THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity

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SC Court of Appeals

Mikell R. Scarborough

Case No. 2011-CP-10-4324

Appellate No. 2013-000168

Town of Mount Pleasant, South Carolina, Condemnor,

v.

Bowman MTP Center, LLC, Landowner, and NBSC, a Division of Synovus Bank, and K-Mart Corporation, Other Condemnees,

Of whom K-Mart Corporation is the Appellant,

And

Of whom Bowman MTP Center, LLC is the Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A No. 2011-CP-10-4324
	)	
TOWN OF MOUNT PLEASANT, SOUTH CAROLINA, Condemnor,	)	**ORDER GRANTING BOWMAN MTP CENTER, LLC's MOTION FOR SUMMARY JUDGMENT**
-vs-	)	
Bowman MTP Center, LLC, Landowner,	)	
and	)	
NBSC, a Division of Synovus Bank, and K-Mart Corporation, Other Condemnees.	)	

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BY

This matter came before the Court pursuant to Cross-Motions for Summary Judgment filed by the Landowner, Bowman MTP Center, LLC, hereinafter referred to as the "Landowner," and an "Other Condemnee," the K-Mart Corporation, hereinafter referred to as the "K-mart." A hearing on these Motions was held on September 17, 2012. Counsel of record appearing on behalf of Landowner consisted of Rick Bybee, Esquire, and Joe Qualey, Esquire. Counsel of record appearing on behalf of K-mart consisted of Chris Murphy, Esquire. Based upon a review of the pleadings, the motions, memoranda of law provided by both parties, and oral arguments, the Landowner's Motion for Summary Judgment is appropriate, and therefore granted, and K-mart's motion is denied.

BACKGROUND FACTS

The underlying action in this case is a condemnation proceeding brought by the Town of Mount Pleasant, South Carolina, pursuant to the South Carolina Eminent Domain Procedures Act (SCEDPA), S.C. Code Ann. § 28-2-10, *et seq.* The Subject Property is owned by the "Landowner," Bowman MTP Center, LLC. The "Other

Condemnees," which are NBSC, a division of Synovus bank, hereinafter referred to as "NBSC," and the K-Mart Corporation have a mortgage and lease interest in the property.

K-mart originally leased its retail location for ten years on March 23, 1978, and has subsequently exercised multiple extensions until the present day. The space leased to K-mart is an 8.6 acre parcel legally described as "Tract A-2" on plat prepared by Harold J. LeaMond, PE and LS date March 6, 1978, and assigned TMS Parcel Identification Number 559-13-00-041.[1] On January 28, 2011, Bowman Center MTP, LLC purchased the Subject Property (Charleston County RMC, Deed Book 0168, Page 975), subject to K-mart's lease of March 23, 1978. Also on January 28, 2011, K-mart as the "Tenant" signed a Subordination, Nondisturbance, and Attornment Agreement, or "SNDA," with NBSC as the "Lender." This agreement was recorded by the Charleston County Clerk of Court (Charleston County RMC, Book 0168, Page 978).

On June 17, 2011, the Town of Mt. Pleasant filed a Notice of Condemnation and lis pendens pursuant to S.C. Code Ann. § 5-2-50 in the Court of Common Pleas, Charleston County, to take 29,884 square feet (sf) in fee simple from a portion of the the Subject Property, which was not part of K-mart's demised premises, or "Tract A-2," as defined in the K-Mart lease. This taking consisted of a "strip-take" for public right-of-way (ROW) improvements and the widening of Bowman Road. On April 10, 2012, a settlement was reached between the Town of Mt. Pleasant and the Landowner in the amount of $435,925.00, and a Consent Order was entered, and executed by all parties which dismissed the Town of Mt. Pleasant and referred this matter to this court for a hearing on the allocation of just compensation pursuant to S.C. Code Ann. § 28-2-460.

K-mart's Tract A-2 is not contiguous to Bowman Road.[2] K-mart conceded in oral arguments that the strip-take in this matter expropriates land which lies outside of K-

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[1]. Exhibit A, Parcel A of the original K-mart lease dated March 23, 1978, states that the tract demised to K-mart is 8.6 acres of land as depicted upon the plat as "Tract A-2," a sub-portion of the 14.11 acre Subject Property which constitutes the "Entire Shopping Center." The "Entire Shopping Center" of 14.11 acres is designated as "Tract A" in "Exhibit "A," Parcel B" of the March 23, 1978 lease, and it encompasses other retail businesses and a parking lot. Exhibit B of the March 23, 1978, lease also depicts the portion leased by K-mart. The other, 5.15 acre portion of the Subject Property, Tract A-1, is assigned TMS Number 559-13-00-038. The two portions of the Subject Property are clearly distinguished, Tract A-2 as "Kmart #7239," and Tract A-1 as "Rite-Aid, Etc.," a former tenant of the shopping center. Both parties agreed at oral argument that these TMS numbers and property divisions were correctly characterized *supra*.

[2]. K-mart has ingress and egress rights which are unaffected by this taking. Deposition of Jody Bishop.

mart's leased premises. In deposition, K-mart's appraiser admitted that the taking will have no material impact to the direct access to K-mart from Bowman Road.

On May 8, 2012, K-mart filed a motion for summary judgment seeking a ruling that it is entitled to collect the value of its lease-hold interest from the proceeds of the condemnation award based solely on lease language; on this basis, K-mart contends that it is entitled to receive almost the entire condemnation award. On May, 18, 2010, the Landowner filed a Motion for summary judgment stating that in accordance with the condemnation clause of the lease signed by K-mart, K-mart is not entitled to any portion of the condemnation award, and further, that K-mart had subordinated any such interest to NBSC, the mortgagee. By agreement between counsel, the Landowner's motion for summary judgment was amended to include the grounds that the K-mart's valuation claim is premised upon misinterpretations of the lease documents constituting an error of law.

SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate where there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Pittman v. Grand Strand Entertainment, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); Café Assocs., Ltd. v. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). In deciding a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party; however, a court "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonable under the facts of the case." Bloom v. Ravoria, 399 S.C. 417, 423, 529 S.E.2d 710, 713 (2000); see also, Helms Realty, Inc. v. Gibson-Wall, Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). When the party moving for summary judgment does not bear the ultimate burden of persuasion at trial, the burden for summary judgment may be discharged by "pointing out to the court that

there is an absence of evidence to support the non-moving party's case." Sides v. Greenville Hospital System, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

DISCUSSION

I. K-mart's claim is based upon an appraisal analysis which misinterprets the lease as a matter of law.

The appraisal utilized by K-mart was conducted by Jody Bishop of Atlantic Appraisals, LLC, and is dated December 12, 2011. **(See Landowners Exhibit D Atlantic Appraisals, LLC, Report on 1545-1551 Bowman Road).** This appraisal has fatal flaws. K-marts admits that an underlying premise of its appraisal is that it had the right, under the original lease, to construct an additional building on the demised premises and that the loss of land and parking spaces outside the demised premises would limit the size of the building that could be constructed. **(See Landowners Exhibit E Jody Bishop Deposition, pp. 45-51; Deposition Exhibit 9; Landowners Exhibit D Atlantic Appraisals, LLC, Report on 1545-1551 Bowman Road).** The appraisal theory of the tenant is therefore barred, as a matter of law, if K-mart has no right to construct any additional buildings after the date of taking.

While the original lease allowed for the construction of additional buildings, the Second Amendment to the Lease modified the original lease to change the right to build "anywhere on the demised premises" to the right to build in a specific location (the "K-mart Expansion Area"). K-mart actually completed this expansion before the current taking. Exhibit B of the original lease was graphically modified by Exhibit B of the Second Amendment to the Lease in order to specify this expansion right; this modification is noted on the Exhibit B plat with the notation "Rev. 3-31-89," and this new Exhibit B was made a part of the original lease. **(See Landowner's Exhibit A K-mart's Lease of March 23, 1978, With Amendments and Exhibits).** It is self-evident that the expansion option in the tightly defined, Second Amendment to the K-mart Lease has already been exercised, and K-mart's structural expansion is built-out. There is no indication in the lease or Second Amendment that multiple expansions were ever contemplated by either party. Thus, the "expansion right" which K-mart's counsel emphasized at oral arguments has already been exercised.

Further, K-mart's appraisal specifically lists the property identification number(s) as TMS No. 559-13-00-041 and TMS No. 559-13-00-038. The appraisal therefore covers the parcel leased by K-mart (TMS No. 559-13-00-041, Tract A-2, at 1551 Bowman Road), and the parcel leased by others (TMS No. 559-13-00-038, Tract A-1, at 1545 Bowman Road). The appraisal notes on page 2 that "both parcels are owned by the same entity and have similar use," there is currently "a surplus of 230 parking spaces, and no parking is specifically assigned to K-mart. Based upon these reasons, the appraiser chose to combine both K-mart's leased parcel and Rite-Aid's formerly leased parcel, and they were "appraised as a single property under the principle of larger parcel."

In addition to the analytical problem discussed above in regard to the "expansion right" theory, the larger parcel premise also fails in this case. Under the larger parcel theory, "for parcels to be combined parcels must have unity of use, ownership and proximity." S.C. St. Hwy. Dep't v. Terrain, 267 S.C. 186, 227 S.E.2d 184 (Sup. Ct. 1976). For unity of title to exist, there must be a unity of ownership for the purpose of addressing damages to any remaining portion of the tract. Arnold v. S.C. Public Serv. Auth., 292 S.C. 396, 356 S.E.2d 837 (1987). However, in this case, K-mart has a lease-hold on the 8.6 acres of Tract A-2, hence its property name of "K-mart # 7239," but K-mart has no lease-hold on the 5.15 acres of Tract A-1. Other commercial entities clearly occupy the buildings located in Tract A-1, as admitted by the appraiser Jody Bishop in his deposition **(See Landowners Exhibit E Jody Bishop Deposition, pp. 67-68)**. In this case, there is, in fact, no unity of ownership of leasehold interests, and this presents a fatal, substantive flaw in the larger parcel premise.

In summary, even if K-mart's expansion had not already occurred, there is no "unity of title" in this case, and the appraisal thus fails under the larger parcel premise. The larger parcel interpretation also flies in the face of K-mart's lease and lease amendments, with their various exhibits; the tax maps, property names, property addresses, and parcel identification numbers; the current as-built status of K-mart; and, the differing lease-holds held by other shopping center tenants.

II. K-mart' claim to the allocation proceeding is barred under the condemnation clause of subject property lease.

Under South Carolina law, where the lease includes a provision specifying the rights of the parties in the event of a condemnation of the leased premise, that provision is valid and controlling. Texaco, Inc. v. Warrington, 264 S.C. 18, 212 S.E.2d 59 (1975). The allocation of condemnation awards is also firmly controlled by written lease terms and provisions, which are subject to general rules of contract construction and interpretation. So. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 667 S.E.2d 7, 14 (Ct. App. 2008) ("As such, it is generally held that parties may agree in the lease to a method or formula of valuation or compensation in the event of condemnation"). Further, as cited with approval in M & T Enterprises of Mt. Pleasant, see also, City and County of Honolulu v. Mkt. Place, Ltd., 55 Haw. 226, 517 P.2d 7, 15 (1973) ("Where a landlord and tenant have contractually agreed as to the disposition of compensation in the event of condemnation, such an agreement is generally held binding."); City of Manhattan v. Galbraith, 24 Kan.App.2d 327, 945 P.2d 10, 12–13 (1997) ("[I]f the lease itself includes a provision in respect of the rights of the parties in the event of the condemnation of the leased premises, such provision is controlling, if applicable to the particular case.") (citations omitted); City of Kansas City v. Manfield, 926 S.W.2d 51, 53–54 (Mo.Ct.App.1996) ("[S]pecific provisions in a lease spelling out the respective rights of the parties to that lease are valid and controlling in the event the property is condemned. Such lease provisions have uniformly been upheld.") (*citations omitted).*

The condemnation clause in the K-mart lease is not unique. 96 Am. Jur. Trials 211 § 26. Lease Provisions Governing Lessee's Compensation Upon Condemnation (2005). The construction of a clear and unambiguous contract and its clauses presents a question of law for the court. Pruitt v. S. C. Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001); United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 105-07, 413 S.E.2d 866, 868-69 (Ct. App. 1992) (applying the rules of contract construction to interpret the lease of a shopping center). To determine the intention of the parties, the court "must first look at the language of the contract." C.A.N. Enters., Inc. v. So. Carolina Health and Human Servs. Fin. Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). In this determination, the

court must give effect to the intention of the parties, and "[w]hen a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." Century Indem. Co. v. Golden Hills Builders, Inc., 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). It is also a question of law whether the language of a contract is ambiguous. So. Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C 617, 623, 550 S.E.2d 299, 302-03 (2001).

Where the agreement is not ambiguous and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it. Ebert v. Ebert, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995). This "court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Lindsay v. Lindsay, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct. App. 1997).

In the current matter, the lease is a standardized, 1972, "Semi-gross" lease form, and it addresses the landlord's and the lessee's rights in case of expropriation through eminent domain. Specifically, clause 21 of the K-mart lease addresses the rights of the parties with six full paragraphs, and based upon this court's review of these paragraphs, K-mart has waived its claim to share in any portion of the condemnation award in this particular instance of expropriation.

Specifically, paragraphs one, two and three of clause 21 of the K-mart lease address full or partial takings of the landlord's or the tenant's buildings. Based on the undisputed facts of this matter, this clause is inapplicable as no buildings, or any portions thereof, will be expropriated by the taking, nor will points of ingress or egress be materially impaired. **(See Landowners Exhibit C Condemnation Notice With Attached Maps; Exhibit E Jody Bishop Deposition, pp. 8-9).** Counsel for K-mart admitted in court that in the event of a total taking, K-mart does not get any portion of the award. **(Transcript of Hearing before Judge Scarborough, September 17, 2012; page 17, lines 2-12, and page 41, lines 5-7).**

Paragraph four of the K-mart lease provides that if the taking removes more than 15% of the total land within the overall 14.11-acre "Entire Shopping Center" (Parcel B), and if the Landlord fails to substitute equivalent, improved, contiguous lands, then the tenant may terminate its lease at any time within twelve months of the effective

deprivation by giving notice to the Landlord. In this scenario, the Tenant gets to walk free and clear of any lease obligations, if the Landlord cannot mitigate the loss caused by the expropriation of land either outside of, or within, the parcel demised unto K-mart. Based upon the facts of this matter, the option to terminate and the right to share in any award is waived because 15% of 14.11 acres would be 2.11 acres, and the "strip-take" in this matter (0.686 acres) is only impacting a small fraction of the total acreage of the Subject Property, none of which is leased by K-mart. Further, the strip-take also does not equate to 15% of the demised parcel, which would be 1.29 acres, or 15% of the 8.6 acres comprising Tract A-2. In addition, K-mart has not provided notice of termination as provided for by K-mart within the time period specified. **(See Landowners Exhibit F Affidavit of Ed Navarro).**

Paragraph five of the condemnation clause states that if the lease is terminated due to the eminent domain provision of the lease, all advanced rent and charges will be refunded to the Tenant, who also gets 60 days rent-free to relocate free and clear of any Subject Property lease obligations. Paragraph five of the K-mart lease also notes that if the Tenant's buildings are expropriated and the Tenant has not fully amortized its expenditures made on these buildings, then "the Landlord shall assign to the Tenant that portion of any award" that equals the unamortized expenses of the Tenant by formula. Paragraph five is inapplicable in this case because no buildings, much less un-amortized improvements, will be impacted by the taking and there has been no termination by K-mart.

Paragraph six of clause 21 in the K-mart lease states that if a condemnation award is made to the Landlord for the expropriation of the Landlord's buildings, then the Tenant only has claim for unamortized expenditures from the condemnation award under the formula described in paragraph five, unless an additional award has been separately designated by the condemning authority to go toward the Tenant's unamortized expenses. However, as the second clause of paragraph six notes, the Tenant still retains the right to receive compensation for an award based upon the taking of land, buildings or improvements constructed by the Tenant. Paragraph six is once again inapplicable to K-mart in this matter, as no land, buildings or improvements of the Tenant are being expropriated. Despite the arguments of K-mart's counsel that the strip takes in this

matter constitute "land or improvements of the tenant," this argument fails based upon the language of the lease, the law, and for the reasons discussed *infra*.

In summary, the K-mart lease in this case sets out the rights of two sophisticated parties within a long-term commercial lease. It has both automatic and optional termination clauses, and addresses full takings, partial takings, and the taking of Landlord and Tenant property and/or fixtures; the lease in question has also been repeatedly renewed. Finally, the K-mart lease does allow the Tenant the right to terminate upon conditions the parties have agreed to, and in some cases receive compensation, based upon impacts by a variety of different expropriation scenarios.

Notably, specific annotations made in the margins of the lease in regard to numerous clauses clearly indicate the lease was extensively negotiated, and clearly modified, in favor of K-mart. In this particular matter, based upon abundant case law, commercial real estate practices, and a thorough review of the lease in question, K-mart knowingly bargained for the right to terminate the lease and waived its common law right to share in the condemnation award. A lease may make a provision for the contingency of condemnation, and such a provision will be given effect in accordance with its language and purpose. CJS EMINENT DOM § 233: Lease provisions governing or affecting condemnation. Francis C. Amendola et. al. (May, 2012). Furthermore, there can be no equitable claim to the condemnation award because none of the land taken was from the demised premises of K-mart, nor was their leasehold or access to it materially impacted.

III. NBSC, the mortgagee on the property, is entitled to the condemnation settlement proceeds because K-Mart agreed to subordinate its interest in any such award above $50,000.00, as provided for in the mortgage note.

In regard to the Subordination Non-disturbance and Attornment Agreement (SNDA) signed by K-mart and its effect upon the disposition of the condemnation award, the existing case law, the commercial function of SNDA's as well understood by this court, and legal commentary clearly indicate that K-mart does not have a claim to share in the condemnation award because its leasehold interest is inferior to the bank's interest. SNDA's, and their function, are not unique in the commercial real estate realm. The "subordination provision within an SNDA makes the tenant's rights under the lease subordinate and inferior to the rights of the lender's mortgage." Subordination,

Nondisturbance and Attornment Agreements. Keenen Kolondo, Dallas Bar Association, Real Property Sec. Publication, Nov. 12, 2007; https://www.dallasbar.org/.../2007_november_subordination_nondist.

The note and mortgage, which obviously are to be read in concert with the SNDA, gives the lender NBSC the right to the condemnation award proceeds. **(See Landowners Exhibit F Affidavit of Ed Navarro; Landowners Exhibit G Promissory Note and Mortgage).** Specifically, Recital "B" of the SNDA required by NBSC of all the shopping center tenants states that "As part of the Loan, Lender has required that all tenants on the Premises execute and deliver a Subordination, Nondisturbance and Attornment Agreement," and Recital "C" of this SNDA ties into "Paragraph 28 of that certain lease dated March 23, 1978, by and between Tenant and Landlord's predecessor-in-interest, Baker & Baker. Paragraph 28 of K-mart's original lease unambiguously subordinates the Tenant's lease "to any first mortgage."

Section 2.07 of the executed NBSC mortgage for the Subject Property specifically contemplates condemnation awards, leaving no doubt that the subordination of condemnation awards was addressed by NBSC's SNDA. To wit, Section 2.07 of the NBSC mortgage states:

> "2.07 Condemnation. In the event that by, or pursuant to, proper authority there is taken or condemned the entire Mortgaged Property or any part thereof, under power of eminent domain exercised by any actual or quasigovernmental authority or public utility, the Mortgagor hereby assigns to the Mortgagee any and all awards that may be given, made or due the Mortgagor in any proceedings in connection therewith, and the amounts of such awards shall be applied by the Mortgagee to the reduction of the indebtedness secured hereby, and the Mortgagor agrees to execute any and all such further instruments of assignment of any and all such condemnation awards as may be required by the Mortgagee to carry out the purposes of this Section."

Section 2.07 provides that if the entire property is taken or the cost of restoration is more than $50,000, then all of the condemnation award is applied to the note and all other secured debts are due. Section 2.07 also provides a formula which allows the mortgagor to restore the property with disbursements of the condemnation award paid to the mortgagee, at the option of the mortgagee, in the case of a partial taking where the cost of restoration is under $50,000; this provision allows the bank to choose to address a

scenario in which it believes the mortgagee could restore the property, return to a position of making revenue, and resume paying down their mortgage with the bank.

The SNDA in this matter is conventional, common commercial lending practice, correctly tied to the original Subject Property lease, and properly executed. The interpretation that the SNDA does not subordinate K-mart's right to the condemnation award runs counter to the basic principle of contract interpretation that a mortgage, a promissory note, an SNDA, and a lease have to be read in *pari materia*. Restatement Second of Property thoroughly addresses subordination in relation to tenants and mortgages. See, Restatement 2d Property: Landlord & Tenant § 8.2 Amount Of The Condemnation Award Tenant Entitled To Receive (2012), Comment J and Reporters Note 14. Comment (J) of Restatement 2d Property: Landlord & Tenant § 8.2 Amount Of The Condemnation Award Tenant Entitled To Receive (2012) was cited in Raiford v. Department of Transp., 206 Ga.App. 114, 424 S.E.2d 789, 791 for the proposition that in regard to subordination clauses and condemnation awards, "secondary authorities support the view that such a clause also gives a lienholder priority to condemnation proceeds to the extent that the security has been impaired by the condemnation, although we find no cases specifically addressing the question."

In its memorandum, counsel for the Landowner cited Raiford, *supra,* both in equity and at law, highlighting the fact that in that case, the lessee's subordinate interest was specifically conditioned upon the security deed holders' explicit inclusion of a covenant of quiet possession in their deeds, and since the security deed holders did not fulfill this "condition precedent," they did not have a contractual right to priority under the lease's subordination clause. However, notably in the current case, NBSC did include a "Tenant Not to Be Disturbed" clause within the SNDA; NBSC's SNDA clearly fulfilled the condition precedent of a non-disturbance clause and the Landowner in the current matter notes this distinction. Finally, at oral arguments, K-mart's counsel argued that because NBSC's secured interest was only three million dollars, and the appraised value of the entire shopping center was at least ten million, K-mart was therefore entitled to the entire condemnation award for the expropriation of land it neither owned nor leased; the legal basis of this apportionment argument is without factual or legal support.

IV. K-mart's argument coupling parking and expansion rights, as noted in K-mart's reply brief and mentioned in oral arguments, do not suffice.

Counsel for K-mart noted at oral argument and in its reply brief that K-mart is ostensibly responsible for "sweeping, striping, and snow and ice removal" under Article 15C, as illustrative of a right to use any and all of the parking spaces in the shopping center for a building. However, such a reading brushes aside without mention the amendment entitled "Article 15A, Repairs and Maintenance." The 15A amendment is an obvious, albeit short, portion of the lease that specifically modifies the Article 15C clause cited by K-mart's counsel. The 15A Amendment states that "Landlord shall reimburse Tenant annually for Landlord's pro rata share of Tenant's costs for cleaning, striping, snow and ice removal, and illumination of the parking and common areas, all within the property described in Exhibit A, Parcel B," which is the entire shopping center. K-mart is clearly only responsible for the maintenance of the parking on its demised parcel, and the landlord pays for any of K-marts maintenance which might extend outside Tract A-2. This provision for the proper allocation of a CAM, or Common Area Maintenance fee, ensures that K-mart will not have to pay for the maintenance or lighting of parking outside of its demised parcel; CAM fees are common in commercial real estate. Significantly, the use of the term "landlord's pro rata share" indicates that the parking outside of K-mart's leased parcel belonged to the landlord for lease to other tenants of the shopping center.

As counsel for K-mart pointed out, Article 1 of the K-mart lease clearly grants K-mart "the use of parking areas." K-mart's counsel noted that Article 10 of the K-mart lease is entitled "Parking and Other Common Areas" and states that the "Landlord further covenants that the aggregate area provided for the parking of automobiles shall during the lease term be sufficient to accommodate not Less than Seven Hundred Thirty ----(-730----) automobiles on the basis of arrangement depicted on Tenant's working drawings and specifications." K-mart's counsel then notes that based upon their appraiser's count, since there are 739 parking spaces, K-mart is entitled to the use of all of them, and in the case of a building expansion which covers these parking spaces, the sole use of these spaces. Such a tortured interpretation belies the obvious fact that the other shopping

center tenants and neighbors of K-mart would be entitled to use some of the 730 (or 739) parking spaces.

Further, in specific reference to K-mart's reliance upon Article 10's mention of K-mart's right to use in common "730 parking spaces" as it relates to any possible expansion right, K-mart's counsel overlooks the fact that Article 16 of the lease clearly governs the expansion scenario *in re* parking, stating that "in the event Tenant constructs any such additions or new construction, Landlord shall not be obligated to furnish additional parking areas in substitution of areas thereby built over, and the number of parking spaces required under Article 10 shall be reduced by the number of spaces covered by such additional buildings or structures."

Finally, Counsel for K-mart also misapplies the Landowner's use of Winn-Dixie Stores, Inc. v. Dept. of Transp., 839 So. 2d 727 (Fla. Dist. Ct. App. 2d Dist. 2003). K-mart converts Winn Dixie into the proposition that a strip taking of land alongside a shopping center, but outside of the parcel demised to the actual tenant, can nevertheless provide for an allocation of the condemnation award to the tenant. However, the taking in Winn Dixie, is exactly like the taking in K-Mart Corp. v. Dep't of Transp., 636 So.2d 131 (Fla. 2d DCA 1994) which removed a direct entranceway to a highway, thereby materially impacting the leasehold by diminishing direct access and thereby damaging business (FN. 1). The lack of a material impact to access in the current case is a distinction the Landowner has clearly established.

The final point that the Landowner makes in regard to Winn Dixie is that the third required prong of the reasoning under which Winn Dixie was apportioned some of the condemnation award was the fact that Winn Dixie paid separate consideration for parking. K-mart fails this prong in the current matter. Based upon both the law and the specifics of the various clauses, articles, and amendments, K-mart's interpretation of the lease and its application is at best unpersuasive.

SUMMARY

In summary, the contract documents have very comprehensive eminent domain provisions which: 1) provide for the condemnation award to be paid to the mortgage company, then to the landowner for buildings it has constructed on its land and to the

Tenant if buildings it has constructed are taken or points of ingress or egress are materially affected; 2) allows the Tenant to walk away from the lease free and clear in most of these scenarios, and even 3) requires the Landlord to mitigate the Tenant's unamortized expenditures, refund rent, mitigate for the material loss of parking spaces, and replace impacted buildings. While the Landlord suffers the risk of losing land, points of ingress and egress, buildings, and rental income from such an expropriation, the Tenant can simply break the lease with minimal to no notice, without penalty, after receiving a refund of rent or mitigation for any unamortized improvements it made, and walk away free and clear.

Furthermore, from both an equitable and legal viewpoint, K-mart has shown no loss of value in its lease-hold due to this expropriation in law or in equity. In fact, the road improvements appear likely ultimately improve traffic flow and access to the shopping center once completed, thereby benefitting all shopping center tenants. While K-mart will lose nothing due to this expropriation, it must show damages in order to make any claim to share in the condemnation award on the basis of their leasehold. Ultimately, since there are no damages to K-mart, their claim to share in the condemnation award must fail as a matter of law. So. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008).

CONCLUSION

For the aforementioned reasons the Landowner's motion for summary judgment is granted, and K-mart's motion for summary judgment is denied.

It is So Ordered.

MIKELL R. SCARBOROUGH
Master- in-Equity for Charleston County

CHARLESTON, South Carolina
Oct. 22, 2012

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	C/A No. 2011-CP-10-4321
Town of Mt. Pleasant, South Carolina,)	
Condemnor,)	CONDEMNATION NOTICE AND TENDER OF PAYMENT
vs.)	
Bowman MTP Center, LLC,)	
Landowner,)	
And)	
NBSC, a Division of Synovus Bank,)	
Other Condemnee,)	

FILED
2011 JUN 17 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: LANDOWNER NAMED ABOVE:

1. The Town of Mt. Pleasant (Condemnor) hereby notifies Bowman MTP Center, LLC, (Landowner), as record landowners of fee simple title, of the condemnation of **a portion of the property** known as:

ALL that certain piece, parcel or tract of land, together with the building and other improvements thereon, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being shown and designated as "TRACT A-1 BAKER AND BAKER TMS NO. 559-13-00-038 5.15 TOTAL ACRES" on that certain plat entitled "PLAT SHOWING TRACT A-1 (5.15 ACRES), TRACT A-2 (8.6 ACRES) AND TRACT B (0.588 ACRES) PROPERRTY OF BAKER AND BAKER LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," dated February 22, 2007, prepared by Richard D. Lacey, S.C.P.L.S. 16120, and recorded on March 12, 2007 in the RMC Office for Charleston County, South Carolina in Plat Book EK at Page 536. Said tracts having such actual size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

SUBJECT to all applicable easements, covenants, right-of-way, restrictions, and all other matters of record in the RMC Office of Charleston County.

BEING a portion of the property conveyed to Bowman MTP Center, LLC by deed of Transwestern Mount Pleasant, L.L.C., a Delaware Limited Liability Company, dated January 28, 2011 and recorded in Book 0168, page 975 in the RMC Office for Charleston County.

TMS #559-13-00-038

The Condemnor seeks to condemn a **portion of the property** in the approximate size of 29,884 in fee simple. The area condemned is shown on Exhibit A which is attached to this Notice.

2. The Condemnor's legal authority to condemn is granted pursuant to South Carolina Code section 5-7-50.

3. NBSC, a Division of Synovus Bank is named as an Other Condemnee by virtue of a Mortgage, Assignment of Leases and Security Agreement from Bowman MTP Center, LLC, a Delaware limited liability company to NBSC, a Division of Synovus Bank dated January 28, 2011 and recorded in the RMC Office for Charleston County in Book 0168 at Page 976

4. This property is being condemned for the purpose of creating and constructing a public right-of-way.

5. The Condemnor elects to bring this action under South Carolina Code section 28-2-240.

6. The Condemnor has complied with South Carolina Code section 28-2-70 (A) by having the subject property of Landowner appraised to determine the amount that constitutes just compensation for its taking and in making this appraisal available to the Landowner.

7. The Landowner may inspect the project plans at the Town of Mt. Pleasant Department of Planning and Development, 100 Ann Edwards Lane, Mt. Pleasant, South Carolina.

8. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF $435,925.00 (Four Hundred Thirty Five Thousand Nine Hundred and Twenty Five Dollars and 00/100) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

9. Payment of this amount will be made to the Landowner if within thirty days of service of this Condemnation Notice, the Landowner in writing requests payment, and agree to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Condemnor at the Town of Mt. Pleasant, Legal Department, 100 Ann Edwards Lane, Mt. Pleasant, South Carolina, 29465, c/o R. Allen Young, Corporation Counsel/Town Attorney. If no request and agreement is received by the Condemnor within the thirty-day period, the tender is considered rejected.

10. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the clerk of court in the county where the property is situated and deposit the tender amount with the clerk. The Condemnor shall give the Landowner and Other Condemnees notice it has done so and may then proceed to take possession of the property interest and exercise the rights described in this Condemnation Notice.

11. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS

CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

12. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the clerk of court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The clerk of court shall give the Landowner written notice by mail of the call of the case for trial.

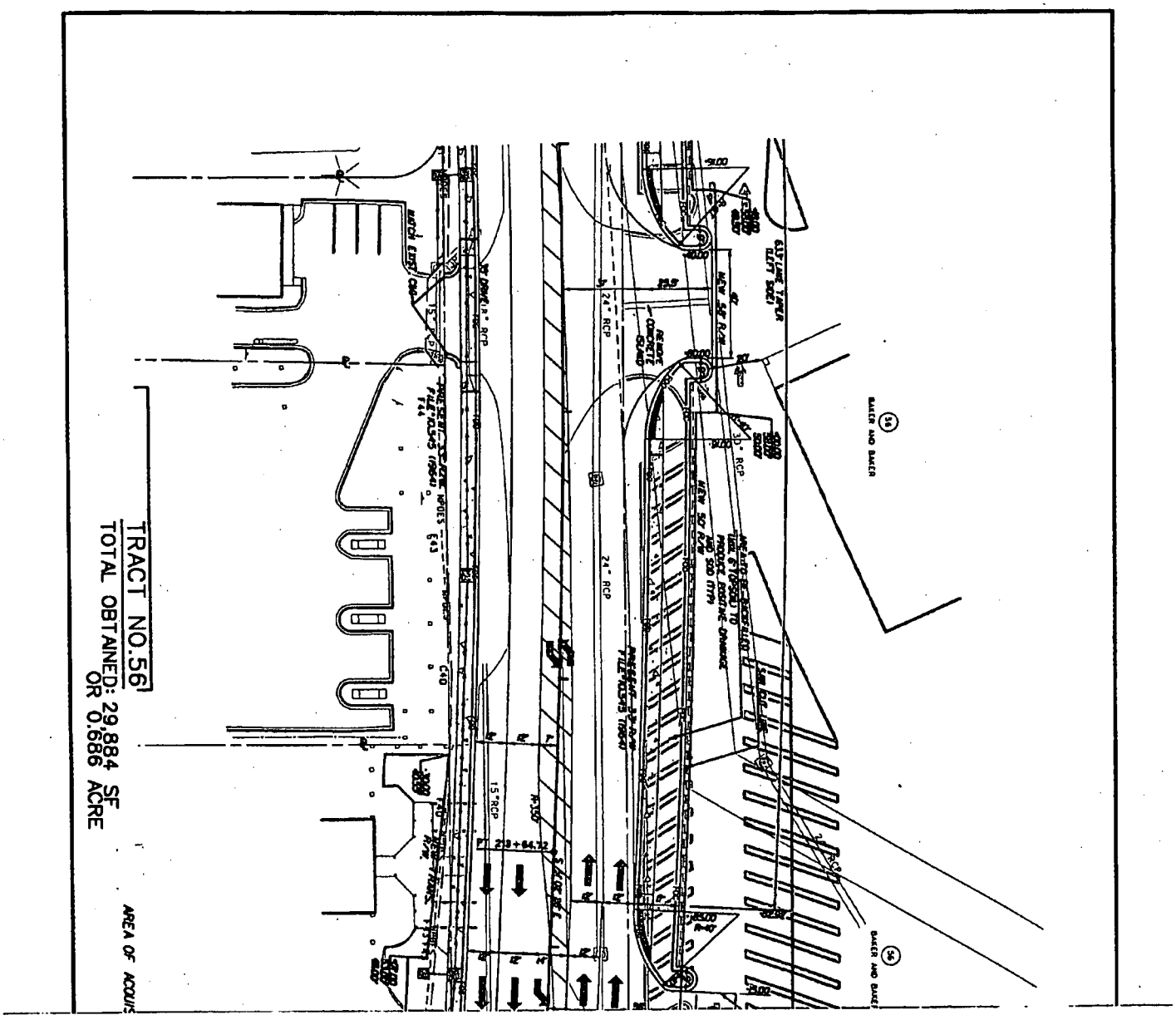
13. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

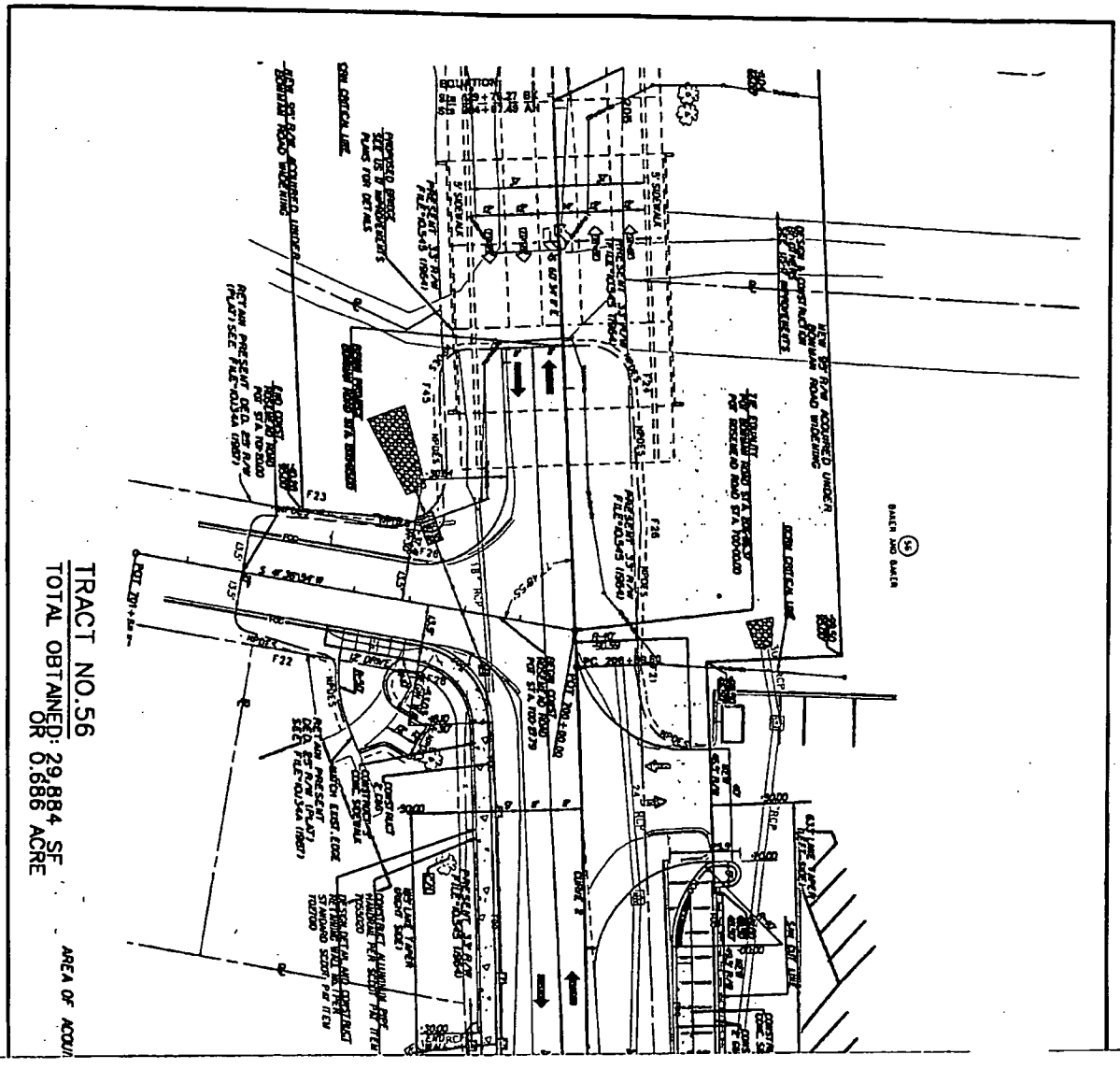
14. In the event the Landowner accepts the amount tendered in this Notice, counsel for the Condemnor shall be notified.

David G. Pagliarini
Julia P. Copeland
Hinchey Murray & Pagliarini, LLC
234 Seven Farms Drive Drive, Suite 300
Daniel Island, SC 29492
(843) 971-8646

R. Allen Young
Corporation Counsel/Town Attorney
Town of Mount Pleasant
100 Ann Edwards Lane
Mt. Pleasant, SC 29465
(843) 849-2020
ATTORNEYS FOR CONDEMNOR

June 3, 2011


TRACT NO.56
TOTAL OBTAINED: 29,884 SF
OR 0.686 ACRE
AREA OF ACQUIS
BAKER AND BAKER
24" RCP
15"RCP



TRACT NO.56
TOTAL OBTAINED: 29,884 SF
OR 0.686 ACRE

AREA OF ACQUI

HINCHEY, MURRAY & PAGLIARINI, LLC

David G. Pagliarini
E-Mail: david@lawyershmp.com

ATTORNEYS AT LAW

234 Seven Farms Drive, Suite 300
Daniel Island, SC 29492
Phone: 843-971-8646
Fax: 843-971-8073

June 15, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: Town of Mt. Pleasant, South Carolina vs. Bowman MTP Center, LLC
Tract 56
2011-CP-10- 4323

Dear Ms. Armstrong:

Enclosed for filing please find the original and three copies of the Condemnation Notice and Tender of Payment, the original and three copies of the Affidavit of David G. Pagliarini, and the original and three copies of the Notice of Lis Pendens in the above-referenced matter. Please clock in the documents and return clocked copies via the courier in the provided envelope. I have enclosed our firm's check totaling $150.00 to satisfy the filing fee.

Additionally, I have enclosed Town of Mt. Pleasant check number 183831 made payable to the Charleston County Clerk of Court in the amount of Four Hundred Thirty Five Thousand Nine Hundred and Twenty Five Dollars and no/100 ($435,925.00.) This check represents the amount of just compensation stated in the notice and is being deposited with your office pursuant to South Carolina Code Section 28-2-230.

Sincerely,

David G. Pagliarini

DGP/cb
Enclosure(s)

cc: Richard D. Bybee, Esquire

HINCHEY, MURRAY & PAGLIARINI, LLC

David G. Pagliarini
E-Mail: david@lawyershmp.com

ATTORNEYS AT LAW

234 Seven Farms Drive, Suite 300
Daniel Island, SC 29492
Phone: 843-971-8646
Fax: 843-971-8073

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Sincerely,

David G. Pagliarini

DGP/cb
Enclosure(s)

cc: Richard D. Bybee, Esquire

HINCHEY, MURRAY & PAGLIARINI, LLC

David G. Pagliarini
E-Mail: david@lawyershmp.com

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Fax: 843-971-8073

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Sincerely,

David G. Pagliarini

DGP/cb
Enclosure(s)

cc: Richard D. Bybee, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2011-CP-10-4324

TOWN OF MT. PLEASANT, S.C.,
Condemnor,

-vs-

BOWMAN MTP CENTER, LLC,
Landowner,
and

NBSC, A DIVISION OF SYNOVUS BANK, AND K-MART CORP.,
Other Condemnees.

Hearing before the Honorable Mikell R. Scarborough, reported by Bernadette A. Cali, CSR and Notary Public, at 11:30 a.m. on September 17, 2012 at 100 Broad St., Charleston, South Carolina.

A P P E A R A N C E S

For Landowner: Richard D. Bybee, Esq.
Smith Bundy Bybee & Barnett, PC
PO Box 1542
Mt. Pleasant, S.C. 29465-1542

For K-Mart: Christopher L. Murphy, Esq.
Stuckey Law Offices
123 Meeting St.
Charleston, S.C. 29401

Bernadette A. Cali, CSR

E X H I B I T S

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Plaintiff's Exhibit 1 (Landowner's Memorandum)	43
Plaintiff's Exhibit 2 (Diagram)	43

(Hearing commenced.)

THE COURT: This case is captioned Town of Mt. Pleasant, South Carolina, as Condemnor, versus Bowman MTP Center, LLC, Landowner; and NBSC and K-Mart Corporation, As Other Condemnees.

The matter is before the Court today on cross motions for summary judgment is what I have.

Present today -- well, I think the Town of Mt. Pleasant is now out of the case; is that correct? The Town of Mt. Pleasant is out of the case, so this is a battle between the landowner and the tenant at this point in time.

Is there anybody here on behalf of the bank?

MR. BYBEE: No, sir.

THE COURT: So on behalf of the landowner, Mr. Rick Bybee and Joe Qualey; on behalf of K-Mart Corporation, Mr. Chris Murphy.

Gentlemen, I did get memoranda, and I got some supporting documents from each of you, and I appreciate that. I've had some reading to do. Some of it I did this weekend, some of it I did this morning, but I did have a chance to look at it. I think I'm somewhat familiar with the issues, but I want to make sure that we make a full record, so I'm going to give you-all the right to explore those.

I do have some questions for you, because I'll just tell you right off the bat that I find these types of cases to be very, I think, fact driven based upon the lease agreement and also the law. Generally the law is determined by the statutory authority, but I don't know there is any dispute about that. What seems to be in dispute here is the lease agreement, and then there is a subordination agreement that seems to be in dispute.

Let me at the outset say this. Mr. Bybee is representing some family members in a matter right now. I want to make sure that I put that out on the record. He's not representing me, but he is representing some family members in a dispute out there, and I want to put that on the record to make sure there is no conflict about that.

MR. BYBEE: That is correct, Your Honor. Mr. Murphy and I discussed that a couple of times. Any conflict or appearances have been waived by his client.

MR. MURPHY: Yes, sir.

THE COURT: Okay. That having been said, who filed their summary judgment first?

MR. MURPHY: I filed first, Your Honor.

THE COURT: I'll let you argue first.

MR. MURPHY: If I may hand your clerk up the reply

memo I have yet to file, but I was working on it this weekend.

(Hands up document.)

MR. MURPHY: Thank you, Your Honor.

May it please the Court. This, as you know, involves the K-Mart Center up in Mt. Pleasant, corner of Bowman and US-17. It is a 14-acre site. K-Mart leases the property and they have a lease for 8.6 acres of the property which is referred to as the demised area. That is the area where K-Mart can expand or -- expand or create new structures pursuant to the lease.

Now, this lease also includes the parking spaces. There is currently 739 parking spaces on that site. If you look at Paragraph 1 of the lease it states, land -- landlord does demise onto tenant and tenant does take from landlord for the lease term the following property.

THE COURT: Slow down. She's trying to catch this.

MR. MURPHY: Tenant's completed building, together with the site improvements to be constructed by the landowner together with land comprising not less than eight plus or minus acres.

Those site improvements that were demised onto the landowner -- or tenant are included in Paragraph 10 of

the lease which states that they will provide not less than 730 parking spaces. There are 739 on the site, so the K-Mart has the right to use or leases those parking spaces as well.

Now, the Town of Mt. Pleasant acquired a strip-take along Bowman Road. It's about .68 acres or 29,900 square feet. They paid approximately $435,000 for that strip-take.

Now, the strip-take is not within the demised area where K-Mart can expand, but it does take away 57 parking spaces which K-Mart has the right to use.

Now, we filed partial summary judgment solely on the issue of entitlement to seek or share in that award. We're not talking about damage, just saying we get to have a hearing to establish what, if any, is our leasehold interest.

Now, you look to the lease, as you stated, and I've read this lease about a thousand times. I'm convinced of one thing. It was written by folks a lot smarter than me. It has a condemnation clause in it. It's lengthy. But the only relevant portion of the clause, as I see it, is the very last sentence which states, tenant's right to receive compensation for damages or share in any award shall not be effected in any manner hereby if said compensation or damages is

made by expropriation of land or buildings or improvements constructed by tenant.

Now, opposing counsel argues that that does not apply because the take did not include property within the demised area. However, K-Mart argues that it uses the word -- it does apply because it uses the word expropriation of land, which is site inclusive. It does not use the word expropriating of demised land as it does in other portions of the property. That makes sense because K-Mart has development rights in the demised area which are -- directly correlate to the number of parking spaces on the site. So if they could use those parking spaces it suffers damages as a loss -- contributes to a loss of those certain parking spaces.

Now, you mention statute. The Eminent Domain statute defines property as the right to use or privilege to use as a property right. Since this is a defined property right by statute, K-Mart is entitled to share in the award.

Now, there is a Winn Dixie case down in Florida that is directly on point. In that case the DOT acquired a portion of the premises outside the demised area. And, as in here, it's the same argument. They are saying the landowner -- or the landlord said they

don't get anything because it's outside the demised area. The Florida court disagreed. They said the lease contemplated the use of those parking spaces. The lease indicated that the parking spaces were contingent on the continuation of that lease; and the third thing they said is that that tenant paid a monthly fee to maintain those parking spaces.

That's what we have here, Judge. The lease, in Paragraph 1, clearly says they get to use the demised parking spaces. They had to make those improvements prior to the start of this lease, and those improvements shall continue throughout the term of this lease. Although we don't pay a monthly fee for it, K-Mart is responsible for sweeping and striping and removing snow and ice from that area. So we think that the Florida -- that Winn Dixie case is directly on point with what we have here.

Now -- and that's briefly what we -- what our argument is with regard to the lease. So under the lease, which is the first document we're looking at, we think we're entitled to apportionment.

I also cited a case also in Florida, K-Mart versus Florida DOT where they argued whether or not K-Mart was entitled to apportionment under the lease. That involved the exact same lease that we have here. And

the Florida court very quickly said, you get to share in that award.

Now, it's unclear in that case whether that property was within the demised premises or if it was outside the demised premises, but clearly under the language they got to share in that.

So now we're looking at the second document here, which is the subordination agreement. This is another document that I had to spend a great deal of time researching, because I don't do that type of law. But, anyway, it was a subordination -- his argument, as I see it, is basically two-fold.

Number one, it's the document precludes K-Mart from sharing in the award; and then, number two, equity precludes K-Mart from sharing in the award.

So if we look first at the document, it's called a subordination tenant-not-disturbed or attornment agreement. That is required by the banks for loan purposes. If you read that agreement it says that the bank will -- that K-Mart's interest will be subordinate to the bank's in terms of title only. It references Paragraph 14 of the lease which was K-Mart's first right of refusal to purchase the property.

So the bank takes priority over K-Mart's right to purchase the property. So this applies to title only.

That makes sense, because the bank's not going to loan money if it doesn't have priority in terms of title.

Then it goes on to say, tenant's shall -- tenant's right shall not be disturbed. And in that lease there is a lengthy paragraph that goes out of its way to make sure all other rights of the tenants under the lease shall not be disturbed.

So, under the language of the subordination agreement we don't think that that has any effect on K-Mart's ability to share in this award.

Now, the second argument is one of equity. The cases and authority cited by opposing counsel all state that a mortgage holder or lien holder is entitled to priority to the extent that the security's damaged.

That makes sense, because if you have a total take and there is -- the property is mortgaged, it doesn't make sense that the tenant would get priority, and then the landowner would still have to be obligated to make payments under the mortgage without any security.

But that's not the case here. In this case we have a three million dollar mortgage, and we have two appraisers who appraised the property in the after and their values are in excess of ten million dollars. So we have over seven million dollars in equity in this case. So the lease -- so the security interest is not

damaged at all. So from an equitable standpoint we still think we're entitled to share in the award.

I would also say that South Carolina is a lien state and not a title state. And the mortgage holder is just a lien holder and they do not -- it does not entitle to any of the requisites of ownership, which is what is proposed by Mr. Bybee in his brief.

Now, the third part is one of damages. And what is argued by opposing counsel is that the second amendment, where K-Mart did construction to the building, precludes K-Mart from further expanding.

Now, we don't think that's the case. Paragraph 16 of the original lease allows K-Mart to do any type of expansion within the demised area.

The lease also requires K-Mart to get written approval from the landowner if they are going to expand the building. And the landowner, under the lease, is required to give this approval if -- as long as the structure of the building is not impacted.

