springs	5	11
P-4	Letter of Intent	5	12
P-5	Agreement for Purchase and Sale of Developed Lots	5	13
P-6	Purchase and Sale Agreement	5	24
P-7	Second Amendment to Agreement for Purchase and Sale	5	29
P-8	Letter to Ellis R. Lesemann from F. James Warmoth dated May 18, 2021 Re: Tender of Opus Petrus offer	5	35
P-9	Letter to F. James Warmoth from Ellis R. Lesemann dated June 7, 2021 Re: Opus Petrus offer	5	39
P-10	Letter to Ellis R. Lesemann from F. James Warmoth dated June 25, 2021 Re: Opus Petrus offer	5	40
P-11	Letter to Nicholas Franchina from Peter Bouharoun dated September 8, 2021 Re: Notice of Termination	5	41
P-12	Real Estate listing of 36.29 acres on Standing Springs Road, Simpsonville, SC	5	
P-13	CJN's Lost Investment from Opus termination	5	

CRESCENT HOMES SC, LLC EXHIBITS

NO	DESCRIPTION	ID	EV
D-1	Letter of Intent	5	
D-2	Agreement for Purchase and Sale of Developed Lots	5	
D-3	First Amendment to Agreement for Purchase and Sale	5	
D-4	EAS River Springs Site Observation Report	5	92
D-5	Notice of Default to CJN	5	86
D-6	Letter from Counsel for Crescent to CJN regarding unresolved default items	5	99
D-7	Letter from Counsel for Crescent to CJN regarding agreement for purchase and sale of developed lots	5	105
D-8	Email from Counsel for CJN to Crescent re: Douglas F. Clark offer	5	
D-9	Douglas F. Clark Purchase and Sale Agreement	5	
D-10	Letter from Counsel for Crescent to CJN regarding ROFR and Clark Purchase Agreement	5	117
D-11	Email from Counsel for CJN to Crescent regarding ROFR	5	
D-12	Email correspondence from Counsel for CJN to Crescent regarding document for right of first refusal	5	122
D-13	Email correspondence from Counsel for Crescent to CJN regarding revisions to document for right of first refusal	5	
D-14	Second Amendment to Agreement for Purchase and Sale	5	
D-15	Email correspondence between Counsel for CJN, Nicholas Franchina, Charles Howard, Ryan Brown regarding tendering Opus Petrus offer under Crescent's right of first refusal	5	

NO	DESCRIPTION	ID	EV
D-16	Email from Counsel for CJN regarding right of first refusal and tendering Opus Petrus offer	5	
D-17	Letter from Counsel for CJN to Crescent regarding Opus Petrus offer	5	
D-18	Letter from Counsel for Crescent to CJN regarding ROFR and Opus Petrus offer	5	
D-19	Letter from Counsel for CJN to Crescent regarding ROFR and Opus Petrus offer	5	
D-20	Addendum to Opus Petrus offer	5	
D-21	Agreement for Purchase and Sale (single purchase)	5	

1 (WHEREUPON, CJN, LLC Exhibit Numbers 1 through 13
2 were marked for identification)

3 (WHEREUPON, Crescent Homes SC, LLC Exhibit Numbers 1
4 through 21 were marked for identification.)

5 THE COURT: For the record, this is 2019-
6 05954 and 2020-04351; same parties, different lawsuits.
7 We're proceedings here, and this is the matter of Crescent
8 Homes SC, LLC versus CJN and CJN versus Crescent Homes.
9 So is there anything we need to have on the record before
10 we move into testimony? And I do not need any opening
11 statements. But anything procedurally just to have a
12 complete record for the appeal that I'm confident will be
13 following this?

14 MR. LESEMAN: Your Honor, briefly on behalf
15 of the Defendant, this is an issue that's been raised with
16 the Court previously. But under the -- we would move to
17 dismiss the proceeding on the basis that under the
18 People's Federal Savings & Loan case, that's a Supreme
19 Court case from 2004, 596 SE2d 51, that there's no
20 judicable controversy relating to a right of first refusal
21 absent a pending sale, an offer for sale or a purchaser
22 offer to purchase or the presence of a third party
23 challenging the right of first refusal.

24 At this point the two offers that have existed over
25 the course of this proceeding, Mr. Clark and then Opus

1 Petrus, neither of those are in place at this time. So
2 under Supreme Court precedent, Your Honor, there would not
3 be a judicable controversy relating to the right of first
4 refusal at this time.

5 THE COURT: Okay. Thank you. You're
6 protected on the record. I'm denying the motion.

7 Mr. Warmoth, you can call your first witness.

8 MR. WARMOTH: Good morning, Judge. I do have
9 one procedural issue on behalf of Plaintiff CJN, LLC.
10 Crescent filed excerpts of Mr. Franchina's deposition
11 yesterday. I'm going to object to the introduction of
12 those based on the time frame. The rule provides at least
13 a day in advance to use those excerpts. In addition to
14 that, Mr. Franchina is here and can be questioned.

15 THE COURT: As I recall, they weren't emailed
16 to my office until late yesterday afternoon. What's your
17 response in reference to Mr. Warmoth's objection under the
18 rule?

19 MR. LESEMANN: Well, Your Honor, one day in
20 advance. So it was filed yesterday and it was e-mailed to
21 everyone yesterday. So again, that's sworn deposition
22 testimony. And it is of an officer of a party. So it can
23 be used for any purpose. Mr. Warmoth was present at the
24 deposition. We've all got the transcript.

25 THE COURT: All right. I'm going to take

1 that under advisement. I don't know that it's going to
2 make a whole lot of difference at the end of the day since
3 everybody is here to testimony. Technically you may very
4 well be correct, Mr. Warmoth. But like I say, I'm going
5 to take that under advisement.

6 MR. WARMOTH: Thank you, Judge.

7 THE COURT: You can call your witness.

8 MR. WARMOTH: CJN, LLC calls Nicholas
9 Franchina.

10 THE COURT: Come around to the witness stand,
11 please, sir. Place your left hand on the bible, raise
12 your right hand for me. Do you swear to tell the truth,
13 whole truth and nothing but the truth?

14 MR. FRANCHINA: I do.

15 THE COURT: Thank you, sir. Come around and
16 have a seat. State your full name, please, sir.

17 MR. FRANCHINA: Nicholas Michael Franchina.

18 THE COURT: All right. Your witness, Mr.
19 Warmoth.

20 **NICHOLAS MICHAEL FRANCHINA,**

21 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

22 **DIRECT EXAMINATION**

23 **BY MR. WARMOTH:**

24 Q. Good morning, Mr. Franchina. As you know, I'm your
25 attorney James Warmoth in this matter. Would you start by

1 just telling us what CJN, LLC is and what CJN, LLC does
2 and what your role is with that company?

3 A. CJN is myself, Charles Howard and Jeff Howard and
4 family relatives. We go out and we purchase land,
5 purchase investment properties and opportunities, and
6 either develop the land, sell lots off or sell the land or
7 collect rents on properties. Just basically invest in
8 real estate and other opportunities that are out there
9 that may arise.

10 Q. Okay. And you have two partners in CJN, LLC; is
11 that correct?

12 A. That's correct.

13 Q. And who are those people?

14 A. Charles Howard and Jeff Howard.

15 Q. And Mr. Charles Howard is here today?

16 A. He is; correct.

17 Q. And Mr. Jeff Howard, who is he?

18 A. Jeff Howard is a cousin.

19 Q. Does he have a management role in the company?

20 A. He does not.

21 Q. Mr. Franchina, I'm going to hand up a series of
22 exhibits. The court reporter here already has a copy
23 that's been given to the Judge. The attorney has been
24 given a copy and I've got a copy. The first one is
25 Exhibit 1.

1 (WHEREUPON, CJN Exhibit Number 1 was admitted into
2 evidence.)

3 Q. This dispute relates to the River Springs
4 Subdivision. And what I've handed you is kind of an
5 overview of the area. And if you would, I'd just like you
6 to kind of point out the features involved in this action.
7 There's a Phase I and Phase II of a neighboring property,
8 if you could ---

9 A. There is. There's a Phase I, which is lots that we
10 did develop. And then Phase II is undeveloped property on
11 the back side.

12 Q. Okay. And is Phase I shown there with the lot
13 lines?

14 A. It is.

15 Q. That would be the Buckhaven Court and Deerview
16 Trail?

17 A. That's correct.

18 Q. And how about the Clark property, where is that
19 located on here?

20 A. The Clark property is on the back side of Phase --
21 which would be Phase II of the property. And his property
22 basically goes up against this subdivision that's to the
23 north and his property extends all the way down to the
24 river.

25 Q. Okay. I'll hand you what's been marked as Exhibit

1 2.

2 (WHEREUPON, CJN Exhibit Number 2 was admitted into
3 evidence.)

4 Q. Take a look at that and identify that, please.

5 A. That is Phase I of the contract of the lots that
6 were completed.

7 Q. And is this the recorded plat for Phase I?

8 A. It is.

9 Q. Okay. And what's the status of Phase I that, as
10 we'll get to, is the subject of the contract between the
11 parties here, is the development of Phase II. Could you
12 kind of walk us through the status and what's been done
13 there?

14 A. Phase I right now is just about complete. We're
15 down to right now closing out a few sediment ponds. Once
16 they're done -- we had a problem getting pipe, obviously
17 like we talked about just a little while ago. Once that
18 is complete they'll have the option to purchase those four
19 lots that are existing.

20 Q. Okay.

21 A. Per the contract.

22 Q. And I believe there were thirty-two lots total; is
23 that correct?

24 A. That's correct.

25 Q. I'm going to hand you what's been marked as Exhibit

1 3.

2 (WHEREUPON, CJN Exhibit Number 3 was admitted into
3 evidence.)

4 Q. Take a look at that and identify it, please.

5 A. Okay. That would be the future phase. If Phase I
6 was ever developed, that's what it would be right now if
7 you had put a septic tank in there. If it went to septic.

8 Q. I believe you said if Phase I was ever developed.
9 Are you referring to the potential development of Phase
10 II?

11 A. That's correct.

12 Q. Okay. And so this is a preliminary layout that
13 shows you what Phase II might look like if you went
14 forward and developed it?

15 A. That's correct.

16 Q. As of right now the lots shown on here, are they
17 all part of one parcel that CJN currently owns?

18 A. Yes.

19 Q. And is that the parcel that's in dispute in this
20 case ---

21 A. It is.

22 Q. --- regarding right of first refusal?

23 A. It is.

24 Q. I'm going to hand you what's been marked as Exhibit

25 4.

1 (WHEREUPON, CJN Exhibit Number 4 was admitted into
2 evidence.)

3 Q. Take a look at that.

4 A. Okay.

5 Q. And let us know when you're able to identify what
6 it is, please.

7 A. It's a letter of intent from CJN for River Springs.

8 Q. Okay. And kind of taking us back to the beginning
9 of your relationship with Crescent on this project. I see
10 this document is dated 2017 and then the agreement that
11 we're going to talk about in a little bit for Phase I is
12 dated in October of 2018. So is it correct that you had
13 some negotiations with Crescent related to this property
14 back in April of 2017?

15 A. Yes.

16 Q. And at that time was there consideration of
17 potentially developing Phase I and Phase II?

18 A. Yes.

19 Q. And is that reflected on this letter of intent that
20 you would develop both phases?

21 A. It is. Yes.

22 Q. And that's a total of sixty-five lots?

23 A. That's correct.

24 Q. Is it true that ultimately CJN declined to go
25 forward with an agreement to develop Phase II?

1 A. Yes.

2 Q. And what kind of reasons did you have for that
3 decision?

4 A. At the time where the lot prices were at that
5 point, they were like sixty-eight to seventy thousand
6 dollars, and the cost to cross the creek with the rock
7 issues that were out there, it just wasn't economically
8 feasible at the time. But as time has cured -- as time has
9 gone on, obviously, Greenville has gotten better and
10 better. Lot prices have gone up, land prices have gone
11 up, and you know, that's where we're at.

12 Q. And was that a communication you had with Crescent
13 or its representatives that you had considered Phase II,
14 but at some point you decided you didn't want to agree to
15 go forward with it?

16 A. Yeah. We changed -- on the next letter of intent,
17 we changed -- or the contract, we changed it to read the
18 thirty-two lots, is what was on there. That's what we
19 signed the contract on; not the letter of intent, but the
20 contract.

21 Q. I'm going to give you Exhibit 5, the next exhibit,
22 which is the contract you just referenced.

23 (WHEREUPON, CJN Exhibit Number 5 was admitted into
24 evidence.)

25 Q. Is Exhibit 5 I just handed you a copy of the lot

1 Q. And are there lots shown on the underlying drawing
2 under the cross-hatching?

3 A. There are.

4 Q. All right. Back on paragraph 19, the last sentence
5 references a memorandum in the right of first refusal?

6 A. Yes.

7 Q. To be recorded in the public records of Greenville
8 County at the initial closing. Do you see that?

9 A. Yes.

10 Q. Do you know if that memorandum was ever recorded?

11 A. It was not.

12 Q. As you read the clause, do you see any time limit
13 on exercise of the right of first refusal?

14 A. No.

15 Q. Do you see any procedures on how you would
16 specifically exercise it?

17 A. No.

18 Q. Now, I believe it's the case that you didn't
19 actually personally know that this right of first refusal
20 was in the contract when you signed it, but Mr. Francis
21 ---

22 A. Mr. Howard, yeah.

23 Q. --- had reviewed it for CJN; is that correct?

24 A. That's correct.

25 Q. Okay. And at some point later you had a discussion

1 with Mr. Howard about that?

2 A. I received the offer from Mr. Clark and was going
3 back and forth with him. And Mr. Clark's offer came up.
4 You know, Charlie called me, I said, I've got -- he said,
5 I think there's a right of first refusal in the contract.
6 Let's take a look at it real quick. And I took a look at
7 it. I read it. I said, it says lots, lots only. I said,
8 that makes sense. I said, we're selling raw land at this
9 time. This is for the raw land. Mr. Clark owns the
10 property in front of it. It makes absolute sense for him
11 to get the piece of property. It was his family's land.
12 He came and talked to me. I gave him a really good deal
13 on it at the time. He went ahead and he was doing a 1031
14 exchange. He sold his piece of property across West
15 Georgia Road to be able to purchase this under the 1031
16 exchange. And then turned around and Charlie said, you
17 know, let's be good neighbors. He said, go ahead and send
18 it to Crescent just to let them know that you have a
19 contract. I said, really, I don't think we do. But I
20 said, that's fine; let's send it to them. We sent it to
21 them. And then they filed the Lis Pendens. And once they
22 did that Mr. Clark was not able to close on his 1031
23 exchange and had busted it. He was not a happy camper.
24 Q. Okay. So you understood that this right of first
25 refusal didn't necessarily apply to the proposed sale to

1 Mr. Clark, which I'll bring out and ask you about in a
2 minute.

3 A. Right.

4 Q. But you decided to offer it to Crescent as a
5 courtesy?

6 A. Charlie told me to, yes.

7 Q. What about the issue of if you had decided to
8 develop Phase II, did you ever have any concern about
9 giving Crescent the right of first refusal on the lots?

10 A. No.

11 Q. Regardless of the right of first refusal, would you
12 have offered to sell it to Crescent -- offer to sell lots
13 to Crescent on Phase II?

14 A. Yeah.

15 Q. What about your understanding of -- aside from this
16 right of first refusal, in general I take it that you're
17 in the real estate business and you deal with right of
18 first refusals; is that true?

19 A. I do, yes.

20 Q. And what's your general understanding of how they
21 would work from your perspective?

22 A. Right of first refusal would give someone the
23 option to come in basically and if this contract said I'm
24 going to purchase the property for, like Mr. Clark, seven
25 hundred and seventy-five thousand dollars, and I had this

1 terms in it and these dates in it, that you would match
2 them. That's the right of first refusal. They turn it
3 over to you, they give you so many days to basically say
4 if you're going to take it or not. Usually, you know,
5 three or four days, something like that, and they come
6 back to them. But I think that's something that we should
7 have done at the initial closing with the memorandum. But
8 Mr. Clark's offer was before we had the first initial
9 closing.

10 Q. Okay.

11 A. So, you know, it's kind of the situation.

12 Q. And prior to this experience, did you think of a
13 right of first refusal as a benefit to you because you
14 would a -- potentially have a second offer on the same or
15 better terms?

16 A. Yes.

17 Q. I want to ask you briefly about that initial
18 closing. Back on Exhibit 1, if you could take a look at
19 that. I'm sorry, Exhibit 2.

20 A. Yes. Exhibit 1 or ---

21 Q. Exhibit 2 is what I'm referring to. Sorry. That's
22 the plat for Phase I.

23 A. Yes.

24 Q. I'm not sure if you can read it, but it's -- if you
25 look up at the top, it's got a recording date in very

1 small type.

2 A. August of -- August 14th, maybe.

3 Q. Yeah. So the plat on Phase I was recorded in
4 August of 2019?

5 A. Yes.

6 Q. And if we look at Exhibit 5, paragraph 6(a), which
7 is on page 5, my question is, does that paragraph tell you
8 that the initial closing is supposed to happen fifteen
9 days after the recording of the plat?

10 A. Yes.

11 Q. So your understanding was that the initial closing
12 should have happened in August or September of 2019?

13 A. That's correct.

14 Q. And there's a separate case between you and
15 Crescent and CJN that's not being tried today related to
16 contract breach claims going both ways, delays; is that
17 the case?

18 A. Right.

19 Q. So without getting into the weeds on that,
20 generally was it your understanding that Crescent didn't
21 want to close in 2019 for reasons you don't understand,
22 but they made some efforts to delay that closing. Is that
23 your understanding?

24 A. I would think so. Usually -- I mean we do a lot of
25 lot developments and a lot of closings for other builders

1 also. And they can't wait to get started. And as soon as
2 we get the plats recorded, I mean, they're basically
3 chomping at the bit, I mean to basically move forward, get
4 houses on the ground, because that's where they make their
5 money. And on this one, you know, you're always at the
6 mercy of Duke Power to get lights. And you're at the
7 mercy of this one to do the cable to get in. And those
8 are contingencies in some contracts for people that delay.
9 But they never do.

10 Q. Okay. And paragraph 19, which we've talked about,
11 says that this right of first refusal arises at the
12 initial closing?

13 A. Yes.

14 Q. You saw that? Did you have an opinion about
15 whether Crescent even had a right of first refusal prior
16 to the initial closing?

17 A. I did have an opinion. I didn't think they had --
18 I didn't think they had the right of first refusal,
19 because it always says lots. Lot, lots only. I mean
20 that's what it says.

21 Q. I meant your opinion about ---

22 MR. LESEMANN: I just need to briefly
23 interject. He was asking sort of the witness's opinions
24 about the contract. And sort of being a non-jury
25 proceeding and being about the intent, I'm going to do

1 that. But obviously the contract speaks for itself until
2 you may decide that it's ambiguous and needs that further
3 evidence. So I just wanted to bring that up as we're
4 talking about this evidence and opinions about what
5 certain terms mean. Would the Court like to hear that
6 evidence principally from both sides in terms of what
7 their intent and purpose was?

8 THE COURT: Well, Mr. Warmoth, because he is
9 going to intent. And from my analysis, first question the
10 Court has, is there an ambiguity that allows the Court to
11 go outside the four corners of the document? If so, then
12 testimony as to intent would become relevant. If not,
13 then it doesn't matter what they intended. It's what
14 language they used.

15 So I think to come back to your argument, I have no
16 problem if y'all go ahead and build the record, because it
17 may very well be that the Court says I'm limited by the
18 language used by the parties. We don't use any extrinsic
19 evidence. But at the same time, until that determination
20 is made, I think it's fair game.

21 So that's probably a long winded way of not saying a
22 whole lot.

23 MR. LESEMAN: Yes, sir. I think really I
24 have not so much of a objection as just to make sure that
25 that's going to be the ground rule for the proceeding, is

1 that both parties are going to be able, you know, without
2 objection ---

3 THE COURT: The English common law doctrine
4 of the goose and gander. In other words, if I allow them,
5 I will allow your clients.

6 MR. LESEMANN: I think really that's all I
7 was trying to lay out, Your Honor. Thank you.

8 THE COURT: You're protected on the record.

9 MR. WARMOTH: I understand the objection.
10 And maybe if I narrow the question a little bit, it will
11 get out of the realm of intent.

12 Q. What I really want to know is what rights did you
13 think that Crescent had under the right of first refusal
14 prior to the initial closing? If you had a thought about
15 that ---

16 A. Prior to the initial closing I didn't think they
17 had anything because we never put anything in place on the
18 memorandum.

19 Q. Okay. All right. We talked about Mr. Clark a
20 little bit. But if you could just, again, remind us how
21 he fits in the picture and what your discussions with him
22 leading up to an offer were?

23 A. Well, when I first bought the property, if you
24 looked at it and we had discussed it, there's a creek that
25 goes down between the property, and that's why you have a

1 Phase I and Phase II. On Phase II, it adjoins and butts
2 up to Mr. Clark's property, which Mr. Clark's property put
3 together with Phase II, does have a lot greater value. If
4 you notice, Mr. Clark's property does have a little finger
5 that goes all the way down to the river. And by it going
6 all the way down to the river, there's sewer on the
7 opposite side. Because if you look at the neighborhood to
8 the north, that neighborhood has smaller lots. Obviously,
9 it's sewer lots. So there's a manhole at the bottom, plus
10 there's manholes in the street. Even if you couldn't pick
11 up the manhole at the bottom, you can pick up the manhole
12 in the middle. Basically you put them both together and
13 then Mr. Clark, it was his family property. He was very
14 interested in the property. He came to me -- I mean, he
15 talked to me from the day I put it under contract until
16 the day he couldn't get it. Very nice guy. I felt bad
17 that I wasn't able to execute on my side of it, to be
18 honest with you, especially once he sold the other
19 property to do this and he had to pay the taxes.

20 Q. I'm going to hand you what's been marked as Exhibit
21 6.

22 (WHEREUPON, CJN Exhibit Number 6 was admitted into
23 evidence.)

24 Q. Do you recognize what I handed you as the offer you
25 received from Mr. Clark?

-1 A. Yes.

2 Q. And could you talk me through what the basic terms
3 of the offer are? First of all, time frame when this
4 offer was made?

5 A. It was made in June of 2020.

6 Q. Okay. And the price from Mr. Clark?

7 A. Seven hundred and seventy-five thousand.

8 Q. Okay. And just to be clear, this is for the Phase
9 II property?

10 A. That is, it's for the raw land.

11 Q. So no obligation in this to subdivide and sell his
12 lots or anything to that effect?

13 A. No.

14 Q. And I see in paragraph 1.5 you wrote in a
15 recognition that there was a claim from Crescent of right
16 of first refusal and made this contract contingent on
17 that?

18 A. That's correct.

19 Q. Now, in June of 2020 had there been an initial
20 closing yet?

21 A. No.

22 Q. Okay. Do you recall when the initial closing
23 happened?

24 A. I think I bought it in '17 maybe. I'd have to go
25 back and look at the settlement statement. You talking

1 about the initial closing when I purchased the property?

2 Q. No, I'm sorry, the initial closing on the lot
3 purchase agreement with Crescent, do you remember when
4 that happened?

5 A. I don't remember.

6 Q. You just recall it was after the Clark offer?

7 A. Oh, absolutely, yes. It was way after the Clark
8 offer. I believe it was '21 maybe. If you have a
9 settlement statement, it should be on there.

10 Q. Okay. And you testified before, just to put this
11 in place with the Clark offer, that your understanding was
12 right of first refusal applied to lots; not the raw
13 property, but you decided out of courtesy to pass it on to
14 Crescent; is that correct?

15 A. Yeah, me and Charlie -- Charlie talked about -- he
16 basically said, hey, you need to reference all this stuff
17 in there.

18 Q. And after you tendered this to Crescent, what
19 happened next?

20 A. Basically they came back and offered seven hundred
21 thousand dollars for the property. They changed terms and
22 conditions. And they put a Lis Pendens on the property.

23 Q. Now, those -- I call that two events, the making of
24 the seven hundred thousand dollar offer ---

25 A. Right.

1 Q. --- that changed conditions and the Lis Pendens.

2 Do you recall ---

3 A. I don't recall the order.

4 Q. Don't recall the order. Okay. And CJN's response
5 to this raises kind of an interesting thing about this
6 case, that the lawyers did a lot of the communicating
7 between the parties at some point. But do you generally
8 recall that CJN got back to Crescent and said, if you've
9 got a right of first refusal, your option is to say yes or
10 no; not to file a Lis Pendens?

11 A. Yeah. I mean, yes, we did that. I mean that's
12 what a right of first refusal -- that's what I've always
13 -- under the real estate law that I've done, is basically
14 you have someone a contract, they've got to meet the
15 terms in the contract, not rewrite it.

16 Q. And the sale to Mr. Clark did not go through; is
17 that correct?

18 A. It did not go through.

19 Q. Do you recall the specifics of why he needed to
20 back out of that contract?

21 A. Because it's under litigation.

22 Q. Okay. Did he also have a -- I believe it's 1031
23 exchange to buy it?

24 A. He did. Once the 1031 went, he didn't have the
25 money anymore because he paid the -- had to pay taxes on

1 it.

2 Q. So the closing schedule in this offer, as you
3 understood it, would have to take place by a certain
4 deadline; otherwise he would lose his 1031 exchange?

5 A. That's correct.

6 Q. Now, after the Clark offer was terminated ...

7 **(LOSS OF POWER AT COURTHOUSE AT 10:50 A.M.)**

8 THE COURT: All right, Mr. Warmoth.

9 Danette, your equipment up and running?

10 COURT REPORTER: It is.

11 THE COURT: All right.

12 **DIRECT EXAMINATION OF NICHOLAS MICHAEL FRANCHINA CONTINUED**

13 Q. All right, Mr. Franchina, we just lost power for a
14 few minutes, so I'm going to try to back up a couple of
15 sentences and start over on a question.

16 A. That's fine.

17 Q. I was asking you about negotiation of right of
18 first refusal with some specific terms that was attempted.
19 Did that happen?

20 A. Yes, sir.

21 Q. Was that roughly in the months following the Clark
22 offer?

23 A. Yes.

24 Q. And as a general matter did you just feel that you
25 couldn't come to terms because Crescent was asking for

1 things that you didn't think they were entitled to in that
2 right of first refusal?

3 A. That's correct.

4 Q. I'll introduce Exhibit 7 and hand it up to you.

5 (Whereupon, CJN Exhibit Number 7 was admitted into
6 evidence.)

7 Q. Exhibit 7, do you recognize that as a redline
8 document reflecting the negotiation back and forth between
9 Crescent and CJN?

10 A. I do, yes.

11 Q. And is it your understanding that the blue text
12 here is Crescent's revisions to CJN's proposals on the
13 right of first refusal?

14 A. Yes.

15 Q. In paragraph 3(b), which is on page 2, ---

16 A. Uh-huh (affirmative).

17 Q. --- there's a sentence in there about permissible
18 and usable means of access for purposes of vehicular
19 ingress and egress?

20 A. That's correct.

21 Q. Do you see that?

22 A. Yes.

23 Q. Did you interpret that as requiring you to
24 basically pay for something as far as the right of first
25 refusal ---

1 A. Yes.

2 Q. --- that you weren't otherwise obligated to do?

3 A. Yes.

4 Q. Then in paragraph (d) on page 3, there's a
5 paragraph that deals with a closing schedule, and it says
6 it's the later of thirty days from due diligence or the
7 time for closing in the bonafide written offer. Do you
8 see that?

9 A. I do.

10 Q. Would that potentially cause problems with the
11 offer you had received where the closing on the Crescent
12 offer would fall after the ---

13 A. Yeah.

14 Q. --- after the other offer?

15 A. After the other offer, after his 1031 expired.

16 Q. Did you think that was something else that ---

17 A. Yeah, yeah.

18 Q. --- Crescent didn't necessarily have in the
19 contract?

20 A. We just tried to put together -- we try to be fair
21 with people. We just put together a short thing and they
22 came back and changed everything. Blue lined two, three,
23 four pages.

24 Q. And then paragraph (f), it says that this right of
25 first refusal will expire on July 27th, 2030. Do you see

1 that?

2 A. I do.

3 Q. Is that longer than you were willing to ---

4 A. Yes.

5 Q. --- have a right of first refusal? And then time-

6 wise, CJN filed this lawsuit in September of 2021?

7 A. Yes.

8 Q. That would have been a couple of months after this
9 negotiation; is that right?

10 A. That's correct.

11 Q. Did you feel at that time you had exhausted your
12 options to try to work out a deal on this thing and you
13 could only get your ---

14 A. Yes, yes. My opinion is -- the way the contract is
15 written, it was lots and lots only. And we were selling
16 raw land.

17 Q. All right. And then at some point, I believe it
18 was early 2021, you started shopping the property again,
19 for lack of a better term; is that right?

20 A. I did, yes.

21 Q. And did you talk to multiple parties during that
22 time?

23 A. I did.

24 Q. And was this for a sale of the raw land?

25 A. It was.

1 Q. Okay. And what were the price ranges for that --
2 during that discussion?

3 A. When I first started I put it out there for 1.4
4 million just to see what I would get. And I was getting
5 prices anywhere from, you know, a million, million two,
6 million two fifty. And that number right there coming
7 back to me.

8 Q. Okay. In terms of who you would talk to about
9 this, what kind of people -- how do you get in touch with
10 people?

11 A. I've been in real estate for a long time. I'll
12 just give them a call and say, hey, got this piece of
13 property. Are you interested? That's how I'll usually do
14 it.

15 Q. Are there some people like that that also contact
16 you and ask you what you might have for sale?

17 A. Absolutely.

18 Q. And you didn't list this property on MLS during
19 that time; is that right?

20 A. I very rarely list any of my own properties on MLS.
21 I just -- people come to me, they call me. I usually can
22 work my own deals out without having to get involved -- I
23 mean I own a real estate company, I'm a realtor, but we
24 save some fees certain ways, too, also.

25 Q. Okay. But it is the case that fairly recently

1 you've listed this property ---

2 A. I did. I went ahead and listed it because I wanted
3 to really get the opinion of the public to see what it
4 really was worth.

5 Q. Okay. All right. Eventually during that
6 negotiation process, moving on through early 2021, you had
7 some discussions with the Opus Petrus entity that made an
8 offer to you eventually?

9 A. That's correct.

10 Q. And who is the individual that either fully owns or
11 is the primary owner of that ---

12 A. Peter Bouharoun.

13 Q. Okay. And what's your relationship with Peter
14 Bouharoun?

15 A. I have known friends with him. Sold real estate to
16 him back all the way from 1996. Bought real estate from
17 him all the way to present. And own some rental
18 properties with him.

19 Q. Okay. Is it fair to say you've done dozens of real
20 estate deals with Mr. Bouharoun?

21 A. Absolutely.

22 Q. How did this particular property come up with Mr.
23 Bouharoun?

24 A. Well, I was talking to Peter one day and he said he
25 had some money he wanted to spend. And I said, well, I've

1 got a piece of property that would be a good long term
2 play. And I said, you know, because you've got the Clark
3 property in front of it. One day Mr. Clark is going to do
4 something. Or he's in his late seventies, he's going to
5 sell it and he's going to move on. Because he had told me
6 that at one point. He wanted to purchase that piece of
7 property. I told Peter, I said, you get this piece of
8 property, you hold on to it, it's going to be worth a lot
9 more money down the road than what you're -- I said, look
10 -- he said, I've got a couple hundred thousand dollars
11 now. He said ---

12 MR. LESEMANN: Your Honor, I'm just going to
13 object to testimony about what Mr. Bouharoun may have said
14 just as hearsay.

15 MR. FRANCHINA: That's what I said.

16 THE COURT: Hold on. You start out by saying
17 Mr. Bouharoun said. So I sustain the objection.

18 MR. LESEMANN: Yes. Thank you, Your Honor.

19 Q. You can testify about what you said.

20 A. What I told him was basically the property will go
21 up in value. And from where -- you've got it under
22 contract now. He said, I can put so much money down. I
23 said, good. I said, I'll finance it to you and I'll give
24 you these terms. And he said that works for me. He said
25 he would go -- it worked out. It worked out. We got a

1 contract from him. And we were ready to move towards
2 closing. I went ahead and shipped that contract over
3 also.

4 Q. Okay. I'm going to put that offer in front of you
5 next. But before I do, based on your testimony about your
6 relationship with him, did you have any concern that you
7 couldn't negotiate an arms length business deal where both
8 sides negotiated in good faith on that?

9 A. We negotiate -- he negotiates, yes. He's tough.

10 Q. Okay. And those negotiations, were they by phone,
11 in person? How did they happen?

12 A. By phone and in person, both.

13 Q. Is that unusual for you to have negotiations that
14 doesn't have a whole lot of email traffic?

15 A. Not unusual at all.

16 Q. I'll hand up what's been marked as Exhibit 8.

17 (WHEREUPON, CJN Exhibit Number 8 was admitted into
18 evidence.)

19 A. All right.

20 Q. If you could take a look at that and see if you
21 recognize it as, one, the tender letter of this offer from
22 your attorney, and then, two, a copy ---

23 A. Yes. This is a copy of the contract. It says lot
24 and acreage purchase. This is a standard Board of
25 Realtors contract that we use.

1 Q. And the price on this offer from Opus is what?

2 A. 1.25.

3 Q. And I notice there are several dates with
4 amendments. But time-frame-wise, when was this first
5 entered?

6 A. It looks like he signed on 4/13. I signed at 4/19.
7 My attorney made a couple of changes to it because a girl
8 in my office writes them up. And then we had some
9 initials going back and forth and negotiation. And I
10 think the last date might be the 19th or the 21st. No,
11 23rd.

12 Q. 23rd of?

13 A. 23rd of -- well, no, it says May is our last one,
14 10th. May 10th.

15 Q. Okay. And you're looking at the third from the
16 last page down near the bottom? The May 10th date; is
17 that right?

18 A. Yes.

19 Q. Okay. So May 10th. And then back on the letter,
20 it looks like this was tendered -- sent to Crescent on May
21 18th. Does that sound right?

22 A. Okay. Yes.

23 Q. Back on third from last page, paragraph 33, there's
24 some notes there about seller financing?

25 A. Yes.

1 Q. What were the basic terms of that financing
2 arrangement?

3 A. Basically he was going to pay ten percent interest
4 only for a year and he was putting two hundred thousand
5 dollars down. I was going to finance the million fifty
6 thousand dollars to him.

7 Q. Okay. And then what happened after a year?

8 A. He would refinance. He would probably do it before
9 then. I was ready to move. And he was going to move with
10 it.

11 Q. Okay. But either way after a year he would have to
12 pay off the balance to you?

13 A. Absolutely.

14 Q. Is that something you do not uncommonly, seller
15 financing?

16 A. That's correct.

17 Q. What kind of reasons would you have to do that?

18 A. I don't mind being the bank sometimes, and plus it
19 saves on appraisals. It moves things along. And I'm
20 going to get two hundred thousand dollars. Or sometimes
21 people don't follow through with getting their financing
22 and things like that. So it's a good opportunity for both
23 parties. If they need to move forward and they don't have
24 the time to get to the bank and get it done, or if they're
25 not able to. A lot of people aren't able to go to the

1 bank, so I'll go ahead and I finance stuff to them all the
2 time. Mr. Howard does a lot of my closings and he can
3 vouch where it's four, five, six, seven years down the
4 road on some of them, they come and we just deed it over
5 to them when it's done.

6 Q. Okay. How about the price of 1.25, was that in the
7 range of other discussions you were having for sale of the
8 property?

9 A. It was, yes.

10 Q. So you felt like that was the market price?

11 A. I thought it was a good price where it was fair.
12 It wasn't 1.4, it was down between, you know, some of the
13 offers that I had and he was doing financing, so I was
14 probably getting a little bit more than other people were
15 offering on the cash deal -- or the finance deal. So I
16 was like, yeah, I'll take it and I'll await a little while
17 for the money.

18 Q. Okay.

19 A. When people do owner finance deals they usually pay
20 a little bit more.

21 Q. After you sent the Opus offer to Crescent, what did
22 Crescent do in response?

23 A. Filed another Lis Pendens.

24 Q. What was your understanding of their position on
25 why they would do that at that point as opposed to making

1 a matching offer?

2 A. They didn't -- I guess they didn't believe the
3 contract. Because you came back and said they said I
4 owned a piece of property with Peter before, which I had.
5 It was a beach house. He didn't own it. What I did was I
6 bought the notes. Everything went bad, I put together a
7 bunch of people, we bought some notes. It was me,
8 Charlie, Skip Francis, Steve Francis, a bunch of us bought
9 a beach house and Peter was one of the people in the beach
10 house, but we had purchased him out of it. We used money
11 from the joint people. But I do that all the time with a
12 bunch of people I know.

13 Q. And when Crescent made those claims, did you
14 respond to those and explain that you thought it was a
15 legitimate deal, there was nothing ---

16 A. Absolutely.

17 Q. This is Exhibit 9. Take a look at that.

18 (WHEREUPON, CJN Exhibit Number 9 was admitted into
19 evidence.)

20 Q. And after you've looked at it, do you recognize
21 that as Crescent's letter laying out the reasons that it
22 thought this was a sham offer?

23 A. Yes.

24 Q. And as part of that letter or attached to that
25 letter, are there subpoenas that Crescent sent to Opus

1 Petrus?

2 A. Yes.

3 Q. Do you recall whether there was a threat in this --

4 as part of this communication to bring ---

5 A. There was.

6 Q. --- Opus Petrus into the case?

7 A. Yes.

8 Q. I'd like to introduce Exhibit 10.

9 (WHEREUPON, CJN Exhibit Number 10 was admitted into

10 evidence.)

11 Q. Take a look at that, please.

12 A. Okay.

13 Q. Do you recognize Exhibit 10 as CJN's response to

14 the claims ---

15 A. Yes.

16 Q. --- that there was a ---

17 A. Arm's length transaction.

18 Q. So this is a response to the claim that there was a

19 sham offer?

20 A. (Affirmative nod.)

21 Q. Do you feel like you gave a reasonable, adequate

22 explanation of why it was not a sham offer?

23 A. Yes.

24 Q. After that point did Crescent back away from the

25 claim that it was an illegitimate offer?

1 A. No.

2 Q. How did Opus Petrus respond once they receives
3 these subpoenas and the understanding that Crescent
4 intended to sue them or bring them into this lawsuit?

5 A. Well, their ultimate response was basically --
6 ultimate response was that he basically canceled the
7 contract after a while, after going back and forth, after
8 he tendered all the information they asked for, after he
9 had to go hire an attorney, and after I had to hear about
10 how much money he paid his attorney. But, yeah.

11 Q. This is Exhibit 11.

12 (WHEREUPON, CJN Exhibit Number 11 was admitted into
13 evidence.)

14 A. Right.

15 Q. Do you recognize this as a letter from Opus?

16 A. I do. Termination letter that I received from -- I
17 don't remember his attorney's name. But Peter Bouharoun
18 -- yeah.

19 Q. And your understanding was, through this
20 communication, that Opus was backing out of the contract
21 because of the interference from Crescent?

22 A. Yeah. They couldn't get any of the due diligence
23 done. They couldn't do anything because they didn't want
24 to spend money because they didn't think -- yeah, where to
25 go, how to go.

1 Q. And I didn't put it in front of you, but do you
2 recall that there was some extension to the closing date
3 on the Opus contract to give time to work out -- to
4 potentially give Crescent and CJN time to work out?

5 A. Yes.

6 Q. So from your understanding did Opus hope that CJN
7 and Crescent could resolve this so ---

8 A. Yes.

9 Q. --- they wouldn't have to get involved?

10 A. Yes. But it's like any other deal, once something
11 sits there so long, he's going to find something else to
12 do with his money, you know, so ...

13 Q. After that Opus deal was terminated, you eventually
14 came out and listed the property; is that right?

15 A. I did. Before -- I knew we were coming to a head
16 here soon, so I said, you know what, I want to see exactly
17 what the true market would be for it. I said -- you know,
18 and I ran all the numbers. I said, I'm going to put 1.6
19 on it and I'll see what happens. And I went ahead and I
20 put 1.6 million on it and put it in MLS since that was one
21 of the claims, I didn't market it properly. It put it
22 into Costar, things I don't normally do. I'll ever once
23 in a while do it, but not much. And got an LOYN from a
24 larger builder out of Atlanta for 1.6. I got another LOYN
25 from a local investor that I did business with once

1 before. And he wanted to trade me four houses for it that
2 had a greater value than 1.6. And I didn't move any
3 further on that because I didn't want to sign another
4 contract that I couldn't do anything with, but I just had
5 to know exactly where I stood on numbers.

6 Q. So currently your opinion of the market value is
7 that it's around 1.6 million?

8 A. It is, yes.

9 Q. And Judge Simmons said earlier this morning that,
10 you know, this is a bifurcated piece of the trial about
11 the enforceability of this right of first refusal and that
12 there would be a subsequent hearing if it was determined
13 that that was invalid, how you were damaged by that.

14 A. Right.

15 Q. So I'm not going to ask you specifics about your
16 damages other than I would like to establish that you
17 believe it's the case that the right of first refusal is
18 not valid and you would like the Court to issue a
19 statement that it's not valid; is that correct?

20 A. That's correct.

21 Q. And do you believe that you were improperly -- the
22 Clark sale and the Opus sale were improperly terminated or
23 blocked as a result of the claims under the right of first
24 refusal?

25 A. Yes.

1 Q. And do you believe that although the property has
2 appreciated or increased in value since the time of those
3 potential sales, that you lost out on potential profits
4 that you would have made from investing the money from
5 those sales?

6 A. Yes. Yeah, I have. At the end of the day, I
7 haven't made any money on the property until it sells. We
8 all know that. Until you collect the money, you make
9 money, and ...

10 MR. WARMOTH: No further questions on direct.
11 Thank you.

12 THE COURT: Your witness.

13 MR. LESEMANN: Thank you, Your Honor.

14 **CROSS EXAMINATION**

15 **BY MR. LESEMANN:**

16 Q. Mr. Franchina, there was a discussion about the
17 memorandum of the right of first refusal and the fact that
18 that was not recorded; correct?

19 A. Well, we never came to an agreement on it, so it
20 was never recorded. That's correct.

21 Q. And just so that the record is clear, is the reason
22 there was no memorandum recorded that you -- your
23 attorney, Mr. Warmoth, called me and stated the parties
24 were going to have to agree to disagree and that CJN was
25 not going to discuss a memorandum any further?

1 A. I don't agree with that. I thought we were always
2 wanting to do a fair memorandum at some point.

3 Q. Okay. So your testimony under oath is that you
4 were always willing to continue to discuss the memorandum?

5 A. If somebody brings me something fair, Ellis, I'll
6 be willing to sit there and discuss it and go through it.

7 Q. Okay. And your testimony earlier ---

8 A. At some point, you know, if it becomes
9 unreasonable, then yeah, there's no other discussion to be
10 had. It's just burning up time.

11 Q. Okay. How many proposals about the memorandum and
12 the further definition of right of first refusal, how many
13 proposals were exchanged?

14 A. I'm not sure.

15 Q. Okay. So you don't remember?

16 A. I don't remember, no. I'm sure it was a few from
17 the ---

18 Q. Okay. You can't tell me how many proposals that
19 CJN made?

20 A. Not the exact number, no, I can't.

21 Q. All right. Do you know who made the last proposal?

22 A. I don't.

23 Q. So if Crescent had made the last proposal, that
24 would be news to you?

25 A. If they did that would be -- it wouldn't be news to

1 me. I just don't recall at this point.

2 Q. Okay.

3 THE COURT: Now we're talking about the right
4 of first refusal issue? Or a larger issue?

5 MR. LESEMANN: We're talking about -- so you
6 recall the right of first refusal is in the signed
7 contract. The issue that I'm talking about right now is
8 the memorandum of the right of first refusal letter.

9 THE COURT: In the paragraph 19 language?

10 MR. LESEMANN: Yes.

11 THE COURT: I just want to make clear for the
12 record.

13 MR. LESEMANN: Yes. Thank you, Your Honor.

14 Q. So Mr. Franchina, if I were to tell you that after
15 we submitted a proposed memorandum of right of first
16 refusal in an amendment to the contract to clarify those
17 points and that your attorney called me and said that CJN
18 was not going to discuss it any further and that the
19 parties were just going to just have to agree to disagree
20 on that point, would you quarrel with what I've just
21 stated?

22 A. I don't recall.

23 Q. Okay.

24 A. I mean I know we had several phone conversations
25 that got pretty heated, and you were on them. I think so.

1 I think we had it at Mr. Howard's office. I think we had
2 a phone call -- I think it was you that was on there.
3 Somebody with Crescent Homes was on there at the time.

4 Q. I don't know that I ever would have ---

5 A. Yeah, we went back and forth on the telephone, and
6 I think that's what we ended the discussion on.

7 Q. Okay. Are you sure what that conversation was
8 about? Do you think it was about the unresolved issues on
9 the first phase?

10 A. I think it was all tied in. Absolutely.

11 Q. And so is it true that CJN discontinued discussions
12 relating to the memorandum and the right of first refusal
13 in August of 2020 prior to the initial closing in
14 September of 2020?

15 A. I don't recall. I don't recall who ended the
16 discussions or not.

17 Q. So if there's testimony indicating that someone
18 does have a specific recollection and it was you that
19 ended those discussions, you don't really have the
20 authority to quarrel with that? You don't remember?

21 A. I don't. I remember the last conversation we had
22 was on the telephone that day and it kind of went south on
23 everything and basically couldn't come to a resolution on
24 this, obviously.

25 Q. So you mentioned that there were certain things

1 that -- in response to the question that Mr. Warmoth had
2 asked you, that there may have been certain things that
3 were unreasonable? That ---

4 A. Yeah.

5 Q. --- Crescent was requesting relating to the
6 memorandum and the right of first refusal?

7 A. Yes.

8 Q. What was it you were referring to when you said
9 that there were unreasonable items? What were those?

10 A. I'd have to go back through here and read
11 everything now to tell you exactly what they were. I'm
12 not prepared to do that right now.

13 Q. Okay. So you can't tell us here ---

14 A. Well, I mean we put together -- Ellis, like I said,
15 we put together something we felt like was very fair and
16 short and two pages, and y'all came back and added one,
17 two, three pages, all this stuff in here, and basically
18 was changing stuff. It was just like -- you know, usually
19 we don't get into something this detailed. It was very,
20 very detailed and lopsided.

21 Q. Well, it's good when contracts are detailed; right?

22 A. Lopsided.

23 Q. What was lopsided about it?

24 A. Just, you know, I guess 2030, tying the property up
25 till 2030. Going from the raw land -- going after raw

1 land, our lots. I mean I'd have to go back through here
2 and everything. That's not what the contract stated here.
3 The original contract was lots.

4 Q. So why did you make the decision to not continue
5 forward with the discussions?

6 A. I don't think I was the one that made that
7 decision. I mean I'm still willing to talk. We're
8 talking today. We talked before the trial.

9 Q. Right. Now, insofar as a -- we're talking in
10 respective of 2020; right, August of 2020 when these
11 documents are being exchanged, these proposals?

12 A. If you say -- yeah, I guess.

13 Q. And so when you mention tying the property up until
14 2030, now again that would just be a right of first
15 refusal; correct?

16 A. You tell me. Is it right of first refusal on lots,
17 land? What is it?

18 Q. Well, again that's going to be for the Judge to
19 decide.

20 A. Right.

21 Q. And we're going to get into that in a minute;
22 right, based on Exhibit A-2 and the use of the terminology
23 that's used. But we'll just call it for now the property;
24 right? So essentially you mentioned 2030, that there was
25 going to be a ten year limitation; right?

1 A. That's what you put in here.

2 Q. Okay. And you could have responded back with a
3 different number; right?

4 A. I'm pretty sure we did.

5 Q. What was the number you responded back with?

6 A. I don't recall at this time. I don't recall.

7 Q. All right. Now isn't it true that in the Clark
8 offer you had requested a ten-year right of first refusal?

9 A. I think we ended up with like two or three we
10 requested because that's what you guys were doing. Then I
11 ended up with two or three or something like that. We did
12 something in there. I'd have to go back and look at that.

13 Q. Let's get the time lines right.

14 A. Well, let's look at it.

15 Q. That document from Mr. Clark ---

16 A. I mean, I learned from you, to be honest with you.
17 And I tried to use it. It didn't work out for me. But
18 that's the way real estate is.

19 Q. Is it your testimony today that your preparation of
20 the Doug Clark -- CJN's preparation of the Doug Clark
21 right of first refusal provision was based upon our
22 proposed memorandum which didn't come until a month later?

23 A. No. I just put a right of first refusal in there
24 because I learned from it from this contract, your first
25 original contract. And then because I knew one day Mr.

1 Clark was going to do something, I asked him, I said, well
2 if you do something and you decide to sell the property,
3 I'd like the right to buy it back at some time.

4 Q. You testified that you like Mr. Clark?

5 A. I do.

6 Q. Okay. And so when you requested a ten-year right
7 of first refusal in that document, you thought that was
8 reasonable; correct?

9 A. Also we had discussions where we would develop it
10 together at one time if he ever wanted to do that.

11 Q. Okay. But I'm just saying that when it was
12 somebody that you liked that you wanted to try to help out
13 and gave him a fair price?

14 A. I gave him a great price on it.

15 Q. That ten-year right of first refusal, that was
16 reasonable; correct?

17 A. Right of first refusal, I thought it was
18 reasonable. He didn't. That's why he came back.

19 Q. But you thought it was reasonable?

20 A. When you're buying something you think things are
21 reasonable. When you're selling something you think
22 things are reasonable.

23 Q. But again, CJN thought that a ten-year right of
24 first refusal was reasonable?

25 A. At that point, yes.

1 Q. And we are talking about the exact same property;
2 right?

3 A. We are talking about the exact same property.

4 Q. The Phase II property? Correct?

5 A. Correct.

6 Q. Okay. Now, you agree when you entered into this
7 contract with Crescent that you were obligated to act in
8 good faith; right?

9 A. Absolutely.

10 Q. And Crescent was obligated to act in good faith,
11 too; correct?

12 A. Absolutely.

13 Q. And you gave them a right of first refusal in
14 section 19, that's been marked as Exhibit Number 5?

15 A. Okay.

16 Q. Section 19 on page 16?

17 A. Okay.

18 Q. Did CJN reserve the right in Section 19 to sell
19 this as raw land? Is there any language to that effect in
20 this document?

21 A. We never had the discussion. The discussion was
22 always about lots, lot take-downs because that's what
23 Ted's deal is. That's what he does. He goes and buys
24 lots from developers.

25 Q. And that's what this whole deal was about; right?

1 A. Yeah. We discussed it. We were not able to
2 develop the back side of the property and that's why we
3 changed the contract from whatever lots it was down to
4 thirty-two lots because it wasn't feasible at the time.
5 And he said, well, if you ever do decide to develop the
6 lots, we want a right of first refusal on the lots. We
7 all know that. We all knows the discussions that were
8 had.

9 Q. And you gave the right of first refusal?

10 A. It was in the contract on the lots.

11 Q. You intended to be bound by it?

12 A. And I'd still sell the lots. If he comes in at the
13 highest price, he can still buy the lots if I develop the
14 property. I never said that was not going to be viable.
15 I sat there and told you that.

16 Q. And there's a binding right of first refusal on
17 this document; right?

18 A. There's a binding ... No, it's not binding until
19 we put a memorandum together that binded it. If he's
20 still the highest buyer, he can buy them one day.

21 Q. And the memorandum that CJN refused to further
22 discuss; correct?

23 A. No. I don't know who ended the discussions. It
24 went back and back, back and forth. My thing is, it has
25 to be fair in any business deal that you do. You're not

1 going to have both people happy, but it has to be fair,
2 and it was not fair.

3 Q. The discussions ended; right?

4 A. The discussions ended maybe by your client, too. I
5 don't know.

6 Q. Well, I mean he may have some testimony about that.
7 But again in paragraph 19 ---

8 A. Like I've always said, my phone stayed on. And I
9 told y'all that. Anyone could call me. Then Kelly just
10 started calling me recently. I've never said I wouldn't
11 talk to anybody.

12 Q. Well, let's talk about your phone staying on. So
13 you could receive calls and make calls, too; right?

14 A. Absolutely.

15 Q. And you know Mr. Terry?

16 A. Absolutely.

17 Q. And so at some point when you decided that although
18 there's -- it's called a future phase; right? So I mean
19 that frames itself. That indicates that there's going to
20 be a future phase; correct?

21 A. Maybe.

22 Q. All right.

23 A. It's maybe. I never said. That's why we changed
24 this contract, because we weren't sure.

25 Q. So you think that's subject to interpretation about

1 whether the future phrase is essentially an indication of
2 an intent to do another phase?

3 A. We did not intend to do another phase at the time,
4 but we had the option to do that phase. So I mean if the
5 market changed and the numbers got right, then, yeah, we'd
6 move forward and do another phase. And Mr. Terry would
7 have had the right to purchase those lots if he could
8 match anyone's higher offer. I understand that.

9 Q. Mr. Franchina, I don't understand what you --
10 there's a whole exhibit with a future phase on it.

11 A. That's right. And if we decide ---

12 Q. And you have no intention of doing that?

13 A. Yeah, we had an intention of doing it if it made
14 sense. And we knew at the time it didn't make sense
15 because he understood he had to put a bridge in. He had
16 to cross over the thing. We had to go through a bunch of
17 rock. I mean it's a difficult piece of property. But now
18 it's better because of where the market is today.

19 Q. Did Section 19 include any provision that says that
20 this right of first refusal does not apply should CJN
21 decide that it no longer wants to develop a future phase?

22 A. It does not say that in there.

23 Q. Okay. Is there any reference whatsoever in the
24 right of first refusal that should CJN decide that they
25 want to sell off as raw land to the neighbor that their

1 right of first refusal does not apply? Is there any
2 language to that effect?

3 A. It does not say that in there. But it does say
4 lots, lots only.

5 Q. Right. Because that was the entire basis of the
6 relationship. That was the understanding. And you know,
7 the person that prepared Exhibit A-2, that's not
8 Crescent's engineer. That's CJN's engineer; correct? Mr.
9 Gray?

10 A. That's correct.

11 Q. And so you had paid Mr. Gray to prepare out a lot
12 plan?

13 A. We did, yes.

14 Q. And ultimately was the issue -- was the concern
15 locking yourself down on prices when you didn't know when
16 Phase II -- when the future phase was going to come along?

17 A. If you look at lot developers that fail, Ellis,
18 they'll go ahead and they'll sign lot agreements with
19 builders and they'll sign them before they even know what
20 their cost is. And by doing that you've basically already
21 failed before you started. So right now the way the
22 prices are moving in today's market, we don't even sign a
23 contract to builders until we have our grading permits in
24 place and things like that, a lot of times, with the
25 builder. Now, I buy land all the time with a thirty-day

1 due diligence. I buy land with a sixty-day. I buy it
2 once I get a grading permit. It's just how it's
3 negotiated.

4 Q. And again, your concern about not knowing what your
5 costs would be on the future phase; right?

6 A. Nobody would know what their costs was on the
7 future phase right now with the economy that we're in,
8 with the COVID, with the supply chain. Different things
9 change.

10 Q. And nowhere in the contract did you indicate to
11 Crescent, hey, I may just decide to sell this off as raw
12 land and y'all just have no future phrase? There's
13 nothing in this contract that says that?

14 A. It didn't state. It says lots, lots only.

15 Q. All right. And I'm going to ask you under oath,
16 too, did you ever tell Mr. Terry that, you know, just so
17 you know I may never do a future phase. We may not do
18 lots. I just want you to know I'm reserving the right to
19 sell this off as raw land. Did you ever tell him that?

20 A. I'm sure we had the conversation at Rodney's office
21 when he stuck this in front of me that day and I signed it
22 when he came up ---

23 Q. That's different from saying you're sure you did.
24 Did you say, Ted, I want you to know I am distinctly
25 reserving the right to scrap this whole lot plan that I

1 paid to have prepared and just to go forward with the sale
2 of raw land?

3 A. I was at ---

4 Q. You never had that conversation; did you?

5 A. We had this conversation about lots, but not raw
6 land on it. But the understanding was if I did not
7 develop it there was not ever going to be lots put on
8 there so it never should be tied up. I mean that's just
9 the long and short of it. I mean it says lots, lots only.

10 Q. But we're talking about the same property that's
11 hatched; right, on A-2; Right?

12 A. Yes.

13 Q. Whether it's raw or whether it's lots? It's this
14 area that's marked on this document; right?

15 A. That's correct.

16 Q. Okay.

17 A. It's marked as lots. The lot lines on there. It's
18 hatched.

19 Q. Those lots don't exist yet; do they?

20 A. They do not exist. But if I developed them, Mr.
21 Terry would have the right of first refusal to purchase
22 them.

23 Q. He would have the right of first refusal to do
24 that?

25 A. Absolutely. I said that. I've told y'all that six

1 times.

2 Q. Okay. All right.

3 A. I even said it the last time we met. You know, but
4 every time I send you a contract, y'all mark up the
5 contract. That's not a right of first refusal. You don't
6 make your own rules. You follow the rules that someone
7 put in there.

8 Q. All right. So there's going to be a lot of
9 discussion, but you admit that the Doug Clark agreement,
10 that came forward -- now, again, talking about good faith
11 and your phone being on and always open, how did that Doug
12 Clark offer get presented to Crescent?

13 A. Through Mr. Howard.

14 Q. Through lawyers; right?

15 A. Mr. Howard is a partner.

16 Q. Okay. Well, did you ever have the thought of maybe
17 I'll call Ted and say, you know Ted, I've decided that I
18 just don't want to go forward with the future phase. How
19 about let's sit down and let's figure out -- I've got a
20 neighbor who's interested. Did you ever initiate any kind
21 of conversation like that to tell him that you had shifted
22 and you no longer wanted to do this future phase?

23 A. I don't think so.

24 Q. Okay.

25 A. I don't think we had that conversation on that part

1 of it.

2 Q. Would that have been a reasonable, good faith thing
3 to do on your part?

4 A. You know what, hindsight is 20/20, Ellis.
5 Probably. But we had already had some issues going
6 forward on a few of the other things and so everybody
7 wanted to run everything through attorneys.

8 Q. So we looked at that Doug Clark agreement and Mr.
9 Warmoth asked you some questions about it. It's marked as
10 your Exhibit 6.

11 A. Okay.

12 Q. I'm looking at section 4.6(a).

13 THE COURT: I'm sorry, which section?

14 MR. LESEMANN: Sorry, Your Honor, on page 5
15 of Exhibit 6, there's a section 4.6.

16 THE COURT: All right.

17 MR. LESEMANN: And it's subsection (a) that's
18 underscored and bolded.

19 THE COURT: All right. Thank you.

20 A. Okay.

21 Q. You find that, Mr. Franchina?

22 A. 4.6?

23 Q. Yeah, Crescent Homes SC, LLC underlined part. You
24 know what, are you in the Crescent document? I'm in the
25 Doug Clark document.

1 A. Number 6. Yeah, right here. The pole is right
2 there. Crescent Homes SC, LLC Delaware Limited Liability
3 Company ...

4 Q. So it uses the word terminate; right?

5 A. Yes, sir.

6 Q. Crescent Homes is going to termination; right? So
7 I just want it clear for the record, you've made your
8 position known through the questions asked of you by Mr.
9 Warmoth. But you've never received a written notice from
10 Crescent terminating ---

11 A. Mr. Clark put that in there. Yeah.

12 Q. Okay. But you signed it?

13 A. I did.

14 Q. Okay.

15 A. But they terminated it because that's what they
16 said they wanted to do.

17 Q. And ultimately you ended up with a -- was it a
18 three-year right of first refusal in this?

19 A. That's correct.

20 Q. And so both sides thought that was reasonable;
21 right?

22 A. Yes.

23 Q. All right. But you thought ten was reasonable?

24 A. I thought ten was something to ask for.

25 Q. And in terms of the time frame for responding, you

1 avoid the context of the right of first refusal; right?

2 You got a written offer?

3 A. Right.

4 Q. Okay. Is thirty days a reasonable time frame to
5 respond?

6 A. You know what, that's a long time frame on a right
7 of first refusal because it basically gives unfair
8 advantage to the buyer that's on the other side.

9 Q. When you say buyer on the other side, just clarify
10 for me who you mean?

11 A. It would be the person who's putting in the
12 contract to purchase.

13 Q. Oh, you mean the seller is going to be tied up that
14 long? Or I guess I don't understand exactly what you
15 mean.

16 A. If you have a right of first refusal and you have a
17 contract here and you bring it to the guy who has the
18 right of first refusal and you take thirty days, the guy
19 who's over here, he's sitting here idled basically. It's
20 an unfair advantage for him by giving them that much time.
21 I think, you know, forty-eight hours to five days is
22 plenty of time. Maybe ten tops. I mean I just did a
23 contract not too long ago and it was a big real estate
24 deal and they had a right of first refusal. It came
25 through. And they bought it for like twelve million

1 dollars. And the guys on the other side were a big
2 development company and they were ticked that there was
3 ten days in it. And they went back and forth with
4 attorneys thinking there should have been forty-eight
5 hours to have a quicker response.

6 Q. Forty-eight hours. And so ---

7 A. That's what they said. I'm just giving you a ---

8 Q. Okay.

9 A. And I said anything is reasonable from ten down.

10 Q. And in the Doug Clark document it said fifteen?

11 A. That's right.

12 Q. Okay. So that was what both parties thought was
13 reasonable in that?

14 A. At that time, yes.

15 Q. All right. And then it also talks about a bonafide
16 purchase offer. Do you agree both with the Doug Clark
17 contract or with the Crescent contract or with Opus Petrus
18 granting you a right of first refusal, the third party
19 offer needs to be legitimate; correct?

20 A. They are legitimate.

21 Q. I'm just saying, it needs to be legitimate, it
22 needs to be bonafide; correct?

23 A. Yes.

24 Q. Now, we talked about the Doug Clark offer. Now
25 that came up before the initial closing ever happened;

1 right?

2 A. Yes.

3 Q. All right. Now the Opus Petrus offer, are you
4 aware that he never did any -- that Mr. Bouharoun never
5 did any due diligence whatsoever?

6 A. Yes.

7 Q. Okay. And so no telling whether he would have
8 proceeded with the purchase of that property, then?

9 A. There is no telling, but anything I put under
10 contract with Peter, he's never not closed with me. So
11 I've got a pretty good track record. That goes all the
12 way back to the nineties when he purchased some houses
13 from me up in Gaffney, that he still owns today. So you
14 know, I'm pretty confident he would have closed.

15 Q. With regard to the right of first refusal, do you
16 agree that the contract with Crescent is valid; right?

17 A. The contract with Crescent is -- yeah, we closed
18 lots.

19 Q. Okay. And that Mr. Howard, who's in the courtroom
20 with us, he's an experienced property attorney; correct?

21 A. He is, yes.

22 Q. And he reviewed this contract on behalf of CJN,
23 this contract that we've marked as Exhibit 5, the Crescent
24 contract?

25 A. I would hope so, yes.

1 Q. Okay. And you deferred to his review; right?

2 A. I did.

3 Q. Okay. And so coming here today, you actually never
4 looked -- you never looked at the -- you never looked at
5 the right of first refusal before you signed that
6 document; did you, with Crescent?

7 A. I didn't. I'm sure I reviewed the contract, looked
8 at the contract, but I didn't basically dig into the bones
9 of the contract, no.

10 Q. But again, under oath, did you ever actually read
11 and study the right of first refusal provision in
12 paragraph 19 of this agreement before you signed it?

13 A. I don't recall.

14 Q. So as far as what the intent was, you don't know
15 what the intent was because you didn't read it?

16 A. I'm sure I skimmed over it, but I didn't digest
17 everything.

18 Q. Mr. Franchina -- and everybody's got their opinions
19 on this, both CJN and Crescent -- about those default
20 items with the initial phase; correct?

21 A. That's correct.

22 Q. All right. Is there any reason to expect that if
23 none of those issues arose that Crescent, just like any
24 other builder, would have gone forward with the purchase
25 of the initial phase earlier?

1 A. No. No, I mean ---
2 Q. I'm sorry. I want to let you finish your answer.
3 A. I'm done.
4 Q. Okay. You were shown a copy of a preliminary
5 subdivision plat dated from August of 2019?
6 A. Correct.
7 Q. But that had to change; right?
8 A. It had to change?
9 Q. Didn't it change based on the boundaries of the
10 lots along the river?
11 A. Yes, it could have. I think we hit some rock down
12 there and we had to move some stuff around.
13 Q. Right. Right. So again, I just wanted to clarify,
14 was there -- and I think Mr. Warmoth would have shared
15 with you, but were there times when Crescent, through me
16 or itself, was writing letters to say, hey, the
17 subdivision plat that reflects the actual configuration of
18 these lots has not even been recorded yet. We can't close
19 until that's recorded. Do you recall that being a reason
20 why the closing of the initial lots was slowed up?
21 A. I don't recall that, but I recall -- not really an
22 excuse for that -- as soon as a subdivision plat is
23 recorded, and this plat was recorded in order. So you had
24 to take lots down by a certain order. And in that order
25 none of those lots were affected by lot lines adjustments.

1 That was only the ones that were down by the river where
2 we hit rock.

3 Q. Right.

4 A. So it would not have affected any of their take-
5 down.

6 Q. All right. But we talked about a lot of other
7 issues like with the upkeep of the lots, the rock and the
8 debris, the cable installation, the street lights, the
9 mail facility. There were a lot of different things that
10 were ongoing, include the discussions you referred to
11 earlier?

12 A. Every discussion that you're referring to is not
13 anything that held anyone else up from closing lots in the
14 past and/or in the future today. Certain things like the
15 cable, the phones, Duke Power, different things like that
16 -- builders want to get in there and get things done. I
17 mean it goes back to -- I guess it goes back to, you know,
18 they signed off on dirt, they want to do certain areas.
19 They signed the papers off on it. Then they came back and
20 said, oh, my guys didn't have the ability -- the right to
21 sign that. But they had the right to sign it on two or
22 three of our other projects. It's like, come on, Ellis,
23 you can only have it -- you know, you can't have it every
24 way. What's fair is fair. And you know, those lots were
25 ready to be taken down. They could have had the right to

1 take them down. They were sending me a letter saying the
2 grass was ten inches high; it had to be six inches. I
3 mean, come on, you can only keep grass cut on a whole
4 subdivision so high.

5 Q. Right. But once all those issues were done y'all
6 closed on lots; right?

7 A. Yeah, we did. I'm not saying they didn't perform
8 at the end of the day when it was time to perform.

9 Q. And they performed when CJN performed all the items
10 that were required in order for the closing to proceed?

11 A. After everything had gotten all sideways and y'all
12 put the pressure on us to do every little thing and have
13 every little minute thing down to the four inch or six
14 inch grass, yes, you did close.

15 Q. Okay. Once you complied with the contract?

16 A. Once we did everything that y'all asked for.

17 Q. Okay.

18 A. But you didn't ask for those things on the other
19 ones you closed with us.

20 Q. You're talking about other neighborhoods?

21 A. Yes.

22 Q. Oh, okay. We're talking about -- we're here ---

23 A. We're just talking about this one, yeah. Yeah,
24 yeah.

25 Q. Okay. So again, a valid contract with a right of

1 first refusal that you intended to honor; correct?

2 A. Yes.

3 Q. And you have a team that includes a real estate
4 attorney who you rely on to review contracts for you;
5 right?

6 A. He does.

7 Q. Okay. CJN is a sophisticated commercial party;
8 correct?

9 A. CJN is a party, yes.

10 Q. Sophisticated in specifically real estate
11 contracts; right?

12 A. Yes.

13 Q. All right. And we can agree that a ten-year, in
14 your mind, at least as far as your proposal to Mr. Clark,
15 a ten-year right of first refusal would be reasonable;
16 right?

17 A. I asked for it; I didn't receive it. But I guess
18 it's not reasonable, but you're going to ask for things.
19 I could ask for ten million dollars, but I'm not going to
20 get it.

21 Q. Okay. So again, is it your testimony that you
22 thought you were asking the neighbor, Mr. Clark, for
23 something that was unreasonable?

24 A. I was asking for something that I would have liked
25 to get, but obviously it didn't go that way.

1 Q. And fifteen days you think is a reasonable time
2 frame in order for a party to respond to an offer?

3 A. Yes.

4 Q. But you acknowledge that in certain communications
5 between CJN and Crescent, longer time periods have been
6 discussed; twenty days, thirty days. Is that right?

7 A. I guess, yeah.

8 Q. Okay.

9 A. They were in there.

10 MR. LESEMANN: Your Honor, I would have no
11 further questions for the witness at this time.

12 THE COURT: Any other questions, Mr. Warmoth?

13 MR. WARMOTH: I just have one on redirect.

14 **REDIRECT EXAMINATION**

15 **BY MR. WARMOTH:**

16 Q. Mr. Franchina, on the issue of who sent what
17 proposals back and forth on the right of first refusal, I
18 think first of all, is it fair to say you don't remember
19 each and every proposal we sent back and forth on this
20 thing?

21 A. I don't. I was letting the attorneys handle that.

22 Q. Several of them; is that correct?

23 A. Yeah.

24 Q. If you could take a look at Exhibit 8, and the
25 tender letter on the second page. Actually look at the

1 bottom paragraph on page 1 and then the second page.

2 A. Exhibit 8. Which page?

3 Q. Bottom paragraph on page 1 and then the second
4 page.

5 THE COURT: I'm sorry, Mr. Warmoth. Which
6 exhibit again?

7 MR. WARMOTH: Exhibit 8.

8 THE COURT: Thank you.

9 A. You talking about page 2 of 9 of the contract?

10 Q. What I'm going to ask you, this is the tender of
11 this offer. On page 2 it looks like CJN proposed a
12 procedure for exercise of right of first refusal when they
13 tendered this offer?

14 A. Yes. Yes.

15 Q. So I just want to establish, from your perspective,
16 there was never a point where ---

17 A. We shut down communication. Yeah.

18 Q. Exactly. You said you kept throwing across what
19 you thought were reasonable solutions and ---

20 A. Yes.

21 Q. --- you proposed a right of first refusal on the
22 Opus offer and the response you got was to threaten to sue
23 Opus and calling it an illegitimate offer; not negotiate
24 the right of first refusal?

25 A. That's correct.

1 MR. WARMOTH: Nothing further. Thank you.

2 THE COURT: All right, sir, you can step
3 down.

4 MR. FRANCHINA: Just leave all these up there?

5 THE COURT: Yes, sir. Well, Mr. Warmoth, are
6 those his copies as opposed to the Court copies? I've got
7 a series of documents up here on the bench, but I don't
8 know if they're the originals or ---

9 COURT REPORTER: They are. You've got the
10 originals.

11 THE COURT: Okay.

12 MR. WARMOTH: Yes.

13 MR. FRANCHINA: Leave them here?

14 THE COURT: You can take those, I believe.

15 MR. FRANCHINA: All right. Thank you.

16 THE COURT: All right, Mr. Warmoth, how many
17 other witnesses do you have?

18 MR. WARMOTH: I have no further witnesses,
19 Your Honor.

20 THE COURT: Okay. Mr. Lesemann, I guess the
21 question becomes, do we go ahead and take a lunch break
22 now or do you want to proceed with your first witness?

23 MR. LESEMAN: Your Honor, we just have one
24 witness. I do believe though that it's going to be of
25 similar length. So it would make sense for us to go ahead

1 and do that right now if the Court believes that makes
2 sense.

3 THE COURT: Oh, certainly. I tend to like to
4 take a short lunch and get back to work. But I also
5 understand y'all want a little time to further discuss
6 possibilities. Hour, hour and fifteen minutes, is that
7 realistic?

8 MR. LESEMANN: Yes, sir. For us.

9 MR. WARMOTH: Yes. Thank you, Judge.

10 THE COURT: All right. So why don't we start
11 back at maybe one or ten after one?

12 MR. WARMOTH: One.

13 MR. LESEMANN: Yes, sir.

14 THE COURT: How about one ten. I know if I
15 give y'all a range then y'all have got to be back on the
16 early part so the judge doesn't start fussing. I
17 understand. One ten. Let me talk with the attorneys for
18 a moment.

19 **LUNCH BREAK**

20 THE COURT: Call your witness.

21 MR. LESEMANN: Thank you. Your Honor, we
22 call Ted Terry.

23 THE COURT: Come around, please, sir. Place
24 your left hand on the bible. Raise your right hand for
25 me. Do you swear to tell the truth, whole truth and

1 nothing but the truth?

2 MR. TERRY: Yes, I do.

3 THE COURT: All right. Thank you. Come
4 around and have a seat, please, sir. And if you'll state
5 your full name.

6 MR. TERRY: Edward Matthew Terry.

7 THE COURT: All right. Your witness.

8 MR. LESEMAN: Thank you, Your Honor.

9 EDWARD MATTHEW TERRY,

10 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. LESEMAN:

13 Q. Ted, if you could just, for the record, say a
14 little bit about your background and your occupation?

15 A. Yeah. I own Crescent Homes and Levi Grantham Land
16 Group. Residential development on one arm and
17 homebuilding in Charleston, Greenville and Nashville,
18 Tennessee. We basically build homes, sell them, warrant
19 them, do the full spectrum of residential homebuilding and
20 real estate.

21 Q. Was your father also a homebuilder?

22 A. Yes, he was.

23 Q. And how long have you been involved in the
24 homebuilding business?

25 A. I've been involved my entire career.

1 Q. When did you -- when did Crescent and Levi Grantham
2 first start doing projects in Greenville?

3 A. About six years ago.

4 Q. And how long is it -- how did you come to meet Mr.
5 Franchina?

6 A. I met Nick through a mutual friend and I guess
7 consultant, Rodney Gray, who is an engineer I guess Nick
8 has done business with and used. And I was introduced to
9 Rodney when I first got to Greenville and we met shortly
10 after and started doing deals together.

11 Q. You mentioned both Crescent and Levi Grantham.
12 Could you go a little bit more into that and how that
13 relates to the different types of transactions and deals
14 that you do?

15 A. Sure. So I have a homebuilding arm, which is
16 Crescent Homes. Instead of doing -- we have to develop
17 land to get lots in the markets that we're in. So instead
18 of doing that all under the homebuilding entity, I have a
19 land development and investment entity that really
20 provides most of the lots to Crescent at this point, but
21 buys land, does do entitlement, development, sells the
22 lots to Crescent. Could sell lots to other builders, but
23 we're so far behind we can't get the lots out, so ... But
24 yeah, I just have it under two different, two different
25 umbrellas; land development and homebuilding.

1 Q. Okay. And I say that to be relevant to this
2 proceeding in that have you had occasion in the past with
3 CJN and Mr. Franchina or other entities associated with
4 him to do both what we would call lot deals and raw land
5 deals?

6 A. Yes. So if we buy lots, usually Crescent Homes is
7 the entity that contracts and buys the lots directly from
8 a developer. We've done those deals with Nick and his
9 group. And then, you know, Levi Grantham would buy a land
10 deal and develop it. We've done two of those deals with
11 Nick, as well.

12 Q. Okay. And so how did that relationship expand from
13 the first time when Mr. Gray introduced you?

14 A. Well, you know, we did -- I can't remember what the
15 first deal was. I think it was a little eight lot deal
16 and it went well and we did another one. And I think that
17 Nick liked the houses we built for his style of
18 neighborhood that he developed. So we did more and more.
19 And everything was working great. Most of the deals were
20 -- had had Gray Engineering as the engineer consultant.
21 But it was a good business relationship.

22 Q. Okay. So if a given opportunity is raw land, from
23 your experience Mr. Franchina and CJN knows that you would
24 still be interested?

25 A. Yes.

1 Q. And in fact you've done those sorts of deals with
2 them in the past?

3 A. We've done two I'd say medium to large size deals
4 in the past; about two hundred fifty lots total.

5 Q. Okay. So you're talking about medium and large
6 size deals, how many -- we'll talk now about River
7 Springs. How many lots are in that first phase of River
8 Springs?

9 A. I believe thirty-two.

10 Q. Okay. And how many are anticipated to be in the
11 future phase?

12 A. It was at one point thirty-three. I think it's
13 down to as low as thirty. So in that thirty -- I think
14 it's thirty to thirty-one lots.

15 Q. Okay. So thirty to thirty-two in the initial
16 phase. Is that something that you in your experience of
17 what the company does, would you call that small?

18 A. That is a smaller deal; yes, sir.

19 Q. Okay. And so how does that relate to River Springs
20 in terms of the first phase, the second phase being a
21 sixty or sixty-five lot potential versus a thirty lot
22 potential. What was going on in your mind and with
23 Crescent as you were approaching this as, you know, a
24 single or a multi-phase deal?

25 A. Well, obviously a sixty-plus lot deal is more

1 attractive. And that's what we were looking at, at first,
2 on this River Springs deal. It was a two-phase deal.
3 Phase I was basically -- had been -- had started and was
4 on down the road when I was introduced to the deal. But
5 Phase II was under planning and really was an attractive
6 part of the overall deal. So as far as, you know, the way
7 I look at it and other homebuilders, I mean we have a --
8 if we do a Phase I of a deal, we want to do the rest of
9 the neighborhood. There's a lot that goes in up front to
10 establish the neighborhood and establish our marketing,
11 establish our presence, that we don't want to do the heavy
12 lifting in the Phase I and then have somebody else come in
13 and basically take advantage of what we've created in
14 Phase II and III and so forth.

15 Q. So again, was Crescent very interested in both
16 phases?

17 A. We were. We were very interested in both phases.

18 Q. Let me hand you a ---

19 MR. LESEMANN: Are Plaintiff's exhibits still
20 up there?

21 THE COURT: Which ones are you -- I've got
22 the original exhibits.

23 MR. LESEMANN: Okay. I just need the witness
24 copies, perhaps, because I don't want to -- you know what,
25 I have my set. I'll just use them.

1 Your Honor, just for purposes that I don't want to
2 enter something that Mr. Warmoth has already entered.

3 Q. Mr. Terry, I'll show you what's been marked as
4 exhibit -- Plaintiff's Exhibit 4. And I think -- so do
5 you recognize that document?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is the -- it's a letter of intent for Phases I
9 and II of River Springs going back to 2017.

10 Q. So one of these using this case would be intent,
11 and the Judge will be looking into issues relating to
12 intent. What was Crescent's intent as to this project in
13 terms of the number of phases and things of that nature?

14 A. Well, it was always a two phase deal. Phase I,
15 like I said, was far enough along. We knew exactly what
16 we were looking at. Phase II had been land planned and,
17 you know, there was one -- one, I guess primary version of
18 that. But there were other discussions about what you
19 could do with that. But it was really going to be the
20 same lot size all the way through to the end. And we
21 wanted to buy all the lots. And that was always the
22 intent. And Nick, from day one, was always going to be
23 the developer in this deal and develop all the lots all
24 the way through.

25 Q. Did Mr. Franchina or anybody on CJN's behalf ever

1 say to you, just so you know, there may never be a future
2 phase. We might just, in a couple of months, decide to
3 sell it off to somebody else for some amount of money?

4 A. Never. Never happened. Never was ever
5 contemplated.

6 Q. How would that have affected Crescent's willingness
7 to enter into this -- if it would have, would that have
8 affected Crescent's willingness to enter into this deal?

9 A. It would have because it wasn't -- that is -- that
10 is River Springs Phase II. So if there was never the
11 intent to develop the remaining lots, we would have
12 structured the deal as such. But we wanted -- I mean
13 Crescent Homes negotiated to basically be able to buy the
14 remaining lots in River Springs. It's an inducement to do
15 this deal.

16 Q. Did Mr. Franchina ever express to you that he was
17 harboring the intent to perhaps sell the future phase off
18 as raw land to an unrelated party?

19 A. Never.

20 Q. Would that have been something you would have
21 expected to discuss if that was his expectation?

22 A. Yes.

23 Q. What was it that caused -- from this letter of
24 intent, right, the letter of intent speaking about two
25 phases, sixty-five lots, and as has been already discussed

1 today in testimony, the ultimate agreement is, one, that
2 the first phase thirty-two lots, and then the right of
3 first refusal for the future phase. What -- why did that
4 change?

5 A. It had everything to do with how far Nick was
6 within those two phases. Phase I was far enough down the
7 road that he was comfortable contracting those lots at a
8 certain price. He had, you know, deal points that were
9 important to him on take-downs and things like that. And
10 he was not ready to lock in on Phase II.

11 Q. Right.

12 A. It was never that he didn't know if he was going to
13 develop Phase II, it was that he wasn't far enough down
14 the road to finalize deal terms with me and Crescent
15 Homes.

16 Q. Right. And so, and Judge Simmons can appreciate
17 this, but let's talk about it from the industry
18 standpoint. Builder on the front end of a multi-phase
19 project, would the builder like to have all of the lot
20 prices set in stone from the outset?

21 A. Yes.

22 Q. How about the developer? How does the lot
23 developer feel about having all of those lot phases for
24 the multiple phases set down in stone?

25 A. Well, the developer used to be, I guess, more

1 agreeable and feel more comfortable about that. This day
2 and age, developers do not feel comfortable about that,
3 given the cost structure. Several years ago, I mean it
4 was reasonable to lock in for the phase that he had been
5 working on. And I guess to a certain extent punt on the
6 terms for the rest of it until we got far enough down the
7 road that he knew what, you know, what the costs were.

8 Q. Sure. Okay. So another document that was
9 identified was Plaintiff's Exhibit 5. It's a copy of the
10 -- or if you can explain for the record. Do you recognize
11 that document?

12 A. I do. This is the Purchase/Sale Agreement for the
13 developed lots, thirty-two developed lots.

14 Q. Okay. So the issues of lots versus raw land is
15 something that's come up and it's something for the Judge
16 to consider in his rulings. But let's be clear, as of the
17 date of this contract being entered, were there actually
18 any lots at that point, on the first phase or on the
19 second phase? Or are they all to be set on a subdivision
20 plan in the future?

21 A. I mean, the lots were all planned. I think lots in
22 Phase I were permitted. I think they had started
23 development at the time we went under contract. I can't
24 remember a hundred percent. Phase II was not engineered
25 or permitted at that time.

1 Q. Okay. Now, how many total deals would you say that
2 you and your entities have done with Mr. Franchina and
3 his, in total, approximately?

4 A. At least five.

5 Q. Okay. And so River Springs is the one that's had a
6 lawsuit associated with it; correct?

7 A. Correct.

8 Q. And the others have not?

9 A. Correct.

10 Q. So in the contract there are a couple of things
11 that are of importance. Are there a set of various
12 obligations that the developer has to do in order for
13 those lots to be ready for purchase?

14 A. Yes, there are, and the reps and their warranties,
15 all typical with a lot purchase contract.

16 Q. So without getting into too dry of a discussion
17 about contract language, could you describe some of the
18 issues that came to pass with the initial phase and the
19 impact that that had on timing?

20 A. Yes. So I mean as I recall the phase was delayed.
21 It was being brought on about a year after we contracted
22 for the lots. So -- which is normal. I mean developers
23 get delayed for various reasons. So we weren't -- that
24 wasn't a legal problem or anything like that. The biggest
25 issue is when we got ready to close the lots, there was a

1 lot remaining undone in the neighborhood. And in
2 particular there was about a hundred thousand dollars of
3 just trash material that came out of the road that was
4 sitting on the lots in different piles. That was -- you
5 know, basically became the big dispute, which is remove
6 this material so we can buy the lots. And there were
7 about, I don't know, twenty other things that some major,
8 some minor, that were not done. And so we couldn't get
9 Nick to do those items. And so we -- the only thing we
10 had left to do was hold him in default and work through
11 the contract to try to get that done. But we couldn't buy
12 the lots with all this trash on the lots.

13 Q. Okay. So could you turn in the notebook I handed
14 you to what's been marked for identification as
15 Plaintiff's Exhibit 5. Are you there?

16 A. I'm there.

17 Q. Okay. And so then on the first page of that
18 exhibit is an email; correct?

19 A. Let's see ---

20 Q. Are you looking at the ---

21 A. I'm already at the letter.

22 Q. All right.

23 A. Yes.

24 Q. All right. So is this a letter that -- now, who is
25 Harvey -- how does Harvey & Vallini relate to everything?

1 A. Harvey is just our real estate attorney.

2 Q. Okay. Is this -- Defendant's Exhibit 5, is this a
3 truly accurate copy of a default notice listing various
4 issues as they existed on or about September 5th of 2019?

5 A. Yes, it is.

6 MR. LESEMANN: Your Honor, I had a question
7 that might also be for Ms. Hanks, as well.

8 We premarked this as Exhibit 5. And one reason for
9 that is because we had some other documents in front of
10 it. When I move for it to be introduced, should I keep
11 that numbering or should I switch this to be number 1?

12 COURT REPORTER: Keep the numbering.

13 MR. LESEMANN: Okay. Thank you.

14 THE COURT: What did she say?

15 MR. LESEMANN: She said to keep the number.

16 THE COURT: Whatever she said is what I'm
17 going to do.

18 MR. LESEMANN: Okay. What she said.

19 Excellent. Thank you, Ms. Danette.

20 Your Honor, at this time I would just ask that
21 Plaintiff's Exhibit 5 be entered into evidence?

22 THE COURT: All right. And Mr. Warmoth,
23 unless you have an objection, I'm going to assume that
24 there are no objections.

25 MR. WARMOTH: No objection.

1 (WHEREUPON, Crescent Exhibit Number 5 was admitted
2 into evidence.)

3 Q. Mr. Terry, you may have had an opportunity to look
4 at the letter and it may refresh your recollection. But
5 just, you know, you've been in this business. You've
6 bought a lot of lots. You've bought a lot of raw land.
7 Some of this, it seems like blocking and tackling.
8 Describe the issues in -- I guess the level of surprise
9 and sort of what's going on with this standpoint where
10 you've got this deal and there are seventeen items in the
11 letter that have to be addressed.

12 A. Right. I mean there are situations where
13 developers fall behind waiting on gas lines to go in or
14 power lines to go in and they're on schedule and the plat
15 gets recorded and everything else is done and looks good.
16 The builder and the developer have a great relationship.
17 The builder goes ahead and buys -- take down one or
18 continues. This is way more than that. And again, the
19 biggest problem here was the fact that there was a bunch
20 of junk dirt on the lots that, you know, I think we're in
21 the time frame where developers have the upper hand on
22 builders and builders wanted the relationship and builders
23 would agree to a lot of things. But I thought this was
24 just way overkill. It was, again, a hundred thousand
25 dollars worth of bad dirt that had to be removed to be

1 able to break ground on a lot after you had a building
2 permit. That's not something that we can accept. And we
3 don't have anyway to make him move it other than to
4 enforce the contract. So I think every effort was made
5 and then we held him in default. There were other items,
6 and you know, I mean some of it was negligence; not
7 cutting the grass, things like that. Some of it may have
8 been legitimate excuses that we would have accepted if
9 that was -- I guess the level of trust was lost at that
10 point. And so every deficiency per the contract was
11 included in the default.

12 Q. Well, let's talk about that grass height for a
13 second and about, you know, I think there might have been
14 an implication that maybe you're being persnickety. How
15 does that relate to a neighborhood that's being marketed
16 or where there might be kids in areas where there's
17 overgrown grass?

18 A. Well, right, I mean we spend a lot of money to get
19 neighborhoods looking good, to get model homes going,
20 signage up. When we start marketing and turn that on, we
21 need the neighborhoods to look -- to look topnotch. I
22 mean, so -- and we had done that at that point. We had
23 been marketing this neighborhood getting ready for advance
24 sales, which is normal. So it just -- it was not in good
25 shape.

1 Q. Okay. Let's talk about street lights for a quick
2 second. And Judge Simmons may not have ever had occasion
3 to be out to Phase I before. But is it -- I mean
4 essentially it's a cul-de-sac; right?

5 A. It is, correct.

6 Q. And so why are street lights important in a
7 neighborhood that's currently under development where
8 homes are under construction?

9 A. So if -- obviously you want light to prevent theft,
10 for safety reasons. You know, those are the main reasons.
11 And also, again, it looks like it's ready to -- it looks
12 like a community when you have lighting in the
13 neighborhood when it's dark. I know a lot of our
14 customers come in after hours. Agents are there after
15 hours. It doesn't -- it's not ready.

16 Q. So I want to talk with you again about the rock and
17 the dirt pile. If you could flip to Exhibit 4 in that
18 notebook.

19 A. I'm here.

20 Q. Okay. And so there's an email from Mr. Sharp to
21 Jason Bell with Crescent. And Mr. Sharp is with EAS
22 Professionals; is that right?

23 A. Correct.

24 Q. And is that a vendor -- a professional services
25 vendor that Crescent has utilized in the Greenville area?

1 A. Yes.

2 Q. And following that email is there a multi-page
3 report with some pictures?

4 A. Yes.

5 Q. And is -- the purpose of this report was an
6 analysis of this issue relating to the -- I think it's
7 approximately eleven thousand six hundred sixty-eight
8 cubic yards of debris?

9 A. Yes.

10 Q. All right. Now, the contract itself has a
11 provision indicating that all the lots would be -- and I
12 would refer to section 10(j). Does section 10(j), to your
13 recollection, in the Agreement with CJN state, each lot
14 will be free of trash and debris and iron pins will be on
15 the ground at each corner?

16 A. Yeah, that's typical rep and warranty.

17 Q. So instead of being free of trash and debris and
18 having iron pins on the ground at each corner, did you run
19 into issues over the course of 2019 and 2020 where
20 actually there was approximately eleven thousand seven
21 hundred cubic yards of debris on those lots and the iron
22 pins were not -- and the lots were not flat?

23 A. Correct.

24 Q. And as you go on in the report -- and this is
25 something that Crescent commissioned; correct?

1 A. Yes. And as I recall it was to, you know, assess
2 the suitability of the soils and to be reused on the site
3 in different areas to try to work with Mr. Franchina on
4 how to get rid of it and how to get the lots in a
5 buildable state.

6 Q. And was -- had a representation been made by CJN
7 that they would be potentially suitable?

8 A. I believe so.

9 Q. Okay. So going into this and looking at the
10 pictures, if you see that on the back of that report, are
11 those some examples of the conditions and the different
12 piles of rock and debris that were left?

13 A. Those are what's called as-built so the exact
14 piles.

15 Q. So basically looking at these pictures, Mr.
16 Franchina is coming to you and saying, hey, why aren't you
17 ready to close? And you're saying, well, look at this?

18 A. Right.

19 Q. But this was hiding in plain sight; right? I mean,
20 this ---

21 A. Oh, yeah, they were sitting on the lots. It was on
22 the lots.

23 Q. Now, there's a plat diagram that's right behind the
24 signature page of the report. And I mistakenly didn't
25 bring my magnifying glass with me so I could read these

1 lot numbers. But those piles implicate, if I'm looking at
2 this correctly, at least one, two, three, four, five, six,
3 seven, eight, nine, ten, eleven lots?

4 A. Correct.

5 Q. Now, you talked about timing and leverage; right?
6 Everybody knows if you pay somebody to paint your house
7 and you pay them all in advance, you may never see them
8 again; right?

9 A. Right.

10 Q. Does that additur -- does that wisdom also hold
11 true in lot purchases and dealing with developers? If you
12 have -- if you allow unresolved issues to hang around, is
13 that something that you could very much regret later?

14 A. Yes. And Nick was right in that builders, you
15 know, need the lots so badly that a lot of times, you
16 know, we will close early or when able. Because we're
17 always behind on lot -- or on receiving our lots, it seems
18 like. But you're right, you've got -- once you do that
19 you lose all leverage.

20 Q. And I mean just to be clear, Crescent had the money
21 to buy the lots; right?

22 A. Crescent had the money to buy the lots.

23 Q. Okay. And Crescent is not trying to play some kind
24 of hoodoo game where you're going to push this off for
25 years at a time?

1 A. No. We very much needed the lots in the market.

2 Q. But it's unwise to buy them when they aren't
3 buildable and ready for construction; correct?

4 A. Correct.

5 Q. It's possible if you went ahead and closed on them,
6 could the developer say, you closed on it, that's your
7 baby now?

8 A. Yes. And, you know, to the extent we needed things
9 done in the neighborhood, you know, if we needed them that
10 bad I guess we could have done all that and paid for all
11 that, but that's not what the deal was.

12 Q. Okay. So going back to the ---

13 MR. LESEMANN: Your Honor, I just would ask
14 that we admit Plaintiff's -- excuse me -- Defense Exhibit
15 Number 4, which would be the email and the report from EAS
16 Professionals relating to the rock and debris issues on
17 the site.

18 THE COURT: All right. Thank you.

19 (WHEREUPON, Crescent Exhibit Number 4 was admitted
20 into evidence.)

21 Q. Mr. Terry, looking again at the letter that's
22 Defense Exhibit 5, and again, it's the one with the
23 seventeen issues. We don't have to go through all of
24 them. It's been entered into evidence and the Judge will
25 be able to review it. But septic permits is something I

1 did want to talk about with you specifically because --
2 explain why that was important and why sort of specific to
3 Greenville County and the locale of this project close to
4 the Reedy River, why are those issues important and how
5 did those become significant?

6 A. I mean, the project didn't have sewer. It was a
7 septic tank deal. So in this deal the seller was to
8 obtain what's called easy flow septic tanks or permits
9 through DHEC.