That's all that the second amendment does. It's evidence of written approval of K-Mart's right to expand the building and replaces what's called Exhibit B, which is an as-built survey or plat of the property. So Exhibit B -- the new Exhibit B just shows the addition that K-Mart was going to do. It does not

limit K-Mart's ability to do any future development in any way, nor does it reference Paragraph 16 of the lease to mitigate K-Mart's rights or effect K-Mart's rights to expand or further develop the property.

Then the second argument of damages is, Mr. Bybee argues, the larger-parcel theory. I would first say that this is not a ripe issue, since we're still in the discovery phase. I've asked for the other leases in discovery and haven't received them. I also did a follow-up letter asking for them, so I'm sure they will be forthcoming but, in any case, the larger-parcel theory, as I see it, only applies to land transactions, not leasehold estates. I haven't found any case law where the larger-parcel theory applies to a leasehold. So I don't think that's correct.

Furthermore, we're not combining any leaseholds. We're saying we get compensation for the loss of our parking space that is guaranteed under the lease.

Finally, I will point out that the there are no other tenants involved in this case. No other tenants are seeking any damages, and since I don't have the leases I don't know what, if any, their leasehold interest is at this point.

Finally, Judge, we talk about damages. Mr. Bybee argues there are no damages. He cites the M&T case.

And I feel I'm at a disadvantage arguing the M&T case.

THE COURT: So was he.

(Laughter)

MR. MURPHY: But as I read the M&T case it says that in a partial taking -- the Court did change the law a little bit. But in a partial taking you've got to look at the difference in market value between the property before the take and the difference of market value after the take.

That's exactly what we did in this case. We said there are four parking spaces per thousand foot building ratio for this property. And when you take away 57 parking spaces -- our purchaser said you could have built or developed 37,500 square feet. When you take away those 57 spaces your buildable -- your potential is reduced by 7500 square feet leaving you with 30,000 square feet of building space. Basically, it's the development rights.

That's what our theory of damages is completely premised on, is what are the development rights within the demised area? When you take away parking spaces that they are guaranteed you reduce the K-Mart development rights, which is the measure of damages we have here.

So clearly we have K-Mart development rights being

reduced as a result of this acquisition, and we think we're entitled to damages, as a result of that, to its leasehold interest. A finding of no damages, that we are not entitled to share in the award, would basically leave K-Mart with a diminished site or leasehold. They have less than what they bargained for, but are still obligated to pay the same annual rents.

That's our argument in a nutshell, Judge.

THE COURT: Let me ask you a few specific questions and make sure I'm on the same wavelength and I'll give Mr. Bybee a chance to respond.

Number one, I'm assuming that K-Mart is the anchor tenant in this shopping center.

MR. MURPHY: Yes.

THE COURT: And there is no dispute but that the property that has been taken is not the demised premises.

MR. MURPHY: That is correct.

THE COURT: So what is being taken is out of the demised premises but is part of the, quote, premises, or the land, and impacts parking spaces.

MR. MURPHY: That is correct.

THE COURT: So there is some agreement as to the number of spaces and that's 57. Is there agreement on that figure?

MR. BYBEE: We do not dispute the 57 spaces.

THE COURT: So from K-Mart's standpoint your argument -- I'm going forward now. I'll jump to damages then come back and ask you some questions.

The reduction in the number of parking spaces impacts their future ability to expand their building?

MR. MURPHY: Or as -- construct a new building.

THE COURT: Or construct a new building. But they can only construct that new building on the demised premises?

MR. MURPHY: That is correct.

THE COURT: There is agreement that the non-demised premises are what's being taken?

MR. MURPHY: That is correct. No question. That's factually where we are.

THE COURT: Okay.

As to, you cited -- I did have a chance to review your brief. You talked about the Florida court, Winn Dixie versus the Florida DOT.

There is some similarity there in that the Court found that that taking of land in a similar situation entitled the tenant to relief; correct?

MR. MURPHY: Yes.

THE COURT: What I saw a distinction was -- this is what I wanted to clear up with you. In particular,

what struck me here on this lease was the -- I'm looking at your brief, page 4. It talks about, Paragraph 21 of the lease and the condemnation clause, and the last sentence on Eminent Domain says -- I think we've covered this -- tenant's right to receive compensation shall not be effected by reason of the expropriation of land or buildings or improvements constructed or made by the tenant.

MR. MURPHY: Yes.

THE COURT: My first reading of that had to do with whether or not the item had to be constructed or made by the tenant as effecting what was being taken. Clearly the land that's being taken is not demised. We've covered that issue. Neither does it take a building or improvement constructed or made by the tenant. You agree with that as well?

MR. MURPHY: Just kind of to back up. This is where we're kind of getting into -- I'm not sure how to explain it.

Paragraph 1 of the lease demises the demised area, which is defined as the 8.6 acres, but it also demises the improvements which were defined as these parking spaces.

THE COURT: So the parking spaces are, in fact, improvements, your argument, to the premises whether

it's demised or not demised; is that correct?

MR. MURPHY: That is correct. The demised area is only where K-Mart can expand, so they can't expand outside that. No one is saying we can. But in terms of -- and I think I -- I had to read this clause a lot. When I first read it, it appears that K-Mart is not entitled to share in the award. But the whole condemnation clause goes through great lengths to control or protect the buildings constructed by the landowner. So it says that K-Mart, if you're taking any of the buildings, K-Mart doesn't get any portion of it.

But it does go on to say at the end, says the -- and the Florida case agreed with me that it says tenant's right to receive compensation shall not be effected for the expropriation of land -- which is what we have here -- or any improvements or buildings constructed by the tenant.

That makes sense when you read the whole condemnation clause together, that it protects whoever does the buildings or improvements, they are protected. Does that answer your question?

THE COURT: I think that's what I'm trying to cover, because I see a distinction between the two, clearly. Improvements or buildings constructed or made

by the tenant. The land's not made by the tenant. The tenant's leasing the land, but only the demised premises, and there is agreement that what's being taken is outside of those demised premises. That's what I'm trying to cover.

In Florida the Court said that didn't matter, you're entitled to recovery.

MR. MURPHY: Yes.

THE COURT: The other was the Washington state case.

MR. MURPHY: Yes.

THE COURT: Clearly that was from, what I could tell, that was -- in that case Borders was the anchor tenant and the court found that under similar terms that Borders was entitled to some -- to share in the award based on lack of clear evidence that they had waived their right to the apportionment. Right?

MR. MURPHY: Yes. That's similar language to what we have here in that lease.

THE COURT: Okay.

As to the subordination agreement, it's your position that the value of the property is not being effected, or the equity in the property is not being effected by the taking; is that correct?

MR. MURPHY: The security is not being effected at

all, so they have three million dollars. As long as this property is worth more than three million the bank's protected.

THE COURT: Okay. All right. I think I understand. Thank you.

Mr. Bybee.

MR. BYBEE: Thank you, Your Honor. First of all, a couple of house cleaning matters. I want to hand up to the clerk and, actually, file the Memorandum and all of the documents that have gone with the Memorandum which include all of the lease documents, the affidavit of Ed Navarro who is here in the courtroom, and the deposition of Jodie Bishop. If we could just get that house cleaning matter.

THE COURT: That's what was delivered to me Friday?

MR. BYBEE: That's what was delivered Friday.

Now, this morning I was handed up a reply brief, and I have not fully read it, but I'm prepared to go forward and argue, and if necessary we can supplement with another reply brief.

THE COURT: I haven't read it either.

MR. BYBEE: All right, sir.

The other thing that I just need to make sure is in the record, we took the deposition of Jodie Bishop

last Monday, so the testimony as to where he was coming from on his analysis, which established value, was only recently discovered.

Mr. Murphy agreed to the amendment of my motion for summary judgment, so that we're here today not only on the grounds that the lease documents and the condemnation clause bar any claim; that all of the documents together, including the subordination clause, bars the claim, but also on the grounds that they have no evidence of damage. And that's the premise that I want to start with.

THE COURT: Okay.

MR. BYBEE: I would like to hand up to the Court, and I think it's evident -- this is just for illustrative purposes only --

(Hands up document.)

MR. BYBEE: -- a plat. And on the left side of the plat is Bowman Road. I'm sure Your Honor is familiar with this property.

But on the left side of the plat you see an orange stripe. That's the town's strip-take area. If you look carefully there you will see parking spaces that are enumerated therein, and then they are cross-hatched over.

The area on the right is the demised premise in

yellow. Okay? So it's very clear that there has been no taking from what is defined in the lease as the demised premise. So how does a tenant make a claim to an award for land and improvements outside of his demised premise?

Well, there is one way that that can be done and the lease speaks to this. That is, if they've interfered or materially impacted ingress and egress rights, because this lease does, in its condemnation clause, give you some rights if, either through a total taking or a partial taking of buildings or just the acquisition of the ingress and egress rights, then the condemnation clause speaks to what happens in that event. But that event didn't occur.

Mr. Bishop in his deposition admits that there has been no material impairment of ingress and egress. So those clauses in the Eminent Domain condemnation clause, that deal with total takes, takes of buildings, takings of ingress and egress rights, which I'm going to estimate are the first three or four paragraphs, they don't apply, because they just factually -- that's not where we are today.

So what did the appraiser have to do in order to find a way to damage the leasehold interest? Well, what he did was to seize upon language in the original

lease which gave or purported to give K-Mart the right to construct additional buildings.

Now, the terminology is critical here, Judge. And the exhibits to which the original lease referred are very critical. Some of them look almost identical, but you have to really study it.

So when he goes about analyzing, and as Mr. Murphy described, he was basically mixing apples and oranges, because he was creating rights in the parking spaces which are really not in the lease. What the lease provides is there shall be a minimum of 730 spaces for the entire shopping center. That shopping center is designated by a different exhibit than what the demised premises is.

They don't pay any rent for the parking spaces. They didn't build the parking spaces. They didn't build the improvements. The way this deal was originated was that the landowner was constructing buildings and improvements in exchange for money, over the various terms as it progressed.

So when Mr. Bishop seized upon that language, he was looking to the terms in the original lease. Unfortunately for Mr. Bishop, he had not had the privilege of a reading of the second amendment to the lease.

The second amendment to the lease did two very important things. It altered the terms of the original lease, and it changed K-Mart's right from an ability to add additional buildings anywhere on the demised premises to a right to expand its existing building to a specific location. And the location was identified in the second amendment to the lease.

If you go to your tabs, Your Honor, and you go under A, there is an index and number 2 is the second amendment to the lease. And number 2 also contains, in addition to the verbiage where they are specifying where that particular expansion -- and they are using the word expansion, not construct additional buildings but expansion is going to be permitted. And they have a drawing for us, Judge. And it's called Exhibit B.

Now, if you look at the original lease and look at its drawings and exhibits you'll find, or you'll find almost an identical Exhibit B. But this one is different than what was contained in the original lease. There's a few things I would like to highlight with you.

Under the heading Exhibit B you will note two different dates. One is 1978 and the other is 1989 revised. So we know by the legend that this is a document, not an as-built plat as Mr. Murphy described

it, but a document which was attached to this amendment to the lease.

And the other thing, if you look at the drawings itself, you'll see K-Mart, and underneath the word K-Mart you'll see the 87,000 square foot building. Okay? Immediately to its left -- and if you have to turn the drawing over -- you will see it says K-Mart expansion area. That's what is being specified as where K-Mart may expand. That's what's being changed by virtue of the second amendment.

Beyond that little extension of the building, which is increasing square footage for use, there is also a garden area. Now they had a garden area before but, basically, they just moved the garden area over. All right?

So the other thing that we need to focus on with the amendment to the lease is Paragraph 2, second amendment to the lease, and it says, Paragraph 2, Exhibit B attached hereto shall become Exhibit B to the lease.

So, by this amendment they changed the right to construct buildings anywhere on the demised premises, to the right to expand in a specific area and they amended the original Exhibit B to the lease to reflect those changes.

In other words, they don't have any further rights to construct additional buildings upon the demised premises. And when I pointed those items out to their appraiser, Mr. Bishop, again who didn't have the luxury of reading this document -- he was aware of it apparently, because he had notes about it, but he had not read it -- he agreed with me if that construction of the lease or that construction of the amendment was appropriate -- and I think it's very logical -- then his opinion is meaningless. His estimation of value was meaningless.

Now, you referred to the DOT versus M&T case.

THE COURT: And the basis for your making that statement is because without a right to expand then there can be no damages?

MR. BYBEE: His opinion was that he was entitled to almost the entire 400-odd thousand dollars. It's entirely premised upon some kind of calculation of what K-Mart could build an additional building for, a size of 37,000 square feet instead of 30,000 square feet. That's the entire record with respect to their claim for valuation.

Without that as a premise, which is a matter of law -- because what is going on here is the interpretation of what those lease documents mean.

Without that foundation this claim can't exist, because while you and I have argued what DOT versus M&T meant at the time, what we do know is the Court of Appeals agreed with your ultimate conclusion was, you have to have damage. You have to have support for damage in the record. And while they created new law, in my defense, when it went to the Court of Appeals, the one thing they maintained clearly was that your sense, your gut reaction, which was to a strip-take, which in your mind wasn't going to effect the leasehold valuation whatsoever. And that's my premise here.

By law it cannot effect -- he has no evidence of damage to that leasehold. There is just no way for him to get to square one without being able to show damage.

THE COURT: Your argument there is that's regardless of how many parking spaces would be taken; is that correct?

MR. BYBEE: Correct. And there is a reason for that. And I'm going to get to it. But let me stay on track, if I can.

THE COURT: All right.

MR. BYBEE: The other premise by which Mr. Bishop found damage -- and this was just a supporting premise in order to get to this right to construct additional buildings -- he says he was going to analyze this

property as a larger parcel.

Now, that's an appraisal term that is meant that he's going to go outside the borders of the leased premises. He has to. Because there is no take within the leased premises. All right? So he has to go outside the borders of the leased premises, which in traditional appraisal cases, Eminent Domain cases -- which is the only place this comes up -- that's fine and good, and our Supreme Court says that that's fine and good if you do three things; you have a unity of use, you have continuity and you have unity of title.

Well, in this case when he goes outside the demised leased-as-defined of K-Mart's premises, he's impacting leaseholds of others. He's computing damage and the right to parking spaces. And remember these parking spaces are not assigned. You go to the K-Mart in that shopping center and you can park wherever you want. You can park in front of the Dollar Store. There used to be a water sports place. That's where I used to go. I think Ellison goes in there to work out in the gym. You're not required -- you can park anywhere you want. There is no right K-Mart has to exclude those particular parking spaces.

So what Mr. Bishop, in order to foster this premise of his, had to do was to ignore or what he did

was to subsume all of these leasehold interests and declare, of the 400,000, they don't have any right to anything. Well, that's improper. And it's improper because those leaseholds aren't titled to K-Mart. Those -- that is just a violation and an underlying premise of his particular problem. Okay?

So, as a matter of law, the factual premise that he's been damaged is unsupported with any appraisal or any other kind of testimony.

One thing that we both know is you've got to show damage. And I'm not reaching the issue whether Judge Pieper's proper methodology of appraising properties and partial takes versus appraising properties for total takes -- I'm not going there. All I'm saying is, he's got no way of establishing damages because of this second amendment to the lease and its specific language as to right of expansion.

And, Judge, they did expand. All of us have seen it. There are no disputes of fact as we stand before you. Everything is agreed to. So there is just no way he's going to be able to establish damage.

Now, let's imagine somehow, some way he comes up with a theory that will establish a change in the value of that leasehold. The leasehold before the taking is worth X and after the taking is worth Y. Well, we

still have M&T to guide us and M&T says you do look to the condemnation clauses; you read the condemnation clauses in their entirety; you have to give effect to the bargain of the parties. That's the premise, basic contract law. I don't believe anybody is arguing with those premises.

What we have to focus on is the circumstance of what has occurred today. I'll go back to the little drawing. They took less than an acre of land, .6 of an acre of land, and the condemnation clause, Paragraph 4, speaks to what happens when land only is taken. Okay? The first couple of clauses are about what happens if buildings are taken. So they really don't apply here. What happens if land is taken?

Well, it's very specific. They define land, for the purposes of this condemnation clause, to included the entire shopping center. And they say it's got to be at least 15% of the land of the 14 acres. It's got to be, you know, rough calculations, Judge, at least an acre and a half before that condemnation clause is to kick in. The language says that the landlord is to try and replace the land, and if he doesn't have the land replaced within a year then what's K-Mart's right?

K-Mart agreed that its right would be an option to terminate. They have the right to walk free and clear,

pay no more, get out of the bad bargain if the state or the town has come along and done something which has damaged their rights.

They are not entitled in that clause to share in any award. I'll get to why. But just look at the language itself and stick with the condemnation clause, that's what that paragraph is about.

Now, Mr. Murphy wants to talk about the next paragraph. The next paragraph, as Your Honor has picked up on, really doesn't apply here. Because what the next paragraph addresses is not buildings or improvements that the landlord has constructed, but buildings or improvements that the tenant has constructed.

The tenant has, of course, constructed this expansion and a little garden house, but that's it. He never constructed the improvements. So it's only perfectly rational, when you're dealing with a comprehensive Eminent Domain clause, and I think this one is just about as detailed as you can find. It addresses all the circumstances that can arise; well crafted, well negotiated document. But seizing upon the language as you noted and your questioning to Mr. Murphy, that language is limited to improvements constructed by the tenant. Buildings constructed by

the tenant. And, of course, land doesn't get constructed by the tenant. The only way I can come up with land being constructed by the tenant is if they fill a marsh, which, again, we're not dealing with that.

THE COURT: That hasn't been done here.

MR. BYBEE: So under those documents and under the condemnation clause they have no claim, they have bargained away their claim to share in the award except in that limited circumstance where tenant-constructed buildings or improvements have been impacted by the taking and, again, the facts in this case are, there are -- there is no fact in this case which would indicate that the tenant built these parking spaces.

Now, let's tie that to the third premise and third ground for summary judgment. That's the subordination clause.

The subordination clause says what it says. Mr. Murphy says it's only related to title. I read it a heck of a lot more broadly than that. I think what has to happen when this Court looks at these issues from a legal standpoint, one of the things that our courts have taught us is you look at all the documents, you look at the document in its entirety, but you also have to be able to look at the other documents in existence

on the date of take. For that reason Mr. Navarro's affidavit and the additional documents contained in the notebook are placed in there.

There is a note and a mortgage. And, as is typical in these commercial settings, the note and mortgage provide not only that the mortgage company investment is to be protected, but they are far more specific than that. In this particular note and mortgage it provides anything -- any amounts above $50,000, all of the amount is to be paid to the bank. That's what's in the mortgage clause. That's what's in the note. That's what's in the mortgage. You have to understand notes an mortgages in order to understand leases and amendments to leases, et cetera.

Now, the lease itself acknowledges and has a subordination clause. K-Mart agreed, yes, I will subordinate my interest to the mortgagor's claim. That was originally in the lease. It's in the lease when the case is filed by the Town of Mt. Pleasant and factually, Judge, my clients purchased this property almost immediately before the condemnation. All right? It's kind of hard to argue a case on value of land when you had immediate sale right before the condemnation.

One of the things that occurred was that K-Mart, acknowledging the terms of its own lease and being

proffered documents from the bank, entered and signed the subordination agreement. That agreement is also in the record.

So if you look at all of these documents together, then I think the premise as to why the tenant would agree that his only options in the event of total take, partial take, take of land only, that his only options in those circumstances were to terminate. Because he had already bargained away the right to receive the compensation by both the original lease and the subordination lease -- subordinated document.

So on all fours, as a matter of law, this would end a claim even if they could come up with a valuation theory, which they have not, and which they cannot.

For that reason, Your Honor, we believe we're entitled to summary judgment.

THE COURT: Where in the mortgage, I assume it would be, is that $50,000 figure? Do you know?

MR. BYBEE: I can find it if given a minute or two.

THE COURT: I'm sure there is a provision in there.

MR. BYBEE: I believe that I cited it in the brief.

May I sit, Your Honor?

THE COURT: Sure.

I found it. Looks like page 12. It starts on 11. Paragraph 2.07 of the mortgage, page 11.

MR. BYBEE: Bottom of the page. Condemnation, carries over into the next page. The $50,000 I mentioned is contained therein.

(pause)

MR. BYBEE: There is a good bit of law, Your Honor, cited in the brief. I won't belabor the point.

THE COURT: I didn't remember that. According to this, the mortgagee has the option to take anything over and above 50,000 and apply it toward the debt.

MR. BYBEE: Right. When you read that clause into all of the other documents that are relevant here, the condemnation clause makes perfect sense.

The sophisticated tenant -- K-Mart is a sophisticated commercial tenant -- understood the rules of the game. They understood that mortgage clauses could change or that they can title themselves to everything as typically they do. In today's time that's very important.

THE COURT: I see that a lot.

MR. BYBEE: You see that a lot. For that reason they bargained for something different. I'm not going to get in a fight with you about how much award it is.

I'm going to reserve to myself the right, as it applies to the facts in this case. If the land is taken, it's 15% more than the entire shopping center, well then I get to walk. I get to walk out of this lease. I have -- that's my right. And under that premise there are no theories which would allow K-Mart to share in this award.

THE COURT: All right. Thank you, Mr. Bybee.

MR. MURPHY: I'll be very brief, Judge.

Section 16 of the lease, which allows K-Mart to further develop the property, also includes language that if K-Mart develops the property or puts new buildings on it that the landlord does not have any obligation to replace that lost parking, which is further evidence that K-Mart leased for all the parking spaces on the site. It was contemplated in the lease.

THE COURT: Tell me that again.

MR. MURPHY: The lease says that if K-Mart builds a new building or develops the property, further develops the property, you're going to lose lost parking spaces by virtue of that building being built.

THE COURT: There wouldn't be a reason to have parking if there wasn't a building there.

MR. MURPHY: Right. But the landlord is not obligated to replace that lost parking, so they are

guaranteed at least 730 spaces. If K-Mart loses spaces because they develop the building, the landlord doesn't have to replace that.

THE COURT: Okay.

MR. MURPHY: Mr. Bybee was talking about damage to other leases. None of those have been provided or in evidence; therefore, we don't know what they say and the Court can't make assumptions on that.

Finally, Judge, with regard to the note or mortgage, K-Mart clearly was not a party to the action. The bank's not seeking any apportionment, as far as I can tell. And if your ruling was that the bank or the mortgage holder gets the entire award that would, first of all, destroy the condemnation clause in the lease and; two, it would eliminate any tenants rights in any condemnation action if the property were mortgaged. I just don't think that's makes sense or is the law.

Other than that we just have a fundamental disagreement on the language and the interpretation, but I will concede that if your ruling is that tenant -- that K-Mart cannot develop the property, then our theory of damages goes away. If you find that we cannot use those parking spaces for our development rights then we don't have any damages as well. But that would fly in the clear reading of the lease that

says we lease to you at least 730 spaces.

THE COURT: There is no dispute but that your client signed the subordination agreement?

MR. MURPHY: No question about that.

THE COURT: Whatever it is, they agreed to it.

MR. MURPHY: They signed the subordination agreement. It's just -- this is all contract interpretation for you, Judge. That's really it.

THE COURT: Okay. All right.

Let me hear back from you, Mr. Bybee, on the question of the percentage interest in what they can take and the contractual remedy. Sort of an all-or-nothing that we can pick up and leave. Where is that in the lease?

MR. BYBEE: Under the condemnation clause in the original lease, so we are going to K-Mart's lease which is Item 6 in your tabs, and I believe the condemnation clause is something like Paragraph 21.

MR. MURPHY: Page 10 of the lease.

MR. BYBEE: Page 10. Thank you, Chris. And in the second paragraph from the top is the language about the 15%. The document that it's referring to is Exhibit B.

Now, you can get confused with these exhibits sometimes, Judge, but Exhibit B is the entire shopping

center. All right?

So what that provision provides is, in order for them to have the right and the option to terminate, then there has to be a taking at least 15% of the entire shopping center.

Heck, Judge, if you did your math, if you took 15% of just the demised premises they don't have the right. And the affidavit from Mr. Navarro reflects that this case -- first of all, the record reflects this case has been going on -- date of condemnation is better than a year ago. There has been no notice of termination. There is just nothing that triggers the clause. They may regret signing it, but in the light of the entire business transaction it made perfect sense. There is nothing inequitable about it. They were not forced to do it. They came up with the language on its own. And under those circumstances it has no legal claim under the condemnation clause.

Now, I think that counsel is pushing the envelope a bit on this idea that the tenant has the right to all 730 parking spaces. What they have the right to do is to use them. Whether or not, in the event of expansion under the old lease, they would have replaced parking spaces or not or who was obligated to replace parking spaces or not really doesn't push the ball any way

forward; doesn't connect to our problem. It doesn't help.

The problem is that Mr. Bishop's appraisal was made without a basic study of the facts and the rights of the parties. That's the only evidence in the record. For that reason -- for all three of those reasons we believe summary judgment is appropriate.

THE COURT: Okay. I note in this exhibit I got, looking at page 10, it looks like the figure of 10% was stricken through and 15% added. That was clearly something they negotiated.

MR. BYBEE: They negotiated that.

THE COURT: At the time.

MR. BYBEE: Yes, sir.

THE COURT: That clause would still be in effect. The only change -- the second amendment we talked about.

MR. BYBEE: The second amendment didn't change the condemnation clause. It just changed and specified -- it changed K-Mart's right to construct additional buildings, to K-Mart's right to expand at a specified place.

THE COURT: Very good. All right. Do you want to be heard on that?

MR. MURPHY: Just very briefly.

That clause, as I read it, talks about the 10 or 15%. It doesn't apply to this case, because clearly they didn't take more than 15% of the property; therefore, K-Mart has no right to terminate in the event that more than 15% is taken. It doesn't limit or preclude K-Mart from sharing in the award, because the bottom of that last sentence in this paragraph talks about the expropriation of land which entitles them to share in the award.

MR. BYBEE: Only land they built or buildings they built or improvements they built, none of which applies.

THE COURT: All right. I think I got it.

(pause)

THE COURT: Back to that issue, Mr. Murphy. No question but that not more than 15% of land has been taken; therefore, the option to -- terminate option is not a viable option.

MR. MURPHY: That is correct.

THE COURT: Not withstanding that your argument is we're still entitled to the last clause of the final paragraph?

MR. MURPHY: Yes. And the reason -- I think Mr. Bybee, he's reading into it -- it doesn't differentiate. Clearly the tenant can't construct

land. It just says, for the expropriation of land. It doesn't say demised land, it just says land -- which we think is all encompassing -- or any improvements done by the tenant. That's consistent with the rest of the clause where the landlord is protected. The tenant can't claim any damages or award -- any share of the award for any improvements done by the landlord.

THE COURT: Depends on interpretation of whether or not the tenant -- the land is of the tenant's -- constructed or --

(Reading)

THE COURT: All right. Here's what I'm going to do. Let me take this matter under advisement. What I'll ask you do is to go ahead and prepare me some proposed orders. Thirty days is sufficient for me.

I would like -- I have not read Mr. Bishop's appraisal or his basis for that, but I understand from the landlord's perspective it doesn't matter.

MR. BYBEE: The appraisal is in the documents as well as his deposition.

THE COURT: Okay. And let me just ask, under his scenario would the tenant, K-Mart, be entitled to all the proceeds? Is that --

MR. MURPHY: The lion's share; yes, sir. The reason that is, they have such a strong leasehold

interest that the leasehold is almost equal to the fee interest, according to him.

THE COURT: Not withstanding the fact that they don't lease any of the property that's been taken?

MR. MURPHY: Well, it's not -- they can't construct buildings within that property, but they are guaranteed the use of those parking spaces.

THE COURT: Let me ask -- something I thought of. This property clearly -- had it been impacted by the widening of the other side of the road? Was that subject to some sort of condemnation?

MR. BYBEE: No, sir. That was an existing conversion by the county of the DOT frontage road, without a take of land associated therewith.

THE COURT: Okay.

MR. BYBEE: Off the ledger, not part of this.

THE COURT: We're not worried about how Highway 17 and that little side road? Strictly Bowman Road?

MR. BYBEE: Bowman Road taking is the only source of these funds and the only thing we have presented to you is how those funds are to be awarded.

THE COURT: All right. Very good.

MR. MURPHY: For housekeeping, this is a really good exhibit. If we could mark that as part of that record?

THE COURT: I did.

MR. MURPHY: I will be filing my memo, my reply memo right now.

MR. BYBEE: I'll hand the court reporter an extra and keep that one for yourself. Mark this as 2.

THE COURT: Thank you, gentlemen. Do the book as Exhibit 1 and the diagram as Exhibit 2.

(Whereupon Plaintiff's Exhibit 1 and 2 are received in evidence.)

(Hearing concluded.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

C E R T I F I C A T E

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this September 19, 2012.

Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
TOWN OF MOUNT PLEASANT, SOUTH CAROLINA,)
Condemnor,)
)
-vs-)
)
Bowman MTP Center, LLC,)
Landowner,)
)
and)
)
NBSC, a Division of Synovus Bank and K-Mart Corporation,)
Other Condemnees.)

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-10-4324

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT WITH EXHIBITS

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BOWMAN MTP CENTER, LLC

Mt. Pleasant, South Carolina
September 14th, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A No. 2011-CP-10-4324
	)	
TOWN OF MOUNT PLEASANT, SOUTH CAROLINA, Condemnor,	)	**LANDOWNER BOWMAN MTP CENTER'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
-vs-	)	
Bowman MTP Center, LLC, Landowner,	)	
and	)	
NBSC, a Division of Synovus Bank and K-Mart Corporation, Other Condemnees.	)	

INTRODUCTION

The Landowner, Bowman MTP Center, LLC, (hereinafter referred to as the "Landowner"), by and through its undersigned counsel, respectfully submits this memorandum of law in support of its motion for summary judgment. The grounds are that there are no genuine issues of material fact, and that the Landowner is entitled to summary judgment as a matter of law, because the "Other Condemnee" K-Mart Corporation *is barred* by the subject Leases' Condemnation Clause from sharing in any condemnation settlement and its valuation premise is based upon an error of law. Moreover, the "Other Condemnee" NBSC, a division of Synovus Bank *is* entitled to the condemnation settlement proceeds, as the "Other Condemnee" K-Mart Corporation has agreed to subordinate to its interest in the Subject Lease.

The Landowner also submits this memorandum in opposition to Other Condemnee K-Mart's (hereinafter referred to as "K-Mart") motion for partial summary judgment. For the reasons stated below, the Landowners' motion for summary judgment should be granted, and the K-mart's motion for partial summary judgment should be denied.

PROCEDURAL HISTORY

The underlying action in this case is a condemnation proceeding brought by the Town of Mount Pleasant, South Carolina, pursuant to the South Carolina Eminent Domain Procedures Act (SCEDPA), as codified at S.C. Code Ann. 28-2-10, *et seq.* This parcel is owned by the "Landowner," Bowman MTP Center, LLC, and the "Other Condemnees" are NBSC, a Division of Synovus Bank (hereinafter referred to as "NBSC"), and the K-Mart Corporation. K-Mart currently leases retail space for a retail K-mart store (Store No. 7239) and garden center in this parcel from Bowman MTP Center, LLC, while NBSC holds a mortgage on the parcel.

K-mart, as a sophisticated commercial client, originally leased the Subject Property for ten years on March 23, 1978, and has subsequently exercised multiple, five-year lease extensions with the Landowner. The property leased to K-mart is an 8.6 acre parcel legally described as "Tract A-2," and assigned TMS Parcel Identification Number 559-13-00-041. **(See Landowner's Exhibit A: K-mart's Lease of March 23, 1978 With Amendments and Exhibits).**

On, January 28, 2011, Bowman Center MTP, LLC purchased the Subject Property (Deed Book 0168, Page 975) subject to K-mart's lease of March 23, 1978. On January 28, 2011, K-mart as the "Tenant" signed a Subordination, Nondisturbance, and Attornment Agreement, otherwise referred to as an "SNDA" in the commercial real estate industry, with NBSC as the "Lender." **(See Landowner's Exhibit B: Subordination, Nondisturbance, and Attornment Agreement).** This agreement was duly recorded by the Charleston County Clerk of Court (Book 0168, Page 978). K-mart clearly, knowingly, and freely subordinated its rights under the Subject Lease to the lien of the NBSC's mortgage. As the Lender to the "Landowner" and "Landlord" Bowman Center MTP, LLC, NBSC required that *all* of the tenants on the Subject Property execute the Subordination, Nondisturbance, and Attornment Agreement (SNDA). Paragraph two of the SNDA unambiguously states (PDF snapshot of the NBSC SNDA subordination clause is below):

2. Subordination. The Lease, and the rights of Tenant in, to and under the Lease and the Premises, are hereby subjected and subordinated to the lien of the Mortgage. Lender hereby consents to the Lease terms and provisions. Any options or rights or first refusal contained in the Lease to acquire title to the Premises are hereby made subject and subordinate to the rights of Lender under Section 14 of the Lease.

On June 17, 2011, the Town of Mt. Pleasant filed a Notice of Condemnation and *lis pendens* pursuant to S.C. Code Ann. 5-2-50 in the Court of Common Pleas, Charleston County, to take *in toto* 29,884 square feet (sf) in fee simple from a portion of the the Subject Property, which was not part of the demised premises defined in the K Mart lease. **(See Landowners Exhibit C: Condemnation Notice With Attached Maps).** This taking consists of a "strip-take" for public right-of-way (ROW) improvements and widening of Bowman Road. On April 10, 2012, a settlement was reached between the Town of Mt. Pleasant and the Landowner in the amount of $435,925.00 and a Consent Order was entered, and executed by all parties, which dismissed the Town of Mt. Pleasant and referred this matter to the Master in Equity for a hearing on the allocation of just compensation pursuant to S.C. Code Ann. § 28-2-460.

The small "strip-take" in this matter expropriates land which is *outside* of K-mart's leased premises. Specifically, "Exhibit A, Parcel A" of the original lease dated March 23, 1978 states that the tract demised to K-mart is 8.6 acres of land as depicted upon the plat as "Tract A-2," with all metes and bounds accurately noted, a sub-portion of the 14.11 acres which constitutes the "Entire Shopping Center." The "Entire Shopping Center" of 14.11 acres is designated as "Tract A" in "Exhibit "A," Parcel B" of the March 23, 1978 lease, and it encompasses other retail businesses and a parking lot. Exhibit B of the March 23, 1978 lease also depicts the portion leased by K-mart. **(See "Exhibit A, Parcel A," and "Exhibit A, Parcel B," in Landowner' Exhibit A: K-mart's Lease of March 23, 1978 With Amendments and Exhibits).**

The other, 5.15 acre portion of the Subject Property, Tract A-1, is assigned TMS Number 559-13-00-038. The Charleston County GIS website (http://ccgisweb.charlestoncounty.org) clearly distinguishes these two portions of the Subject Property, and designates Tract A-2 as "Kmart #7239," and Tract A-1 as "Rite-Aid, Etc.," a former tenant. In summary, it is clear that K-mart has leased only a portion

of the Subject Property, and the Town's taking *does not include any portion of the K-mart's demised premises.*

Furthermore, the taking will also have no material impact to the direct access to K-mart by its customers or any valuation issue. [1] As noted above, Tract A-2, the parcel leased by K-mart, is not contiguous to Bowman Road. The overall Subject Property currently has three entrances along Bowman Road, and these entrances to the overall shopping center will not be materially affected by the proposed improvements. **(See Exhibit E: Jodie Bishop Deposition, pp. 8-9.).**

On May 8, 2012 K-mart filed a motion for summary judgment seeking a ruling that it is entitled to collect the value of its lease-hold interest from the proceeds of the condemnation award based solely on lease language. On May, 18, 2010, the Landowner filed a Motion for summary judgment stating that in accordance with the Subject Lease signed by K-mart, K-mart is not entitled to any portion of the condemnation award, and further, that K-mart has subordinated any such interest to NBSC, the mortgagee. By agreement, the Landowner's motion for summary judgment has been amended to include the grounds that the K-mart valuation is premised upon misinterpretations of the lease documents amounting to an error of law.

Specifically, the Landowner seeks a declaration from the Court with regard to three justiciable issues that can be stated as follows: (1) K-mart' claim to the allocation proceeding is specifically barred by the Condemnation Clause of subject property Lease; (2) NBSC, the "Other Condemnee," is entitled to the condemnation settlement proceeds because K-Mart agreed to subordinate its interest in any such award to the mortgagee's interest thereof; and (3) K-mart's claim is based upon an appraisal analysis which clearly misinterprets the lease as a matter of law.

SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate where there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Pittman v. Grand Strand Entertainment, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); Café Assocs., Ltd. v. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). In

[1]. K-mart has ingress and egress rights which are unaffected by this taking. Deposition of Jody Bishop.

deciding a summary judgment motion, the court must view the facts in the light most favorable to the nonmoving party; however, a court "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonable under the facts of the case." Bloom v. Ravoria, 399 S.C. 417, 423, 529 S.E.2d 710, 713 (2000); *see also*, Helms Realty, Inc. v. Gibson-Wall, Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

LEGAL ARGUMENTS

A. The Allocation of the Condemnation Award is Controlled by the Written Lease Terms.

Under South Carolina law, where the lease includes a provision specifying the rights of the parties in the event of a condemnation of the leased premise, that provision is valid and controlling. Texaco, Inc. v. Warrington, 264 S.C. 18, 212 S.E.2d 59 (1975). The allocation of condemnation awards is also firmly controlled by written lease terms and provisions, which are subject to general rules of contract construction and interpretation. So. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 667 S.E.2d 7, 14 (Ct. App. 2008) ("As such, it is generally held that parties may agree in the lease to a method or formula of valuation or compensation in the event of condemnation"). *Further, as cited with approval in* M & T Enterprises of Mt. Pleasant, *see also,* City and County of Honolulu v. Mkt. Place, Ltd., 55 Haw. 226, 517 P.2d 7, 15 (1973) ("Where a landlord and tenant have contractually agreed as to the disposition of compensation in the event of condemnation, such an agreement is generally held binding."); City of Manhattan v. Galbraith, 24 Kan.App.2d 327, 945 P.2d 10, 12–13 (1997) ("[I]f the lease itself includes a provision in respect of the rights of the parties in the event of the condemnation of the leased premises, such provision is controlling, if applicable to the particular case.") (*citations omitted*); City of Kansas City v. Manfield, 926 S.W.2d 51, 53–54 (Mo.Ct.App.1996) ("[S]pecific provisions in a lease

spelling out the respective rights of the parties to that lease are valid and controlling in the event the property is condemned. Such lease provisions have uniformly been upheld.") (*citations omitted*).

Furthermore, the condemnation clause in the K-mart lease is hardly unique, as is summarized below in 96 Am. Jur. Trials 211 § 26. Lease Provisions Governing Lessee's Compensation Upon Condemnation (2005).

> A lessee's entitlement to compensation for the value of a lease-hold interest taken by eminent domain may be limited or extinguished by the terms of the lease agreement. 22 A.L.R.5th 327: Validity, construction, and effect of statute or lease provision expressly governing rights and compensation of lessee upon condemnation of leased property. Often, the owner/lessor and the lessee will include lease provisions governing the lessee's right to compensation in the event the leased property is condemned during the term of the lease, *thereby effectively altering the common-law rule requiring payment of compensation for the taking of a lease-hold interest.* Am. Jur. 2d, Eminent Domain § 236: Condemnation provisions in leases or statutes. Commonly known as "condemnation clauses," such lease provisions typically provide that the lease will automatically terminate, *see* 96 Am. Jur. Trials 211 § 27: Automatic termination of lease upon condemnation, or may be canceled at the option of one or either of the parties upon condemnation, *see* 96 Am. Jur. Trials 211 § 28. Option to terminate upon condemnation, or assign some or all of the lessee's share of compensation for the lease-hold interest to the owner/lessor, *see* 96 Am. Jur. Trials 211 § 29: Assignment of lessee's right to compensation to lessor. It should be noted that such lease provisions will have no effect on the total amount of compensation that the condemning authority is obligated to pay for the condemned property because, in most jurisdictions, both the fee and lease-hold interests are first valued together as a single unit when determining the amount of just compensation owed for the property ("undivided fee rule"), and only afterward is the condemnation award apportioned according to the respective interests of the owner and lessee. Gifford v. City of Colorado Springs, 815 P.2d 1008 (Colo. Ct. App. 1991) (apportionment of this amount among persons claiming a share is of no concern to the condemnor). Thus, condemnation clauses only affect the apportionment stage of the condemnation proceedings, and merely dictate what share, if any, the lessee is entitled to receive from the total amount awarded to the owner/lessor of the condemned property. 96 Am. Jur. Trials 211 § 16: Apportionment between lessor and lessee in absence of agreement.

The construction of a clear and unambiguous contract and its clauses presents a question of law for the court. Pruitt v. S. C. Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001); United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 105-07, 413 S.E.2d 866, 868-69 (Ct. App.

1992) (applying the rules of contract construction to interpret the lease of a shopping center). To determine the intention of the parties, the court "must first look at the language of the contract." C.A.N. Enters., Inc. v. So. Carolina Health and Human Servs. Fin. Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). In this determination, the court must give effect to the intention of the parties, and "[w]hen a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." Century Indem. Co. v. Golden Hills Builders, Inc., 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). It is also a question of law whether the language of a contract is ambiguous. So. Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C 617, 623, 550 S.E.2d 299, 302-03 (2001).

Where the agreement is not ambiguous and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it. Ebert v. Ebert, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995). The "court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Lindsay v. Lindsay, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct. App. 1997).

B. K-mart's Claim Is Specifically Barred by the Unambiguous Condemnation Clause Contained Within the Lease Which K-mart Has Repeatedly Renewed.

In this case, the lease is a standardized, "semi-gross" lease form from 1972, and it is clear and unambiguous in regard to the lessee's rights in case of expropriation through eminent domain. Clause 21 of the K-mart lease systematically and comprehensively addresses the rights of the parties with no less than six full paragraphs, and based upon a review of these paragraphs, K-mart clearly and cogently waived its claim to share in any portion of the condemnation award in this particular instance of expropriation. The specific paragraphs of the eminent domain clause (Clause 21) of the K-mart lease are analyzed below.

Paragraph one of clause 21 in the K-mart lease addresses a full taking of the tenant's buildings. This is an automatic termination ("shall terminate") of lease clause in case of 100% expropriation of all buildings built by the Landlord for the Tenant, or 100% expropriation of the points of ingress/egress. Based on the undisputed facts

described above, this clause is patently inapplicable as no buildings, or any portions thereof, will be 100% expropriated by the taking, nor will points of ingress or egress be materially impaired. **(See Landowners Exhibit C: Condemnation Notice With Attached Maps; Exhibit E: Jody Bishop Deposition, pp. 8-9).**

Paragraph two of the eminent domain clause in the K-mart lease addresses the partial taking of buildings. It allows an optional termination of the lease with 90 days' notice to the Landlord if more than 10%, but less than 100%, of the buildings built by the Landlord for the tenant are expropriated (a partial taking). Based on the undisputed facts described above, this clause is patently inapplicable since no buildings, or any portions thereof, are to be impacted by the taking. **(See Landowners Exhibit C: Condemnation Notice With Attached Maps; Exhibit E: Jody Bishop Deposition, pp. 8-9).** Paragraph three of the eminent domain clause in the K-mart lease states that if the lease is not terminated under paragraphs one or two when the Tenant exercises his right to walk away from the lease completely free and clear of rent obligations, then the Landlord will abate the rent on the buildings built by the Landlord for the Tenant which have been expropriated, while the Landlord "promptly and with due diligence restores said buildings" at his "sole cost and expense," on a pro-rata and square foot basis. Paragraph three addresses expropriation of less than 10% of the tenant's buildings. Simply put, if the partial taking is below 10%, then the Landlord mitigates the effect upon the Tenant. However, once again, based on the undisputed facts described above, this clause is inapplicable because no buildings, or any portions thereof, will be impacted by the taking.

Paragraph four of the K-mart lease provides that if the taking removes more than 15% of the total land within the overall 14.11-acre "Entire Shopping Center" (Parcel B), and if the Landlord fails to substitute equivalent, improved, contiguous lands, then the tenant may terminate their lease at any time within twelve months of the effective deprivation by giving notice to the Landlord. In this scenario, the Tenant once again gets to walk free and clear of any lease obligations, if the Landlord cannot mitigate the loss caused by the expropriation of land either *outside* of, or *within*, the parcel demised unto K-mart. But, based upon the undisputed facts described above, the option to terminate and the right to share in any award is waived because 15% of 14.11 acres would be 2.11 acres, and the "strip-take" in this matter (0.686 acres) is only impacting a

very small fraction of the total acreage of the Subject Property, *none* of which is leased by K-mart. K-mart has not provided notice of termination was provided by K-mart within that time period. **(See Exhibit F: Affidavit of Ed Navarro).**

In regard to paragraph four, it bears mention that the "strip-take" along Bowman Road in this case does not even come close to physically approaching the parking spaces in front of K-mart. In Norman's, Inc. v. Wise, 747 S.W.2d 475, Tex.App.–Beaumont, 1988, the court was faced with a very similar situation. In Norman's, the city condemned an 18.9 feet wide right-of-way over a small portion of a parking lot which was leased to a retail store, and the store filed a DJ action to have its lease with landlord Wise declared terminated. The trial court held that the lease was not terminated because the lease agreement referred to and covered two separate tracts of land, one of which was the store and the other of which was the parking lot, and "no portion of the clothing store or the land upon which it was situated was affected by the condemnation." Norman's, at 476. The store appealed. The Court of Appeals affirmed, holding that two separate tracts were leased and it was "glaringly clear that this condemnation was a partial taking and, indeed, a modest or small partial taking," and that the only way the automatic termination provision of the lease agreement condemnation clause could have been triggered would be if it had specified expropriation of "the demised premises, or any part thereof." Norman's, at 477.

The specific expropriation of shopping center parking in relation to lessees is further addressed in Winn-Dixie Stores, Inc. v. Dept. of Transp., 839 So. 2d 727 (Fla. Dist. Ct. App. 2d Dist. 2003). In Winn Dixie, the lessee of space in a shopping center had a leasehold interest in the center's parking area, and was found to be entitled to share in proceeds of Department of Transportation's condemnation of portion of parking area, where the lease referred to the leased premises as the "store building and related improvements," the "related improvements" included specifications for minimum ratio of parking spaces to building area, and notably the lessee paid separate consideration to the lessor for the use, maintenance and repair of the parking area. In the current case, even assuming, *arguendo,* that the small "strip-take" not within the 8.6 acre parcel demised unto K-mart will somehow project across the Subject Property to impact the parking spots in front of K-mart, it is clear from the lease that K-mart *does not pay* separate consideration for their parking space.

Paragraph five of the condemnation clause states that if the lease is terminated pursuant to the eminent domain provision of the lease, all advanced rent and charges will be refunded to the Tenant, who also gets 60 days rent-free to relocate free and clear of any Subject Property lease obligations. Paragraph five of the K-mart lease also states that if the Tenant's buildings are expropriated and the Tenant has not fully amortized its expenditures made on these buildings, then "the Landlord shall assign to the Tenant that portion of any award" that equals the unamortized expenses of the Tenant; a formula for the Landlord to use is then provided for the calculation of the portion of the award to be assigned to the Tenant. However, paragraph five is also inapplicable in this case because no buildings, much less un-amortized improvements, alteration or changes to any portions thereof, will be impacted by the taking and there has been no termination by K-mart.

Paragraph six of the eminent domain clause in the K-mart is meant to be read in concert with the paragraph five, *supra*. Paragraph six states, *in toto*:

> "Tenant shall not be entitled to share in any award made by reason of expropriation of Landlord buildings on the demised premises, or any part thereof, by public or quasi-public authority, except as set forth in the preceding paragraph relative to unamortized expenditures by tenant, and then only if the award for such unamortized expenditures shall be made by the expropriating authority in addition to the award for the land, buildings, and other improvements (or portions thereof) comprising the demised premises; however, the tenants right to receive compensation for damages or to share in any award shall not be effected in any manner hereby if said compensation damages or award is made by reason of expropriation of the land or buildings or improvements constructed or made by the Tenant."

Paragraph six of clause 21 in the K-mart lease states that if a condemnation award is made to the Landlord for the expropriation of the Landlord's buildings, then the Tenant only has claim for unamortized expenditures from the condemnation award under the formula of paragraph five, *unless* an additional award has been separately designated by the condemning authority to go toward the unamortized expenses of the Tenant.

However, as the second clause of paragraph six notes, the Tenant still retains the right to receive compensation for an award based upon the taking of land, buildings or improvements constructed by the Tenant. Paragraph six is once again inapplicable to K-

mart in this matter, as no land, buildings or improvements of the Tenant are being expropriated.

In summary, the K-mart lease in this case addresses condemnation and sets out the exclusive rights of two sophisticated parties within a long-term commercial lease. It has both automatic and optional termination clauses, and addresses both full takings, partial takings, and the taking of Landlord and Tenant property; the lease in question has also been repeatedly renewed. Finally, it bears mention that the K-mart lease is not inequitable, unconscionable or one-sided, for it does allow the Tenant the right to terminate upon conditions the parties have agreed to based upon impacts by a variety of different expropriation scenarios.

In this particular matter, based upon abundant case law, commercial real estate practices, and a thorough review of the lease in question, it is clear that K-mart knowingly bargained for the right to terminate the lease and waived its common law right to share in the condemnation award. A lease may make a provision for the contingency of condemnation, and such a provision will be given effect in accordance with its language and purpose. CJS EMINENTDOM § 233: Lease provisions governing or affecting condemnation. Francis C. Amendola et. al. (May, 2012). Furthermore, there can be no equitable claim to the condemnation award because none of the land taken was from the demised premises of K-mart.

C. K-mart's Claim to the Condemnation Award is Barred by the Subordination Clause of the Properly Executed SNDA.

In regard to the specific SNDA signed by K-mart and its effect on the disposition of the condemnation award, existing case law, the function of SNDA's, and commentary clearly indicates that K-mart has no claim to share in the condemnation award because its leasehold interest is inferior to the bank's interest. SNDA's, and their function, are hardly unique in the commercial real estate realm. Simply put, the "subordination provision within an SNDA makes the tenant's rights under the lease subordinate and inferior to the rights of the lender's mortgage." Subordination, Nondisturbance and Attornment Agreements. Keenen Kolondo, Dallas Bar Association, Real Property Sec. Publication, Nov. 12, 2007; https://www.dallasbar.org/.../2007_november_subordination_nondist. The note and mortgage gives the lender NBSC the right to the condemnation award

proceeds. **(See Exhibit F: Affidavit of Ed Navarro; Exhibit G: Promissory Note and Mortgage).**

Specifically, Recital "B" of the SNDA requested by NBSC states that "As part of the Loan, Lender has required that all tenants on the Premises execute and deliver a Subordination, Nondisturbance and Attornment Agreement," and Recital "C" of this SNDA directly ties into "Paragraph 28 of that certain lease dated March 23, 1978 by and between Tenant and Landlord's predecessor-in-interest, Baker & Baker, a partnership, as amended (the "Lease") requires Tenant to deliver this Agreement." (PDF Snapshot of Paragraph 28 of the original, March 23, 1978 lease is below).