10 Q. Right.

11 A. And you know, the lots were big enough to
12 accommodate those. And it has worked out. But we've got
13 to make sure that we get a septic permit with enough
14 bedrooms to see what we're -- you know, what our plan is
15 for that lot. And I believe we had some issues on a
16 couple of lots further down towards the river. Is that
17 what you're ---

18 Q. Oh sure, yeah. That's great. But it was seller's
19 obligation to get a septic permit for each lot?

20 A. Correct.

21 Q. And there were problems; right?

22 A. There were some problems.

23 Q. And that's something that you brought to seller's
24 attention?

25 A. Yes.

1 Q. But that was an issue that had to be -- that needed
2 to be resolved; correct?

3 A. It had to be resolved, yes.

4 Q. All right. Because before you're proceeding, you
5 need to know is this a thirty-two lot deal, is this a
6 twenty-lot deal; right?

7 A. (Affirmative nod.)

8 Q. And over the course of so -- this is in September
9 of 2019. To your knowledge is seller still in
10 communications with DHEC and trying to work through these
11 issues to deliver on their obligation?

12 A. Yes.

13 Q. But they hadn't delivered on it yet?

14 A. Correct. Some of the lots required engineered
15 systems. And it just becomes a lot more technical.
16 There's a lot greater cost to those, which there was a
17 cost reconciliation, I guess, addendum that we agreed to.
18 But, yeah, it's been more difficult.

19 Q. And the Judge may already be aware of this from
20 prior cases. But it's not just you're getting a permit.
21 Is it true that the permit is for a specific precise
22 location to put that system?

23 A. Correct.

24 Q. Okay. And that could shift; right?

25 A. Yes.

1 Q. So if the location of the septic facility shifts,
2 what else could shift?

3 A. Your building pad.

4 Q. Okay. And if your building pad shifts, could that
5 affect your lot lines?

6 A. Well, it very well may affect your lot lines, yes.

7 Q. And if your lot lines get affected, would then your
8 subdivision plat be affected?

9 A. And then the plat gets affected, yes.

10 Q. Okay. So did the issues with seller's ability to
11 obtain septic permits affect the lot lines and the
12 building pads in this case?

13 A. Yes, it did.

14 Q. And so did that affect the preliminary plat?

15 A. It did.

16 Q. When someone ---

17 A. In the final plat, yes.

18 Q. Correct. And so then in -- fast forwarding a
19 little bit, was CJN asking Crescent to close on lots
20 before the final reconfigured plat was even approved?

21 A. Yes.

22 Q. Why is that a problem for Crescent? Can you close
23 on these lots before you even know if you actually have a
24 lot?

25 A. No. You can't.

- 1 Q. But they were pressuring you to do so; correct?
- 2 A. Yes.
- 3 Q. And you declined?
- 4 A. Correct.
- 5 Q. And spent a lot of money on a lot of lawyers
- 6 writing letters to try to bring these issues to their
- 7 attention; right?
- 8 A. (Affirmative nod.)
- 9 Q. So that'll bring us to Exhibit 6. Exhibit 5 was
- 10 sent on September 5, 2019?
- 11 A. Yeah.
- 12 Q. And there came a time when -- was CJN resolving
- 13 these issues at an appropriate pace in 2019?
- 14 A. No, not really at all.
- 15 Q. And in fact were they insisting that you close and
- 16 that they didn't really feel like they had anything
- 17 further they needed to do?
- 18 A. There was no urgency to get the issues resolved.
- 19 Now, I'm not saying none of them got addressed at all, but
- 20 there was no urgency to resolve ---
- 21 Q. In fact, did CJN issue a notice of default to
- 22 Crescent claiming that Crescent was refusing to close in
- 23 an improper manner?
- 24 A. Yes.
- 25 Q. All right. And you may not know all the legal

1 terms, but this one might be one that you know. If you
2 have an issue where a party is not doing what they're
3 required to do under a contract, is there a form of relief
4 that you can seek to try to get the Court to require them
5 to do that?

6 A. Yes.

7 Q. Okay. And what's that? To your understanding what
8 is that called?

9 A. What is specific performance.

10 Q. Right. So you asked CJN to do those things;
11 correct? They refused?

12 A. Oh, yeah, there was plenty of dialogue.

13 Q. And they refused?

14 A. Yes.

15 Q. Okay. So at that point you either could walk away
16 from the deal or you could seek specific performance;
17 right?

18 A. That's correct. After default there's a couple of
19 things you can do, and that's really the only way to force
20 them to do anything.

21 Q. Okay. So what did Crescent decide to do?

22 A. So we did that. We pursued that.

23 Q. And that's one of the two cases that has found its
24 way to the Master?

25 A. Yes.

1 Q. And that was, I think, when I became involved in it
2 that I filed that lawsuit on behalf of Crescent?

3 A. That's correct.

4 Q. And then to your knowledge was I having discussions
5 with Mr. Zack Roberts in the months that followed? With
6 Mr. Roberts and it appears I may have had one or two with
7 Mr. Franchina and Mr. Howard was on the phone. And from
8 time to time I would report back to you about these
9 conversations?

10 A. Correct.

11 Q. Okay. Were you continuing to be frustrated about
12 how some civil issues were not being resolved?

13 A. Yeah. And at that point it just seemed like the
14 trust factor, the relationship declined, and it was hard
15 to get anything done. And I think that's why we're here
16 today. I think this whole right of first refusal issue is
17 not a non-issue unless this happens. So I think it's all
18 based on a solid relationship. But, yes, it was
19 frustrating.

20 Q. Did you instruct me to make a further follow-up
21 letter about the outstanding default issues?

22 A. I believe so.

23 Q. Again, now, the case has not been called for trial
24 at that point; right?

25 A. Correct.

1 Q. Okay. And so is Crescent trying to resolve these
2 issues without actually having to go all the way to a
3 trial?

4 A. All we want is our lots. All we want to do is buy
5 lots and build houses.

6 Q. Right. So January 13th of 2020, you see that
7 document that's been marked as Exhibit 6. Is that a
8 letter of communication that was made on behalf of
9 Crescent to a representative of CJN?

10 A. Yes.

11 Q. And do you see, does it go through the seventeen
12 items?

13 A. It does.

14 MR. LESEMANN: Your Honor, at this time I'd
15 ask that we -- that the Court kindly admit Defendant's
16 Exhibit Number 6.

17 THE COURT: All right.

18 (WHEREUPON, Crescent Exhibit Number 6 was admitted
19 into evidence.)

20 Q. All right. So January 13th is what's called four
21 months after early September of 2019? Okay. But even by
22 2019, you've already been under contract since October of
23 2018; right?

24 A. Correct.

25 Q. What was the anticipated time schedule when these

1 lots were going -- from the date of contract, what was the
2 estimated time schedule that these lots were going to be -
3 - when these lots were going to be completed? Was it
4 about a six-month time frame?

5 A. I thought it was supposed to be about six months,
6 yes.

7 Q. Okay. And so six months from October would be --
8 of 2018 would be approximately April of 2019?

9 A. Correct.

10 Q. All right. And so you're writing in September of
11 2019, or your counsel is, with a list of seventeen issues?

12 A. Right.

13 Q. Okay. And then in January of 2020, you're writing
14 with a continuing list of issues; correct?

15 A. Right. So at six months after contract the
16 development is not concluded. It's concluding at the end
17 of the summer. But with this massive punch list that
18 never got addressed and just sat. I mean I guess the deal
19 should have been totally done, ready to close lots
20 certainly by August of 2019.

21 Q. Okay. So by January 13th of 2020, just to go
22 through this fairly quickly, item 1, there's still issues
23 with the berm and the landscaping; correct?

24 A. Correct.

25 Q. All right. Item 2, you're still requesting

1 confirmation that all cable data and phone utilities are
2 in place; right?

3 A. Correct.

4 Q. Is that important?

5 A. Well, yeah.

6 Q. Before you go in and start building?

7 A. First of all, if we don't have power -- I mean you
8 could potentially get T-poles, but you'd have to bring
9 generators to build houses and there's only a certain
10 point that you can go in construction without having power
11 and gas in before you have to stop.

12 Q. So as of January 13, 2020, item 3, has the
13 purchaser received as-builts and were the sewer taps
14 marked?

15 A. No.

16 Q. Grass was still an issue, grass height?

17 A. And that dictates garage left, garage right, how
18 you plan your houses on each lot. So grass being cut is
19 just a basic requirement.

20 Q. Okay. Item 4, stabilization of the site needs to
21 be completed. What does stabilization mean?

22 A. Stabilization is basically required for the SWPPP.
23 It's a requirement by the government agency on both the
24 developer and the builder once the builder buys a lot.
25 But if you have an unstable -- if you have, you know, mud

1 running into the road, the job is going to get shut down.

2 So you've got to achieve stabilization.

3 Q. Okay.

4 A. And that's a requirement.

5 Q. As of the time of this letter, it had not been
6 achieved?

7 A. Correct.

8 Q. All right. Number 5, street lights still not
9 installed; right?

10 A. Correct.

11 Q. Number 6, majority of the lot corners still need to
12 be re-pinned?

13 A. Correct.

14 Q. Number 7, there's damage to curbs and road paving?

15 A. Correct.

16 Q. All right. Still haven't received septic permits
17 for the lots?

18 A. Right.

19 Q. And those were also for the premium lots; right,
20 those lot numbers?

21 A. Yes.

22 Q. Those lot numbers are the ones that are close to
23 the Reedy River?

24 A. Yes, they are.

25 Q. Okay. Number 9, requesting that there be

1 confirmation that the subdivision has been brought into
2 compliance with the grading plan?

3 A. Correct.

4 Q. Again, another pre-requisite? I mean until it is
5 in compliance with the grading plan, CJN hasn't done their
6 job; right?

7 A. Right. And again, that's a government requirement,
8 but it's also -- we need to make sure that's done so that
9 we're not held accountable to issues with grading.

10 Q. Okay. Item 10, good news. They did resolve that
11 one? Right? Item 11, still talking about the eleven
12 thousand seven hundred cubic yards of dirt and rock that
13 were not usable as fill; right?

14 A. (Affirmative nod.)

15 Q. Number 12, the permits to operate for the water
16 system had not been received?

17 A. Correct.

18 Q. Okay. And then going on, issues about the detailed
19 -- you know, the monument, the landscape, irrigation and
20 budget, etcetera, because again if the seller comes in and
21 puts a bunch of sod everywhere, puts a bunch of plants
22 everywhere, but the irrigation system is not in, what
23 happens -- you know, depending on the time of year, what
24 happens?

25 A. Everything dies.

1 Q. Okay. And then this could be on you?

2 A. Could be, yes.

3 Q.

4 Okay. To have to replace things that really were
5 already baked into the cost of the lots?

6 A. (Affirmative nod.)

7 Q. All right. And go -- and so on. So that is as of
8 January 2020. Exhibit 7. By May 29 of 2020 which is
9 approximately nine months after the September letter, has
10 CJN resolved all the issues about the lots?

11 A. No.

12 Q. Did you instruct me to write another letter to
13 them?

14 A. Yes.

15 Q. And as this letter goes through -- when you
16 identify default to CJN under the agreement, are they
17 supposed to fix it within thirty days?

18 A. Yes.

19 Q. So at this point we're looking at like -- we're
20 looking at many months?

21 A. Yeah.

22 Q. All right. But you're still trying to get it done
23 so you can close; right?

24 A. Correct.

25 Q. Going forward from May into the summer, would you

1 characterize that was a bit of -- did the trajectory
2 change somewhat in terms of the resolution of these issues
3 and did you begin to make some progress?

4 A. We did. We finally got an agreement on the dirt
5 and I think some of the dirt stayed onsite. Some was
6 hauled off. I'm not sure exactly where it went. And then
7 items started to get resolved.

8 Q. Okay.

9 MR. LESEMANN: Your Honor, I would ask that
10 we enter Defense Exhibit Number 7 into evidence.

11 THE COURT: All right.

12 (WHEREUPON, Crescent Exhibit Number 7 was admitted
13 into evidence.)

14 Q. And as we alluded to earlier, those issues were the
15 subject permits that affected the permit locations,
16 affected -- so on and so forth. As of May/June 2020 is
17 there a final recorded plat yet?

18 A. No.

19 Q. And you can't close until that's there?

20 A. Correct.

21 Q. Okay. Still working on issues with street lights
22 and some other things, as well; right?

23 A. (Affirmative nod.)

24 Q. Okay. So then -- well, obviously we're here to
25 talk about the right of first refusal, but I wanted to

1 allow you to explain to the Court one of the reasons why
2 the initial closing did not go forward. When really
3 either side had intended. And is that due to unresolved
4 defaults by CJN?

5 A. Yes. I mean they're -- like I said we needed the
6 project, we needed the lots. We had already started our
7 marketing. We had already been advertising. We were
8 ready to go. We had our personnel hired. I mean our team
9 is ready to go. So it's -- the delay hurt us. It was
10 necessary, though.

11 Q. Right. The right of first refusal language in the
12 agreement in section 19 of the contract, it refers to the
13 future phase, but there is a relationship with the initial
14 closing; right?

15 A. Correct.

16 Q. Okay. The right of first refusal would arise at
17 the -- would arise and be recorded as of the initial
18 closing?

19 A. As of the initial closing.

20 Q. Could you explain, what's the relationship between
21 those two? Is there a reason why you would want to have
22 the initial closing -- you know, that you would want to be
23 moving forward with Phase I and making sufficient progress
24 before you get moving with Phase II?

25 A. Yeah. And that was the sequence of the deal. I

1 mean Phase I was ready to go before Phase II, so the idea
2 was to keep working on Phase II and then we would, you
3 know, -- when that was ready to go we would have the right
4 -- we would negotiate the lot prices and go into Phase II.
5 Again, it wasn't contemplated that the land would be sold.
6 But yeah, Phase I comes before Phase II. Logically.

7 Q. Did Mr. Franchina ever contact you to state, well,
8 you know, I've changed my mind. I don't want to develop
9 the future phase anymore? What should we do about this?
10 Did he ever ---

11 A. Never.

12 Q. --- approach you in that way?

13 A. No.

14 Q. Would you have expected that?

15 A. Absolutely. I mean the intent was that Crescent
16 Homes would be able to buy the lots in Phase II whether,
17 you know -- if Nick didn't want to be a developer anymore,
18 there's other ways that we could achieve the, you know,
19 the goal or the deal. But, yeah, there was no discussion
20 about that.

21 Q. So as you recall, how was it you discovered
22 indirectly that maybe Nick didn't want to do Phase II
23 anymore?

24 A. When we received the contract from the neighbor.

25 Q. I think Nick mentioned in his testimony that Mr.

1 Clark had been talking to him ever since he bought the
2 property about potentially buying it. Was any of that
3 disclosed to you?

4 A. I didn't know who Mr. Clark was at the time.

5 Q. Was it ever disclosed to you that Mr. Franchina
6 wanted to sort of withhold the right so that CJN could
7 maybe sell this off to Mr. Clark if they decided that's
8 what they wanted to do?

9 A. That was not ever part of -- that was never
10 discussed. It was never part of the deal. It was never -
11 - it was, it was -- it wasn't even contemplated.

12 Q. So let's talk about the right of first refusal for
13 a bit. So section 19. Yeah, it's in both -- there's
14 copies in both.

15 A. Okay. Okay. Gotcha. Yeah.

16 Q. The word lots appear there; right? But there's
17 also reference to Exhibit A-2?

18 A. Correct.

19 Q. Why did the word lots get used?

20 A. Because the land was to be developed into lots per
21 the plan. Yes, that was always the plan.

22 Q. Okay. Did -- was there any discussion with Mr.
23 Franchina or anybody with CJN about none of this is
24 applicable if we decide that we want to sell it off at
25 some point?

1 A. No.

2 Q. Have you continued to be interested in the lots?

3 A. We have.

4 Q. Have you continued to be interested in the raw
5 land?

6 A. We have.

7 Q. Was there a problem with the timing of Mr. Clark's
8 offer in that was CJN asking you to exercise the right of
9 first refusal really before the -- they were doing that
10 before the initial closing had happened; right?

11 A. Yes.

12 Q. And did Crescent believe that that violated the
13 letter and the spirit of the document?

14 A. It did. And we -- you know, again, we're busy
15 trying to get the very first closing taken care of and all
16 the issues surrounding that. So -- and it was clear that,
17 I guess, the right of first refusal had not yet been
18 triggered by the initial closing so that we did not have
19 to accept that deal at the time.

20 Q. Do you feel like that what CJN was doing was in
21 good faith and was consistent with the contract?

22 A. No.

23 Q. There's a reference to -- in section 19, to a
24 memorandum of the right of first refusal. Do you recall
25 discussing with your team and with your legal counsel

1 preparing a memorandum that could be recorded?

2 A. I do. I remember it being part of the first
3 closing, which was supposed to be per the contract. I
4 remember there being very little back and forth. I
5 believe we made a counter to a proposed memorandum. And
6 it didn't go anywhere. They refused to sign it or I guess
7 make a counter-proposal.

8 Q. Okay. And so based on that language in section 19,
9 it wasn't to be filed before the initial closing; it was
10 to be filed at the initial closing?

11 A. At the initial closing.

12 Q. And as it turns out, that initial closing happened
13 a lot later than had been initially expected?

14 A. Oh, yeah, a year later.

15 Q. Right. But you were still in July and August of
16 2020, it would have been an appropriate and logical time
17 to prepare that memorandum and to put it on file?

18 A. That's correct.

19 Q. All right. Crescent did attempt -- did Crescent
20 attempt to work together with CJN on the wording of the
21 memorandum so that it could be filed?

22 A. Yes. I mean our real estate attorney was part of
23 the closing. It was -- our real estate attorneys had that
24 on their to-do list. It was attempted and I understand
25 that, you know, the other side called you and said they

1 basically didn't want to -- well, we would agree to
2 disagree on it and let's proceed to closing.

3 Q. Right. And so at that point you did want the lots?

4 A. We needed the lots, yes.

5 Q. And so with the idea of -- let's say this dispute,
6 right, it's about thirty-two lots, plus a right of first
7 refusal. Has Crescent over time tried to reduce the scope
8 of this dispute?

9 A. Absolutely.

10 Q. And has that, in part, been successful? Of the
11 thirty-two lots, have almost all of them in the first
12 phase been closed?

13 A. All that we can close have been closed.

14 Q. Okay. And the issue with the right of first
15 refusal, have you continued to attempt to work with CJN
16 and through me and through counsel, have you continued to
17 try to resolve that issue?

18 A. Yes. I mean we have obviously tried to further
19 define the right of first refusal. We've made multiple
20 offers to just buy the property outside of mediation that
21 went unanswered. We've been trying the whole time.

22 Q. Okay. Now, by CJN offering the property to Mr.
23 Clark in June of 2020, do you believe that was a breach of
24 their contract with you and their agreement that you have
25 a right of first refusal that would arise as of the

1 initial closing?

2 A. I do. I mean it doesn't comply with the agreement.

3 I mean furthermore, I got a call from Rodney Gray asking

4 me to release the rights so that this sale could go

5 through, basically claiming that the land was not good.

6 It was going to be a burden, rocky, septic issues, things

7 like that; let's just release this one and it wasn't -- it

8 wasn't appropriate. I mean this is our lots -- we were

9 relying on these lots. This is our lot supply in the

10 market. So I take it very seriously.

11 Q. And this is still something that you intended, that

12 you believed both parties intended, that was going to be a

13 sixty-five lot deal?

14 A. That was the intent.

15 Q. Looking down from section 19, do you see section

16 21(e)?

17 A. Yes.

18 Q. Okay. Do you understand that both parties have the

19 obligation to operate in good faith; correct?

20 A. I think it's always implied in a contract. But in

21 this case it's written. It's part of the contract.

22 Q. Okay. Flipping the page to page seventeen. This

23 is a bit more of a legal issue. But do you see the

24 paragraph marked (g)?

25 A. Yes.

1 Q. I'll just read it. The extent to which any party
2 participated in the drafting of this document shall not
3 determine how any provision hereof is to be construed. It
4 is being recognized that the parties have both contributed
5 substantially material -- materially in the preparation of
6 this agreement. To your recollection did both parties
7 participate in the drafting of this agreement between CJN
8 and Crescent?

9 A. Yes.

10 Q. Okay. And is this a provision that -- who do you
11 utilize a lot to do your real estate contract?

12 A. Susan Roth. Levick Roth is the firm out of Atlanta
13 that I've used for almost my entire career.

14 Q. And is this the sort of provision that she -- that
15 Levick Roth includes in a lot of your contracts?

16 A. Yes.

17 Q. Okay. Indicating that when the Court is looking to
18 this document the parties believe the Court should treat
19 it as joint authorship?

20 A. Correct.

21 Q. Next section talks about waiver. No provision,
22 condition or covenant of this agreement shall be waived by
23 either party hereto except by a written instrument
24 delivered to the other party and executed by the party
25 consenting thereto. Have you waived -- has Crescent ever

1 waived its right of first refusal as to the property
2 that's indicated in Exhibit A-2?

3 A. No.

4 Q. Whether as lots or whether as raw land?

5 A. Absolutely not.

6 Q. So we talked about the Clark agreement and the
7 timing of that was inappropriate in Crescent's view?

8 A. Yes.

9 Q. And then it was presented to you at a time that
10 violated your right of first refusal right to have that
11 arise after the initial closing rather than before?

12 A. Correct.

13 Q. Now, you heard about the Opus Petrus Agreement, as
14 well; ---

15 A. Yes.

16 Q. --- right? So rolling forward this case is still
17 pending; correct?

18 A. Right.

19 Q. The Clark agreement, was that around June/July of
20 2020?

21 A. Yes.

22 Q. This lawsuit is pending and the parties are going
23 back and forth on that; right?

24 A. Yes.

25 Q. And then do you recall on your behalf that we made

1 an argument indicating that this case really doesn't
2 present a dispute unless there's a third-party offer?

3 A. Right.

4 Q. And do you recall, I believe, -- did you come with
5 me to that hearing in April of 2020?

6 A. No.

7 Q. Of 2021 at that point? Okay. Well, do you
8 remember that there was a hearing with Judge Simmons on
9 the motion to dismiss and the motion for summary judgment?

10 A. Summary judgment. Yes, I remember.

11 Q. And do you recall we presented that argument on
12 your behalf?

13 A. Yes.

14 Q. All right. Did something happen within essentially
15 a week of that hearing and that argument being made?

16 A. I believe we defeated the motions.

17 Q. Okay. And all of a sudden did a third-party offer
18 appear?

19 A. Yes.

20 Q. And was that the Opus Petrus offer?

21 A. The Opus Petrus.

22 Q. So let's talk about it for a minute. Did you look
23 at the Opus Petrus offer?

24 A. Yes.

25 Q. Explain to the Judge the reasons why you were --

1 well, I'll back up. Do you believe it's implicit that any
2 offer for purposes of a right of first refusal needs to be
3 bonafide and legitimate?

4 A. Absolutely.

5 Q. Did you consider the Opus Petrus offer to be
6 bonafide and legitimate?

7 A. I did not.

8 Q. Okay. I want to talk with you for the record why
9 that was the case. All right. The form of the document
10 ---

11 A. Which one is ---

12 Q. Sure. The Opus Petrus document is going to be --
13 it was entered as an exhibit by James.

14 MR. WARMOTH: Number 8.

15 MR. LESEMANN: Thank you, James.

16 So, Your Honor, Exhibit -- Plaintiff's Exhibit 8.

17 THE COURT: All right.

18 Q. Let me back up one moment on Mr. Clark's offer. If
19 you go to Defense Exhibit 10, is that a letter dated July
20 4, 2020 -- July 14, 2020?

21 A. Yes, it is.

22 Q. My wife would have been upset with me if I wrote
23 this on July 4th. As you can see, it begins to talk about
24 various issues. But as you go into the letter on page 2,
25 3 and 4, does it discuss various other unresolved

1 defaults, as well as the issues relating to the right of
2 first refusal?

3 A. Yes.

4 Q. Okay. Was this a statement of Crescent's position
5 and response to the tender of Mr. Clark's offer?

6 A. Yes.

7 MR. LESEMANN: Your Honor, I'd ask that
8 Defense Exhibit Number 10 be entered into evidence.

9 THE COURT: All right.

10 (WHEREUPON, Crescent Exhibit Number 10 was admitted
11 into evidence.)

12 Q. And again, following that, Ted, for a while after
13 July 14th, 2020, the parties did work together somewhat to
14 try to come up with a memorandum; correct?

15 A. Somewhat, yes.

16 Q. And then it's your understanding and recollection
17 that CJN pulled the plug on that?

18 A. That's what you told me.

19 Q. Okay. Were you willing to continue to work toward
20 that -- because the initial closing had not happened was
21 Crescent willing to continue to work on that?

22 A. Oh, of course. I mean this is not hard stuff.
23 This is -- if two reasonable parties come together, this
24 is something that's easily agreed upon.

25 Q. Okay. Now, part of that is what could be

1 reasonable; right?

2 A. Right.

3 Q. Because there are certain time frames and things
4 that aren't addressed in section 19 itself?

5 A. Correct.

6 Q. All right. And so in terms of how long the right
7 of first refusal itself should continue to be in place,
8 have you seen examples of ones where at least right of
9 first refusal of ten years was requested?

10 A. Yes.

11 Q. And you heard Mr. Franchina's testimony earlier?

12 A. Yes.

13 Q. And you saw an agreement where he agreed to one
14 that was three years duration?

15 A. Correct.

16 Q. So that in that case with Mr. Clark, both parties
17 thought that was reasonable for three years?

18 A. Yes.

19 Q. And so a five year right of first refusal, could
20 that be reasonable?

21 A. Absolutely. I mean in today's age that time frame
22 goes by very quickly. So yes, it's -- you know, it's
23 almost like it's pointless to enter into a right of first
24 refusal for such a short time frame when I mean if you
25 intend to sell the property to that party or develop lots

1 to that party you would do so, really, somewhat timely,
2 but you wouldn't necessarily worry about the time frame.

3 Q. And so in this instance, the right of first refusal
4 was going to arise from the initial closing?

5 A. Correct.

6 Q. And that happened in September of 2020?

7 A. Yes, it did.

8 Q. Okay. So you could talk about a right of first
9 refusal of three years or five years, for example, from
10 that date?

11 A. Correct.

12 Q. And you believe that either of those time frames
13 could be reasonable?

14 A. Could be reasonable.

15 Q. Now, how about in terms of the time line from when
16 the holder of the right of first refusal would have, upon
17 receipt of a bonafide third party offer how quickly they
18 would respond. Forty-five days, would that be reasonable?

19 A. It would.

20 Q. Okay.

21 A. It would.

22 Q. Could thirty days under certain circumstances be
23 reasonable?

24 A. It could.

25 Q. Okay. Now, what are some of the particular aspects

1 of this property that might call for it to be a slightly
2 longer period?

3 A. As far as the ---

4 Q. The ability ---

5 A. --- land purchase contract?

6 Q. Yes. And the ability to evaluate the offer and to
7 determine whether it's a fair price for a property,
8 because again this Phase II, this future phase, it may or
9 may not turn out as planned and as intended; right?

10 A. Right. So while this property has got zoning, the
11 same zoning as Phase I, it also is a septic tank deal.
12 It's got rock. It's got rock sticking out of the ground.
13 You've got a wetland crossing. You've got a critical line
14 on the river that could -- that, you know, I would say
15 it's just a due diligence item. You've got topo on the
16 property. So, you know, getting over the crossing, making
17 sure you can get septic permits for the number of lots
18 that you're valuing the property for, making sure that
19 that critical line doesn't move and encroach into your
20 lots. These are all -- I mean that is the due diligence
21 on the property. That's what you've got to -- you've got
22 to find out.

23 Q. But there is reasonable times that can be applied
24 to the length of the right of first refusal; is that
25 right?

1 A. Right.

2 Q. And are there reasonable times that can be applied
3 or used for the length of time when the holder of the
4 right would have to respond to a third party offer?

5 A. Yes.

6 Q. Okay. And then beyond that, as far as the right of
7 first refusal itself, would you understand that that would
8 typically involve the holder of the right having the right
9 to either accept or reject a given set of deal terms?

10 A. Yes.

11 Q. Provided that those are legitimate and bonafide?

12 A. Yes. Correct.

13 Q. We should clean up a couple of items before we go
14 and speak about the Opus Petrus situation. Tab 14 in your
15 notebook. Actually let's go to tab 12 first. So do you
16 recall that a proposal was made by CJN relating to a
17 second amendment and a potential memorandum that could be
18 recorded?

19 A. Yes.

20 Q. Okay. And then that was tendered from -- you'll
21 see from the email from page one -- from Mr. Warmoth to me
22 on July 26, 2020?

23 A. This is 14?

24 Q. 12. Sorry. I confused everybody.

25 A. Yes. Okay.

1 Q. Okay. So you see that. So this is after Mr.
2 Clark's offer and while the parties are making good
3 progress or resolving those issues with the initial
4 closing; right?

5 A. Yes.

6 Q. Is there a light at the end of the tunnel as far as
7 the initial closing goes at this point?

8 A. I think the closing was set up at this point.

9 Q. Okay. And then so that was on Sunday, July 26th.
10 If you go to ...

11 MR. LESEMANN: Your Honor, I would just ask
12 that, if it hasn't been admitted already that -- by James
13 -- that Defense Exhibit 12 be admitted into the record.

14 THE COURT: All right.

15 MR. LESEMANN: Thank you, Your Honor.

16 (WHEREUPON, Crescent Exhibit Number 12 was admitted
17 into evidence.)

18 Q. Ted, tab 13. Do you recall working together with
19 me and with the project team to come up with a response?

20 A. I do.

21 Q. And is a copy of that response appearing behind an
22 email dated July 30th, about four days later?

23 A. Yes.

24 Q. Okay. And is that an initial proposal and response
25 that Crescent made back to CJN?

1 A. Correct. This is our first, I guess, counter-
2 proposal.

3 Q. Okay. And at that point did the discussions and
4 proposals cease?

5 A. They did.

6 Q. Okay. And that was due to CJN indicating that they
7 no longer wanted to discuss it?

8 A. They agreed to disagree and did not want to pursue
9 it any further.

10 Q. Okay. So ultimately there were still some other
11 issues that we needed to discuss; right, in terms of
12 credits for septic permits and things like that, lot
13 credits? So if you'll turn to tab 14. The second
14 amendment as entered ultimately didn't address anything
15 about the right of first refusal and there was no
16 memorandum that the parties agreed to; right?

17 A. Right.

18 Q. Now, the contract between CJN and Crescent said
19 that memorandum will be recorded; right?

20 A. Right.

21 Q. Mandatory language? Did any party in your belief
22 have a good faith right just to throw up their arms and
23 not discuss it anymore?

24 A. I mean, no, it was really a closing requirement.

25 Q. All right. So going forward. Again, as I

1 practiced a few minutes ago, the next issue was with Opus
2 Petrus. And I want to go -- after receiving that did you
3 attempt to understand who Opus Petrus was?

4 A. Yes. We looked them up. Looked up, you know, who
5 the company was, who the man was behind Opus Petrus, what
6 they -- real estate that they owned in Greenville County,
7 as best we could.

8 Q. Now, Mr. Terry, when you're let's say competing for
9 property, a lot of times you're going to be running into
10 the same parties; right?

11 A. Right.

12 Q. Okay. And so Opus Petrus was not one of those
13 parties that you had ever encountered on any land deal?

14 A. No.

15 Q. Had you ever heard of them?

16 A. I had not.

17 Q. Okay. When you did your research to see who Opus
18 Petrus was, what did you discover?

19 A. That he was a liquor store owner and that I believe
20 owned maybe two commercial small parcels in Greenville
21 County. And then also we found out that he owned a beach
22 house with Nick and was certainly not a known real estate
23 investor.

24 Q. Okay.

25 A. Or developer.

1 Q. Okay. And why -- is that important? With this
2 piece of property and with the issues that you shared with
3 Judge Simmons about it just a few minutes ago, is this
4 just a -- there could be a lot of iceberg underneath the
5 water as far as this goes; right? I mean there's a lot
6 that the eye does not behold?

7 A. The value of this property lies in the number of
8 lots you can get and the value of the lots, the end value
9 of the lots. So you've got to be able to obtain the lots
10 and develop -- to achieve the value in the end. That's
11 the underlying value of the land.

12 Q. So that absence of market presence on behalf of
13 Opus Petrus and your research, did that give you reasons
14 to be skeptical that this was a bonafide offer?

15 A. Yes. We were suspicious.

16 Q. Okay. And are there other terms of the agreement,
17 whether it be seller financing, other things of that
18 nature, that were also questionable in your mind?

19 A. The seller financing is just not -- again, that's
20 not -- in a hot market if you have a seller trying to get
21 highest and best use, that's just not something you see.
22 I've never -- I've never seen that before in a competitive
23 deal. The fact that it's a friend of Nick's, a buddy of
24 Nick's, that it's on this MLS contract with five thousand
25 dollars earnest money, is just bogus.

1 Q. And so it's -- is it -- do you believe -- you
2 mentioned MLS contract. For a land deal of this kind, it
3 is customary to see a particularized detailed professional
4 land acquisition contract?

5 A. It's not typical. I'd say a sophisticated land
6 purchase agreement is what you would normally see on a
7 deal like this.

8 Q. And even, Mr. Clark, the neighbor, the form he used
9 was a lot more detailed and sophisticated than this one
10 from Opus Petrus; right?

11 A. Correct.

12 Q. Did you take further steps? Through counsel, did
13 you try to get some further information about what was
14 behind this offer and whether it could be bonafide?

15 A. Yes.

16 Q. Did you ask for us to issue subpoenas to get some
17 more information about the basis for the purchase price
18 and negotiations that had occurred between the parties?

19 A. Yeah. And any information that was there
20 supporting this deal. We did.

21 Q. What was -- if there had been a record and some
22 information, could that have helped inform you that
23 perhaps it was a legitimate deal?

24 A. Correct.

25 Q. All right. What did you get -- what was received

1 in response?

2 A. I think we got nothing.

3 Q. Do you see that there's a septic permit contingency
4 in the Opus Petrus contract? It's in section 16?

5 A. Yeah, there's a sixty-day septic contingency.

6 Q. Okay. Indicating that the purchaser would have
7 sixty days to obtain permits for well and septic system
8 suitable for the buyer's intended structure from DHEC;
9 right?

10 A. Right.

11 Q. Okay. Have you ever seen any information through
12 all the subpoenas and discovery in this case, etcetera,
13 have you ever seen anything about what buyer's intended
14 structure was?

15 A. No.

16 Q. Okay. Did your counsel submit a FOIA request to
17 DHEC?

18 A. (Affirmative nod.)

19 Q. Do you recall the response from DHEC about whether
20 they had ever received any application or correspondence
21 from Opus Petrus?

22 A. They had not.

23 Q. Okay. Now, that is important; correct? The
24 availability of a septic permit is important to this
25 property?

1 A. You can't -- that's the only way you can build a
2 structure is if you get a septic permit.

3 Q. Okay.

4 A. Certainly that's the only way you can build thirty
5 or thirty-two structures.

6 Q. So within this due diligence period that was agreed
7 upon in this document for septic permit contingency, is it
8 your understanding that zero activity was done toward
9 obtaining a septic permit?

10 A. There was zero activity done and there was -- it
11 wasn't enough time to obtain the permit if activity had
12 been done.

13 Q. Okay. Is there also a ninety day general due
14 diligence period set forth in this contract -- well, let
15 me back up. Does the fact that that septic permit
16 contingency was reserved in the contract and it indicated
17 that the buyer would have sixty days and that that's
18 something that's very important to the develop ability of
19 this property, because again, that's a -- that price,
20 1.25, at that time was that high?

21 A. It was, I thought, a high price.

22 Q. Okay. And by high it's ---

23 A. I thought it was an aggressive price for
24 developable highest and best use.

25 Q. Right.

1 A. It certainly wasn't -- you would have to be able to
2 obtain the septic permits to make that anywhere near
3 justified. It's certainly not timber pricing for this.
4 So it's a big deal.

5 Q. So based on what you were able to glean, did the
6 purchaser take any steps of figuring out the answer to
7 this very important issue about septic permit
8 availability?

9 A. No.

10 Q. Does that further inform or affect your opinion
11 about whether this offer was legitimate?

12 A. It does. It shows me it's a sham offer.

13 Q. There's a ninety day -- ninety business day due
14 diligence period in section 12. Again, based on the
15 response to the subpoenas and other things that have
16 happened in this case, are you aware of any due diligence
17 activities whatsoever that Opus Petrus undertook during
18 that ninety business day due diligence period?

19 A. No. I don't think we've received any information
20 on any due diligence that was obtained or done.

21 Q. If no due diligence was done and there's no
22 evidence that any was done, does that affect your -- or
23 further inform your opinion about whether this is a
24 legitimate bonafide offer?

25 A. No sane buyer would pay this amount without doing

1 due diligence. It's just not -- this doesn't happen.

2 Q. Now, admittedly, our litigation with CJN was
3 pending during this time frame; correct?

4 A. Right.

5 Q. But Opus Petrus was aware of that?

6 A. Right.

7 THE COURT: Sir, if you could answer out
8 loud.

9 MR. TERRY: Sorry. Yes. Sorry.

10 MR. LESEMANN: Okay.

11 Q. Now, again, you continued to believe -- Crescent
12 continues to believe it has the right of first refusal?

13 A. Yes.

14 Q. And you aren't going to surrender that right of
15 first refusal for an offer you believe to be illegitimate?

16 A. No. We were not.

17 Q. Did you undergo a series of multiple efforts to try
18 to get yourself information that might allow you to decide
19 that maybe this was legitimate?

20 A. Yes. There was -- we instructed you and you issued
21 subpoenas and had depositions. And all the while we made
22 offers and tried to engage with Nick and just get a deal
23 done.

24 Q. Okay. And ultimately, from that, relating to this
25 Opus Petrus contract, did you ever -- were you ever able

1 to receive any emails surrounding it?

2 A. No. There's no correspondence.

3 Q. No correspondence? No text messages?

4 A. No nothing.

5 Q. Okay. No interaction with DHEC relating to this
6 important issue about the septic permit?

7 A. Nothing.

8 Q. No due diligence activities?

9 A. Not that we could see.

10 Q. Okay. Now, do you recall, was there a -- and so
11 turning to item 18 ---

12 THE COURT: In which document?

13 MR. LESEMANN: Oh, sorry. Exhibit 18. Thank
14 you, Your Honor.

15 Q. Exhibit 18 in that notebook, Mr. Terry.

16 A. Okay.

17 Q. Do you see a June 7th, 2021 letter?

18 A. I do.

19 Q. And was that sent on your behalf to attorney for
20 CJN relating to the Opus Petrus offer?

21 A. Yes.

22 Q. So at that time does this reflect the understanding
23 that you had about the reasons why that was not a bonafide
24 offer?

25 A. Yeah, that's what this letter is. It's that

1 explanation.

2 Q. And did additional things, such as the lack of due
3 diligence, the lack of communication with DHEC, did
4 additional facts come to -- arise later?

5 A. Yes.

6 Q. Okay. And did those reinforce your belief?

7 A. Absolutely.

8 Q. Now, filing a Lis Pendens, why did you instruct me
9 to file a Lis Pendens on these properties?

10 A. I mean that's the only way to prevent, you know,
11 title from being transferred in a dispute. So it was
12 clear that they were trying to, I guess, sidestep our
13 right of first refusal and so that's the only way you can
14 protect that right.

15 Q. Okay.

16 A. That I know of. And you advise me of that.

17 Q. Yes. And so if you believe that someone is
18 circumventing a right of first refusal, it's your
19 understanding that filing a Lis Pendens is the appropriate
20 thing to do?

21 A. Correct.

22 Q. And is it a necessary thing to do?

23 A. Yes.

24 Q. If you could turn to Exhibit 20 in the book. So
25 this is in the August of 2021 time frame. Do you recall

1 receiving a copy of an amendment to the Opus Petrus
2 contract?

3 A. Yes, I do.

4 Q. Okay. And does this indicate that the due
5 diligence period would extend until October 1st?

6 A. Correct.

7 Q. And this was as of August 25th, 2021 when this was
8 signed?

9 A. Correct. So basically a thirty-day extension.

10 Q. Okay. So setting aside whether it's possible to do
11 all the due diligence within ninety business days; right,
12 because that's what the original Opus Petrus contract
13 said, ninety business days; correct?

14 A. Correct.

15 Q. And they didn't undertake it. There's an amendment
16 signed on August 25th indicating that they would extend
17 the due diligence period to October 1st. And so that's
18 approximately four and a half weeks or so from August
19 25th?

20 A. Correct.

21 Q. All right. If a party has done no due diligence
22 whatsoever on the future phase, do you think it's
23 legitimate to enter into a four-week due diligence period?

24

25 A. It's pointless.

1 Q. Okay. Does the fact that parties not having
2 engaged in any due diligence, entered into a four-week
3 extension, is that -- does that further reinforce your
4 belief that this contract was not legitimate?

5 A. Yes, it does.

6 Q. Even with the most herculean of efforts, is it
7 possible for the appropriate amount of due diligence,
8 including dealing with governmental agencies like DHEC,
9 during COVID, is it at all possible for them to have
10 completed, between August 25th and October 1st, the sort
11 of due diligence that would need to be completed?

12 A. You could get very little done in thirty days.

13 Q. Do you know -- do you recall, was there a request
14 made for the final hearing in this case to be held during
15 September of 2021?

16 A. Right. Correct.

17 Q. Do you feel like that has more to do with the
18 timing and the nature of this amendment than any intent to
19 actually engage in due diligence?

20 A. That's what it looks like.

21 Q. Mr. Terry, what are you -- you're working -- Judge
22 Simmons has been clear to us that, you know, today he's
23 making a decision on the right of first refusal and other
24 aspects of the case we filed. First I want to say have
25 you been sincere and genuine in your efforts to try to

1 resolve this whole matter?

2 A. I think so.

3 Q. Those efforts have continued, and the Judge has
4 been gracious to allow us to interfere with his schedule
5 to pursue them today?

6 A. Correct. We've gone into today. It's been an
7 ongoing effort.

8 Q. You were here this morning when Mr. Franchina
9 testified. Did you hear him say that he believed that the
10 right of first refusal was binding?

11 A. Among other things, yes.

12 Q. Do you believe it's binding?

13 A. It is binding.

14 Q. Was it negotiated in good faith?

15 A. It was.

16 Q. Were both sides represented by counsel?

17 A. Well, they were, and both sides are real estate
18 professionals that do this for a living that have dealt
19 with each other before. So it's -- I mean it's -- there's
20 no argument that it's not binding. I mean it's two
21 professionals with legal counsel doing a deal that they
22 normally do.

23 Q. Do you have any reason to believe that either side
24 didn't know what they were agreeing to when they agreed to
25 that provision?

1 A. No, no.

2 Q. Have we discussed reasonable time frames to the
3 extent that time frames are not in that document. Have we
4 discussed reasonable time frames that the Court could add
5 to that?

6 A. Yes, we have.

7 Q. Both for the overall duration of the right of first
8 refusal?

9 A. Yes.

10 Q. And also for the length of time that would be
11 needed for a holder to respond to a third-party offer?

12 A. Yes.

13 Q. That the implied condition that that third-party
14 offer be legitimate and bonafide?

15 A. Correct.

16 Q. Why is that important? I mean what could the owner
17 of the property do to try to cleanse or strip the property
18 of a right of first refusal?

19 A. I mean, the oldest trick in the book is get your
20 buddy to submit a contract and use that to get rid of the
21 right holder. I mean that's what I think he did.

22 Q. And then perhaps not even close?

23 A. Right. And then not close; correct.

24 Q. So just to add to that point, is it your
25 understanding the right of first refusal and your intent

1 that again the right only really goes away if you're
2 presented with the offer, it's legitimate, you decline on
3 it and that closing actually goes forward?

4 A. That closing goes forward under the terms that was
5 presented. That's extremely important. I mean this day
6 and age there's a lot of, you know, potential buyers that
7 get deals under contract and retrade the deals, retrade
8 the terms, retrade the price after they figure out --
9 after they look at the property, do the due diligence, and
10 figure out what they think it's worth. And there's plenty
11 of buyers that, you know, they'll pay whatever to try to
12 get -- or offer whatever to get it under contract and try
13 to flip or just end up not closing. In that case, it's my
14 opinion that the right would come back to us unless the
15 property was closed under the terms that we were
16 presented.

17 Q. Has that been your experience as a real estate
18 professional?

19 A. Yes.

20 Q. That's how it works?

21 A. Yes.

22 Q. Okay. And are you aware of any confusion or
23 disagreement on that sort of concept as between you and
24 CJN?

25 A. No.

1 MR. LESEMANN: Your Honor, I have nothing
2 further at this time.

3 THE COURT: Mr. Warmoth, how long do you
4 anticipate your cross going?

5 MR. WARMOTH: Judge, my guess would be thirty
6 minutes or less.

7 THE COURT: Is that real time or is that
8 lawyer time?

9 MR. WARMOTH: Maybe forty minutes.

10 THE COURT: All right, Mr. Lesemann, ---

11 MR. WARMOTH: I do need a restroom break.

12 THE COURT: Yeah, we're going to do that.

13 --- do you have other witnesses?

14 MR. LESEMANN: No, Your Honor, this would be
15 our lone witness.

16 THE COURT: Okay. We'll take a ten-minute
17 break.

18 RECESS

19 THE COURT: All right, Mr. Warmoth.

20 CROSS EXAMINATION

21 BY MR. WARMOTH:

22 Q. Good afternoon, Mr. Terry. James Warmoth, attorney
23 for CJN. I had considered working backwards, but I'm
24 going to go the same old boring way and go back to the
25 beginning. On the issue of this letter of intent that

1 included Phase II and then the transition to the lot
2 purchase agreement, do you dispute that CJN made an
3 express decision through that, that they did not want to
4 develop Phase II? So by entering the lot purchase
5 agreement, they -- and rejecting that LOI, they said, we
6 are not going to do Phase II, at least right now?

7 A. I don't -- I don't agree that he was saying that he
8 was not going to do Phase II. I think it was all about
9 timing and where he was with that. So it's a timing ---

10 THE COURT: I'm sorry. Just for the record,
11 which exhibits are you referring to?

12 MR. WARMOTH: The LOI, letter of intent, is
13 Exhibit 4 and the lot purchase agreement is Exhibit 5.

14 THE COURT: All right. Thank you.

15 MR. TERRY: Should I have your exhibits?

16 MR. WARMOTH: I'm going to do what Ellis did
17 and ask you about mine unless I need to go to Ellis's.

18 MR. TERRY: Well, they're different. So do
19 you need to point me? Okay.

20 MR. WARMOTH: I didn't realize you didn't
21 have ---

22 MR. TERRY: Yeah, they're not the same.

23 MR. WARMOTH: Okay.

24 THE COURT: So just for the record to make
25 sure that you have the right one. What I see as Exhibit 5

1 is the what's entitled execution version, agreement for
2 purchase and sale of developed lots. Let me know when you
3 have that one.