Mortgage Subordination	28. Upon written request by Landlord, Tenant shall execute and deliver an agreement subordinating this lease to any first mortgage upon the demised premises; provided, however, such subordination shall be upon the express condition that the validity of this lease shall be recognized by the mortgagee, and that, notwithstanding any default by the mortgagor with respect to said mortgage or any foreclosure thereof, Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such mortgagee unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

Paragraph 28 of the original lease unambiguously subordinates the Tenant's lease "to any first mortgage." Moreover, Section 2.07 of the executed NBSC mortgage for the Subject Property specifically contemplates condemnation awards, leaving no doubt that the subordination of condemnation awards was addressed by NBSC's SNDA. To wit, Section 2.07 states:

> "2.07 Condemnation. In the event that by, or pursuant to, proper authority there is taken or condemned the entire Mortgaged Property or any part thereof, under power of eminent domain exercised by any actual or quasigovernmental authority or public utility, the Mortgagor hereby assigns to the Mortgagee any and all awards that may be given, made or due the Mortgagor in any proceedings in connection therewith, and the amounts of such awards shall be applied by the Mortgagee to the reduction of the indebtedness secured hereby, and the Mortgagor agrees to execute any and all such further instruments of assignment of any and all such condemnation awards as may be required by the Mortgagee to carry out the purposes of this Section."

Section 2.07 also provides a formula which allows the mortgagor to restore the property with disbursements of the condemnation award paid to the mortgagor in the case of partial taking where the cost of restoration is under $50,000.

The SNDA in this matter is conventional, common commercial lending practice, unambiguous, correctly tied to the original Subject Property lease, and properly executed. The interpretation that the SNDA does not subordinate K-mart's right to the condemnation award flies in the face of the basic contract interpretation principle that a mortgage, promissory note, SNDA, and lease have to be read *in pari materia.* Further, if K-mart's interpretation of the SNDA is to be believed, it would be necessary to suppose that commercial mortgagee's who secure their indebtedness with parcels adjacent to public right-of-ways have elected to forego their secured status in regard to those portions of land which might one day expropriated, a clearly illogical syllogism in commercial business terms.

Restatement Second of Property thoroughly addresses subordination in relation to tenants and mortgages. Specifically, Restatement 2d Property: Landlord & Tenant § 8.2 Amount Of The Condemnation Award Tenant Entitled To Receive (2012), Comment J and Reporters Note 14 state:

> "Comment J: Mortgage or other lien on leased property. The tenant may have subjected his leasehold interest to a mortgage or other lien. In that case, any condemnation award that would otherwise go to the tenant will go to the mortgagee or lienholder to the extent his security has been impaired by the condemnation and only the surplus, if any, will go to the tenant."
>
> RN 14. Rights of mortgagee or lienor superior to lease—No cases have been found on the question of the apportionment of an award among a landlord, tenant and mortgagee, *but it is certainly settled that if a lien on property taken by eminent domain exists before the condemnation, the lienor's claim on the award is superior to the owner's and other creditors' rights. His lien on the property becomes an equitable lien on the award.* 2 Nichols on Eminent Domain § 5.74; Annot., 45 A.L.R.2d 522 (1956); e.g., Wilson v. Beville, 47 Cal.2d 852, 306 P.2d 789 (1957). *Similarly in all states a mortgagee may have his debt satisfied out of the award in advance of other creditors,* 2 Nichols on Eminent Domain § 5.741; e.g., City of Chicago v. Salinger, 384 Ill. 515, 52 N.E.2d 184, 154 A.L.R. 1104 (1943), whether or not the mortgage debt has matured. *See,* e.g., Knoxville Housing Authority, Inc. v. Bush, 56 Tenn.App. 464, 408 S.W.2d 407 (1966). In title-theory states his remedy can be directly against the condemnor, his interest being constitutionally protected property. Collector of Taxes v. Revere Building, Inc., 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931). If the tenant's interest is subordinate to the lien, the lien should undoubtedly be satisfied first.
>
> The position taken in Comment J that the mortgagee is entitled to the amount necessary to protect his security interest follows the majority rule. Annot., 58 A.L.R. 1534 (1929), supp. by 110 A.L.R. 542 (1937), supp. by 154 A.L.R. 1110

(1945); Seaboard All-Florida Ry. v. Leavitt, 105 Fla. 600, 141 So. 886 (1932); State v. Hemmingson, 57 Wash.2d 635, 359 P.2d 154 (1961). 2 Nichols on Eminent Domain § 5.741(1) takes the position that the mortgagee or lienor in partial condemnation cases is entitled to have the entire lien satisfied if possible, and this seems to be the rule in New York. In re Houghton and Olmstead Avenues, 266 N.Y. 26, 193 N.E. 539 (1934).

Comment (J) of Restatement 2d Property: Landlord & Tenant § 8.2 Amount Of The Condemnation Award Tenant Entitled To Receive (2012) was cited in Raiford v. Department of Transp., 206 Ga.App. 114, 424 S.E.2d 789, 791 for the proposition that in regard to subordination clauses and condemnation awards, "secondary authorities support the view that such a clause also gives a lienholder priority to condemnation proceeds to the extent that the security has been impaired by the condemnation, although we find no cases specifically addressing the question."

In Raiford, a lessee who operated a self-service laundromat on condemned property sought just compensation for business losses. The lessee argued that he was entitled to priority in disbursement of funds even though two banks held mortgages and a clause in his lease provided that the lessee's leasehold interest was subordinate to security deed holders' claims. The trial court entered judgment on a jury verdict awarding the lessee no damages for business losses because the property was not unique, and, finding that under the subordination clause, the security deeds had priority to the condemnation award proceeds.

On appeal, the Raiford court found that "the subordination agreed to is general and would operate to establish priorities between the lender and the lessee regardless of what event caused lessee's ouster. The subordination was not limited to an event of foreclosure." Raiford, at 792. However, the appellate court in Raiford reversed and remanded upon this point because the lessee's subordinate interest was specifically conditioned upon the security deed holders' explicit inclusion of a covenant of quiet possession in their deeds, and since the security deed holders did not fulfill this "condition precedent," they did not have a contractual right to priority under the lease's subordination clause. However, notably in the current case, NBSC *did* include a "Tenant Not to Be Disturbed" clause within the SNDA.

D. K-mart's Claim Is Based Upon an Appraisal Analysis Which Clearly Misinterprets the Lease as a Matter of Law.

The appraisal utilized by K-mart was conducted by Jody Bishop of Atlantic Appraisals, LLC, and is dated December 12, 2011. **(See Landowners Exhibit D: Atlantic Appraisals, LLC, Report on 1545-1551 Bowman Road).** The appraisal has fatal flaws. The premise of the Tenant's appraisal is that the Tenant had the right under the original lease to construct an additional building on the demised premises and that the loss of land and parking spaces outside the demised premises would limit the size of the building that could be constructed. **(See Landowners Exhibit E: Jody Bishop Deposition, pp. 45-51 and Deposition Exhibit 9; Landowners Exhibit D: Atlantic Appraisals, LLC, Report on 1545-1551 Bowman Road).** While the original lease allowed for the construction of additional buildings, the Second Amendment to the Lease modified the original lease to change the right to build "anywhere on the demised premises" to the right to build in a specific location (the "K-mart Expansion Area"). K-mart actually built this expansion *before* this taking. Exhibit B of the original lease was graphically modified by Exhibit B of the Second Amendment to the Lease in order to specify this expansion right. **(See Landowner's Exhibit A: K-mart's Lease of March 23, 1978 With Amendments and Exhibits).** It is self-evident that the expansion option in the Second Amendment to the K-mart Lease *has already been exercised* and K-mart's structural expansion is *built-out*. The appraisal theory of the tenant is therefore barred as a matter of law because K-mart has no right to construct any additional buildings after the date of taking.

Second, this appraisal specifically lists the property identification number(s) as TMS No. 559-13-00-041 *and* TMS No. 559-13-00-038. The appraisal therefore covers the parcel leased by K-mart (TMS No. 559-13-00-041, Tract A-2, at 1551 Bowman Road), *and* the parcel leased by others (TMS No. 559-13-00-038, Tract A-1, at 1545 Bowman Road). The appraisal notes on page 2 that "both parcels are owned by the same entity and have similar use," there is currently a surplus of 230 parking spaces, and no parking is specifically assigned to K-mart. Based upon these reasons, the appraiser chose to combine both K-mart's leased parcel and Rite-Aid's leased parcel, and they were "appraised as a single property under the principle of larger parcel."

In addition to the analytical problem discussed above in regard to the expansion theory, the larger parcel premise also fails soundly in this case. Under the larger parcel theory, "for parcels to be combined parcels must have unity of use, ownership and proximity. S.C. St. Hwy. Dep't v. Terrain, 267 S.C. 186, 227 S.E.2d 184 (Sup. Ct. 1976). For unity of title to exist, there must be a unity of ownership for the purpose of addressing damages to any remaining portion of the tract. Arnold v. S.C. Public Serv. Auth., 292 S.C. 396, 356 S.E.2d 837 (1987). However, in this case, K-mart has a lease-hold on the 8.6 acres of Tract A-2, hence its property name of "K-mart # 7239," but *K-mart has no lease-hold on the 5.15 acres of Tract A-1*. Other commercial entities clearly occupy the buildings located in Tract A-1, as admitted by the appraiser Jody Bishop in his deposition **(See Landowners Exhibit E: Jody Bishop Deposition, pp. 67-68)**. In this case, there is, in fact, *no unity of ownership* of leasehold interests, and this presents a fatal, substantive flaw in the larger parcel premise.

Therefore, even if this possible expansion had not already occurred, there is no lease-hold "unity of title" in this case, and the appraisal thus fails under the larger parcel premise. Finally, the larger parcel interpretation wholly flies in the face of K-mart's lease and lease amendments, with their various exhibits; the tax maps, property names, property addresses, and parcel identification numbers; the current as-built status of K-mart; and, the differing lease-holds held by other shopping center tenants.

E. Summary.

In summary, the K-mart contract documents have a very comprehensive eminent domain clause which: 1) provides for the condemnation award to be paid to mortgage company and the Tenant remedies if buildings, improvements, sufficient land, or points of ingress or egress are expropriated and the expropriation materially impacts the Tenant; 2) allows the Tenant to walk away from the lease free and clear in most of these scenarios, and even 3) requires the Landlord to mitigate the Tenant's unamortized expenditures, refund rent, mitigate for the material loss of parking spaces, and replace impacted buildings. While the Landlord suffers the risk of losing land, points of ingress and egress, buildings, and rental income from such an expropriation, the Tenant can simply break the lease with minimal to no notice, without penalty, after receiving a

refund of rent or mitigation for any unamortized improvements it made, and walk away free and clear.

Furthermore, from an equitable and legal viewpoint, K-mart *can show no loss of value in its lease-hold* due to this expropriation in law or in equity. In fact, the road improvements will ultimately improve traffic flow and access to the shopping center once completed, thereby benefitting all shopping center tenants. While K-mart will lose nothing due to this expropriation, it *must* show damages in order to make any claim to share in the condemnation award on the basis of their leasehold. Specifically,

> "It is clear under South Carolina law that the Tenant is only entitled to the difference between what they pay in rent and what the property could be leased for. Thus, in order to prevail it would be incumbent upon the Tenant to prove the present value of its Leasehold Estate and then deduct the rent that is actually payable to the Landlord to arrive at a diminution, if any, in the value of the Leasehold Estate."
>
> (So. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, Order of Judge Mikell R. Scarborough, dated October 24, 2006; page 6).

Furthermore, while M & T Enterprises of Mt. Pleasant dealt with at least a certain level of impact to a leasehold interest, allowing the court to find that "it can be deduced from his [appraiser's] testimony that there necessarily has been no reduction in value of the leasehold estate," (So. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, Order of Judge Mikell R. Scarborough, dated October 24, 2006, page 7) no such inference can be attempted drawn in this matter, as K-mart fails to demonstrate that their demised parcel is even impacted, much less their leasehold.

In the current case, since the Tenant K-mart is wholly "without evidence that the leasehold estate is actually less valuable than the amount of rent that the Tenant is obligated to pay, the Tenant has proven no damages" (So. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, Order of Judge Scarborough, dated October 24, 2006 Page 8).

Ultimately, since there are no damages to K-mart, their claim to share in the condemnation award must fail as a matter of law. So. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008).

CONCLUSION

For the aforementioned reasons the Landowner's motion for summary judgment should be granted and K-mart's motion for summary judgment should be denied.

Richard D. Bybee, Esq.
SMITH, BUNDY, BYBEE & BARNETT, P.C.
1037 Chuck Dawley Blvd., Bldg. F, Suite 100
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
(843) 881-1623

ATTORNEY FOR LANDOWNER
BOWMAN MTP CENTER, LLC

Mt. Pleasant, South Carolina
9.14, 2012

EXHIBIT A:

K-mart's Lease of March 23, 1978 With Amendments and Exhibits

	Components of K-mart Lease Are Listed Below In Order
1	2003 Kmart to Baker & Baker Memo Re Renewal of Lease
2	Second Amendment of 4-10-1989 to Lease & Exhibit B Map of "K-mart Expansion Area"
3	First Amendment to Lease of 1-26-1979
4	Memorandum of Lease & Acknowledgement of 3-23-1978
5	Exhibit A Parcel A ("Kmart Demised Parcel") & Exhibit A Parcel B ("Entire Shopping Center")
6	The K-mart Lease of 3-23-1978 With All Clauses & Acknowledgements of 3-23-1978
7	Exhibit A Parcel A & Exhibit A Parcel B Clauses
8	Exhibit B Map showing NO "Expansion Area"
9	Clause 15 A – Requiring Landlord to Reimburse Tenant For CAM Maintenance
10	Kmart Letter of 10-3-1977 Describing Typical Kmart Store Build-out Plans
11	Kmart Letter of 11-28-1977 Describing Kmart Store Build-out Plan Revisions

Cynthia Lapensee
Real Estate Department

Kmart Corporation
Resource Center
3100 West Big Beaver Road
Troy, MI 48084-316
(248) 463 - 1490
Fax (248) 463 - 2689

FAX TRANSMITTAL FORM

DATE: May 28, 2003

TO: John D. Baker

FAX NUMBER: (803) 254-0508

FROM: Cynthia Lapensee

NUMBER OF PAGES: 2

COMMENTS: Kmart # 7239 Mt. Pleasant, SC

CONFIDENTIALITY NOTICE: This fax transmittal contains confidential information which is legally privileged and intended only for the Recipient. If you are not the Recipient, you are hereby notified that any disclosure, copying, distribution or taking of action in reliance on the contents hereof except direct delivery to the Recipient is strictly prohibited and is at your own risk. If you have received this fax in error, please call immediately to arrange for return to us.

Kmart Corporation
Resource Center
3100 West Big Beaver Road
Troy MI 48084-3163

May 28, 2003

FEDERAL EXPRESS OVERNIGHT

CERTIFIED MAIL – RRR
#7002 0860 0002 1568 0715

Baker & Baker Real Estate Developers, LLC
c/o John D. Baker
1400 Pickens St., 5th Floor
Columbia, SC 29201

Re: Lease dated March 23, 1978 for
the premises located in Mt. Pleasant, SC
and known as Kmart #7239

Dear Landlord:

The undersigned hereby elects to extend the subject Lease for an additional term of five (5) years, commencing December 1, 2003, to and including November 30, 2008, upon the terms, conditions, and rental as set forth in said Lease, as amended.

Sincerely,

KMART CORPORATION

By _____
Michelle H. Gluck
Vice President Real Estate, Construction
& Assistant Secretary

MG/cjl

cc: C. Downes
F. Duzzie
R. Fitzgerald
D. Haluska
C. Houck
D. Hurley
C. Lapensee
Corres. File
Lease File

Baker & Baker Real Estate Developers, LLC
P. O. Box 12397
Columbia, SC 29211-2397
CERTIFIED MAIL - RRR
#7002 0860 0002 1568 0722

EU 677448383 US

COPY

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE is made and entered into this 10th day of April, 1989 between BAKER AND BAKER, a PARTNERSHIP, having its principal office at 1400 Pickens Street, Columbia, South Carolina 29211-2397 ("Landlord") and K MART CORPORATION, having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Tenant");

WITNESSETH

WHEREAS Landlord and Tenant have entered into a lease dated March 23, 1978 regarding leasehold premises located in the City of Mt. Pleasant, County of Charleston, State of South Carolina and more fully described in Exhibit "A" to the lease; and

WHEREAS the lease was amended by letter agreement dated June 26, 1979 (the lease together with its Amendment is hereinafter referred to as the "Lease"); and

WHEREAS, Landlord and Tenant desire to further amend the Lease as provided by this SECOND AMENDMENT TO LEASE.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the adequacy of which is acknowledged, Landlord and Tenant agree as follows:

1. Tenant may, but is not obligated to, at its sole cost expand the building (the "Building") leased to it within the area designataed as "K mart Expansion Area" as shown on Exhibit "8" attached hereto.

2. Exhibit "8" attached hereto shall become Exhibit "8" to the Lease.

3. In the event Tenant expands the Building Tenants Additional Rental obligation pursuant to Article 4 shall be determined by multiplying Tenant's gross sales by the fraction 68,444/87,543 with the resulting product representing gross sales for purposes of determining Tenant's additional rent obligation. This addition rent adjustment shall be effective on the day after two (2) years after the day that sales of merchandise from the expanded portion of the Building are made to the public. If the day this adjustment starts is not the first day of the lease year, then the original method of determining percentage rent and this adjustment will be calculated separately by reducing the gross sales and breakpoint provided in the lease porportionately to the period being calculated relative to the lease year.

4. The excess tax credit provided for in Article 5 of the Lease shall not include any real estate taxes attributed to the expanded portion of the Building. In the event the tax records do not separately identify the portion of taxes attributed to the expansion then the taxes on the Building as expanded shall be multiplied by 21.8% to determine the taxes attributed to the expansion.

5. The Lease as amended is ratified and confirmed by Landlord and Tenant.

IN WITNESS WHEREOF the parties have executed this SECOND AMENDMENT TO LEASE which is to become effective as provided herein.

WITNESS

BAKER & BAKER, A PARTNERSHIP

By: _____, general partner

By: _____, general partner

WITNESS

K MART CORPORATION

By: M. L. Skiles, its Vice President

By: _____
C. E. Lotzar Jr., assistant secretary

ACKNOWLEDGMENTS

STATE OF MICHIGAN)
COUNTY OF OAKLAND) ss:

I do hereby certify that on this 10th day of April , 1989, before me, Mary E. Harker , a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. L. Skiles ---------- and C. E. Lotzar, Jr. ----------, known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester, Michigan and Birmingham, Michigan ---------- respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the use, and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

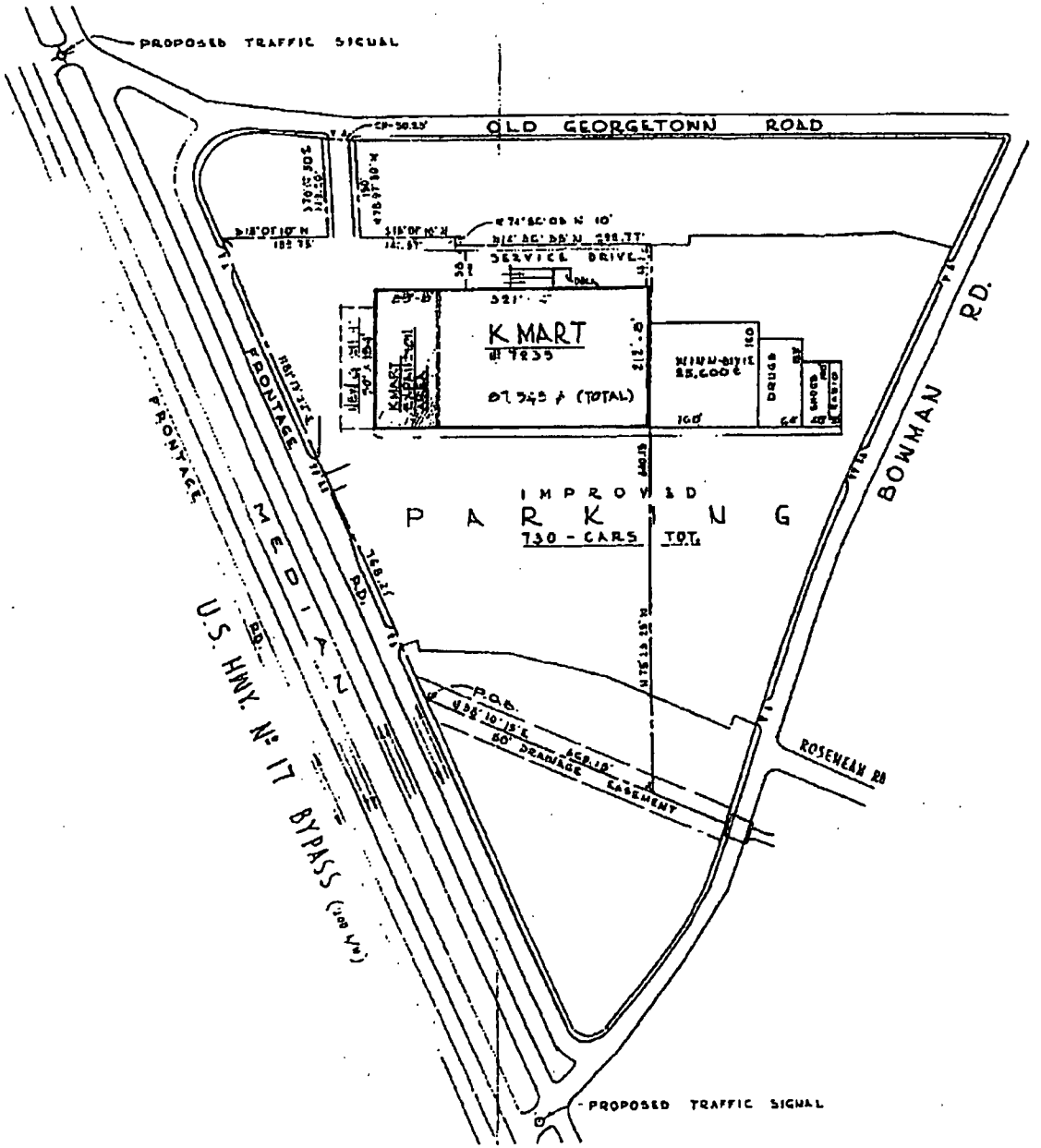
My commission expires: June 11, 1989 Mary E. Harker
Notary Public

ACKNOWLEDGEMENT FOR PARTNERSHIP

STATE OF) South Carolina
) SS
COUNTY OF Richland)

On the 22nd day of March , 1989, before me personally came David Baker and Lee J. Baker , to me known, who, being by me duly sworn, did depose and say that he/she is/are a partner/partners in the firm of Baker and Baker , a partnership, and that he/they executed the foregoing instrument on behalf of said firm.

Janet Edwards
Notary Public
My Commission Expires September 6, 1994



STORE № 7239

N.W.L. OF U.S. HWY. № 17 & OLD GEORGETOWN RD.

MT. PLEASANT, S. CAROLINA.

N.

EXHIBIT 'B'

DATE:
3-23-78
5-31-89 (REV.)

SCALE:
100 FEET TO 1 INCH

0097

K MART CORPORATION
INTERNATIONAL HEADQUARTERS
TROY, MICHIGAN 48084
REAL ESTATE DEPARTMENT

J. P. JOHNSON
VICE PRESIDENT

D. H. BURDICK II
C. E. LOTZAR, JR.
R. N. COMBS
F. H. WENNEIER
W. A. TORPHY
A. J. POTTS
M. L. SEILER
L. D. ROSS
F. A. ZANTELLO
D. L. DAYNE
J. A. SIRACO
W. F. HERRINGTON
R. G. STAHL
R. H. SHOEMAKER

January 26, 1979

Baker & Baker
P. O. Box 11700
Columbia, SC 29211

Attention: Lee Baker

Re: K mart #7239
Mt. Pleasant, SC

Gentlemen:

Please let this letter serve as the First Amendment to that certain Lease for captioned premises by and between Baker & Baker, Landlord, and K mart Corporation, Tenant, dated March 23, 1978.

Article 20 (Damage to Demised Premises), appearing on Pages 2 and 3 of the Rider of said Lease, is hereby considered to be null and void and of no further force and effect.

Further, please let this letter serve to declare null and void that certain letter dated January 10, 1979, from Mr. J. P. Johnson of K mart Corporation to Baker & Baker, Landlord.

Very truly yours,

K MART CORPORATION

By J. P. Johnson
J. P. Johnson, Vice President

JPJ:mlg

ACCEPTED AND AGREED TO IN
ACCORDANCE WITH THE FOREGOING

BAKER & BAKER

By Lee F Baker, David P Baker

Date January 29, 1979

COPY

Parties

THIS MEMORANDUM OF LEASE dated this 23rd day of March , 19 78 , between BAKER & BAKER, a Partnership mailing address ~~a _____ corporation~~ having its principal ~~office~~ at P. O. Box 11700, Columbia, South Carolina 29211 (herein referred to as "Landlord"), and K MART CORPORATION a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084, (herein referred to as "Tenant"),

WITNESSETH: That for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations and the further consideration of the rents reserved and the covenants and conditions more particularly set forth in a certain lease between Landlord and Tenant and bearing even date herewith, Landlord and Tenant do hereby covenant, promise and agree as follows:

Demised Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the term hereinafter provided, and any extension thereof, the following property: Tenant's completed building ~~or buildings~~ (designated K mart ~~and Food Market~~), together with site improvements to be constructed as specified in said lease by Landlord at its expense on the land described in Exhibit "A" Parcel A and depicted on Exhibit "B" attached hereto and made a part hereof, and situated in the City of Mt. Pleasant , County of Charleston , State of South Carolina ; said building ~~or buildings~~ to be in the locations and of the dimensions depicted on said Exhibit "B".

Landlord hereby gives and grants unto Tenant, in common with others entitled thereto, including Tenant's agents, employees, customers, licensees and invitees the following licenses, rights, privileges and easements: the use of parking areas, common areas (including rest rooms and other facilities, if any), roadways, sidewalks and accessways to public streets and highways indicated on said Exhibit "B", together with the use of any delivery or servicing areas adjoining Tenant's said buildings or designated as such on Exhibit "B", which areas shall be adequate for the passage, unloading and, if necessary, turning around of trailer trucks and other commercial vehicles.

Said land, completed buildings and site improvements, together with the licenses, rights, privileges and easements herein set forth, shall be hereinafter collectively referred to as the "demised premises".

Term

2. The lease term shall commence upon the date of occupancy by Tenant of said buildings, and shall terminate upon such date as shall be twenty-five(-25-) years from the last day of the month in which said date of occupancy by Tenant shall occur; provided, however, Tenant shall have the option to extend the lease term for ten ------- (-10-) successive periods of five ---- (--5--) additional years each.

Building Areas

3. Landlord covenants, during the period commencing with the date of execution of the aforesaid lease and ending upon the last day of the lease term and any extension or renewal thereof, that it will not erect or construct any buildings or other structures upon land described in Exhibit "A", Parcel B except as shown on Exhibit "B"; provided, however, in the event that the date of occupancy by Tenant of the demised premises shall not occur prior to such date as shall be seven (7) years from the date of the aforesaid lease, then the restrictions imposed by this Article shall cease and determine and shall be of no further force or effect.

Signs

4. The demised premises shall be referred to by only such designation as Tenant may indicate. Landlord expressly recognizes that the service mark and trademark "K mart" is the valid and exclusive property of Tenant, and Landlord agrees that it shall not either during the term of this lease or thereafter directly or indirectly contest the validity of said mark "K mart", or any of Tenant's registrations pertaining thereto in the United States or elsewhere, nor adopt or use said mark or any term, word, mark or designation which is in any aspect similar to the mark of Tenant. Landlord further agrees that it will not at any time do or cause to be done any act or thing, directly or indirectly, contesting or in any way impairing or tending to impair any part of the Tenant's right, title and interest in the aforesaid mark, and Landlord shall not in any manner represent that it has ownership interest in the aforesaid mark or registrations therefor, and specifically acknowledges that any use thereof pursuant to this lease shall not create in Landlord any right, title or interest in the aforesaid mark.

Tenant shall have the option to erect at its sole cost and expense upon any portion of the demised premises signs of such height and other dimensions as Tenant shall determine, and bearing such legend or inscription as Tenant shall determine. Tenant shall have the option to utilize the lighting standards in the parking lot for advertising purposes by attaching, or causing to be attached, signs advertising any and all products and services as Tenant shall elect.

Signs (cont'd)

Landlord shall not permit any other signs, billboards or posters to be displayed on any portion of the demised premises.

The sole purpose of this instrument is to give notice of said lease and all its terms, covenants and conditions to the same extent as if said lease were fully set forth herein.

The conditons, covenants and agreements contained in this instrument shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this instrument and said lease shall run with the land.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate as of the day and year first above written.

WITNESSES:

BAKER & BAKER, a Partnership

Peggy M. Hurley

Anne Coates

By: _____
Lee J. Baker, Partner

And: _____
David Baker, Partner

APPROVED

Patricia Ann Lusby

Marsha Prose

K MART CORPORATION

By: _____
J. P. Johnson, Vice President

Attest: _____
C. E. Lotzar, Jr., Assistant Secretary

ACKNOWLEDGEMENTS

STATE OF GEORGIA)
) SS
COUNTY OF DEKALB)

Personally appeared before me, Peggy M. Gurley, who being duly sworn and says that she saw David Baker and Lee J. Baker sign, seal, as their act and deed, and deliver the foregoing instrument for the uses and purposes therein mentioned, and that she, with Ann Coates, witnessed the execution thereof.

Peggy M. Gurley
Peggy M. Gurley

Sworn to and subscribed before me

this 23rd day of March, 1978.

Bobbie L. Combee
Bobbie L. Combee, Notary Public

My commission expires:
Notary Public, Georgia, State at Large
My Commission Expires Dec. 19, 1979

STATE OF MICHIGAN)
COUNTY OF OAKLAND) SS:

I do hereby certify that on this 21st day of April, 1978, before me, Margaret T. Grant, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared J. P. Johnson and C. E. Lotzar, Jr., known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Birmingham, Michigan respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires: MARGARET T. GRANT
Notary Public, Oakland County, Mich.
My Commission Expires June 30, 1981

Margaret T. Grant
Notary Public

EXHIBIT "A"

PARCEL A

All that certain piece, parcel and tract of land, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, containing 8.60 acres, and being shown and designated as TRACT A-2 on a plat entitled "PLAT OF THE SUBDIVISION OF A 17.34 ACRE TRACT LOCATED IN MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA", by Harold J. LeaMond, P.E. & L.S., dated March 6, 1978, to be recorded, said Tract A-2 being more fully described as follows: Commencing at an iron pipe marked "i.n." on said plat located on the southern boundary of U. S. Highway No. 17 By-Pass (200'R/W) approximately six hundred six (606) feet from an iron pipe marked "i.n." located at the intersection of the southern boundary of said U. S. Highway No. 17 By-Pass and the northeastern boundary of Bowman Road at the apogee of a triangle of land reserved to be dedicated to South Carolina State Highway Department; thence running in an easterly direction N81°13'22"E along the said southern boundary on the said U. S. Highway No. 17 for a distance of seven hundred sixty-eight and twenty-one/100ths (768.21') feet to an iron pipe marked "i.n." on said plat; thence running in a southwest direction S15°01'10"W along TRACT "B" 0.65 ACRES for a distance of one hundred fifty-nine and seventy-five/100ths (159.75') feet to an iron pipe marked "i.n." on said plat; thence running in an east-southeast direction S78°07'50"E along the said TRACT "B" for a distance of one hundred forty-nine and twenty/100ths (149.20') feet to an iron pipe marked "i.n." situated on the western boundary of Old Georgetown Road (50'R/W); thence running in a southwesterly direction along said western boundary of Old Georgetown Road on a curve having a chord distance of fifty and twenty-three/100ths (50.23') feet to an old concrete monument marked "o.c.m." on said plat; thence running in a west-northwesterly direction N78°07'50"W along lands now or formerly of Rosalie Wirth and Bency Belton Babson for a distance of one hundred fifty and no/100ths (150.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S15°01'10"W along lands of the said Babson for a distance of one hundred forty-one and fifty-seven/100ths (141.57') feet to an iron pipe marked "i.o." on said plat; thence running in a west-northwesterly direction N74°56'03"W along lands now or formerly of Franto Mollycheck, Jr. for a distance of ten and no/100ths (10.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S14°36'35"W along lands of the said Mollycheck for a distance of two hundred ninety-two and seventy-seven/100ths (292.77') feet to an iron pipe; thence turning in a west-northwesterly direction N75°23'25"W along other lands of Baker & Baker for a distance of eight hundred forty and fifteen/100ths (840.15') feet to an iron pipe; thence turning in a northeasterly direction N38°10'15"E for a distance of three hundred sixty-nine and fifteen/100ths (369.15') feet to the iron pipe at the POINT OF BEGINNING.

EXHIBIT "A"
PARCEL A
K MART DEMISED PREMISES

EXHIBIT "A"
PARCEL B

ENTIRE SHOPPING CENTER

TRACT "A" 14.11 ACRES: Commencing at an iron pipe marked "i.n." on said plat located on the southern boundary of U. S. Highway No. 17 By-Pass (200'R/W) approximately six hundred six (606) feet from an iron pipe marked "i.n." located at the intersection of the southern boundary of said U. S. Highway No. 17 By-Pass and the northeastern boundary of Bowman Road at the apogee of a triangle of land reserved to be dedicated to South Carolina State Highway Department; thence running in an easterly direction N81°13'22"E along the said southern boundary on the said U. S. Highway No. 17 for a distance of seven hundred sixty-eight and twenty-one/100ths (768.21') feet to an iron pipe marked "i.n." on said plat; thence running in a southwest direction S15°01'10"W along TRACT "B" 0.65 ACRES for a distance of one hundred fifty-nine and seventy-five/100 (159.75') feet to an iron pipe marked "i.n." on said plat; thence running in an east-southeast direction S78°07'50"E along the said TRACT "B" for a distance of one hundred forty-nine and twenty/100ths (149.20') feet to an iron pipe marked "i.n." situated on the western boundary of Old Georgetown Road (50'R/W); thence running in a southwesterly direction along said western boundary of Old Georgetown Road on a curve having a chord distance of fifty and twenty-three/100ths (50.23') feet to an old concrete monument marked "o.c.m." on said plat; thence running in a west-northwesterly direction N78°07'50"W along lands now or formerly of Rosalie Wirth and Bency Belton Babson for a distance of one hundred fifty and no/100ths (150.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S15°01'10"W along lands of the said Babson for a distance of one hundred forty-one and fifty-seven/100ths (141.57') feet to an iron pipe marked "i.o." on said plat; thence running in a west-northwesterly direction N74°56'03"W along lands now or formerly of Franto Mollycheck, Jr. for a distance of ten and no/100ths (10.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S14°36'35"W along lands of the said Mollycheck for a distance of three hundred fifty and seventy-seven/100ths (350.77') feet to an iron pipe marked "i.o." on said plat; thence running in an east-southeasterly direction S75°21'41"E along lands of the said Mollycheck for a distance of ten and no/100ths (10.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S14°57'15"W along lands now or formerly of Mary Ann Wharrie and Preston & Judith F. Howard for a distance of one hundred ninety-nine and eighty-three/100ths (199.83') feet to an iron pipe marked "i.o."; thence continuing in a southwesterly direction S12°46'41"W along lands of the said Howard for a distance of ninety-nine and eighty-nine/100ths (99.89') feet to an iron pipe marked "i.o." on said plat; thence running in a west-southwesterly direction S28°03'37"W along lands now or formerly of James S. & Katiri B. Graves for a distance of ninety-seven and sixty-four/100ths (97.64') feet to an iron pipe marked "i.o." located on the northeastern boundary of Bowman Road (66'R/W); thence running in a northwesterly direction along the said northeaste boundary of Bowman Road with the following courses and distances: N51°20'32"W for a distance of four hundred forty-eight and thirty/100ths (448.30') feet to an iron pipe marked "i.n." on said plat; thence along a curve having a chord distance of two hundred eighteen and seventy-three/100ths (218.73') feet to an iron pipe marked "i.n."; thence N57°46'56"W for a distance of two hundred seventy-six and thirty-six/100ths (276.36') feet to an iron pipe marked "i.n." on said plat; thence running in a northeasterly direction N38°10'15"E along TRACT "C" 1.29 ACRES on said plat for a distance of four hundred eighty-eight and forty-nine/100ths (488.49') feet to an iron pipe marked "i.n." on the southern boundary of U. S. Highway No. 17 By-Pass, the point and place of beginning.

EXHIBIT "A"
PARCEL B

COPY

Parties

THIS LEASE made and entered into as of this 23rd day of March, 1978, between BAKER & BAKER, a Partnership

~~a _____ corporation~~ having its principal ~~office~~ mailing address at P. O. Box 11700, Columbia, South Carolina 29211 (herein referred to as "Landlord"), and K MART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (herein referred to as "Tenant"),

WITNESSETH: That in consideration of the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

Demised Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the lease term the following property: Tenant's completed building ~~or buildings~~ (designated K mart ~~and Food Market~~), together with site improvements to be constructed as hereinafter specified by Landlord at its expense together with land comprising not less than eight plus (-8+-) acres described in Exhibit "A", Parcel A attached hereto and made a part hereof, and situated in the City of Mt. Pleasant, County of Charleston, State of South Carolina; said building ~~or buildings~~ to be in the locations depicted on Exhibit "B" attached hereto and made a part hereof, and of the following dimensions:

K mart Department Store: 321'4" x 212'8" = 68,337 square feet

Outdoor Garden Shop: 66'3" x 99'8"

Said land, completed buildings and site improvements, together with all licenses, rights, privileges and easements, appurtenant thereto shall be herein collectively referred to as the "demised premises".

Term

2. The term of this lease shall commence upon the "date of occupancy by Tenant", as that term is defined in Article 11 hereof, and shall terminate upon such date as shall be twenty-five(-25-) years from the last day of the month in which said date of occupancy by Tenant shall occur; provided, however, the term of this lease may be extended as provided in Article 18 hereof. The phrase "lease term", as used in this lease, shall be the term of this lease and any extension thereof pursuant to said Article 18.

Annual Minimum Rental

3. Tenant shall, during the lease term, pay to Landlord, at such place as Landlord shall designate in writing from time to time, an annual minimum rental of TWO HUNDRED TWENTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-EIGHT---------- DOLLARS ($ 227,838.00——), unless abated or diminished as hereinafter provided, in equal monthly installments on the first day of each month, in advance, commencing upon the first day of the lease term; provided, however, in the event the first day of the lease term shall not be the first day of a calendar month, then the rental for such month shall be prorated upon a daily basis.

Additional Rental

4. In addition to the aforesaid annual minimum rental, with respect to any lease year during the lease term in which Tenant's "gross sales", as hereinafter defined, shall exceed the sum of EIGHT MILLION EIGHT HUNDRED THOUSAND ---------- DOLLARS ($ 8,800,000 ----), Tenant shall pay to Landlord as additional rental an amount equal to one percent (1%) of gross sales exceeding EIGHT MILLION EIGHT HUNDRED THOUSAND ---------- DOLLARS ($ 8,800,000 -----) up to but not in excess of FIFTEEN MILLION ---------- DOLLARS ($ 15,000,000 ——); and Tenant shall pay to Landlord as additional rental an amount equal to five-tenths of one percent (.5%) of gross sales for such lease year exceeding FIFTEEN MILLION ---------- DOLLARS ($15,000,000 ——) up to but not in excess of EIGHTEEN MILLION SEVEN HUNDRED FIFTY THOUSAND ---------- DOLLARS ($ 18,750,000 --------).

Additional Rental (continued)

Said additional rental shall be paid on or before the thirtieth (30th) day following the end of each "lease year". For the purposes of this lease, a "lease year" shall be each successive period of twelve (12) consecutive calendar months from the last day of the month in which said lease term shall commence. Sales for any period preceding the first lease year shall be included in gross sales reported for the first lease year. Tenant shall on or before the thirtieth (30th) day following the end of each lease year or lesser period, deliver to Landlord a statement signed by an officer of Tenant certifying the true amount of the gross sales for such lease year or lesser period. The term "lesser period", as used herein, shall be any period beginning on the first (1st) day of any lease year and ending, by reason of the termination of this lease, prior to the end of such lease year. In the event that a period of more or less than twelve (12) months shall be so required to be included in any such statement, then the dollar amounts referred to in the preceding paragraph shall be proportionately increased or decreased, as the case may be.

Should Tenant at its option operate its fountain and lunch counter prior to opening for other business, such operation shall not be an acceptance of the demised premises, or an acknowledgment that the representations and warranties of Article 12 shall have been fulfilled, or an opening for business under Article 11 or any other provision of this lease, but sales from such operation shall be included in Tenant's reported gross sales for the first lease year.

Landlord or its agent may inspect Tenant's record of gross sales annually, provided such inspection shall be made at Tenant's principal office within six (6) months after the statement of sales shall be delivered to Landlord and shall be limited to the period covered by such statement. Except to the extent that disclosure shall be required for any bona fide sale or mortgage of the demised premises or for legal proceedings in any court, at law or in equity, Landlord shall hold in confidence sales figures or other information obtained from Tenant's records.

The term "gross sales", as used herein, shall be the total sales of merchandise or services made by Tenant or any occupant of the demised premises, whether wholesale or retail, cash or credit (including merchandise ordered on the demised premises and delivered from another place) and shall include sales made from trucks, trailers, vans or other temporary facilities used by Tenant on any part of the land described in Exhibit "A", except that the following shall be excluded:

(a) Sales of merchandise subsequently returned for refund or credit, merchandise transferred to a warehouse or another store of Tenant, discounts on merchandise which shall be allowed to employees of Tenant, or merchandise which shall be issued in redemption of trading stamps, if any, which shall have been issued free of charge to Tenant's customers at the time of sale of other merchandise or services;

(b) Any and all taxes levied upon, assessed against, or measured by the receipt or purchase of merchandise by any occupant of said demised premises, and any and all occupational sales taxes and other taxes levied upon, assessed against, based upon, or measured by (i) such occupant's gross receipts, or any part thereof, or (ii) the sale or sales price of merchandise and services, or either, and which shall be payable by such occupant, whether or not collected by such occupant from its customers as reimbursement or as agent of the taxing authority, and whether or not the same shall be commonly known as a sales tax, use tax, retailers' occupational tax, gross receipts tax or excise tax; provided, however, said taxes to be excluded from gross sales shall not include any net income tax, franchise, or any other tax not levied upon or computed upon gross sales or gross receipts, or any portion thereof; provided further, said taxes to be excluded from gross sales shall be excludable regardless of whether imposed under any existing or future orders, regulations, laws, statutes or ordinances;

(c) Receipts from cigarettes, lockers, stamp machines, public telephones, pay toilets, "kiddie rides", money orders and all licenses sold to the public;

(d) Service and interest charges for time payment accounts and charge accounts;

~~(e) All sales of merchandise or services made by any food market which shall occupy any portion or portions of the demised premises; and~~

(e) (f) All sales of automotive gasoline or diesel fuel.

Additional Rental (continued)

Should the Tenant at any time elect to discontinue the operation of its store, the Tenant shall give to the Landlord notice in writing of its intention so to do and in such event the Landlord shall have one option, to be exercised by notice in writing given to the Tenant within ninety (90) days after the date of mailing of the Tenant's aforesaid notice to the Landlord, to cancel and terminate this lease. If the Landlord exercises its said option, this lease shall cancel and terminate on the last day of the month next following the end of said ninety (90) day period and the Tenant shall be released from any further liability under this lease.

Should the Landlord fail to exercise its said option and should the Tenant at any time thereafter discontinue the operation of its said store then and in any such event, anything in this lease to the contrary notwithstanding, it is hereby mutually agreed that the rent which Tenant shall pay to the Landlord during the remainder of the term of this lease shall be the rent more particularly set forth in said Article 3, and the word "minimum" in said Article 3 shall be deemed deleted. Upon the discontinuance of the operation of said store, all of the covenants and provisions contained in the preceding paragraph of this article shall be of no further force and effect.

Real Estate Taxes

5. Tenant shall pay and discharge all ad valorem real estate taxes and assessments which shall be levied against the taxable premises during the lease term, excluding therefrom payment of assessments which are incurred or levied as a result of Landlord's activity in developing the demised premises for Tenant's occupancy.

To the extent permitted by law, Tenant may pay any such assessment in annual installments. In the event any such assessment shall be payable in a lump sum or on an installment basis, Tenant shall have the sole right to elect the basis of payment. If Tenant shall elect to pay such assessment on the installment basis, then Tenant shall pay only those installments which shall become due and payable during the lease term. Any such installments due and payable in the years in which this lease commences and terminates shall be prorated proportionately.

Tenant shall not be chargeable with nor be obligated to pay any tax of any kind whatsoever which may be imposed on the Landlord, the rents payable hereunder or the demised premises except the ad valorem real estate taxes and assessments mentioned in the first paragraph of this Article 5.

The amount, if any, by which the ad valorem real estate taxes and assessments payable hereunder exceed Twenty-two Thousand ---------- DOLLARS ($ 22,000.00-----) during any lease year, shall be hereinafter referred to as an "excess tax payment". All excess tax payments shall be deductible by Tenant from additional rentals, as defined in Article 4, due and payable for such lease year. In the event the excess tax payment for any lease year exceeds said additional rental due and payable during the same lease year, the amount by which said excess tax payment exceeds said additional rental shall be carried forward and be deductible from additional rentals due and payable for succeeding lease years on a cumulative basis.

The taxable premises, as defined below, shall be separately assessed if practicable from any contiguous lands and from any additional lands and improvements incorporated into the demised premises in the future.

Parcel A

In the event Tenant constructs, as provided in Article 16 hereof, additional buildings or structures on any portion of the land described in Exhibit "A", said additional buildings or structures shall be excluded from the taxable premises. Said additional buildings or other structures shall be separately assessed and all ad valorem taxes and assessments levied thereon shall be paid and discharged by Tenant and shall not be deductible from additional rentals as provided herein.

The Tenant shall have the right to participate in all negotiations of tax assessments. Tenant shall have the right to contest the validity or the amount of any tax or assessment levied against the taxable premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate; provided, however, Tenant shall take no action which will cause or allow the institution of any foreclosure proceedings or similar action against the demised premises. Landlord shall cooperate in the institution and prosecution of any such proceedings initiated by the Tenant and will execute any documents required therefor.

Should the Landlord institute proceedings to contest the validity or the amount of any tax or assessment levied against the taxable premises, the Tenant will cooperate in such proceedings.

Real Estate Taxes (continued)

Should any of the proceedings referred to in the preceding two paragraphs of this Article 5 result in reducing the total annual real estate tax and assessment liability against the taxable premises, the Tenant shall be entitled to receive all refunds paid by the taxing authorities. After payment of all of Landlord's and Tenant's expenses incurred in any such proceeding in which a refund is paid, the Tenant shall pay to the Landlord either the balance of such refund or, alternatively, Tenant shall pay to the Landlord that part of the excess tax payment which may have been deducted from additional rent in the tax year for which the refund was granted, whichever amount shall be the lesser. Any balance of said refund remaining after such payment to Landlord shall belong to the Tenant. If no refund shall be secured in any given proceeding, the party instituting the proceeding shall bear the entire cost.

Parcel A

The term "taxable premises", as used in this lease, shall be that certain land described in Exhibit "A", together with such buildings and other improvements required by Tenant to be constructed thereon by Landlord under the terms of this lease.

New Building by Landlord

6. Tenant's said buildings and site improvements shall be completed and delivered to Tenant promptly and with due diligence. If the performance by Landlord of any of its obligations hereunder is delayed by reason of the act or neglect of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, or act of the public enemy, the period for the commencement or completion thereof shall be extended for a period equal to such delay. Landlord warrants that a general contract for construction of said buildings and improvements referred to in Articles 1 and 12 hereof shall be let, rough site grading shall be completed and foundations and footings commenced not later than May 1, 1978 . If for any reason whatever Landlord shall fail to comply fully with this warranty, Landlord shall so notify Tenant in writing and in such event, Tenant shall have, in addition to other remedies which may be available to it by law or otherwise, the option to terminate this lease within sixty (60) days thereafter by notice to Landlord; provided, further, in the event that, regardless of the reason therefor, said buildings and site improvements shall not have been completed in accordance with working drawings and specifications prepared by Landlord as approved in writing by Tenant's Construction Department, and possession thereof tendered to Tenant prior to May 1, 1979 , then Tenant shall, at any time thereafter, have the further option of terminating this lease by notice to Landlord. Notwithstanding anything to the contrary herein contained, in the event that the lease term shall not have commenced prior to such date as shall be seven (7) years from the date of this lease, then this lease shall be automatically terminated without further act of either party hereto.

Drawings and Specifications

7. Tenant's said buildings and site improvements shall be constructed by Landlord, at its sole cost and expense, in accordance with the working drawings and specifications prepared by Landlord which shall, with respect to standards of construction and division of responsibility for supplying materials and equipment, substantially satisfy the provisions of Tenant's typical store drawings and specifications, prior receipt of which Landlord hereby acknowledges and which are identified as Set No. B-0296, containing such additions, changes and modifications as are more particularly set forth in those certain letters dated October 3, 1977 and November 28, 1977, written by Mr. James A. Kilgore, Manager of Design Division, Construction Department, to Baker & Baker, P. O. Box 11700, Columbia, South Carolina 29211, Attention: Mr. David Baker, copies of which are attached hereto and marked Exhibit "C".

(a) Said working drawings are subject to the following exceptions and such other deviations as may be approved in writing by Tenant's Construction Department.

(b) Changes of type and standards of construction and of arrangement to the extent as shall be required by applicable laws, codes or ordinances.

Drawings and Specifications (continued)

Said working drawings and specifications shall be submitted to Tenant for approval prior to commencement of construction and such approval shall not be unreasonably withheld. Within sixty (60) days after receipt of such working drawings and specifications, Tenant shall in writing, inform Landlord of required revisions or corrections thereto which are necessary to conform said working drawings and specifications to the Tenant's typical store drawings and specifications hereinbefore referred to, and Landlord shall make such revisions or corrections and resubmit them for Tenant's final approval. In the event Tenant shall not inform Landlord of such desired revisions or corrections within said sixty (60) days, said working drawings and specifications shall be deemed approved and accepted for the purposes hereof.

Said typical drawings and specifications, and working drawings and specifications as approved by Tenant shall constitute a part of this lease.

Guarantee of Materials

8. Landlord shall unconditionally guarantee all work performed by or for Landlord in the construction of Tenant's buildings and site improvements against defective workmanship and materials for the period of one (1) year from the commencement of the lease term. Landlord shall assign to Tenant any and all guarantees of workmanship and materials which it may receive.

Advance Possession for Fixturing

9. For a period of ~~thirty (30)~~ sixty (60) days prior to completion of Tenant's buildings by Landlord, as set forth in Article 11(b), Tenant shall have the privilege, rent free, of entering said buildings for the purposes of installing storage bins, storing merchandise, and other of Tenant's construction activities in conjunction with Landlord's preparation for Tenant's acceptance of said buildings, which shall not create unreasonable interference with the work of the Landlord. Such entry shall not be construed as an acceptance of the demised premises by the Tenant under the provisions of this lease or as a waiver of any of the provisions hereof.

Parking and Other Common Areas

10. Prior to commencement of the lease term, Landlord shall construct, in accordance with said working drawings and specifications approved by Tenant, on the premises described in Exhibit "A", all of the sidewalks, service drives, parking areas, driveways, streets, curbs, directional signs (not Tenant's pylon) and related improvements, substantially as shown on said working drawings and specifications (all of which improvements shall hereinafter, along with the land thereon constructed, be referred to as the "common areas").

Parcel B

Landlord shall also construct or cause to be constructed upon certain property or rights-of-way contiguous to the premises described in Exhibit "A", all sidewalks, driveways, streets, curbs, acceleration, deceleration and stacking lanes, traffic controls, and signals, directional signs and related improvements in accordance with said working drawings and specifications and the requirements of any governmental bodies.

Landlord covenants and represents that at the commencement of the lease term, there shall be adequate sidewalks, driveways, roadways and entrances for automotive and pedestrian ingress and egress to and from the demised premises and adjacent public streets and highways, as shown on said working drawings and specifications.

Landlord further covenants that the aggregate area provided for the parking of automobiles shall during the lease term be sufficient to accommodate not less than Seven Hundred Thirty ——— (—730———) automobiles on basis of arrangement depicted on Tenant's working drawings and specifications.

At least sixty (60) days prior to the commencement of the lease term, Landlord shall provide paved driveways running from the adjoining public streets around the front, sides and rear of Tenant's buildings in order to secure convenient ingress and egress from said public streets to the front and rear entrances of Tenant's buildings for the purpose of receiving and delivering fixtures, merchandise and other property. Such driveways shall be of sufficient width to permit the passage, unloading, and if necessary, the turning around of trailer trucks and other commercial vehicles.

During the lease term, Landlord shall keep Tenant insured against all statutory and common law liabilities for damages on account of damage to property or injuries and loss of life sustained by any person or persons within said common areas, in a policy or policies in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) with respect to injury to any one person and in the amount of One Million Dollars ($1,000,000.00) with respect to any one accident or disaster, and in the amount of One Hundred Thousand Dollars ($100,000.00) with respect to damage to property; and Landlord shall also indemnify and save Tenant harmless against any such liability. Any such policies shall bear endorsements to the effect that Tenant shall be notified not less than five (5) days in advance of any modification or cancellation thereof. Copies of such policies, so endorsed, or certificates evidencing the existence thereof, shall be promptly delivered to Tenant upon written request therefor.

Parcel B

Parking and Other Common Areas (continued)

In the event that unauthorized persons, including tenants or invitees of tenants occupying buildings now or at any future time located beyond the limits of the land described in Exhibit "A" utilize the demised premises for parking or other purposes to an extent which shall be objectionable to Tenant, Landlord shall at its sole expense, upon written request by Tenant, take whatever action as shall be so requested to prevent said unauthorized utilization, including the erection of fences or other barricades.

Should Tenant, at any time, utilize portions of the common areas for outdoor shows, entertainment or such other uses which in Tenant's judgment tend to attract the public, Tenant shall give Landlord notification of such intended use, a reasonable time in advance thereof, and on request supply Landlord with reasonable proofs of adequate insurance or indemnification against damage to property, injuries to persons and loss of life sustained in connection therewith. In addition, Tenant shall be responsible for any physical damage to said common areas resulting from said use. Rent, if any, from such use shall be included as part of "gross sales" under Article 4 hereof.

Store Opening

11. The term "date of occupancy by Tenant", as used in this lease, shall be the first to occur of the following two dates: (a) the date upon which Tenant shall open for business, or (b) the date which shall be sixty (60) days (plus a period of time equal to any delays due to conditions beyond Tenant's control) after the date upon which (i) Tenant's buildings and site improvements shall be completed in accordance with said working drawings and specifications and the possession thereof shall be tendered to Tenant, and (ii) all of the representations and warranties set forth in Article 12 shall be fulfilled; except, however, notwithstanding anything to the contrary in this lease contained, in the event said date of occupancy shall occur during the period between November 1 and the last day of February, the lease term shall not commence until March 1 unless Tenant shall elect to open for business prior to such date. Tenant shall have the option to open for business prior to the completion of the matters set forth in subdivisions (i) and (ii) of this Article 11, and in the event of the exercise of such option, Landlord shall complete said buildings and site improvements as expeditiously as possible; provided, however, if Landlord shall have failed to complete said buildings and improvements according to the said working drawings and specifications within ninety (90) days after Tenant opens for business, Tenant shall thereafter at any time be privileged, but not obligated, to complete, correct, or remedy in all or part any such deficiency, and the cost therof shall be deducted from the rentals due under this lease, without waiver of Tenant's other remedies hereunder.

Tenant's

Landlord's Representations and Warranties

12. Landlord represents, warrants and covenants that it shall, prior to commencement of the lease term, complete the buildings and site improvements substantially in accordance with the site plan depicted on said Exhibit "B", including completion of said common areas in accordance with the provisions of Article 10 hereof. Landlord further covenants that it will not erect any buildings or other structures on the land described in Exhibit "A" except as shown on said Exhibit "B".

Parcel B

Landlord further represents, warrants and covenants that the land described in Exhibit "A" will, at the time of the commencement of construction by Landlord and at the time of the commencement of the lease term, be properly zoned for Tenant's intended use, and that all necessary governmental consents, permits and approvals for such use shall have been obtained. Further, Landlord shall deliver to Tenant a Certificate of Occupancy prior to commencement of the lease term.

The lease term shall not commence and said annual minimum rental and other charges payable under this lease shall not commence to accrue until the foregoing representations and warranties shall have been fulfilled; provided, however, in the event that Tenant shall elect to open for business before the Landlord shall have fulfilled the foregoing representations and warranties, the term of this lease shall commence, but Tenant shall not be obligated to pay the annual minimum rental or the additional rental; provided, further, in lieu thereof, Tenant shall pay monthly in arrears one percent (1%) of said gross sales and Tenant shall continue said payment until Landlord's said representations and warranties shall be fulfilled, at which time Tenant shall commence payment of the rental set forth in Articles 3 and 4 hereof.

In the event Landlord's said representations and warranties shall not be fulfilled within ninety (90) days after commencement of the lease term, Tenant thereafter shall have the option of either completing said representations and warranties at Landlord's cost and expense, or, alternatively, Tenant shall have an option to terminate this lease by notice to Landlord, which notice shall state an effective date of termination of not less than sixty (60) days from the date of such notice.

Options to Extend Lease

13. (a) Tenant shall have ten (10) successive options to extend the term of this lease for an additional period of five (5) years on each such option, such extended term to begin respectively upon the expiration of the term of this lease or of this lease as extended and the same terms and conditions as herein set forth shall apply to each such extended term. If Tenant shall elect to exercise the aforesaid options, it shall do so by giving notice to Landlord not less than six (6) months prior to the expiration of the term of this lease or of this lease as extended.

Options to Extend Lease (continued)

(b) Regardless of the exercise or nonexercise by Tenant of any or all of the foregoing options, Tenant shall have, unless the last day of the lease term shall be January 31 of any year, the option to extend (or further extend, as the case may be) the term of this lease for such period of time as shall cause the last day of the term of this lease to be the January 31 next succeeding the date upon which the term of this lease would expire but for the exercise of this option. This option shall be exercised by notice to Landlord not less than six (6) months prior to the expiration of the term of this lease or any extension thereof. Tenant's rental during this option period shall be the same rental payable under the terms of this lease at the time Tenant notifies Landlord of its intention to exercise this option.

First Refusal to Purchase Option

14. Anything in this lease contained to the contrary notwithstanding, and without in any manner affecting or limiting any of the rights, privileges, options or estates granted to Tenant under this lease, it is agreed that if the Landlord at any time during the term of this lease (excepting the first lease year) receives one or more bona fide offers from third parties to purchase the demised premises or property of which the demised premises are a part, and if any such offer is acceptable to the Landlord, then Landlord agrees to notify Tenant in writing, giving the name and address of the offeror, and the price, terms and conditions of such offer, and Tenant shall have thirty (30) days from and after the receipt of such notice from Landlord in which to elect to purchase the property for the consideration contained in the bona fide offer. If Tenant does not elect to purchase said property and Landlord thereafter sells the property, the purchaser shall take the property, subject to and burdened with all the terms, provisions and conditions of this lease, including this Article 14 and the rights of the Tenant under this lease as against the new owner shall not be lessened or diminished by reason of the change of ownership. Tenant's failure at any time to exercise its option under this Article 14 shall not affect this lease or the continuance of Tenant's rights and options under this Article 14 or any other article.

In the event Tenant elects to purchase the property as provided in this lease, then Landlord shall, within thirty (30) days after receipt of such notice of election by Tenant, deliver to Tenant a title insurance policy in the amount of the consideration set forth in such offer, issued by a responsible title guarantee company, showing a good and marketable title in Landlord. If Landlord fails or refuses to furnish the title policy, then Tenant may, at its election, procure the same at Landlord's expense, and in the amount of the purchase price, and deduct the cost thereof from the cash consideration to be paid for the property. Tenant shall have thirty (30) days after receipt of the title policy in which to examine the title and notify the Landlord whether or not the title is acceptable to Tenant. If Tenant is willing to accept Landlord's title and consummate the purchase, then Landlord shall, within ten (10) days after written notice thereof from Tenant, convey the premises to Tenant by full warranty deed, free and clear of all liens and encumbrances except highway easements, private road easements and restrictions of record which were of record as of the date of Tenant's acceptance of the premises hereunder or incorporated in an amendment to this lease, if any, and deliver such deed to Tenant upon tender of the consideration.

Notwithstanding any other provisions of this lease, the provisions of this Article 14 will not apply to any sale of the demised premises or any property of which the demised premises are a part at foreclosure, and shall not be binding upon any purchaser at foreclosure, any mortgagee in possession, or any holder of a deed in lieu of foreclosure or the successors or assigns of any of the foregoing, or to any sale of the demised premises by Landlord in connection with sale and leaseback financing.

If Tenant is not willing to accept Landlord's title, Tenant shall make any objections thereto in writing to Landlord and Landlord shall be allowed one hundred twenty (120) days to utilize its best efforts to make such title acceptable to Tenant. If such title is not rendered marketable within one hundred twenty (120) days from the date of said written objections thereto, Tenant may, at its election, take such action, including instigation of legal process (in which the Landlord agrees to participate) to remedy any such defect in title making such acceptable to Tenant, and to deduct all costs thereof from the cash consideration to be paid for the property. If the Tenant is unable to correct such defects in title or elects not to attempt such remedy, neither party shall be held liable for damages to the other party and both parties shall be released of all liabilities and obligations under this Article 14.

Repairs and Maintenance

15. Tenant shall make and pay for all maintenance, replacement and repair necessary to keep the demised premises in a good state of repair and tenantable condition, except for the following maintenance, replacement or repair which shall remain the Landlord's sole responsibility:

(a) all maintenance, replacement and repair to the roof, outer walls and structural portion of the buildings which shall be necessary to maintain the buildings in a safe, dry and tenantable condition and in good order and repair; and

(b) all repairs, maintenance or replacement of or to the demised premises, including but not limited to, underground utility installations and underground electrical conduit and wire, which are occasioned by settlement of the premises or a portion thereof, or caused by soil conditions; and

Repairs and Maintenance (continued)

(c) all repairs and replacement (exclusive of sweeping, striping and snow and ice removal) necessary to maintain all driveways, sidewalks, street and parking areas free of all settling, clear of standing water, and in a safe, sightly and serviceable condition, free of chuck holes, fissures and cracks.

In the event buildings or improvements constituting the demised premises or a portion thereof shall be rendered unusable due to Landlord's default or negligence with respect to required repairs, there shall be a just and equitable abatement of said annual minimum rental and all other charges payable under this lease until said premises shall be made usable. Emergency repairs which shall be Landlord's responsibility hereunder, and which shall be necessary to protect the buildings or contents and/or to keep the common areas in a neat, clean, safe and orderly condition may be made by Tenant without notice to Landlord, and the cost of such repairs not to exceed Two Thousand Dollars ($2,000.00) in any one instance, may be deducted by Tenant from rentals subsequently accruing hereunder.

See Rider (Article 15A)

Alterations and Additional Construction

16. Tenant may, at its own expense, from time to time make such alterations, additions or changes, structural or otherwise, in and to its buildings as it may deem necessary or suitable; provided, however, Tenant shall obtain Landlord's prior written consent to drawings and specifications for structural alterations, additions or changes; provided, further, Landlord shall not withhold its consent thereto if the structural integrity of the buildings will not be impaired by such work. The term "structural changes", as used herein, shall not include moving of non-loadbearing partitions, minor plumbing and electrical work, modification and rearrangement of fixtures or other minor changes. Landlord, at Tenant's cost, shall cooperate with Tenant in securing building and other permits or authorizations required from time to time for any work permitted hereunder or installations by Tenant.

or its nominee

Tenant may, at its own expense, at any time, erect or construct additional buildings or structures on any portion of the demised premises. In such event gross sales made in or from said additions shall be excluded from gross sales as defined in Article 4 of this lease and provided further, said additional building or structure shall be excluded from the taxable premises and all ad valorem taxes and assessments levied thereon shall not be deductible from additional rents payable under the terms of Article 4 hereof. Tenant shall reimburse Landlord for any increase in insurance premiums attributable solely thereto. Tenant shall also be solely responsible for exterior and interior repairs thereto, except those necessitated by fire, the elements or other casualty. In the event Tenant constructs any such additions or new construction, Landlord shall not be obligated to furnish additional parking areas in substitution of areas thereby built over, and the number of parking spaces required under Article 10 shall be reduced by the number of spaces covered by such additional buildings or structures.

Utilities

17. Landlord covenants and agrees that the demised premises shall be properly serviced with gas, electric, telephone, water, sewer and other utilities sufficient to meet Tenant's requirements as of the commencement of the lease term. Tenant shall pay all charges for utility services furnished to the demised premises during the lease term.

Landlord may provide a disposal or septic tank system in lieu of public sanitary sewer, subject to Tenant's written approval of plans and specifications and Landlord's continuing obligation to clean and maintain said system at all times in good and serviceable condition at its sole expense.

Governmental Regulations

18. Tenant shall observe and comply with all requirements of rules, orders and regulations of the federal, state and municipal governments or other duly constituted public authority affecting said demised premises including the making of non-structural alterations, insofar as they are due to Tenant's occupancy; provided, however, in the event such rules, orders and regulations shall either (a) require structural changes, including but not limited to, the erection of a fire escape or exit, or (b) require non-structural changes which would have been required irrespective of the nature of the tenancy, then in either such event, the same shall be complied with by Landlord at its sole expense.

Exculpation

19. Anything to the contrary in this lease notwithstanding the covenants contained in this lease to be performed by Landlord shall not be binding personally, but instead said covenants are made for the purpose of binding only the fee simple or leasehold estate which Landlord owns in the demised premises; provided, however, the obligations imposed by Article 8 of this lease shall be personally binding upon Landlord.

Damage to Demised Premises

20. From and after the date on which Tenant shall be privileged to enter upon the demised premises for the purposes specified in Article 9 hereof, Landlord shall insure the buildings depicted on Exhibit "B", including Tenant's buildings, against damage or destruction by fire and other casualties insurable under a standard extended coverage endorsement. Said insurance shall be in an amount equal to not less than eighty percent (80%) of the insurable value of the permanent improvements thereof. All such policies shall bear endorsements to the effect that Tenant shall be notified not less than five (5) days in advance of modification or cancellation thereof and that the assured has waived right of recovery from Tenant. Copies of such insurance policies or certificates evidencing the existence thereof so

Damage to Demised Premises (continued)

endorsed, shall be promptly delivered to Tenant upon written request therefor. Irrespective of the cause thereof, Tenant shall not at any time be liable for any loss or damage to said buildings resulting from fire, explosion or any other casualty.

In the event that, at any time during the lease term, the permanent improvements then constituting Tenant's buildings and site improvements shall be damaged or destroyed (partially or totally) by fire or any other casualty insurable under a standard fire and extended coverage endorsement Landlord shall, at its expense, promptly and with due diligence repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction; provided, however, if as a result of any such damage or destruction during the last two (2) years of the lease term, Tenant's fixtures, equipment or other property shall be damaged or destroyed in an amount exceeding Twenty-five Thousand Dollars ($25,000.00), then either party may terminate this lease as of the date of such damage or destruction by giving written notice to the other party within thirty (30) days thereafter and Tenant shall have an additional sixty (60) days, rent free, within which to remove its property from the demised premises. Notwithstanding any such termination of this lease by Landlord as provided in this Article, Tenant shall have the right to exercise any option to extend the term hereof in accordance with the provisions of Article 13 within thirty (30) days after the date of the receipt of Landlord's notice of termination, and upon the exercise of any such option (other than the option set forth in paragraph (b) of Article 13) by Tenant, then this lease shall continue in full force and effect despite such notice of termination by Landlord and Landlord shall repair, rebuild and restore the said permanent improvements as above provided. In the event that this lease shall be terminated as above provided, all unearned rent and other charges paid in advance shall be refunded to Tenant.

During any period commencing upon the date of any such damage or destruction by fire, the elements or any other casualty whatsoever, and ending upon the "date of reoccupancy by Tenant", the annual minimum rental and any other charges payable under this lease shall abate in the proportion that the part of Tenant's buildings which shall be untenantable shall bear to the whole. The term "date of reoccupancy by Tenant", as used herein, shall be the first to occur of the following two dates: (a) the date upon which Tenant shall open for business in that part of Tenant's buildings rendered untenantable by such damage or destruction, or (b) the date which shall be sixty (60) days (plus a period of time equal to any delays due to conditions beyond Tenant's control) after the date of completion of the repairs, rebuilding and restoration required of Landlord herein.

In the event that, at any time during the lease term except the last two (2) years thereof, any building or buildings within the site depicted on Exhibit "B", other than Tenant's building or buildings, shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty, Landlord shall, at its expense, promptly and with due diligence repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction; or Landlord may, at its option, elect to raze any buildings so damaged or destroyed and pave the area formerly occupied by said buildings so as to provide additional parking facilities, said areas to be paved, marked, lighted, drained and maintained in the same manner as required in Articles 10 and 15 hereof for other parking areas in the demised premises.

Each party hereto has hereby remised, released and discharged the other party hereto and any officer, agent, employee or representative of such party of and from any liability whatsoever hereafter arising from loss, damage or injury caused by fire or other casualty for which insurance (permitting waiver of liability and containing a waiver of subrogation) is carried by the party at the time of such loss, damage or injury to the extent of any recovery by the injured party under such insurance.

Eminent Domain

21. In the event all of Tenant's buildings constructed by Landlord shall be expropriated or the points of ingress and egress to the public roadways substantially as depicted on Exhibit "B" be materially impaired by a public or quasi-public authority, this lease shall terminate as of the date Tenant shall be deprived thereof.

In the event that less than the whole but more than ten percent (10%) of Tenant's buildings constructed by Landlord shall be expropriated by public or quasi-public authority, Tenant shall have the option to terminate this lease as of the date Tenant shall be dispossessed from the part so expropriated, by giving notice to Landlord of such election so to terminate within ninety (90) days from the date of such dispossession.

Eminent Domain (continued)

In the event of an expropriation of any portion of Tenant's buildings, constructed by Landlord, and if this lease shall not be terminated as hereinabove provided, it shall continue as to that portion of the said buildings which shall not have been expropriated or taken, in which event Landlord shall, at its sole cost and expense, promptly and with due diligence restore said buildings as nearly as practicable to complete units of like quality and character as existed just prior to such expropriation. The annual minimum rental and other charges shall abate during the period of demolition and restoration, and thereafter the annual minimum rental and the dollar amounts set forth in the first paragraph of Article 4 shall be reduced in the proportion the ground floor area of the part of Tenant's buildings so expropriated shall bear to the total ground floor area of said buildings prior to such expropriation.

Parcel B

Without limiting the foregoing, in the event that any of the land described in Exhibit "A" shall be expropriated by public or quasi-public authority, Landlord shall make every effort to substitute equivalent and similarly improved lands contiguous to and properly integrated with the remainder of the site depicted on Exhibit "B". If Landlord shall be unable to substitute such lands and if one or more expropriations shall in total deprive Tenant of the use of more than ~~ten percent (10%)~~ fifteen percent (15%) of the land described in Exhibit "A", then, in such event, the Tenant shall have the option to terminate this lease at any time within twelve (12) months after such deprivation becomes effective by giving notice to Landlord.

Parcel B

In the event this lease shall be terminated pursuant to this Article, any annual minimum rental and other charges paid in advance shall be refunded to Tenant, and Tenant shall have an additional sixty (60) days, rent free, within which to remove its property from the demised premises. In the event that at the time of any expropriation of Tenant's buildings, Tenant shall not have fully amortized expenditures which it may have made on account of any improvements, alterations or changes to its buildings, Landlord shall assign to Tenant that portion of any award payable as a result of such expropriation as shall equal the unamortized portion of Tenant's said expenditures. Said unamortized portion of Tenant's said expenditures shall be determined by multiplying such expenditures by a fraction, the numerator of which shall be the number of remaining years of the lease term at the time of such expropriation and the denominator of which shall be the number of remaining years of the lease term at the time such expenditures shall have been made plus the number of years for which the lease term may have been subsequently extended.

Tenant shall not be entitled to share in any award made by reason of expropriation of Landlord buildings on the demised premises, or any part thereof, by public or quasi-public authority, except as set forth in the preceding paragraph relative to unamortized expenditures by Tenant and then only if the award for such unamortized expenditures shall be made by the expropriating authority in addition to the award for the land, buildings and other improvements (or portions thereof) comprising the demised premises; however, the Tenant's right to receive compensation for damages or to share in any award shall not be affected in any manner hereby if said compensation, damages, or award is made by reason of the expropriation of the land or buildings or improvements constructed or made by Tenant.

Use, Assignment and Subletting

22. The premises hereby demised may be used for any lawful purpose. Tenant may assign this lease or sublet the whole or any part of the demised premises, but if it does so, it shall remain liable and responsible under this lease.

Signs

23. The demised premises shall be referred to by only such designation as Tenant may indicate. Landlord expressly recognizes that the service mark and trademark "K mart" is the valid and exclusive property of Tenant, and Landlord agrees that it shall not either during the term of this lease or thereafter directly or indirectly contest the validity of said mark "K mart", or any of Tenant's registrations pertaining thereto in the United States or elsewhere, nor adopt or use said mark or any term, word, mark or designation which is in any aspect similar to the mark of Tenant. Landlord further agrees that it will not at any time do or cause to be done any act or thing directly or indirectly, contesting or in any way impairing or tending to impair any part of the Tenant's right, title and interest in the aforesaid mark, and Landlord shall not in any manner represent that it has ownership interest in the aforesaid mark or registrations therefor, and specifically acknowledges that any use thereof pursuant to this lease shall not create in Landlord any right, title or interest in the aforesaid mark.

Tenant shall have the option to erect at its sole cost and expense upon any portion of the demised premises signs of such height and other dimensions as Tenant shall determine, bearing such legend or inscription as Tenant shall determine. Tenant shall have the option to utilize the lighting standards in the parking lot for advertising purposes by attaching, or causing to be attached, signs advertising any and all products and services as Tenant shall elect.

Landlord shall not permit any other signs, billboards or posters to be displayed on any portion of the demised premises.

Ingress and Egress

24. Landlord warrants as a consideration for Tenant entering into this lease it will initially provide and will maintain, for the period of this lease and any extension thereof, ingress and egress facilities to the adjoining public streets and highways in the number and substantially in the locations depicted on Exhibit "B", subject to unavoidable temporary closings or temporary relocations necessitated by public authority or other circumstances beyond Landlord's control.

Landlord's Remedies

25. If Tenant shall be in default under any other provision of this lease and shall remain so for a period of thirty (30) days after notice to Tenant of such default, then Landlord may, by giving notice to Tenant at any time thereafter during the continuance of such default, either (a) terminate this lease, or (b) re-enter the demised premises by summary proceedings or otherwise, expel Tenant and remove all property therefrom, relet said premises at the best possible rent readily obtainable (making reasonable efforts therefor), and receive the rent therefrom; provided, however, Tenant shall remain liable for the equivalent of the amount of all rent reserved herein less the avails of reletting, if any, after deducting therefrom the reasonable cost of obtaining possession of said premises and of any repairs and alterations necessary to prepare it for reletting. Any and all monthly deficiencies so payable by Tenant shall be paid monthly on the date herein provided for the payment of rent. If any default by Tenant (except nonpayment of rent) cannot reasonably be remedied within thirty (30) days after notice of default, then Tenant shall have such additional time as shall be reasonably necessary to remedy such default before this lease can be terminated or other remedy enforced by Landlord. Except for the legal remedy of damages (provided Landlord shall, in all instances, be required to mitigate damages) and the equitable remedy of an injunction, the remedies of Landlord herein shall be exclusive of any other remedies.

Bankruptcy

26. If a petition in bankruptcy shall be filed by Tenant, or if Tenant shall be adjudicated bankrupt, or if Tenant shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of Tenant a receiver of all of the property of Tenant shall be appointed and shall not be discharged within ninety (90) days after such appointment, then Landlord may terminate this lease by giving notice to Tenant of its intention so to do; provided, however, neither bankruptcy, insolvency, an assignment for the benefit of creditors nor the appointment of a receiver shall affect this lease or permit its termination so long as the covenants on the part of Tenant to be performed shall be performed by Tenant or someone claiming under it.

Covenant of Title

27. Landlord covenants, represents and warrants that it has full right and power to execute and perform this lease and to grant the estate demised herein and that Tenant, on payment of the rent and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the demised premises and all rights, easements, appurtenances and privileges belonging or in anywise appertaining thereto during the lease term without molestation or hindrance of any person whomsoever, and if at any time during the term hereby demised the title of Landlord shall fail or it be discovered that its title shall not enable Landlord to grant the term hereby demised, Tenant shall have the option at Landlord's expense to correct such defect or to annul and void this lease with full reservation of its right to damages, if any.

Parcel B

Landlord further covenants, represents and warrants that it is seized of an indefeasible estate in fee simple or has a good and marketable leasehold title to the land described in Exhibit "A", free and clear of any liens, encumbrances, restrictions and violations (or claims or notices thereof), except as follows:

(a) Public utility easements not impairing Tenant's use of the demised premises.

(b) _____

Landlord shall, without expense to Tenant and within thirty (30) days after written request by Tenant, furnish (a) a certification by an attorney acceptable to Tenant that Landlord's title is as herein represented and certifying that the premises depicted on Exhibit "B" are within the bounds of the property described in Exhibit "A", (b) a survey by a licensed surveyor of the land described in Exhibit "A", and (c) agreements wherein each holder of any lien against the demised premises shall consent to this lease and warrant that Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such holder unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

Parcel B

Covenant of Title (continued)

In the event Landlord's estate is derived from a leasehold interest in a ground lease, Landlord shall, prior to the commencement of construction of the improvements required hereunder, deliver to Tenant an agreement executed by the fee owner of the demised premises wherein the fee owner recognizes this lease and Tenant's rights hereunder and agrees that, notwithstanding any default by the Landlord and subsequent termination of said ground lease, Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such fee owner unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

Mortgage Subordination

28. Upon written request by Landlord, Tenant shall execute and deliver an agreement subordinating this lease to any first mortgage upon the demised premises; provided, however, such subordination shall be upon the express condition that the validity of this lease shall be recognized by the mortgagee, and that, notwithstanding any default by the mortgagor with respect to said mortgage or any foreclosure thereof, Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such mortgagee unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

Tenant Indemnifies Landlord

29. During the lease term Tenant shall indemnify and save Landlord and Landlord's ground lessor, if any, harmless against all penalties, claims, or demands of whatsoever nature arising from Tenant's use of the Tenant's buildings except those which shall result, in whole or in part, directly or indirectly, from the default or negligence of Landlord or Landlord's ground lessor, if any.

Tenant's Right to Cure Landlord's Defaults

30. In the event Landlord shall neglect to pay when due any obligations on any mortgage or encumbrance affecting title to the demised premises and to which this lease shall be subordinate, or shall fail to perform any obligation specified in this lease, then Tenant may, after the continuance of any such default for seven (7) days after notice thereof by Tenant, pay said principal, interest or other charges or cure such default, all on behalf of and at the expense of Landlord, and do all necessary work and make all necessary payments in connection therewith, and Landlord shall on demand, pay Tenant forthwith the amount so paid by Tenant together with interest thereon at the rate of seven percent (7%) per annum or the then current prime rate, whichever is the higher, and Tenant may to the extent necessary withhold any and all rental payments and other payments thereafter due to Landlord and apply the same to the payment of such indebtedness.

Provided the holder of a properly recorded first mortgage shall have notified Tenant in writing that it is the holder of such lien on the demised premises and shall so request, Tenant shall provide such holder with a duplicate copy of any notice sent to Landlord covering a default hereunder, and such holder shall be granted sixty (60) days after receipt thereof to correct or remedy such default.

Condition of Premises at Termination

31. At the expiration or earlier termination of the lease term Tenant shall surrender the demised premises, together with alterations, additions and improvements then a part thereof, in good order and condition except for the following: ordinary wear and tear, repairs required to be made by Landlord, and loss or damage by fire, the elements and other casualty. All furniture and trade fixtures installed in said buildings at the expense of Tenant or other occupant shall remain the property of Tenant or such other occupant; provided, however, Tenant shall, at any time and from time to time during the lease term, have the option to relinquish its property rights with respect to such trade fixtures (including, but not limited to, air conditioning machinery and lighting fixtures), which option shall be exercised by notice of such relinquishment to Landlord, and from and after the exercise of said option the property specified in said notice shall be the property of Landlord.

Holding Over

32. In the absence of any written agreement to the contrary, if Tenant should remain in occupancy of the demised premises after the expiration of the lease term, it shall so remain as a tenant, from month-to-month and all provisions of this lease applicable to such tenancy shall remain in full force and effect.

Investment Tax Credit

33. Landlord hereby agrees to elect under the applicable provisions of the Internal Revenue Code of 1954, as amended, (hereinafter referred to as the "Code") to pass through to the Tenant all investment tax credit which may be available from time to time in respect of the demised premises under Section 38 of said Code to the extent such investment tax credit is not usable under said Code by the Landlord, its successors and assigns. Landlord agrees to timely execute all documents required by said Code, and regulations issued thereunder, to enable Tenant to obtain such investment tax credit.

Investment Tax Credit (continued)

Landlord further agrees to maintain adequate records so that the qualifying property can be identified and the cost thereof can be determined and to provide such records to the Tenant upon written request and otherwise to cooperate with Tenant in said matter. Landlord agrees not to destroy or otherwise dispose of such records until written consent to such destruction or disposal has been obtained from Tenant.

Notices

34. Notices required under this lease shall be in writing and deemed to be properly served on receipt thereof if sent by certified or registered mail to Landlord at the last address where rent was paid or to Tenant at its principal office in Troy, Michigan, or to any subsequent address which Tenant shall designate for such purpose. Date of notice shall be the date on which such notice is deposited in a post office of the United States Postal Service.

Captions and Definitions

35. Marginal captions of this lease are solely for convenience of reference and shall not in any way limit or amplify the terms and provision thereof. The necessary grammatical changes which shall be required to make the provision of this lease apply (a) in the plural sense if there shall be more than one Landlord, and (b) to any landlord which shall be either a corporation, an association, a partnership, or an individual, male or female, shall in all instances be assumed as though in each case fully expressed. Unless otherwise provided, upon the termination of this lease under any of the Articles hereof, the parties hereto shall be relieved of any further liability hereunder except as to acts, omissions or defaults occurring prior to such termination.

Successors and Assigns

36. The conditions, covenants and agreements contained in this lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this lease shall run with the land.

Memorandum of Lease

37. The parties hereto have simultaneously with the execution and delivery of this lease executed and delivered a Memorandum of Lease which Landlord shall at its sole expense cause to be recorded within sixty (60) days following delivery of this lease and returned to Tenant by Landlord within sixty (60) days thereafter.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate as of the day and year first above written.

WITNESSES:

BAKER & BAKER, a Partnership

Peggy M. Hurley

By: Lee J. Baker, Partner

Dawn Coates

And: David Baker, Partner

APPROVED

K MART CORPORATION

Patricia M. Lucey

By: R. Johnson, Vice President

Marsha Prosa

Attest: C. E. Lotzar, Jr., Assistant Secretary

ACKNOWLEDGEMENTS

STATE OF GEORGIA)
) SS
COUNTY OF DEKALB)

Personally appeared before me, Peggy M. Gurley, who being duly sworn and says that she saw David Baker and Lee J. Baker sign, seal, as their act and deed, and deliver the foregoing instrument for the uses and purposes therein mentioned, and that she, with Ann Coates, witnessed the execution thereof.

Peggy M. Gurley
Peggy M. Gurley

Sworn to and subscribed before me
this 23rd day of March, 1978.

Bobbie L. Combee
Bobbie L. Combee, Notary Public

My commission expires:

Notary Public, Georgia State at Large
My Commission Expires Dec. 10, 1979

STATE OF MICHIGAN)
COUNTY OF OAKLAND) ss:

I do hereby certify that on this 21st day of April, 19 78, before me, Margaret T. Grant, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared J. P. Johnson and C. E. Lotzar, Jr., known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Birmingham, Michigan

respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires: MARGARET T. GRANT
Notary Public, Oakland County, Mich.
My Commission Expires June 30, 1981

Margaret T. Grant
Notary Public

EXHIBIT "A"

PARCEL A

All that certain piece, parcel and tract of land, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, containing 8.60 acres, and being shown and designated as TRACT A-2 on a plat entitled "PLAT OF THE SUBDIVISION OF A 17.34 ACRE TRACT LOCATED IN MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA", by Harold J. LeaMond, P.E. & L.S., dated March 6, 1978, to be recorded, said Tract A-2 being more fully described as follows: Commencing at an iron pipe marked "i.n." on said plat located on the southern boundary of U. S. Highway No. 17 By-Pass (200'R/W) approximately six hundred six (606) feet from an iron pipe marked "i.n." located at the intersection of the southern boundary of said U. S. Highway No. 17 By-Pass and the northeastern boundary of Bowman Road at the apogee of a triangle of land reserved to be dedicated to South Carolina State Highway Department; thence running in an easterly direction N81°13'22"E along the said southern boundary on the said U. S. Highway No. 17 for a distance of seven hundred sixty-eight and twenty-one/100ths (768.21') feet to an iron pipe marked "i.n." on said plat; thence running in a southwest direction S15°01'10"W along TRACT "B" 0.65 ACRES for a distance of one hundred fifty-nine and seventy-five/100ths (159.75') feet to an iron pipe marked "i.n." on said plat; thence running in an east-southeast direction S78°07'50"E along the said TRACT "B" for a distance of one hundred forty-nine and twenty/100ths (149.20') feet to an iron pipe marked "i.n." situated on the western boundary of Old Georgetown Road (50'R/W); thence running in a southwesterly direction along said western boundary of Old Georgetown Road on a curve having a chord distance of fifty and twenty-three/100ths (50.23') feet to an old concrete monument marked "o.c.m." on said plat; thence running in a west-northwesterly direction N78°07'50"W along lands now or formerly of Rosalie Wirth and Bency Belton Babson for a distance of one hundred fifty and no/100ths (150.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S15°01'10"W along lands of the said Babson for a distance of one hundred forty-one and fifty-seven/100ths (141.57') feet to an iron pipe marked "i.o." on said plat; thence running in a west-northwesterly direction N74°56'03"W along lands now or formerly of Franto Mollycheck, Jr. for a distance of ten and no/100ths (10.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S14°36'35"W along lands of the said Mollycheck for a distance of two hundred ninety-two and seventy-seven/100ths (292.77') feet to an iron pipe; thence turning in a west-northwesterly direction N75°23'25"W along other lands of Baker & Baker for a distance of eight hundred forty and fifteen/100ths (840.15') feet to an iron pipe; thence turning in a northeasterly direction N38°10'15"E for a distance of three hundred sixty-nine and fifteen/100ths (369.15') feet to the iron pipe at the POINT OF BEGINNING.

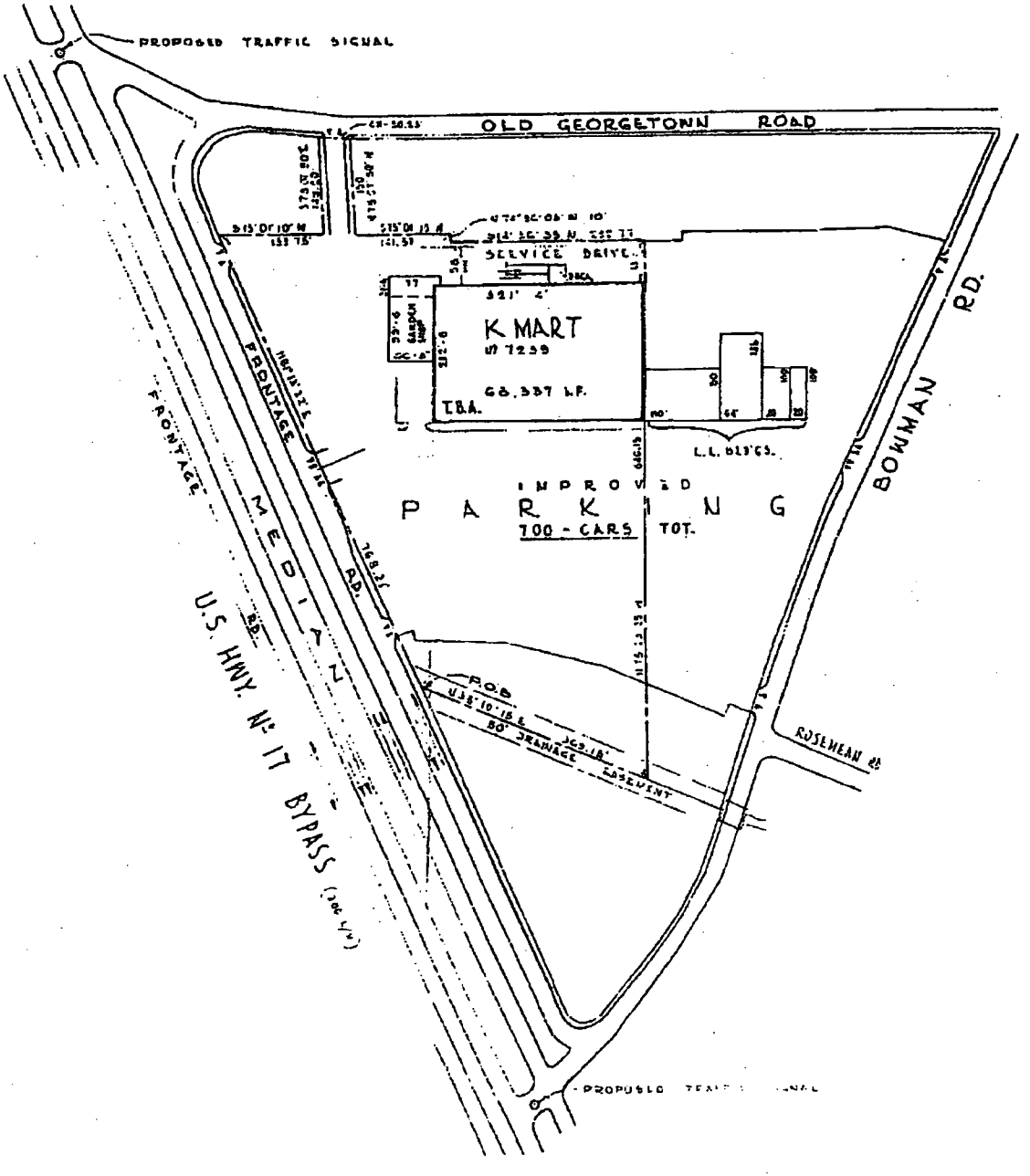
EXHIBIT "A"
PARCEL A
K MART DEMISED PREMISES

EXHIBIT "A"
PARCEL B

ENTIRE SHOPPING CENTER

TRACT "A" 14.11 ACRES: Commencing at an iron pipe marked "i.n." on said plat located on the southern boundary of U. S. Highway No. 17 By-Pass (200'R/W) approximately six hundred six (606) feet from an iron pipe marked "i.n." located at the intersection of the southern boundary of said U. S. Highway No. 17 By-Pass and the northeastern boundary of Bowman Road at the apogee of a triangle of land reserved to be dedicated to South Carolina State Highway Department; thence running in an easterly direction N81°13'22"E along the said southern boundary on the said U. S. Highway No. 17 for a distance of seven hundred sixty-eight and twenty-one/100ths (768.21') feet to an iron pipe marked "i.n." on said plat; thence running in a southwest direction S15°01'10"W along TRACT "B" 0.65 ACRES for a distance of one hundred fifty-nine and seventy-five/100th (159.75') feet to an iron pipe marked "i.n." on said plat; thence running in an east-southeast direction S78°07'50"E along the said TRACT "B" for a distance of one hundred forty-nine and twenty/100ths (149.20') feet to an iron pipe marked "i.n." situated on the western boundary of Old Georgetown Road (50'R/W); thence running in a southwesterly direction along said western boundary of Old Georgetown Road on a curve having a chord distance of fifty and twenty-three/100ths (50.23') feet to an old concrete monument marked "o.c.m." on said plat; thence running in a west-northwesterly direction N78°07'50"W along lands now or formerly of Rosalie Wirth and Bency Belton Babson for a distance of one hundred fifty and no/100ths (150.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S15°01'10"W along lands of the said Babson for a distance of one hundred forty-one and fifty-seven/100ths (141.57') feet to an iron pipe marked "i.o." on said plat; thence running in a west-northwesterly direction N74°56'03"W along lands now or formerly of Franto Mollycheck, Jr. for a distance of ten and no/100ths (10.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S14°36'35"W along lands of the said Mollycheck for a distance of three hundred fifty and seventy-seven/100ths (350.77') feet to an iron pipe marked "i.o." on said plat; thence running in an east-southeasterly direction S75°21'41"E along lands of the said Mollycheck for a distance of ten and no/100ths (10.00') feet to an iron pipe marked "i.o." on said plat; thence running in a southwesterly direction S14°57'15"W along lands now or formerly of Mary Ann Wharrie and Preston & Judith F. Howard for a distance of one hundred ninety-nine and eighty-three/100ths (199.83') feet to an iron pipe marked "i.o."; thence continuing in a southwesterly direction S12°46'41"W along lands of the said Howard for a distance of ninety-nine and eighty-nine/100ths (99.89') feet to an iron pipe marked "i.o." on said plat; thence running in a west-southwesterly direction S28°03'37"W along lands now or formerly of James S. & Katiri B. Graves for a distance of ninety-seven and sixty-four/100ths (97.64') feet to an iron pipe marked "i.o." located on the northeastern boundary of Bowman Road (66'R/W); thence running in a northwesterly direction along the said northeaster boundary of Bowman Road with the following courses and distances: N51°20'32"W for a distance of four hundred forty-eight and thirty/100ths (448.30') feet to an iron pipe marked "i.n." on said plat; thence along a curve having a chord distance of two hundred eighteen and seventy-three/100ths (218.73') feet to an iron pipe marked "i.n."; thence N57°46'56"W for a distance of two hundred seventy-six and thirty-six/100ths (276.36') feet to an iron pipe marked "i.n." on said plat; thence running in a northeasterly direction N38°10'15"E along TRACT "C" 1.29 ACRES on said plat for a distance of four hundred eighty-eight and forty-nine/100ths (488.49') feet to an iron pipe marked "i.n." on the southern boundary of U. S. Highway No. 17 By-Pass, the point and place of beginning.

EXHIBIT "A"
PARCEL B



STORE № 7239

N.W.C. OF U.S. HWY. # 17 & OLD GEORGETOWN RD.

MT. PLEASANT, S. CAROLINA.

N

EXHIBIT 'B'

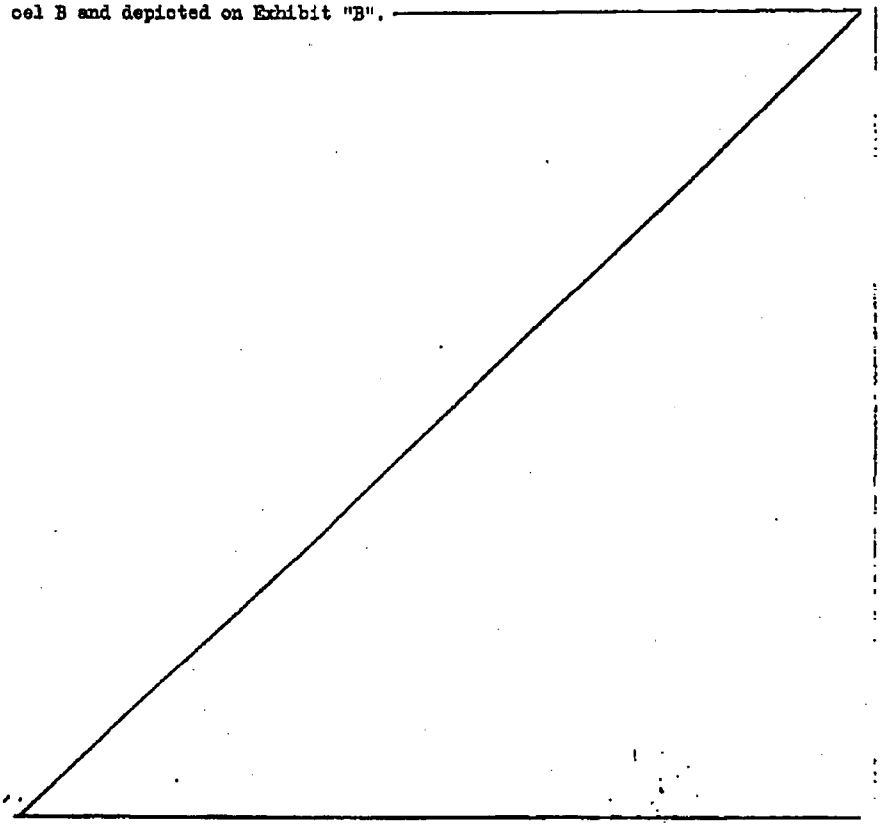
DATE:
5-23-78

SCALE
100 FEET TO 1 INCH

0126

REPAIRS AND MAINTENANCE (Article 15A)

15A. Landlord shall reimburse Tenant annually for Landlord's pro rata share of Tenant's costs for cleaning, striping, snow and ice removal, and illumination of the parking and common areas, all within the property described in Exhibit "A" Parcel B. This shall include maintenance and replacement of "In", "Out" and other parking control signs, maintenance of landscaping and other related operating costs which Tenant shall have undertaken pursuant to Article 15. Said pro rata share shall be based upon the ratio that the floor area of Landlord's building bears to the total gross floor area of all buildings (exclusive of additional buildings or structures erected by Tenant under the provisions of Article 16 hereof) at any time existing on the premises described in Exhibit "A" Parcel B. Landlord shall be obligated to reimburse Tenant pursuant to this Article only in the event Tenant elects to perform the aforementioned maintenance and services to the entire development as described in Exhibit "A" Parcel B and depicted on Exhibit "B".

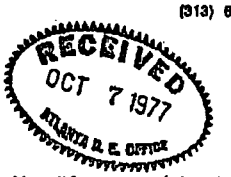


Kmart CORPORATION

INTERNATIONAL HEADQUARTERS
3100 WEST BIG BEAVER ROAD
TROY, MICHIGAN 48084
(313) 643-1000

Baker and Baker
P. O. Box 11700
Columbia, SC 29211

October 3, 1977



Attention: Mr. David Baker

Re: K mart # - Mt. Pleasant (Charleston), SC
S/S U.S. 17 Bypass, E. of Bowman Rd.

Dear Mr. Baker:

At the request of Mr. R. N. Combs of our Real Estate Department, we are forwarding to you two (2) sets of Typical Plans and Outline Specifications identified with the set number B-0296, covering our minimum requirements for the construction of a K mart.

The Typical K mart store plans and specifications consist of the following:

321'-4" x 212'-8" K mart plans dated November 8, 1976

15SD1 15M1 thru 15M10 15E1 thru 15E8
15A1 thru 15A10

Outline Specifications dated November 8, 1976, including specification sheet SPR-18, Painting, dated February 17, 1977, SPR-20, Special Code Requirements, dated May 20, 1977, and sheets SPR-25 thru SPR-25c dated August 15, 1977.

SITE DEVELOPMENT

The K mart Corporation shall be party to the initial site development decisions. To enable the K mart Corporation to properly evaluate the site conditions and have a meaningful input in these major decisions, the Developer shall submit to the K mart Corporation, in written and drawing form, a description of his proposed preliminary site development design.

The site development design shall encompass all aspects of the proposed K mart operation i.e. access, site drainage and the relationship of the K mart floor elevation to adjacent grades, roads and buildings. Land balance shall be given consideration but shall not be the overriding factor in the ultimate site design.