4 MR. WARMOTH: Somehow Exhibit 5 escaped.

5 MR. LESEMANN: Was there anything on there

6 ---

7 MR. WARMOTH: I didn't see anything ---

8 MR. LESEMANN: That's our contract; right?

9 MR. WARMOTH: Yeah.

10 THE COURT: So do you have ---

11 MR. TERRY: Yes, sir.

12 THE COURT: Okay. And then Defendant's 6 is
13 titled on the front page purchase and sale agreement. Do
14 you have that one?

15 MR. TERRY: Yes, sir.

16 THE COURT: This appears to be June 23rd and
17 June 26th of 2020.

18 MR. WARMOTH: The two I was asking about are
19 Plaintiff's number 5 and 4. So 5 is the lot purchase
20 agreement which I believe you located ---

21 THE COURT: Okay. I apologize for confusing
22 things.

23 MR. WARMOTH: No problem. And then 4 is the
24 letter of intent that came in 2017.

25 MR. TERRY: They're right here. I've got

1 them both.

2 Q. And at this point I'm not asking really about the
3 specific terms of these, but I'm glad you've got those in
4 front of you. So I was asking, was it your understanding
5 that CJN had said, basically, no, we don't want to develop
6 Phase II? And you responded, I believe, we're in the
7 process of saying it was more a question of when they were
8 going to do it, not if they were going to do it. Was that
9 your answer?

10 A. Right. That's my answer.

11 Q. And that was based on the discussions between the
12 parties; is that right?

13 A. Yes.

14 Q. Okay. In the lot purchase agreement, other than
15 the right of first refusal, is there anything that gives
16 CJN an obligation to develop that property?

17 A. No.

18 THE COURT: All right. Again, and I'm not
19 trying to be hyper-technical, but I want to make sure the
20 record is clear. You say the lot purchase agreement.
21 That's Exhibit 5?

22 MR. WARMOTH: Yes, Judge. And I'm sorry. I
23 keep calling it lot purchase agreement because I've called
24 it that for two years. But it is actually the agreement
25 for purchase and sale ---

1 THE COURT: That's fine. I just want to make
2 sure when the very fine lawyers down in Columbia are
3 looking at all of this, they're able to say exactly what
4 we understand to be looking at.

5 MR. WARMOTH: Thank you, Judge.

6 Q. And my question that I just asked was about Exhibit
7 5, which is the agreement for purchase and sale of
8 developed lots between Crescent and CJN? And my question
9 was, is there, aside from the right of first refusal, an
10 obligation anywhere in that agreement for CJN to pursue
11 development of Phase II?

12 A. No.

13 Q. But I believe your testimony is there is an
14 obligation? There was an obligation for CJN to continue
15 with Phase II?

16 A. There was certainly -- there was certainly the
17 intent, you know, to continue from Phase I into Phase II
18 with CJN being the developer and Crescent Homes being the
19 builder. When we signed this contract, that's what I was
20 thinking and that's what he was thinking.

21 Q. In your mind there's intent and you feel confident
22 that was the intent on both sides? Is obligation a
23 different thing in your mind? Whether there's an
24 obligation to do that on CJN's part?

25 A. Well, that's not -- I mean the right of first

1 refusal isn't an obligation. It's not a contract to
2 develop. It's the right -- again, it's the right of first
3 refusal. So, no, there's not -- can't hold a gun to his
4 head and force him to develop the lots.

5 Q. Well, that goes to the next question. And again,
6 I'm asking about Exhibit 5 and the right of first refusal,
7 which is paragraph 19. If -- now, I believe your
8 testimony is this right of first refusal applies to the
9 lots in Phase II because a sale of the raw property is not
10 a legitimate option. Is that true?

11 A. No. That's not what I said. I mean the reason it
12 refers to lots is because that was the deal that was being
13 presented by him as the developer and the owner of the
14 property. If it was relayed that a raw land sale was
15 something that was desired or even a possibility, I would
16 have been -- that would have been addressed in the
17 contract. It would have been addressed in our
18 negotiation. But that wasn't the deal that was laid out,
19 you know, to me, from day one.

20 Q. And I believe it's true that you have more or less
21 said you were not contemplating what would happen under
22 this right of first refusal if we had a sale of raw land
23 at issue? Is that right?

24 A. No. I mean, there again, that wasn't the deal that
25 was laid out to me, so there was no reason to necessarily

1 contemplate that. You know, it wasn't -- that wasn't
2 discussed as an -- as an option. Having said that, if
3 Nick doesn't want to be a developer, there's other ways of
4 getting the land developed. I have the ability to develop
5 the land. There are other land developers. I mean, but
6 certainly the intent was that Crescent Homes be able to
7 buy these lots in the future.

8 Q. Okay.

9 A. And at the time the future was, you know, right
10 after Phase I. That was what we were planning on doing.

11 Q. Well, what I'm struggling with is if we have this
12 letter of intent that says we're going to develop Phase II
13 and CJN comes back and says, we don't want to do it.
14 Enters a lot purchase agreement or the agreement for
15 purchase and sale of developed lots that doesn't expressly
16 develop -- that doesn't expressly address the development
17 of Phase II, an obligation to do that. Isn't there a
18 better way contractually in this final agreement that you
19 would have come back and made that clear what the plan was
20 and that you expected that CJN was going to do that
21 development at some point?

22 A. So, you know, I think initially that was the deal
23 we were talking about, is a two-phase deal under a
24 contract. When he felt uncomfortable locking in -- you
25 know, using a right of first refusal to secure the

1 remaining land in a project is really pretty normal. This
2 is -- so the fact that it refers to lots, not lots and
3 land, is more of a result of how Nick presented the deal,
4 as a lot deal, to us. So again, it's -- how do you get
5 land to lots, well, you've got to entitle it, permit it
6 and develop it. He does that. I do that. There's others
7 that do that. But the bottom line is that we required
8 both phases to do the deal that we entered into. We
9 wanted to buy the lots and we contracted, basically, to
10 buy the lots. And the way we were able to, based on our
11 seller, with a hard contract for Phase I and the right of
12 first refusal for Phase II.

13 Q. I guess I'm trying to get you to admit, and you
14 obviously don't have to, that there was a whole lot more
15 clear way to do -- to express the intent that you had on
16 your side and you potentially thought CJN had on the other
17 side, than to include a right of first refusal that says
18 lots, if we also want to include development of the raw
19 property. Would you agree with that or no?

20 A. I think this is coming from how this deal was
21 presented. So if it was -- I think that should have been
22 brought up by Nick. Look, let's talk about what happens
23 if I don't want to develop these lots. Surely that
24 wouldn't have been difficult to address. But also, you
25 know, and I guess referring to your last question, you

1 know, along the way -- obviously the intent was to get
2 those Phase II lots to Crescent Homes in an arms length
3 deal. Along the way, why didn't he come to me and say,
4 hey, I don't want to develop these any longer. Let's talk
5 about the options. Let's talk about doing a deal. That
6 never happened.

7 Q. Well, he did tender the Clark offer to you, did he
8 not?

9 A. Yes, he did.

10 Q. And part of why I'm confused here is in that case
11 you're relying on some pretty technical interpretations
12 that a sophisticated business would use in saying the
13 initial closing hasn't happened yet; therefore there's no
14 right of first refusal that I've got to exercise?

15 A. Then that's what the contract says.

16 Q. But how is that different than the contract says
17 lots; therefore we've got a right of first refusal on
18 lots?

19 A. Well, because that's what it -- yes, it does say
20 both. But again, and the bottom line is, here we're one
21 year into a dispute where we were supposed to buy lots a
22 year ago, but the neighborhood wasn't ready. The lots had
23 -- basically Nick tried to get out of it by throwing his
24 debris out of the road into the lots versus hauling it
25 off. And all these other items. And we were still trying

1 to get him to fix the neighborhood so we could close lots.
2 If that doesn't happen, this never happens. And I know
3 that that's not being litigated today, but that -- if that
4 did not happen, this is not an issue. Two real estate
5 professionals can figure this deal out.

6 Q. And I also don't want to litigate that other case
7 today. But I do want to ask you if you'll acknowledge
8 that for each of the letters -- the series of letters that
9 Mr. Lesemann showed you on that issue, do you acknowledge
10 that CJN sent a response where they had a different
11 position about whether an item was required for closing or
12 whether Crescent had authorized the rock pile by having
13 one of his employees sign it and say okay to leave it
14 here?

15 A. I wish -- there was a response to at least most of
16 them. I don't know about all of them.

17 Q. In the right of first refusal clause, paragraph 19,
18 do you acknowledge on the text of that language itself
19 there's no time limit on the right of first refusal?

20 A. Yes.

21 Q. Does the word lots -- I mean is that an industry
22 standard term, like I believe you told me in deposition
23 actually that right of first refusal is an industry
24 standard term that you don't really have trouble
25 understanding. Is lots also one of those terms?

1 A. Yes. It is. It's actually a defined term in this
2 contract.

3 Q. And without going into what that definition might
4 be, is it pretty easily distinguishable as different from
5 thirty-one acre raw parcel?

6 A. Yeah. Lots means the finished version of that.
7 Obviously the developed version is what we're talking
8 about.

9 Q. Okay. And your real estate attorney who I believe
10 you said was the one who drafted this right of first
11 refusal clause is located in Atlanta; is that correct?

12 A. She is.

13 Q. Do you know if she's a South Carolina lawyer, by
14 any chance?

15 A. I don't know if she's gotten her -- I don't know if
16 it would be license here or the other term where she's
17 able -- I think she has -- she has been very active here
18 for many years.

19 Q. Now, when -- I think we're all in agreement that
20 there has not been a response by Crescent, an immediately
21 response, where Crescent has accepted the tender of the
22 right of first refusal in the Clark case or the Opus case
23 and said, yes, we'll buy it? Is that correct?

24 A. Correct.

25 Q. But there have been offers and we're back and

1 forth. What I want to ask about that is this distinction
2 between Levi Grantham that you brought up earlier and
3 Crescent. Is it true that any offer you've made in this
4 case has been from Levi Grantham?

5 A. Correct. I explained earlier, Levi Grantham is my
6 land owner -- land investment and development arm. So new
7 offers for land purchases, you know, would come out --
8 would be -- purchaser would be Levi Grantham, LLC.

9 Q. Would you agree with me, at least technically
10 speaking, the contract says that the purchaser has the
11 right of first refusal; not a related entity?

12 A. I would agree. That's what it says. Again, this
13 was a lot purchase contract. I will point out, you know,
14 to you and the Judge that we have -- I have the right to
15 assign to any entity controlled, you know, by me, Edward
16 N. Terry, per this contract. So to contract in one entity
17 that I own and then assign to another prior to closing is
18 normal and allowed per the contract.

19 Q. I don't really have a position on that. My
20 question is more, if that was likely going to be the case,
21 why not -- why not spell that out in the right of first
22 refusal itself, that you've got this related entity that
23 would more likely be the one who would purchase raw
24 property?

25 A. I don't have an answer other than the same -- the

1 same one I've given you, which is this was, you know, this
2 was sold as a lot deal.

3 Q. On this Clark deal, which came in in June of 2020,
4 I think we've all agreed that that happened prior to the
5 initial closing?

6 A. Yes.

7 Q. What rights did you think Crescent had at that
8 point under this right of first refusal clause given that
9 the clause itself says the right arises at the initial
10 closing?

11 A. I guess the right is -- well, the right is there,
12 but I guess another way of explaining it would be the
13 right is triggered at the closing, comes right at the
14 closing. I mean, the right is there unless the contract
15 is terminated.

16 Q. Well, regardless of what we call that right, what
17 rights did you have at that point? In the event ---

18 A. A right of first refusal. It's the same right,
19 it's just ---

20 Q. Well, my question is ---

21 A. A contractual right. I had a contractual right.

22 Q. But isn't it the case that Crescent took the right
23 that -- or took the position that the right of first
24 refusal couldn't be exercised at that time because the
25 initial closing hadn't occurred?

1 A. I think it's more that we didn't feel like we had
2 the obligation to exercise it at that time. It's not that
3 we didn't have the right. It's just that we didn't have
4 to exercise prior to the initial closing.

5 Q. And was there a practical reason that you wouldn't
6 want to exercise it prior to initial closing, especially
7 when you testified earlier that you were well on your way
8 to that first closing at that point?

9 A. Well, yeah, I mean all our efforts are basically --
10 well, first of all, again, the deal was a two-phase deal,
11 which means, you know, you buy Phase I lots and then you
12 buy Phase II lots. That's how that works. To the extent
13 we got thrown the curve ball on the land purchase, again,
14 all our efforts are focused on marketing the lots, our
15 Phase I, getting to our Phase I lot purchase, getting our
16 building permits, getting our program going. So you know,
17 it's a little premature to then just be immediately
18 focused on buying Phase II prior to -- it's a good
19 trigger. Phase I happens, then Phase II happens.

20 Q. This is a question I don't know the answer to, but
21 is there a general rule or principal that guides you in
22 the timing of when you would want to purchase raw land for
23 a development like this? Would it be like as late as
24 possible, as soon as possible, or is there not a ...

25 A. Well, I mean the answer is that you would like the

1 finished lots to come on basically to where they're not
2 too early and not too late. You don't want to -- you
3 don't need to sit on sixty lots all at once necessarily,
4 and you don't need to finish Phase I and then have a gap
5 before Phase II. So you would like them to kind of
6 gracefully come online so that you can continue your lot
7 take and your program.

8 Q. Okay. And in that smooth transition, is it the
9 ability to continue building on the lots that you've
10 acquired? That's kind of the limiting factor on that? I
11 mean if you acquired all of these lots, there's some
12 reason you couldn't build out on all thirty-one of them at
13 one time; right?

14 A. You know, there's -- other than that -- I mean
15 you're not necessarily going to start sixty houses at
16 once, no. That's not -- that would not be normal.

17 Q. Well, maybe I'll ask it in another way. I mean
18 it's true, is it not, that the timing of when you acquired
19 this property is important to you in relation to what
20 houses have been built and potentially other factors?

21 A. Timing is important.

22 Q. How many lots does either Crescent or Levi Grantham
23 have under control right now in the upstate?

24 A. It's -- I don't know the exact number. Under
25 control is probably about fifteen hundred.

1 Q. Okay. And this Phase II, we're talking about
2 thirty lots, more or less?

3 A. Correct.

4 Q. In the grand scheme of things, are those thirty
5 lots a big deal to you or ---

6 A. Yes, they are.

7 Q. They're more important somehow than the other
8 fifteen hundred lots?

9 A. I would say the fifteen hundred lots are different
10 lots, but varying degrees of importance; A locations, B
11 locations. But this is important because, again, this is
12 Phase II of a Phase I that we've already performed in, in
13 a great location. We've performed well. We've done the
14 heavy lifting. You know, we've done the marketing. We've
15 got the street scape. We've done a good job here. And it
16 was always -- we were basically always counting on Phase
17 II on this deal.

18 Q. You were asked before -- let me back up. Before I
19 move on from this right of first refusal clause itself,
20 what is your view of what happens -- what rights you have
21 if the memorandum of that right of first refusal has not
22 been recorded?

23 A. My rights are the same. The memorandum just puts
24 the world on notice that there's a right of first refusal.
25 And it's -- you know, it's -- it was part of this

1 contract. It's something that we always would like to
2 include on something like that with a contract. But my
3 rights are the same.

4 Q. Okay. So it's your position that you've got the
5 same right of first refusal rights that you would have had
6 if that memorandum had been filed?

7 A. Yes.

8 Q. You were asked about proposals sent back and forth.
9 I think Mr. Lesemann phrased it as proposed memoranda.
10 But as part of that, there were also proposed amendments
11 to the contract that would basically set out details for
12 this right of first refusal. Do you recall those?

13 A. Just to clarify, the initial contract or ...

14 Q. The proposals back and forth on -- basically ---

15 A. On the memorandum?

16 Q. Well, technically there was a proposed second
17 amendment to the contract that set out the terms of the
18 right of first refusal. And there was a memorandum that
19 referenced back to that and said ---

20 A. All at the initial closing, is that what you're
21 referring to?

22 Q. Well, this is negotiation that happened just prior
23 ---

24 A. Prior to that, yeah. Okay. I do recall.

25 Q. Okay. And do you recall any of the particulars

1 that Crescent would have asked for in response to the
2 initial proposal that CJN made?

3 A. I believe we asked for a ten-year right. I believe
4 it was a thirty-day trigger or response time. What are
5 the numbers? I may be wrong on that. But that's -- seems
6 to be what I -- you know, what it was.

7 Q. Well, would you agree that if you have a proposal
8 back and forth ---

9 THE COURT: Could you ask your clients not to
10 talk so my court reporter can make a clean record? Or use
11 their inside voices.

12 MR. LESEMANN: I'm sorry, Your Honor.

13 THE COURT: Thank you. All right.

14 Q. Would you agree with me if the due diligence
15 proposal on the right of first refusal, the time frame
16 proposed, plus some time after that for closing, extended
17 the closing beyond what was proposed, either the due
18 diligence or the closing beyond what was proposed in the
19 initial offer? Do you think that's a right you have under
20 the right of first refusal, to extend that time frame?

21 A. Please restate.

22 Q. Yeah, that was confusing. Would you agree with me,
23 generally speaking, your obligation, if there's a valid
24 right of first refusal, is to match the terms of whatever
25 offer that you're tendered, if it's bonafide?

1 A. Generally speaking, yes.

2 Q. Would that include the terms that relate to due
3 diligence and closing?

4 A. Yes. Again, as long as it's a bonafide arms length
5 transaction or contract.

6 Q. So back to my confusing question. If you had
7 proposed the right of first refusal that potentially
8 necessarily causes the proposed contract by Crescent to
9 exceed either the due diligence period or the closing
10 period, in the third-party contract that you've been
11 tendered, is that an expansion of ---

12 A. Within the, I guess, the review period of the
13 contract?

14 Q. Right?

15 A. So my understanding of a right of first refusal is
16 that if -- say that a contract was signed, it's tendered
17 to us, that contract isn't executed until our time frame
18 is passed to review it and accept or reject. So I don't
19 think the due diligence would be going necessarily within
20 the review time frame. That's my interpretation.

21 Q. Okay. Well, let me ask it this way. If the
22 contract that's proposed is going to close in sixty days
23 and Crescent's right of first refusal, as requested in
24 these negotiations, requires that time period to be
25 seventy days before Crescent can close, is that giving

1 Crescent something that they wouldn't otherwise have under

2 ---

3 A. Again, just to clarify. Seventy days ---

4 Q. In place of the sixty that the third-party has to -

5 --

6 A. Seventy days review period of the contract?

7 Q. I'm adding all these periods together to get to the
8 end. And I'm saying the way it reads, you add all those
9 time periods up and you get a little bit more time if
10 you're Crescent under this right of first refusal?

11 A. I don't -- I don't look at it that way. Again, I
12 think that it's -- I think you've got your review period
13 to determine whether you're going to accept the contract,
14 step into the shoes of the contract, and at that point
15 then the contract would be, I guess, executed and you
16 would be working within the contract time frames. I don't
17 see them overlapping like you're, I think, referring to.

18 Q. Okay. In those proposals do you recall Crescent
19 requesting a term that stated that due diligence doesn't
20 start running until CJN provides a permissible and usable
21 means of vehicular access?

22 A. I do remember something to that extent.

23 Q. Was requiring CJN to provide that a right that you
24 had under the right of first refusal contained in the lot
25 purchase agreement?

1 A. It is not.

2 Q. So you would agree that was something that you were
3 asking for on top of -- the right you were asking for on
4 top of what you had in the initial contract?

5 A. Yes.

6 Q. All right. You were asked about the Opus Petrus
7 offer earlier. Do you recall that?

8 A. Yes.

9 Q. And do you recall that offer was 1.25 million
10 dollars?

11 A. Yes.

12 Q. Did you have an opinion at the time frame that that
13 offer came in of what the value of the property was?

14 A. I -- you know, the value with comps and where you
15 are with CMA right at that particular point in time, did I
16 do that right when this came in? No. I had an idea of
17 what I thought the range of the value was. I did think
18 this was an aggressive high offer. Healthy offer for
19 sure. That's the long way of answering -- I guess
20 answering your question.

21 Q. Well, did you think it was so high that that was at
22 least a factor in your determination that it was
23 illegitimate?

24 A. I thought it was aggressive, given everything taken
25 into account with the offer. With what I knew -- you

1 know, what I knew about the property, what my company
2 knows about the property, and the questions that remain
3 that need to be, you know, satisfied to be able to I guess
4 finalize value on a property like this.

5 Q. And I believe it's your position that essentially
6 the only way -- the only buyer in the market who is going
7 to put out the highest and best use price of this is going
8 to be a developer for this particular project -- or
9 property? Is that accurate?

10 A. I think it's likely because the highest and best
11 value -- highest and best use for the value of the
12 property is developable property, residential developable
13 property.

14 Q. And I think you're going to disagree with me that
15 an investor who wanted to sit on the property for some
16 period of time and either sell it or maybe develop it
17 later, could also value it the same way and come up with
18 the same market price?

19 A. Yeah, making assumptions, yes, you could value it
20 at that. But to basically satisfy these assumptions
21 through a due diligence period, understanding --
22 understanding the septic situation; can you get thirty
23 septic permits, can you get across that pond? You know,
24 you've got to figure those things out to unleash the value
25 or else -- I mean it could be worth way less than that.

1 Q. Okay. So an investor like I described could
2 potentially come up with a valid market price, but they
3 would have to be committed to doing due diligence to
4 figure out ---

5 A. I think in some cases projects are sold, you know
6 exactly what you can do, the risk is minimal. In this
7 case that is not the case.

8 Q. Well, my question, again, is if an investor goes in
9 and does the due diligence that a developer would have
10 done and figures out what the development capacity, for
11 lack of a better term, of this subdivision is, is that
12 person in just as good a position at that point to come in
13 and make a market value offer?

14 A. James, I'm not saying that's impossible. It
15 certainly is -- investors buy property all the time. I
16 think that it's unlikely for this situation that that
17 would be the case. It's way more likely that a
18 developer/builder like myself would be the one that would
19 be able to get this deal done and purchase this deal.
20 That's my opinion.

21 Q. Now I want to ask you about what was my Exhibit 10.
22 If you could confirm that you can locate that, please.
23 And that's going to be a June 25, 2021 letter from me.

24 A. 10?

25 Q. Yes, sir. Exhibit 10.

1 A. Got it.

2 Q. Have you got it in front of you, sir?

3 A. Yes, sir.

4 Q. This is a letter where CJN gives its response

5 basically to the allegations that there's a sham offer

6 that Opus has made. Do you recognize it as that kind of
7 letter?

8 A. Yes.

9 Q. And did you -- do you recall receiving that letter
10 or on sometime shortly after June 25, 2021?

11 A. Yes.

12 Q. Did you review it?

13 A. Yes.

14 Q. Would you agree with me that it's an attempt by CJN
15 to allay whatever concerns Crescent had regarding the
16 legitimacy of the Opus offer?

17 A. Yes.

18 Q. Would you agree it's an attempt at least to address
19 each of the primary factors that Crescent initially
20 pointed out about the software that were a problem?

21 A. I agree.

22 Q. On item 1 this addresses a concern that Crescent
23 raised that the property was not being marketed. CJN came
24 back and said, actually we're informally talking to people
25 we know, which is how we typically do business. Did that

1 information change anything about your analysis?

2 A. No.

3 Q. Item 2, the allegation on Crescent's part was Opus
4 was not a homebuilder. At that point CJN came back and
5 said, we -- our understanding is Opus is going to invest.
6 And I think that's the issue we talked about with the
7 developer and you gave your opinion that more than likely
8 that's not going to happen in this case, that an investor
9 would make a market price offer?

10 A. That's my opinion.

11 Q. Have you since come to learn that Opus is, in fact,
12 a licensed residential builder?

13 A. No.

14 Q. How about Mr. Bouharoun or any entity that's run by
15 him, do you know if any of those are licensed builders?

16 A. Who is that?

17 Q. Mr. Peter Bouharoun, the owner, ---

18 A. I did not know that.

19 Q. --- do you know if he controls any licensed
20 homebuilder? If you had learned that information, would
21 that change anything about your analysis on this?

22 A. Very slightly.

23 Q. Then the -- item 3, the form of the contract, and I
24 think Crescent's comment there is this is a standard form
25 that's still way too complicated for the standard form.

1 Is that accurate?

2 A. That's my opinion on what you typically see.

3 Correct.

4 Q. And CJN came back and said, well, it's a standard
5 form but it's for the purchase of lots and acreage and we
6 use this form commonly.

7 A. Okay.

8 Q. Did that change anything about your ---

9 A. No.

10 Q. Item 4 is dealing with the market price, which I
11 think you told me your opinion on that. Item 5, lack of
12 documentation. The argument there, which I think you
13 testified earlier today, is you asked for documents
14 related to this transaction and you didn't get any. In
15 this item CJN comes back and tells you, well, there are no
16 documents related to this transaction. What did you think
17 when you saw that?

18 A. It just leads to further suspicion.

19 Q. Do you dispute that there are legitimate deals that
20 are done with just a contract and verbal either phone or
21 in-person conversations?

22 A. I don't dispute that there are deals done without
23 -- like that. But I know a lot about this deal and this
24 piece of land.

25 Q. So in this particular case, would you expect a

1 paper trail, for lack of a better term, with any deal or
2 is it something in particular about the Opus offer that
3 made you expect to see that?

4 A. I think you're likely going to have a paper trail
5 with -- some level of paper trail with any deal. I think
6 it is highly likely you're going to have one with this
7 deal.

8 Q. I don't remember your exact terminology and I
9 apologize, but you do acknowledge that you did get some
10 paper trail as in like transmittals of the contract back
11 when you requested documents from CJN and Crescent; is
12 that right?

13 A. Yeah, if we're referring to any sort of like
14 correspondence discussing the deal, particulars of the
15 deal. Anything. Pricing on the deal, septic permits, how
16 many lots you're going to get. All of those particulars
17 that you would, I think, -- would need to be conveyed on a
18 deal like this.

19 Q. Okay. I understand the distinction. I'm just
20 asking you, isn't it true that you did get back a response
21 from CJN where you had transmittals of the contracts and
22 the contract?

23 A. Just the contract, yes.

24 Q. And then you did get a response back from Opus
25 where you got similar documentation? You got transmittals

1 of the contract back and forth? Is that accurate?

2 A. Yes.

3 Q. And do you dispute under -- the earnest money is
4 low in your opinion. Do you have dispute that you had
5 evidence that that was deposited?

6 A. No, I don't dispute that.

7 Q. Do you know offhand what the earnest money on this
8 lot purchase agreement for Phase I was?

9 A. Five hundred a lot.

10 Q. And doing the match does that come out to roughly
11 sixteen thousand?

12 A. It does. But again, this is a lot purchase
13 agreement with other terms.

14 Q. Okay. So in that circumstance are you implying
15 that the earnest money would be lower with the lot
16 purchase agreement?

17 A. You can't just look at that one deal term. This
18 deal, what was important to Nick was a larger first take
19 and hitting his lot price. And so we were able to
20 negotiate a lower per lot with a higher up-front purchase.
21 If you look at that first right of first refusal, I think
22 it was like two hundred thousand dollars, five percent of
23 the total contract, so -- which is more typical of a
24 larger deal like that.

25 Q. Which right of first refusal are you referring to

1 there?

2 A. The initial right of first refusal that's part of
3 the -- your Exhibit 4.

4 Q. Okay. Letter of intent?

5 A. Yeah, excuse me, letter of intent.

6 Q. Okay. On this offer by Opus or another third
7 party, what amount of earnest money would you expect to
8 see? What would you find appropriate?

9 A. I mean you see deals at five percent, ten percent
10 all the time. I mean you can see deals way lower than
11 that. It's negotiable. But, you know, five thousand,
12 it's just very low.

13 Q. Is there a number you can give me that would -- you
14 can say basically wouldn't raise your eyebrows if you saw
15 it on the low end?

16 A. I mean we just offered Nick -- you know, we just
17 offered him a hundred thousand dollars earnest money today
18 for the same phase. So I mean ---

19 Q. Would you have the same concern if it was ten
20 thousand?

21 A. Not quite as much as far as that goes.

22 Q. And back on this letter, Exhibit 10, item 6 in that
23 response to the allegations of a sham offer explains the
24 relationship with Mr. Franchina and Mr. Bouharoun. It
25 admits they've been friends but it says they've done real

1 estate together, they've got a track record of doing that.

2 Did that change your analysis in anyway?

3 A. It did not. I mean again that was -- just made us
4 highly suspicious. The owning of the beach house
5 together. Obviously they're buddies. It just -- that
6 adds to it.

7 Q. Did you learn either through this letter, which I
8 don't know if it's in here, or at some point that the
9 shared ownership in that beach house was a prior deal that
10 was no longer a current deal?

11 A. We knew that was a prior deal, yes.

12 Q. Did you later learn that there were multiple
13 investors in that beach house property?

14 A. I learned that today.

15 Q. Does that change anything, make it look more like
16 two parties that do real estate together?

17 A. It really doesn't. It's a buddy deal to sidestep
18 the right of first refusal. And that's ---

19 Q. So taking this letter as a whole and the
20 information you got back in response to your claim, you
21 weren't swayed that this was a legitimate offer?

22 A. No.

23 Q. And as you sit here today, do you still believe
24 it's illegitimate?

25 A. Yes.

1 Q. You testified earlier, I believe, that you or your
2 counsel filed a Lis Pendens in response to the Opus offer
3 and your understanding was that that was necessary or
4 proper to prevent the sale to Opus; is that right?

5 A. That's my understanding.

6 Q. Did you not think that the current lawsuit about
7 this right of first refusal was sufficient to give notice
8 of the issue?

9 A. I mean this is really more of a legal -- it's more
10 of a legal question. I'm advised by legal counsel on
11 issues like this. So I take that advice. So you know,
12 that's what this is.

13 Q. Okay. I don't want to ask you what your lawyer
14 told you. I just want to make sure that your reason for
15 filing the Lis Pendens is because you were told through
16 legal counsel that you thought that was the proper step to
17 protect ---

18 A. That's correct.

19 Q. --- this thing from getting sold to somebody else?

20 A. Yes, sir.

21 Q. Do you recall when Opus sent a letter backing out
22 of this deal?

23 A. Yes.

24 Q. Do you recall in general terms what their argument
25 was or what their reasoning was why they decided to back

1 out?

2 A. I would really want to look at that again.

3 Q. Okay. It's Exhibit 11 in my exhibits.

4 A. Okay.

5 Q. Is that the same letter you remember seeing before,
6 Opus termination?

7 A. I know I've seen it. I'm not super familiar with
8 this one.

9 Q. Well, if you know by looking through it or some
10 other way, my question is, did you have the general sense
11 that Opus alleged that they were backing out because of
12 interference from Crescent?

13 A. My understanding is that, yeah, when Opus was
14 presented with -- and this is coming from what my attorney
15 to me, when Opus was presented with basically being
16 brought into the lawsuit, one way or the other, they
17 backed out of the deal.

18 Q. And do you acknowledge either through letters or
19 some pleadings in the Court that at some point Opus was
20 given notice by Crescent that they were going to bring you
21 into this lawsuit to become a part of this determination?

22 A. Yes. And my understanding is because, again,
23 that's the only way to gain information and get to the
24 bottom of that.

25 Q. Okay. And Opus explained in this letter that they

1 didn't continue with due diligence or even really get
2 started on due diligence because they, pretty shortly
3 after filing the offer, got Crescent's response and the
4 threat of litigation. Does that sound legitimate to you?
5 I mean is that what you would do in this similar
6 situation, is not bother spending that money on due
7 diligence?

8 A. I think that's reasonable.

9 Q. And these transactions that we've talked about,
10 Opus and Clark, and in general, do you know of any reason
11 that CJN would not sell to Crescent if CJN was happy with
12 the terms of the offer?

13 A. Yeah. My perception, given this experience, is
14 that Nick does not want to deal with me any longer. And
15 did not want to see this deal through. Has never engaged
16 with me on the situation to try to work out a deal or a
17 solution, ever. Has not responded to offers along the way
18 that were good offers. Yeah, I do get that feeling, that
19 he does not want to deal with me or Crescent Homes.

20 Q. Is it true that you, Crescent or Levi Grantham, did
21 not submit a matching offer in response to the Clark
22 offer, the matter exceeded those terms?

23 A. That's true.

24 Q. Is it true that Crescent or Levi Grantham did not
25 submit a matching offer in response to the Opus Petrus

1 offer?

2 A. Well, I will say at the initial presentation, I
3 agree with what you're saying. As time went on and we
4 were trying to engage, I think we have met or exceeded
5 these numbers. In fact, we've exceeded them by far at
6 this point.

7 Q. I know you're not going to agree with me on how
8 much the market has gone up since either of those offers.
9 But would you agree that it's fairly consistently gone up
10 since -- throughout this entire process?

11 A. I'll agree.

12 Q. No further questions. Thank you, Mr. Terry.

13 THE COURT: Before your lawyer asks you
14 questions, I may have misheard. I thought I heard you say
15 that in Plaintiff's 5, the original contract, that it
16 defined lots. Did I understand that correctly?

17 MR. TERRY: I looked on the front page and
18 lot is in capital, which means it's defined for the
19 contract, which is actually different than what is in the
20 right, yes, sir. I mean it's defined -- the lot is -- let
21 me see what it says exactly.

22 MR. LESEMAN: Your Honor, I can bring that
23 out on Redirect, too, if that would help.

24 MR. TERRY: This is actually defined ---

25 THE COURT: We're going to let your lawyer do

1 what lawyers do and -- Mr. Warmoth, you certainly ---

2 MR. WARMOTH: It does define lots and it
3 defines them as lots one through thirty-two in Phase I.

4 THE COURT: Is there anymore definition other
5 than ---

6 MR. WARMOTH: Not that I've found. It kind
7 of leaves you, in my opinion, still not any further ---

8 THE COURT: It refers to the plat but it
9 doesn't give a definition beyond Phase I, look on the
10 plat?

11 MR. WARMOTH: Not that I ---

12 MR. LESEMANN: Your Honor, the defined term
13 is, as Mr. Warmoth mentioned, relates to lots one through
14 thirty-two and uses a capital L.

15 THE COURT: Okay. That's what I thought, but
16 I just wanted to make sure that ---

17 MR. LESEMANN: In section 19 it uses small l,
18 undefined term lots, and again makes that graphical
19 depiction on A-2.

20 Thank you, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. LESEMANN:**

23 Q. Ted, if you're a potential buyer of property and
24 you know that that property is involved in some
25 litigation, are there ways that you can preserve your

1 rights or address that within the contract?

2 A. Absolutely.

3 Q. So for example, if you're going to buy lots, but
4 the subdivision plat that was just approved, it's under
5 appeal, is there a way to try and accommodate that and to
6 protect that and to bring that into a contract?

7 A. Yes.

8 Q. One example might be that due diligence might start
9 when the appeal is final?

10 A. Correct.

11 Q. Or when the litigation is resolved?

12 A. Correct. Or a contingency or something like that.

13 Q. So you mentioned -- it was asked, you know, why did
14 you file a Lis Pendens. And did you indicate that that
15 was so that the world could be on notice?

16 A. Yes.

17 Q. Okay. And that world in this case would include
18 someone like Opus Petrus?

19 A. Right.

20 Q. So at the time that Opus Petrus entered its
21 contract, all information leads us to believe they were
22 fully aware of the litigation, and if they checked their
23 records would have been fully aware of the Lis Pendens?

24 A. Correct.

25 Q. And if they weren't, were we able to make them

1 aware by asking them for documentation to try to show that
2 their deal was legitimate?

3 A. Yes.

4 Q. So when we're asking about whether it was
5 reasonable or not for them to proceed with due diligence,
6 Opus Petrus and CJN did agree on a ninety day -- ninety
7 business day due diligence period in that contract; right?

8 A. Yes.

9 Q. And at that time CJN knew that they were in
10 litigation? And as far as we can tell, did Opus Petrus
11 know?

12 A. Yes.

13 Q. But they didn't engage in any due diligence?

14 A. No.

15 Q. And they didn't engage in any efforts to find out
16 whether they could get those septic permits or not?

17 A. Correct.

18 Q. And so is it sort of dubious to you that they were
19 acting surprised that there was litigation or a dispute?

20 A. Obviously they knew there was litigation and a
21 dispute in place.

22 Q. I mean they entered a contract to do due diligence,
23 and they didn't do it?

24 A. Yeah. My comment to James has to do with them, you
25 know, feeling threatened that they might be brought into

1 the litigation, which -- but yeah, obviously they were on
2 notice that litigation between Crescent and CJN was
3 underway and had been in place.

4 Q. When Mr. Warmoth was asking you some questions that
5 kind of bordered on some communications with you and legal
6 counsel, I didn't jump up and scream privilege because I
7 think that advice that's been received in this process has
8 been influential on some decisions that have been made?

9 A. Sure.

10 Q. If Opus Petrus and CJN had a live contract, right,
11 that was still pending, do you have an understanding as to
12 whether this Court could make a decision about whether
13 that contract was valid or not without Opus Petrus being
14 also here in the courtroom?

15 A. No. I don't see how that could -- from what I
16 know, I don't think that's possible.

17 Q. Okay. And have you ever heard the term necessary
18 party used before?

19 A. Yes.

20 Q. Did Crescent -- if Opus Petrus was claiming a live
21 contract that we believed was an attempted circumvention
22 of the right of first refusal, did Crescent believe that
23 Opus Petrus was a necessary party?

24 A. Yes.

25 Q. When Opus Petrus terminated the contract was it

1 Crescent's believe that they no longer were a necessary
2 party?

3 A. Yes, correct.

4 Q. And is that why they were not ultimately added to
5 the litigation?

6 A. Correct.

7 Q. Do you recall if we filed a motion to amend to add
8 them to the case in August of 2021?

9 A. Yes.

10 Q. Was it September 8th of 2021 when they wrote their
11 letter of termination?

12 A. That's right.

13 Q. So when Mr. Warmoth was reviewing these exhibits
14 with you, I think it was number 10 and then number 11.
15 Number 10, did they indicate that Opus was going to -- in
16 paragraph 2, was going to treat this as an investment
17 property?

18 A. Yes.

19 Q. And so maybe we shouldn't be looking at it through
20 the view of a homebuilder?

21 A. Correct.

22 Q. Would an investor property or would an investor
23 typically have a septic permit contingency of sixty days
24 so that they could go apply to DHEC for a septic permit?

25 A. Not necessarily.

1 Q. That sounds like a homebuilder activity; right?

2 A. Yes.

3 Q. Okay. In attempting to tell you that this offer
4 was legitimate in Plaintiff's Exhibit 10, they're telling
5 you that they're a long term investor? If you look at 11
6 under this Second, do you see OP here?

7 A. Yes.

8 Q. And if OP stands for Opus Petrus, could you read
9 the sentence that I'm pointing to on page 2 of the letter?

10 A. Read this?

11 Q. Yes.

12 A. OP was never intended to have nor does it possess
13 the ability to acquire real property or similar
14 investments and sit on them for protracted, indefinite
15 periods of time.

16 Q. So is an investor someone who might sit on a
17 property for a protracted or indefinite period of time?

18 A. Yes.

19 Q. Okay. So you're being presented with these
20 letters. CJN is claiming that Opus Petrus is an investor
21 and Opus Petrus is telling CJN, I have to cancel this
22 contract because I can't sit on this for an indefinite
23 protracted period of time?

24 A. Right.

25 Q. So are examples like that, even in the evidence

1 before the Court today, are examples like that further
2 inconsistencies and indicia of the fact that this was not
3 a legitimate third-party offer?

4 A. Everything I've heard it leads to that, in my
5 opinion.

6 Q. And I'm interested, you see that letter, Exhibit
7 11, it's one, two, three single-spaced pages. We talked
8 about the lack of documentation. Is basically this three-
9 page highly detailed letter, is that the one document,
10 other than the contract and the amendment, that we've ever
11 seen?

12 A. I believe so.

13 Q. Now, bringing us full circle, on September 8th of
14 2021, Opus Petrus terminated the contract. Now is it
15 possible that was because they -- it really was not a
16 legitimate contract?

17 A. That's what I think.

18 Q. Is it possible that they decided, well, I haven't
19 done any due diligence. I'm not sure if I want to buy
20 this. My due diligence closes October 1st, so I need to
21 get out?

22 A. Yes.

23 Q. But they terminated?

24 A. Uh-huh (affirmative).

25 THE COURT: I'm sorry. That's a yes?

1 MR. TERRY: Yes.

2 THE COURT: All right. Thank you.

3 Q. So ultimately the Opus Petrus contract is
4 terminated. They didn't buy the property; right?

5 A. Right.

6 Q. The property is still there?

7 A. Yes, it is.

8 Q. And so the right of first refusal is still there?

9 A. Yes.

10 Q. So ultimately the Opus Petrus contract doesn't
11 resolve the issue that's in front of the Court because
12 they didn't buy the property?

13 A. Correct.

14 Q. When it came time for them to defend their right to
15 buy the property, ...

16 A. They bailed.

17 Q. Let's talk about the Clark -- we'll talk about the
18 Clark deal in a second. Raw land versus lots and you gave
19 a lot of testimony on that and Judge Simmons just pointed
20 out the distinction between capital L lots Phase I and
21 then small l lots, the reference in section 19. Again, on
22 Exhibit A-2 to the contract if you can find that? Our
23 contract with ---

24 THE COURT: And I appreciate the
25 characterization, but you're the one who referred to the

1 capital L versus the little l.

2 MR. LESEMANN: Thank you, Your Honor. I
3 apologize.

4 THE COURT: That's fine.

5 Q. So if you look at A-2 here, there's a sharpy pen or
6 something that's been used; right?

7 A. Right.

8 Q. And while there are lot lines on there, those lots
9 don't exist at this time; do they?

10 A. No, they don't.

11 Q. And there are reasons to expect that they could
12 change?

13 A. Correct.

14 Q. So that's a hypothetical set of lots?

15 A. Yes.

16 Q. But what does the sharpy pen do? Does it designate
17 a set of acreage?

18 A. It outlines the acreage that basically the lots are
19 within.

20 Q. Okay. So in that sense the raw land of the lots,
21 are they the same?

22 A. Yes, as far as the land goes.

23 Q. I mean to this day they still aren't lots; right?

24 A. No, they haven't been subdivided.

25 Q. So it's still raw land? And just for purposes of

1 clarification, you don't believe that there's the ability,
2 and Crescent does not believe that CJN has the ability to
3 circumvent the right of first refusal by trying to do a
4 raw land deal?

5 A. No, I don't. I strongly do not believe that.

6 Q. On the agreement, could you go to Section 9(j),
7 which is on page 9. Do you see that?

8 A. Yes.

9 Q. Could you read that quickly for the record?

10 A. Seller will not take any action or omit to take any
11 action, which action or omission would have the effect of
12 violating or causing to be untrue any of the
13 representations, warranties, covenants and agreements
14 contained herein.

15 Q. Okay. In Section 19, -- you don't have to turn to
16 it. But in Section 19, CJN agreed to give you a right of
17 first refusal on the lots as of the initial closing;
18 correct?

19 A. Correct.

20 Q. If seller tried to sell the property to Mr. Clark
21 before the initial closing, would that be taking an action
22 that would cause their obligation to give you a right of
23 first refusal as of the initial closing to be rendered
24 untrue?

25 A. Yes.

1 Q. Because if they did that, they could no longer do
2 what they were obligated to do?

3 A. Correct.

4 MR. LESEMAN: Your Honor, I have no further
5 questions. Thank you.

6 THE COURT: Mr. Warmoth, any other questions?

7 MR. WARMOTH: I don't, Your Honor. I would
8 like to raise one additional legal argument based on the
9 testimony of Mr. Terry.

10 THE COURT: Well, let me have the witness go
11 ahead and step down.

12 MR. WARMOTH: Sure.

13 MR. TERRY: Do I leave all of this?

14 THE COURT: Yes, sir. Thank you.

15 All right, now I'll be glad to hear from you, Mr.
16 Warmoth.

17 MR. WARMOTH: Yes, Judge, I think another
18 grounds on which this thing is unenforceable is there's an
19 unreasonable restraint on alienation if CJN can't sell
20 this property unless they develop it. So if Crescent is
21 taking the position that a -- CJN cannot circumvent the
22 right of first refusal by doing a raw land deal, then
23 that's another grounds where it's unenforceable if that's
24 the interpretation.

25 THE COURT: Let me hear from you.

1 MR. LESEMANN: Thank you, Your Honor. What I
2 would say in response is, again, that property is
3 identified. And the evidence of the intent is to show
4 that ---

5 THE COURT: Yeah, I understand. But just on
6 his argument to bring in this theory or this cause of
7 action?

8 MR. LESEMANN: Well, we weren't saying that
9 they were obligated to develop that. We were saying that
10 that land -- there's a right of first refusal on that
11 land. There's evidence in front of the Court to show that
12 this was intended to do a two phase lot deal. But again,
13 even if it's raw land, Crescent still has the right of
14 first refusal on it. Which is consistent with James --
15 with Mr. Warmoth's client's behavior in the Doug Clark
16 agreement and the Opus Petrus agreement, ultimately both
17 raw land deals, the right of first refusal was referenced.

18 THE COURT: And again, I understand your
19 arguments. But just in response to Mr. Warmoth's motion
20 now to bring in this cause of action based upon the
21 testimony here today, he's moving ---

22 MR. LESEMANN: Oh, oh, oh, Your Honor, I ---

23 MR. WARMOTH: I don't know if I would call it
24 a cause of action. It's just another theory among the ---

25 THE COURT: A theory called a ---

1 MR. LESEMANN: Your Honor, we would not
2 object to the pleadings conforming to the evidence in that
3 you basically -- and I think you in your equitable role,
4 you can look at anything that can be applied from the
5 record, so ...

6 THE COURT: All right. Thank you.

7 MR. LESEMANN: I'm sorry, Your Honor. I
8 thought you wanted to hear me make a brilliant argument,
9 not just allow for the ---

10 THE COURT: Always like hearing good lawyers
11 and always like hearing good arguments -- good lawyers'
12 brilliant arguments. So I just wanted to make sure we had
13 it clean on the record.

14 I will make my decision, best I can, within twenty-
15 one days and issue a written Order. Y'all have been
16 living with this for a long time, and I get it. I do, I
17 appreciate having good lawyers who have done a good job of
18 being advocates, who understand what the issues are, who
19 have been zealous in their representation. That helps
20 make my job, in some respects easier, and in some respects
21 more difficult.

22 But anyway, thanks to both of you, gentlemen. If
23 you'll pack up as soon as you can and get out of the
24 courthouse because we're the last occupants here today and
25 they're going to lock it down. There are about fifteen or

1 twenty maintenance people downstairs trying to get to
2 work.