Preparation of final engineering drawings or commitments affecting site improvements and development shall not be made by the Developer until approval has been granted by the K mart Corporation.

EXHIBIT "C"

The design package shall indicate the proposed building location, floor elevation, site drainage pattern and utilities. The design package shall also include a topographical survey of the entire site including an area extending approximately 150' onto all adjacent properties and to the centerline of all boundary roads, or as may be required to determine any adjacent terrain conditions which might influence the site development design. The survey shall also include the site description, measurements and all existing utilities. Preliminary test boring reports indicating the sub-surface soil conditions shall also be submitted.

The K mart Corporation will review all submitted data and if necessary, visit the site. If in the judgment of the K mart Corporation the proposed site development design would be detrimental to the K mart operation, the design will be returned to the Developer for re-study. Upon approval of the Site Development Design by the K mart Corporation, the Developer may proceed with final engineering drawing.

The Typical K mart store plans and specifications described above are to be modified as indicated in the criteria revisions outlined in the following paragraphs.

1. Enlarged Entrance Ramp consisting of drawing TD-22 dated revised December 6, 1976. This drawing indicates revised painting of ramp.

2. Security Office consisting of drawing TD-23 dated January 5, 1977.

3. Canopy Over Truck Dock consisting of drawing TD-29 dated January 10, 1977.

4. Power and Communication Wiring for ARS consisting of drawing 15ARS/KPE-1R dated revised March 4, 1977.

5. Plugmold Layout consisting of drawing No. E-278 dated revised March 1, 1977.

6. TV Antenna Services consisting of drawing E-286 dated March 31, 1977.

7. Partial Floor Plan consisting of drawing TD-27 dated January 6, 1977.

8. Time Recorder and L.V. Transformer Location consisting of drawing E-288 dated June 1, 1977.

9. Hang Rods For Infants Department consisting of drawing TD-33 dated August 12, 1977.

10. Minimum Heavy Duty Paving consisting of drawing TD-38 dated August 12, 1977.

11. Jewelry & Camera Dept. consisting of drawing E-294 dated August 16, 1977.

12. Cafeteria Power Plan consisting of drawing E-297 dated September 16, 1977.

13. Cafeteria Plumbing Plan consisting of drawing SK-PL-2R dated September 16, 1977.

These plans and specifications describe a 321'-4" wide x 212'-8" deep K mart, containing 68,337 square feet, with the Auto Service Center to the right. This building will have an attached Co-tenant building to the right and, therefore, the Typical Plans issued must be considered opposite hand. We are including a Preliminary Layout B-0296, dated 9-21-77, for this size and hand store. This drawing also indicates any required modifications to the Typicals for this specific location.

Please advise your consultants regarding the following mechanical and electrical information which supplements and/or modifies the enclosed drawings and specifications.

Secondary electric service is acceptable. Necessary capacitors are required to maintain the power factor at minimum of 97% under all load conditions. Service shall be sized for an all electric store. Utility transformer shall be located where shown on layout.

The three compartment delicatessen sink required by criteria revision is Washington Equipment Company Model #SSK-1; NSF approved stainless steel body construction enclosed on three (3) sides; 10" high back splash; three (3) 14" x 16" x 12" deep sinks; three (3) basket strainers; one (1) standard faucet with 14" spout; stainless steel kick plates; three (3) sides with standard raised "V" edge and with removable front panel. "No alternates". This supersedes the three (3) compartment sink indicated in the criteria specifications.

NOTE: No underfloor plumbing changes will be required because of this change of sink units.

Electrical contractor shall provide and install manual motor starters for motor-compressed unit at Griddle Stand refrigerated drawers, refrigerated display case and the carborator in the cafeteria.

Delete Jewelry Dept. special lighting as shown on Drawing 15E-2 & 15E-5.

In lieu of Edwards #88-100 transformer for low voltage signal and electrical door latches use Edwards #599 transformer.

Space heating (resistance type), domestic hot water heater and cooking equipment shall be all electric.

Each combination cooling and heating roof top unit will require demand control equipment or devices to limit demand during the heating season. Provide normally closed relay in circuit to last 1/2 of heating stages for each combination cool-heat unit, so that they cannot come on when row of lights adjacent to units are turned on or when the night switch is in the night position. Also provide manual by-pass switch to override relay and night switch.

For additional staging of electric heaters, include in heating circuit, outdoor stat(s) to lock out stages until outside temperature drops to below a pre-determined set point. The exact quantity of stats and staging shall be determined when make and capacity of actual equipment is known.

Provide one (1) meter for each utility to the K mart.

The K mart parking lot lighting, sidewalk (under canopy) lighting and service drive lighting shall be connected directly to K mart switchboard through K mart meter except where the site includes one or more co-tenants the parking lot lighting in front and on the Auto Center side shall be fed through the K mart meter and the remaining portion on the Landlord or other meters.

Landlord's engineer shall consult the telephone company relative to proper facilities, including conduit, to handle the telephone installation.

These sets of Typical plans and specifications are to be used only as a guide for the preparation of complete working drawings and specifications. If, at the time this project is formalized, modifications which affect electrical or plumbing underfloor locations have occured additional information covering such modifications will then be furnished.

Very truly yours,

James A. Kilgore, A.I.A.
Manager, Design Division
Construction Department

JAK:jet
cc: Mr. G. L. Hostetter
Mr. W. J. Mottershaw
Mr. A. D. Kerkau
Mr. R. N. Combs
Public Utilities
Mr. P. Leonard - K.E.I.

Kmart CORPORATION

INTERNATIONAL HEADQUARTERS

3100 WEST BIG BEAVER ROAD
TROY, MICHIGAN 48084
(313) 643-1000

November 28, 1977

Baker & Baker
P.O. Box 11700
Columbia, SC 29211

Attention: Mr. David Baker

Re: K mart #7239 - Mt. Pleasant, SC
S/S By-Pass 17, E. of Bowman St.

Dear Mr. Baker:

Attached are two (2) prints of the preliminary layout which was originally issued to you with the date of September 21, 1977. This project has now been assigned a number (#7239) and you are at liberty to proceed with contract drawings and specifications.

Please notify the writer and Mr. W. J. Mottershaw, Manager, Building Division, of the names and addresses of your architect, engineers and contractor as soon as possible.

The attached preliminary layout B-0296 has been revised thru November 18, 1977 to indicate Pharmacy Department.

During the period between the issuance of the typical criteria documents and the writing of this letter, certain revisions and modifications have been added to the criteria for implementation into the contract documents. In order that you and your Architect might incorporate these revisions and modifications into your contract documents, we are forwarding to you at this time two (2) copies each of the criteria revisions described in the following paragraphs.

1. Power and Communication Wiring for ARS consisting of Drawing 15ARS/KPE-1R-P dated revised November 3, 1977. This drawing supersedes drawing 15ARS/KPE-1R issued to you on October 3, 1977.

2. Plugmold Layout consisting of drawing E-278 dated revised November 7, 1977. This drawing supersedes drawing E-278 dated March 1, 1977 previously issued.

3. Cafeteria Power Plan consisting of drawing E-297-R dated revised October 10, 1977. This drawing supersedes drawing E-297 dated September 16, 1977 previously issued.

4. Revised Mezzanine Stock Area consisting of drawing TD-41 dated October 24, 1977.

EXHIBIT "C"

Baker & Baker
Mr. David Baker
Re: K mart #7239 - Mt. Pleasant, SC

- 2 -

November 28, 1977

Please advise your consultants regarding the following mechanical and electrical information which supplements the information and/or drawings forwarded to you under my letter dated October 3, 1977:

Delete electrical for Curtain Displayers. This includes:

a. 2 - 120 V. circuit.
b. 3 - floor outlets.
c. 48-40 watt fluorescent lamps.
d. All electrical connections.

The aforementioned criteria revisions are to be implemented into your contract documents prior to their submission for our approval. Any cost adjustments resulting from these revisions are to be submitted to Mr. W. J. Mottershaw, Manager, Building Division, Construction Department, the K mart Corporation within sixty (60) days of receipt of this letter for approval and construction authorization. Failure to submit any anticipated cost adjustments within this sixty (60) day period shall be deemed, at the discretion of the K mart Corporation, either a "No Change" in construction cost or in the event a construction cost rebate is in order, the rebate will be negotiated with the K mart Corporation.

Very truly yours,

James A. Kilgore, A.I.A.
Manager, Design Division
Construction Department

JAK:klk

cc: Mr. G. L. Hostetter
Mr. R. N. Combs
Mr. W. J. Mottershaw
Mr. A. D. Kerkau
Ms. H. T. Kremski
P. L. File

RECEIVED
DEC 2 1977
ATLANTA R. E. OFFICE

EXHIBIT B:

Subordination, Nondisturbance, and Attornment Agreement

RMC Bk 0168 Pg 978 : pg 1 *

SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this "**Agreement**") is entered into and effective as of Jan. 28, 2011, by and between **Kmart Corporation,** a Michigan corporation ("**Tenant**"), and **NBSC, a Division of Synovus Bank** ("**Lender**"), whose address is 1148 Broadway, Columbus, Georgia 31901.

RECITALS:

A. Lender represents to Tenant that Lender intends to make a loan ("**Loan**") to Bowman MTP Center LLC, a Delaware limited liability company ("**Borrower**" and "**Landlord**"), which Loan is to be secured by a mortgage, security agreement and assignment of leases and rents, which may be amended from time-to-time (the "**Mortgage**") on the real property legally described in the attached **Exhibit A** and the improvements thereon (the "**Premises**").

B. As part of the Loan, Lender has required that all tenants on the Premises execute and deliver a Subordination, Nondisturbance and Attornment Agreement.

C. Paragraph 28 of that certain lease dated March 23, 1978 by and between Tenant and Landlord's predecessor-in-interest, Baker & Baker, a partnership, as amended (the "**Lease**") requires Tenant to deliver this Agreement.

NOW, THEREFORE, for and in consideration of their respective representations hereinabove set forth and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledge, Lender and Tenant agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into and made a part of this Agreement.

2. Subordination. The Lease, and the rights of Tenant in, to and under the Lease and the Premises, are hereby subjected and subordinated to the lien of the Mortgage. Lender hereby consents to the Lease terms and provisions. Any options or rights or first refusal contained in the Lease to acquire title to the Premises are hereby made subject and subordinate to the rights of Lender under Section 14 of the Lease.

3. Tenant Not to Be Disturbed. Subject to the provisions of this Agreement, so long as Tenant is not in default (beyond any period expressly afforded the Tenant by the terms of the Lease to cure such default) in the payment of rent or additional rent or of any of the terms, covenants, or conditions of the Lease on Tenant's part to be performed, Lender or any purchaser (at a foreclosure sale or other proceedings brought to enforce the Mortgage), subsequent owner (receiving title by deed in lieu of foreclosure), successor, or assign (such purchaser, owner, successor, or assign referred to as "**Successor**"): (a) shall not diminish or interfere with Tenant's

possession of the Demised Premises and its rights and privileges under the Lease, including, but not limited to, any extension or renewal rights expressly provided therein; and (b) shall not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

4. Tenant to Attorn to Lender. If Lender or its Successor succeeds to the interest of Borrower under the Lease, the Lease shall continue in full force and effect as a direct Lease between Tenant and Lender or its Successor, as applicable, who shall succeed to the rights and duties of Borrower as landlord, and Tenant shall attorn to Lender or any such Successor as its landlord (said attornment to be effective and self-operative without the execution of any further instruments); the provisions of this sentence shall be effective and self-operative without any need for the Lender, any Successor or Tenant to execute any further documents.

5. Successor Landlord. If Lender should succeed to the interest of the Landlord under the Lease, Lender shall be bound to Tenant under all terms, covenants and conditions of the Lease, and the Tenant shall, from and after the Lender's succession to the interest of the Landlord under the Lease, have the same remedies against the Lender for the breach of an agreement contained in the Lease that the Tenant might have had under the Lease against the Landlord if the Lender had not succeeded to the interest of the Landlord. Notwithstanding the foregoing, the Lender, however, shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord); provided, however, that Lender or Successor shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes Control of the Premises. For the purposes of this Agreement, "Control" shall mean that the Lender or Successor has either ownership, physical possession or other control of the Premises pursuant to court order, or the right to collect rents for the Premises pursuant to court order. If such act or omission of a prior landlord would have entitled Tenant to terminate the Lease or exercise self help if not cured within any applicable notice and grace period provided under the Lease then Tenant may, following any such event, terminate the Lease if such act or omission remains uncured for sixty (60) days after Tenant has provided Lender or Successor written notice as provided in the Lease and the opportunity to cure within said sixty (60) day period or Tenant may cure and offset the reasonable cost and expense of such cure against the rents due under the Lease; or

(b) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord); or

(c) bound by any rent or additional rent which the Tenant might have paid for more than the current month to any prior landlord (including the Landlord), except for any periodic reconciliation of any such additional rent amounts.

6. Lender's Option to Cure Borrower's Default. Except in the case of an emergency, Tenant will endeavor to give Lender a courtesy copy of any notice of default sent by Tenant to Landlord ("**Courtesy Notice**"); provided that, Tenant's failure, for any reason or no reason, to

RMC Bk 0168 Pg 978 : pg 3 *

give Lender a Courtesy Notice will not comprise either a default or breach of Tenant's obligations under the Lease and will not preclude or affect in any way Tenant's right to exercise any remedy provided to Tenant for Landlord's default in the Lease. If Lender receives a Courtesy Notice from Tenant, Lender shall have the same period of time provided Landlord under the Lease within which to cure such default. Lender's cure period shall begin to run upon receipt of the Courtesy Notice.

7. Notice. Any notices required or permitted to be given under this Agreement shall be in writing and given in the same manner as provided in the Lease, and to Tenant at 3333 Beverly Road, Department 824RE, Hoffman Estates, IL 60179, Attention: Vice President, Real Estate, with a copy to Tenant at 3333 Beverly Road, Department 824RE, Hoffman Estates, IL 60179, Attention: Vice President, Real Estate Law and Asset Management.

Signatures appear on next page

IN WITNESS WHEREOF, the parties hereto have caused the execution hereof as of the day and date first above written.

WITNESSES:

Kmart Corporation,
a Michigan corporation

By: _____
Name: James B. Terrell
Title: Vice President, Real Estate

REAL ESTATE LEGAL

STATE OF Illinois)
) ACKNOWLEDGMENT
COUNTY OF Cook)

I, Barbara E. Pelagio (Notary Public) do hereby certify that Kmart Corporation, a Michigan corporation, by James B. Terrell, its Vice President, Real Estate personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 19th day of January, 2011.

_____
Notary Public for State of Illinois
My Commission Expires 4/20/2011

[Signatures continuing on next page]

IN WITNESS WHEREOF, the parties hereto have caused the execution hereof as of the day and date first above written.

WITNESS:

LENDER:

NBSC, A DIVISION OF SYNOVUS BANK

By: _____
Name: Jerry Tevis
Its: Senior Vice President

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, _____ (Notary Public) do hereby certify that NBSC, a Division of Synovus Bank, by Jerry Tevis, its Senior Vice President personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 28th day of January, 2011.

_____
Notary Public for SC
My Commission Expires 10/10/20

RMC Bk 0168 Pg 978 : pg 6 *

Exhibit A

Legal Description

All those certain pieces, parcels, or tracts of land, situate, lying and being in the Town of Mount Pleasant, Charleston County, South Carolina, shown and designated as **"TRACT A-1, BAKER & BAKER, TMS# 559-13-00-038, 5.515 TOTAL ACRES;" "TRACT A-2, BAKER & BAKER, TMS# 559-13-00-041, 8.600 TOTAL ACRES;" "TRACT B, BAKER & BAKER, TMS# 559-13-00-044,"** on a plat entitled: "PLAT SHOWING TRACT A-1 (5.515 ACRES), TRACT A-2 (8.600 ACRES), AND TRACT B (0.588 ACRES), PROPERTY OF BAKER AND BAKER, LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by HLA INC, dated February 22, 2007, and recorded in Plat Book EK, Page 536, in the RMC Office for Charleston County. Said Parcels having such sizes, shapes, dimensions, buttings and boundings as shown on said plat.

TMS#559-13-00-038 (Tract A-1)
TMS#559-13-00-041 (Tract A-2)
TMS#559-13-00-044 (Tract B)

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

HAYNSWORTH SINKLER BOYD, P.A.

P.O. BOX 340
CHARLESTON SC 29402

RECORDED

Date:	January 28, 2011
Time:	2:39:23 PM

Book	Page	DocType
0168	978	Misc/Sub

Charlie Lybrand, Register
Charleston County, SC

RMC Bk 0168 Pg 978 : pg 7 of 7

MAKER:
KMART

RECIPIENT:
NBSC

Original Book:

Original Page:

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# of Pages:	7
# of References:	
Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ 2.00
Postage	$ -
Chattel	$ -
TOTAL	$ 12.00
DRAWER	Drawer 2
CLERK	SLW

0168 Book

978 Page

01/28/2011 Recorded Date

7 # Pgs

Original Book

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14:39:23 Recorded Time

EXHIBIT C:

Condemnation Notice With Attached Maps

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A No. 2011-CP-10-4324

Town of Mt. Pleasant, South Carolina,

Condemnor,

vs.

Bowman MTP Center, LLC,

Landowner,

And

NBSC, a Division of Synovus Bank,

Other Condemnee,

CONDEMNATION NOTICE
AND
TENDER OF PAYMENT

FILED
2011 JUN 17 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: LANDOWNER NAMED ABOVE:

1. The Town of Mt. Pleasant (Condemnor) hereby notifies Bowman MTP Center, LLC, (Landowner), as record landowners of fee simple title, of the condemnation of **a portion of the property** known as:

ALL that certain piece, parcel or tract of land, together with the building and other improvements thereon, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being shown and designated as "TRACT A-1 BAKER AND BAKER TMS NO. 559-13-00-038 5.15 TOTAL ACRES" on that certain plat entitled "PLAT SHOWING TRACT A-1 (5.15 ACRES), TRACT A-2 (8.6 ACRES) AND TRACT B (0.588 ACRES) PROPERRTY OF BAKER AND BAKER LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," dated February 22, 2007, prepared by Richard D. Lacey, S.C.P.L.S. 16120, and recorded on March 12, 2007 in the RMC Office for Charleston County, South Carolina in Plat Book EK at Page 536. Said tracts having such actual size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

SUBJECT to all applicable easements, covenants, right-of-way, restrictions, and all other matters of record in the RMC Office of Charleston County.

BEING a portion of the property conveyed to Bowman MTP Center, LLC by deed of Transwestern Mount Pleasant, L.L.C., a Delaware Limited Liability Company, dated January 28, 2011 and recorded in Book 0168, page 975 in the RMC Office for Charleston County.

TMS #559-13-00-038

The Condemnor seeks to condemn a **portion of the property** in the approximate size of 29,884 in fee simple. The area condemned is shown on Exhibit A which is attached to this Notice.

2. The Condemnor's legal authority to condemn is granted pursuant to South Carolina Code section 5-7-50.

3. NBSC, a Division of Synovus Bank is named as an Other Condemnee by virtue of a Mortgage, Assignment of Leases and Security Agreement from Bowman MTP Center, LLC, a Delaware limited liability company to NBSC, a Division of Synovus Bank dated January 28, 2011 and recorded in the RMC Office for Charleston County in Book 0168 at Page 976

4. This property is being condemned for the purpose of creating and constructing a public right-of-way.

5. The Condemnor elects to bring this action under South Carolina Code section 28-2-240.

6. The Condemnor has complied with South Carolina Code section 28-2-70 (A) by having the subject property of Landowner appraised to determine the amount that constitutes just compensation for its taking and in making this appraisal available to the Landowner.

7. The Landowner may inspect the project plans at the Town of Mt. Pleasant Department of Planning and Development, 100 Ann Edwards Lane, Mt. Pleasant, South Carolina.

8. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF $435,925.00 (Four Hundred Thirty Five Thousand Nine Hundred and Twenty Five Dollars and 00/100) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

9. Payment of this amount will be made to the Landowner if within thirty days of service of this Condemnation Notice, the Landowner in writing requests payment, and agree to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Condemnor at the Town of Mt. Pleasant, Legal Department, 100 Ann Edwards Lane, Mt. Pleasant, South Carolina, 29465, c/o R. Allen Young, Corporation Counsel/Town Attorney. If no request and agreement is received by the Condemnor within the thirty-day period, the tender is considered rejected.

10. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the clerk of court in the county where the property is situated and deposit the tender amount with the clerk. The Condemnor shall give the Landowner and Other Condemnees notice it has done so and may then proceed to take possession of the property interest and exercise the rights described in this Condemnation Notice.

11. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS

CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

12. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the clerk of court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The clerk of court shall give the Landowner written notice by mail of the call of the case for trial.

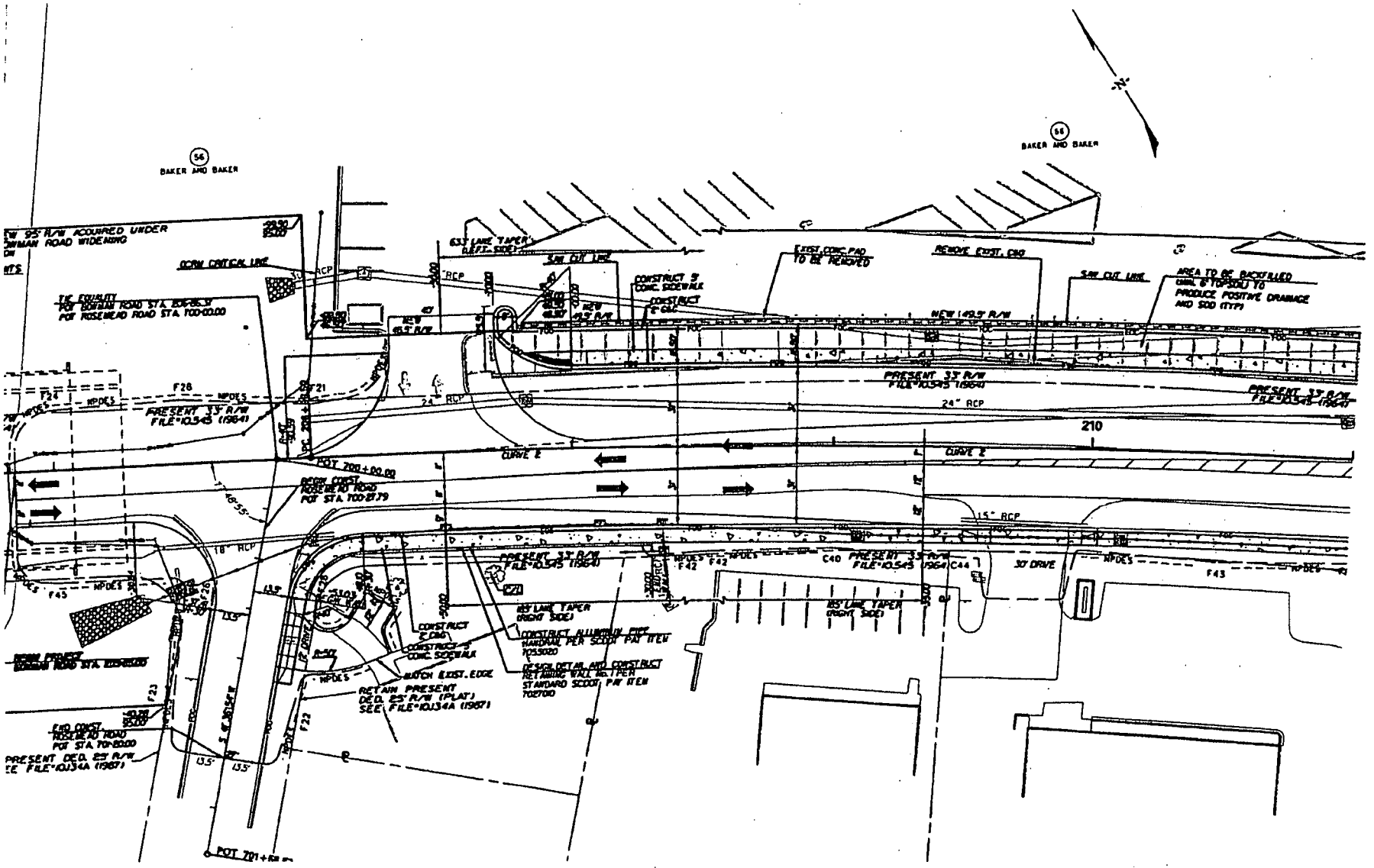
13. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

14. In the event the Landowner accepts the amount tendered in this Notice, counsel for the Condemnor shall be notified.

David G. Pagliarini
Julia P. Copeland
Hinchey Murray & Pagliarini, LLC
234 Seven Farms Drive Drive, Suite 300
Daniel Island, SC 29492
(843) 971-8646

R. Allen Young
Corporation Counsel/Town Attorney
Town of Mount Pleasant
100 Ann Edwards Lane
Mt. Pleasant, SC 29465
(843) 849-2020
ATTORNEYS FOR CONDEMNOR

June 3, 2011



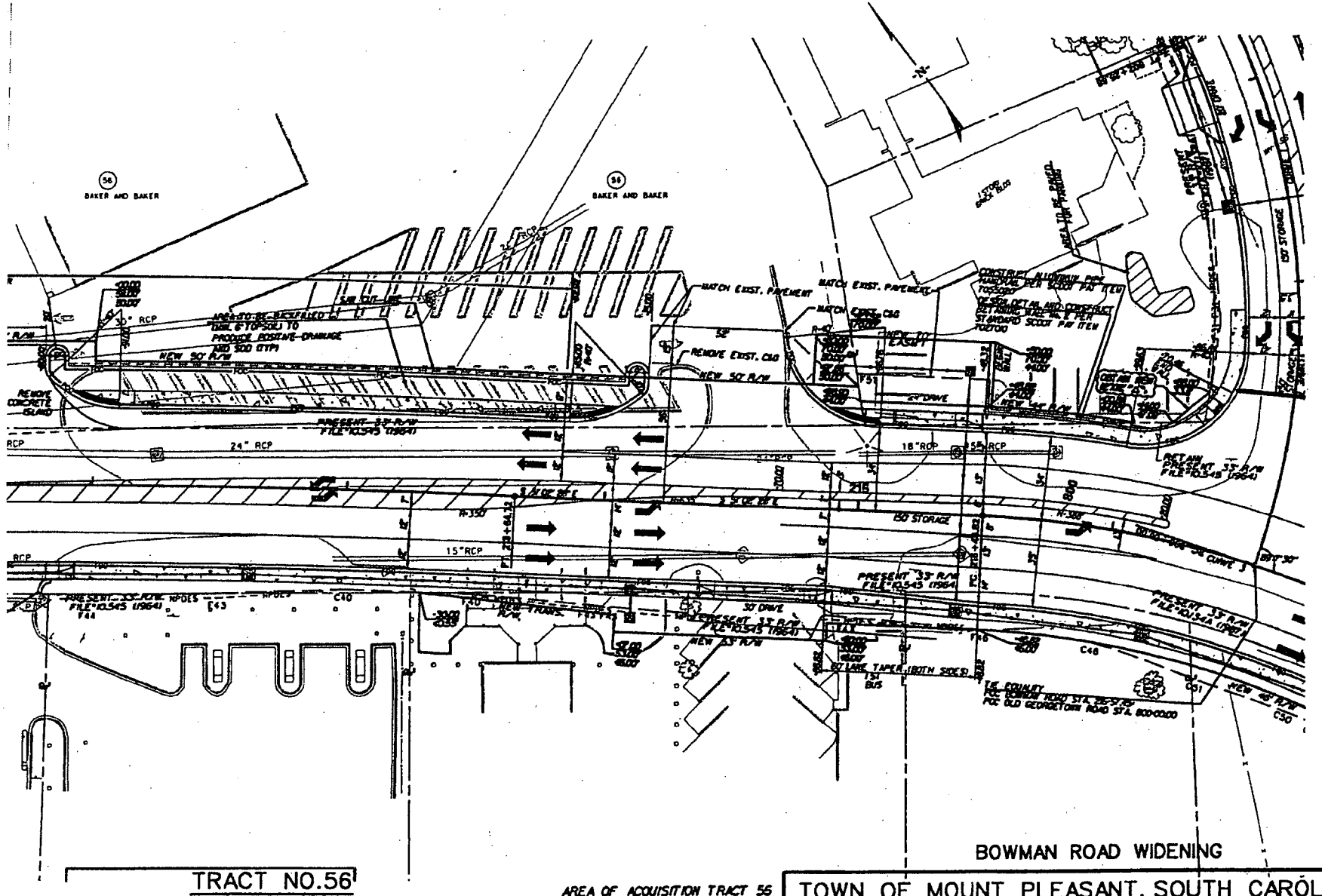
BOWMAN ROAD WIDENING

TRACT NO.56
TOTAL OBTAINED: 29,884 SF
OR 0.686 ACRE

AREA OF ACQUISITION TRACT 56

TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
SCALE: 1"-50' EXHIBIT "A" LAST REV: N/A

0153



BOWMAN ROAD WIDENING

TRACT NO.56

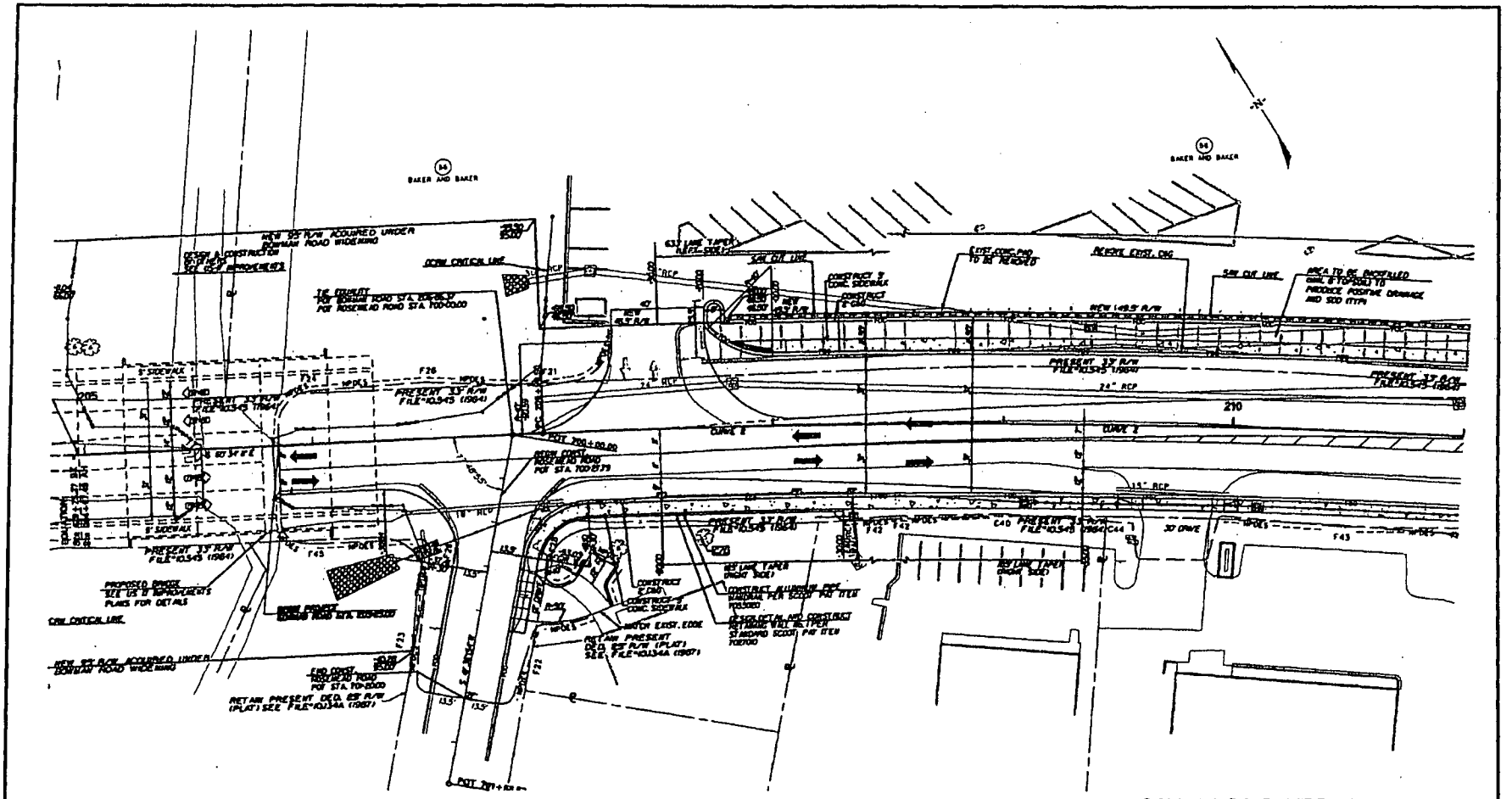
TOTAL OBTAINED: 29,884 SF
OR 0.686 ACRE

AREA OF ACQUISITION TRACT 56

TOWN OF MOUNT PLEASANT, SOUTH CAROLINA

SCALE: 1"=50' EXHIBIT "B" LAST REV: N/A

0154



BOWMAN ROAD WIDENING

TRACT NO.56

TOTAL OBTAINED: 29,884 SF
OR 0.686 ACRE

AREA OF ACQUISITION TRACT 56

TOWN OF MOUNT PLEASANT, SOUTH CAROLINA

SCALE: 1"=50' EXHIBIT "A" LAST REV: N/A

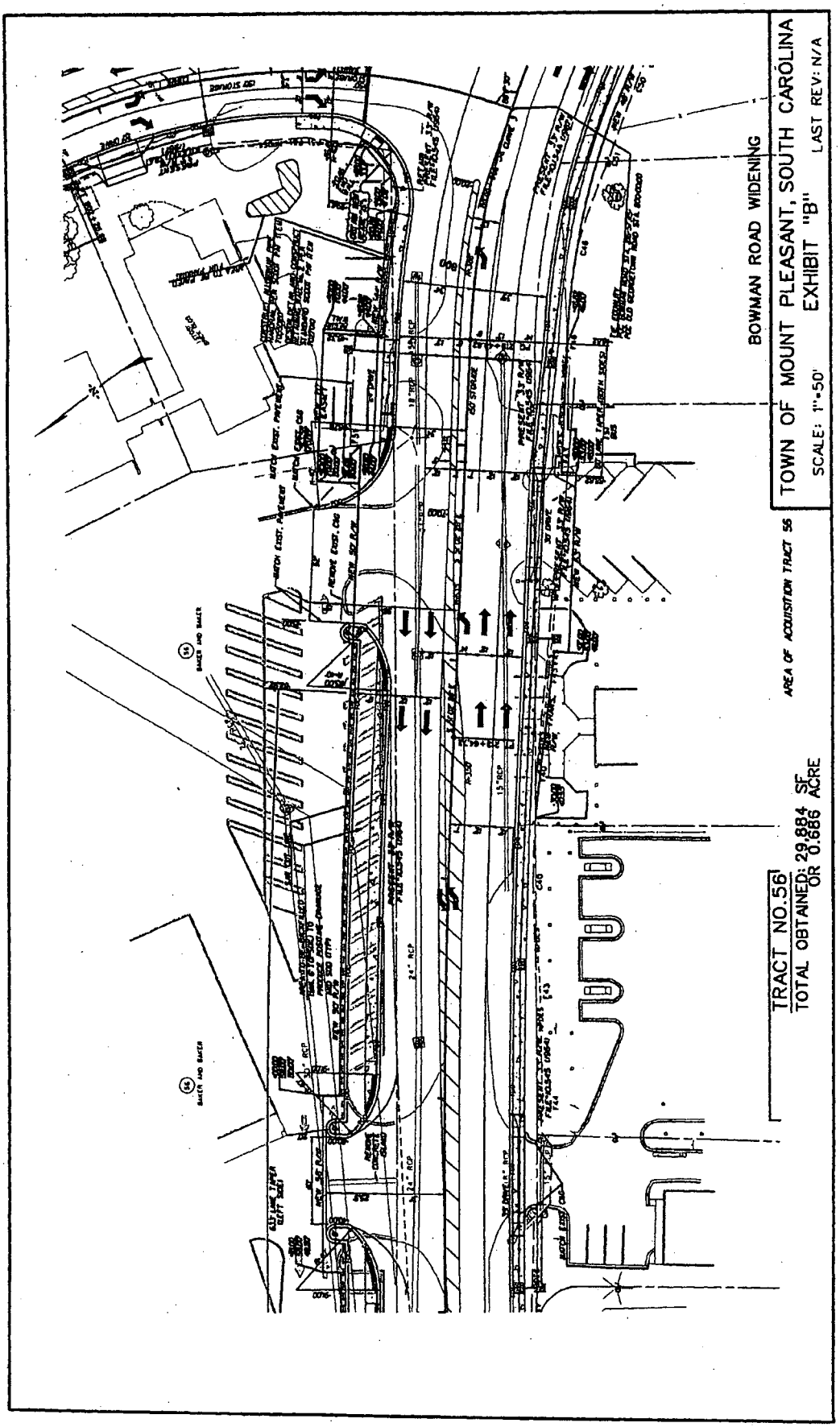

BOWMAN ROAD WIDENING
TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
SCALE: 1"=50'
EXHIBIT "B"
LAST REV: N/A
AREA OF ACQUISITION TRACT 56
TRACT NO.56
TOTAL OBTAINED: 29,884 SF
OR 0.686 ACRE

EXHIBIT D:

Atlantic Appraisals, LLC, Report on 1545-1551 Bowman Road

AN APPRAISAL OF
A LEASEHOLD INTEREST IN 1545 - 1551 BOWMAN ROAD
LOCATED IN MOUNT PLEASANT, SOUTH CAROLINA

AS OF

DECEMBER 12, 2011

PREPARED FOR

CHRISTOPHER L. MURPHY, ESQUIRE
STUCKEY LAW OFFICES, LLC
123 MEETING STREET
CHARLESTON, SOUTH CAROLINA 29401

BY

PLEDGER M. BISHOP, III, MAI, SRA, CRE
ATLANTIC APPRAISALS, LLC

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PO Box 834
Mt. Pleasant, SC 29465

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Atlantic Appraisals, LLC
REAL ESTATE APPRAISERS AND CONSULTANTS

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Mt. Pleasant, South Carolina 29465
Phone: (843) 884-1266
Fax: (843) 881-7532

PO Box 424
Beaufort, South Carolina 29901
Phone: (843) 379-6220
Fax: (843) 379-6222

December 12, 2011

Christopher L. Murphy, Esquire
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, South Carolina 29401

RE: An appraisal of 1545 – 1551 Bowman Road in Mount Pleasant, South Carolina

Dear Mr. Murphy:

At your request, I have prepared the attached real estate appraisal estimating the market value of the leasehold interest in the referenced property both before and after The Town of Mount Pleasant completes road widening improvements along Bowman Road. It is my understanding this appraisal will be utilized for litigation support.

The referenced property is a retail shopping center anchored by K-Mart. It was built in 1978. K-Mart occupies 87,602 square feet and there is 39,750 square feet of in-line retail space leased to other tenants. K-Mart holds a lease that has a 25 year term plus 10 five year renewal option periods. If K-Mart elects to exercise every renewal option, the lease will expire at the end of October 2053.

The lease allows K-Mart to construct additional buildings or expand the existing K-Mart Building at K-Mart's cost but no additional minimum rent is due. The original lease stipulates that the developer provides a minimum of 730 parking spaces and there are 739 spaces on-site. Current zoning requires 509 spaces (350 for the K-Mart and 159 spaces for the in-line retail) so there is a surplus of 230 parking spaces. If K-Mart expands the existing store footprint or constructs additional buildings, the developer is not responsible for replacing any parking spaces lost due to a new building or expansion of the existing building so existing parking can be utilized for additional space without penalty to K-Mart.

Understanding this, it appears there is sufficient parking and land area to accommodate an additional 37,500 square feet of building area on this site. The land area necessary to accommodate that building area and parking as required by zoning is 2.95 acres.

The current lease to K-Mart encompasses the existing store footprint and 580 parking spaces (excluding 159 spaces for the in-line local space) and the rent payment covers in addition to the building footprint the surplus parking and underlying land. Minimum rent for K-Mart is $227,838 annually. There are provisions for additional rent when sales exceed certain levels but according to K-mart no additional rent has been paid as a result of exceeding minimum sales.

Market rent for 87,602 square feet of building area which K-Mart currently occupies and necessary parking as required by zoning is $657,015 ($7.50 per square foot). Market rent for the 2.95 acres of surplus land is $219,600. Therefore, total market rent is $876,615 compared to minimum contract rent of $227,838. The difference is a significant leasehold interest held by K-Mart.

The shopping center is separated into two adjacent parcels. One parcel is improved with surface parking and the K-Mart building and the other parcel is improved with surface parking and the in-line retail space. None of the parking is designated or controlled so K-Mart and in-line retail customers can park in any space. Both parcels are owned by the same entity and have similar use. Therefore, I have appraised them as a single property under the principle of the larger parcel.

The Town of Mount Pleasant has started a road widening project along Bowman Road that will require acquisition of .686 acres or about 29,882 square feet. All of the area acquired is situated along Bowman Road. About 20,161 square feet of that taking is highland utilized for landscaping and parking and about 9,721 square feet is wetland that serves no beneficial purpose to the developer/owner.

There are 57 parking spaces situated within the new right of way so after this taking, the number of surplus parking spaces is reduced to 173. This taking reduces the potential additional retail space from 37,500 square feet to 30,000 square feet. The loss of the parking spaces in the right of way taking will reduce the potential future retail space by 7,500 square feet and the land area available for the surplus parking after the taking is reduced to about 2.3 acres.

The loss of this potential future retail space as a result o this taking reduces the leasehold interest. The difference between the market value of the leasehold interest before the taking and the market value of the leasehold interest after the taking is loss in leasehold interest value as a result of the Town of Mount Pleasant's land taking.

After due consideration of all of the factors involved as outlined in the attached report, a reasonable opinion of the market value of the leasehold interest in the referenced property as of December 12, 2011 is:

Market Value – Leasehold Interest
Before the Taking

SIX MILLION SIX HUNDRED THIRTY THOUSAND DOLLARS

$6,630,000

The value after acquisition assumed the road widening improvements are completed and in place. That is a hypothetical assumption that is not true but is assumed to be true for the purposes of this appraisal. After considering the various market factors as analyzed herein, a reasonable estimate of the market value of the leasehold interest in the referenced property, on December 12, 2011, assuming the road widening improvements are completed and in place, is:

Market Value – Leasehold Interest
After Taking

SIX MILLION TWO HUNDRED THOUSAND DOLLARS

$6,200,000

The difference between the market value of the leasehold interest before the taking and the market value of the leasehold interest after the taking is the loss in leasehold interest value as a result of the taking.

Loss In Leasehold Interest Value

FOUR HUNDRED THIRTY THOUSAND DOLLARS

$430,000

I have not appraised this property within the past 36 months.

I hereby certify that to the best of my knowledge and belief, the statements and opinions contained in this report are full, true and correct, and that this appraisal is subject to the attached Certification, Underlying Assumptions, and General Limiting Conditions.

In the preparation of this Appraisal report, I have made the assumption that there is no environmental pollution or hazardous material present in any part of the referenced property or nearby properties. I have made no environmental survey or study and assume no responsibility in connection with such matters or for any studies that might be required to discover such matters.

I have prepared appraisals on commercial properties in this market and have the experience and knowledge to competently complete an assignment of this type. The value reported in this appraisal is not contingent upon a specific minimum value, a requested value or the approval of a loan.

Thank you for the opportunity of providing this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact us. Your attention is invited to the attached report, which summarizes the pertinent data, reasoning and analyses used to arrive at the value conclusions.

Pledger M. Bishop, III, MAI, SRA
State Certified General
Real Estate Appraiser
Certification No. CG795

File No. 11-0529 PMB

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SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS

Location:	1545 – 1551 Bowman Road, Mount Pleasant, SC 29464
Tax Map Number:	559-13-00-038 & 041
Owner of record:	Bowman MTP Center LLC
Effective Date of Appraisal:	December 12, 2011
Land Area – **Before Acquisition:**	12.97 AC Highland
Land Area – **After Acquisition:**	12.28 AC Highland
Land Area –**Acquired:**	.686 acres of highland
Zoning:	Areawide Business; Part of the Urban Corridor Overlay District
Market Value – Leasehold Before Acquisition:	$6,630,000
Market Value – Leasehold After Acquisition:	$6,200,000
Compensation to Leaseholder:	**$430,000**
Appraiser:	Pledger M. Bishop, III, MAI, SRA, CRE
Appraisal File No:	11-0529 PMB

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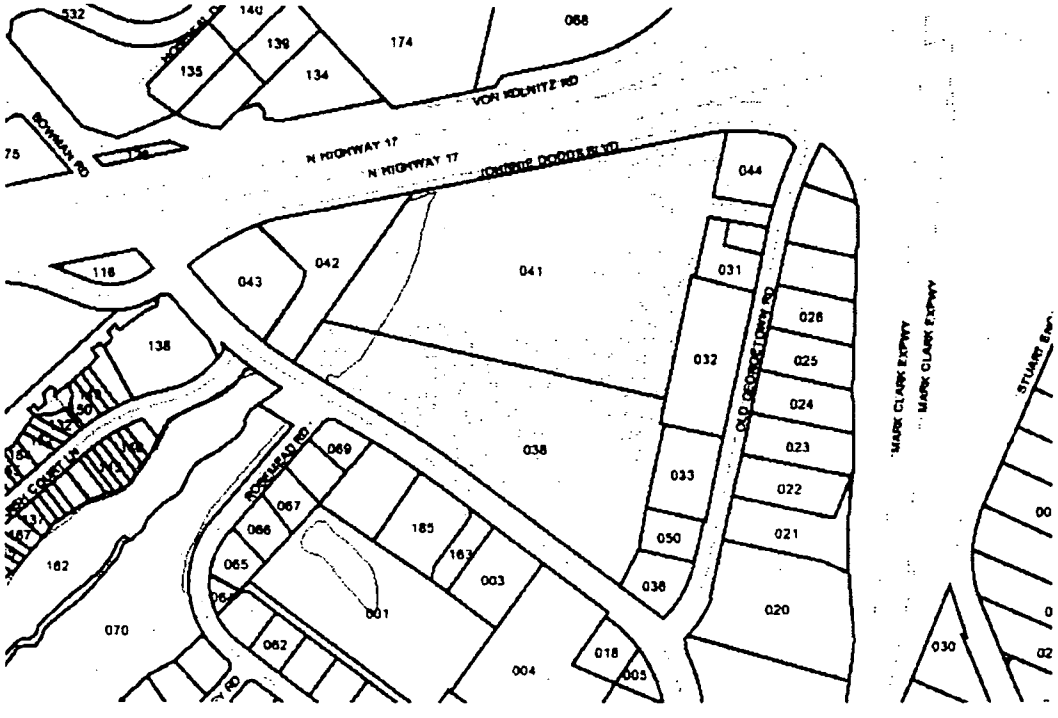
SCOPE OF THE APPRAISAL

Identification of the Property Appraised

The property appraised is a shopping center anchored by K-Mart and located off Bowman Road. The property address is 1545 – 1551 Bowman Road in Mount Pleasant, 29464.

The property is identified by the Charleston County Assessor's office as tax map reference 559-13-00 parcels 038 and 041. A copy of the tax map is included below.

Tax Map



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Aerial Photograph per Charleston County Assessor

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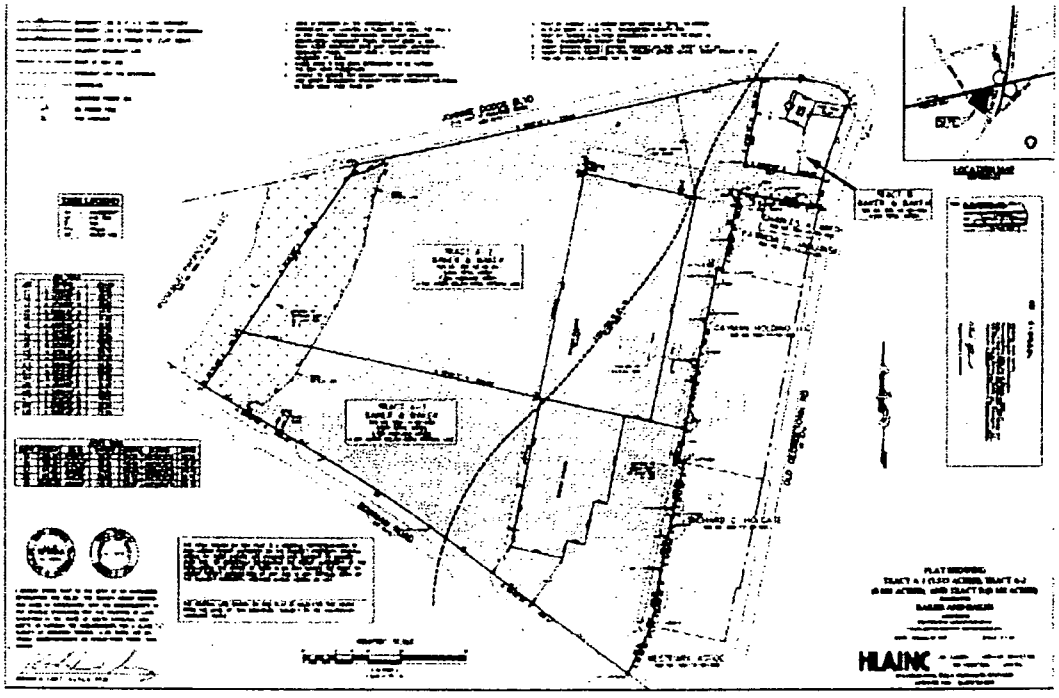
Survey



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Date of Appraisal

This property was inspected several times between December 8 and December 12, 2011. The effective date of this appraisal is December 12, 2011. The date of this writing is December 13, 2011.

Owner of Record

This property is currently owned by Bowman MTP Center LLC. It was acquired from Transwestern Mount Pleasant LLC on January 28, 2011. That transaction is recorded in deed book 0168 on page 975. A copy of this deed is included in the addenda.

The purchase price on the deed is $10 and other consideration but the affidavit of sale indicates a purchase price of $4,460,000. That included TMS Parcel 044 which is not part of this appraisal.

Transwestern Mount Pleasant LLC acquired this property from Baker and Baker Real Estate Developers LLC on March 7, 2007. The purchase price was $13,800,000. That included TMS parcel 044 as well. The deed for that transaction is recorded in book U618 on page 023.