3 MR. LESEMANN: Thank you, Your Honor. Do you
4 want to do that work completely on your own authorship or
5 would you ask for proposed Orders from the parties?

6 THE COURT: You are so kind, but my
7 philosophy always is that I'm so blessed to get a
8 government paycheck fairly regularly and I ought to be
9 doing something to earn that.

10 MR. LESEMANN: Yes, sir.

11 THE COURT: But what I will do is either
12 issue a letter opinion and get it to both lawyers or do a
13 conference call within the next three weeks or so to let
14 you know what my decision will be.

15 All right. Thank you.

16 MR. LESEMANN: Thank you, Your Honor.

17 MR. WARMOTH: Thank you.

18

19 END OF REQUESTED TRANSCRIPT OF RECORD

1 The undersigned, Danette P. Hanks, Court Reporter,
2 Office of Master in Equity for Greenville County, South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete Transcript of Record of requested
5 portions of the proceedings had and evidence introduced in
6 the hearing of the captioned case, relative to appeal,
7 before The Honorable Charles B. Simmons, Jr., as Master in
8 Equity for Greenville County, South Carolina on the 4th
9 day of May, 2022.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any parties hereto.

12
13 August 24, 2022

14 *Danette P. Hanks*

15 Danette P. Hanks, CCR

CRESCENT HOMES

April 20, 2017

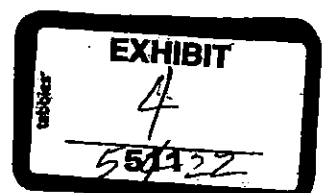
LETTER OF INTENT

1. **PROPERTY:** River Springs Subdivision Phases 1 & 2 (65 lots)
2. **SELLER:** CJN, LLC
3. **PURCHASER:** Crescent Homes SC, LLC
4. **PURCHASE PRICE:** Seventy Thousand and No/100 (\$70,000) Dollars per Finished Lot.
5. **EARNEST MONEY:** As evidence of good faith, Purchaser shall deliver to Purchaser's attorney, upon execution of a contract, a check in the amount of \$200,000 (the Earnest Money) which will be applied to the purchase of said lots.
6. **INSPECTION PERIOD:** Purchaser shall have a 45 day "Due Diligence Period" (Inspection Period) from Contract execution. Purchaser shall conduct, at Purchaser's cost and expense, inspection and studies of any and all aspects of the property solely to purchaser's satisfaction, including but not limited to market analysis and zoning with city approvals. Seller shall make available to Purchaser, for purchaser's review all documents pertaining to the property in the Seller's possession including but not limited to leases, surveys, soil borings and title insurance policies.
- If Purchaser decides not to close after the expiration of the Due Diligence period Purchaser shall, at no cost to seller, forward copies of all reports and or approvals.
7. **CLOSING:** Initial Closing: Closing of initial 16 lots shall occur 30 days after the latest completion of all of the following 4 events: 1) Satisfactory completion of development criteria; and; 2) Fifteen (15) days after the expiration of the "Due Diligence Period" (inspection period); and 3) ARB approval of plans; and; 4) Septic permit issuance. No lot shall be required for take down unless approval has been granted by all necessary planning, zoning, utility, or other government agencies to allow construction of 4 and 5

Page | 1

572 Savannah Highway
Charleston, SC 29407
843.573.9635

Crescent 0225



bedroom single-family residences on these lots consistent with the shape and size of plans in Crescent Homes current plan library.

Additional Closings: Closing of additional six (6) Lots shall occur within 180 days of initial Closing. Six (6) Lots every 90 days thereafter.

8. ARB APPROVAL: Contract is contingent on Purchaser obtaining any necessary ARB approval for the Crescent Homes Plans. Seller and purchaser shall work together to develop any necessary restrictive covenants or ARB guidelines.
9. SEPTIC APPROVAL: Contract is contingent upon Seller obtaining the necessary permits to construct on-site septic systems, granted by the necessary permitting agencies for houses including a combination of 4 and 5 bedroom homes.
10. FINISHED LOTS: Lots shall be cleared sufficiently to allow for the construction of homes up to 70' in depth without the need to remove additional trees.
11. PHASE 2: Seller agrees to proceed with development of Phase 2 in such a manner as to ensure availability of lots according to the timeline established in the takedown schedule without unnecessary delays.
12. CONTINGENCIES: Contract is contingent on Planning Commission approval of a substantially similar plat to preliminary approved plat.
13. CONFIDENTIALITY: Neither party shall disclose the terms, and conditions of this letter of intent to any other party without mutual written consent of Seller and Purchaser, except to those parties acting in a fiduciary capacity (i.e., legal representatives, Financial institutions, authorized agents, partners etc.) who shall be entitled to the knowledge of such for the mutual benefit of Purchaser and Seller.
14. EXCLUSIVITY: Seller agrees not to discuss, negotiate, or agree to a sale or other disposal of the property to any other party until it is determined that a meeting of the minds will not take place or written release is mutually signed or 30 days has taken place from seller receipt of this letter of intent.

Page | 2

572 Savannah Highway
Charleston, SC 29407
843.573.9635

Crescent 0226

This letter of intent sets forth the basic terms of an agreement between the parties with respect to the purchase and sale of the Property. The parties agree to work together in good faith to further document the agreement in a formal contract to be executed and delivered within thirty days after the full execution hereof.

[Signatures for: River Springs Subdivision]

PURCHASER:

CRESCENT HOMES SC, LLC

By: Andru Blonquist
Andru Blonquist
Sr. Vice President

Date: 4/20/17

SELLER:

CJN, LLC

By: [Signature]
member

Date: 5-2-17

EXECUTION VERSION

AGREEMENT FOR PURCHASE AND SALE
OF DEVELOPED LOTS

(32 Single Family Lots/Multiple Closings)

THIS AGREEMENT FOR PURCHASE AND SALE OF DEVELOPED LOTS (this "Agreement") is made and entered into by and between CRESCENT HOMES SC, LLC, a Delaware series limited liability company ("Purchaser"), and C J N, LLC, a South Carolina limited liability company ("Seller"). The last date on which this Agreement is signed by either Purchaser or Seller (each, a "Party" and, collectively, the "Parties") and an executed copy thereof is delivered to the other will be the "Effective Date" of this Agreement.

1. Conveyance: In consideration of the mutual promises and agreements of the Parties and the sum of Sixteen Thousand and No/100 Dollars (\$16,000.00) as earnest money (the "Earnest Money") to be paid by Purchaser to Harvey & Vallini, LLC ("Escrow Agent"), Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell and convey to Purchaser, developed residential lots in that certain subdivision known as River Springs Subdivision (the "Subdivision"), being more particularly described as those certain parcels of land, including any improvements, fixtures, rights, privileges, easements, hereditaments and appurtenances thereto (collectively, the "Real Property"; sometimes referred to as the "Property"), situate, lying and being on Standing Springs Road, Greenville County, South Carolina, being shown and designated as Lots 1 - 32 (32 Lots total; each individually a "Lot", and collectively, the "Lots") shown on the Stakeout Plan prepared by Gray Engineering Consultants dated December 5, 2017 (the "Proposed Subdivision Plat"), a reduced copy of which is attached hereto as Exhibit "A-1" and incorporated herein.
2. Purchase Price and Earnest Money: The Purchase Price shall be paid as follows:
 - A. Price Schedule. The purchase price for each Lot (a "Lot Purchase Price" or "Purchase Price") is set forth on the Lot Pricing and Takedown Schedule attached hereto as Exhibit "B" and incorporated herein (the "Takedown Schedule").
 - B. Earnest Money. The Earnest Money will be deposited with Escrow Agent within five (5) business days after the Effective Date and held in a non-interest-bearing escrow account to be credited equally pro rata in the amount of Five Hundred and No/100 Dollars (\$500.00) per Lot. If the Earnest Money is forfeited by Purchaser pursuant to this Agreement, then the Escrow Agent shall pay the Earnest Money to Seller. If Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period, as defined in subparagraph 4.B. below, or as may otherwise be expressly permitted herein, then the Escrow Agent shall return the Earnest Money to Purchaser.

**DISCLOSURE: PRINCIPALS OF PURCHASER AND SELLER ARE
LICENSED REAL ESTATE BROKERS.**

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3. Subdivision and Lot Selection

- A. Subdivision. As of the Effective Date, the Lots have not been subdivided and are a portion of that certain tax parcel with TMS No. 0584010102601 in the Greenville County, South Carolina tax records (the "Parent Parcel"). Seller has caused to be prepared the Proposed Subdivision Plat reconfiguring the existing tax parcel into thirty-two (32) lots with associated common areas as more particularly shown thereon. Seller will not revise or amend the Proposed Subdivision Plat without the prior written consent of Purchaser, which consent will not be unreasonably withheld. Seller will provide a copy of any comments to or required revisions to the Proposed Subdivision Plat received from Greenville County and/or the applicable Planning Commission as soon as reasonably practicable after receipt thereof. If the comments and required revisions to the Proposed Subdivision Plat are, in the discretion of Purchaser, material, then Purchaser may terminate this Agreement by notice delivered to Seller, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. The Proposed Subdivision Plat Subdivision Plat, as approved by Greenville County and recorded in the Register of Deeds, is referred to herein as the "Subdivision Plat".
- B. Lot Selection: Development of the Lots is subject to the Lot Disturbance Schedule attached hereto as Exhibit "C" and incorporated herein (the "Lot Disturbance Schedule"). Subject to the Takedown Schedule, Purchaser shall, in its sole discretion, select the Lots (the "Applicable Lots") for each Closing, as defined in Paragraph 6 below, by delivering written notice thereof to Seller at least ten (10) days prior to a Closing. Subject to the Lot Disturbance Schedule, Purchaser may from time to time elect to close more Lots than required by the Takedown Schedule for the applicable Closing. If Purchaser closes more Lots than required by the minimum shown on the Takedown Schedule, then the number of excess Lots closed shall be carried forward as a cumulative credit toward the next succeeding Required Minimum Lot Takedown or Takedowns.
- C. Optional Lot Removal. Purchaser may, in its discretion from time to time, remove any Lot from this Agreement: (i) in accordance with the provisions of Paragraph 4.F below; and/or (ii) with respect to Lots 16 through 18 on the Takedown Schedule, if Purchaser determines that such Lot or Lots are not suitable for its development. If Purchaser elects to remove a Lot or Lots from this Agreement, then Purchaser may provide written notice thereof to Seller and Escrow Agent, in which event such Lot shall be removed from this Agreement, and Escrow Agent will return Five Hundred Dollars (\$500.00) of the Earnest Money for each Lot to Purchaser. If a Lot or Lots are so removed from this Agreement, then the number of Lots referenced in Paragraph 9.U below will be deemed amended to reflect the total number of Lots subject to this Agreement.

4. Due Diligence, Access, and Materials:

- A. Due Diligence Materials. Within two (2) business days after the Effective Date, Seller shall deliver to Purchaser copies of all due diligence materials pertaining to all or any portion of the Property in its possession or control, including title commitments, policies, abstracts and opinions together with copies of all title exceptions and materials, including existing and proposed declarations,

covenants, conditions and restrictions and other similar instruments; drawings, plans, as-built plans and specifications, including civil plans and specifications for utilities, grading, drainage, lift stations and pumps, roads and other facilities serving all or any portion of the Property; boundary, topographical, tree and wetland surveys and subdivision plats (including any draft or preliminary plats); environmental assessments, geotechnical studies and cultural resource or threatened and endangered species assessments; zoning certificates, letters, minutes and related materials; site plan and subdivision approvals; annexation agreements; NPDES and other soil and erosion control permits and land disturbance permits; Department of the Army COE wetlands or other certifications or permits together with all materials and information related to or submitted for a jurisdictional determination letter; deposits; general intangibles; contracts and contract rights; guarantees and warranties; marketing and advertising materials, logos, trade names and related registrations; development agreements; development bonds (including maintenance and performance bonds); certificates as to electrical work, building, safety and health approvals; impact and tap fee credits; and all other licenses, certificates, permits, applications, approvals, development rights and entitlements; (collectively, the "Due Diligence Materials"). The "Due Diligence Delivery Date" is the later of: (i) the Effective Date, or (ii) the date on which Seller confirms delivery to Purchaser of all the Due Diligence Materials in its possession or control. Seller shall promptly provide Purchaser with (i) any document described above and coming into Seller's possession or produced by or for Seller after the initial delivery of the Due Diligence Materials, and (ii) upon request, information regarding the general and/or site work contractor performing development work in the Subdivision and regarding the scope of work performed or to be performed by such general and/or site work contractor.

- B. Due Diligence Period. Purchaser shall have forty-five (45) days after the Due Diligence Delivery Date, (the "Due Diligence Period"), in which to inspect the Property, including title, soil testing, surveys, feasibility studies, environmental studies and any other inspections, tests or studies that Purchaser may require. The results of such inspections shall be treated as confidential by Purchaser and not be disclosed to any third party or governmental entity except as may be necessary to obtain permits and approvals in the normal course of Purchaser's business or as may be required by law (provided, however, that such results may be disclosed to Purchaser's consultants, attorneys and lenders, who shall similarly treat such results as confidential). If Purchaser is not satisfied with its inspections of the Property for any reason or no reason, in Purchaser's sole discretion, then Purchaser may terminate this Agreement by notice delivered to Seller on or before the expiration of the Due Diligence Period, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. If actions or inactions of Seller prevent Purchaser's access to property to complete surveys or other due diligence activities, the Due Diligence Period shall be extended on a day-to-day basis until such access is available to Purchaser without interference.
- C. Intentionally Omitted.
- D. Access. During the term of this Agreement, Purchaser, its agents, contractors and representatives shall, from time to time, have the right to enter upon the

Property to perform inspections and testing, provided Purchaser shall indemnify, defend and hold Seller harmless from and against any damages, liability, cost or expense, including attorney's fees incurred by Seller resulting from Purchaser's activities on the Property. This Indemnity shall survive the Closings or the termination of this Agreement.

E. Conveyance of Personal Property. Upon request of Purchaser in connection with the Initial Closing and at any time thereafter, Seller shall convey to Purchaser its right, title and interest in and to all or any portion of the Due Diligence Materials pertaining to the Property at one or more Closings. Seller shall use its best efforts, without additional consideration (provided that Purchaser shall pay out-of-pocket costs, if any), to obtain written consents and approvals as necessary or desirable from design and engineering professionals and governmental authorities in connection with the assignment of Due Diligence Materials to Purchaser.

F. Septic Permits. Seller will cause a septic field perc test and treatment system feasibility study to be performed for each Lot as necessary and will obtain SCDHEC septic permits for the installation of an Easy Flow Gravity Conventional System for a not less than 4-bedroom home on each Lot in a location on each Lot approved by Purchaser (each, a "Septic Permit" and collectively, the "Septic Permits"). Seller will deliver copies of such test results and other materials pertaining to the Septic Permits and the corresponding plans for system improvements as may be requested by Purchaser promptly after such materials are available. Seller will make application for the Septic Permits as soon as reasonably practicable after the Effective Date and shall deliver a copy of each Septic Permit to Purchaser upon issuance thereof.

5. Title:

A. Seller Warranties. Seller represents and warrants to Purchaser that Seller has "good and marketable, fee simple title" to the Real Property, and that at each Closing, Seller shall convey "good and marketable, fee simple title" to the Applicable Lots to Purchaser, subject only to the following exceptions (the "Permitted Exceptions"):

- (1) The lien for ad valorem taxes which are not yet due and payable;
- (2) Easements shown on the Subdivision Plat;
- (3) The Declaration, as defined in Paragraph 15 below; and
- (4) General service lines and utility easements that serve only the Real Property.

"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company, chosen by Purchaser at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions (the "Title Policy").

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3

- B. Title Defects. If Purchaser's examination of the title and a survey of the Real Property reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller prior to the expiration of the Due Diligence Period, then Seller shall promptly cure the Title Defects, provided that if Seller does not promptly demonstrate to Purchaser's reasonable satisfaction that Seller will cure such Title Defects prior to Closing, then Purchaser may elect by written notice to Seller to extend the Due Diligence Period, or, if applicable, the Closing, until such time as such Title Defects are so cured. Notwithstanding the foregoing, Purchaser shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including judgment liens, affecting all of any portion of the Property that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than the applicable Closing. Purchaser shall be entitled to cure Monetary Encumbrances at the applicable Closing with the proceeds payable to Seller at one or more Closings. Purchaser shall be entitled to examine title to the Real Property prior to each Closing and to object to all matters appearing of record or otherwise affecting the Real Property between the date on which Purchaser made its title examination pursuant hereto and the date of each Closing.
- C. Seller Easements. During the term of this Agreement, Seller will not grant any easements, permits, licenses, declarations, covenants or restrictions, or amend, revise or re-file the Subdivision Plat without the prior written approval of Purchaser which shall not be unreasonably withheld.
- D. Property Owners Assessments. Seller represents and warrants that no property owner or home owner assessments or capital contributions will accrue or be payable with respect to any Lot purchased by Purchaser until such time as the Lot is developed and sold to a bona fide third party.
6. Closings: Each Closing shall be consummated by Seller's delivery to Purchaser of a properly executed special warranty deed conveying the Applicable Lots to Purchaser upon receipt by Seller of the Lot Purchase Price for each Applicable Lot, subject to the contingencies set forth herein, at a location selected by Purchaser or by mail through Purchaser's title company, at a specific time and date selected by Purchaser. Seller shall deliver possession of the Applicable Lots to Purchaser at each Closing. Purchaser shall give Seller notice of the date of each Closing together with a list of Applicable Lots at least ten (10) days prior to the selected time and date. The date of such Closings shall be determined as follows:
- A. Initial Closing. Closing of at least ten (10) Lots (the "Initial Closing") shall be held on or before fifteen (15) days after the recording of the Subdivision Plat.
- B. Subsequent Closings. Each Closing after the Initial Closing (a "Subsequent Closing"; the Initial Closing and each Subsequent Closing are referred to singularly as a "Closing" and collectively as the "Closings") shall be conducted in accordance with the provisions of Paragraph 3 above and the Takedown Schedule.
- C. Taxes/Prorations. At each Closing, taxes applicable to any personal property and to the Applicable Lots for the current year shall be prorated between the

Parties as of the date of the applicable Closing. Seller shall be responsible for all assessments placed against the Property prior to the applicable Closing, irrespective of when payable. If the current year taxes for the Applicable Lots have not been determined by the date of the applicable Closing or the Applicable Lots are a portion of a larger tract, then the proration shall be based on the taxes for the previous year or such other information as may be reasonably available. If the current year taxes cannot be paid at the applicable Closing, then Seller's portion shall be credited to Purchaser, provided further if the Real Property is assessed as a part of a larger tract, Seller and Purchaser shall each deposit a sum sufficient to pay an estimate of its proportionate share of the entire tax bill with Escrow Agent. The Parties agree to adjust between themselves any difference in the estimated and actual prorations within thirty (30) days after the actual tax statements for the Applicable Lots are available. Any roll back taxes and special assessments shall be paid by Seller. If there are any potential roll back taxes that are not due and payable at the applicable Closing, Escrow Agent shall hold in escrow sufficient amounts of Seller's proceeds to pay the roll back taxes when the tax bills are issued.

- D. Closing Costs. Seller shall pay for preparation and recording of the Subdivision Plat, the Declaration, the special warranty deeds and any instruments necessary to cure Title Defects, all transfer taxes, deed stamps or documentary stamps and all other costs normally paid by a seller of real estate. Purchaser shall pay for the cost of its inspection and such other costs normally paid by a purchaser of real estate. Each Party shall be responsible for its own attorney's fees.

7. Closing Deliveries:

- A. Seller Documents. At each Closing, Seller shall execute and deliver the following documents to Purchaser, in addition to any other documents required herein:
- (1) Special warranty deed conveying the Applicable Lots subject only to the Permitted Exceptions;
 - (2) Lien and possession affidavit sufficient to induce the title company to issue the Title Policy without standard exceptions;
 - (3) Information required to complete a Substitute Form 1099;
 - (4) Certificate of non-foreign status in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended;
 - (5) South Carolina tax compliance letter or transferor affidavit;
 - (6) Instruments necessary to cure Title Defects, if applicable;
 - (7) Settlement statement which will be prepared by Purchaser's attorney;
 - (8) Bill of sale, transfer and assignment of the Due Diligence Materials, as applicable, in accordance with subparagraph 4.E.;

- (9) Satisfactory evidence of Seller's due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby;
- (10) Certification to Purchaser confirming that the warranties and representations contained in this Agreement are true and correct on the date of each Closing;
- (11) Such easements and rights-of-way over any adjoining land of Seller as may be required to construct single family residences on the Real Property; and
- (12) Such other documents as may be reasonably requested by Purchaser.

B. Purchaser Documents. Purchaser shall execute and deliver to Seller a counterpart of the settlement statement. Purchaser shall also provide satisfactory evidence of Purchaser's due and proper authority, power to perform its obligations hereunder, and power to execute and deliver all documents required hereby, together with such other documents as may be reasonably requested by Seller.

8. Casualty and Condemnation:

- A. Seller shall bear all risk of casualty to the Property and Seller's property located thereon until Closing and transfer of possession to Purchaser.
- B. Subject to the representation in subparagraph 9.C. below, Seller agrees to give Purchaser prompt written notice if it becomes aware of any action or proceeding for condemnation of any part of the Property by friendly acquisition or statutory proceeding that may result in the temporary or permanent taking of all or any part of the Property. Purchaser shall have the right, to be exercised within thirty (30) days after receipt of such notice setting forth the extent of the condemnation and the final offer of compensation therefor, to terminate this Agreement and receive a refund of the Earnest Money, and no Party shall have any further rights or obligations hereunder except for covenants, representations, warranties and indemnities stated herein to survive the termination of this Agreement. If Purchaser does not elect to terminate this Agreement, then Seller will credit Purchaser as applicable at Closing with any monies received by Seller by reason of such taking or Seller will assign to Purchaser at Closing all of Seller's interest in and to any unpaid condemnation award or offers payable to Seller relating to the Property. In the event that such notice of condemnation shall occur within thirty (30) days prior to Closing, Purchaser shall have the right to extend Closing so the same will occur no later than thirty (30) days after Purchaser's receipt of Seller's notice required pursuant to this subparagraph 8.B.

9. Seller's General Representations and Warranties: Seller covenants, represents and warrants to Purchaser the following:

- A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent

of any other party. The signatories to this Agreement for Seller are duly authorized to bind Seller.

- B. Entering into this Agreement will not constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it nor result in a violation of any applicable law, order, rule or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending in any court or before, or by, any federal, district, county or municipal department, commission, board, bureau, agency or other governmental authority, which could become a cloud on the title to the Property or any portion thereof or which could threaten the validity or enforceability of the transaction contemplated by this Agreement or any actions taken pursuant hereto.
- C. As of the Effective Date, no portion of the Property is subject to temporary requisition or use by any governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding, nor is there now pending any condemnation, requisition or similar proceeding affecting the Property or any portion thereof. Seller has neither received notice nor has any knowledge that any such proceeding is contemplated.
- D. Seller neither not received any notice from any federal, state or municipal authority nor does Seller otherwise have any knowledge of any violation of any law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements with respect to the Property. Seller will promptly notify Purchaser if it receives any such notice or otherwise becomes aware of any actual or potential violation.
- E. Seller neither has knowledge of nor has Seller received notice of any default or breach under any covenant, condition, restriction, right-of-way or easement affecting the Property or any portion thereof and no such default or breach now exists.
- F. No special assessments have been levied, are threatened against, or are pending against all or any portion of the Property, and Seller has no knowledge of any intended assessments.
- G. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Property or Seller is pending, threatened or contemplated by Seller.
- H. There are no leasehold or occupancy agreements encumbering the Property, no party has any possessory interest to or right in the Property, and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Property.
- I. Seller will not sell, assign, convey or encumber any right, title or interest in or to the Property or any portion thereof, other than as provided in subparagraph 21.B. below. Seller will not create or permit any lien, encumbrance or charge thereon without promptly discharging the same.

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- J. Seller will not take any action or omit to take any action, which action or omission would have the effect of violating or causing to be untrue any of the representations, warranties, covenants and agreements contained herein.
- K. Seller is not aware of any moratorium on the issuance of building permits or installation or activation of utilities or the approval of preliminary or final subdivision plats. If Seller becomes aware of such a moratorium, Seller will immediately notify Purchaser in writing. All dates, deadlines and time periods contained in this Agreement will be tolled until each such moratorium has been lifted.
- L. The Property is served by public water with sufficient capacity for development of the Lots for their intended use.
- M. No portion of any Lot is within a flood plain or wetland and, except for building setback lines and rights-of-way shown on the Subdivision Plat, no portion of any Lot is unsuitable for or restricted from constructing building improvements thereon.
- N. To the best of Seller's knowledge, the Property has neither been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws, regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on, or about the Property.
- O. The Property is zoned for the construction of single family detached residences, and Seller and the Property are in compliance with all governmental ordinances including such zoning ordinances, regulations, laws, codes and development, permit and subdivision requirements that affect the Property. Seller has no knowledge of any pending change in the zoning classification of the Property.
- P. The Property and Seller are in and, subject to Purchaser's obligations set forth in subparagraph 11.D. below, will continue to be in compliance with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements. There are no outstanding fines against Seller or the Property with respect to the foregoing requirements.
- Q. Seller shall have completed and filed a Notice of Intent ("NOI") with the Environmental Protection Agency and any other applicable authorities and shall have provided (or made available to) Purchaser a copy of the Storm Water Pollution Prevention Plan and the NOI applicable to Seller's development activities.
- R. The Property has no special tax designation that requires any payment or penalty for change in use, and Seller has no knowledge of any special tax or assessment to be levied against all or any portion of the Property.
- S. If applicable, Seller shall post and maintain street, sedimentation, storm drainage, and other forms of surety (performance) bonds as may be required by the

EMA 3

applicable governmental authorities for development of the Lots and the drainage facilities serving the Lots, whether such facilities are located on or off the Real Property.

- T. All trees, landscaping, central mail facilities (if applicable) and other improvements to the common areas that are the responsibility of Seller, or if not Seller, the applicable developer, have been installed as required by the applicable authority or association.
- U. Septic Permits for not less than thirty-two (32) 4-bedroom homes are or will be issued and in full force and effect for system improvements and in a location reasonably acceptable to Purchaser, and each Lot will accommodate the system improvements and location designated therefor in the applicable Septic Permit.

10. Seller Representations and Warranties Regarding the Lots: Seller covenants, represents and warrants to Purchaser the following with respect to the Applicable Lots at each Closing:

- A. The Subdivision Plat will be recorded in the plat records of Greenville County, South Carolina. All operational permits will be received so that a building permit and a certificate of occupancy can be obtained on each Lot.
- B. Domestic water lines are stubbed within the boundary of each Lot no more than six (6) feet below existing grade.
- C. Electricity, natural gas, telephone, and cable, including fiber optic, facilities will be installed in sufficient capacity to service the Lots for their intended use and will be available for connection either within the boundary of each Lot or in the public right-of-way adjacent thereto.
- D. All impact, capacity and similar fees have been paid in full, and Purchaser shall only be required to pay normal and customary tap or connection fees for each Lot at the time of issuance of a building permit therefor.
- E. The location of the utilities described in subparagraphs 9.L. and 10.B. above will be clearly marked on the ground and accurately shown on as-built utility plans delivered to Purchaser in accordance with subparagraph 4.A. above. All such utilities will be underground except for appurtenant facilities that are customarily above ground. Seller shall provide letters from the applicable authority stating that water taps are available for purchase for each Lot.
- F. Intentionally Omitted.
- G. All streets, roads, curbs and gutters and surface water management facilities serving the Lots and shown on the Subdivision Plat will be installed in accordance with applicable regulatory requirements and, subject to Purchaser's obligations set forth in subparagraphs 11.A. and 11.C. below, will be maintained by Seller at its expense in good condition and repair until dedication to and acceptance by the applicable governmental authority.
- H. Construction access will be available to the Lots.

EMT 3

- I. All street lights, fire hydrants and other common facilities serving the Lots will be installed in accordance with applicable governmental regulations and permitting requirements.
- J. Each Lot will be free of trash and debris; and iron pins will be on the ground at each corner.
- K. Each Lot will have a street address and tax parcel identification number.
- L. Seller shall have provided Purchaser with two (2) copies of the "as built" construction plans for the water system and storm drainage network, which plans will be sufficient to enable Purchaser to locate water taps on each Lot. Water taps for each Lot will be in accessible locations in the ground within the boundary of such Lot.
- M. Seller agrees to keep all lots owned by Seller maintained by keeping grass and weeds cut to six inches (6") or less and keeping the lots free of debris.
- N. Notwithstanding the requirements of the Lot Disturbance Schedule, Seller will cause Lots 1-14 and 19-32 to be developed in a manner that provides completed Lots for takedown in accordance with the Takedown Schedule.

If Seller breaches any of the representations and warranties set forth in this Paragraph 10 (a "Paragraph 10 Breach"), then Purchaser may give written notice thereof to Seller, which notice will require Seller to cure such breach within fourteen (14) days after delivery of notice thereof. If Seller fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Purchaser may either:

- (1) Cure such breach, and Seller will reimburse Purchaser the actual and reasonable cost thereof plus ten percent (10%). Purchaser shall submit reasonable backup documentation with any request for reimbursement, and Seller shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. Notwithstanding the foregoing, if the cost to cure any such breach is less than One Thousand and 00/100 Dollars (\$1,000.00), Purchaser may cure such breach without prior written notice to Seller provided that Purchaser makes available photographs or other reasonable documentation evidencing such breach with its request for reimbursement. If Seller fails to reimburse Purchaser any amounts due pursuant to this Paragraph 10, Purchaser shall be entitled to a credit therefor against amounts due to Seller at the next Closing; or
- (2) Declare a default and pursue its remedies under subparagraph 13.B. below.

11. Purchaser Construction Obligations:

- A. Purchaser shall repair or cause to be repaired any damage beyond normal wear and tear caused by its employees, agents, contractors and subcontractors to the streets, roads, curbs, gutters, sidewalks, storm drainage, signs or other

EMT 3

improvements in connection with Purchaser's construction activities on, about or adjacent to the Property.

- B. Purchaser shall not cause or permit its employees, agents, contractors and subcontractors to dump or deposit building materials, trash or debris on any lots, rights-of-way or other property not then owned by Purchaser.
- C. Purchaser shall cause construction dirt and gravel generated by its construction activities to be periodically cleaned by a professional street cleaning service.
- D. Purchaser will comply with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements.
- E. Intentionally Omitted.
- F. Purchaser shall have the right to clean up or landscape any property owned by Seller to enhance the appeal of the Lots, provided Purchaser shall obtain Seller's prior approval thereof. Seller shall approve any such request or provide written objections to Purchaser within fourteen (14) days after request therefor, which approval will not be unreasonably withheld. Failure of Seller to approve any such request within said fourteen (14) day period shall be deemed approval thereof.
- G. Purchaser shall install trees and landscaping on each Lot in accordance with applicable regulatory requirements.

If Seller determines that Purchaser has failed to fulfill any of its obligations set forth in this Paragraph 11 (a "Paragraph 11 Breach"), then Seller may give written notice thereof to Purchaser, and Purchaser shall commence to cure such breach within fourteen (14) days after delivery of notice thereof. If Purchaser fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Seller may elect to cure such breach, and Purchaser will reimburse Seller the actual and reasonable cost thereof plus ten percent (10%). Seller shall submit reasonable backup documentation with any request for reimbursement, and Purchaser shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. The sole remedy of Seller for a Paragraph 11 Breach is set forth in this Paragraph 11.

12. Service Areas:

- A. Seller shall permit Purchaser to install a temporary construction and/or sales trailer on property not then owned by Purchaser in a location mutually agreeable to the Parties. Purchaser shall maintain the temporary office in a good and neat condition in compliance with all applicable regulatory requirements. Purchaser shall remove all gravel, pavement, concrete and debris in the area immediately surrounding the location of the temporary office and cause it to be grassed within forty-five (45) days after the removal thereof.
- B. Seller shall provide a concrete wash out area on property not then owned by Purchaser. Purchaser shall periodically remove accumulated concrete material.

EMT 3

Purchaser's obligations under this Paragraph 12 are deemed additional Construction Obligations. If Purchaser fails to fulfill same, such failure shall be a Paragraph 11 Breach, and the sole remedy of Seller is set forth in Paragraph 11.

13. Remedies:

A. Purchaser's Default.

- (1) If Purchaser fails to close on the Applicable Lots within the time frames set forth in this Agreement because of Purchaser's breach of this Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy, Seller may terminate this Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The Parties recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure of Purchaser to consummate the sales contemplated hereby, it being specifically acknowledged and agreed by the Parties that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Purchaser's breach of this Agreement and relinquishes any and all right to pursue an action for specific performance against Purchaser in the event Purchaser defaults in any of its obligations hereunder.
- (2) If Purchaser fails to fulfill any obligation under this Agreement other than as set forth in Paragraph 11, Paragraph 12 or subparagraph 13.A.(1) above, then Seller may notify Purchaser of such default. If Purchaser has not cured such default within thirty (30) days after Purchaser's receipt of notice thereof, then Purchaser shall be deemed in default under this Agreement and Seller may as its sole remedy terminate this Agreement and retain the Earnest Money as liquidated damages. If such default cannot be reasonably cured within such thirty (30) day period, then Purchaser shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Purchaser is diligently working towards a cure. The Parties hereby acknowledge that the actual damages suffered by Seller on account of Purchaser's default would be difficult if not impossible to measure and that the liquidated damages set forth in this subparagraph 13.A.(2) are a reasonable estimate of the damages Seller may suffer on account of Purchaser's breach.

- B. Seller's Default. If Seller defaults under any provision of this Agreement, Purchaser may notify Seller of such default. If Seller has not cured such default within thirty (30) days after Seller's receipt of notice thereof, then Seller shall be deemed in default under this Agreement. If such default cannot be reasonably cured within such thirty (30) day period, then Seller shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Seller is diligently working towards a cure. If Seller fails to cure any default within the time frame set forth above, then Purchaser may as its sole and exclusive remedies either: (i) seek specific performance, injunctive relief or any other remedies available at law or in equity; (ii) proceed with the purchase of Lots and deduct the cost to cure from the Purchase Price; or

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3

(iii) terminate this Agreement and receive a refund of the Earnest Money. If Purchaser engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Purchaser.

14. **Notice:** All notices, demands, consents, approvals, and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing, which may be delivered via e-mail or may be delivered by either a personal delivery service with charges therefor billed to shipper or by a nationally recognized overnight delivery service with charges therefor billed to shipper (either of which shall be deemed given and received upon delivery). If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. in the receiving location, in which case such receipt shall be the next business day. Any notice not deliverable shall be deemed received on the first date of attempted delivery. Any notices under this Agreement may be given by or to the respective attorneys listed below.

Purchaser: Crescent Homes SC, LLC
572 Savannah Hwy
Charleston, South Carolina 29407
Attention: Edward M. Terry
Telephone: (843) 573-9635
Email: t.terry@crescenthomes.net

With a copy to: Harvey & Vallini, LLC
497 Bramson Court, Ste. 201
Mt. Pleasant, SC 29464
Attention: Steven E. Harvey, Esq.
Telephone: (843) 388-8883
Email: steveh@hvlawsc.com

And to: LevickRoth
999 Peachtree Street, NE
Suite 855
Atlanta, Georgia 30309
Attention: Suzan E. Roth, Esq.
Telephone: (404) 201-7841
Email: sroth@levickroth.com

Seller: C J N, LLC
c/o Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0557
Email: nickfranchina@accessrealtysc.com

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With a copy to:

Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0557
Email: nickfranchina@accessrealtysc.com

In the event of a change of address by a Party, such Party shall give written notice thereof in accordance with the foregoing. Rejection or failure to claim delivery of any such notice, or any refusal to accept any such notice, or the inability to deliver any such notice hereunder because of changed address or phone for which no notice was given, shall be deemed to be receipt of the notice sent as of the date of attempted delivery.

15. Restrictive Covenants and Plan Approval: Seller agrees to adopt Purchaser's standard form of Declaration of Covenants, Conditions and Restrictions or similar instrument for the Subdivision as may be revised to reflect the particulars of the Subdivision (the "Declaration"). Seller will be the "Declarant" under the Declaration until such time as the development obligations of the Declarant thereunder have been satisfied and the remaining obligations assumed by the home owners' association, and so long as this Agreement is in effect, all matters pertaining to the ARB and plan approval will be determined by Purchaser in its sole discretion. The Declaration will be recorded at the Initial Closing, and Seller will bear any third-party costs incurred in the preparation and recording thereof.
16. Signs: As long as this Agreement is in effect, Purchaser shall have the right to erect a limited number of professionally-designed and constructed temporary signs on the Lots and at the entrance to the neighborhood for purposes of advertising the homes to be constructed on the Lots.
17. Entrance Feature Plans. If not previously delivered to Purchaser, within **thirty (30) days** after the beginning of the Due Diligence Period, Seller will deliver proposed plans for an appropriate entrance feature for the Subdivision to Purchaser for its review and approval, which approval will not be unreasonably withheld. Within ten (10) business days after receipt, Purchaser shall deliver written notice of approval or detailed written comments with suggested revisions to Seller. The Parties will work together in good faith to agree upon the plans for an appropriate entrance feature for the Subdivision prior to the expiration of the Due Diligence Period. Seller will cause the entrance feature for the Subdivision to be completed not later than sixty (60) days after the recording of the Subdivision Plat.
18. Lot Grading and Preparation Cost. If the cost to grade and prepare any Lot for development as a single-family home in accordance with Purchaser's criteria, including without limitation the recommendations of Purchaser's geotechnical engineer, exceeds Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Lot Prep Cost Cap"), then Seller will reimburse Purchaser an amount equal to the actual cost in excess of the Lot Prep Cost Cap (the "Lot Prep Excess Cost"). Seller will reimburse Purchaser any Lot Prep Excess Cost within fourteen (14) days following request therefor accompanied by reasonable documentation thereof, provided Purchaser may, at its option, take a credit against the Purchase Price due at any Closing for the aggregate, unreimbursed Lot Prep Excess Cost incurred by Purchaser to date. Purchaser shall provide reasonable documentation of any Lot Prep Excess Cost not previously submitted to

Seller no later than three (3) business days prior to a Closing in which a Lot Prep Excess Cost credit will be taken.

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.
20. Commissions: The Parties covenant and agree, each to the other, to indemnify the other against any loss liability, cost, claims, demands, damages, actions, causes of action or suits based upon or arising out of the employment or use by the indemnifying Party of any real estate broker or agent in connection with the purchase and sale of the Property. Although not entitled to a commission in connection with the transaction contemplated herein, principals of Purchaser are licensed real estate brokers.
21. Miscellaneous:
 - A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
 - B. Assignment of Agreement by Seller. Seller shall have the right to assign this Agreement upon thirty (30) days prior written notice to Purchaser to a limited liability company in which Seller shall be a member or manager. Upon any such transfer, Seller shall be released of all liability under this Agreement so long as the entity to which Seller assigns this Agreement agrees to assume all of Seller's obligations hereunder.
 - C. Assignment of Agreement by Purchaser. Purchaser shall not assign this Agreement or its rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except that Purchaser may assign to a subsidiary or affiliate controlled by or under common control with Purchaser or Edward M. Terry (collectively, an "Assignee"). Principals of Purchaser are licensed real estate brokers or agents and may be principals in an Assignee. If such assignment is made, then the applicable sales contemplated by this Agreement shall be consummated in the name of and by the authorized officials of any such Assignee and Seller shall look solely to such Assignee for the performance and discharge of all the obligations and liabilities of Purchaser hereunder.
 - D. Undertakings. The Parties agree to execute and deliver such other and further instruments and documents as may be necessary to implement and effectuate the terms of this Agreement.
 - E. Good Faith. The Parties shall act in good faith in performing and discharging their respective duties and obligations hereunder.
 - F. Governing Law. This Agreement has been made in the State of South Carolina and shall be interpreted in accordance with South Carolina law and any enforcement of this Agreement shall be brought in the State of South Carolina.

EMT 7

- G. Construction. The extent to which any Party participated in the drafting of this document shall not determine how any provision hereof is to be construed, it is being recognized that both Parties have contributed substantially and materially in the preparation of this Agreement.
- H. Waiver. No provision, condition, or covenant of this Agreement shall be waived by either Party hereto except by a written instrument delivered to the other Party and executed by the Party consenting thereto, and no failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of such Party's right to demand exact compliance with the terms hereof.
- I. Insurance. Purchaser agrees to maintain in full force and effect liability insurance covering damage to property and injuries to persons resulting from or connected with its construction and sales activities on and about the Real Property. Each Party agrees to indemnify, defend and hold the other Party harmless from any liability, loss or damage to persons or property, including reasonable attorneys' fees and related costs and expenses, caused by the indemnifying Party or by its agents or employees.
- J. Time Periods. Should the date upon which any act required to be performed under this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.
- K. Entire Agreement. This Agreement contains all of the terms and conditions agreed to between the Parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction contemplated herein.
- L. Time of Essence. Time is of the essence with respect to this Agreement.
- M. Like Kind Exchange. Either Party may elect to sell or purchase the Real Property and qualify under the rules of a Section 1031, Tax Deferred Exchange. The Parties will cooperate with the other in effecting such exchange, providing it creates no expense or liability to the other Party.
- N. Sales and Marketing. Purchaser shall have the right to use the name "River Springs " in any signage, advertising and other marketing materials relating to its marketing of the Lots.
- O. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original and all of which shall be deemed one and the same agreement. Counterparts delivered by e-mail delivery of a PDF or similar type format data file, shall have the same force and effect as if such counterpart were an original thereof.
- P. Headings. Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

- Q. Survival. Except as otherwise provided in this Agreement, all of the terms, provisions, representations, warranties and indemnities of this Agreement shall not merge with any deed but shall survive each and every Closing. Termination of this Agreement for any reason after the Initial Closing shall be effective only with respect to such Lots for which closing has not occurred.
- R. Confidentiality. Except as specifically provided in this Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Parties agree to (i) keep this Agreement and its terms confidential, (ii) keep confidential any information that is provided by Purchaser or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of this Agreement, and (iv) not make any public announcement or press release about this Agreement without the other's prior written approval.
- S. Intentionally Omitted.
- T. Patriot Act. The Parties each hereby certify that: (i) they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) they are not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. The Parties each hereby agree to defend, indemnify and hold harmless the other from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
- U. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, rather such provision shall be enforced to the greatest extent permitted by law.
- V. Amendment. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the Parties.
- W. Including. The term "including" when used in this Agreement means "including but not limited to."
- X. Independent Consideration. If Purchaser terminates this Agreement pursuant to a right to do so granted to Purchaser hereunder, and if the Earnest Money is otherwise refundable to Purchaser and additional consideration is required for this Agreement to be enforceable under applicable law, then Purchaser and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into this Agreement.

22. Expiration: This Agreement has been executed first by Purchaser as a continuing offer to purchase the Property, which offer shall be open to acceptance by Seller until 5:00 p.m. on _____, **2018**, at which time the offer shall be deemed to be withdrawn by Purchaser if the same has not been accepted by Seller and a signed copy delivered to Purchaser.

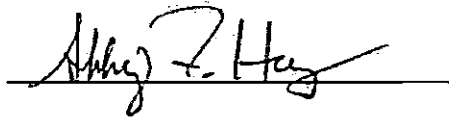
[Signatures begin on following page]

EMT 

[Purchaser's signature page for Agreement for Purchase and Sale of Developed Lots]

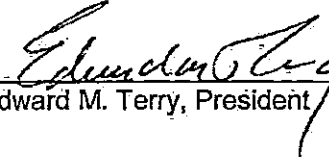
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year shown below their signatures:

Witness:



PURCHASER:

CRESCENT HOMES SC, LLC, a Delaware
series limited liability company

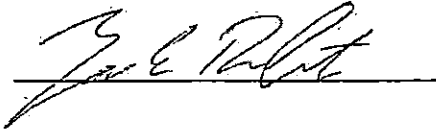
By: 
Edward M. Terry, President

Date: 10/8/18, 2018

[Signatures continue on next page]

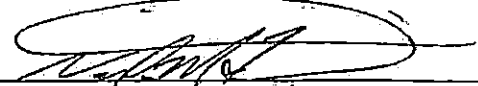
[Seller's signature page for Agreement for Purchase and Sale of Developed Lots]

Witness:



SELLER:

C J N, LLC, a South Carolina limited liability company

By: 

Print Name: NICK F. H. H. H.