Property Rights Appraised

The property rights appraised are those of the leasehold interest. Leasehold interest is defined "As the interest held by the lessee (tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions."

The Appraisal of Real Estate, Twelfth Addition

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Client, Intended Use and Intended Users of the Report

The client is Christopher L. Murphy. The appraisal was commissioned for use in litigation support. The intended users include Mr. Murphy and those with whom he chooses to share this report.

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the subject property.
Market Value is defined as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus."

Implicit in this definition is the consummation of a sale as a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and Seller are typically motivated.
2. Both parties are well informed or well advised, and acting in what they consider their own best interests.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash of U.S. dollars or in terms of financial arrangements comparable thereto.
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.[1][2]

[1] Department of the Treasury, Office of Thrift Supervision. 12 CFR 564.2, dated Thursday, August 12, 1990.

[2] Department of the Treasury, Office of the Comptroller of the Currency. 12 CFR Part 34.42, dated Friday, August 24, 1990.

[3] Federal Deposit Insurance Corporation, 12 CFR Part 323.2, dated Monday, August 20, 1990.

Appraisal Process

As part of this appraisal, a number of independent investigations and analyses were conducted. In addition to data compiled by Atlantic Appraisals on a regular basis, the investigation undertaken and major data sources used are listed below.

Area & Neighborhood Analysis - Information on the Trident area, Charleston County and Mount Pleasant was obtained from the Chamber of Commerce and local municipalities. A personal inspection of the neighborhood was conducted.

Site Description & Analysis - The site was physically inspected several times. The site inspection was conducted using a copy of the most recent survey and Town of Mount Pleasant Road plan exhibits that were made available.

Improvement Description and Analysis – The improvements were inspected from the exterior and the interior. Details on the physical characteristics were gathered during this walk through.

Highest and Best Use – Since this is a valuation of a leasehold interest and the property owner cannot change the use of this property until the K-Mart lease expires or is given up by K-Mart, no analysis of highest and best use is necessary.

Value of Leasehold Interest – Since this is an appraisal of the leasehold interest, an income approach is utilized. First, contract rent is analyzed. This includes an estimate of contract rent through the entire term of the lease.

The second step is to estimate market rent for the property. This was accomplished by locating examples of recent rent negotiations for larger retail space in the area and comparing those leases to the K-Mart space. From that comparison market rent for the K-Mart space is established.

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Since the rent comparables did not include surplus land on which the tenant could construct additional retail square footage, it is necessary to establish market rent for the surplus land. This was accomplished by first estimating market value for the surplus land area using a traditional sales comparison approach. A land capitalization rate was then established from examples in this market and that rate applied to the market value estimate for the surplus land. The result is market rent for the surplus land.

A discounted cash flow analysis (DCF) is then utilized to estimate the market value of the leasehold interest. This is essentially the difference between market rent and contract rent in terms of cash over the remaining term of the lease. Vacancy and credit loss is deducted from that difference as well as some miscellaneous expenses to the tenant and the net cash flow for each year is discounted to present value. The individual annual present value cash flows over the remaining term of the lease are then added together to arrive at the value of the leasehold interest.

Report Preparation - The final phase of the appraisal process is the preparation of the appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The report is also intended to conform to the code of ethics as adopted by the Appraisal Institute.

REGION DESCRIPTION

The Charleston - North Charleston Metropolitan Statistical Area (MSA) is also known as the Trident Region. It area is located along the central and southern coastal region of South Carolina and consists of Charleston, Berkeley and Dorchester Counties. The area covers nearly 90 miles of Atlantic Coastline; reaches inland approximately 50 miles; and contains a total of 3,163 square miles. It has a diversified economy comprised of the military, the Port of Charleston, tourism, the medical community, and manufacturing and has enjoyed significant growth in both population and jobs in recent years, and continued growth is anticipated.

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Interstate 26 is an east/west controlled access highway that runs inland and intersects with Interstate 95 (north/south) approximately 59 miles northwest of Charleston. Interstate 526 (Mark Clark Expressway) is a 19-mile inner belt freeway connecting Mount Pleasant at the intersection with Highway 17 North to North Charleston, and West Ashley. The completion of this interstate in 1993 changed traffic patterns tremendously and initially reduced traffic congestion and greatly improved vehicular access in the Trident area. However, over the past 5 years as traffic has increased Interstate 526 has become prone to massive congestion during periods of heavy commuter traffic. US Highway 17 is a four lane highway that parallels the coast connecting Myrtle Beach to the north with Savannah, Georgia to the south. It runs in a north/south direction through Charleston area and basically parallels the coast. Like I526, US 17 experiences congestion during commute hours.

Other roadways in the Charleston area that have had a strong positive impact on the Charleston transportation network include the Isle of Palms Connector, a fixed bridge connector running from Highway 17 north in the Mount Pleasant area to the Isle of Palms. The James Island Connector connects the Peninsula City of Charleston with James Island and has had a tremendous impact on property values in the James Island area.

Tremendous gains have been made in attracting new industry and jobs to the area. Despite the current economic downturn, the local economy has been bolstered by the relocation of Boeing to a site adjacent to the Airport in North Charleston. Boeing is nearing completion of a second large manufacturing facility to continue to build its Dream Line plane in Charleston.

This new facility is anticipated to create about 3,000 new jobs plus additional spin off companies who are already locating to this market. This is a potentially tremendous shot in the arm for the local economy as many employees are already relocated to the area and the facility recently announced it had reached the "topping" off where the roof and siding on the structure are complete.

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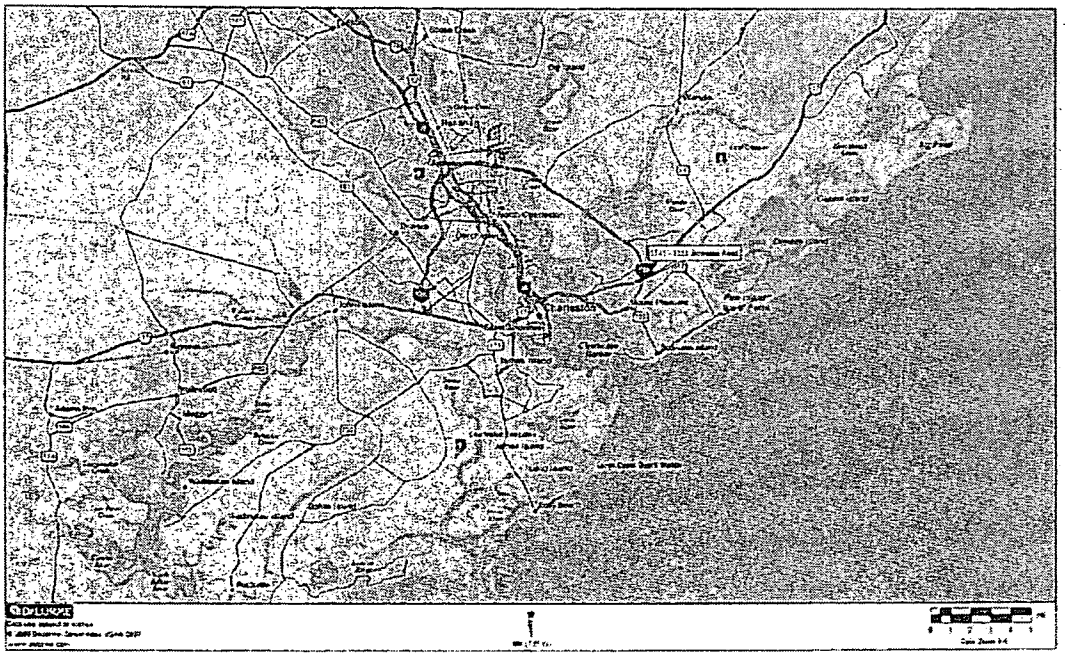
The Trident area has always weathered economic downturns better than the Nation as a whole and has recovered well ahead of the nation as a whole. The coastal location along with quality of life has been an attraction for many people who visit and then decide to relocate to the area. This trend appears to be continuing despite the economic downturn. Boeing locating here has exposed this area to a large portion of the population that had never heard of Charleston. This will only increase the opportunities for visitors to continue to relocate.

The outlook for the area is positive. It may take a few more years for the national economy to completely recover but as in the past, Charleston's recovery should be well ahead of the Nation so if the economic pundits are correct then Charleston should be well down the road to recovery.

Location Map



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NEIGHBORHOOD DESCRIPTION

Mount Pleasant is a bedroom community located east of the City of Charleston across Charleston Harbor and the Wando and Cooper Rivers. The Town has grown rapidly over the past fifteen years.

For nearly 70 years, Mt. Pleasant was connected to the City of Charleston by fixed span bridges. The Grace Memorial Bridge was built in the 1930's and the Silas Pearman Bridge was completed in 1966. Those bridges were outmoded and were replaced in 2005 by a single cable stay bridge known as The Ravenel Bridge. This has become the center point for Charleston.

Mount Pleasant is an affluent bedroom community. Growth has been to the north off US 17. As part of the Town's ten-year master plan water and sewer service is in place north of the Town and this has enhanced development in those areas.

Traffic congestion has been a major controversy in Mount Pleasant and the Town has taken an active role in initiating and funding several significant road projects over the past five years and more are planned. The completed projects include the widening of Highway 17 North to six lanes from Wando Crossing Center to Six Mile Road; Hungry Neck connector (frontage road from Wando Crossing to Six Mile Road) (partially completed); re-alignment of the US 17 North and Venning Road intersection; re-alignment of the US 17 North and Highway 41 intersection; widening of Long Point Road from Egypt Road to Whipple Road and two "Round-Abouts" at key intersections on Rifle Range Road have been completed.

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Major road improvement projects under construction include widening of US 17 North from Isle of Palms Connector to Darryl Creek Trail; intersection improvements and road widening at all 6 existing intersections on Johnnie Dodds Blvd (By-Pass); Overpass and intersection improvements at I526/Hungryneck Boulevard Connector and US 17 North Intersection; Overpass and intersection improvements at Johnnie Dodds Blvd (By-Pass) and Bowman Road; and widening of Bowman Road from Mathis Ferry Road to Chuck Dawley Boulevard.

Mount Pleasant is bounded on three sides by water and, as a result, as an elongated geography (see map at the end of this section). Because of the rapid growth that this suburban area has experienced the distance from one end of town to the other has quickly become substantial. To provide commercial services this population demands a system of hubs has been developed. These commercial hubs provide proximate services to nearby residents and help keep traffic off the length and breadth of Highway 17.

In conclusion, this area has experienced excellent demand for new development and prior to the economic downturn, property values increased rapidly. The outlook for this area remains positive and Mount Pleasant is expected to remain one of the most desirable Towns in the area.

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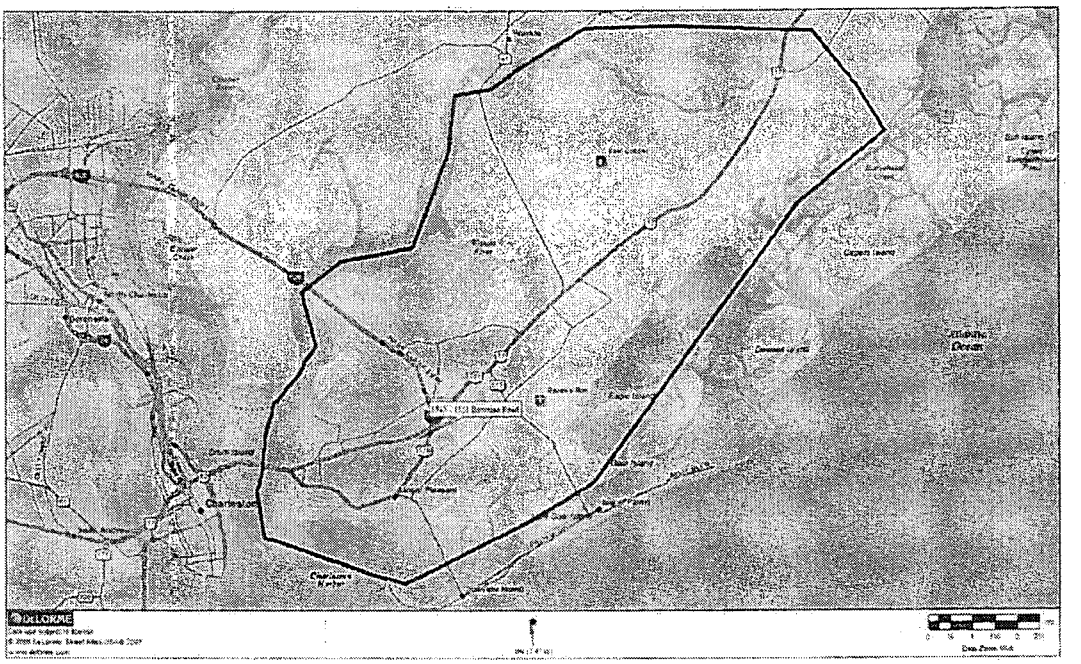
Location Map – App Town Boundary in Blue



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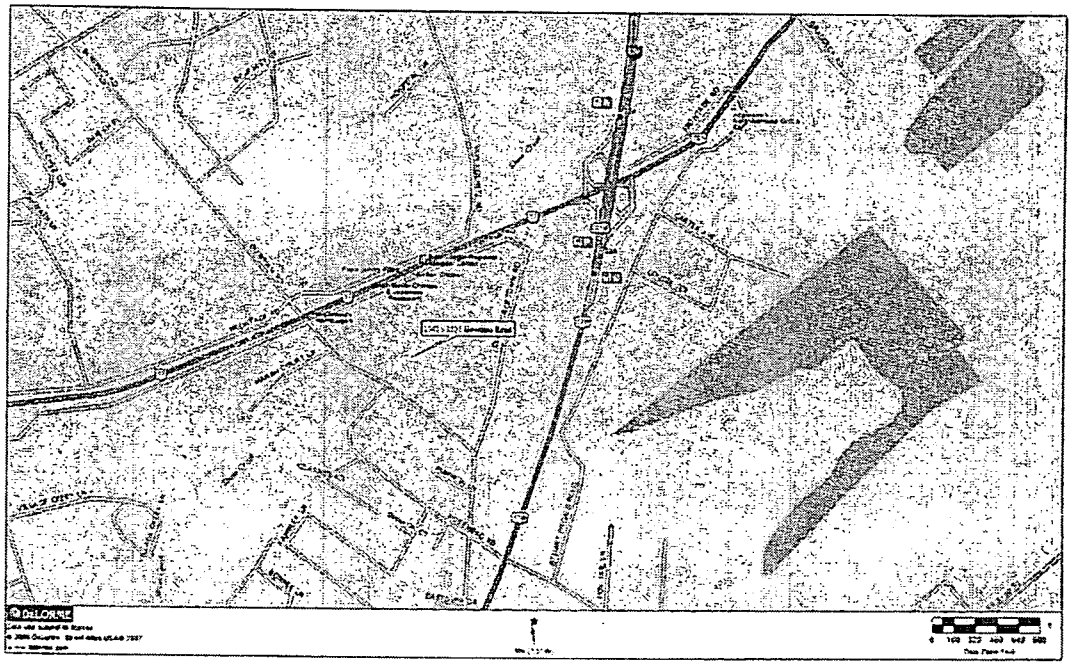

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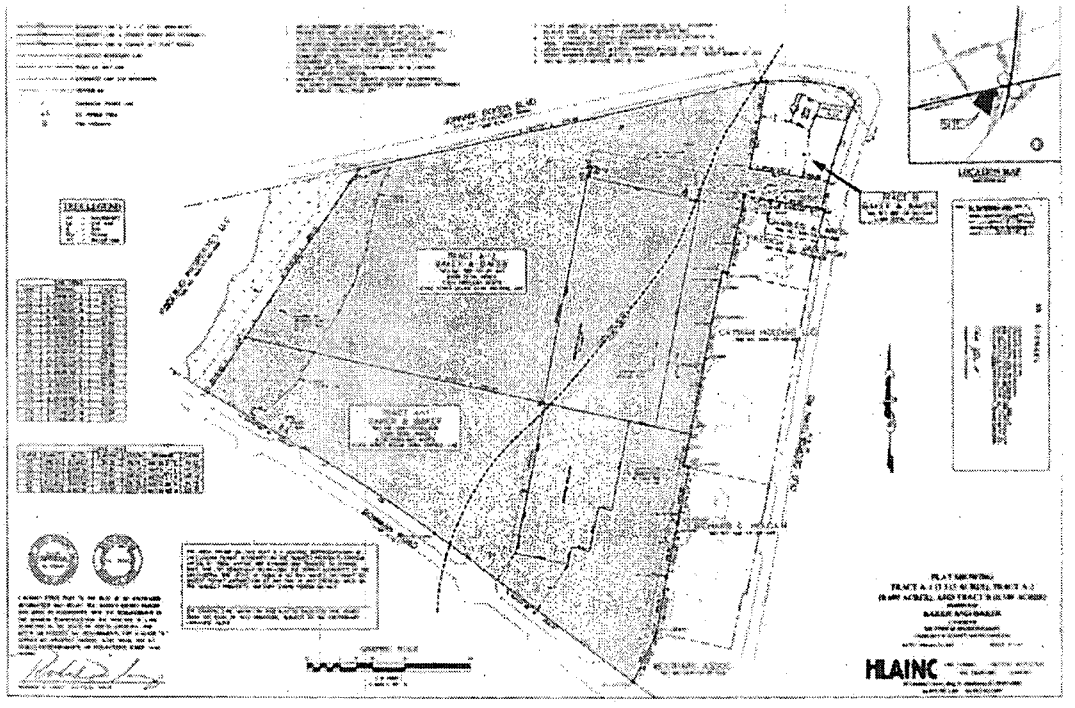
SITE DESCRIPTION – Before Taking

Introduction – A plat prepared by Hoffman, Lester and Associates was utilized to visualize this property. This plat is dated February 22, 2007. A copy of this plat is included here.



Dimensions, Size & Shape – This survey depicts an irregular parcel with street frontage on Bowman Road, the frontage road of Johnnie Dodds Boulevard and Old Georgetown Road. The survey indicates a total area is:

	TMS 038	TMS 041	Total
Highland	5.15	7.82	12.97
Wetland	0.37	0.78	1.15
Gross Area	5.52	8.6	14.12

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Topography & Drainage – The site is basically level with a slope toward a wetland area which is the headwaters of Shem Creek. The majority of the property is covered with asphalt paving and there were no signs of standing water at the time of inspection.

Soil & Subsoil – In the preparation of this report, the assumption has been made that there is no environmental pollution or hazardous materials present in any part of this property or nearby properties. No environmental survey or study has been made and no responsibility in connection with such matters or for any studies, which might be required to discover such matters, is assumed.

Access – There are 3 curb cuts on Bowman Road and 3 curb cuts to the frontage road of Johnnie Dodds Boulevard. This is adequate access for a commercial site.

Visibility – This site is highly visible from Bowman Road; the frontage Road; and Johnnie Dodds Boulevard.

Easements & Encroachments – There are typical drainage and utility easements located at the property lines that do not affect the development potential of the property. No adverse easements are noted.

Utilities – All public utilities except for natural gas are available at the site.

Conclusion – The site is a mostly level, with adequate access and visibility. The site has the necessary frontage and depth for commercial development.

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DESCRIPTION OF THE IMPROVEMENTS

The improvements consist of 127,352 square feet. Of that area, 87,602 square feet is the space leased by K-Mart and 39,750 square feet is in-line retail space. The lease indicates the K-Mart space to encompass 87,543 square feet which is 59 square feet smaller than the size concluded by me. The building was measured from the exterior and those measurements were cross checked with the dimensions cited on the survey. Because the current lease is not based upon a price per square foot, I have used the size concluded by me.

The improvements were completed in 1978. They appear to be in average condition. This is a concrete block and steel structure situated in a concrete slab foundation that is reinforced with steel. The roof is a standard metal truss system with a slightly sloped pitch. The decking on top of the trusses is metal panels and they are covered with a rubber coating.

The interior is a typical retail design with a large open floor and some partitioning in the rear. The floors are asphalt tile and the ceiling is covered with acoustic drop tiles. The finishes vary by tenant.

Site improvements include 739 marked parking spaces situated in front of the retail buildings; along Bowman Road in front of and to the side of the building; and along the frontage road both in front of and to the side of the building. There is landscaping along Bowman Road and exterior lighting in the parking areas.

This structure is 33 years old and appears to be in average condition. The effective age is estimated to be 25 years. Based upon an economic life of 70 years, depreciation from all causes is about 35%.

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REAL ESTATE TAXES – Before Taking

The Charleston County Assessor's Office is responsible for appraising this property for property tax purposes. The property taxes are reported as follows:

	Appraised Value	2011 Tax Due
TMS 038	$3,030,000	$36,626
TMS 041	$3,219,000	$38,911
Total	$6,249,000	$75,537

For 2011 the Assessor implemented a reassessment program and the effective date of that appraisal is December 31, 2008. The value is also based upon the fee simple interest.

The SC Legislation enacted a change to the property tax law in 2007 and now any property that undergoes an "assessable transfer of interest" (ATI) will be re-appraised by the Assessor in the following year. The January 2011 sale is an ATI so this property will be re-appraised by the Assessor for the 2012 tax year. That appraisal is to be at current market levels for that tax year (December 31, 2011 effective date of appraisal) so more than likely the Assessor will re-appraise this property at or near the recent sale price. Therefore property taxes should be reduced in 2012.

ZONING

According to the Town of Mount Pleasant Planning and Zoning Department, the current zoning for this property is AB or area wide business zoning. The purpose of this zoning category is to create commercial development targeted to uses which need location adjacent to arterial roads. Legal uses under this zoning category are plentiful and include most retail and office uses.

In addition to the AB zoning, this property is located within the Urban Corridor Overlay District recently created by the Town of Mount Pleasant. This overlay district was enacted and signed into law on February 9, 2011.

The UC-OD (Urban Corridor Overlay District) pertains to the areas of Coleman – Ben Sawyer Boulevard and Chuck Dawley Boulevard and Johnnie Dodds Boulevard. According to Ordinance #10081, the UC-OD is intended to "facilitate the development of this area into the urban core of the Town with an emphasis on mixed use commercial and residential development in a pedestrian and bicycle friendly, walkable style of development. Appropriate development form will include taller buildings, higher density residential use, and compact development form with multimodal access to facilitate pedestrian, bicycle, and mass transit-type modes of transportation to include buses and shuttle service."

The UC-OD is divided into several different sections and this property is located in the UC-JDB Health and Wellness/Economic Development District. This section is designed for research and medical office uses or medical campus use; higher density residential and workforce housing to facilitate hospital expansion; ancillary retail and service related uses; and accommodations for hospital visitors.

The maximum density for single use residential development is 20 units per acre and the maximum density for mixed use development is 30 units per acre. Buildings fronting on frontage roads must be a minimum of 2 stories and buildings fronting on side streets (non-frontage roads) or located at intersections between the frontage road and Johnnie Dodds Boulevard may utilize a single story.

The maximum building height is 80' except for buildings that are located within 50' of an abutting residential property line or an abutting street right of way adjoining residential property outside of the UC-JDB. Those buildings shall be a maximum of 40' and should not exceed 3 stories.

The front set back is 20' to 30' with a minimum 5' sidewalk. The side yard setback is 10' on either side and 15' at the rear. There is a provision upon approval through the Design and Review Process for development utilizing an integrated site plan involving multiple parcels may forego side and rear yard setbacks along parcel lines except when abutting residential parcels.

This is an analysis of the leasehold interest and the term of the lease if all options are exercised is about 43 years. Therefore the likelihood of the property being redeveloped under the overlay district concept is remote without a interested developer acquiring the leasehold interest.

HIGHEST AND BEST USE ANALYSIS – Before Acquisition

Introduction – Highest and Best Use, as defined by *The Dictionary of Real Estate Appraisal*, 3rd Edition, (Appraisal Institute, Chicago, 1993), is:

> The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

The analysis of the highest and best use is considered in three steps. The first step is to determine the highest and best of the site as though vacant. The conclusion must be either to leave the site vacant or to improve it for some use. If the highest and best is for development, then the second step is to determine the ideal improvements for the property, which is utilized in the final step. The final step in this analysis is the comparison of the ideal improvements with the existing improvements, if present. A conclusion is made as to whether the existing improvements should remain in its current state, be modified, or be razed and the site developed with the ideal improvements.

Highest and Best Use As Though Vacant – Before the Acquisition

As described in the definition of highest and best use above, this analysis considers the following four factors.

1. Legally Permissible
2. Physically Possible
3. Financially Feasible
4. Maximally Productive

This is an analysis of a leasehold interest so there is no highest and best use analysis to consider. Therefore it is not employed in this appraisal.

VALUATION METHODOLOGY

In the valuation of real estate, any one or any combination of the three traditional appraisal methods may be used. These three methods are known as the Cost, Sales Comparison and Income approaches. All three approaches are based on the economic principle of substitution, which holds that when several goods or services are available, the one with the lowest price attracts the highest demand.

The cost approach methodology suggests that the value of the property being appraised can be estimated from the cost of acquiring an equally desirable substitute property without undue delay. This includes the acquisition of a comparable site and the construction of improvements having a comparable utility. Since this is an appraisal of the leasehold interest, the cost approach is not employed herein.

The sales comparison approach methodology suggests that the value of a property being appraised can be estimated from the cost to acquire an equally desirable substitute property without undue delay. The estimated market value of a property is determined from an analysis of recent sales of similar or comparable properties in this market. A sales comparison approach is utilized in the estimate of market rent for the surplus land.

The income approach methodology suggests that the value of the property being appraised can be estimated from the present worth of its future benefits (net operating income potential). Since this is an appraisal of a leasehold interest, a discounted cash flow analysis is employed. Contract rent is analyzed and calculated over the remaining term of the lease.

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Market rent is then estimated. Examples of recent rent negotiated for larger retail spaces in the market were analyzed and used to compare to the existing K-Mart space. From that, market rent for the K-Mart space is estimated.

In order to estimate market rent for the surplus land, a sales comparison approach is utilized to estimate the market value of that area and then a land capitalization rate is applied. The result is market rent for the surplus land.

The difference between contract rent and market rent in the first year and each year thereafter until the lease expires is the potential gross income to the leaseholder. This can be expressed as potential dollars under a sublet situation or in savings from paying rent that is less than market.

Vacancy and operating expenses are deducted in each year of the remaining lease term and the result is net operating income to the leaseholder. NOI is then discounted to present value using a discount rate. The sum of the present value cash flow for each year of the remaining lease term is the present value of the leasehold interest.

MARKET VALUE - LEASEHOLD INTEREST - Before the Taking

The leasehold interest is essentially the market value of the net income received by the tenant after paying contract rent and then receiving sub-tenant rent and paying operating expenses or it can be the rent savings by virtue of having below market rent. The first step in this analysis is to analyze the lease (contract rent). The lease is summarized as follows:

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Lessor	Baker & Baker
Lessee	K Mart Corporation
Lease Start Date	11/9/1978
Lease Termination Date	10/31/2003
Renewal Options	10 - 5 Year Options
Building Size	68,377 SF
Minimum Base Rent	$227,838
Rent Escalations	None
Additional Rent	1% of "Gross Sales" exceeding $8,8M - $15M .5% of "Gross Sales" exceeding $15M - $18,750M
Property Taxes	Tenant pays but property tax in excess of $22,000 is applied against additional rent
Minimum # Parking Spaces	730
Demised Premises	Parcel A - 14.1 AC

In 1989, a 19,206 SF additional was constructed. The gross area increased to 87,543 SF.

The lease indicates the lessee has a right to expand the building or construct new buildings on the surplus land at their cost with no additional rent due to the Lessor. Lessee controls excess parking and any parking lost due to new building will not have to be replaced by the Lessor.

The lease is on triple net terms with the tenant responsible for practically all costs excluding property management and major building repairs. There are 42 years and 10 months left on the lease if all renewal options are exercised.

Potential gross income from contract rent is calculated as follows:

	Date	Original Lease 68,537 SF	$/SF	% Increase	Additional 19,206 SF
Year 1	November 9, 1978	$227,838.00	$3.33		0
Year 2	November 1, 1979	$227,838.00	$3.33	0.00%	
Year 3	November 1, 1980	$227,838.00	$3.33	0.00%	
Year 4	November 1, 1981	$227,838.00	$3.33	0.00%	
Year 5	November 1, 1982	$227,838.00	$3.33	0.00%	
Year 6	November 1, 1983	$227,838.00	$3.33	0.00%	
Year 7	November 1, 1984	$227,838.00	$3.33	0.00%	
Year 8	November 1, 1985	$227,838.00	$3.33	0.00%	
Year 9	November 1, 1986	$227,838.00	$3.33	0.00%	
Year 10	November 1, 1987	$227,838.00	$3.33	0.00%	
Year 11	November 1, 1988	$227,838.00	$3.33	0.00%	
Year 12	November 1, 1989	$227,838.00	$2.60	0.00%	
Year 13	November 1, 1990	$227,838.00	$2.60	0.00%	
Year 14	November 1, 1991	$227,838.00	$2.60	0.00%	
Year 15	November 1, 1992	$227,838.00	$2.60	0.00%	
Year 16	November 1, 1993	$227,838.00	$2.60	0.00%	
Year 17	November 1, 1994	$227,838.00	$2.60	0.00%	
Year 18	November 1, 1995	$227,838.00	$2.60	0.00%	
Year 19	November 1, 1996	$227,838.00	$2.60	0.00%	
Year 20	November 1, 1997	$227,838.00	$2.60	0.00%	
Year 21	November 1, 1998	$227,838.00	$2.60	0.00%	
Year 22	November 1, 1999	$227,838.00	$2.60	0.00%	
Year 23	November 1, 2000	$227,838.00	$2.60	0.00%	
Year 24	November 1, 2001	$227,838.00	$2.60	0.00%	
Year 25	November 1, 2002	$227,838.00	$2.60	0.00%	
Year 26	November 1, 2003	$227,838.00	$2.60	0.00%	
Year 27	November 1, 2004	$227,838.00	$2.60	0.00%	
Year 28	November 1, 2005	$227,838.00	$2.60	0.00%	
Year 29	November 1, 2006	$227,838.00	$2.60	0.00%	
Year 30	November 1, 2007	$227,838.00	$2.60	0.00%	
Year 31	November 1, 2008	$227,838.00	$2.60	0.00%	
Year 32	November 1, 2009	$227,838.00	$2.60	0.00%	
Year 33	November 1, 2010	$227,838.00	$2.60	0.00%	
Year 34	November 1, 2011	$227,838.00	$2.60	0.00%	
Year 35	November 1, 2012	$227,838.00	$2.60	0.00%	
Year 36	November 1, 2013	$227,838.00	$2.60	0.00%	
Year 37	November 1, 2014	$227,838.00	$2.60	0.00%	
Year 38	November 1, 2015	$227,838.00	$2.60	0.00%	
Year 39	November 1, 2016	$227,838.00	$2.60	0.00%	
Year 40	November 1, 2017	$227,838.00	$2.60	0.00%	
Year 41	November 1, 2018	$227,838.00	$2.60	0.00%	
Year 42	November 1, 2019	$227,838.00	$2.60	0.00%	
Year 43	November 1, 2020	$227,838.00	$2.60	0.00%	
Year 44	November 1, 2021	$227,838.00	$2.60	0.00%	
Year 45	November 1, 2022	$227,838.00	$2.60	0.00%	
Year 46	November 1, 2023	$227,838.00	$2.60	0.00%	
Year 47	November 1, 2024	$227,838.00	$2.60	0.00%	
Year 48	November 1, 2025	$227,838.00	$2.60	0.00%	
Year 49	November 1, 2026	$227,838.00	$2.60	0.00%	
Year 50	November 1, 2027	$227,838.00	$2.60	0.00%	
Year 51	November 1, 2028	$227,838.00	$2.60	0.00%	
Year 52	November 1, 2029	$227,838.00	$2.60	0.00%	
Year 53	November 1, 2030	$227,838.00	$2.60	0.00%	
Year 54	November 1, 2031	$227,838.00	$2.60	0.00%	
Year 55	November 1, 2032	$227,838.00	$2.60	0.00%	
Year 56	November 1, 2033	$227,838.00	$2.60	0.00%	
Year 57	November 1, 2034	$227,838.00	$2.60	0.00%	
Year 58	November 1, 2035	$227,838.00	$2.60	0.00%	
Year 59	November 1, 2036	$227,838.00	$2.60	0.00%	
Year 60	November 1, 2037	$227,838.00	$2.60	0.00%	
Year 61	November 1, 2038	$227,838.00	$2.60	0.00%	
Year 62	November 1, 2039	$227,838.00	$2.60	0.00%	
Year 63	November 1, 2040	$227,838.00	$2.60	0.00%	
Year 64	November 1, 2041	$227,838.00	$2.60	0.00%	
Year 65	November 1, 2042	$227,838.00	$2.60	0.00%	
Year 66	November 1, 2043	$227,838.00	$2.60	0.00%	
Year 67	November 1, 2044	$227,838.00	$2.60	0.00%	
Year 68	November 1, 2045	$227,838.00	$2.60	0.00%	
Year 69	November 1, 2046	$227,838.00	$2.60	0.00%	
Year 70	November 1, 2047	$227,838.00	$2.60	0.00%	
Year 71	November 1, 2048	$227,838.00	$2.60	0.00%	
Year 72	November 1, 2049	$227,838.00	$2.60	0.00%	
Year 73	November 1, 2050	$227,838.00	$2.60	0.00%	
Year 74	November 1, 2051	$227,838.00	$2.60	0.00%	
Year 75	November 1, 2052	$227,838.00	$2.60	0.00%	

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First year contract rent is $227,838.

Market Rent – K-Mart Space

In order to estimate market rent, I have researched the area for examples of larger retail space that has been recently leased or is in the negotiations for leasing. Some of this is confidential so those properties are not described or identified in this report.

The most recent larger retail space in Mount Pleasant was the former Circuit City space in Wando Crossing. Wando Crossing is anchored by Super Wal-Mart, TJ Max, Office Depot; and Marshal's. Michaels leased 20,671 square feet at $13.50 per square foot on triple net terms. The landlord spent a confidential amount of money on the up fit for Michaels. Since the K-Mart space is not up fitted for a modern tenant, I have amortized the cost of the up fit spent on the Michaels space over initial term of the lease and deducted it from the negotiated rate. It indicates rent of about $8.50 per square foot for a retail shell.

Marshal's just recently leased 26,000 square feet in Ashley Center which is anchored by a Kohl's Department Store. The rental rate was $9.00 per square foot and that was for 26,000 square foot space. It was a turnkey deal. The Landlord spent a confidential amount on up fit. Amortizing that over the initial lease term indicates net rental of about $7.00 per square foot for a shell.

In Mount Pleasant there are several confidential negotiations in process for space in a proposed development nearby. The potential users are larger retailers associated with National chains. They range in size from 26,000 square feet to over 100,000 square feet. It is difficult to gauge what rental rates are for those spaces as they are negotiating ground leases for build to suit deals.

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On interested retail user who requires about 40,000 square feet made an offer of $10.00 per square foot for a turnkey space. The developer did not counter that offer. Adjusting it for the landlord up fit indicates a rental rate for a shell of about $5.50 per square foot.

Based upon the rent comparable activity in this market, it appears that rent for the K-mart space, as a single 87,602 square foot retail shell is $7.50 per square foot. This would be on triple net terms. Therefore, potential gross income for the existing K-Mart space is $657,015 in the first year.

Market Rent – Surplus Land

The rent estimate for the K-Mart space is for the existing building plus associated parking required by zoning. Zoning requires a 4 to 1 parking ratio or 4 spaces for every 1,000 square feet of retail space. For this K-Mart space, zoning requires 350 spaces and for the local space, zoning requires 159 spaces. That is a total of 509 spaces.

K-Mart has a right to expand their building or add additional buildings on the property as long as there is sufficient parking to satisfy zoning. If this is done, the landlord has no responsibility to replace any parking affected. There is also no provision for K-Mart to pay additional rent if an expansion is made or an additional building is constructed. There are 739 spaces on-site so 230 spaces are surplus and represent land area that has potential for K-Mart to expand on or construct additional buildings.

If K-Mart expands and it affects parking, then some of the 230 surplus parking spaces would be lost so it is not reasonable to expect K-Mart to achieve 100% efficiency in an expansion or future building. Some spaces would be lost.

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A land to building ratio of 3.427 is calculated for this development if the site were fully developed given the current parking design. Using that, I tested the size of an expansion or additional building that could be constructed on this site and how much parking would be lost to the new building footprint.

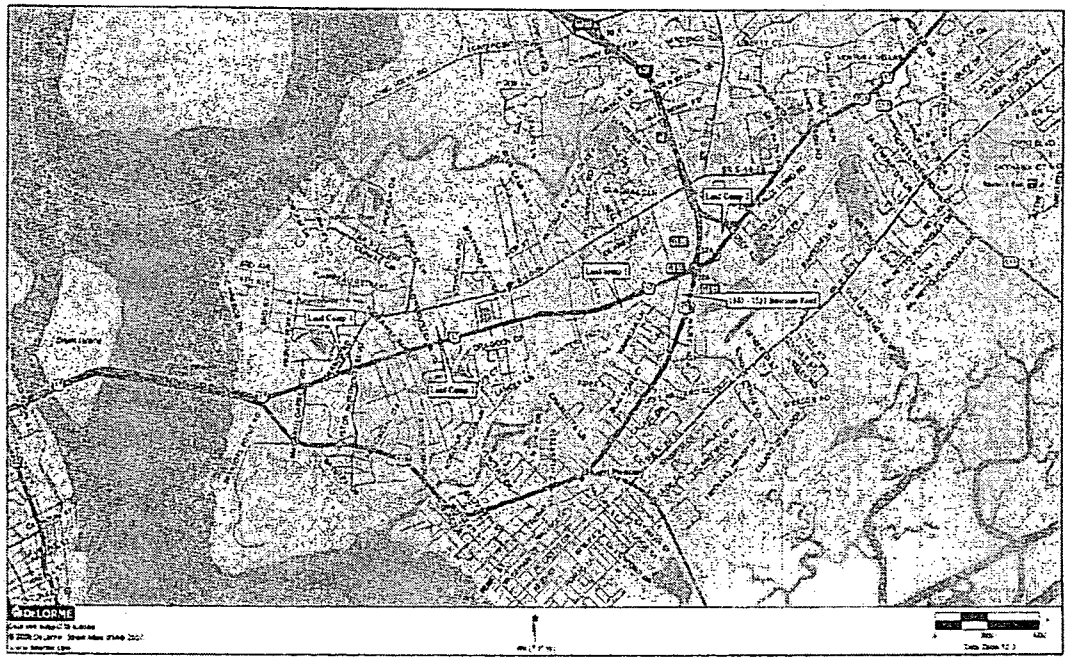
From this analysis, it appears that there is potential for 37,500 square feet of expansion or additional building area which would require 150 parking spaces while losing 70 spaces to the building or expansion area. This is demonstrated in the accompanying chart.

Future Bldg Area	# Spaces per Zoning	Land Area	Spaces Lost to Bldg	Total # Spaces
5,000	20	0.39	9	29
7,500	30	0.59	14	44
10,000	40	0.79	18	58
12,500	50	0.98	23	73
15,000	60	1.18	28	88
17,500	70	1.38	32	102
20,000	80	1.57	37	117
22,500	90	1.77	42	132
25,000	100	1.97	46	146
27,500	110	2.16	51	161
30,000	120	2.36	55	175
32,500	130	2.56	60	190
35,000	140	2.75	65	205
37,500	150	2.95	69	219
40,000	160	3.15	74	234

In order to estimate market rent for this surplus area, market value must be known as ground leases or rent for land are based upon a percentage of market value of the site. Therefore I have used a traditional sales comparison approach to estimate the market value of the 2.95 acres which supports the surplus parking and future building area.

The sales comparison approach is a process of analyzing sales of similar recently sold vacant commercial properties in order to arrive at an indication of the most probable sales price of the property appraised. Several comparables from the area were selected to compare to his area.
The comparables are discussed in detail on the following pages and the map below shows the location of these comparables in relation to this property.

Location Map



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Land Sale No. 1

Property Identification	
Record ID	3326
Property Type	2500, 2513
Address	1081 Johnnie Dodds Blvd, Mt. Pleasant, Charleston County, South Carolina 29464
Tax ID	535-00-00-014
Appraiser	006
Sale Data	
Grantor	Johnnie Dodds Redevelopment LLC
Grantee	Johnnie Dodds Ventures LLC
Sale Date	January 07, 2011
Deed Book/Page	0165/ 0387
Recorded Plat	L10 331
Property Rights	Fee Simple
Verification	Chris Fraser
Sale Price	$1,000,000
Land Data	
Zoning	Areawide Business
Topography	Level
Utilities	All Available
Shape	Rectangular
Land Size Information	
Gross Land Size	1.250 Acres or 54,450 SF
Actual/Planned Building SF	10,500
Indicators	
Sale Price/Gross Acre	$800,000
Sale Price/Gross SF	$18.37

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Remarks

This is part of a 5.0 acre tract located on the frontage road of the By-pass that was assembled for a mixed use development about 3 years ago. The mixed use concept was abandoned after the real estate market slowdown but this portion of the property is slated for medical office development.

The purchaser is a medical office developer/user and intends to construct a 10,000 to 11,000 SF medical office building. The property was listed for sale for $1,500,000 on March 1, 2010 and a contract was accepted within 30 days.

The price per SF of potential building area is $90 to $100.

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Land Sale No. 2

Property Identification	
Record ID	2757
Property Type	2500, 2514
Property Name	Former Ryans Steakhouse Property
Address	1470 Johnnie Dodds Blvd, Mt. Pleasant, Charleston County, South Carolina 29464
Tax ID	559-10-00-021
Appraiser	03
Sale Data	
Grantor	Hipp Properties Investments LLC
Grantee	NBSC
Sale Date	June 23, 2008
Deed Book/Page	B663/ 0127
Recorded Plat	EH/ 470
Property Rights	Fee Simple
Sale History	11/04/2004 sold for $2,500,000
Verification	Preston Hipp; 571-2332, May 29, 2008; Gregg Legerton, 843-725-7200, October 28, 2008
Sale Price	$4,100,000
Land Data	
Zoning	AWB, Areawide Business
Topography	Level/Wetlands
Utilities	All Available
Land Size Information	
Gross Land Size	5.570 Acres or 242,630 SF
Useable Land Size	3.145 Acres or 136,997 SF , 53.57%
Indicators	
Sale Price/ Acre	$1,303,657
Sale Price/ SF	$29.93

Remarks

This is a sale of a 5.57 acre parcel located one site from a stop lighted interchange at the entrance to the Wando Crossing shopping center. It has excellent visibility from the intersection and functions similarly to a corner site. This property is improved with a former Ryan's Streak house building which has been vacant for a number of years and has no contributory value.

This site has a total of 5.57 acres, however; the rear 2.425 acres are wetlands resulting in a usable acreage area of 3.145 acres. The property is being purchased by NBSC which has a branch approximately 1 block away. The SCDOT is reportedly taking this property for the I-526 interchange improvements, and NBSC will be relocating to this site. Obviously, the bank does not need 3.145 acres and will sell the residual land for some other commercial use with a motel being a possibility.

The current owners purchased the property for 2.5 million on 11/04/2004. The indicated appreciation rate based on this contract is 20% annually.

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Land Sale No. 3

Property Identification	
Record ID	3731
Property Type	2500, 2512
Address	Mount Pleasant, Charleston County, South Carolina 29464
Location	South Shellmore Blvd.
Tax ID	514-00-00-416
Appraiser	02
Additional Tax Map #	514-00-00-417, 418 & 419
Sale Data	
Grantor	David N. Jordan, etal
Grantee	The Porter Academy d/b/a The Porter-Gaud School
Sale Date	January 18, 2011
Deed Book/Page	0167 / 439
Recorded Plat	L11 / 0023
Property Rights	Fee Simple
Verification	Chris Anderson, Broker; May 03, 2011
Sale Price	$2,750,000
Upward Adjustment	$850,000
Adjusted Price	$3,600,000
Land Data	
Zoning	AB, Areawide Business
Topography	Level
Utilities	All Available
Shape	Irregular
Landscaping	Wooded
Land Size Information	
Gross Land Size	4.380 Acres or 190,793 SF
Front Footage	Johnnie Dodds Blvd.;South Shellmore Blvd.

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Indicators

Sale Price/Gross Acre	$821,918
Sale Price/Gross SF	$18.87

Remarks

This 4.38 acres is divided into four lots known as tax map numbers 514-00-00-416, 417, 418 & 419. The total site extends from Johnnie Dodds Blvd. to Mathis Ferry Road with an average depth of about 227 feet. The tract is located on a frontage road with no direct access to Johnnie Dodds. However, South Shellmore Blvd. has a stop lighted intersection with Johnnie Dodds that allows all turns. The seller negotiated to sell three of the lots and donated the fourth. According to the listing agent, the approximate value of the donated lot is $850,000. This is added to the price to obtain the total agreed upon value of the land. The buyer will build a new O'Quinn School on this site.

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Land Sale No. 4

Property Identification	
Record ID	2527
Property Type	2500, 2505
Address	224 Mathis Ferry Road, Mt. Pleasant, Charleston County, South Carolina
Tax ID	514-13-00-072
Appraiser	006
Additional Tax Map #	514-13-00-074
Sale Data	
Grantor	SPC MT.P., LLC
Grantee	KVH Hospitality Group, LLC
Sale Date	October 18, 2007
Deed Book/Page	S641 / 0032
Recorded Plat	EB / 521
Verification	Steve Varn, Buyer
Sale Price	$2,900,000 Deed shows $1,550,000
Adjusted Price	$2,900,000
Land Data	
Zoning	AB, Areawide Business
Land Size Information	
Gross Land Size	2.908 Acres or 126,673 SF
Planned Units	116
Indicators	
Sale Price/ Acre	$997,249
Sale Price/ SF	$22.89
Sale Price/Planned Unit	$25,000

Remarks

This is 2 adjacent sites purchased for development of a 116 room limited service Hotel. The site has a narrow configuration and there is about .75 acres available for an out parcel site. The purchaser initially attributed $900,000 to the potential out parcel site so the price paid for the land necessary for the Hotel component was$2,000,000. However, due to grand trees and the need for parking for the hotel, the total site was purchased for hotel use, at $25,000 / Key.

The deed price reflects $1,550,000, but the true sales price was cash and an interest in the purchasing LLC.

Explanation of Adjustments

Unit of Comparison – The most appropriate unit of comparison is price paid per square foot of land area. This appears to be the most common unit of comparison used by market participants.

Property Rights – All of the comparable sales involved the fee simple interest in the respective properties and no adjustments were necessary.

Financing – All of the comparables sold with market or equivalent financing and no adjustments were necessary.

Conditions of Sale – Comparable 4 involved an assemblage of four sites and the fourth was donated to the purchasing entity. The market value of that site was added as a condition of sale adjustment.

Time – A review of the immediate market indicates that properties had been appreciating at rates that range from 5% to 25% per year through 2007. In 2008 they appear to be flat and then they tended to decrease in 2009 and stabilize in 2010.

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Comparables 1 and 4 are recent so no adjustment is necessary. There is a sale of an out parcel site in Oakland which is a large retail shopping center anchored by Super Wal-Mart and Kohl's. It is located on Highway 17 North in Mount Pleasant. That site sold in November of 2006 for $1,200,000 (bank site) and then re-sold in June of 2011 for $1,075,000 (convenience store). It shows a decrease of about 2.36% per year on average from November 2006 to June 2011.

Comparable 3 is a re-sale from November 2004 when it sold for $2,500,000. The June 2008 sale at $4,100,000 indicates a nearly 20% per year appreciation rate.

Other sales and re-sales suggest significant increasing value through 2007 and flat value through 2008. Values declined in 2009 and have stabilized since then. Therefore, comparable 2 which occurred in October of 2007 was adjusted upward 10% per year through the end of 2007 and then negative 10% for the 2009 year.

Likewise, comparable 3 which occurred in 2008 was adjusted negative 10% for 2009.

Location – All 4 comparables are located in Mount Pleasant on Johnnie Dodds Boulevard and each is located either on a frontage road or on a side street. Those are similar in terms of proximity to Johnnie Dodds Boulevard as the K-Mart location.

Comparable 1 is located near the Ravenel Bridge which is the entrance to the City of Charleston. A study of properties closer to the Ravenel Bridge indicates increasing land value as compared to those further from the Bridge. This location is superior and a negative 20% adjustment is indicated.

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Corner Influence – The K-Mart property and comparables 1, 2 and 4 are similar in terms of frontage and access. Comparable 3, on the other hand, functions like a corner site as it is situated close to the traffic light at Johnnie Dodds Boulevard and Wando Crossing Way which is the primary entrance to Wando Crossing Shopping Center. A negative 30% adjustment is indicated for this characteristic.

Size – An analysis of the comparable sales indicates that larger properties typically sell for a lower unit price. Adjustments are made accordingly.

After the adjustments are made, the comparables indicate a range of value from about $14.70 per square foot to about $20.00 per square foot. Based upon this analysis, a reasonable estimate of market value of the surplus land is $19.00 per square foot or $2,440,000 rounded.

Adjustment Grid – Reference is made to the adjustment grid on the following page showing the adjustments made to the comparables.

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Surplus Land Value
Market Adjustment Chart – Before the Acquisition

TRANSACTION # -	1	2	3	4
TYPE TRANS	Sale	Sale	Sale	Sale
GRANTOR	Johnnie Dodds	SPC	Hipp	Jordan
GRANTEE	Johnnie Dodds	KVH	NBSC	The Porter
DATE	7-Jan-11	18-Oct-07	23-Jun-08	18-Jan-11
CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
PROP RIGHTS CONVEYED	Fee Simple	Fee Simple	Fee Simple	Fee Simple
ADJ FOR PROP RIGHTS	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
FINANCING	Typical	Typical	Typical	Typical
ADJ FOR FINANCING	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
CONDITIONS OF SALE ADJ	$0	$0	$0	$850,000
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$3,600,000
SIZE-SF	54,450	126,673	136,997	190,793
$/SF	$18.37	$22.89	$29.93	$18.87
	1.000	1.030	0.900	1.000
ADJUSTED CONSIDERATION	$18.37	$23.58	$26.93	$18.87
ADJ FOR PHYSCIAL DIFFERENCES - PER SF				
Location	1.00	0.80	1.00	1.00
Corner	1.00	1.00	0.70	1.00
Site Conditions	1.00	1.00	1.00	1.00
Size	0.80	1.00	1.00	1.05
TOTAL ADJUSTMENT	0.80	0.80	0.70	1.05
INDICATION/SF	$14.69	$18.86	$18.85	$19.81

		Market Value per SF	$19.00

	128,518 SF	at $19.00 per SF	$2,441,847
		Rounded to	**$2,440,000**

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In order to estimate market rent for the surplus land, a land capitalization rate should be applied against market value and the result is an indication of net rent that would be charged for a ground lease. There are several ways to estimate a land cap rate and the best was from market examples.

The Palmetto Ford site on Savannah Highway has been ground leased to the current owner for nearly 20 years. The rent for the ground lease is based upon 9% of market value. The property is re-appraised every three years to establish market rent for the next 3 years period.

There is a CVS Pharmacy located at Mount Pleasant at the corner of Ben Sawyer Boulevard and McCants Street. The site was ground leased to a developer who constructed the store and leased it to CVS Pharmacy about 6 years ago. Rent for the ground lease was established at 9% of market value.

OL Thompson Construction owns a light industrial property near the Air Port in North Charleston. It is ground leased to Valcor and the rent was established at 9% of market value.

Based upon those examples, a reasonable ground rent cap rate for the surplus land at K-Mart site is 9% of market value. Market rent for the surplus land before the taking is calculated as follows;

Market Value before Taking	**$2,440,000**
Land Cap Rate	9%
Market Rent to Excess Land	**$219,600**

Adding the market rent for the K-Mart space to market rent for the surplus land indicates potential gross income of $876,615.

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I have had conversations with several Brokers who specialize in leasing retail space to larger National chain users and a typical rent escalation over the term of a lease is $.50 per square foot every five years. Likewise, rent escalations for ground rent leases are typically 5% every 5 years. Those have been implemented in the DCF.

There is currently minimal big box retail vacancy in Mount Pleasant. In addition to that, I am aware of ongoing negotiations for five proposed big box retail pads in Mount Pleasant and there are 6 or 7 retail companies vying for the space. Understanding this and the location of this property in the center of Mount pleasant which has limited land available for future development, vacancy and credit loss is estimated at 3%.

All retail leases are essentially absolute net which places all the responsibility of payment for operating expenses related to the real estate to the tenant. Those expenses would be passed on to a ub-let tenant. A sandwich lease tenant like K-Mart would still be required to manage the real estate between the lessor and sub-lessee and there would be professional fees involved with that as well as miscellaneous expenses. The total of these is estimated to be 5%.

At the end of all renewals, the lease expires and the property owner retains ownership of all leasehold improvements so there is no income from a reversion. The sum of the net cash flow for each holding period should be discounted to present value and the sum of the net present value cash flow for each period is the market value of the leasehold interest.

A future payment is discounted to present value by calculating the amount that, if invested today, would grow with compound interest at a satisfactory rate to equal the future payment. When a series of payments is expected, each payment (net operating income) is discounted to present value and the sum of the present value indications is the present value of the investment. A discounted cash flow analysis can be utilized to estimate the present value of the investment.

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The net operating income for each year has already been estimated so the next step is to estimate a reasonable discount rate for investment of this type. In this process, expectations of market participants including buyers, sellers, advisers and brokers must be considered. While the actual return on an investment cannot be determined until the investment is sold, an investor may set a target for return on the investment before or during ownership.

Some sources of data from investments include historical rates of return abstracted from market sales, but they demonstrate past trends and do not address the future activity or forecasts. To accomplish this, the rates of return from comparable investments in today's market can be analyzed. This would include rates of return from investment in the financial markets, both long term and short term as well as rates of return from investment in real estate.

Realty Rates reports average discount rates for anchored retail properties are 8.57% to 13.25% with an average of 11.3%. Overall rates for anchored centers average 9.3%. Adding the anticipated average income increase over the holding period (about 1.27%) would suggest a discount rate of about 10.57%.

Korpac indicates an average discount rate of 8.61% with a range from 6.5% to 12.5%.
The two reports suggest a discount rate from 6.5% to 13.25% with an average of 8.6% to 9.3%. Adding the average increase in come over the holding period which reflects risk would increase the average 9.87% to 10.57%.

In order to make a comparison of those potential rates of return to the real estate investments, information on alternative investments is considered. Alternative yield comparisons from Korpacz are summarized in the following chart.

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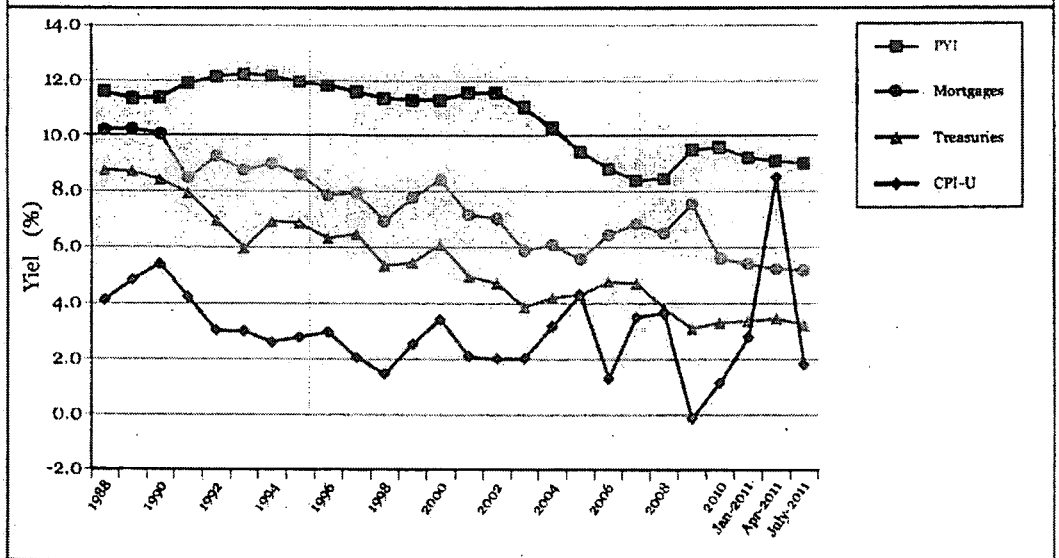
YIELD COMPARISONS
July 1, 2011

	2006 AVERAGE	2007 AVERAGE	2008 AVERAGE	2009 AVERAGE	2010 AVERAGE	2010 OCTOBER	2011 JANUARY	2011 APRIL	2011 JULY
PwC Yield Indicator (PYI)[a]	8.81%	8.41%	8.47%	9.49%	9.58%	9.32%	9.20%	9.10%	8.99%
Long-Term Mortgages[b]	6.45%	6.84%	6.50%	7.55%	5.60%	4.64%	5.41%	5.22%	5.17%
10-Year Treasuries[c]	4.76%	4.72%	3.82%	3.09%	3.31%	2.54%	3.36%	3.46%	3.22%
Consumer Price Index Change[d]	1.32%	3.50%	3.65%	(0.14%)	1.17%	1.28%	2.77%	8.51%	1.81%
SPREAD TO PYI (Basis Points)									
Long-Term Mortgages	236	157	197	194	398	468	379	388	382
10-Year Treasuries	405	369	465	640	627	678	584	564	577
Consumer Price Index Change	749	491	482	963	841	804	643	59	718

a. A composite IRR average of the markets surveyed (excluding hotels).
b. Fixed-rate mortgages; immediate funding. Source: CB Richard Ellis/L.J. Melody Capital Markets; reflects conventional funding, 70% average LTV commercial loans; fixed rates, 15-year average term.
c. Source: Federal Reserve; the annual average change is the mean of the four corresponding quarters.
d. Source: U.S. Department of Labor; quarterly changes are annualized based on the index change from the prior quarter; the annual average change is the mean of the four corresponding quarters.

COMPARATIVE YIELDS
July 1, 2011



Considering that the safest rates of return are nearing 1% to 2% and the bonds are at about 6.5%, returns sought by investors in real estate should be greater as the risk of investment increases. Based upon this information, a reasonable discount rate for this property is 10%. The discounted cash flow model is presented here.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
K-Mart Space - Market Rent / SF	$7.50	$7.50	$7.50	$7.50	$7.50	$8.00	$8.00	$8.00	$8.00	$8.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $	$657,015	$657,015	$657,015	$657,015	$657,015	$700,816	$700,816	$700,816	$700,816	$700,816
Excess Land - Market Rent	$219,600	$219,600	$219,600	$219,600	$219,600	$230,580	$230,580	$230,580	$230,580	$230,580
Total Market Rent	$876,615	$876,615	$876,615	$876,615	$876,615	$931,396	$931,396	$931,396	$931,396	$931,396
Contract Rent - $	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$648,777	$648,777	$648,777	$648,777	$648,777	$703,558	$703,558	$703,558	$703,558	$703,558
Less Vacancy @ 3%	($19,463)	($19,463)	($19,463)	($19,463)	($19,463)	($21,107)	($21,107)	($21,107)	($21,107)	($21,107)
Effective Gross Income - Leasehold	$629,314	$629,314	$629,314	$629,314	$629,314	$682,451	$682,451	$682,451	$682,451	$682,451
Less Operating Expenses @ 5%	($31,466)	($31,466)	($31,466)	($31,466)	($31,466)	($34,123)	($34,123)	($34,123)	($34,123)	($34,123)
NOI - Leasehold Interest	$597,848	$597,848	$597,848	$597,848	$597,848	$648,329	$648,329	$648,329	$648,329	$648,329
Discount Rate @ 10%	0.90909	0.82645	0.75131	0.68301	0.62092	0.56447	0.51316	0.46651	0.42410	0.38554
Net Present Value	$543,498	$494,089	$449,172	$408,338	$371,217	$365,965	$332,695	$302,450	$274,955	$249,959

	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
K-Mart Space - Market Rent / SF	$8.50	$8.50	$8.50	$8.50	$8.50	$9.00	$9.00	$9.00	$9.00	$9.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $	$744,617	$744,617	$744,617	$744,617	$744,617	$788,418	$788,418	$788,418	$788,418	$788,418
Excess Land - Market Rent	$242,109	$242,109	$242,109	$242,109	$242,109	$254,214	$254,214	$254,214	$254,214	$254,214
Total Market Rent	$986,726	$986,726	$986,726	$986,726	$986,726	$1,042,632	$1,042,632	$1,042,632	$1,042,632	$1,042,632
Contract Rent - $	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$758,888	$758,888	$758,888	$758,888	$758,888	$814,794	$814,794	$814,794	$814,794	$814,794
Less Vacancy @ 3%	($22,767)	($22,767)	($22,767)	($22,767)	($22,767)	($24,444)	($24,444)	($24,444)	($24,444)	($24,444)
Effective Gross Income - Leasehold	$736,121	$736,121	$736,121	$736,121	$736,121	$790,351	$790,351	$790,351	$790,351	$790,351
Less Operating Expenses @ 5%	($36,806)	($36,806)	($36,806)	($36,806)	($36,806)	($39,518)	($39,518)	($39,518)	($39,518)	($39,518)
NOI - Leasehold Interest	$699,315	$699,315	$699,315	$699,315	$699,315	$750,833	$750,833	$750,833	$750,833	$750,833
Discount Rate @ 10%	0.35049	0.31863	0.28966	0.26333	0.23939	0.21763	0.19784	0.17986	0.16351	0.14864
Net Present Value	$245,106	$222,823	$202,567	$184,152	$167,411	$163,403	$148,548	$135,044	$122,767	$111,607

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	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
K-Mart Space - Market Rent / SF	$9.50	$9.50	$9.50	$9.50	$9.50	$10.00	$10.00	$10.00	$10.00	$10.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $	$832,219	$832,219	$832,219	$832,219	$832,219	$876,020	$876,020	$876,020	$876,020	$876,020
Excess Land - Market Rent	$266,925	$266,925	$266,925	$266,925	$266,925	$280,271	$280,271	$280,271	$280,271	$280,271
Total Market Rent	$1,099,144	$1,099,144	$1,099,144	$1,099,144	$1,099,144	$1,156,291	$1,156,291	$1,156,291	$1,156,291	$1,156,291
Contract Rent - $	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$871,306	$871,306	$871,306	$871,306	$871,306	$928,453	$928,453	$928,453	$928,453	$928,453
Less Vacancy @ 3%	($26,139)	($26,139)	($26,139)	($26,139)	($26,139)	($27,854)	($27,854)	($27,854)	($27,854)	($27,854)
Effective Gross Income - Leasehold	$845,167	$845,167	$845,167	$845,167	$845,167	$900,600	$900,600	$900,600	$900,600	$900,600
Less Operating Expenses @ 5%	($42,258)	($42,258)	($42,258)	($42,258)	($42,258)	($45,030)	($45,030)	($45,030)	($45,030)	($45,030)
NOI - Leasehold Interest	$802,909	$802,909	$802,909	$802,909	$802,909	$855,570	$855,570	$855,570	$855,570	$855,570
Discount Rate @ 10%	0.13513	0.12285	0.11168	0.10153	0.09230	0.08391	0.07628	0.06934	0.06304	0.05731
Net Present Value	$108,498	$98,634	$89,667	$81,516	$74,105	$71,787	$65,261	$59,328	$53,935	$49,031

	Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37	Year 38	Year 39	Year 40
K-Mart Space - Market Rent / SF	$10.50	$10.50	$10.50	$10.50	$10.50	$11.00	$11.00	$11.00	$11.00	$11.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $	$919,821	$919,821	$919,821	$919,821	$919,821	$963,622	$963,622	$963,622	$963,622	$963,622
Excess Land - Market Rent	$294,285	$294,285	$294,285	$294,285	$294,285	$308,999	$308,999	$308,999	$308,999	$308,999
al Market Rent	$1,214,106	$1,214,106	$1,214,106	$1,214,106	$1,214,106	$1,272,621	$1,272,621	$1,272,621	$1,272,621	$1,272,621
Contract Rent - $	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$986,268	$986,268	$986,268	$986,268	$986,268	$1,044,783	$1,044,783	$1,044,783	$1,044,783	$1,044,783
Less Vacancy @ 3%	($29,588)	($29,588)	($29,588)	($29,588)	($29,588)	($31,343)	($31,343)	($31,343)	($31,343)	($31,343)
Effective Gross Income - Leasehold	$956,680	$956,680	$956,680	$956,680	$956,680	$1,013,440	$1,013,440	$1,013,440	$1,013,440	$1,013,440
Less Operating Expenses @ 5%	($47,834)	($47,834)	($47,834)	($47,834)	($47,834)	($50,672)	($50,672)	($50,672)	($50,672)	($50,672)
NOI - Leasehold Interest	$908,846	$908,846	$908,846	$908,846	$908,846	$962,768	$962,768	$962,768	$962,768	$962,768
Discount Rate @ 10%	0.05210	0.04736	0.04306	0.03914	0.03558	0.03235	0.02941	0.02673	0.02430	0.02209
Net Present Value	$47,350	$43,045	$39,132	$35,575	$32,340	$31,145	$28,313	$25,739	$23,400	$21,272

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		Year 41	Year 42	10 months
K-Mart Space - Market Rent / SF		$11.50	$11.50	$11.50
K - Mart - Building Area		87,602	87,602	87,602
K-Mart Space - Market Rent - $		$1,007,423	$1,007,423	$839,519
Excess Land - Market Rent		$324,449	$324,449	$270,374
Total Market Rent		$1,331,872	$1,331,872	$1,109,894
Contract Rent - $		$227,838	$227,838	$227,838
Cash Flow to Leasehold		$1,104,034	$1,104,034	$882,056
Less Vacancy @	3%	($33,121)	($33,121)	($26,462)
Effective Gross Income - Leasehold		$1,070,913	$1,070,913	$855,594
Less Operating Expenses @	5%	($53,546)	($53,546)	($42,780)
NOI - Leasehold Interest		$1,017,368	$1,017,368	$812,814
Discount Rate @	10%	0.02009	0.01826	0.01660
Net Present Value		$20,435	$18,577	$13,493

Market Value Leasehold Interest	$6,627,343
Rounded to	$6,630,000

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MARKET VALUE OF LEASEHOLD INTEREST – After taking

The next step in this appraisal is to estimate the leasehold interest "after taking". In order to accomplish this, it is necessary to describe the changes and any affects they may have on this property.

Description of Acquisition

A portion of a Town of Mount Pleasant Road Design plan for this project on which this property is depicted was utilized to visualize this property after acquisition. According to the plans, the acquisition consists of .686 acres or 29,882 square feet. Of that area, about 9,721 square feet is wetlands in the headwater of Shem Creek so the highland area taken is .462 acres or about 20,161 square feet.

The area taken is situated along Bowman Road. It contains 57 parking spaces and landscaping. The acquisition has a depth ranging from about 16' to about 17.5'. There are two sections that jog into the property at greater depths.

Copies of portions of the Road Design Plans are included here:

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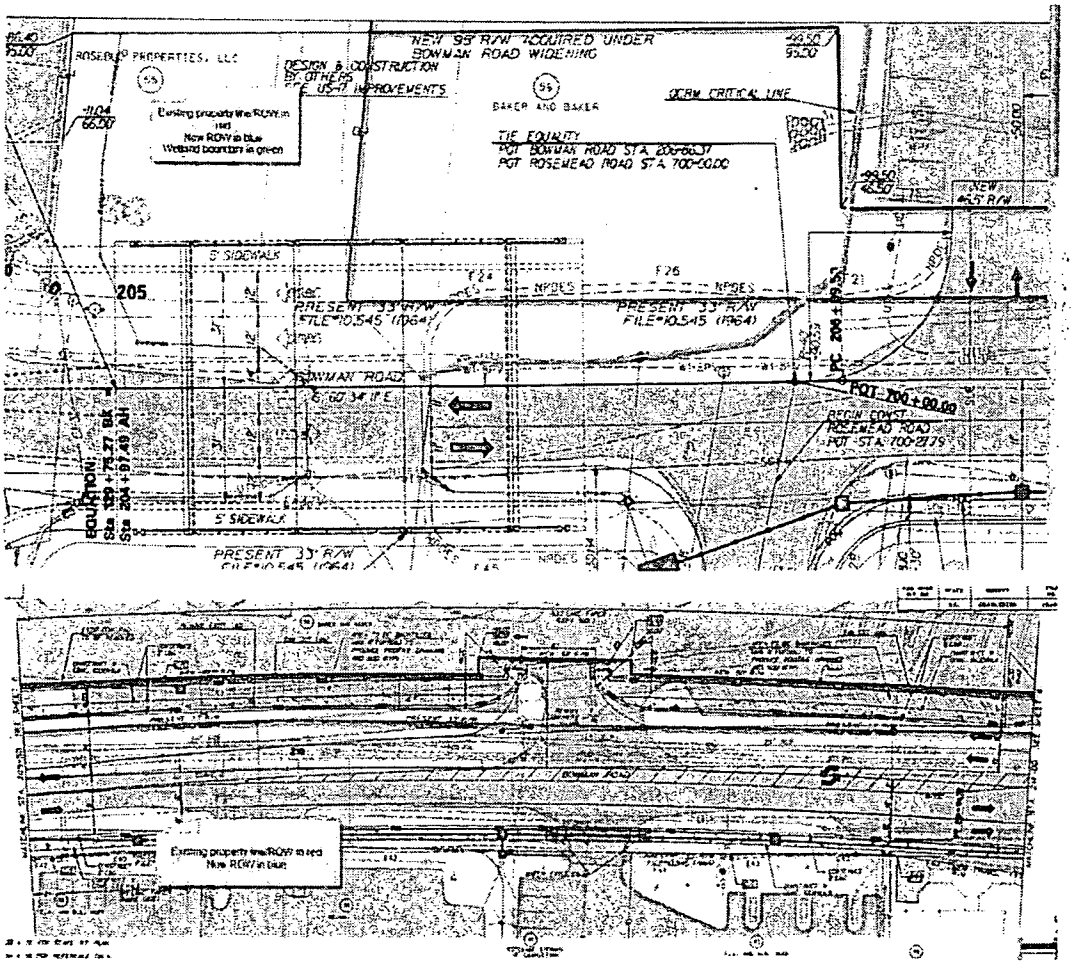
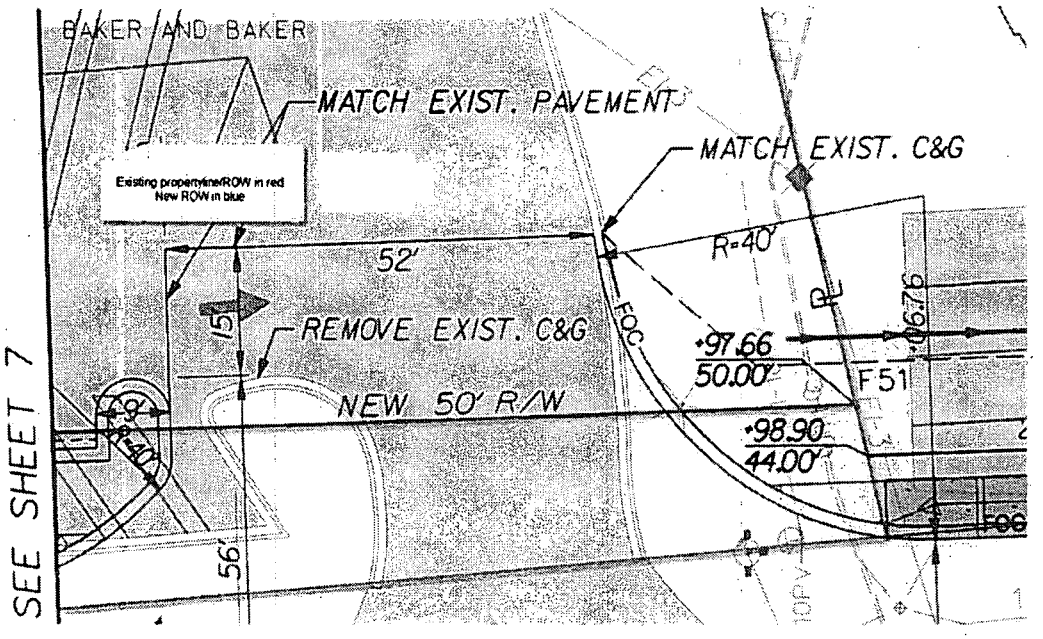
Road Plan


NEW 99' R/W REQUIRED UNDER
BOWMAN ROAD WIDENING
ROSEMEAD PROPERTIES, LLC
DESIGN & CONSTRUCTION
BY OTHERS
FOR US-17 IMPROVEMENTS
BAKER AND BAKER
OCRM CRITICAL LINE
TIE EQUALITY
POT BOWMAN ROAD STA 200+60.37
POT ROSEMEAD ROAD STA 700+00.00
Existing property line/ROW in red
and
New ROW in blue
Wetland boundary in green
5' SIDEWALK
205
PRESENT 33' R/W
FILE #10,545 (1964)
BOWMAN ROAD
5' SIDEWALK
EQUATION
Sta 199 + 75.27 Bk
Sta 204 + 01.49 Ah
POT 700+00.00
BEGIN CONST.
ROSEMEAD ROAD
POT STA 700+27.79
NEW 45' R/W
Existing property line/ROW in red
New ROW in blue



Description of the Remainder & Highest and Best Use – Assuming the Site is Vacant

The property remaining after the acquisition consists of 12.50 acres of highland and the on-site parking is reduced to 682 spaces. Since no parking is designated, the reduction in spaces affects the future development potential for K-Mart to construct additional space.

As demonstrated earlier, zoning requires 509 on-site parking spaces for K-Mart and the in-line space. 350 of those spaces are required for K-Mart and 159 spaces are required for the in-line space. The remaining spaces total 173 spaces which is a reduction of 57 from the number before the taking.

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Since K-Mart has a right by lease to expand the building pad or build additional buildings and that space can cover the existing surplus parking, the potential future square footage is reduced by the loss of 57 on-site spaces.

I have used the same formula to estimate the potential future area for K-Mart to expand or construct new building and it is shown in the accompanying chart.

Bldg Area	# Spaces Needed	Land Area	Spaces Lost to Bldg	# Spaces in Total
5,000	20	0.39	8.81	28.81
7,500	30	0.59	13.21	43.21
10,000	40	0.79	17.62	57.62
12,500	50	0.98	22.02	72.02
15,000	60	1.18	26.42	86.42
17,500	70	1.38	30.83	100.83
20,000	80	1.57	35.23	115.23
22,500	90	1.77	39.64	129.64
25,000	100	1.97	44.04	144.04
27,500	110	2.16	48.44	158.44
30,000	120	2.36	52.85	172.85

As you can see, the potential area for future expansion or new construction is reduced to 30,000 square feet after the taking. The potential future area before the taking was 37,500 square feet so the taking of 57 parking spaces reduces the future potential area by 7,500 square feet.

MARKET VALUE - LEASEHOLD INTEREST - After the Taking

The same analysis is applied to the market value of the leasehold interest after the taking as was applied in the market value of the leasehold interest before the taking.

Market rent for the K-Mart space and contract rent remain unchanged after the taking. Therefore, market rent is $657,015 or $7.50 per square foot for the K-Mart and parking required by zoning.

Market rent for the surplus land will be less because of the loss of 7,500 square feet of potential future space. In order to estimate the loss from this, I have re-appraised the surplus land site using the same comparables as in the before taking analysis. The market adjustment grid is shown here.

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Surplus Land Value
Market Adjustment Chart – After the Acquisition

TRANSACTION # -	1	2	3	4
TYPE TRANS	Sale	Sale	Sale	Sale
GRANTOR	Johnnie Dodds	SPC	Hipp	Jordan
GRANTEE	Johnnie Dodds	KVH	NBSC	The Porter
DATE	7-Jan-11	18-Oct-07	23-Jun-08	18-Jan-11
CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
PROP RIGHTS CONVEYED	Fee Simple	Fee Simple	Fee Simple	Fee Simple
ADJ FOR PROP RIGHTS	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
FINANCING	Typical	Typical	Typical	Typical
ADJ FOR FINANCING	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
CONDITIONS OF SALE ADJ	$0	$0	$0	$850,000
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$3,600,000
SIZE-SF	54,450	126,673	136,997	190,793
$/SF	$18.37	$22.89	$29.93	$18.87
	1.000	1.030	0.900	1.000
ADJUSTED CONSIDERATION	$18.37	$23.58	$26.93	$18.87
ADJ FOR PHYSCIAL DIFFERENCES - PER SF				
Location	1.00	0.80	1.00	1.00
Corner	1.00	1.00	0.70	1.00
Site Conditions	1.00	1.00	1.00	1.00
Size	0.80	1.00	1.00	1.05
TOTAL ADJUSTMENT	0.80	0.80	0.70	1.05
INDICATION/SF	$14.69	$18.86	$18.85	$19.81

		Market Value per SF	$19.00
102,815 SF	at $19.00 per SF		$1,953,478
	Rounded to		$1,955,000

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A reasonable ground rent cap rate for the surplus land at K-Mart site is 9% of market value. Market rent for the surplus land after the taking is calculated as follows;

Market Value before Taking	**$1,955,000**
Land Cap Rate	9%
Market Rent to Excess Land	**$175,950**

Adding the market rent for the K-Mart space to market rent for the surplus land indicates potential gross income of $832,965.

A similar DCF analysis is made with the same assumptions as in the before taking analysis. The DCF model is presented here.

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		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
K-Mart Space - Market Rent / SF		$7.50	$7.50	$7.50	$7.50	$7.50	$8.00	$8.00	$8.00	$8.00	$8.00
K - Mart - Building Area		87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $		$657,015	$657,015	$657,015	$657,015	$657,015	$700,816	$700,816	$700,816	$700,816	$700,816
Excess Land - Market Rent		$175,950	$175,950	$175,950	$175,950	$175,950	$184,748	$184,748	$184,748	$184,748	$184,748
Total Market Rent		$832,965	$832,965	$832,965	$832,965	$832,965	$885,564	$885,564	$885,564	$885,564	$885,564
Contract Rent - $		$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold		$605,127	$605,127	$605,127	$605,127	$605,127	$657,726	$657,726	$657,726	$657,726	$657,726
Less Vacancy @	3%	($18,154)	($18,154)	($18,154)	($18,154)	($18,154)	($19,732)	($19,732)	($19,732)	($19,732)	($19,732)
Effective Gross Income - Leasehold		$586,973	$586,973	$586,973	$586,973	$586,973	$637,994	$637,994	$637,994	$637,994	$637,994
Less Operating Expenses @	5%	($29,349)	($29,349)	($29,349)	($29,349)	($29,349)	($31,900)	($31,900)	($31,900)	($31,900)	($31,900)
NOI - Leasehold Interest		$557,625	$557,625	$557,625	$557,625	$557,625	$606,094	$606,094	$606,094	$606,094	$606,094
Discount Rate @	10%	0.90909	0.82645	0.75131	0.68301	0.62092	0.56447	0.51316	0.46651	0.42410	0.38554
Net Present Value		$506,931	$460,847	$418,952	$380,865	$346,241	$342,124	$311,022	$282,747	$257,043	$233,675

		Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
K-Mart Space - Market Rent / SF		$8.50	$8.50	$8.50	$8.50	$8.50	$9.00	$9.00	$9.00	$9.00	$9.00
K - Mart - Building Area		87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $		$744,617	$744,617	$744,617	$744,617	$744,617	$788,418	$788,418	$788,418	$788,418	$788,418
Excess Land - Market Rent		$193,985	$193,985	$193,985	$193,985	$193,985	$203,684	$203,684	$203,684	$203,684	$203,684
Total Market Rent		$938,602	$938,602	$938,602	$938,602	$938,602	$992,102	$992,102	$992,102	$992,102	$992,102
Contract Rent - $		$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold		$710,764	$710,764	$710,764	$710,764	$710,764	$764,264	$764,264	$764,264	$764,264	$764,264
Less Vacancy @	3%	($21,323)	($21,323)	($21,323)	($21,323)	($21,323)	($22,928)	($22,928)	($22,928)	($22,928)	($22,928)
Effective Gross Income - Leasehold		$689,441	$689,441	$689,441	$689,441	$689,441	$741,336	$741,336	$741,336	$741,336	$741,336
Less Operating Expenses @	5%	($34,472)	($34,472)	($34,472)	($34,472)	($34,472)	($37,067)	($37,067)	($37,067)	($37,067)	($37,067)
NOI - Leasehold Interest		$654,969	$654,969	$654,969	$654,969	$654,969	$704,269	$704,269	$704,269	$704,269	$704,269
Discount Rate @	10%	0.35049	0.31863	0.28966	0.26333	0.23939	0.21763	0.19784	0.17986	0.16351	0.14864
Net Present Value		$239,563	$208,693	$189,721	$172,474	$156,794	$153,270	$139,336	$126,669	$115,154	$104,685

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		Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Ye
K-Mart Space - Market Rent / SF		$9.50	$9.50	$9.50	$9.50	$9.50	$10.00	$10.00	$10.00	$10.00	$1
K - Mart - Building Area		87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87
K-Mart Space - Market Rent - $		$832,219	$832,219	$832,219	$832,219	$832,219	$876,020	$876,020	$876,020	$876,020	$87
Excess Land - Market Rent		$213,868	$213,868	$213,868	$213,868	$213,868	$224,562	$224,562	$224,562	$224,562	$22
Total Market Rent		$1,046,087	$1,046,087	$1,046,087	$1,046,087	$1,046,087	$1,100,582	$1,100,582	$1,100,582	$1,100,582	$1,1
Contract Rent - $		$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$22
Cash Flow to Leasehold		$818,249	$818,249	$818,249	$818,249	$818,249	$872,744	$872,744	$872,744	$872,744	$87
Less Vacancy @	3%	($24,547)	($24,547)	($24,547)	($24,547)	($24,547)	($26,182)	($26,182)	($26,182)	($26,182)	($2
Effective Gross Income - Leasehold		$793,702	$793,702	$793,702	$793,702	$793,702	$846,561	$846,561	$846,561	$846,561	$84
Less Operating Expenses @	5%	($39,685)	($39,685)	($39,685)	($39,685)	($39,685)	($42,328)	($42,328)	($42,328)	($42,328)	($4
NOI - Leasehold Interest		$754,017	$754,017	$754,017	$754,017	$754,017	$804,233	$804,233	$804,233	$804,233	$80
Discount Rate @	10%	0.13513	0.12285	0.11168	0.10153	0.09230	0.08391	0.07628	0.06934	0.06304	0.0
Net Present Value		$101,891	$92,628	$84,207	$76,552	$69,593	$67,480	$61,345	$55,768	$50,698	$46

		Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37	Year 38	Year 39	Ye
K-Mart Space - Market Rent / SF		$10.50	$10.50	$10.50	$10.50	$10.50	$11.00	$11.00	$11.00	$11.00	$1
K - Mart - Building Area		87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87
K-Mart Space - Market Rent - $		$919,821	$919,821	$919,821	$919,821	$919,821	$963,622	$963,622	$963,622	$963,622	$96
Excess Land - Market Rent		$235,790	$235,790	$235,790	$235,790	$235,790	$247,579	$247,579	$247,579	$247,579	$24
Total Market Rent		$1,155,611	$1,155,611	$1,155,611	$1,155,611	$1,155,611	$1,211,201	$1,211,201	$1,211,201	$1,211,201	$1,21
Contract Rent - $		$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$22
Cash Flow to Leasehold		$927,773	$927,773	$927,773	$927,773	$927,773	$983,363	$983,363	$983,363	$983,363	$98
Less Vacancy @	3%	($27,833)	($27,833)	($27,833)	($27,833)	($27,833)	($29,501)	($29,501)	($29,501)	($29,501)	($29
Effective Gross Income - Leasehold		$899,940	$899,940	$899,940	$899,940	$899,940	$953,862	$953,862	$953,862	$953,862	$95
Less Operating Expenses @	5%	($44,997)	($44,997)	($44,997)	($44,997)	($44,997)	($47,693)	($47,693)	($47,693)	($47,693)	($47
NOI - Leasehold Interest		$854,943	$854,943	$854,943	$854,943	$854,943	$906,169	$906,169	$906,169	$906,169	$90
Discount Rate @	10%	0.05210	0.04736	0.04306	0.03914	0.03558	0.03235	0.02941	0.02673	0.02430	0.0
Net Present Value		$44,541	$40,492	$36,811	$33,465	$30,422	$29,314	$26,649	$24,226	$22,024	$20

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		Year 41	Year 42	10 months
K-Mart Space - Market Rent / SF		$11.50	$11.50	$11.50
K - Mart - Building Area		87,602	87,602	87,602
K-Mart Space - Market Rent - $		$1,007,423	$1,007,423	$839,519
Excess Land - Market Rent		$259,958	$259,958	$216,632
Total Market Rent		$1,267,381	$1,267,381	$1,056,151
Contract Rent - $		$227,838	$227,838	$227,838
Cash Flow to Leasehold		$1,039,543	$1,039,543	$828,313
Less Vacancy @	3%	($31,186)	($31,186)	($24,849)
Effective Gross Income - Leasehold		$1,008,357	$1,008,357	$803,464
Less Operating Expenses @	5%	($50,418)	($50,418)	($40,173)
NOI - Leasehold Interest		$957,939	$957,939	$763,290
Discount Rate @	10%	0.02009	0.01826	0.01660
Net Present Value		$19,241	$17,492	$12,671

Market Value Leasehold Interest	$6,200,429
Rounded to	$6,200,000

RECONCILIATION

The difference between the market value of the leasehold interest before the taking and the market value of the leasehold interest after the taking is the loss in leasehold interest value as a result of the taking. The calculation is shown here.

Market Value of Leashold Before Taking	$6,630,000
Market Value of Leashold After Taking	$6,200,000
Loss in Value as a Result of the Taking	$430,000

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CERTIFICATION

The appraiser hereby certifies that Atlantic Appraisals, LLC was engaged to appraise the market value of the leasehold interest in the following real property, as of December 12, 2011:

1545 – 1551 Bowman Road
Mount Pleasant, South Carolina

The property was inspected by Pledger M. Bishop III, MAI, SRA several times between December 5, 2011 and December 12, 2011.

Neither Atlantic Appraisals, LLC nor the signatories of this Certification, have any present or contemplated future interest in the real estate that is the subject of this report.

The appraiser(s) have no personal interest or bias with respect to the subject matter of this report or to the parties involved other than as an unbiased advisor to the client. The reported analyses, opinions and conclusions are limited only by the special and General Assumptions and General Limiting Conditions set forth in this report.

To the best of the appraiser(s) knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct. No one other than the signatories of this Certification prepared the analyses, conclusions and opinions concerning the real estate set forth in this report.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Pledger M. Bishop, III, MAI, SRA has completed the requirements of the continuing education program of the Appraisal Institute.

I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of The Appraisal Institute.

I certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives.

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The compensation for this appraisal is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

Based on the appraiser's investigation, analysis and conclusions, an opinion has been formed that the market value of the leasehold interest, as of December 12, 2011:

Market Value of Leasehold Interest - Before the Taking

SIX MILLION SIX HUNDRED THIRTY THOUSAND DOLLARS

$6,630,000

Market Value of Leasehold Interest - After the Taking

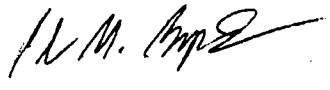
SIX MILLION TWO HUNDRED THOUSAND DOLLARS

$6,200,000

Loss in Leasehold Interest Value

FOUR HUNDRED THIRTY THOUSAND DOLLARS

$430,000



Pledger M. Bishop, III, MAI, SRA
State Certified General Real Estate Appraiser
Certification No. CG795

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GENERAL UNDERLYING ASSUMPTIONS

This appraisal report has been made with, and is subject to, the following general assumptions:

That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.

That the definition of value together with other definitions and assumptions on which our analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included in their entirety.

The property is considered to be free of all liens and encumbrances.

That the facts, estimates and opinions furnished to the appraisers by others and contained in this report are considered to be from reliable sources and, where feasible, have been verified. However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.

All engineering and/or surveys are assumed to be correct. The sketches, plot plans and drawings included in the report are included only to assist the reader in visualizing the property.

It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property which would render them more or less valuable.

Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances. The presence of potentially dangerous or hazardous materials, gases, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicted on the assumption that there is no such element on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.

It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.

It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined, and considered in the appraisal report.

It is assumed that all required licenses, certificates of occupancy, legislative or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

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GENERAL LIMITING CONDITIONS

This appraisal report has been made with, and is subject to, the following General Limiting Conditions:

The appraisers, by reason of this appraisal report, are not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.

The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.

Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent and approval of the appraiser(s).

Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.

This appraisal report has been prepared for the exclusive benefit of the stated client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk.

The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report.

Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

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QUALIFICATIONS OF THE APPRAISER

Pledger M. Bishop III, MAI, SRA, CRE

EDUCATION

Graduate of University of South Carolina, 1984 - B.S. Degree Finance & Insurance
Graduate of Porter-Gaud High School, 1979

PROFESSIONAL AFFILIATIONS

CRE – The Counselors of Real Estate 2003
MAI Designation - Appraisal Institute 1995
SRA Designation - Appraisal Institute 1989

South Carolina State Certified General Real Estate Appraiser #CG795

2011 Immediate Past President - SC State Chapter of the Appraisal Institute
2010 President - SC State Chapter of the Appraisal Institute
2009 1st Vice President - SC State Chapter of the Appraisal Institute
2008 2nd Vice President - SC State Chapter of the Appraisal Institute
2007 Treasurer - SC State Chapter of the Appraisal Institute
2006 Secretary - SC State Chapter of the Appraisal Institute

Member of the Appraisal Institute General Demonstration Report Grading Panel
2011 – 2012 Member of the Appraisal Institute Admissions Designations Qualifications Committee
2009 – 2010 Member of the Appraisal Institute Admissions Designations Qualifications Committee
Selected as Discussion Leader for Appraisal Institute 2005 Leadership Development and Advisory Council Conference

Member Charleston Trident Board of Realtors
Former Member of Board of Directors for Charleston Trident MLS
Former Member of Charleston Trident Board of Realtors Professional Standards Committee
Former Chairman Charleston Trident Board of Realtors Grievance Committee

Former Member Charleston County Board of Assessment Appeals
Recognized as an Expert Witness in various Courts of Law

Elder Mount Pleasant Presbyterian Church
Member Rotary Club of Mount Pleasant

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SPECIAL EDUCATION

Appraisal Institute:

Advanced Spreadsheet Modeling for Valuation Applications, May 2011
The Lending World in Crisis: What Clients Need Their Appraisers to Know, January 2011
Residential Design: The Makings of a Good House, June 2010
National USPAP Update, May 2010
Spotlight on USPAP: Appraisal Review, April 2010
Appraising Distressed Commercial Real Estate: Here We Go again, January 2010
Spotlight on USPAP: Agreement for Services-Instructions, January 2010
The Lender's Perspective; The Role of the Appraiser in the Lending Process, July 2009
Business Practice and Ethics, May 2009
National USPAP Update, June 2008
Analyzing Distressed Real Estate, January 2008
Spotlight on USPAP: Hypothetical Conditions & Extraordinary Assumptions, Oct 2007
The Valuation of Wetlands, July 2007
Analytics with the Site to Do Business, April 2007
Forecasting Revenue, March 2007
National USPAP Update, May 2006
Small Hotel/Motel Valuation: Appraising Limited Service Lodging Facilities, January 2006
Real Estate Investment and Development, January 2006
AI Leadership Development Advisory Council Conference, March 2005
AI Instructor Leadership Development Conference, November 2004
An Appraisers Primer to the International Building Code, April 2004
AI Leadership Development & Advisory Council Meeting, April 2004
Crossing the Line: Home Mortgage Fraud, January 2004
Business Practice and Ethics, May 2003
The National USPAP Update, May 2003
Establishing the Worth of an Appraisal to Your Client, April 2003
AI Leadership Development & Advisory Council Meeting, April 2003
AI Leadership Development & Advisory Council Meeting, April 2002
Appraisal Review, General, January 2001
Eminent Domain and Condemnation, January 2001
Introduction to Appraising for Conservation Easements, January 2001
Supporting Sales Comparison Approach Adjustments, January 2000
Cost Approach Applications, January 2000
Standards of Professional Practice Part C, May 1999
Residential Consulting, January 1999
USPAP in Cross Examination, January 1999
Understanding New Trends in Quality Appraisal Production, October 1998
Appraising Historic Properties, May 1998
Appraising High Value and Historic Homes, January 1998

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Appraisal Institute (cont)
Standards of Professional Practice Part A, March, 1996
Maximizing the Value of an Appraisal Practice, July 1995
Comprehensive Appraisal Exam, August 1994
Comprehensive Appraisal Workshop, August 1994
Commercial Demonstration Appraisal Report, June 1994
Advanced Applications - Court 550, November 1993
Report Writing & Valuation Analysis, Course 540 - March 1993
Standards of Professional Practice Parts A & B, May 1991
Real Estate Risk Analysis, February 1991

American Institute of Real Estate Appraisers:
Course A: Capitalization and Theory Techniques, July 1988
Course B: Capitalization and Theory Techniques, July 1988
Course 1: Real Estate Appraisal & Principles, February 1984
Course II: Basic Valuation Procedures, February 1984

Society of Real Estate Appraisers
Residential Demonstration Appraisal Report, March 1989
Casualty Loss Appraisal Seminar, October, 1989
Standards of Professional Practice Seminar, February 16, 1989
Course 102: Applied Residential Property Valuation, Challenge Exam, October, 1988
Residential Narrative Report Seminar, January 15-16, 1988
Federal Home Loan Bank Board Regulation R41C Seminar, 03/87

International Association of Assessing Officials:
Course II: The Income Approach to Valuation, July 31-August 5, 1985

Other
Author of Seminar "SC Property Tax Reform Act 2006 – It's affect on Market Value"
Author of Seminar "Appraising Historic Homes"
Speaker at Northern California Chapter of Appraisal Institute's Education Conference Fall 2005
CLE Eminent Domain Conference, February 2005
Guest Speaker - Appraising and Marketing Historic Properties, February 2002
May 2000 & May 1999
Guest Speaker at various seminars on Conservation Easements & Appraising Historic Properties

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EMPLOYMENT

Present Partner - Atlantic Appraisals, LLC

1990 - 1996 Atlantic Appraisals, Associated with Charles F. Middleton, MAI, Christopher D. Donato, MAI, G. Hammond Bamberg, III, MAI, and Gary L. Pruitt, MAI, as independent fee appraiser

1986 - 1990 Appraisal Consultants, Inc., Associated with A. Palmer Owings, MAI, and Charles F. Middleton, MAI, as independent fee appraiser

1983 - 1986 Charleston County Assessors Office, Charleston, S.C. Appraising real estate, beginning as Appraisal Assistant and advancing to Senior Staff Appraiser. Appraisal assignments covered many types of properties, condominiums and vacant land.

PARTIAL LIST OF CLIENTS

BB & T
Wachovia National Bank
Mortgage Guaranty Insurance Corporation
National Bank of South Carolina
Community First Bank
Thomas H. Brush, Esquire
Banks Construction
Wachovia Mortgage
Atlantic Services Group
Barkley Enterprises
SC Dept of Transportation
Smith and Collins, PA
SC State Budget and Control Board
Heritage Trust Federal Credit Union
MeadWestvaco Corporation
Christopher L. Murphy, Esquire
Joseph Qualey, Esquire
Robert Mozingo, Esquire
First Reliance Bank
Haynesworth, Sinkler, Boyd P.A.
Nelson, Mullins, Riley, & Scarborough LLP
First Federal of Charleston
T.D. Bank
Bank of America
SC Bank and Trust
Tidelands Bank
South Carolina Electric & Gasoline Co.
Southcoast Community Bank
Bank of America Mortgage Corporation
Professional Mortgage Company
The Nature Conservancy
McAlister Development, Inc
Ann Stirling, Esquire
Regions Bank
Alex Cash, Esquire
RBC Centura Bank
Stanley C. Rogers, Esquire
Richard D. Bybee, Esquire
South Carolina Bank and Trust
Palmetto First Bank
Ogletree, Deakins, Nash, Smoak & Stewart
Nexen, Pruitt, LLC

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ADDENDA

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EXHIBIT E:

Jody Bishop Deposition and Deposition Exhibit 9

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF PLEDGER M. BISHOP, III, MAI, SRA, CRE

TOWN OF MT. PLEASANT, SOUTH CAROLINA,
Condemnor,
vs. CASE NO. 11-CP-10-4324
BOWMAN MTP CENTER, LLC,
Landowner,
And
NBSC, a Division of Synovus Bank,
Other Condemnee.

DEPONENT: PLEDGER M. BISHOP, III, MAI, SRA, CRE

DATE: SEPTEMBER 10, 2012

TIME: 10:00 AM

LOCATION: SMITH BUNDY BYBEE & BARNETT
1037 Chuck Dawley Boulevard
Mount Pleasant, South Carolina

REPORTED BY: J. LYNN CLARK, CSR(Iowa) RPR-CP
NCRA REGISTERED MERIT REPORTER
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Lynn@Clark-Associates.com

APPEARANCES

ON BEHALF OF CONDEMNOR:
STUCKEY LAW FIRM
BY: CHRISTOPHER L. MURPHY
123 Meeting Street
Charleston, SC 29401

ON BEHALF OF LANDOWNER:
SMITH BUNDY BYBEE & BARNETT
BY: RICHARD D. BYBEE
1037 Chuck Dawley Boulevard
Building F
Mount Pleasant, SC 29464

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PLEDGER M. BISHOP, III, MAI, SRA, CRE, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BYBEE:

Q. Jody, you've been through this a number of times with me before.

A. Yes.

Q. If I ask a question you don't understand, I don't want you to answer it. I want you to tell me you don't understand it, and I will rephrase it. Please direct your questions to me, not to Mr. Murphy. If you need a break, tell me and I will accommodate you. Do you understand?

A. Yes, sir.

Q. And I've asked you to bring your file today, and you did that. Then I asked you to pull out for me the documents that you were provided by your client, and you've given me a stack of documents. And can you characterize what those documents are for me, please?

A. This is a lease from K-Mart to then at the time Baker and Baker who developed the property.

Q. And the date of the lease?

A. 23rd March, 1978.

Page 5

Q. Were you provided anything else by the client?
A. No, but I do have some information on lease amendments, so I must have seen -- and it might be electronically, which -- the lease amendments because I reference them in my appraisal. But they're not physically in the file.
Q. Who provided you with the lease information that was printed out?
A. Mr. Murphy.
Q. And that's what this document -- these documents are.
A. Yes, sir.
Q. All right. Would you mark that, please.
(Exhibit No. 1 was marked for identification.)
Q. And you believe that you've seen electronic copies of a lease amendment?
A. Well, I know I have reference to lease amendments in the appraisal, and I believe I saw reference to amendments in my notes. So I know I saw lease amendments, but if they're not -- they could be in here. Let me look. I normally -- they're normally kept in here -- I don't see it.
Q. Do you recall how many lease amendments you

Page 6

saw?
A. One. It's a letter that I read dated 1-26-79. It's the first amendment. I believe it might have been preconstruction. There was another letter dated 11-16-79, Johnson K-Mart to Baker and Baker. There's a second amendment 4-10-89 that allowed them to expand the building, and it was a formula in there of gross sales times the building size to get a factor for the expansion. So that was something that I read on top of that lease. And again, I got first amendment, second amendment information so I know I saw it, but if they're not in my file, I have to have gotten it electronically and I might have just read it on the screen and not actually printed it.
Q. So the document you're now referring to is a set of notes reflecting your recollections or notetaking from those various amendments?
A. Yes.
Q. And would you separate those notes and give them to the court reporter so she can mark them as Exhibit 2.
(Exhibit No. 2 was marked for identification.)
Q. Were you provided other documents?

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A. Not to my recollection.
Q. Were you provided a copy of a notice of condemnation?
A. I don't have a copy in my file. No. Unless, again -- I don't have a copy in my file.
Q. Were you provided --
A. Actually, Rick, I misspoke. When I did it the first time, I don't believe it had been condemned because I got asked to update it to the date.
Q. So the product that I'm looking at is an updated appraisal?
A. No, it's not. But I did get asked to update it to a date. I haven't done that yet.
Q. When you were asked to do the leasehold analysis -- because that was what was requested of you; is that correct?
A. Yes.
Q. -- you were to provide the valuation of K-Mart's leasehold.
A. Yes.
Q. When you were provided that information, were you told anything about the taking that the Town had accomplished or was about to accomplish?
A. Well, yes. I knew that they were taking a

Page 8

strip along Bowman Road, and it was going to affect some parking.
Q. And to your understanding was it going to affect ingress or egress?
A. No.
Q. And did you verify that?
A. With the Town?
Q. With the Town or with your client or -- I'm just trying to understand how this process worked.
A. Right. There were two takings, as I understand it. One to widen Bowman Road, one as part of the 17 bridge they built and realigned the frontage roads. The taking -- the condemnation action that I was involved in was the widening of Bowman Road. Not --
Q. By the Town?
A. By the Town. Not the flyover.
Q. All right, sir. And that taking was a strip take; is that correct?
A. Yes.
Q. And it impacted some improved parking lot area.
A. Yes.
Q. From the lands owned by Bowman MTP Center, LLC.