Print Title: Managing Director

Date: 10-5-18, 2018

EXHIBIT "A-2"

Future Phase

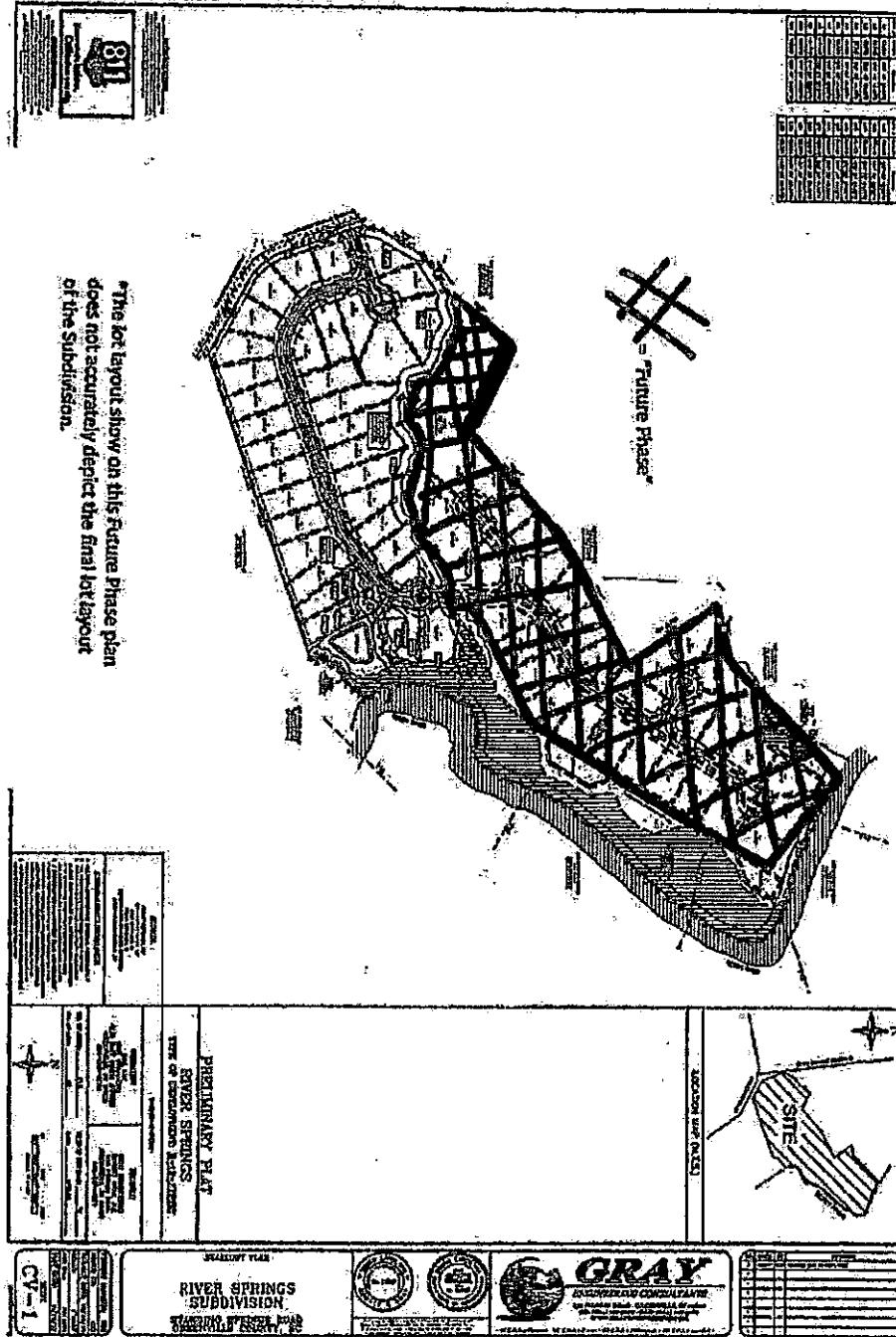


EXHIBIT "B"

Lot Pricing and Takedown Schedule

Lot Takedowns (See subparagraph 3.B regarding Lot Selection):

<u>Takedown</u>	<u>Required Minimum Lot Takedown (Note 1)</u>
Initial Closing	10
2	6
3	8
4	8

Lots:

<u>Lots</u>	<u>Purchase Price</u>
1-14	\$66,500.00
15-18	\$86,500.00
	[Adjacent to Reedy River]
19-32	\$66,500.00

Notes:

1. Pursuant to subparagraph 6.B. of the Agreement, each Subsequent Closing shall occur no later than one hundred eighty (180) days following the immediately preceding takedown.
2. Each Closing deadline runs from the prior Closing deadline of the previous Closing, not from the actual date of the prior Closing or Closings.
3. With respect to each Closing, Purchaser shall have the option to purchase Lots (which shall be some or all, of the Lots in a future takedown requirement) at a faster rate than provided in Paragraph 2 above, and, in such event, the Lots so purchased shall be credited to the next subsequent purchase obligation. Purchaser will be able to "skip" one subsequent takedown during the contract period at the Purchaser's discretion.
4. The last Required Minimum Lot Takedown will be adjusted to reflect any Lots removed from this Agreement in accordance with Paragraph 3.C. above.
5. In addition to the rights of Purchaser pursuant to Paragraph 10, if any Closing is delayed for any reason that is the fault of Seller, then Purchaser may require that the Required Minimum Lot Takedown cease until all such delays have been satisfied, at which time the Required Minimum Lot Takedown will continue from the point at which they were previously suspended.

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EXHIBIT "C"

Lot Disturbance Schedule, Cont.

VERY SPECIAL NOTES:

1. FOR LOTS 2-13, AND LOTS 18-22, THE CONTRACTOR SHALL NOT DEVELOP ANY LOTS UNTIL THE RIGHT OF WAY HAS BEEN COMPLETELY STABILIZED. NO MORE THAN 10 LOTS AT ANY TIME MAY BE DISTURBED, WHICH DISCHARGE TO THE MULTI-USE BASIN, WHICH INCLUDE LOTS 2-13, AND LOTS 18-22.
2. THE FOLLOWING LOTS DO NOT CONTRIBUTE TO THE MULTI-USE BASIN AND MAY BE DEVELOPED AT ANY TIME AS LONG AS THE ASSOCIATED BMPs ARE IN PLACE: 1, 14-18, 23-28, AND 29-32.
3. LOTS 25-27, SHALL NOT BE DEVELOPED UNTIL SEDIMENT TRAP WITH DISCHARGE PIPE HAS BEEN INSTALLED. LOT 23 MAY BE DEVELOPED ONCE SITE HAS BEEN STABILIZED AND THE DETENTION POND HAS BEEN CONVERTED TO POST CONDITIONS.
4. LOTS 17 AND 18 ARE ONLY TO BE DEVELOPED AFTER THE MULTI-USE BASIN HAS BEEN CONVERTED TO POST CONDITIONS TO ALLOW ACCESS TO LOTS 17 AND 18.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the Effective Date by and between CJN, LLC, a South Carolina limited liability company (collectively, "Seller") and Douglas F. Clark, his permitted successors and assigns ("Purchaser"). The "Effective Date" as used herein shall be the date this Agreement is signed by both parties and if both parties do not sign on the same date, it shall be the date on which the Agreement is signed by the last party to sign. If one of the parties fails to date its signature in the blank provided, the Effective Date shall be the date of the other party's signature.

ARTICLE I PURCHASE AND SALE

1.1 **Agreement of Purchase and Sale.** Subject to the terms and conditions set forth herein and for and in consideration of the mutual promises of the parties made herein and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Seller agrees to sell and convey and Purchaser agrees to purchase that certain tract of land containing approximately 34.11 acres located on Old Standing Springs Road, Simpsonville, SC 29681, Greenville County TMS# 0584010102601 as shown on plat of survey as set forth in Section 3.4 (the real property described in this clause (a) being herein referred to as the "Property");

1.2 **Permitted Exceptions.** The Property shall be conveyed, and Purchaser shall accept the Property, subject to the matters which are deemed to be Permitted Exceptions pursuant to ARTICLE 2 hereof (herein referred to collectively as the "Permitted Exceptions").

1.3 **Purchase Price.** Seller is to sell and Purchaser is to purchase the Property for a total purchase price of Seven Hundred Seventy Five Thousand and no/100 Dollars (\$775,000.00) ("Purchase Price"). The Purchase Price shall be payable as follows:

(a) Earnest Money - \$10,000.00; and

(b) The remainder payable in cash or other immediately available funds at Closing;

1.4 **Earnest Money.** Within five (5) days of the Effective Date, Purchaser shall deposit \$10,000.00 (the "Earnest Money") with Access Realty, LLC, 4113 E. North Street, Greenville, South Carolina 29615 ("Escrow Agent"). Escrow Agent shall deposit the Earnest Money in a federally regulated financial institution. If this transaction is fully consummated, the Earnest Money shall be applied against the cash portion of the Purchase Price. The parties understand and agree that Escrow Agent is authorized to deliver the Earnest Money to the Seller at Closing. However, if Closing does not occur, and Escrow Agent receives a notice requesting release of the Earnest Money from either party, Escrow Agent is authorized to release the Earnest Money to the requesting party, provided that: the notice sets forth the basis on which the Earnest Money is to be released; the notice is simultaneously sent to the other party; and the request is not refuted by the non-requesting party within ten (10) days after receipt of the notice. If the parties cannot agree as to the disposition of the Earnest Money, Escrow Agent is authorized to hold the Earnest Money until the parties reach agreement or until a court of competent jurisdiction establishes the rightful disposition. In any legal action involving the Escrow Agent, including any inter-pleader action initiated by the Escrow Agent, all legal expenses reasonably incurred by the Escrow Agent including all discovery and appeals expenses shall be advanced from the Earnest Money and then borne by the party against which final judgment is rendered or as otherwise ordered by the court. All fees and costs incurred, including reasonable attorneys' fees, shall be paid by the non-prevailing party. In consideration of Escrow Agent's services, the Seller and the Buyer agree to indemnify, defend and hold Escrow Agent harmless from and against all liabilities, damages, costs, expenses (including all attorneys' fees and expenses incurred by Escrow Agent or any of Escrow Agent's employees or agents), causes of action, suits, demands, judgments, and claims of any nature whatsoever that might arise at any time out of Escrow Agent's holding, investing, reinvesting, payment, or other disposition of the Earnest Money, except those which result from Escrow Agent's willful misconduct or gross negligence.



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And Purchaser to buy

1.5 **Contingencies.** The obligation of the Seller to sell the Property is contingent upon Crescent Homes SC, LLC, a Delaware limited liability company, terminating any and all rights of first refusal for the Property pursuant to that Agreement for Purchase and Sale of Lots and Development with an effective date of October 8, 2018, and any amendments thereto (collectively, the "LPA").

ARTICLE 2 INSPECTION PERIOD

2.1 **Right of Inspection.** Purchaser shall have a period of fifteen (15) days from the Effective Date in which to perform due diligence and conduct and approve any investigations and studies Purchaser deems necessary (the "Inspection Period"). During the Inspection Period (as hereinafter defined), Purchaser shall have the right to make a physical inspection of the Property, and Purchaser, personally or through agents, employees or contractors, may go upon the Property during normal business hours or at other reasonable times, with no less than twenty four (24) hours' advance notice to Seller, to make boundary line or topographical surveys and to conduct such non-invasive studies, tests, samplings, investigations and analyses of any and all aspects of the Property as Purchaser deems desirable, including, without limitation, engineering, environmental, soil, and groundwater and other tests, samplings and studies of the Property. Purchaser shall indemnify and hold harmless Seller from and against all claims, demands, losses and expenses (including reasonable attorneys' fees) for injuries or death to persons or damage to the Property resulting from Purchaser's exercise of its inspection rights herein. The foregoing indemnification shall survive the Closing or the termination of this Agreement. This Section 2.1 shall survive the Closing or any termination of this Agreement.

2.2 **Seller Deliveries.** Seller hereby agrees to deliver to Purchaser within five (5) days following the Effective Date, copies of all materials described below to the extent in Seller's possession and by this reference made a part hereof (collectively, the "Property Documents"), to the extent Seller has not already done so:

- (a) Copies of all environmental reports related to the Property;
- (b) Copies of surveys and site plans related to the Property;
- (c) Copies of engineering reports related to the Property; and
- (d) Copies of all title insurance policies for the Property.

Seller does not warrant the accuracy or completeness of any information provided to the Purchaser or its attorneys, accountants, engineers or other representatives.

2.3 **Right of Termination.** At any time during the Inspection Period, Purchaser may terminate this Agreement and all Purchaser's obligations for any reason whatsoever, in its sole discretion. If Purchaser deems the Property unsatisfactory, Purchaser may terminate this Agreement by giving notice to Seller as provided in Paragraph 10.2 hereof prior to the expiration of the Inspection Period. Upon such termination by Purchaser prior to the expiration of the Inspection Period, the Escrow Agent shall promptly refund all Earnest Money to Purchaser and thereafter, neither party hereto shall have any further obligations hereunder to the other. All Earnest Money shall be non-refundable to the Purchaser upon the expiration of the Inspection Period, except in the event of default of Seller.

ARTICLE 3 TITLE AND SURVEY

3.1 **Title Examination; Commitment for Title Insurance.** Purchaser shall obtain from a nationally recognized Title Insurance Company (the "Title Company"), a commitment for an ALTA 2006 Owners Policy of Title Insurance (the "Title Commitment") within Seven (7) days of the Effective Date (the "Title Review Period").

3.2 **Survey.** ^{Seller} ~~Purchaser~~ will, at ^{Seller's} ~~Purchaser's~~ expense, employ a reputable surveyor or surveying firm,

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licensed by the State of South Carolina, to survey the Property and prepare and deliver to Purchaser and Seller during the Inspection Period a boundary survey and plat thereof (the "Survey") reflecting the total area of the Property calculated to the nearest 100th of an acre, and the location of all improvements, if any, to be approved by the Purchaser and Seller.

3.3 **Title Objections; Cure of Title Objections.** Purchaser shall have until three (3) days after the expiration of the Title Review Period to give written notice to Seller of objections to any exceptions disclosed in the Title Commitment and any amendments thereto. Any exception in the Title Commitment to which Purchaser does not object by timely written notice (the "Title Objections") shall be a "Permitted Exception." Time is of the essence with respect to the provisions of this Section 3.3. If Seller is able and willing to cure or remove such Title Objections (which removal shall be deemed to be effected by the issuance of title insurance eliminating or insuring over the effect of such Title Objection), but Seller fails or is unable to cure any such exception at or prior to Closing, Seller shall be entitled to one reasonable adjournment of the Closing of up to, but not beyond, the thirtieth (30th) day following the date for Closing set forth in Section 4.1 hereof to attempt such cure.

Seller may, but notwithstanding anything in this Agreement to the contrary, shall not be obligated under any circumstances, to remove, or cause to be removed or insured over, at its expense, any Title Objection. If Seller determines, within its discretion, not to remove, satisfy or otherwise cure any such title exceptions, Purchaser's sole remedy hereunder in such event shall be either: (i) to accept title to the Property subject to such exceptions without abatement of the Purchase Price or (ii) to terminate this Agreement by providing written notice to Seller pursuant to Section 10.2. Upon such termination, the Earnest Money shall be returned to Purchaser and neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.4 **Conveyance of Title.** At Closing, Seller shall convey and transfer to Purchaser, by recordable limited warranty deed, such title to the Property as will enable the Title Company to issue to Purchaser, at Purchaser's expense, an ALTA Owner's Policy of Title Insurance (the "Title Policy") covering the Property, in the full amount of the Purchase Price without exception other than Permitted Exceptions and reservation of a Right of First Refusal (as defined in Article 9 below). Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters, which shall be deemed to be Permitted Exceptions:

- (a) The lien of all ad valorem real estate taxes and assessments not yet due and payable as of the date of Closing, subject to proration between the parties as herein provided;
- (b) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;
- (c) easements for utilities and road rights of way serving the Property but which do not adversely affect intended development and use thereof; and
- (d) items which are, or become, Permitted Exceptions pursuant to Sections 3.3 or 3.5 hereof.

3.5 **Amendments to Title Commitment.** Purchaser shall have the right to object to any title exceptions first raised by the Title Company in any amendments to the Title Commitment for matters first occurring after the effective date of the initial Title Commitment by giving written notice of those exceptions to which Purchaser is objecting within one (1) day after Purchaser's receipt of any such amendment. If Purchaser does not object to any exception first raised in an amendment to the Title Commitment issued after Purchaser's receipt of the Title Commitment by giving timely written notice as herein provided, such exception shall be a Permitted Exception. In the event Purchaser gives timely written notice of objection to any exception as herein provided, the provisions of Section 3.3 shall apply with respect thereto as if set forth herein in full. Time is of the essence with respect to the provisions of this Section



ARTICLE 4 CLOSING

4.1 **Time and Place.** The consummation of the transaction contemplated hereby ("Closing") shall be held on or before July 15, 2020 through the office of the closing attorney selected by the Purchaser. At Closing, Seller and Purchaser shall each perform their respective obligations as set forth in this Agreement. The Closing may be held at such other place or such earlier time and date as Seller and Purchaser shall mutually approve in writing. The date on which the Closing is scheduled to occur hereunder (or, if earlier, or as the context requires, the date on which Closing actually occurs) is referred to herein as the "Closing Date".

4.2 **Seller's Obligations at Closing.** At or prior to Closing, Seller shall:

(a) deliver a Limited Warranty Deed, in proper form for recording, conveying good, marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, easements and restrictions except permitted exceptions;

(b) deliver to the Title Company any standard affidavits as may be required by the Title Company;

(c) deliver to the Title Company any standard Seller's affidavits as may be required by the Title Company;

(d) deliver to Purchaser possession of the Property, subject only to the permitted exceptions;

(e) deliver to Purchaser an affidavit duly executed by Seller stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act;

(f) deliver to Purchaser a residency certification as required by South Carolina and federal laws; and

(g) deliver such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

4.3 **Purchaser's Obligations at Closing.** At Closing, Purchaser shall:

(a) deliver to Escrow Agent the full amount of the Purchase Price, as increased or decreased by credits, prorations and adjustments as provided in Section 4.5 hereof, in immediately available federal funds wire transferred to Escrow Agent's Account pursuant to the terms of this Agreement, it being agreed that at Closing the Earnest Money shall be applied towards payment of the Purchase Price;

(b) deliver to Seller such evidence as Seller's counsel and/or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser; and

(c) deliver to the Title Company a duly executed closing statement; and

(d) deliver such additional documents as shall be reasonably requested by the Title Company or required by this Agreement or by any applicable law to consummate the transaction contemplated by this Agreement, provided, however, that in no event shall Purchaser be required to undertake any other material liability not expressly contemplated in this Agreement, unless Purchaser elects to do so in its sole discretion.

4.4 **Closing Costs and Prorations.** Costs and payments related to the purchase and sale of the Property shall be paid at Closing as follows: Seller shall satisfy or pay (a) all mortgages and other liens with respect to the Property; (b) the cost of documentary stamps, statutory deed recording fees or transfer taxes assessed in connection

with the conveyance of the Property; (c) all of Seller's legal fees; and (d) the cost of preparing the deed. Purchaser shall pay for (a) title insurance premiums; (b) all of Purchaser's legal fees; (c) loan fees and costs, if any; (d) costs of all inspections; ~~(e) rollback taxes, if any, and (f) cost of new survey, if any.~~ All other costs of closing shall be paid by the party incurring such cost. *Ad valorem* property taxes, which are a lien, but not yet due and payable, shall be prorated as of the Closing date.

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4.5 **Conditions Precedent to Obligation of Purchaser.** The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date (or such earlier time as otherwise required hereby) of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

(a) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as if made and updated as of the Closing Date;

(b) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date; and

(c) All other conditions precedent to Purchaser's obligation to consummate the transaction hereunder (if any) which are set forth in this Agreement shall have been satisfied on or before the Closing Date.

In the event any of the foregoing conditions has not been satisfied by the Closing Date other than through Purchaser's default or failure of Purchaser to fully comply with its obligations under this Agreement, Purchaser shall not be obligated to consummate the transactions contemplated hereby until such conditions have been satisfied and until such conditions have been satisfied, Purchaser shall have the right to terminate this Agreement by written notice given to Seller, whereupon Escrow Agent shall refund the Earnest Money to Purchaser and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive the termination of this Agreement.

Notwithstanding anything to the contrary in the foregoing, if any of the foregoing conditions in this Section 4.5 has not been satisfied due to a default or failure of performance by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations shall instead be determined in accordance with ARTICLE 6.

4.6 **Conditions Precedent to Obligation of Seller.** The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

✓ (a) Crescent Homes SC, LLC, a Delaware limited liability company, terminating any and all rights of first refusal for the Property pursuant to the LPA (as set forth in Section 1.5 hereinabove);

(b) Seller shall have received the Purchase Price, as adjusted for prorations and net of the amount needed to satisfy any mortgage loan;

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as if made and updated as of the Closing Date;

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date; and

(e) All other conditions precedent to Seller's obligation to consummate the transaction hereunder (if any) which are set forth in this Agreement shall have been satisfied on or before the Closing Date.

In the event any of the foregoing conditions has not been satisfied by the Closing Date other than through Seller's default or failure of Seller to fully comply with its obligations under this Agreement, Seller shall have the right to terminate this Agreement by written notice given to Purchaser on the later of (i) the Closing Date or (ii) the

date that is five (5) days after Purchaser has received written notice from Seller stating that any of the above conditions have not been satisfied. If Seller terminates this Agreement pursuant to this Section, Escrow Agent shall pay the Earnest Money to Seller and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive a termination of this Agreement, except in the event condition 4.6(a) is not satisfied in which event the Escrow Agent shall pay the Earnest Money to the Purchaser.

Notwithstanding anything to the contrary in the foregoing, if any of the foregoing conditions in this Section has not been satisfied due to a default or failure of performance by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations and the disposition of the Earnest Money as a result of such default shall instead be determined in accordance with ARTICLE 6.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **Representations and Warranties of Seller.** Seller hereby makes as of the Effective Date the following representations and warranties to Purchaser, which representations and warranties shall be true and correct in all material respects as of the Closing Date.

(a) **Authority.** Seller has the full right and authority to enter into this Agreement and to convey fee simple title to the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person(s) signing this Agreement on behalf of Seller are authorized to do so. Neither the execution and delivery of this Agreement nor any other documents executed and delivered, or to be executed and delivered, by Seller in connection with the transactions described herein, will violate any provision of any agreements, regulations, or laws to or by which Seller is bound. This Agreement has been duly authorized, executed and delivered by Seller, is a valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity;

(b) **Pending Actions.** No action, suit, arbitration, administrative or judicial proceeding, or unsatisfied order or judgment is pending or, to Seller's knowledge, threatened against Seller which pertains directly to the Property or the transaction contemplated by this Agreement. In addition, there exists no other action, suit, arbitration, administrative or judicial proceeding, or unsatisfied order or judgment which is pending or, to Seller's knowledge, threatened against Seller which, if adversely determined, would have a Material Adverse Effect. (As used in this Agreement, the term "Material Adverse Effect" means, with respect to any fact or circumstance, that such fact or circumstance would individually or in the aggregate, have a material adverse effect on title to the Property or any portion thereof, or on Seller's ability to consummate the transaction contemplated herein, or on the physical condition, legal status, value or ability to develop or operate the Property in its condition as of the Effective Date or as related to the Intended Improvements).

(c) **Condemnation.** Seller has received no notice of, nor to the best of Seller's knowledge is there, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation.

(d) **Conflicts.** There is no agreement to which Seller is a party, or binding on Seller, which is in conflict with this Agreement.

(e) **Financial Status.** Seller is solvent, has not made a general assignment for the benefit of its creditors, and has not admitted in writing its inability to pay its debts as they become due. Seller has neither filed, nor does it contemplate the filing of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or any other proceeding for the relief of debtors in general, nor has any such proceeding been instituted by or against Seller, nor, to Seller's knowledge, is any such proceeding threatened or contemplated. The sale of the Property will not render Seller insolvent.

5.2 **Survival of Seller's Representations and Warranties.** The representations and warranties of Seller set forth in Section 5.1 shall survive Closing for a period of six (6) months (the "Survival Period"), unless notice setting forth a specific claim under any such representation or warranty (a "Claim") shall be given to Seller within that period, in which case such representation or warranty shall survive until such claim is finally and fully resolved.

5.3 **Covenants of Seller.** Seller hereby covenants with Purchaser, from the Effective Date until the Closing or earlier termination of this Agreement, as follows:

(a) **Maintenance of Property.** Seller shall maintain the Property in a manner generally consistent with the manner in which Seller has maintained the Property prior to the Effective Date;

(b) **Execution of New Contracts.** Seller shall not, without Purchaser's prior written consent in each instance (which consent may be withheld in Purchaser's sole discretion), enter into any contract or agreement or lease that will be an obligation affecting the Property or binding on Purchaser after the Closing;

(c) **Disposition of the Property and Other Matters.** For so long as this Agreement remains in force, Seller shall not, without Purchaser's prior written consent in each instance (which consent may be withheld in Purchaser's sole discretion):

(1) sell, assign, rent, lease, convey (absolutely or as security), grant a security interest in, or otherwise encumber or dispose of, the Property (or any interest or estate therein), change or request a change in the zoning classification of the Property or any development restrictions applicable to the Property, or consent to or acquiesce in any of the foregoing;

(2) enter into any contract that will be an obligation affecting the Property subsequent to the Closing; or

(3) enter into any lease, license or occupancy agreement of all or any part of the Property which (i) cannot be terminated by Seller on thirty (30) days' written notice, and (ii) terminated by Purchaser as of or after the Closing Date without notice and at no cost or expense to Purchaser.

5.4 **Representations and Warranties of Purchaser.** Purchaser hereby makes the following representations and warranties to Seller as of the Effective Date:

(a) **Authority.** Purchaser has the full right and authority to enter into this Agreement and to purchase the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person signing this Agreement on behalf of Purchaser is authorized to do so. Neither the execution and delivery of this Agreement nor any other documents executed and delivered, or to be executed and delivered, by Purchaser in connection with the transactions described herein, will violate any provision of any agreements, regulations, or laws to or by which Purchaser is bound. This Agreement has been duly authorized, executed and delivered by Purchaser, is a valid and binding obligation of Purchaser and is enforceable against Purchaser in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity;

(b) **Pending Actions.** There is no action, suit, arbitration, administrative or judicial administrative proceeding, or unsatisfied order or judgment pending or, to Purchaser's knowledge, threatened against Purchaser or the transaction contemplated by this Agreement, which, if adversely determined, could individually or in the aggregate have a material adverse effect on Purchaser's ability to consummate the transaction contemplated herein; and

(c) **Conflicts.** There is no agreement to which Purchaser is a party, or binding on Purchaser, which is in conflict with this Agreement.



5.5 **Survival of Purchaser's Representations and Warranties.** The representations and warranties of Purchaser set forth in Section 5.4 shall survive Closing.

ARTICLE 6 DEFAULT

6.1 **Default by Purchaser.** If the sale of the Property as contemplated hereunder is not consummated due to Purchaser's default hereunder, then Escrow Agent shall pay the Earnest Money to Seller, on demand, without prejudice to any other rights or remedies of Seller hereunder, at law or in equity. This Section 6.1 is subject to Section 6.4 hereof.

6.2 **Default by Seller.** If the sale of the Property as contemplated hereunder is not consummated due to Seller's default hereunder, then Escrow Agent shall refund the Earnest Money to Purchaser, on demand, and the Purchaser as its sole remedies hereunder, may (1) terminate this Agreement by notice to Seller; or (2) bring an action for specific performance. Notwithstanding the foregoing to the contrary, Purchaser shall not exercise any of its options under this Section unless, after making written demand upon Seller, Seller fails within ten (10) business days to cure such default or breach. This Section 6.2 is subject to Section 6.4 hereof. Notwithstanding any language contained herein to the contrary, the refusal of Crescent Homes SC, LLC to terminate any and all rights of first refusal for the Property pursuant to the LPA shall ^{NOT} constitute a Seller default hereunder.

6.3 **Notice of Default; Opportunity to Cure.** Neither Seller nor Purchaser shall be deemed to be in default hereunder until and unless such party has been given written notice of its failure to comply with the terms hereof and thereafter does not cure such failure within five (5) business days after receipt of such notice; provided, however, that this Section 6.3 shall not apply in case of (i) Purchaser's failure to deliver the Earnest Money or any portion thereof on the date required or (ii) a party's failure to make any deliveries required of such party on the Closing Date. Such failures under sub-sections (i) and (ii) shall not have the effect of extending the due date of any Earnest Money deposit (or portion thereof) or the Closing Date hereunder.

6.4 **Recoverable Damages.** Notwithstanding Sections 6.1 and 6.2 hereof, in no event shall the provisions of Sections 6.1 and 6.2 limit (i) either Purchaser's or Seller's obligation to indemnify the other party or the damages recoverable by the indemnified party against the indemnifying party due to a party's express obligation to indemnify the other party in accordance with this Agreement, or (ii) either party's obligation to pay costs, fees or expenses under this Agreement, including, without limitation, Section 4.6 hereof or the damages recoverable by either party against the other party due to a party's failure to pay such costs.

6.5 **Survival.** This ARTICLE 6 shall survive the rescission, cancellation, termination or consummation of this Agreement.

ARTICLE 7 RISK OF LOSS

7.1 **Risk of Loss.** Until the purchase of the Property has been consummated on the Closing Date, all risk of loss of, damage to, or destruction of, the Property (whether by fire, flood, tornado or other casualty, or by the exercise of the power of eminent domain, or otherwise) shall belong to and be borne by Seller. For purposes of this Agreement, any contamination of the Property with Hazardous Materials or release or discharge at the Property of Hazardous Materials, except for such contamination, release, or discharge caused by Purchaser or its agents, occurring on or after the Effective Date shall constitute a casualty.

7.2 **Casualty or Condemnation.** In the event of any damage to or destruction of any material portion of the Property or in the event of any taking or threat of taking by condemnation (or any conveyance in lieu thereof) of any material portion of the Property by anyone having the power of eminent domain, Purchaser shall, by written notice to Seller delivered within ten (10) business days of receiving written notice from Seller of such event, elect to: (a) terminate this Agreement and all of Purchaser's obligations under this Agreement, whereupon the Earnest Money shall be returned to Purchaser, this Agreement shall terminate and Purchaser and Seller shall have no further rights

and obligations hereunder except those which expressly survive termination of this Agreement; or (b) consummate the Closing subject to the terms and conditions of this Agreement. If Purchaser receives Seller's written notice within less than ten (10) business days of Closing, the Closing Date shall be extended as necessary in order for Purchaser to have ten (10) business days in which to make its election. If Purchaser does not elect to terminate this Agreement pursuant to clause (a) of this Section 7.2, then Seller shall on the Closing Date pay to Purchaser all insurance proceeds then received by Seller and all condemnation awards and compensation then received by Seller. In addition, Seller shall transfer and assign to Purchaser, in form reasonably satisfactory to Purchaser, all rights and claims of Seller with respect to payment for damages and compensation on account of such damage, destruction or taking.

7.3 Notice of Condemnation or Casualty. Seller shall notify Purchaser immediately upon Seller's receiving notice of the occurrence or existence of any damage, destruction, condemnation or threat of condemnation affecting the Property and, at the same time, shall provide Purchaser with such information with respect thereto as is in Seller's possession in order to aid Purchaser in making, on an informed basis, the election between the alternatives provided by clauses (a) and (b) in Section 7.2 above. Notwithstanding anything in this Agreement to the contrary, Purchaser shall have ten (10) business days after it receives such information from Seller within which to elect between such alternatives, and, accordingly, the Closing Date shall be postponed, if and to the extent necessary, to allow Purchaser such ten (10) business day period in which to make the election under Section 7.2 above.

ARTICLE 8 COMMISSIONS

8.1 Representation and Indemnity. Purchaser and Seller each hereby represents and warrants to the other that it has not disclosed this Agreement or the subject matter hereof to, and has not dealt with, any real estate broker, agent or salesman so as to create any legal right or claim in any such broker, agent or salesman for a real estate commission or similar fee or compensation with respect to the negotiation and/or consummation of this Agreement or the conveyance of the Property by Seller to Purchaser. Purchaser and Seller shall indemnify, hold harmless and defend each other from and against any and all claims and demands for a real estate brokerage commission or similar fee or compensation arising out of any claimed dealings with the indemnifying party and relating to this Agreement or the purchase and sale of the Property (including reasonable attorneys' fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity).

8.2 Survival. This ARTICLE 8 shall survive the rescission, cancellation, termination or consummation of this Agreement.

ARTICLE 9 RIGHT OF FIRST REFUSAL

9.1 Right of First Refusal. As additional inducement for Seller to sell the Property, Purchaser has agreed to Seller reserving a right of first refusal to repurchase the Property in the event Purchaser, his successors, heirs and assigns, should decide to sell and/or convey the Property for a period of ^{3 years} ~~ten (10)~~ years from the date of Closing. If Purchaser receives a bona fide offer to purchase the Property (the "Selected Property"), then Seller shall promptly notify Purchaser of said offer(s) evidenced by a copy of the offer. Seller shall have a right of first refusal to purchase the Property on the same terms as the bona fide offer received by Purchaser (the "Right of First Refusal"). Within fifteen (15) days of receipt of the terms of the bona fide purchase offer, Seller shall notify Purchaser in writing as to whether it desires to purchase the Property. If Seller does not provide Purchaser with written notice within said fifteen (15) day period, Seller will be deemed to have refused to purchase the Property and Purchaser shall be free to sell the Property to the other party on the terms of the bona fide purchase offer. If Seller elects to purchase the Property, the closing shall occur within sixty (60) days of Seller's election. If Seller elects not to exercise the Right of First Refusal as to the Property and the bona fide third party transaction is not consummated, Seller shall retain the right to exercise its Right of First Refusal for the Property.

**ARTICLE 10
MISCELLANEOUS**

10.1 **Assignment.** Purchaser may assign its rights under this Agreement to any entity controlled by or under common control of Purchaser or in which Purchaser has a majority interest without Seller's consent, and may otherwise assign its rights hereunder with the consent of Seller in Seller's sole discretion. No transfer or assignment by Seller or Purchaser shall release or relieve such assignor of its obligations hereunder without the express written consent of the non-assigning or non-transferring party. Each party will assist the other, if requested, in effectuating a tax-deferred exchange under Section 1031 of the Internal Revenue Code and related regulations; provided, however, that the Closing shall not be delayed and non-requesting party shall incur no greater expense or liability in connection with the transactions contemplated under this Agreement than they would have incurred without said exchange. The parties shall execute all documents reasonably requested by the requesting party or any Qualified Intermediary as that term is defined by Internal Revenue Service Regulations, Rev. Proc. 2000-12, 2000-4 I.R.B. 387, to effectuate said exchange (including an assignment of rights and obligations under this Agreement to the Qualified Intermediary).

10.2 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the day of service if served personally on the party to whom notice is to be given; (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below if transmitted during regular business hours on a business day, and if not, then on the following business day; (iii) on the day of transmission if delivered by electronic mail during regular business hours on a business day and, if not, then on the following business day; (iv) one (1) business day after being sent by a nationally recognized overnight courier or United States mail; or (v) three (3) days after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. All notices shall be addressed as follows:

Seller:
CJN, LLC
Attn: Nicholas M. Franchina
4113 E. North Street
Greenville, SC 29615
Email: nickfranchina@yahoo.com
Phone: 864-630-0557

Purchaser:
Douglas F. Clark
2869 Old Standing Springs Road
Simpsonville, SC 29681

Email: _____

Phone: _____

With Copy to:
P. Ryan Brown
Keable & Brown, PA
109 Laurens Rd., Bldg. 2, Ste. A
Greenville, SC 29607
Email: ryan@keablelaw.com
Phone: 864-250-4000 Fax: 864-250-4004

If to Escrow Agent: Access Realty, LLC
4113 E. North Street
Greenville, SC 29615
Attn: Earlene Cassell
Telephone: 864 322-8282
Email: ecassell@accessrealtysc.com

10.3 **Modifications.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought. Except in the case of counterpart signature pages pursuant to Section 10.8, this Agreement shall not be altered, amended or modified by electronic means, including, without limitation, electronic mail or electronic record.

10.4 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Eastern Standard Time. All references to "days" in this Agreement shall mean calendar days unless specifically set forth otherwise.

10.5 **Successors and Assigns.** Subject to Section 10.1 hereof, the terms and provisions of this Agreement are to apply to and bind the successors and permitted assigns of the parties hereto.

10.6 **Entire Agreement.** This Agreement, including the exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

10.7 **Further Assurances.** Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property. The provisions of this Section 10.7 shall survive Closing.

10.8 **Counterparts.** This Agreement may be executed in counterparts, and all such executed counterparts shall constitute and be part of the same agreement. Facsimile, DocuSign or electronically mailed copies of executed counterparts shall be deemed to be the same as originals. It shall be necessary to account for only one such counterpart in proving this Agreement.

10.9 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.10 **Applicable Law.** This Agreement is performable in the State of South Carolina and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of South Carolina. Seller and Purchaser hereby irrevocably submit to the jurisdiction of any state or federal court sitting in the State of South Carolina and judicial district in which the Property is located in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state and judicial district in which the Property is located. Purchaser and Seller agree that the provisions of this Section 10.10 shall survive the Closing of the transaction contemplated by this Agreement or any termination of this Agreement.

10.11 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

10.12 **Attorneys' Fees.** In the event litigation is required by either party to enforce the terms of this Agreement, the prevailing party of such action shall, in addition to all other relief granted or awarded by the court, be entitled to judgment for reasonable attorneys' and/or paralegals fees and costs incurred by reason of such action and all

10.13 **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any section or any subsection hereof.



10.14 **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.15 **Termination of Agreement.** It is understood and agreed that if either Purchaser or Seller terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve Seller and Purchaser (in which event the defaulting party shall remain liable as provided in this Agreement) from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

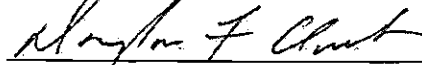
10.16 **Survival.** All provisions of this Agreement, which are not fully performed as of Closing, shall survive Closing subject to the terms and provisions set forth in this Agreement.

10.17 **Time of Essence.** Time is of the essence with respect to this Agreement.

SIGNATURE PAGE TO FOLLOW

----- IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date. -----

PURCHASER:



DOUGLAS F. CLARK

DATE: 6-26-2020

SELLER:

CJN, LLC,

A SOUTH CAROLINA LIMITED LIABILITY COMPANY

BY:



NICHOLAS M. FRANCHING, ITS MANAGER

DATE: 6-23-2020

SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE

This **SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE** ("Second Amendment") is made and entered into as of July 27, 2020 by and between **CRESCENT HOMES SC, LLC**, a Delaware series limited liability company ("Purchaser"), and **C J N, LLC**, a South Carolina limited liability company ("Seller"). Seller and Purchaser being collectively referred to as the "Parties."

WHEREAS, Purchaser and Seller entered into that certain Agreement for Purchase and Sale of Developed Lots, having an Effective Date of October 8, 2018 (the "Agreement") regarding that certain track or parcel of real estate identified as TMS No. 0584010102601, located in Greenville County, South Carolina (the "Real Property"); and

WHEREAS, the Agreement included a provision indicating that Seller would deliver a right of first refusal to Purchaser at the Initial Closing relating to the "Future Phase" of the subdivision, and Seller desire to amend the right of first refusal provisions of the Agreement, for purposes of clarification and compliance with the Agreement;

WHEREAS, Section 19 of the LPA Agreement provides the following with respect to the right of first refusal ("ROFR-1") under the Agreement:

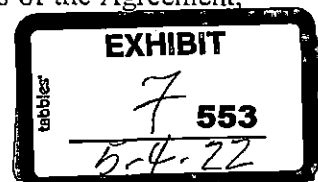
Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.

WHEREAS, ~~on or about June 26, 2020, C J N received an offer for purchase of the future phase ("Offer"), and as of that date, the Initial Closing had not occurred and the memorandum referenced in Section 19 had not been agreed to or recorded.~~

WHEREAS, ~~the Offer was set to close on July 15, 2020, but, on or about July 10, 2020, Purchaser filed a lis pendens in relation to the ROFR-1 Property in *Crescent Homes SC, LLC v. C J N, LLC*, Greenville County Case No. 2020-CP-2300343 ("Lis Pendens"), preventing closing of the sale related to the Offer.~~

WHEREAS, ~~the parties are in~~Parties have a dispute regarding the Offer, the enforceability of ROFR-1 based on its terms and/or the circumstances at the time of the Offer, if enforceable, the status of the parties rights and obligations under ROFR-1 at the time of the Offer, and the Lis Pendens (the "Dispute"). Real Property and various provisions of the Agreement (the "Dispute"). including a dispute as to the Right of First Refusal;

WHEREAS, ~~the parties~~Parties wish to reserve all rights, claims, and defenses related to the Dispute, but, in order to facilitate the carrying out of the remaining terms of the Agreement,



~~wish to reach while also facilitating an Initial Closing and Seller's grant of a compromise as to any future right of first refusal valid and enforceable Right of First Refusal to Purchaser;~~

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller amend the Agreement as follows:

1. The Recitals set forth above are hereby incorporated into this Second Amendment and are hereby made a part hereof, as if fully set forth herein.
- ~~2. The parties reserve all claims and defenses related to the Dispute but otherwise agree that ROFR 1 is terminated and shall be of no further effect. The right of first refusal granted herein below shall not be construed as a waiver of any rights related to the Dispute. The parties agree that any further right of first refusal shall be governed by the following.~~
3. Seller hereby grants and delivers to Purchaser a right of first refusal ("ROFR-2") relating to the Future Phase on the following terms and conditions:
 - a. Immediately upon receipt, Seller shall notify Purchaser of any offer *bona fide*, binding written offer ("Offer") received during the Term (defined herein below) to purchase that certain parcel of all or any portion of the Future Phase, which is the real property ("Property") that is legally described on Exhibit A as attached hereto to this Second Amendment and made a part hereof, whether as gross acreage or as lots. The Property is that which is also generally depicted as the cross-hatched area shown on Exhibit "A-2" of the Agreement as "Future Phase", and labeled as the "Future Phase." Seller shall also immediately provide Purchaser with copies of any and all amendments made to the Offer.
 - b. Purchaser shall have a right of first refusal on any such offer Offer to purchase all or any portion of the Property, whether as gross acreage or as developed lots. Upon receipt of any such offer the Offer from Seller, Purchaser shall have a 30-day due diligence period ("Due Diligence Period") to determine whether to exercise the right of first refusal. In order However, the Due Diligence Period shall begin to run only if Seller has already provided Purchaser with written notice of a permissible and usable means of access for purposes of vehicular ingress and egress from the Future Phase. All provisions of Sections 4(A), (D) and (E) of the Agreement relating to Due Diligence shall be applicable to the Due Diligence Period relating to the Future Phase.
 - b.c. To exercise the right of first refusal, Purchaser shall, on or before the last day of the due diligence period, submit a Due Diligence Period, provide written offer notice to Seller, matching that Purchaser shall purchase the Future Phase for the purchase price terms and all upon the other material terms of any such offer (including conditions or contingencies) as stated in the Offer, subject to the provisions of this Second Amendment relating to the closing date of the potential purchase of the Future Phase by Purchaser.

e. ~~The "Term" of ROFR 2 begins on the Effective Date of the Second Amendment and will continue until the earliest to occur of the following, at which point it will automatically expire and terminate:~~

i. ~~On the date of sale of the Property to a third party after Purchaser declines to exercise ROFR 2 in accordance with the above.~~

d. On the closing date for final closing identified in If Purchaser elects to purchase the Future Phase, the closing of the Future Phase shall be held no sooner than the later of the following: (i) thirty (30) days from the conclusion of the Due Diligence Period; or (ii) the time period for closing that was set forth in the bona fide written offer, subject to the conditions or contingencies stated in the Offer, as applicable, and subject to Seller's ability to provide clear and marketable title to the Future Phase, including a legal means of access.

e. Should Purchaser, by written notice to Seller, elect not to exercise the right to purchase, or should Purchaser fail to notify Seller of its election to purchase by the close of the Due Diligence Period, Seller shall be free to consummate the sale of the Property, or the applicable portion thereof, to the third party that submitted the Offer, provided that the sale is closed based upon the same material terms and conditions as contained in the Offer, without any substantive modification thereto. Should any sale be consummated to the third party, Purchaser's right of first refusal shall thereafter be of no further force and effect with respect to the Future Phase. However, should any such sale not be consummated, Seller shall, in the event Seller subsequently receives any modified or new bona fide written offer from any third party to purchase the Future Phase, or any portion thereof, again follow the provisions of this paragraph requiring notice to Purchaser and opportunity for Purchaser to purchase the Property.

f. Purchaser's right of first refusal begins on the Effective Date of the Second Amendment and shall expire on July 27, 2030. The right of first refusal shall be applicable to any offers received by Seller during this period until such time as each of the following has occurred: (i) Seller has complied with Seller's obligations hereunder; (ii) Purchaser provides written notice to Seller declining to proceed with the purchase of the Future Phase; and (iii) Seller closes on the sale of the Future Phase to the third-party on the basis of the same Offer that was presented to Purchaser.

ii. Upon the filing of the memorandum of the right of first refusal attached as Exhibit B to the Agreement (the closing associated with Take Down No. 4);

iii. On July 27, 2022

4.3. Upon execution of this Second Amendment, Purchaser shall immediately cancel/withdraw the Lis Pendens and shall not refile it previously filed on the Future Phase.

5.4. Capitalized terms used in this Second Amendment not otherwise defined above shall have the same meaning as set forth in the Agreement.

6.5. The Agreement, as amended hereby, is hereby ~~ratified~~, confirmed and remains in full force and effect as amended hereunder.

7.6. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Executed copies of this Second Amendment may be delivered electronically, by facsimile or in PDF or similar format, and such copies shall be deemed originals for all purposes.

IN WITNESS WHEREOF, the ~~parties~~Parties hereto have executed this Second Amendment as of the date first above written.

[Purchasers Signature to Second Amendment to Agreement for Purchase and Sale]

Witness:

PURCHASER:

CRESCENT HOMES SC, LLC, a
Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

[Signatures Continue on Next Page]

[Seller's Signature to Second Amendment to Agreement for Purchase and Sale]

Witness:

SELLER:

C J N, LLC, a South Carolina
limited liability company

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

The real property affected and that is the subject of this Lis Pendens is specifically the real property described below:

All that certain piece, parcel, or tract of land, together with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as "AREA: 2,664,658.13 SQ. FT. 61.17 ACRES, on a plat entitled "BOUNDARY AND WETLAND SURVEY AT THE REQUEST OF: CJN LLC," prepared by Precision Land Surveying, Inc., dated March 2, 2017, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1274 at Page 0001. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Less and excepting:

All those certain pieces, parcels, or lots of land, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 on that certain plat entitled "River Springs Phase I" prepared by EAS Professionals, Inc., dated August 8, 2019, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1345 at Page 0018. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TMS: P/O 0584010102601



F. James Warmoth
Attorney
Licensed in SC and NC
704 East McBee Avenue
Greenville, SC 29601
864.242.4899
warmoth@conlaw.com

May 18, 2021

Ellis R. Lesemann
Lesemann & Associates LLC
418 King Street, Ste. 301
Charleston, SC 29403
erl@lalawsc.com

RE: **CJN, LLC v. Crescent Homes SC, LLC**
Tender of Opus Petrus, LLC offer
Right of first refusal for Future Phase, River Springs Subdivision

Dear Ellis:

As you know, CJN has disputed and continues to dispute that Crescent has any rights to the future phase under Section 19 of the LPA¹ for River Springs, containing the right of first refusal in dispute ("ROFR"). Nevertheless, CJN makes the below tender in an effort to resolve the dispute regarding Crescent's purported rights. Therefore, CJN limits this tender to the Opus offer and does not waive its previously stated objections to the ROFR should the proposed sale to Opus or Crescent not reach closing.

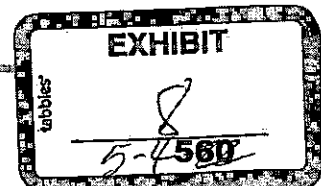
Enclosed herewith is an offer by Opus Petrus, LLC to purchase the property identified as Future Phase in Section 19 of the LPA. The Opus Offer contains the following key terms

- \$1,250,000 purchase price
- 90 day due diligence period
- closing on or before September 15, 2021.

The letter will serve as CJN's tender of a right of first refusal to Crescent to purchase the future phase on terms meeting or exceeding those set forth in the Opus Offer.

Although the parties have not agreed to procedures for the exercises of the ROFR, Crescent has proposed certain procedures it presumably finds acceptable. In particular, Crescent has proposed a 45 day due diligence period, while the Opus Offer allows for a 90 day due diligence period. Therefore, CJN requests the following procedures:

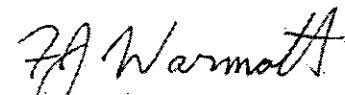
¹Agreement for Purchase and Sale of Developed Lots dated October 8, 2018 ("LPA")
GREENVILLE www.conlaw.com



1. Tender: CJN tenders the Opus offer via this letter dated May 18, 2021.
2. Response period: After tender, Crescent shall have a 20 day response period, ending on June 7, 2021, to elect to exercise the right of first refusal or decline to exercise the right of first refusal.
3. Election to exercise or decline right:
 - a. In order to exercise the right of first refusal, Crescent shall, on or before June 7, 2021, submit a written, qualifying offer to Seller. A qualifying offer must meet or exceed the Opus offer's favorability to CJN with respect to price and all other material terms, including but not limited to closing schedule, due diligence period, and extent of contingencies.
 - b. In order to decline the right of first refusal, Crescent shall, on or before June 7, 2021, submit a written notice declining to exercise the right of first refusal.
 - c. The right of first refusal shall terminate automatically should Crescent fail to respond in accordance with 3.a or 3.b above.
4. Due diligence: The due diligence period and procedures shall be as set forth in the Opus Offer. In order to hold the due diligence and closing schedule set forth in Opus Offer, the 90 day due diligence period shall begin running from the May 10, 2021 Opus offer date and end on August 8, 2021.
5. Term: The "Term" of this right of first refusal begins on May 18, 2021 and will continue through June 7, 2021, at which point it will automatically expire and terminate.

I look forward to your response regarding the above.

Sincerely,


F. James Warmoth

cc: CJN, LLC



**AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(GENERAL-USE AND LOTS/ACREAGE)**

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Opus Petrus, LLC

Seller(s), CJN, LLC

("Buyer"), and

("Seller").

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.

(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.

(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.

TBD

(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.

(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.

(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.

(G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods. 4/19/2021

☐ BUYER ☒ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. **PURCHASE PRICE:** \$ 1,250,000.00

One Million, Two Hundred Fifty Thousand

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☒ Cash USD.

Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before _____. This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☒ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address Standing Springs Rd

Unit # _____

City Simpsonville

State of South Carolina

Zip 29680

County of Greenville

Lot _____ Block _____ Section/Phase _____ Subdivision _____

Other _____

Tax Map 0584010102601

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ In attachment(s):

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before September 15, 2021 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): TBD

[PSB] BUYER [_____] BUYER [_____] SELLER [_____] SELLER HAVE READ THIS PAGE

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and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ _____ accompanies this offer and \$ 5,000.00 will be paid within 2 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) _____ to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Keable & Brown as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/lens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ _____ OR _____ % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☐ Seller's or ☒ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

7. FINANCE: Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum _____ % and maximum _____ % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within _____ Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within _____ Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender

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SCR Form 330 11/2017 PAGE 2 of 9

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lends loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): _____ ☐ FHA ☐ VA ☐ Conventional ☐ Seller

Other Seller Financing ☐ An FHA VA Financing Addendum ☐ is ☐ not attached. Additional financing terms ☐ are ☐ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other _____ ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD ends no later than 90 Business Days after Contract's original Primary Effective Date unless the Parties agree in writing to extend the Due Diligence Period.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Contract Renegotiations, Seller to obtain estimates, Buyer and Seller to negotiate Contract terms, and Buyer to potentially timely/proper Due Diligence terminate or buy.

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SCR Form 330 11/2017 PAGE 3 of 9

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During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. **TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.**

- (1) Conduct/obtain inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds. **DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD:** The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as Insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☒ is ☐ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than 60 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination

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during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____.

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this Inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property Issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to Inspect Property Issues for all their needs.

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property Issues per their needs.

20. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☐ Seller or ☒ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

 BUYER [_____] BUYER  SELLER [_____] SELLER HAVE READ THIS PAGE

SCR Form 330 11/2017 PAGE 5 of 9

24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by Buyer and paid for by Buyer.

All of these reports or certifications shall be completed no later than 60 Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

27. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
 - (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
 - (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-6206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, Interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

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SCR Form 330 11/2017 PAGE 6 of 9

20. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

31. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. **NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.**

32. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, inspectors, professionals, service providers, contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here (e.g. SCR 390, 391, 311, 503, 504, 315, 320, 393, 370, 375, 513, 510): Seller shall finance to Buyer under the following main terms: \$200,000 down, 10% interest rate, 1st year payments are interest only. A note and mortgage executed by both parties and recorded at closing.

Handwritten: MATURE DATE 12/2021 AFTER CLOSING 4-10-21
* 9-10-21 4-10-21 4-23-21
* 4-23-21 4-23-21
* 4-23-21 4-23-21

[PSB] BUYER [] BUYER [3] SELLER [] SELLER HAVE READ THIS PAGE

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on May 3, 2021 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline: _____

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signer is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☒ to be Delivered within 2 Business Days. Parties shall initial and date all page and changes in this Contract.

BUYER: [Signature], SOLE MEMBER Date: 4/13/2021 Time: _____
Opus Petrus, LLC

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: [Signature] Date: 4-17-21 Time: 5:30 PM
CJN, LLC

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR. SCR makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SC attorney prior to signing to ensure the completed form meets your legal need.

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TRANSACTIONAL INFORMATION ONLY (Attach SCR390 if space needed for contractual agreement terms):

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Keable & Brown

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): _____

ESCROW AGENT CONTACT INFO: Ryan Brown - ryan@keablelaw.com

(864)250-4000

109 Laurens Road

LICENSEE: _____ **SC LICENSE #** _____ **EXPIRES** _____

BROKER IN CHARGE: _____ **SC LICENSE #** _____ **EXPIRES** _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE _____

MEMBERS OF _____ **ASSOCIATION/BOARD OF REALTORS®**

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ **OFFICE PHONE:** _____

OTHER: _____

LICENSEE: _____ **SC LICENSE #** _____ **EXPIRES** _____

BROKER IN CHARGE: _____ **SC LICENSE #** _____ **EXPIRES** _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE _____

MEMBERS OF _____ **ASSOCIATION/BOARD OF REALTORS®**

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ **OFFICE PHONE:** _____

OTHER: _____

***DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS. NO AGENT IS NO CLIENT SERVICE, YES CUSTOMER SERVICE.**

[RSB] BUYER [_____] BUYER [3] SELLER [_____] SELLER HAVE READ THIS PAGE

SCR Form 330 11/2017 PAGE 9 of 9

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

ELLIS R. LESEMANN
EMAIL: erl@lalawsc.com

418 KING STREET, SUITE 301
CHARLESTON, SOUTH CAROLINA 29403

TELEPHONE (843) 724-5155

DIRECT: (843) 724-5156
WEBSITE: www.lalawsc.com

June 7, 2021

VIA U.S. MAIL AND E-MAIL

F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
warmoth@conlaw.com

Re: *CJN, LLC v. Crescent Homes, LLC*
Opus Petrus, LLC Offer

Dear James:

My client Crescent Homes SC, LLC ("Purchaser") has reviewed the recent correspondence from CJN, LLC ("Seller"), which included a tender of a purported third-party offer (the "Offer") from Opus Petrus, LLC ("Opus Petrus") to purchase the lots within the undeveloped future phase of the River Springs subdivision ("Future Phase").

Upon review of the Offer, my client has determined that the Offer is illegitimate and not tendered in good faith. Therefore, my client's position is that the Right of First Refusal ("ROFR") held by Purchaser has not been triggered. Furthermore, the tender of the illegitimate Offer constitutes a breach of the implied covenant of good faith and fair dealing, tortious interference with contractual relations, among other things.

To protect the ROFR from being wrongfully circumvented, Purchaser will seek leave to file an Amended Complaint in the initial action and a motion to consolidate the two cases, so that this issue can be addressed. Please let us know if you consent. As Opus Petrus would be a necessary party, Opus Petrus will be named as a defendant.

The Offer

As set forth below, the terms and conditions of the Offer are not commercially reasonable or consistent with what would be set forth within a legitimate *bona fide* offer. Furthermore, the



timing, interpersonal relationships, and lack of supporting documentation all underscore my client's determination that the Offer is not legitimate.

As you know, the Future Phase is not being marketed for sale. Furthermore, Opus Petrus is not a homebuilder or, in what we have been able to find, a residential developer. We have conducted thorough research and issued a subpoena to Opus Petrus. We are unable to find any relevant prior experience or transaction.

In terms of the timing, the Offer was tendered shortly after CJN unsuccessfully moved for partial summary judgment to invalidate and void the ROFR. Also, it was tendered by a party owned by an individual with whom Mr. Franchina has a personal relationship.

Furthermore, the terms of the offer itself are inconsistent with the market, whether in terms of the purchase price, the amount of earnest money, or the provision of seller financing, the financing terms and maturity date, and the omission of standard contingencies, among other things. The use of the standard "REALTOR®" form for the purchase of raw land is also suspect and entirely inconsistent with industry practice.

For these reasons, our client believe that the Offer was generated and tendered for an improper purpose, which was to either: (1) attempt to circumvent the ROFR; or (2) attempt to extract an unreasonable purchase price from Purchaser.

Opus Petrus Subpoena Response

As you are aware, we served the enclosed subpoena on Opus Petrus and requested all materials in its possession regarding the Offer, including communications between Opus Petrus and CJN, communications with brokers or third parties regarding the Offer, financing documents or proposals, and any appraisals or related materials.

In response, the only document provided was a copy of the purported Offer. This is deeply suspect, as the purchase of raw land for residential development is a complex business with a number of risks. The lack of any documentation relating to negotiations, land planning, or due diligence is a further indicator that the Offer is illegitimate. A copy of the email received from counsel for Opus Petrus is enclosed. We will file a Motion to Enforce the Subpoena and will be taking a deposition of Mr. Bouharoun as soon as possible, which will hopefully allow us to receive the information that, to date, the parties have not provided to us.

Personal Relationship Between the Parties

Another questionable item is the existing relationship between Peter S. Bouharoun, the sole member of Opus Petrus, and Nick Franchina. For the past decade, it appears that Mr. Bouharoun and Mr. Franchina have owned a beach house in Pawleys Island together, along with Mr. Howard. While this could be just a coincidence, these circumstances and the ongoing association between the parties are a further reason why our client does not consider the Offer to be legitimate.

Timing

Because our client believes the Offer does not constitute a legitimate *bona fide* offer made that has been made in good faith, there is no action for Crescent to take regarding the ROFR at this time, as the ROFR has not been triggered. However, to allow for the issue to be determined by the court, Purchaser will amend its Complaint to add a claim for declaratory judgment so that the issue can be addressed by Judge Simmons.

In the meantime, should CJN maintain that the Offer is a *bona fide* offer despite the foregoing issues, please provide any and all additional material in support of such contention so that Crescent can evaluate this issue further.

Best regards,

s/ Ellis

Ellis R. Lesemann

ERL/bhj
Enclosures

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

NINA M. THOMAS, PARALEGAL
EMAIL: nmt@lalawsc.com

418 KING STREET, SUITE 301
CHARLESTON, SOUTH CAROLINA 29403

TELEPHONE (843) 724-5155

DIRECT DIAL: 843-203-0473
WEBSITE: www.lalawsc.com

May 24, 2021

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Vanessa Hartman Kormylo, as Registered Agent
Opus Petrus, LLC
1314 E. Washington Street
Greenville, SC 29607

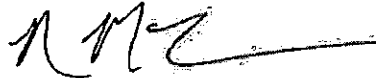
Re: *Crescent Homes SC, LLC v. C J N, LLC*
Case Nos.: 2019-LP-23-00843; and 2019-CP-23-05954

Dear Ms. Kormoylo:

Enclosed is a subpoena requiring you to produce items listed therein to Harvey & Vallini, LLC, 100 Verdae Boulevard, Suite 400, Greenville, South Carolina by 10:00 a.m. on before June 4, 2021. However, in lieu of physically producing the documents to Harvey & Vallini's office in Greenville, you may forward copies of all documents to Lesemann & Associates, 418 King Street, Suite 310, Charleston, SC 29403 or email them to nmt@lalawsc.com and erl@lalawsc.com.

As stated in the Subpoena, the documents should be received by me on or before **June 4, 2021**. If you have any questions, please do not hesitate to contact us at 843-724-5155.

With best regards,



Nina M. Thomas
Paralegal

NMT
Enclosures

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Crescent Homes, SC, LLC, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

CJN, LLC, Defendant

Case Number: 2019-CP-23-5954

Pending in Greenville County

TO: Vanessa Hartman Kormylo, as Registered Agent
Opus Petrus, LLC
1314 E. Washington Street
Greenville, SC 29607

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
DATE AND TIME	AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME	AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE EXHIBIT A

PLACE Harvey & Vallini, LLC 100 Verdae Blvd #400 Greenville, SC 29607	DATE AND TIME June 4, 2021, 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME	AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.


Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

5/24/21 Date Ellis R. Lesemann Print Name

Lesemann & Associates, 418 King Street, Suite 301, Charleston, SC 29403, 843-724-5155, Attorney for the Plaintiff

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON Vanessa Hartman Kormylo		MANNER OF SERVICE Certified Mail
SERVED BY Nina M. Thomas		TITLE Paralegal

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on 5/24/2021

SIGNATURE OF SERVER

418 King St, Ste 301 Charleston, SC 29403
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Exhibit A

- Any correspondence of any nature, including, but not limited to, letters, emails, and text messages between Opus Petrus, LLC and CJN, LLC relating to the Agreement/Contract to Buy and Sell Real Estate for Standing Springs Road in Simpsonville, South Carolina executed by Opus Petrus, LLC and CJN, LLC;
- All documents of any nature, whether stored electronically or in hard copy, written or recorded, related to any communications, transactions, meetings, and due diligence conducted by Opus Petrus, LLC relating to Opus Petrus, LLC's offer to purchase the property or development plan that is the subject of the Agreement/Contract to Buy and Sell Real Estate for Standing Springs Road in Simpsonville, South Carolina executed by Opus Petrus, LLC and CJN, LLC;
- Any and all appraisals or other related materials, including comparable properties, that were used in determining the purchase price of the property that is the subject of the Agreement/Contract to Buy and Sell Real Estate for Standing Springs Road in Simpsonville, South Carolina executed by Opus Petrus, LLC and CJN, LLC;
- Any and all communications, including text messages and emails, with counsel for CJN, LLC relating to the purchase of the property that is the subject of the Agreement/Contract to Buy and Sell Real Estate for Standing Springs Road in Simpsonville, South Carolina executed by Opus Petrus, LLC and CJN, LLC;
- Any and all communications, including text messages and emails or submissions, with any realtor or any other third party relating to the purchase of the property that is the subject of the Agreement/Contract to Buy and Sell Real Estate for Standing Springs Road in Simpsonville, South Carolina executed by Opus Petrus, LLC and CJN, LLC;
- Any and all submittals of any nature to any government entity by Opus Petrus, LLC, or anyone acting on its behalf, including third party vendors, relating to the property that is the subject of the Agreement/Contract to Buy and Sell Real Estate for Standing Springs Road in Simpsonville, South Carolina executed by Opus Petrus, LLC and CJN, LLC;
- Any and all documents and proposals exchanged between Opus Petrus, LLC and CJN, LLC relating to seller financing; and
- Copies of all checks, money orders, or wire transfers reflecting any earnest money deposited relating to the property that is the subject of the Agreement/Contract to Buy and Sell Real Estate for Standing Springs Road in Simpsonville, South Carolina executed by Opus Petrus, LLC and CJN, LLC.

Benjamin Joyce

Attachments: contract.OP.pdf

From: Vanessa Kormylo <vkormylo@kormylo.com>
Sent: Friday, June 4, 2021 11:54 AM
To: nmt@lalawsc.com; erl@lalawsc.com
Subject: Crescent Homes SC, LLC v. JN, LLC

Dear Ms. Thomas and Mr. Lesemann,

Pursuant to the subpoena you issued to Opus Petrus, LLC, I have attached the related contract provided by Mr. Bouharoun, owner of Opus Petrus, LLC. Hopefully this contains the information you are seeking. To my knowledge, a formal appraisal was not conducted and Mr. Bouharoun respectfully asserts that the manner in which he valued the property is proprietary information and therefore not subject to this subpoena.

As indicated within the contract, the funds for the earnest money were deposited at the firm of Keable & Brown should you desire to confirm this deposit.

If you have any questions or need additional information, please advise and I will contact Mr. Bouharoun in regard to these requests. I hope you enjoy a wonderful weekend.

Sincerely,

Vanessa

Vanessa H. Kormylo, P.A.
Attorney at Law
1314 East Washington Street
Greenville, South Carolina 29607
Ph. (864) 242-1644

This email transmission and any documents attached hereto or contained herein may contain confidential and/or legally privileged information. If you are not the intended recipient, and I apologize if you are not, you are hereby notified that you must not read this transmission and that any disclosure, copying, printing, distributing, reliance on or any use of the information contained or attached is strictly prohibited. If you have received this transmission in error, please notify the sender by phone or return email and please immediately delete the original transmission and any attachment(s) without reading or saving the same. Thank you for your prompt attention to this request.



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (GENERAL USE AND LOTS/ACREAGE)

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Opus Petrus, LLC

Seller(s), CJN, LLC

("Buyer"), and

("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
 (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
 (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.
TBD
 (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to Initially cause this primary Contract to be binding on all Parties.
 (E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
 (F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
 (G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☒ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. **PURCHASE PRICE:** \$ 1,250,000.00

One Million, Two Hundred Fifty Thousand

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☒ Cash USD.

Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before . This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☒ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address Standing Springs Rd

Unit #

City Simpsonville

State of South Carolina

Zip 29680 County of Greenville

Lot Block Section/Phase Subdivision

Other

Tax Map 0584010102601

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before September 15, 2021 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): TBD

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and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's-designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debts, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ _____ accompanies this offer and \$ 5,000.00 will be paid within 2 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Keable & Brown as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment); interest; non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing; contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ _____ OR _____ % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☐ Seller's or ☒ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

7. **FINANCE:** Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum _____ % and maximum _____ % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within _____ Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within _____ Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender

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SCR Form 330 11/2017 PAGE 2 of 9

lands loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change):

☐ FHA ☐ VA ☐ Conventional ☐ Seller

Other

An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms ☐ are ☐ are not attached.

8. **INSPECTION/REINSPECTION RIGHTS:** Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections

Other ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. **SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE:** Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. **SURVIVAL:** If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD ends no later than 90 Business Days after Contract's original Primary Effective Date unless the Parties agree in writing to extend the Due Diligence Period.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate inspections and Contract Renegotiations, Seller to obtain estimates, Buyer and Seller to negotiate Contract terms, and Buyer to potentially timely/proper Due Diligence terminate or buy.

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SCR Form 330 11/2017 PAGE 3 of 9

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ USD Good Funds. DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☒ is ☐ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than 60 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination

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SCR Form 330 11/2017 PAGE 4 of 9

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during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____ Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") (check one):

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property Issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead In Your Home." For their protection, Buyers should conduct/obtain inspections of all Property Issues per their needs.

20. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☐ Seller or ☒ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

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SCR Form 330 11/2017 PAGE 5 of 9

24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by Buyer and paid for by Buyer.

All of these reports or certifications shall be completed no later than 60 Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

27. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

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SCR Form 330, 11/2017 PAGE 6 of 9

29. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

31. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

32. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here (e.g. SCR 390, 391, 311, 503, 504, 315, 320, 393, 370, 375, 513, 610): Seller shall finance to Buyer under the following main terms: \$200,000 down, 10% interest rate, 1st year payments are interest only. A note and mortgage executed by both parties and recorded at Closing.

Handwritten: Purchaser *Handwritten:* After Closing *Handwritten:* 4/23/2021
* 4-10-21 [PSB] 4/23/2021 [PSB]

[PSB] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

Handwritten: PSB

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on May 3, 2021 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline: _____

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signer is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☒ to be Delivered within 2 Business Days. Parties shall Initial and date all page and changes in this Contract.

BUYER: [Signature], sole member
Opus Petrus, LLC

Date: 4/13/2021 Time: _____

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: [Signature]
GJN, LLC

Date: 4-17-21 Time: 5:30 PM

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

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TRANSACTIONAL INFORMATION ONLY (Attach SCR390 if space needed for contractual agreement terms):

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Keable & Brown

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): _____

ESCROW AGENT CONTACT INFO: Ryan Brown - ryan@keablelaw.com

(864)250-4000

109 Laurens Road

LICENSEE: _____ SC LICENSE # _____ EXPIRES _____

BROKER IN CHARGE: _____ SC LICENSE # _____ EXPIRES _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ OFFICE PHONE: _____

OTHER: _____

LICENSEE: _____ SC LICENSE # _____ EXPIRES _____

BROKER IN CHARGE: _____ SC LICENSE # _____ EXPIRES _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ OFFICE PHONE: _____

OTHER: _____

***DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS. NO AGENT IS NO CLIENT SERVICE, YES CUSTOMER SERVICE.**

[PSB] BUYER [_____] BUYER [3] SELLER [_____] SELLER HAVE READ THIS PAGE

SCR Form 330 11/2017 PAGE 9 of 9



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address Standing Springs Rd Unit # _____
City Simpsonville State of South Carolina
Other _____ TMS 0584010102601

The undersigned Parties hereby agree as follows: Purchaser hereby acknowledges that Crescent Homes claims a 1st right on the above referenced property, should Crescent Homes choose to exercise their right the contract between CJN, LLC and Opus Petrus, LLC will become Null and Void. Contract between CJN, LLC and Opus Petrus, LLC executed on 5/10/2021, notice was given to Crescent Homes attorney on 5/18/2021 given them 20 days to exercise their right or decline (deadline is June 7th, 2021). All other terms and conditions shall remain the same.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at ☐ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline."

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: [Signature]
Opus Petrus, LLC

Date: 5/25/21 Time: 3:15 pm

BUYER: _____

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

SELLER: [Signature]
CJN, LLC

Date: 5-25-21 Time: 2:46 PM

SELLER: _____

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

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FORM 390 PAGE 1 of 1



**KENISON, DUDLEY
& CRAWFORD, LLC**
ATTORNEYS AT LAW

F. James Warmoth
Attorney
Licensed in SC and NC
704 East McBee Avenue
Greenville, SC 29601
864.242.4899
warmoth@conlaw.com

June 25, 2021

Ellis R. Lesemann
Lesemann & Associates LLC
418 King Street, Ste. 301
Charleston, SC 29403
erl@lalawsc.com

RE: **CJN, LLC v. Crescent Homes SC, LLC**
Opus Petrus, LLC offer

Dear Ellis:

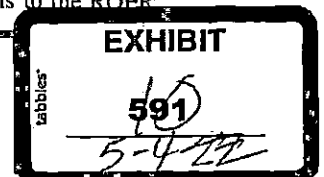
This responds to your letter dated June 7, 2021 regarding the Opus Petrus, LLC ("Opus") offer for the purchase of the property in dispute in the above-action ("Property") and the right of first refusal in dispute ("ROFR"). The Opus offer is legitimate despite Crescent's claims to the contrary. Frankly, it is hard to see how Crescent has a colorable argument otherwise because the facts alleged, even if true (which are largely disputed hereinbelow), do not support the conclusion of an improper offer.

The Opus offer was tendered in good faith on May 18, 2021 and required response by Crescent on or before June 7, 2021. The ROFR¹ was triggered by the tender of the Opus offer. Crescent failed to make a matching offer, which resulted in the termination of Crescent's rights under the ROFR. Therefore, CJN rejects Crescent's allegations regarding the legitimacy of the Opus offer as baseless and improper interference with the Opus sale. Obviously, Crescent's actions create a risk that Opus will seek to back out of the sale. CJN demands that Crescent cease and desist from interfering with the Opus sale, immediately cancel any lis pendens on the Property, and issue written acknowledgement that Crescent no longer claims any right to the Property.

Responding to the specific allegations in your June 7 letter, it appears that Crescent has concluded that the offer is illegitimate because it "was generated and tendered for an improper

¹ CJN restates the following disclaimer included in its May 18 letter:

CJN has disputed and continues to dispute that Crescent has any rights to the future phase under Section 19 of the LPA for River Springs, containing the right of first refusal in dispute ("ROFR"). Nevertheless, CJN makes the below tender in an effort to resolve the dispute regarding Crescent's purported rights. Therefore, CJN limits this tender to the Opus offer and does not waive its previously stated objections to the ROFR should the proposed sale to Opus or Crescent not reach closing.



purpose, which was to either: (1) attempt to circumvent the ROFR; or (2) attempt to extract an unreasonable purchase price from Purchaser.” This is allegedly based on factors including the terms and conditions of the offer, the timing of the offer, interpersonal relationships, and lack of supporting documentation. Crescent has not identified anything in the ROFR or another legal standard applying these factors to determine that the offer is illegitimate. It stands to reason that CJN cannot generate a sham sale for purposes of circumventing the ROFR. However, even if some or all of these factors are as alleged, there is no basis to conclude the offer is a sham or otherwise improper.

CJN responds Crescent’s additional specific allegations regarding the offer as follows:

1. Property not marketed for sale: Crescent’s allegation that the property was not being marketed is incorrect. For more than a year, CJN has been engaged in discussions regarding sale of the Property with multiple parties, as I have communicated to you, including a party from Greenville and two separate parties from Charlotte, in addition to Opus. Price discussions have been all been over \$1 million during a period when the value has been increasing. As of now the value is still increasing, but that could change at any time. CJN has relationships with these potential buyers and markets to them by contacting or being contacted by these potential buyers. In any event, nothing in the ROFR requires a specific marketing strategy.
2. Opus not homebuilder: Our understanding is that Opus views this as an investment property and does not have immediate plans to develop lots or build homes on the Property. Nothing in the ROFR requires development or home building.
3. Form of contract/offer: The form of contract is an South Carolina Association of REALTORS form, designed specifically for the sale of lots/acreage, which is the nature of the sale here. CJN has used this form for numerous prior sales and use of the form is consistent with standard practices in CJN’s industry. The fact that Crescent, which is not in the business of selling raw land or developed lots, does not like the form is immaterial. In any event, nothing in the ROFR limits CJN to accepting offers in any certain format.
4. Terms of contract/offer: Crescent claims the price and other terms are inconsistent with the market without offering any opinion or evidence of market terms. In CJN’s experience, including the negotiations referenced above, the terms are consistent with the market. Nothing in the ROFR limits CJN to rejecting offers that are higher or lower than the market. Further, as Crescent knows, the Opus terms are similar with respect to price and contingencies to CJN’s offer of sale to Crescent on April 9, 2021. Crescent apparently does not want to pay the market price, but that is also immaterial to the legitimacy of the Opus offer.
5. Lack of documentation: The offer was negotiated via in person and phone discussions, then memorialized in the offer contract (CJN will provide documents in response to your resent request for production that will confirm this). This is not

unusual or improper in any way. Nothing in the ROFR limits CJN to sales that are supported by extensive documentation.

6. Relationship: Mr. Franchina and Mr. Bouharoun have been friends for years. This connection facilitated CJN's identification of a prospective buyer in Opus. This is not unusual or improper in any way. As noted above, CJN generally has relationships with the prospective buyers it markets to. CJN and Opus are not affiliated in any way. Nothing in the ROFR limits CJN to sales to strangers. Your letter appears to recognize that the relationship between CJN and Opus (and their members) is far too remote to support a claim that Opus is an "insider" of CJN and CJN is essentially selling the property to itself.

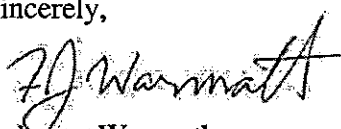
Accordingly, CJN rejects Crescent's contention that the offer was improper and demands that Crescent cease and desist from interfering with the Opus sale, immediately cancel any lis pendens on the Property, and issue written acknowledgement that Crescent no longer claims any right to the Property so that the Opus sale can proceed without further interference from Crescent.

CJN does not consent to Crescent's request to consolidate this action with the *Crescent v. CJN* action. Assuming that Crescent fails to comply with the above demands, this would delay resolution of the ROFR issue and increase the likelihood that the Opus sale will be lost as a result of Crescent's improper interference. Crescent itself set up two actions by filing the *Crescent v. CJN* action related to Phase I and then filing multiple lis pendens related to the Property, rather than seeking to amend the *Crescent v. CJN* action to include the Property. Since this action is limited to issues related to the ROFR, it can be resolved quickly, with little or no discovery required, as you, I, and Judge Simmons acknowledged at the hearing on CJN's motion for partial summary judgment. CJN will attempt to resolve the matter before the Opus sale is lost as a result of Crescent's improper interference.

Further, this matter can and should be resolved without adding Opus as a party. At most, an Opus representative would be needed to testify regarding the legitimacy of the offer. Opus has already provided its documentation related to the sale in response to your subpoena. To the extent that Crescent brings Opus into this dispute, CJN will take the position that this amounts to interference by Crescent intended to block the sale of the Property, in addition to the abuse of process in the repeated filing of lis pendens on the Property.

I look forward to your response regarding the above.

Sincerely,



F. James Warmoth

cc: CJN, LLC

September 8, 2021

Nicholas Franchina
CJN, LLC
4113 E. North St.
Greenville, SC 29615

RE: Notice of Termination: Agreement Regarding Sale of Real Property on Standing Springs Road in Simpsonville, South Carolina

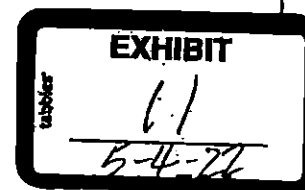
Dear Nick:

Please allow this correspondence to serve as Opus Petrus, LLC's ("OP") Notice of Termination of the Agreement to Buy/Sell ("Contract") Real Property on Standing Springs Road in Simpsonville, South Carolina ("Property"), as executed in May of 2021 by CJN, LLC ("CJN") and OP. For ease of reference, a copy of the Contract is attached hereto, along with the latest amendment by the Parties. Unfortunately, OP cannot move forward with the contemplated purchase transaction at this time and is, therefore, furnishing notice to CJN of its termination of the Contract as allowed under its terms.

As you know, there has been a long-standing business relationship between our respective companies and, for that reason, OP's termination of the Contract was a difficult decision to reach. However, it is my hope that you can understand why we feel compelled to terminate the Contract at this time, as several factors make it impossible for OP to move forward.

First, due to CJN's ongoing dispute with Crescent Homes, SC, LLC ("Crescent"), OP has been unable to complete the due diligence it would pursue in a property transaction such as this one. Indeed, when the Parties (*i.e.*, CJN and OP) first executed the Contract (back in May), it was my hope CJN's dispute with Crescent would soon end. At that time, the due diligence period appeared amply long enough for CJN to resolve its dispute with Crescent (whether through the Courts, by negotiated outcome, or by virtue of Crescent's exercise of its contractual rights (if any) regarding the Property), while still allowing OP sufficient time to finish the due diligence it needed to complete, assuming the Property remained available to purchase. Unfortunately, this did not occur and the lawsuit between Crescent and CJN remains ongoing. Of course, CJN and OP thereafter amended the Contract to extend the due diligence period for an even longer period but now even the extended deadline imminently looms.

As such and in my view, OP now unexpectedly finds itself in a "damned if you do" and "damned if you don't" due diligence scenario. On one hand, if OP pushes forward with its due diligence, it will incur out of pocket costs of approximately ten thousand dollars (\$10,000) (perhaps more) simply by completing the due diligence needed to move forward with buying the Property. But, in such an event, OP will still lack clarity as to whether it can move forward with its plans despite investing in its due diligence. This is true because: Crescent has clouded the Property's title (as I understand the underlying facts) and appears likely to continue doing so; and Crescent may, at some point, also purport to exercise its purported "contract" right of first refusal,



which admittedly appears unenforceable, but will nonetheless further cloud the Property's title for an unknown duration until ultimately resolved by the Courts. Either way, OP faces the undesirable prospect of sinking money into completing due diligence on the Property, which it thereafter cannot readily use or, according to Crescent, may never be able to acquire.

By contrast, if OP elects not to spend the money and, as a result, does not complete due diligence, then the date specified by the Contract's amendment will soon lapse (by month's end) and OP will be contractually obligated to buy the Property. In such event, OP will be contractually required to proceed with closing on the Property without the benefit of completing any due diligence, which no reasonably prudent investor would ever do. To make matters worse, the cloud on the Property's title—resulting from Crescent's conduct (as I understand the same)—will likewise persist. So, under scenario two, OP would acquire the Property blindly—having conducted no due diligence—only to find itself still in the untenable position of being unable to use the Property for an unknown time period or, according to Crescent, ever.

Second, and as referenced above, Crescent's ongoing lawsuit with CJN—along with my understanding of Crescent's efforts to cloud the Property's title—puts OP in an untenable position since it is unclear when OP will be able to sell, develop, or use the Property in a way that generates a return on its investment in the Property. As you know, OP is a small, relatively unsophisticated, limited liability company that I started in hopes of making investments capable of generating small returns that I hoped then to use toward my retirement. OP was never intended to have, nor does it possess, the ability to acquire real property (or similar investments) and sit on them for protracted, indefinite periods of time. As a result, the cloud over the Property's title, which appears likely to last for a protracted time-period—is a serious business problem that OP cannot overcome in moving forward with purchasing the Property from CJN.

Third, as you also know, Crescent is represented by Attorney Ellis Lesemann from the low country. Mr. Lesemann has made numerous threats/untrue statements against and about OP merely for trying to buy the Property from CJN. This is true even though OP remained, *at all times*, in the Contract's due diligence period and never even had the chance to move beyond the due diligence period because of the conduct of Crescent and Mr. Lesemann. While OP certainly understands that it possesses claims against Crescent, Mr. Lesemann, and his law firm for their collective efforts seeking to coerce and extort OP into terminating its Contract with CJN (thereby abandoning the opportunity to purchase the Property), it is, by a like token, extremely unattractive to OP to become embroiled in protracted litigation against Crescent, Mr. Lesemann, and his law firm.

As noted, OP was formed as a company that I hoped to use as a corporate vehicle to save monies toward my retirement. Spending money to fund a lawsuit is contrary to OP's purpose as a corporate entity and frankly would work an extreme hardship upon both myself and OP. As a result, OP feels compelled to terminate its Contract with CJN because it cannot afford to waste money on prosecuting lawsuits. Of course, if Crescent, Mr. Lesemann, and his law firm force the issue by virtue of their continued, baseless attacks on OP and myself, I may have no alternative but to press such claims in a courtroom. Otherwise, on behalf of OP and myself, we would rather simply terminate the Contract and pursue another investment opportunity when it comes along.

Last, in my view, OP's termination of the Contract with CJN is likely what Crescent and Mr. Lesemann had hoped all along would occur by: threatening OP, threatening to pursue a SLAP suit against OP, and otherwise making what I perceive as defamatory remarks against OP and myself. I am currently evaluating what recourse exists, in what venues, and with what regulatory authorities, should such misconduct fail to cease immediately. Nonetheless, I regret having to terminate the Contract with CJN under such extortionate and underhanded circumstances. Historically, both you and CJN have been good business partners over the years. I hope that does not change because of what, in my opinion, amounts to below-board conduct on the part of Mr. Lesemann and Crescent.

Should you have any questions or concerns, please feel free to contact me.

Sincerely,

Peter Bouharoun

Opus Petrus, LLC

Abby Hayes

From: Jason Bell
Sent: Tuesday, September 3, 2019 4:48 PM
To: Ted Terry; Kelly McGuinn
Subject: FW: River Springs - Site Observations
Attachments: EAS-17-8285 River Springs Subdivision - Greenville, SC - Site Observations.pdf

This attachment from EAS states that the stockpiles are "unsable as structural fill" as based on visual observations. This needs to be combined with the earlier attachments.

Jason Bell

Division Operations Manager

Mobile: (864) 318-3912

Email: jason.bell@crescenthomes.net

Office: 1200 Woodruff Road, Suite C-12, Greenville, SC 29607

CRESCENT
HOMES

From: Tom Sharp <tsharp@eas-pro.com>
Sent: Tuesday, September 3, 2019 4:23 PM
To: Jason Bell <jason.bell@crescenthomes.net>
Cc: Brad Fitzmorris <bfitzmorris@eas-pro.com>; Travis S. Hatfield <thatfield@eas-pro.com>; Matthew C. Christie <mchristie@eas-pro.com>
Subject: River Springs - Site Observations

Jason,

Please see the attached letter for the River Springs subdivision regarding the on-site soil stockpiles.

Thank you,

Tom Sharp, EIT, MSI
Project Engineer
Master of Special Inspection

EAS
PROFESSIONALS

9 Pilgrim Road
Greenville, SC 29607

Office (864) 234-7368
Cell (864) 908-8579
www.eas-pro.com

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September 3, 2019

Mr. Jason Bell
Crescent Homes
1200 Woodruff Road
Suite A3
Greenville, South Carolina 29607
jason.bell@crescenthomes.net

Reference: Site Observations
River Springs Subdivision
Greenville, South Carolina 29681
EAS Project No.: 17-8285

Mr. Bell:

This letter serves as a summary of field observations made by Engineering and Surveying Professionals (EAS) during our site visit on August 30, 2019. EAS was requested by Crescent Homes to verify if fill soils had been placed within the limits of the above referenced subdivision.

At the request of Crescent Homes, EAS was on-site to verify if fill soils had been placed within the above referenced subdivision. During our site visit on August 30, 2019, EAS observed seven (7) soil stockpiles within the above referenced subdivision (see the attached River Springs Dirt Pile Volumes for approximate locations). The observed stockpiles contained small rocks and large boulders (12 inches and greater) and/or organic debris (mulch, roots, etc.). Several stockpiles were covered in vegetation (grass, weeds, etc.) at the time of our site visit. Since it was not requested to gather bulk soils samples or to perform any testing, EAS is unaware of soil conditions within the stockpiles and cannot verify the suitability of fill soils not observed. If it is desired to evaluate the stockpiled soils further, EAS recommends that we be retained to evaluate/test the in-place condition and collect several bulk samples within each stockpile.

Based on our observations, these stockpiled soils are unusable as structural fill in their current condition. Strictly based on visual observations, in order to utilize the on-site stockpile soils as structural fill, the soils will likely require extensive processing. If the decision is made to proceed and use the stockpiled soil, EAS should be allowed to verify the soil properties for use as structural fill.

LIMITATIONS

This report has been prepared for the exclusive use of Crescent Homes, for specific application to the referenced property in accordance with generally accepted soil and foundation

engineering practices. No other warranty, expressed or implied, is made. The site observations provided for the above referenced subdivision does not reflect soil conditions at adjacent and/or nearby structures and may be less suitable. Our conclusions and recommendations are based on design information furnished to us; the data obtained from the previously described site observations and generally accepted geotechnical engineering practice.

It should be noted that a formal geotechnical evaluation of the site sub-surface conditions was not in our scope of services and that the condition of in-place soils not tested may be even less suitable. Utilities installed before, during, or after our visit should be installed, backfilled, and compacted in accordance with typical construction practices and local codes. Any topsoil or organic matter should be removed from the building footprint prior to monolithic slab construction. Our recommendations do not reflect variations in subsurface conditions that may exist at unexplored portions of the site or further depths. Should such variations become apparent during construction, the recommendations contained within this letter will not be considered valid unless EAS is given the opportunity to review such variations and revise or modify our recommendations accordingly. Exposure of the subgrade soils to moisture, excessive drying, or frost heave can weaken these soils at near surface elevations and may require rework/re-compaction prior to excavation or concrete placement.

EAS must be retained to test and document all structural fill soils placed within the limits of the site for the entire duration of the project. It is important to understand that EAS and/or any other 3rd party testing agency cannot certify the compaction of fill soils placed without full-time observation and testing. If another 3rd party testing firm is retained to verify our findings and/or compaction of the site soils, this letter should be provided to them along with any/all of our correspondence.

It should be noted that EAS was not retained to monitor site clearing, stripping and mass grading activities for the above referenced lots. EAS was not provided reporting of site clearing, stripping and mass grading within the above referenced lots and no density/compaction test results were provided. It is important to understand that there is a potential risk of settlement and/or subsidence in unsuitable and/or uncontrolled fill soils that have not been monitored and density tested on a continuous basis during mass grading activities. If the in-situ density/moisture is desired, we recommend EAS be retained to perform test pits to collect drive tube density test samples and adjacent bulk soil samples for testing in our soils laboratory.

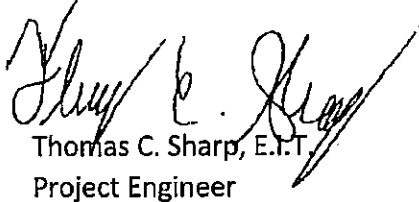
According to the International Residential Code 2015 (IRC 2015), Section R109.1, "inspection of the foundation shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations." Therefore, an inspection by EAS



or the building official will be required after foundations are excavated and before concrete is placed.

Respectfully Submitted,

EAS PROFESSIONALS, INC.



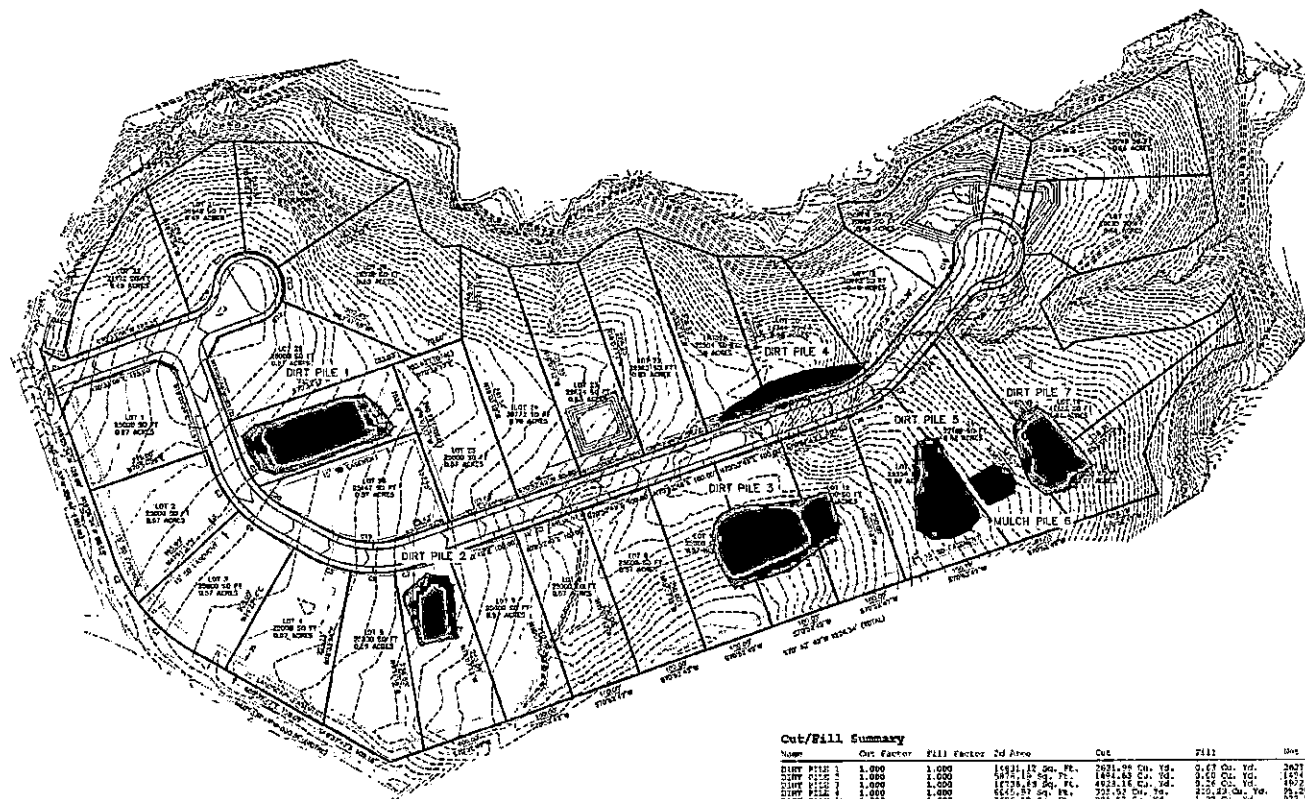
Thomas C. Sharp, E.I.T.
Project Engineer



Douglas R. Dunko, P.E.
Senior Geotechnical Engineer

ATTACHMENTS

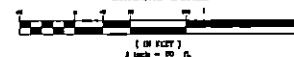
- Dirt Pile Volumes
- Cut/Fill Report



Cut/Fill Summary

Name	Cut Factor	Fill Factor	2d Area	Cut	Fill	Dist
DIRT PILE 1	1.000	1.000	1531.12 Sq. Ft.	2021.94 Cu. Yd.	0.67 Cu. Yd.	2621.33 Cu. Yd. <Cut>
DIRT PILE 2	1.000	1.000	5872.15 Sq. Ft.	1851.85 Cu. Yd.	0.60 Cu. Yd.	1851.85 Cu. Yd. <Cut>
DIRT PILE 3	1.000	1.000	1779.18 Sq. Ft.	4523.18 Cu. Yd.	0.00 Cu. Yd.	4523.18 Cu. Yd. <Cut>
DIRT PILE 4	1.000	1.000	1222.51 Sq. Ft.	222.51 Cu. Yd.	222.22 Cu. Yd.	0.29 Cu. Yd. <Cut>
DIRT PILE 5	1.000	1.000	785.38 Sq. Ft.	805.15 Cu. Yd.	1.27 Cu. Yd.	805.15 Cu. Yd. <Cut>
DIRT PILE 6	1.000	1.000	5077.70 Sq. Ft.	1170.31 Cu. Yd.	0.72 Cu. Yd.	1170.31 Cu. Yd. <Cut>
DIRT PILE 7	1.000	1.000	1170.31 Sq. Ft.	1170.31 Cu. Yd.	222.52 Cu. Yd.	1168.09 Cu. Yd. <Cut>
Total			65162.89 Sq. Ft.	11680.64 Cu. Yd.	222.52 Cu. Yd.	11658.12 Cu. Yd. <Cut>

GRAPHIC SCALE



Cut/Fill Report

Generated: 2019-09-03 11:48:42

By user: bfitzmorris

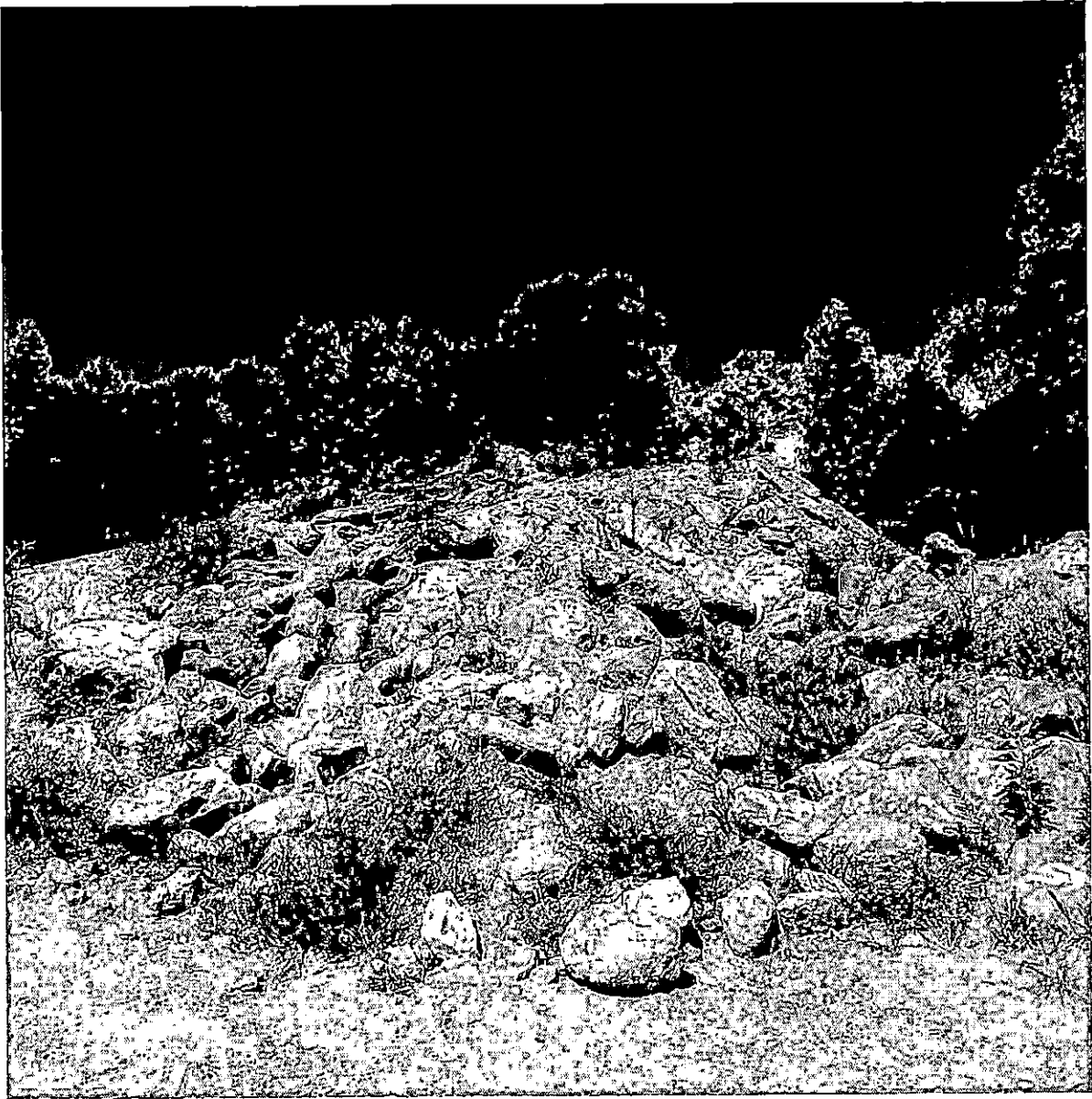
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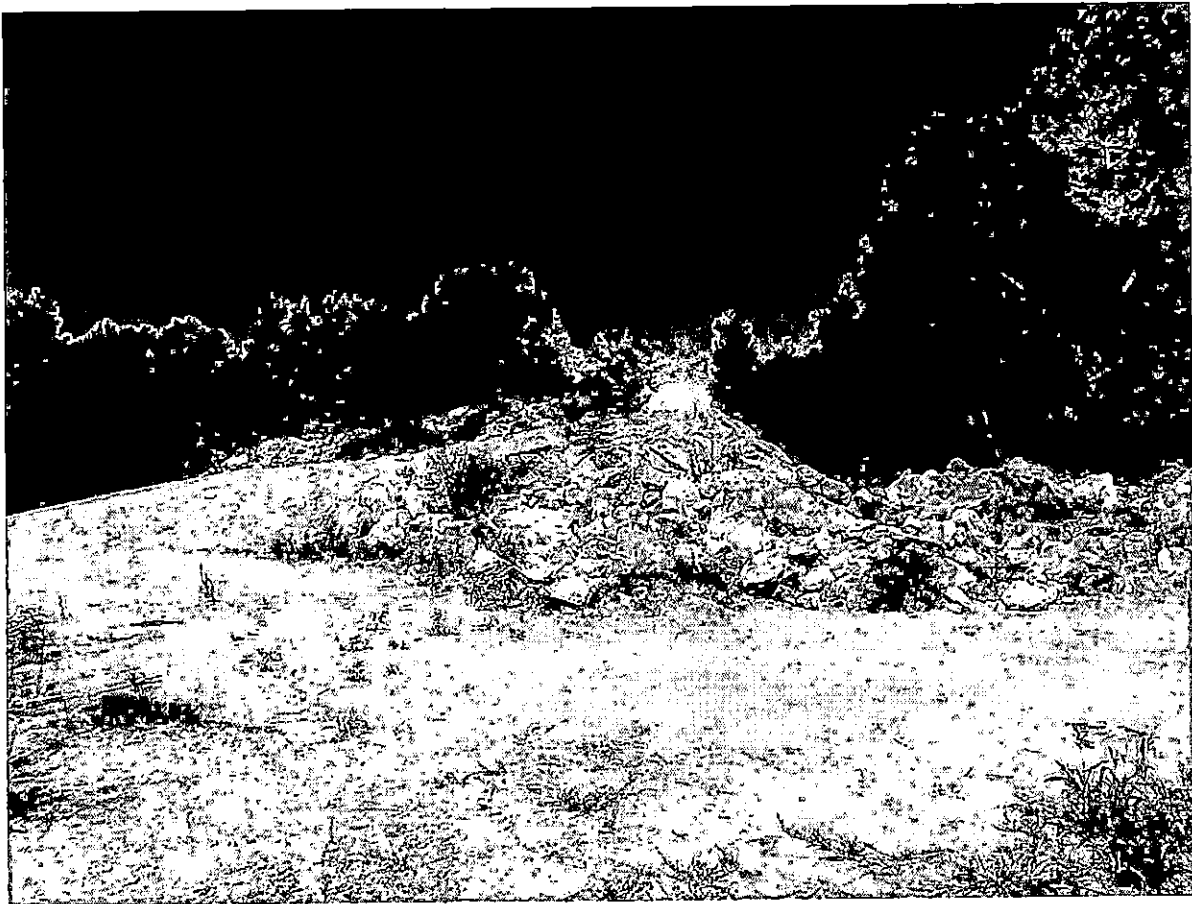
S:\EAS 2017 Projects\EAS-17-8285 (River Springs Subdivision, Greenville, SC)
Nick Franchina - CJN LLC\S\EAS 2017 Projects\EAS-17-8285 (River Springs
Subdivision, Greenville, SC) Nick Franchina - CJN LLC\17-8285 (River Springs
Subdivision) Nick Franchina Dirt Pile Volumes.dwg

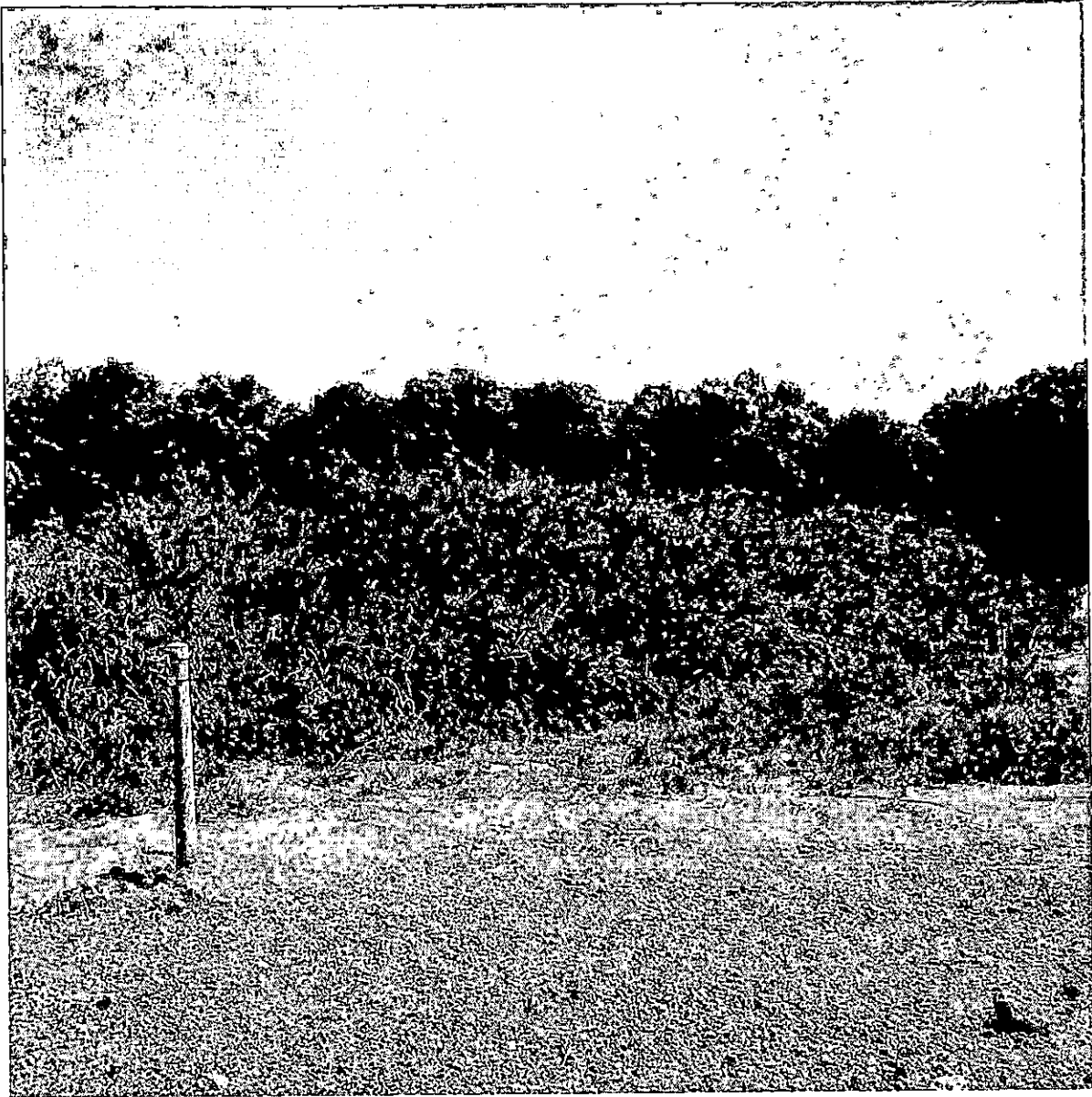
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DIRT PILE 1	full	1.000	1.000	14631.12	2631.98	0.63	2631.35<Cut>
DIRT PILE 2	full	1.000	1.000	5876.19	1494.63	0.00	1494.63<Cut>
DIRT PILE 3	full	1.000	1.000	16738.63	4923.16	0.26	4922.91<Cut>
DIRT PILE 4	full	1.000	1.000	6645.97	305.52	210.23	95.29<Cut>
DIRT PILE 5	full	1.000	1.000	9686.50	924.53	1.27	923.27<Cut>
MULCH PILE 6	full	1.000	1.000	2592.83	430.45	0.02	430.43<Cut>
DIRT PILE 7	full	1.000	1.000	9015.58	1170.38	0.12	1170.26<Cut>

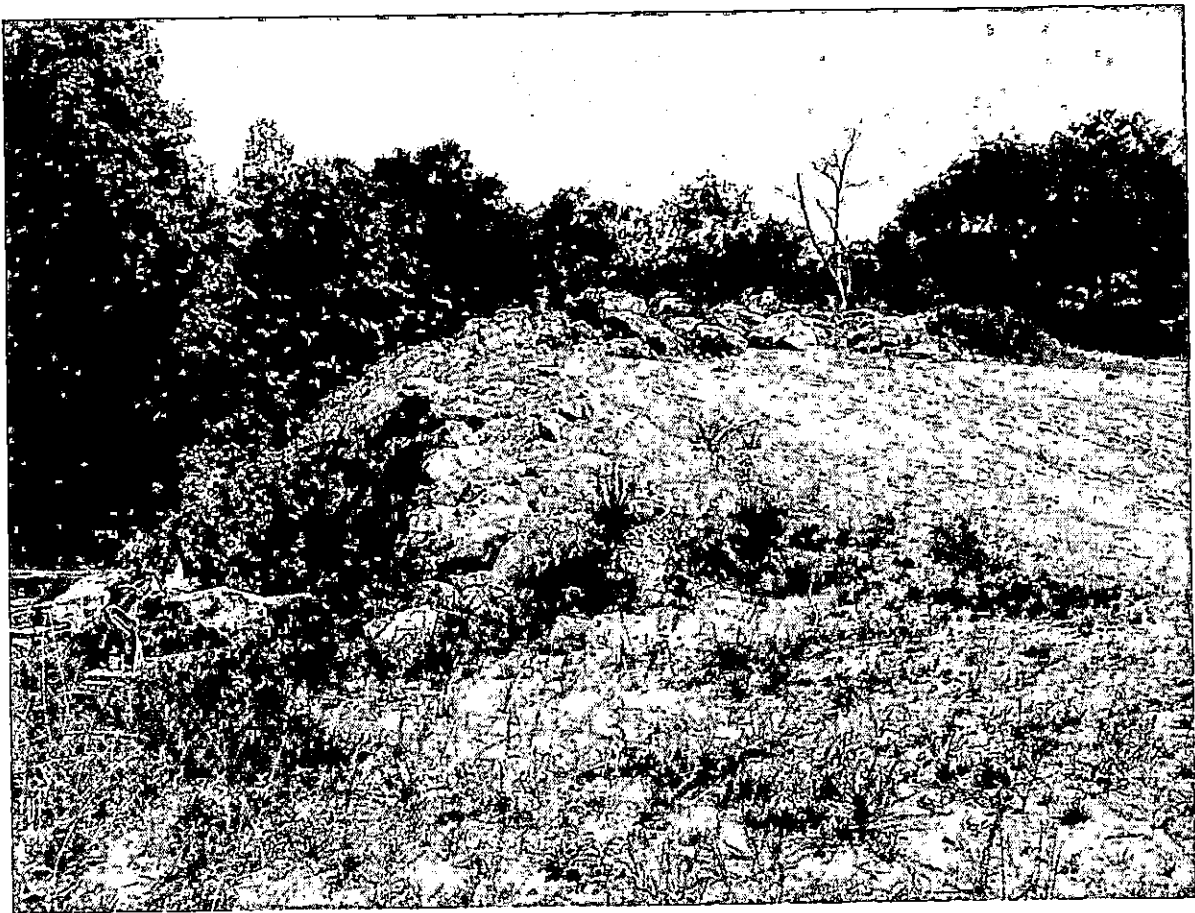
Totals				
	2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
Total	65186.82	11880.65	212.52	11668.13<Cut>

* Value adjusted by cut or fill factor other than 1.0















Abby Hayes

From: Christina Douglas <Christina@hvlawsc.com>
Sent: Thursday, September 5, 2019 9:52 PM
To: 'NickFranchina@accessrealtysc.com'
Cc: 'ryan@keablerlaw.com'; Steve Harvey; Carolyne Poling; Ted Terry; 'SRoth@levickroth.com'
Subject: RIVERSPRINGS: (#20791063.001) - RESPONSE TO NOTICE OF DEFAULT
Attachments: Response to S Notice of Default.pdf

Importance: High

Good evening, Mr. Franchina.

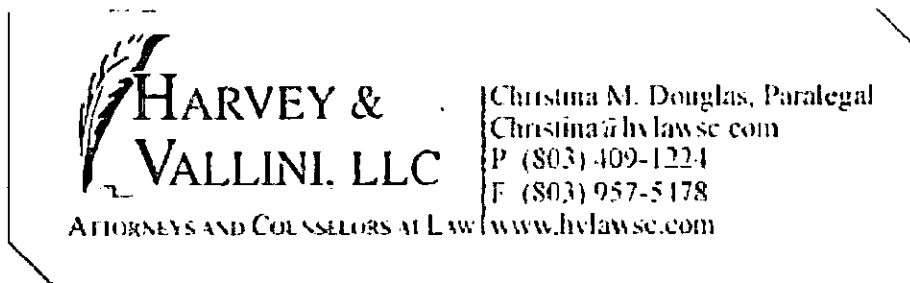
With regard to the above referenced matter, please see the attached correspondence.

The original is scheduled for delivery tomorrow via FedEx.
I requested tracking updates are delivered by FedEx to your email.

Please advise if you have any trouble with the attachment or are not receiving updates on the package.

Many Thanks,

Chris Douglas
Assistant to Steven E. Harvey



Mailing Address: 211 W. Main Street, Lexington, SC 29072

HARVEY & VALLINI, LLC

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CHRISTINA M. DOUGLAS

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(803) 409-1224

September 5, 2019

*Via Email: (NickFranchina@accessrealtysc.com)***C J N, LLC**

c/o Access Realty, LLC

4113 E. North St.

Greenville, SC 29615

ATTN: Nick Franchina

Re: Matter: River Springs – Agreement for Purchase and Sale of Developed Lots by Crescent Homes SC, LLC, as Purchaser, and C J N, LLC as Seller, together with the First Amendment to Agreement for Purchase and Sale (collectively the “Agreement”)
Client: Crescent Homes SC, LLC
Matter Number: 2079.063.001

Dear Mr. Franchina:

Please be advised this law firm represents Crescent Homes SC, LLC (the “Purchaser”). In such capacity we hereby notify you that your recent Notice of Default to Purchaser constitutes an anticipatory breach of and default under the Agreement. We hereby demand on behalf of Purchaser that you provide us with additional assurances that you will honor the terms of the Agreement including the correction and completion of the items noted below:

1. Complete berm and landscaping across lots 1, 2, 3, 4 & 5 per mutual satisfaction of Purchaser and Seller.
2. Ensure all utilities are in place including power, natural gas, water, cable/data (Spectrum and/or AT&T).
3. Water taps marked at curb with As-Builts sent to the Purchaser
4. Cut all grass areas to a maximum height of 6” / Complete stabilization of site
5. Install street lights
6. Re-pin all lot corners; utility contractors have removed many of them
7. Repair all curbs damaged by road paving and utility installation.

8. Deliver septic permits to Purchaser with a minimum capacity of a four-bedroom home. This should consist of an Easy Flow Gravity Conventional System per contract.
9. Bring development back to the grading plan that was approved by Greenville County
10. Issue final recorded subdivision plat, individual lot TMS numbers and individual lot addresses.
11. Remove dirt piles per schedule below. Approximately 11,668.13 cubic yards. Must Re-stabilize site after this.

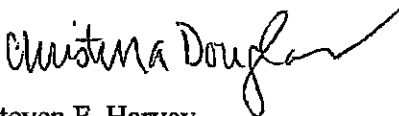
Volume Summary							
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DIRT PILE 1	full	1.000	1.000	14631.12	2631.98	0.63	2631.35<Cut>
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DIRT PILE 4	full	1.000	1.000	6645.97	305.52	210.23	95.29<Cut>
DIRT PILE 5	full	1.000	1.000	9686.50	924.53	1.27	923.27<Cut>
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DIRT PILE 7	full	1.000	1.000	9015.58	1170.38	0.12	1170.26<Cut>
Totals							
				2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
Total				65186.82	11880.65	212.52	11668.13<Cut>

12. Deliver water PTOs – Operational Permits
13. Submit to Purchaser detailed entrance monument and landscape and irrigation plan and budget. Submit to Purchaser central mail facility detail and locations. The foregoing must be approved by Purchaser.
14. Central mail facilities must be installed prior to closing. Entrance monument and landscape and all irrigation must be installed prior to closing.
15. All BMPs must be installed per the approved SWPPP and civil plans.

16. Per the Lot Development Sequence Plan, the discharge sediment basin with discharge pipe must be installed. Provide Post Conditions plan and explanation regarding Seller action to render Lot 23 buildable.
17. Confirm that Multi-Use Basin has been installed and approved per plan. Provide Post Conditions plan and explanation regarding Seller action to render Lots 17 and 18 buildable.

Due to your indicated refusal to honor the terms of the Agreement, each of the foregoing items constitutes a breach of Section 10 of the Agreement and a general default of the same under Section 13B. Purchaser hereby demands that the aforementioned defaults be cured as required under 13B the Agreement.

With best regards,


for Steven E. Harvey

Enclosures:

cc: **Keable & Brown, PA** (Ryan@keablelaw.com)
109 Laurens Rd.
Building A, Suite A
Greenville, SC 29607
ATTN: Ryan Brown, Esq.

Access Realty, LLC (Nick Franchina, NickFranchina@accessrealtysc.com)
4113 E. North St.
Greenville, SC 29615
ATTN: Nick Franchina

Crescent Homes SC, LLC (T.Terry@crescenthomes.net)
572 Savannah Hwy
Charleston, SC 29407
ATTN: Edward M. Terry

LevickRoth (SRoth@levickroth.com)
999 Peachtree St NE, Suite 855
Atlanta, GA 30309
ATTN: Suzan E. Roth, Esq.

LESEMANN & ASSOCIATES LLC

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DIRECT: (843) 724-5156
WEBSITE: www.lalawsc.com

January 13, 2020

VIA U.S. MAIL and EMAIL

Charles E. Howard, Esq.
Howard, Howard, Francis & Reid, L.L.P.
111 Petigru Street
Greenville, SC 29601

Re: River Springs – Pending Defaults and Deficiencies relating to Agreement for Purchase and Sale, as amended (collectively the “Agreement”), all capitalized terms below having the meanings ascribed to them in the Agreement

Dear Charles:

As recently discussed, a representative of Purchaser has conducted a site review of the current conditions of the Lots and the Subdivision as a whole. The site review has confirmed that nearly all of the defaults and deficiencies that were previously noticed remain unresolved.

Purchaser wishes to continue the ongoing discussions regarding a resolution of these issues, but the resolution needs to be complete. All remaining items identified to Seller by Purchaser in the Notice of Default dated September 5, 2019 must be addressed.

To that end, below is a summary of the results of the site review, using the same numbering for the various items as was used in the prior Notice of Default dated September 5, 2019:

1. The berm and landscaping across lots 1, 2, 3, 4 and 5 still needs to be completed to the mutual satisfaction of Purchaser and Seller.
2. Seller is requested to confirm that cable/data and phone utility infrastructure is in place (Spectrum and/or AT&T). The site review has confirmed that power, gas, and water are in place.
3. Purchaser has still not received “as-builts” for the Lots and the sewer taps are still not marked.
4. All grass areas still need to be cut to a maximum height of 6” and the stabilization of the site still needs to be completed. The area along the roadside that was

previously hydro-seeded was subsequently disrupted by the gas company during construction of the gas line, which needs to be corrected by Seller.

5. Street lights have still not been installed.
6. The majority of the lot corners still need to be re-pinned.
7. There is unresolved damage to curbs arising from road paving and utility installation.
8. Purchaser has not received septic permits for lots 14, 15, 16 or 18. Of the lots for which septic permits have been received, seven would require pumps, which is not consistent with the requirements of the Agreement.
9. Seller is requested to confirm that the Subdivision has been brought into compliance with the grading plan approved by Greenville County
10. (This item appears to be resolved.)
11. The dirt/mulch piles need to be removed or otherwise used to construct a mutually acceptable berm. At present, there are approximately 11,668.13 cubic yards of excess material on site. After removal of the excess material, the Lots must be re-stabilized. (It is noted that a proposed resolution of this item is pending.)

Volume Summary							
Name	Type	Cut Factor	Fill Factor	2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
DIRT PILE 1	full	1.000	1.000	14631.12	2631.98	0.63	2631.35<Cut>
DIRT PILE 2	full	1.000	1.000	5876.19	1494.63	0.00	1494.63<Cut>
DIRT PILE 3	full	1.000	1.000	16738.63	4923.16	0.26	4922.91<Cut>
DIRT PILE 4	full	1.000	1.000	6645.97	305.52	210.23	95.29<Cut>
DIRT PILE 5	full	1.000	1.000	9686.50	924.53	1.27	923.27<Cut>
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DIRT PILE 7	full	1.000	1.000	9015.58	1170.38	0.12	1170.26<Cut>
Totals							
				2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
Total				65186.82	11880.65	212.52	11668.13<Cut>

12. The Water PTOs (Permits to Operate) have not been received by Purchaser.

13. Seller still needs to submit a detailed entrance monument and landscape and irrigation plan and budget, as well as the central mail facility detail and locations. These must be approved by Purchaser.
14. The Central mail facilities have still not been installed prior to closing. Also, although the entrance monument has been installed, the lettering for "River Springs" was missing from entrance monument. Seller is requested to confirm the installation of the irrigation system.
15. All BMPs (Best Management Practices) still need to be installed per the approved SWPPP (Stormwater Pollution Prevention Plan) and civil plans.
16. It appears that the Discharge Settlement Basin has been installed. However, regarding Lot 23, Seller needs to provide a post conditions plan and explanation regarding Seller's intended actions to render this Lot buildable.
17. Seller must confirm that the Multi-use Basin has been installed and approved per the plans. Also, regarding Lots 17 and 18, Seller needs to provide a post conditions plan and explanation regarding Seller's intended actions to render these Lots buildable and a confirmation that Seller will complete this work.

Please review this list with your client, then let's find a time this week to review these items so that we can try to make further progress toward resolution. I appreciate your ongoing attention to these issues and will be in further contact soon.

With best regards,

s/ Ellis

Ellis R. Lesemann

ERL/nmr

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

ELLIS R. LESEMANN
EMAIL: erl@lalawsc.com

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WEBSITE: www.lalawsc.com

May 29, 2020

VIA U.S. MAIL and EMAIL

F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601

Charles E. Howard, Esq.
Howard, Howard, Francis & Reid, L.L.P.
111 Petigru Street
Greenville, SC 29601

Re: River Springs – Agreement for Purchase and Sale of Developed Lots dated October 8, 2018, as amended, (the “Agreement”), between CJN, LLC (“Seller”) and Crescent Homes SC, LLC (“Purchaser”), all capitalized terms below having the meanings ascribed to them in the Agreement

Dear James and Charles:

I am writing to briefly respond to the prior letter sent on behalf of Seller relating to the Agreement, after having had numerous (productive) conversations with James on these issues. To be clear, the ultimate purpose of this letter is to confirm the path going forward, rather than to derail our interim progress due to disagreements between our clients.

As you know, Purchaser issued a default notice to Seller on September 5, 2019 (“Initial Default Notice”). The Initial Default Notice identified seventeen (17) deficiencies and defaults. Seller did not address the deficiencies and defaults within the applicable 30-day period set forth within Section 13(B) of the Agreement.

Due to the unresolved defaults, Purchaser was required to file a lis pendens against the subject property on September 20, 2019, an Amended Lis Pendens on October 10, 2019, and a civil action for specific performance against Seller on October 11, 2019.

Subsequent notices relating to the unresolved defaults and additional deficiencies were issued on January 13, 2020 (“Second Default Notice”) and April 7, 2020 (“Third Default Notice”).

In order to allow for Purchaser to provide an abbreviated response to your letter dated April 30, 2020, Purchaser incorporates the contents of the Initial Default Notice, the Complaint, the Second Default Notice, and the Third Default Notice, along with our relevant email correspondence and other communications on these issues. Additionally, due to the revisions in the configuration of Lots 15 and 16, a revised Subdivision Plat is required. My client has approved the revised Subdivision Plat, but has not been presented with a recorded copy of the revised Subdivision Plat as approved by Greenville County, which is a prerequisite to the Initial Closing.

Although Seller issued a demand that the Initial Closing occur by today's date, we have discussed the outstanding issues that must be resolved in order for the Initial Closing to proceed. Based on the phone conversation that I had with James yesterday, and my communications with my client, I believe that we have consensus on how to proceed.

Subject to the terms and conditions set forth in this letter, I would like to confirm that Seller and Purchaser are agreeable to proceed with the Initial Closing within ten (10) days of the date that the last of the following items occurs: (1) Seller providing Purchaser with copies of approved septic permits for Lots 15 and 16 from SCDHEC conforming with the applicable requirements of Section 4(f) of the Agreement; (2) Seller providing Purchaser with documentation of Duke Energy's receipt and acceptance of a complete application/request from Seller for street lighting installation and service for the Subdivision; (3) Seller's confirmation (as Declarant under the Declaration of Covenants, Conditions, and Restrictions) that the street lights will be turned on and kept on during appropriate time frames immediately upon the completion of their installation, consistent with Declarant's general obligations under Article VIII, *et seq.*, of the Declaration; and (4) Seller providing Purchaser with a recorded copy of the revised Subdivision Plat reflecting the revised configuration of Lots 15 and 16.

Also, to follow up on our discussion from yesterday, Purchaser is agreeable to Seller's proposed credit to Purchaser in the amount of \$2,000 per Lot for each Lot where the installation of a pump is required for the permitted septic system. The credit(s) will be applied at the closing(s) in which the applicable Lots (Lots, 8, 9, 10, 11, 12, and 25) require a pump are purchased.

Although you and I did not discuss the recordation status of the revised Subdivision Plat when we spoke yesterday, I do not believe that Seller would disagree that this issue must be resolved before the Initial Closing, based on Section 6(A) of the Agreement. Please review my understanding of our proposed compromise as I have stated above with your client and let me know if everyone is amenable to proceeding in this manner.

With best regards,

s/ Ellis

Ellis R. Lesemann

ERL/st

cc: Crescent Homes SC, LLC
Steven E. Harvey, Esq.

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

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July 14, 2020

VIA U.S. MAIL and EMAIL

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704 East McBee Avenue
Greenville, SC 29601

Charles E. Howard, Esq.
Howard, Howard, Francis & Reid, L.L.P.
111 Petigru Street
Greenville, SC 29601

Re: River Springs – Notice of Additional Breach/Default of Agreement for Purchase and Sale of Developed Lots dated October 8, 2018, as amended, (the “Agreement”), between CJN, LLC (“Seller”) and Crescent Homes SC, LLC (“Purchaser”), all capitalized terms below having the meanings ascribed to them in the Agreement

Dear James and Charles:

Unfortunately, the Initial Closing under the Agreement has yet to occur due to Seller’s ongoing breaches of the Agreement. These breaches have been outlined in prior correspondence dated September 5, 2019, January 13, 2020, April 7, 2020, and May 29, 2020, and also within the Summons and Complaint filed by Purchaser on October 9, 2019.

Although the parties have had some productive conversations and Seller has addressed certain defaults and deficiencies, several have still not been cured.

On May 29, 2020, Purchaser confirmed that the Parties would proceed to an Initial Closing on the following basis:

Subject to the terms and conditions set forth in this letter, I would like to confirm that Seller and Purchaser are agreeable to proceed with the Initial Closing within ten (10) days of the date that the last of the following items occurs: (1) Seller providing Purchaser with

copies of approved septic permits for Lots 15 and 16 from SCDHEC conforming with the applicable requirements of Section 4(f) of the Agreement; (2) Seller providing Purchaser with documentation of Duke Energy's receipt and acceptance of a complete application/request from Seller for street lighting installation and service for the Subdivision; (3) Seller's confirmation (as Declarant under the Declaration of Covenants, Conditions, and Restrictions) that the street lights will be turned on and kept on during appropriate time frames immediately upon the completion of their installation, consistent with Declarant's general obligations under Article VIII, et seq., of the Declaration; and (4) Seller providing Purchaser with a recorded copy of the revised Subdivision Plat reflecting the revised configuration of Lots 15 and 16.

On that same date, Seller stipulated that Items (1) - (3) were accepted and applicable, but asked that, with regard to Item (4), the Parties consider proceeding to the Initial Closing within ten (10) days of Items (1) through (3) being resolved, provided that the revised Subdivision Plat had been submitted to Greenville County and was pending approval. While Purchaser was amenable to this, the other conditions to the Initial Closing never occurred.

Earlier today, you and I confirmed over the phone that Seller has failed/refused to perform these items. On this basis, the stipulated conditions precedent to the Initial Closing have not occurred.

Although the Initial Closing has not yet occurred, Seller is now attempting to force Purchaser to engage in either a premature exercise or a premature waiver of Purchaser's right of first refusal for the "Future Phase" of River Springs.

The right of first refusal continues to bind the Future Phase property but is not "delivered" by Seller to Purchaser until the Initial Closing. Below is the exact wording of the relevant provision from the Agreement:

19. **Right of First Refusal:** At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on **Exhibit "A-2"** as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.

See Agreement at Section 19.

My client is not required to exercise or waive the right of first refusal at this time. Although you sent a letter earlier today threatening to sue Purchaser for damages, Seller acknowledged the binding nature of the right of first refusal by making the sales contract with Mr. Clark contingent upon Purchaser "terminating" its right of first refusal.

To be clear, the right of first refusal: (a) has not been terminated by Purchaser; (b) has not yet been delivered by Seller and is therefore not yet capable of being exercised; (c) has not yet been placed into memorandum form or recorded in the public records of Greenville County; and (d) once it has been delivered, is not required to be exercised or waived by Purchaser until a reasonable time *after* the Initial Closing.

In the meantime, due to Seller's prior and current conduct in violation of the Agreement, Purchaser has filed a *lis pendens* on the Future Phase property. This will ensure that Purchaser's rights are honored. Although it is noted that Mr. Clark may not be able to conduct a Section 1031 exchange at this time, this is a risk that he knowingly and voluntarily took when entering into a contingent contract relating to a parcel of property that Mr. Clark has acknowledged is subject to a right of first refusal. If Mr. Clark's intention was to guarantee the ability to conduct a 1031 exchange, an alternative property that was not subject to a binding right of first refusal should have been pursued.

Based on the plain wording of the Agreement, the right of first refusal is not to be exercised as of the date of the Initial Closing. It will be "*delivered*" to Purchaser at that time. The fact that the parties stipulated that they would record a memorandum of the right of refusal at the time of the Initial Closing demonstrates the mutual understanding that the exercise of the right of first refusal would not be due until sometime after the Initial Closing.

Otherwise, the provision would be nonsensical. There is no reason to prepare and file a memorandum at the time of the Initial Closing if the right of first refusal would no longer bind the Future Phase property. Under South Carolina law, "[a]ll contracts should receive a sensible and reasonable construction, and not such a one as will lead to absurd consequences or unjust results." *Bruce v. Blalock*, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962). Your client is advocating an interpretation of the Agreement that violates this well-recognized legal principle.

In view of the purpose of the Agreement, which is to allow for the underlying property to be examined for its suitability for development and construction of single family residences, the timeline for the exercise of the right of first refusal necessarily involves a reasonable time period for due diligence and closing. As a matter of common sense, these activities relating to the Future Phase would occur after the "Initial Closing," not before. See *Popocar Enterprises By & Through Fin. Mgmt. Corp. v. McGowan*, 300 S.C. 178, 181, 386 S.E.2d 795, 797 (Ct. App. 1989) ("[c]ommon sense and good faith are the leading touchstones of construction of the provisions of a contract[.]") Under the circumstances, this requires analysis and testing of the geotechnical conditions of the Future Phase property, which my client will be undertaking as soon as next week.

The Agreement does not include a deadline for Purchaser's exercise of the right of first refusal, which indicates that exercise should occur within a reasonable time, as opposed to immediately upon the Initial Closing. See, e.g., *Cloniger v. Cloniger*, 261 S.C. 603, 608, 193 S.E.2d 647, 651 (1973). Seller's position is also inconsistent with this legal principle and with Seller's duty of good faith and fair dealing under the Agreement.

I am concerned that the dispute between our clients is about to become even broader, just as the parties had been waiting for Seller to complete the last items necessary to proceed to the

Initial Closing. That being said, as I communicated to you by phone earlier today, my client is willing to modify the previously stipulated conditions for the Initial Closing on the following basis:

1. My client is prepared and willing to close on Lots 4, 7, 8, 13, 21, 24, and 28 as soon as possible after your client submits the request for streetlight service and trims these Lots in accordance with Section 10(M) of the Agreement;
2. The parties will conduct the Initial Closing (which will involve the remaining lots originally slated for the Initial Closing) upon Seller's performance of the stipulated conditions precedent to the Initial Closing;
3. Regarding septic permits for Lots 15 and 16, Seller can meet this condition either by obtaining permits that comply with the provisions of Section 4(F) of the Agreement or by obtaining approval to use engineered systems on these two Lots and paying the additional costs of the engineered septic systems;
4. Relating to the Future Phase property, Purchaser will conduct due diligence relating to the Future Phase and will notify Seller no later than August 17, 2020, whether Purchaser shall exercise the right of first refusal on the Future Phase;
5. If the right of first refusal is waived, Purchaser will deliver a written waiver to Seller and shall cancel the *lis pendens* relating to the Future Phase property no later than August 17, 2020;
6. If the right of first refusal is exercised, Purchaser will close on the Future Phase property no later than September 17, 2020; and
7. The terms and conditions of the Agreement, other than as amended, will remain in full force and effect.

Please review this matter with your client as soon as possible and confirm that the parties will proceed on this basis. I will look forward to hearing from you.

Best regards,

s/ Ellis

Ellis R. Lesemann

ERL/st

Nina M. Thomas

From: Ellis Lesemann <erl@lalawsc.com> on behalf of Ellis Lesemann
Sent: Tuesday, May 3, 2022 10:41 AM
To: Benjamin Joyce; Nina M. Thomas
Subject: Fwd: CJN/Crescent-right of first refusal
Attachments: CJN-Crescent-Second Amendment re Right of First Refusal.docx; CJN-Crescent-Memo re Right of First Refusal.docx

----- Forwarded message -----

From: James Warmoth <warmoth@conlaw.com>
Date: Sun, Jul 26, 2020 at 8:34 PM
Subject: CJN/Crescent-right of first refusal
To: Ellis Lesemann <erl@lalawsc.com>

Ellis,

See attached proposed document regarding the right of first refusal. Let's discuss in the morning if you can.

Sincerely,

F. James Warmoth



F. James Warmoth
Attorney
KENISON, DUDLEY & CRAWFORD, LLC
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Greenville, SC 29601
Email: warmoth@conlaw.com
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SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE

This **SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE** ("Second Amendment") is made and entered into as of July 27, 2020 by and between **CRESCENT HOMES SC, LLC**, a Delaware series limited liability company ("Purchaser"), and **C J N, LLC**, a South Carolina limited liability company ("Seller").

WHEREAS, Purchaser and Seller entered into that certain Agreement for Purchase and Sale of Developed Lots, having an Effective Date of October 8, 2018 (the "Agreement") regarding that certain track or parcel of real estate identified as TMS No. 0584010102601, located in Greenville County, South Carolina (the "Real Property"); and

WHEREAS, Purchaser and Seller desire to amend the right of first refusal provisions of the Agreement.

WHEREAS, Section 19 of the LPA provides the following with respect to the right of first refusal ("ROFR 1") under the Agreement:

Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.

WHEREAS, on or about June 26, 2020, CJN received an offer for purchase of the future phase ("Offer"), and as of that date, the Initial Closing had not occurred and the memorandum referenced in Section 19 had not been agreed to or recorded.

WHEREAS, the Offer was set to close on July 15, 2020, but, on or about July 10, 2020, Purchaser filed a lis pendens in relation to the ROFR 1 Property in *Crescent Homes SC, LLC v. C J N, LLC*, Greenville County Case No. 2020-CP-2300343 ("Lis Pendens"), preventing closing of the sale related to the Offer.

WHEREAS, the parties are in a dispute regarding the Offer, the enforceability of ROFR 1 based on its terms and/or the circumstances at the time of the Offer, if enforceable, the status of the parties rights and obligations under ROFR 1 at the time of the Offer, and the Lis Pendens (the "Dispute").

WHEREAS, the parties wish to reserve all rights, claims, and defenses related to the Dispute, but, in order to facilitate the carrying out of the remaining terms of the Agreement, wish to reach a compromise as to any future right of first refusal.

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller amend the Agreement as follows:

1. The Recitals set forth above are hereby incorporated into this Second Amendment and are hereby made a part hereof, as if fully set forth herein.
2. The parties reserve all claims and defenses related to the Dispute but otherwise agree that ROFR 1 is terminated and shall be of no further effect. The right of first refusal granted herein below shall not be construed as a waiver of any rights related to the Dispute. The parties agree that any further right of first refusal shall be governed by the following.
3. Seller hereby grants Purchaser a right of first refusal ("ROFR 2") on the following terms and conditions:
 - a. Immediately upon receipt, Seller shall notify Purchaser of any offer received during the Term (defined herein below) to purchase that certain parcel of real property ("Property") that is legally described on Exhibit A attached hereto and made a part hereof. The Property is generally depicted as cross-hatched area shown on Exhibit "A-2" of the Agreement as "Future Phase".
 - b. Purchaser shall have a right of first refusal on any such offer to purchase the Property. Upon receipt of any such offer, Purchaser shall have a 30 day due diligence period to determine whether to exercise the right of first refusal. In order exercise the right of first refusal, Purchaser shall, on or before the last day of the due diligence period, submit a written offer to Seller, matching the price terms and all other material terms of any such offer.
 - c. The "Term" of ROFR 2 begins on the Effective Date of the Second Amendment and will continue until the earliest to occur of the following, at which point it will automatically expire and terminate:
 - i. On the date of sale of the Property to a third party after Purchaser declines to exercise ROFR 2 in accordance with the above.
 - ii. On the closing date for final closing identified in Exhibit B to the Agreement (the closing associated with Take Down No. 4);
 - iii. On July 27, 2022
 - d. Upon execution of this Second Amendment, Purchaser shall immediately cancel the Lis Pendens and shall not refile it.
4. Capitalized terms used in this Second Amendment not otherwise defined above shall have the same meaning as set forth in the Agreement.
5. The Agreement, as amended hereby, is hereby ratified, confirmed and remains in full force and effect.
6. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Executed copies of this Second Amendment may be delivered electronically,

by facsimile or in PDF or similar format, and such copies shall be deemed originals for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first above written.

[Purchasers Signature to Second Amendment to Agreement for Purchase and Sale]

Witness:

PURCHASER:

CRESCENT HOMES SC, LLC, a
Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

[Signatures Continue on Next Page]

[Seller's Signature to Second Amendment to Agreement for Purchase and Sale]

Witness:

SELLER:

**C J N, LLC, a South Carolina
limited liability company**

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

The real property affected and that is the subject of this Lis Pendens is specifically the real property described below:

All that certain piece, parcel, or tract of land, together with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as "AREA: 2,664,658.13 SQ. FT. 61.17 ACRES, on a plat entitled "BOUNDARY AND WETLAND SURVEY AT THE REQUEST OF: CJN LLC," prepared by Precision Land Surveying, Inc., dated March 2, 2017, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1274 at Page 0001. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Less and excepting:

All those certain pieces, parcels, or lots of land, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 on that certain plat entitled "River Springs Phase I" prepared by EAS Professionals, Inc., dated August 8, 2019, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1345 at Page 0018. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TMS: P/O 0584010102601

Memorandum of Right of First Refusal

This Memorandum of Right of First Refusal ("**Memorandum**") is entered into as of July 27, 2020, by and between CJN, LLC, a South Carolina limited liability company ("**Seller**") and Crescent Homes SC, LLC a Delaware series limited liability company ("**Purchaser**").

Recitals

- A. WHEREAS, Seller and Purchaser are parties to that certain Agreement for Purchase and Sale of Developed Lots dated on or about October 8, 2018 (as amended, "**Agreement**").
- B. WHEREAS, Seller and Purchaser entered a Second Amendment to the Agreement dated on or about July 27, 2020 ("**Second Amendment**").
- C. WHEREAS, pursuant to the Second Amendment, Seller has granted to Purchaser a right to first refusal ("**ROFR**") to purchase that certain parcel of real property ("**Property**") that is legally described on Exhibit A attached hereto.
- D. Seller and Purchaser now desire to record this Memorandum in order to notify third parties of the ROFR held by Purchaser with respect to the Property.

Agreements

Now, therefore, for and in consideration of the foregoing Recitals (all of which are hereby incorporated into this Agreement) and the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Memorandum and are hereby made a part hereof, as if fully set forth herein.
2. Notice of ROFR. Under the Second Amendment, Seller has granted to Purchaser the exclusive right during the Term (as defined below), to purchase the Property in accordance with the terms and conditions of the Second Amendment.
3. Term. The "**Term**" of ROFR begins on the Effective Date of the Second Amendment and will continue until the earliest to occur of the following, at which point it will automatically expire and terminate:
 - a. On the date of sale of the Property to a third party after Purchaser declines to timely exercise the ROFR in accordance with the Second Amendment.
 - b. On the closing date for final closing identified in Exhibit B to the Agreement (the closing associated with Take Down No. 4);
 - c. On July 27, 2022.
4. Purpose of Memorandum; Superiority of Second Amendment. This Memorandum is made solely for purpose of creating record notice of the existence of the ROFR granted to Purchaser with respect to the Property. This Memorandum does not in any manner

amend or modify the respective rights and obligations of Seller and Purchaser under the Second Amendment. In the event of any conflict or inconsistency between the terms and conditions of the Agreement and the terms and conditions of this Memorandum, the terms and conditions of the Second Amendment will in all cases govern and control.

5. Counterparts. The Memorandum may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first above written.

Witness:

PURCHASER:

CRESCENT HOMES SC, LLC, a
Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

Witness:

SELLER:

C J N, LLC, a South Carolina
limited liability company

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

The real property affected and that is the subject of this Lis Pendens is specifically the real property described below:

All that certain piece, parcel, or tract of land, together with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as "AREA: 2,664,658.13 SQ. FT. 61.17 ACRES, on a plat entitled "BOUNDARY AND WETLAND SURVEY AT THE REQUEST OF: CJN LLC," prepared by Precision Land Surveying, Inc., dated March 2, 2017, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1274 at Page 0001. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Less and excepting:

All those certain pieces, parcels, or lots of land, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 on that certain plat entitled "River Springs Phase I" prepared by EAS Professionals, Inc., dated August 8, 2019, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1345 at Page 0018. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TMS: P/O 0584010102601

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas for the Thirteenth Judicial Circuit
The Honorable Charles B. Simmons, Jr. Master-in-Equity

Civil Action Case Nos.: 2019-CP-23-05954 & 2020-CP-23-04351
Appellate Case No.: 2022-000897

Crescent Homes SC, LLC,

Appellant/Plaintiff,

v.

CJN, LLC,

Respondent/Defendant.

CERTIFICATE OF COUNSEL

I certify on this date that the **Appellant's Record on Appeal** contains all material proposed to be included by any of the parties and not any other material in accordance with Rule 210(g) of the South Carolina Appellate Court Rules.

By: s/Ellis R. Lesemann

Ellis R. Lesemann (S.C. Bar No. 15315)

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Benjamin H. Joyce (S.C. Bar No. 100949)

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March 1, 2023

Charleston, South Carolina

Attorneys for Appellant Crescent Homes SC, LLC