A. Right.
Q. Right?
A. Yes.
Q. But it was your determination that there was no impairment of ingress or egress, or at least you made no such analysis.
A. I didn't see any impairment of ingress/egress.
Q. And did you actually get a look at the Town's plans?
A. Yes. I got -- there's some documents in the appraisal. I'll show you what I looked at. It's on page 48, 49. And it basically starts at the -- where the wetlands are, so that would be where the bridge crossing Shem Creek -- it's right in here.
Q. Yes, sir.
A. The existing bridge. There's the property line -- this is a colored version on electronic version, these lines are colored, but it shows the present right-of-way. The new right-of-way comes up here. That's a wetland line right there showing the taking. This is another section which continues the taking along there showing where it's affected the parking spaces. And then this is the third section of that where it's at the end --

where the curb cut is, and affects a little bit of parking right there.
Q. So on your electronic file you have a copy of the road plans the Town had condemned by.
A. I think I did. I got it -- I got it somewhere. Obviously I had a look at the plans.
Q. Were you provided a copy of the subordination agreement?
A. Between the --
Q. K-Mart --
A. -- tenant and landlord?
Q. -- and the mortgage company and the landlord.
A. No.
Q. Do you have opinions with respect to entitlement that are not reflected in your appraisal document?
A. I don't quite understand what you're asking.
Q. Are all of your opinions reflected in your appraisal document?
A. Yes.
Q. Were you asked to review the condemnation clause in the lease?
A. Not specifically.
Q. Did you review the condemnation clause in

the lease?
A. Yes, I read it.
Q. And did you formulate opinions with respect to K-Mart's entitlement in the event of an eminent domain action?
A. Well, there was language that would allow them to terminate the lease if a certain amount of area were taken or if -- I don't remember specifically what it said, but there was a clause in there that allowed the tenant to terminate the lease in the event a certain amount of space got taken, a certain amount of property got taken, if the building was impacted. There's also clauses in there on how the landlord could relocate part of a building that was taken, but there were clauses in there.
Q. And did you formulate opinions with respect to the intent of that eminent domain or condemnation clause?
A. It just allowed the tenant to terminate the lease if they felt like eminent domain action would harm them.
Q. And I saw no such articulation of an opinion in your report. Did you actually speak to that and I missed it?

A. No, I don't think -- when I did my leasehold analysis on this -- it's up to the tenant to decide whether they want to terminate the lease or enforce it. I didn't analyze whether that gave them an ability to terminate the lease or not.
Q. So is it then fair to say you don't have an opinion as to their entitlement to the leasehold value pursuant to the eminent domain clause?
A. Yes.
Q. Yes, you do not have such an opinion; is that correct?
A. I don't have an opinion.
Q. There we go. Thank you.
And then as the third exhibit I'm going to mark the condemnation notice.
(Exhibit No. 3 was marked for identification.)
Q. Take a look at that and see if the exhibits correspond to the plan sheets that you reviewed electronically.
A. It looks like it's the same document.
Q. So as far as impacts from the taking, there was a land acquisition, a strip take of land along Bowman impacting how many parking spaces?
A. 57.

Page 13

Q. And they were going to install some drainage within that area, or do you know?
A. I don't know what they were going to do.
Q. As far as you were concerned, it was the acquisition of the land and the 57 spaces that you were concerned with as far as the valuation in the before and the after?
A. The 57 spaces.
Q. Did you count the spaces or where did that number come from?
A. I counted them.
Q. And did you count them on the plan sheets or did you count them physically on the ground?
A. No. I walked. That's -- I counted each bay, row of parking on the entire property, and sort of halfway where it was located.
Q. You've given me a set of notes on graph paper with a series of numbers. What do these numbers represent?
A. The number of parking spaces I could identify in the parking lot.
Q. And the number 666, what does that represent?
A. I'm not sure.
Q. If I total all these numbers up, what number

Page 14

would I come to?
A. I had counted -- I don't want to misspeak so I'm going to look. It was 739 marked spaces.
Q. How often -- how many times did you go on site to count spaces?
A. I did it one morning.
Q. Do you know when that was?
A. I inspected the property between December 5th and December 12th, 2011.
Q. How many times?
A. Like four or five. I just would go look at the property for various reasons.
Q. And one of those times you took these space counts?
A. Yes.
Q. And how did you identify the number of spaces to be taken? In other words, what was on the ground that allowed you to figure out the amount that was going to be acquired?
A. Well, there were some markings, some department of transportation markings, little orange dots and some arrows showing the right-of-way, the new right-of-way. And then also on their plan sheet, they noted the number of spaces they were affecting.

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Q. So it was a combination of verifying what was on the plan sheet?
A. Yes.
Q. As well as counting them on the ground?
A. As best I could.
Q. And the markings were painted markings on the pavement? Is that what you saw?
A. Yes.
Q. And then the counting of the spaces in the bays, did anybody assist you?
A. No.
Q. And did you make that count one time?
A. No. I trekked it twice. Keep in mind the parking lot had not been striped for quite some time so some of the markings were extremely faint.
Q. I see one series of numbers. You had no corrections?
A. Those were in the middle.
Q. What does that mean?
A. The parking lot's -- this is Bowman Road. The buildings were here. This was the far parking lot by the wetlands. This was over where the new right-of-way action was going on from the flyover because they had already started construction of that.

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Q. Okay.
A. And then these where the parking lot goes in rows away from the property -- I mean from the building all the way to the back, long deep bays. So I started out on one side.
Q. The side closest to the building?
A. I think I started out over on this side.
Q. This side then being --
A. And started going out, and then turned around and came back in, counted the spaces going out.
Q. So you started from the frontage road side --
A. Yes, I believe so.
Q. -- and then went backwards. Now, my question was when you double-checked your count, were you exact the first time? There were no corrections?
A. I don't see any on there, but again, I also looked at, you know, the County's aerial overhead. I think that's what I looked at. I saw something else that had parking on it, but I know I physically counted the spaces as best I could.
Q. The notes to the left, Little Caesars, Dollar General, what are those?

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A. Tenants who were in the building at the time.
Q. Occupying -- tenants that were occupying space.
A. It looked like they were, yes.
Q. Mark this, please.
(Exhibit No. 4 was marked for identification.)
Q. Did you measure the spaces?
A. I measured the building, and then I used the survey, and then there was one other calculation that -- it was confusing to me, something's coming up with a little different size than what the lease said on the building based on the survey as well, which is not unusual in the appraisal world, because you have a concrete block building that goes in and out. So there's demising walls on the inside. So somebody could have measured the physical building from the inside and gotten a smaller size than somebody like me who measures it from the outside. So --
Q. My question was whether you measured the parking spaces.
A. Oh, measured them physically like the size of the spaces?

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Q. Yes.
A. No.
Q. Do you know what the parking space size was?
A. They looked like they were standard 18 by about 9.
Q. 18 feet by 9 feet?
A. It seemed to me they looked -- they looked like a standard size parking space. I thought you meant the building. I'm sorry.
Q. That's all right. You found surplus property, as you called it, of about 2.95 acres.
A. Right.
Q. Correct?
A. Yes, sir.
Q. And found the tenant had a right to construct an additional building than what was there on the date of your inspection within that 2.95 acres. Is that a fair assessment of your analysis?
A. Yes.
Q. Can you show me where that 2.95 acres is? I gave you -- can you draw that for me on that drawing right there?
A. It would be somewhere in here, or possibly on the edge here in the parking area.

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Q. Let's use yellow on this exhibit and outline for me where your 2.95 acres was.
A. It was in here and here and, of course, they had some area in the back and then the building comes along in here.
Q. Let's mark that, please.
(Exhibit No. 5 was marked for identification.)
Q. And can you tell me how you calculated the 2.95-acre area?
A. Well, I looked at the parking ratio to building size that was in place, and then there's a standard size that's used to design sites of 350 to 400 square feet per parking space. So I took the number of extra parking spaces they had, and then you've got to consider that any new building would take up its own area. So it wouldn't be one for one square foot.
And so using that calculation I figured out what the size of the potential area -- the effective size of a building you could put on it. And by effective size, you know, each building has the physical footprint of the building, but then it's got to be able to accommodate parking and drainage and stuff around it. So I took the

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effective size of the building based on the same parking ratio.
Q. When you tell me that you looked at the parking ratio to building size that was in place, what was that ratio?
A. Well, it was four-to-one parking for every thousand square feet of retail.
Q. That was the --
A. That's what current zoning requires.
Q. Zoning requirement.
A. Yes. So zoning now requires 350 spaces for K-Mart and 159 spaces for the local space, which is 509 total spaces.
Q. And that's reflected in your appraisal.
A. Yes, sir. And then --
Q. Did you do an actual calculation as to building size versus actual land area, not a zoning ratio?
A. I did, but I don't know where it is, if I did it -- a land to building ratio of 3.427 was calculated for the development.
Q. That number and that statement is contained in your appraisal, is it not?
A. Yes, sir.
Q. And can you tell me how you calculated that

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building ratio? What numbers did you use to come up with that?
A. That would be the size of the building divided by the number of spaces.
Q. That would be the size of the building of K-Mart or all buildings?
A. All the buildings on the site.
Q. And then divided by the number of all marked spaces on the site that you counted?
A. The land to building ratio is the ratio of land to building area. So if you have a total building area of -- bear with me a second. You have a total land area of --
Q. Jody, when you're calculating and you're throwing numbers into the calculator and you're mumbling to yourself, I don't know what you're doing and you're going to have to do it all over again. So what I'm asking you and what I'm trying to get you to explain to me -- because what you told me you did was take the size of the building and divided it by the number of spaces. Then you testified to something a little different, I believe. What are you doing?
A. Well, I'm confused. So --
Q. Why are you confused?

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A. Because you asked me a question, and I was looking for the information, and I think I found the information you asked me, but I'm not sure if we're on the same question or not. I've got in here that the land to building ratio of 3.427 is what I used.
Q. And my follow-up question to that was how did you calculate that number, to which you responded you divided the building space by the number of spaces, and you told me that that included both K-Mart's leasehold as well as the other --
A. Right, but if you have surplus land, that's going to give you more land area than a typical building that's efficiently designed and maximized.
Q. That's not my question. I'm asking how you came up with the 3.427 factor.
A. Right.
Q. Can you tell me how you did that?
A. I figured out on the maximum size of the building that you could put on there including the surplus land area.
Q. You backed into it.
A. Yes.
Q. Why did you back into it instead of using

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actual numbers from what was on the ground?
A. But when you have surplus land --
Q. Just tell me why you backed into it.
A. I don't know any other way to do it.
Q. Okay. So when you gave me the testimony that you took the building sizes, both K-Mart and the other building, and divided by the parking spaces, that was incorrect.
A. Yes.
Q. Can you tell me how you computed the number 3.427? Can you give me the calculation, please?
A. That would be 12.97 times 43,560. That gives you 564,973 square feet.
Q. That 12.97 represents what?
A. The highland area.
Q. The highland area of --
A. The shopping center site.
Q. The entire shopping center site.
A. Yes.
Q. That includes area outside of K-Mart's demised premises.
A. Right.
Q. And you multiplied 12.97 times 43,567, which is the amount of square footage in an acre?
A. 43,560.

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Q. 560. Excuse me. And what was the product that you got?
A. 564,973.
Q. And what did you do with that number?
A. Well, that represents the square footage of the land. Then I took the building area, 127,352 square feet.
Q. Now, that's for all buildings.
A. Right.
Q. Does it include the garden area?
A. No. Just the building area.
Q. And how did you find or where did you get the 127,352 square foot number?
A. From a combination of measuring the building, the lease size stipulated, and the survey showing the building situated on it.
Q. When you tell me it was from a combination of those facts, did you have three different numbers?
A. They were slightly different. I used my measurements.
Q. Okay. So it was really your measurement that equaled 127,352?
A. Right.
Q. And you measured the outside -- from the

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outsides of the buildings?
A. Yes.
Q. And are there notes reflecting those measurements?
A. I just saw them. I believe that's where I --
Q. This sheet here?
A. Yes, sir. (Tendered.)
Q. Did anyone assist you in preparing these measurements?
A. No, sir.
Q. What did you use to compute your numbers or estimate your distances?
A. I had a measuring wheel.
Q. Just walk me through it, please. You've got -- this is the building shape for both the K-Mart and the other tenants?
A. Yes.
Q. So you would take a wheel and came up to 100 feet there?
A. Yes, sir.
Q. And then as the building had different pieces and parts, you measured accordingly?
A. Right.
Q. And then wrote the numbers down adjacent to

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each portion of the building.
A. Right. And I used the survey with the measurements on it as a cross-reference while I was doing it.
Q. On the right-hand side of this document, there are numbers. It says Bowman Road, and then a series of numbers. It starts off with 218.9. What is that -- what do those numbers represent?
A. I don't know.
Q. Below there is -- does that say frontage road? F road?
A. I guess. It might have been the lengths that were on those documents that I put showing the actual length of the area acquired. In other words, the distance.
Q. All right.
A. I'm not -- but again, Rick, I'm not sure.
Q. And then the last entry says, OG Road? What is that?
A. That might be the road behind it. Old Georgetown Road. Right there.
Q. Okay. And then to the left of the bottom of the document there's a series of numbers. What do those represent?
A. That would be gross area, highland area,

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wetland area.
Q. Of what?
A. That would be the parcel K-Mart's on, and that would be the parcel that the local spaces are on.
Q. So the K-Mart parcel for gross area is 8.6 acres, the highland is 7.824, and the wet is .783?
A. Right.
Q. And where did you get those dimensions from?
A. What I did -- this showed it right here.
Q. Is that what you did? You copied it from the HL -- what's the name of that plat or -- H --
A. Tract A-1 -- you know, property of Baker and Baker. HLA, Inc. is the land planning group.
Q. And the date of the plat?
A. December -- February 22nd, 2007.
Q. And the date of its recordation?
A. 3-9-87.
Q. So you believe you copied these dimensions from that plat?
A. Yeah, they look like they're the same.
Q. And so which section was for the demised property of K-Mart?
A. There.
Q. Which tract number on your plat?

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A. A-2.
Q. And then for A-1, that's the area for the other buildings and parking area, you had a gross area of -- is that -- can you read that for me, please?
A. 5.515.
Q. And then high ground is 5.15?
A. Well, I can't read my own writing.
Q. Yes, sir. I'm having that trouble myself.
A. It looks like a 5 or a 6. I don't know which. That's what it looks like.
Q. But your attempt there was to compute or copy the land areas between high and low-lying areas?
A. Well, for some reason I was writing that down on my notes.
Q. Does it have anything to do with the building calculations we were just talking about?
A. No.
Q. The plat, the large plat you have in front of you, a shaded version of that plat was contained in your appraisal; is that not correct?
A. Yes, sir.
Q. And instead of marking that, can you compare that photocopy I've made out of your appraisal and

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tell me that we're dealing with the same plat?
A. It looks to be the same.
Q. Would you give it to the court reporter and let her mark it, please.
(Exhibit No. 6 was marked for identification.)
Q. So let's finish the calculation, if you will, please. You had calculated your land area and your building area. First of all, before we go precisely there, is there any document or note which reflects how you totaled all these numbers up?
A. You mean showing the calculations?
Q. Yes. Yes.
A. I don't see one. There's some calculations. I don't know -- I'm not quite sure what I was doing with that.
Q. All right. Well, I don't want you to guess. Tell me how you would have utilized your notes to come to a calculation of square footage area for either building.
A. You have to calculate the building, you know, the measurements, by sectioning off each measurement, adding it all together at the end. So -- you would take 100 times 31.9, and you could

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take 135 times 80.4. Then you could take 160 times 106.6, and then 160 plus 49.3 times 410 times .7 -- if that's 410, I'm reading upside down -- but somehow I would section off the building and come up with a size.
Q. Not something you can do in your head.
A. No.
Q. You did it some way on a computer? A calculator?
A. I wrestled with the size because I was coming up with something different than what the lease area said.
Q. You told me that. And I'm trying to understand how you calculated your number.
A. I just described to you what the --
Q. I hear what you're telling me that you did, but I also know it's a multitasked effort.
A. Right.
Q. Something you can't do in your head.
A. Well, I can't.
Q. I can't either. And you didn't do it in your head.
A. No.
Q. You did it either by note or on the computer.

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A. Right.
Q. And would you have done it on the computer?
A. We have a software program that I could have put it on. I don't know if I did that or not.
Q. When you searched your files for the subpoena, would that have been in the electronic file that also contained --
A. No.
Q. -- the other items that we spoke about?
A. No. That would have been something I would have created if I had done that.
Q. Created in what format?
A. I have a software program that is used -- the residential guys use it more than the commercial guys -- where I could plug in all those numbers and it will tell me what the size of the building is.
Q. And did you use that software?
A. No.
Q. What did you do?
A. I calculated it just like I described to you.
Q. So did you do it without notes you mean?
A. Well, I don't know where that -- those calculations are. That's why -- I mean I looked

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for them. I don't see them so -- but I didn't take anything out of the file when you asked me to bring my file. So I picked the file up and walked out of my office with it.
Q. I'm just trying to understand how you came up with your calculation of 127,352.
A. I told you.
Q. And there's no written records that you could find.
A. No.
Q. And if you go back to your office and you find same, would you give those to Mr. Murphy?
A. Sure.
Q. What did you -- let's mark that as the next exhibit, please.
(Exhibit No. 7 was marked for identification.)
Q. These are the notes. What did you do next?
A. I took that size, plus I did an analysis of a future building area with the number of spaces per zoning and the land area that would be required.
Q. All right. I asked a bad question. To calculate the 3.427 number, what did you do?
A. That's what I'm telling you I did. I didn't

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know what to add as far as the potential building space in -- how much more buildable area they would have when you take away the parking that would be required for the building, plus the parking that would be required for zoning that would be allocated to that new space.

So in other words, you don't just build a 10,000 square foot building and say, okay, well, I only need 40 spaces, or in that case -- yeah, 40 spaces. You have to take away the spaces where the building sits, plus the spaces you physically need to park your cars.

So I created a spreadsheet, which is right here, that told me how many spaces per zoning that was necessary along with the size of the land area that would be required and how many spaces you would lose for that size building for the building footprint to sit. And then it would tell me how many spaces was required there.

And when I ran that iteration, it came up to a size of 37,500 square foot, and that's what I determined to be the potential building area that K-Mart has under the current lease.

Q. Wait a minute. I'm going to interrupt you. What page of the document of your appraisal are you

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looking at?

A. 27.

Q. And that's your table.

A. Yes, sir.

Q. The question I want to make sure that you are answering, you've got a land to building ratio of 3.427.

A. Uh-huh.

Q. You gave me a 564,973 square feet of land calculation and 127,352 building calculation.

A. Right. That doesn't equal 3.427.

Q. No, sir. I know.

A. Right.

Q. And what I want you to tie up in a nice pretty little bow for me --

A. I'm about to. I'm about to show you where it came from.

Q. What did you add and to what did you add it?

A. 37,500 square feet was added to the building size, and then the calculation was made.

Q. The table that you prepared here, was that a table that you created?

A. Yes.

Q. In the calculation where it says spaces lost to building, that's the amount of area lost to the

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building footprint.

A. Right.

Q. So if I multiply the number 69 times your 350 square foot estimate for a parking space, what do I get?

A. 24,150 square feet.

Q. And we have how many parking spaces required by a building of 37,500 feet by zoning?

A. 150.

Q. If I multiply 150 times 350, what do I get?

A. 52,500.

Q. And if I add up 52,500 and 24,150, what do I get?

A. I didn't understand. What --

Q. We're not adding it, are we? We're supposed to be --

A. I don't know what you're trying to do.

Q. If you have -- so of the 150 parking spaces, the area required for 150 parking spaces is how much square feet?

A. 52,500 square feet.

Q. And the square footage of the building is 37,500, right?

A. Yes.

Q. So if I add 52,500 and 37,500, what do I

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get?

A. 37,500 plus 52,500?

Q. Yes.

A. You get 90,000 square feet.

Q. And how many acres is that? Divide that by 43 --

A. 2.

Q. How many?

A. 2.

Q. Where is the other .95?

A. Well, the other .95 is the parking ratio of 3.427 acres. That's --

Q. I thought we were trying to get to that number.

A. I used that number.

Q. I thought you were trying to explain to me how you calculated that number.

A. Right. I went and liaisoned, for lack of a better word -- I talked to some civil engineers about planning something like this, and then I also went and looked at some other land to building ratios of retail type properties. And so when I was backing into a land to building size ratio, I determined that about 3.427 was about what was sort of average for the properties I looked at.

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Q. All right. Stop. Wait, wait, wait. So the whole exercise that we've just gone through for the last 15 minutes about the multiplication, and you're trying to tell me how you calculated 3.427, is not the testimony -- is not true?
A. No. I'm trying to tell you if you take the building size plus 37,500 square feet, divide it by the land size, you get 3.427 land to building ratio.
Q. Why, when we go to -- you've testified that you had 2.95 acres surplus area. Why is that number not equal to the building and land area of 90,000 square feet we just calculated?
A. Because if you take 90,000 square feet and divide it by a building area of 37,500 square feet, you get a 2.4 land to building ratio. It's too small. You've got to effectively expand your site.
Q. What are you doing with the extra acre or almost extra acre?
A. The area required to design a site is more than just the actual parking bay. You've got buffers in there. You've got entrances and things like that.
Q. And how did you estimate those numbers, or did you not?

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A. That's where I looked at what a typical parking ratio would be -- land to building ratio would be at 3.427 acres. And that's how I figured out and what I thought the maximum area they had to build was.
Q. Who was the consultant you dealt with?
A. I talked to Michael McCormick, and I talked to Chris Donato, Jr.
Q. And what did Mr. McCormick tell you?
A. That, yeah, you've got to account for this, that and the other, that the Town would require. And so you're not going to get the maximum. So I was like, so you're going to have to --
Q. So this, that and the other is what?
A. Buffers, landscape, islands, things like that.
Q. Does it include the aisles, travel aisles?
A. The travel aisles should be -- yeah, that would give you -- the area of the travel aisles would be widened in that.
Q. And what did Chris Donato, Jr. -- what information did he provide to you?
A. Pretty much the same. I mean he just -- when he looked at it, he actually helped me figure out how much of the wetland area was in the area

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acquired because there wasn't any information on that. So -- but he looked at it and I talked to him about it, and both of them were -- that the thing that's complicated about this is that you don't get space per -- you've got to actually plan it to know exactly what you would get. It's got to be planned. That's why I developed this formula to try to get a ballpark of what it looked like you could build with the typical land to building ratio.
Q. And by formula, you're talking about your table?
A. Backing into a size using a 3.427 ratio.
Q. And that was done in the before situation?
A. Uh-huh.
Q. And then in the after situation you removed from the equation the land taken.
A. Well, the parking spaces taken.
Q. Parking spaces taken.
A. Which using the same formula here with the same building ratio, you lost about 7,000 square feet of potential building area because of the loss of parking.
Q. The taking was from outside K-Mart's demised area.

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A. Yes.
Q. Why would you calculate that when it doesn't affect K-Mart's demised area?
A. But it does, because the lease required the landlord to provide a minimum of 730 spaces. Those spaces aren't on K-Mart's demised area. They're in the entire parking lot. So K-Mart has required that a certain number of spaces be made available to them and they'll lease the property. It also says that if K-Mart builds a future building and reduces the parking area because they place the building on it, the landlord doesn't have to replace back parking. In other words, K-Mart has to eat the fewer number of parking spaces.
So K-Mart has an ability to expand the building based on the number of parking spaces on the site. Well, there's no documentation saying that these spaces are parcel A and these spaces are parcel B. There's no signs. There's nothing on site that tells you or tells me, hey, only K-Mart customers can park here and the local space customers here. They share the entire parking lot. So they have a vested interest in the number of spaces because the number of spaces is the formula that would be used to determine how much more

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building area they can get.
How much parking do you have determines how much building area you can get. If this were undeveloped land, and there was clearly a defined area where you could build like an outparcel, then if K-Mart still had the same right on that outparcel, then they would have a vested interest in it. But in this case, it's just a parking -- the entire parking. K-Mart has the right -- the landlord has to keep a certain amount of parking for K-Mart, and part of that parking was taken away. So when K-Mart goes to develop or add on buildings or build a new building, they've got to take away parking.
Well, they don't have as much potential to build as much area as they did now because 57 parking spaces have been taken from the site. So it reduces their potential to build a building.
Q. Are you finished with your explanation?
A. Yes.
Q. So it's your testimony that K-Mart could have located its building outside of its demised area?
A. No.
Q. It had to stay within its demised area.

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A. Yes.
Q. Okay. The right to construct additional structures was contained in the lease; is that correct?
A. Yes.
Q. Did you ever look at the memorandum of lease?
A. I don't understand your question.
Q. Let me show you this document. Have you ever seen it before?
A. This is the part of the same document that I showed you in the beginning.
Q. No, sir. I don't believe it is. Look at it again. The title of it is memorandum of lease. Have you seen the document?
A. This -- like this? Just the four-page document.
Q. Yes, sir.
A. No -- well, do you have the document -- no. It's different from what I have. I just want to make sure.
Q. So Exhibit 1 is what you had?
A. Right.
Q. You did not have the memorandum of lease. You've never seen it before.

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A. Huh-uh.
Q. All right. Let her mark it.
(Exhibit No. 8 was marked for identification.)
Q. Now, go to the section of Exhibit 1 which allows for additional buildings and identify the section for me.
A. It is section 16, second paragraph.
Q. Any other provisions of the lease that allow for alterations or additional construction aside from section 16?
A. Well, there's a repairs and maintenance clause.
Q. But that doesn't affect alterations, does it?
A. No.
Q. And they have the right -- the tenant had the right at its expense under this clause to erect or construct additional buildings or structures on any portion of the demised premises, right?
A. Yes, sir.
Q. And demised premises was a defined term, right?
A. Yes.
Q. A term of art. A term of art. A defined

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term within the meaning of the lease.
A. Right.
Q. On your plat it would have been which of the parcels? Look at your plat.
A. A-2.
Q. Not A-1.
A. No.
Q. And for tax reasons, the tenant and the landlord had to come to agreement about how taxes would be treated differently for any building that the tenant actually constructed because it was the landlord that constructed the original buildings; is that not correct?
A. The landowner did build the original building.
Q. And the lease reflects that when the tenant -- if the tenant elected to build an additional building, there would be a different method of calculating tax responsibility; is that correct?
A. Yes.
Q. I'm going to hand you what's been identified or labeled as the second amendment to the lease. April 10th, 1989. Have you seen that document before?

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A. I think so, because I've got some information about the addition they put on the buildings. I don't know where I got it from, so -- I know -- I referenced some amendments that I saw. I'm not 100 percent sure -- I think I saw that.
Q. Well, let's make sure. Let's mark it.
A. 1989?
(Exhibit No. 9 was marked for identification.)
Q. Exhibit Number 9 has two pages of verbiage, an acknowledgment page and an exhibit; is that correct?
A. Yeah. This is the second amendment here. It's in my notes so obviously I saw it.
Q. So this second amendment to the lease did what?
A. It allowed them to build an addition on the side of their building. Well, it just is the vehicle that allows them to build the building.
Q. The original lease was at article 16 which allowed them to do certain things, correct?
A. Yes.
Q. Including erecting or constructing an additional building, right?
A. Yes.

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Q. And so this amendment to the lease amended the original lease in that respect as far as additional buildings; is that not correct?
A. Yes.
Q. And one of the changes was to change the verbiage of article 16 from erect or construct additional buildings or structures on any portion of the demised premises to expanding the building that was then leased to it, right?
A. I guess. I didn't really --
Q. Well, can't you read it? Look at paragraph one, Jody.
A. Right. It says they can build expanded area on Exhibit B.
Q. Well, it doesn't say build. It says expand.
A. Okay. Expand.
Q. Right?
A. Yes.
Q. It changed the lease article 16, correct?
A. Well, that's a legal question, Rick. I don't know if it specifically --
Q. Did you seek legal advice when you were constructing your estimate of leasehold value? Did you ask Mr. Murphy what the lease meant?
A. Yes.

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Q. What did he tell you about the condemnation clauses?
A. He didn't.
Q. What did he tell you about the second amendment to the lease and its impact as far as changing article 16 of the original lease?
A. He didn't.
Q. What advice did you receive from Mr. Murphy as to the interpretation or opinion of legal legality in the course of your work?
A. That K-Mart had a right to build a building or expand their building on the site.
Q. So you assumed that was correct for purposes of your appraisal.
A. Yes.
Q. Now, let me ask you, had you read the second amendment to the lease and compared its language to the original lease?
A. No, I didn't specifically compare it.
Q. As you sit here today, do you recognize the distinction in the language?
A. This allows them to expand within an area designated as K-Mart expansion area.
Q. And where are you getting that?
A. In section 1.

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Q. All right. So what it did was change article 16 and defined what had been a general proposition in article 16 to a specific location with the second amendment to the lease; is that not correct?
A. Again, I didn't -- that's out of the realm of my expertise.
Q. Understood, sir. But if you're opining that they still have a right to expand -- and that's the entire premise of your appraisal, is it not?
A. Yes.
Q. -- and that legal interpretation that they still had that general right of expansion, your appraisal methodology fails, does it not?
A. Yes.
Q. Let's go further. You've read leases before.
A. Yes.
Q. You understand how to read the English language, right?
A. Sometimes.
Q. Sometimes.
A. Yes.
Q. Well, in this case, if you look at the terminology of article 16, where they have the

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right to erect or construct additional buildings or structures on any portion of the demised premises, you recognize that the second amendment to the lease only allows the expansion on a specified location, right?
A. That's what it says.
Q. Look at the Exhibit B to the original lease.
A. Which is on the back page?
Q. Yes. Well, it's not all the way to the back, but it's back there.
A. This.
Q. Okay. What's the date of Exhibit B on the original lease?
A. 3-23-78.
Q. And look to now the second amendment to the lease.
A. Right.
Q. And what's Exhibit B's date?
A. Well, it shows two dates on it.
Q. Yeah. What's the --
A. One's the original date and then one's the revision date.
Q. What's the revision date?
A. 3-31-89.
Q. And it specifies the location of the

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expansion to be adjacent to the original K-Mart building built by the landlord, correct?
A. Yes.
Q. And then it also has an area for the garden area which you didn't include in your calculations, correct?
A. Correct.
Q. Now, go back to paragraph 2 of the amendment to the lease, the second amendment to the lease.
A. Right.
Q. What does it say?
A. Exhibit B attached hereto shall become Exhibit B to the lease.
Q. So Exhibit B, the revised Exhibit B, supplants the original Exhibit B and specifies the expansion location, correct?
A. For their -- for this expansion.
Q. No, sir. For any -- what's been substituted is Exhibit B to the original lease; is that not correct? Or are you going to play lawyer with me now?
A. No, I'm not going to play lawyer.
Q. Well, read it.
A. I don't know the answer to the question, Rick. I don't know --

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Q. In your experience as an appraiser, you don't know how to read the lease and know which exhibit goes with what?
A. No, I understand that. I just don't -- I can't sit here in good conscience and tell you the legality of the lease. My interpretation of the lease was that the tenant with -- okay. What I read -- from what Mr. Murphy told me and what I read, simply said in the original lease that the tenant had to get permission in order to expand. And --
Q. Did you read that language there?
A. Well, I'm paraphrasing what I read. Let me show you. But to answer your question, if this is a controlling document and it changes that, and this is a controlling document --
Q. This being the second amended --
A. Right. I didn't know that.
Q. And your whole premise of your appraisal will fall.
A. Well, if K-Mart cannot expand any more because this document says they can't, then my appraisal doesn't hold any -- it's meaningless.
Q. And your reading of paragraph 2 to the second amendment to the lease where it says Exhibit

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B attached hereto shall become Exhibit B to the lease, we necessarily have to substitute the defining expansion point to the original lease, correct?
A. If you mean this becomes the document and the leased -- the new building area is the control -- is the area shown on here, then yes.
MR. BYBEE: Let's take a break.
(A recess was taken.)
Q. Back on the record. Jody, your testimony was that your dimensions for the parking spaces you actually found on the ground was something like 18.9 -- 18 feet by 9; is that right?
A. Roughly, yes.
Q. What is that calculated as to a square footage area?
A. 126 square feet.
Q. When you used 350 square feet, why was there discrepancy?
A. Well, there's -- you know, you've got to have a turning radius, and there's other aspects of developing a parking lot that give it a little bit more area.
Q. Would those include -- would that other aspect include the islands, the buffer areas?

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A. It could.
Q. So if it does, how do we know whether it does or doesn't as far as the 350 square foot estimate you used?
A. Again, when I talked to the civil engineers and their industry standards, it's 350 to 400 square feet.
Q. But did you ask them does that include the aisles and the buffer areas and the turning radiuses?
A. It's larger than the physical space because it could, depending on the type of parking lot that's developed.
Q. So the .95 acres which you said was set aside for that additional buffer, aisle area, we may be doubling up?
A. Well, again, I used some rule of thumb industry standards. It's not designed by a site engineer specifically, where if a site engineer were to design a building on there, we'd know exactly what was required.
Q. Well, I understand that. But your explanation of the extra acre of your surplus land was -- it would account -- you had to account for your aisles and your buffer areas.

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A. Well, and --
Q. Right?
A. Yeah, but it's also got a lot of other area around the building. You've got sidewalks, you've got setbacks from the building, setbacks from the street. You've got a lot of other things that go on, and that's why a land to building ratio is not just simply the absolute nth of just put parking and driveway in there and a building. There's a lot of other parts to it that are required.
Q. Agreed. I understand that, but my point to you is if the 350 square foot number that you used in your analysis already included that area, then we have a discrepancy between 2.0 acres and 2.95 as far as surplus is concerned.
A. Right, but the discrepancy -- the 350 will have some turning radius and some aisles in it, but the other things aren't in that, and that would include setbacks, buffers, sidewalks --
Q. How do you know what's in it and what's not if you just relied on Chris Donato, Jr., and Mr. McCormick to give you a number?
A. I just told you, Rick, that I used some industry standards to create, using a standard or what appears to be an average land to building

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ratio for this area, to determine that. And if a site engineer comes in and has a different formula and says that that parking lot size should be 400 feet and that I was wrong by a half an acre, then I'm going to have to adjust my findings.
Q. If there was not surplus acreage of 2.95 and it was only 2, what would that do to your findings?
A. That would lower the amount of area that was lost due to the taking of the parking.
Q. By a third.
A. I don't know. I would have to figure it out.
Q. How would you do it?
A. I would take the known and then plug it in to the analysis.
Q. Walk me through how you'd do it.
A. Well, if I found -- ask me the question again.
Q. If the amount of surplus area was not 2.95 acres, but was 2 acres, how would that change your opinion?
A. Well, to start with, I don't know how much surplus land there is. I used a formula taking the rule of thumb for parking and taking what I consider to be an average, a reasonable land to

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building ratio and backed into the number.
Now, if any of those variables is different, then my number would -- the amount of building area, potential building area could decrease or increase depending on what that difference is, and I don't know what it is.
Q. And here's my question --
A. I don't know how to calculate it. I can't sit here and tell you, oh, it would be exactly this.
Q. You assume 2.95 of surplus area to come up with your numbers. I'm only asking you to say, well, what if that's wrong, let's just use 2 acres.
A. Right.
Q. What will that do to your number?
A. But if 2 acres was what it was, then my analysis of what that was worth would be lower.
Q. That's in the before, right?
A. Then -- you're looking at before or the after?
Q. 2.95 is in the before, right?
A. Okay.
Q. Isn't that right?
A. That's what I estimated it to be. If any of the variables change, then I might have a known. I

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might not need this if the variables changed.
Q. What I'm asking is --
A. I don't know.
Q. You don't know. You can't recalculate it.
A. No. If a known variable is changed -- now, I could go back and figure it out. You give me the known variable, I could go figure it out.
Q. I'm trying to --
A. But I don't know the known variable right now.
Q. I'm telling you it's 2 acres, not 2.95.
A. So you want me to assume that it's 2 acres, just assume 2 acres.
Q. Yeah. Tell me how it changes your result.
A. Well, then you could have 27 -- roughly a 25 to 27,000 square foot building --
Q. So your building's smaller?
A. Right, but the area that would be lost due to the taking of the parking would probably be closer to the same. You would go from -- if it were 2 acres --
Q. Wait a minute. Let's stick with your building size. What page are you on?
A. I'm on 27.
Q. And what would your building size be?

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A. Well, looking at my chart, assuming all the other variables stayed the same, 1.97 acres supports a 25,000 square foot building.
Q. And in your after don't you have a 30,000 square foot building?
A. Well, that was based on a going in size of 37,500. Because --
(Reporter Interruption.)
Q. But that's in the before, Jody. So now I'm comparing a before of 27,000 square feet to an after of 30,000 square feet. I see no loss.
A. In the after I took the amount of parking that was available after 57 spaces were reduced. So I used the same format and just used everything the same and just figured out what size potential building is supported by the number of parking spaces that are on site in the after.
So we would do the same analysis in the after. So if the before building were to shrink by 7,000 square feet, the after building should shrink by 7,000 square feet roughly.
Q. No, sir. I don't understand that premise. You backed into these numbers, Jody. You went and you calculated backwards. You came up with your 37,000 square foot building as a before. And you

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told me in the after you get to build a 30,000 square foot building.
A. But the after was the same formula that was used, Rick. You back into the after.
Q. The formula may have been the same but the assumptions were different.
A. You asked me to change the assumptions.
Q. Listen to me. I'm only asking you to change the assumption in the before from 2.95 acres to 2, because the after amount of land is staying the same. The only thing I'm asking you to redefine is your estimate of surplus land in the before. And if your land in surplus in the before is wrong to the tune of an acre, then the valuation premise will be that you can construct just as large a building as you could have in the before under your table. Right?
A. You lose the parking. See, your parking --
Q. You've already accounted for the loss of parking.
A. Oh, no, no. I see where you're coming from. You're asking me just to assume it's 2 acres and I was wrong and then we have the loss of parking in here.
Q. Thank you.

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A. Oh, okay. I see what you're saying. And I don't know what the after would be.
Q. Well, is there any reason --
A. You're asking me to assume this, that I'm wrong here, but that I'm right here. Of course that would be equal.
Q. In the table in the after situation, you're not having to estimate surplus land. You're just giving me a table that you can construct a 30,000 square foot building assuming the Town takes the 57 parking spaces. Right?
A. I used the same -- the same theory to back into the number of the building that was available in the after with the number of spaces.
Q. Look, it's really simple. If your calculation of surplus land was off by an acre, rounded, then you've testified that your building size is 27,000 in the before, right?
A. It looks like it would be roughly that size.
Q. And there's nothing that changes in the table in the after because there's no surplus estimate in the after. And your testimony, your appraisal says they still have the ability to construct a 30,000 square foot building in the after.

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A. My theory on the before, absence of what you're asking me to assume, is that they can build -- because of surplus parking, they can build up to X size building, and when that parking's taken away, their ability to build the building is reduced. If the same number of parking is taken, but it's only 2 acres, you still have the parking to deal with. So it seems to me like if you reduced the number of parking, then there again, you would be reducing your ability to build that much building.

It's pretty straightforward, Rick. If you reduce the parking, you reduce the size of the building that you can put on a site if you're maximizing the building site. So just because we lower the area of the land which would lower the area of the building to go in, when you further reduce it by the number of parking, it seems to me like the building area that you could build would be further reduced because you've got a lack of parking.

Q. What was the software you used to attempt to calculate your building size?

A. Excel.

Q. So Excel is just a general spreadsheet.

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A. Yes.

Q. There would have been a formula that would have allowed you to calculate the various boxes; is alls you did was go through different columns for each box and then total it all up.

A. I wrote a formula that calculated the answer that you see right there.

Q. And --

A. Inputting the variables.

Q. And that would have been on your electronic file?

A. Well, my Excel spreadsheet.

Q. Where is your Excel spreadsheet?

A. Sitting on my computer at work.

Q. Would you print it out and send it to Mr. Murphy, please?

A. I'd be glad to. It's exactly what you see right here.

Q. What page?

A. 27 and 50.

(This page contains Requested Information.)

A. You want the actual document? You want the whole --

Q. Yeah, I want to see the spreadsheet.

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A. You want the working spreadsheet or you just want to see it?

Q. I want to see the working spreadsheet where you calculated your -- I think it was 127 square foot number.

A. Okay.

Q. What page are you looking at at your appraisal?

A. Right now I'm on page 50.

Q. And page 50, can you tell me -- what's on page 50 that comprises the Excel spreadsheet?

A. The same formula that was on page 27.

Q. All right. You and I aren't communicating.

A. I know we're not. You asked me a question I can't give you an answer to.

Q. When you calculated the building size from Exhibit 7, you told me you used certain software.

A. No. I said I had software. I didn't say I used it.

Q. Then how did you -- did you use it?

A. I don't think I did. I think I just calculated it by hand, the old-fashioned way. I don't use the software because I can't confirm some of the calculations in the software. Sometimes it comes up with something different than when I hand

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calculate it. So if I can't -- if I can't understand how the software's calculated something, I won't use it.

Q. So when you did these hand calculations, did you do them using a spreadsheet?

A. No. I used my HP 12C.

Q. Did you make notes?

A. They're not in the file if I did.

Q. And where would they be if they're not in the file?

A. I don't know.

Q. Is that a complete copy of your appraisal?

A. It appears to be.

Q. Hand it to the court reporter. Let her mark it as the next exhibit.

(Exhibit No. 10 was marked for identification.)

Q. Contained in Exhibit 10 is a cover letter to Mr. Murphy of December 12, 2011. Is that a part of the appraisal?

A. The second page?

Q. The cover letter of December 12, 2011.

A. That's the letter of engagement.

Q. No, sir. I don't think it is. Look at it, December 12, 2011. It's after the first page of --

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it's after the cover sheet. All right?
A. It's called --
Q. Is that part of the appraisal?
A. Yes.
Q. The first paragraph -- excuse me. The second paragraph, where you've come up with K-Mart occupying 87,602 square feet, where did you get that number?
A. From my calculations.
Q. So if I take Exhibit 7, I need to draw a line between the K-Mart building and the other retail space, right?
A. Yes.
Q. Where would the line be drawn?
A. Somewhere right in here. (Indicating).
Q. Somewhere where?
A. 49.3.
Q. At 49.3? And then the next number in the paragraph is 39,750 square feet. Where did that number come from?
A. That would be the area of the retail building that's got the end-line space in it that K-Mart doesn't occupy.
Q. How did you calculate that square footage?
A. From the measurements.

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Q. On Exhibit 7; is that correct?
A. (Nodded.)
Q. You need to answer --
A. Yes. Yes, sir.
Q. The computation to market rent referred to on the second page of the 2.95 acres of surplus land, that's the land sales contained in your appraisal? Is that how that was estimated?
A. Well, market rent for land is by using a land cap rate and applying it to the value of the land, and that would be the rent that you've established for the site.
Q. So was it -- was it rentals that you used?
A. No. You value the site, and then a land cap rate is applied to the site that tells you what the rent is. If you had a $100,000 site and the land cap rate was 10 percent, then you'd divide that by -- you'd apply that to the $100,000 value. It says that rent should be $10,000 a year.
Q. Did you extract the cap rate from sales of income producing property?
A. From land sales. I had some examples of land cap rates.
Q. And it was those sales that are in your appraisal.

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A. I valued the properties and land sales, the site. That's what you'll find on page 39. And then the estimated market rent for that area, if you go to page 40, I cited a couple of market examples of land cap rates. And so I took the value of the land going in and applied the land cap rate to it. And that's the rent for the surplus land.
Q. Okay. And the land cap rate that you used -- you chose to use was 9 percent.
A. Yes, sir.
Q. And you extracted that from what?
A. Well, Palmetto Ford has got a ground lease based on 9 percent of market value --
Q. So it's those ground leases at page 40 that gave you your cap rate?
A. Yes.
Q. And then the prior verbiage or prior land sale documentation is contained in page 39.
A. Right.
Q. All right. Now, the third paragraph on page 2 of your summary letter, you say, both -- in the last sentence -- both parcels are owned by the same entity. And what you're referring to is the K-Mart parcel as reflected as tract A-2 on that plat and

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the other retail parcel is owned by others as reflected as A-1 on that parcel; is that correct?
A. Yes, sir.
Q. So the A-1 parcel is owned by tenants or leased by tenants other than K-Mart.
A. Right.
Q. There's a number of them, correct?
A. Three.
Q. Three of them. Three that you -- that you found.
A. That were occupying spaces at the time.
Q. Did you look at the leases?
A. No.
Q. Did you ask for leases?
A. No.
Q. You're appraising a leasehold interest, right?
A. Yes.
Q. K-Mart's leasehold is owned by K-Mart. Right?
A. Yes.
Q. The leaseholds of the other tenants are not owned by K-Mart.
A. Right.
Q. Why did you treat them as the larger parcel

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if they didn't have unity of ownership between the leaseholds?
A. The larger parcel -- I looked at it as the larger parcel because the parking and the lease was spread across the entire 14 acres, not just K-Mart's 8.65 acres.
Q. I hear that, but the larger parcel concept requires unity of title, contiguity and unity of use, right?
A. Yes.
Q. And the leases -- the various leases, there are -- there is no unity of title, right?
A. I didn't look at it like that but, yes, you're right. There's no unity of title.
Q. So if that assumption was wrong, then the whole premise, again, of your appraisal fails because you've misused the larger parcel definition.
A. Well, the only part of the larger parcel that -- and I wouldn't say it was misused. K-Mart has a right to all of the parking on parcel A-1 and A-2, A and B in the lease.
Q. Mr. Bishop, you never read the leases on the other tenants. You don't know what they had a right to as far as parking --

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A. I said K-Mart.
Q. Did you read the leases for the other tenants?
A. No.
Q. All right. How do you know they don't have a right to a certain amount of parking?
A. I don't.
Q. And the estimate that you've provided us is for the whole property, all 14 acres as you've defined it.
A. It's K-Mart's leasehold is what I have valued.
Q. Yes, sir, but you based it on all the parking spaces for the entire site, the whole 14 acres. Right?
A. Right.
Q. And you've never read the leases for the other portions of the improvements, the improved buildings. So you don't know what they have a right to as far as parking is concerned, right?
A. Right.
Q. So when you base your estimate on the entire shopping center, is it not possible that the tenants would have a -- the other tenants aside from K-Mart would have a claim to the share that

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you're estimating for K-Mart?
A. I don't know what right they have.
Q. Of course you don't, but assume for me just for the purposes of my question, and if you'd read the leases and they had rights to a certain portion of the parking, and your premise appraisal is based on parking for the entire shopping center, that one of those tenants may have a claim to that portion of that -- or to a portion of your valuation amount; is that not true?
A. Under your assumption, they could.
Q. So why would you use a larger parcel concept when you had different leaseholds with different owners?
A. I looked at it from the larger parcel specifically because K-Mart's lease referenced 730 spaces a minimum, and so K-Mart had a -- they had to contain that for the entire center. So it wasn't just the spaces on K-Mart's parcel; it was the spaces on the entire center.
Q. Is it your testimony that K-Mart had the right to 730 parking spaces exclusively?
A. No.
Q. So if you're appraising a leasehold interest of K-Mart, why are you using a larger parcel

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concept for the owner as opposed to the tenant?
A. I don't know. I didn't look at it that way, Rick.
Q. Page 1, summary of important facts and conclusions. Land area before, 12.97 acres high. Where did you get that number?
A. That would have been taken from adding the area of A-1-2 and A-1.
Q. From the plat?
A. Yes, sir.
Q. The property was consistently divided on the tax map as shown on the plat we just referenced?
A. It appeared to be.
Q. And that's because there was going to be a different tax consequence for the building between the various tenants? Is that your assumption there?
A. I don't know why they divided.
Q. Page 17, description of the improvements. When you say the lease indicates K-Mart space to encompass 87,543 square feet, can you show me in the lease where it says that? Exhibit 1, you need?
A. Yes.
Q. Put in the record what you're looking at and what you just calculated on your Hewlett Packard.

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A. I'm looking at Exhibit 9, and that says 87,543 on it.
Q. So that's Exhibit B to the amended lease.
A. Yes.
Q. Which had modified the original lease. Right?
A. Yes.
Q. This is the same amendment that --
A. This one's yours.
Q. -- you couldn't find in your file.
A. I know where it is. It's in the electronic file, which --
Q. And you're going to print that out --
A. I'll send it to you.
Q. Send it to Mr. Murphy.
A. Right.
Q. Thanks.
(This page contains Requested Information.)
Q. Did you formulate an opinion as to the price paid by the landowner immediately prior to the condemnation when it purchased the land and the buildings?
A. As in -- I know he bought it at some reduced price compared to what the Transwestern guys had

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bought it for.
Q. Did you make an analysis to determine whether he paid market?
A. Well, I didn't sit down and appraise what he paid, but I did look at it, and it looked like he paid less than market.
Q. And do you know -- do you have an opinion as to how much less than market?
A. No.
Q. Page 26.
A. Yes.
Q. The last sentence in the fourth paragraph on that page.
A. Right.
Q. It says, there are 739 spaces on site. It says -- so 230 spaces are surplus and represent land area that has potential for K-Mart to expand or construct additional buildings. Where did you get the 230 spaces estimate?
A. That would be the total of spaces that is on -- that zoning requires less what's there. It should be -- yeah, it's 739 minus 509, which is what zoning requires. In the paragraph above, if you'll look at the last two sentences, K-Mart zoning requires 350 spaces for K-Mart and 159 for

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the local space. That's 509. If you'll just subtract 739 from 509, you get 230.
Q. And what is 230 times 350?
A. 80,500 square feet.
Q. And what is 230 times 162 square feet?
A. 37,260 square feet.
Q. The land sales that are contained starting at page 29, were these sales independently verified by yourself? Let's take them one at a time.
A. Sale one, yes.
Q. Who did you talk to?
A. Chris Fraser.
Q. And was that done in conjunction with this appraisal or some prior appraisal?
A. Prior appraisal.
Q. And what were you appraising previously that you contacted Mr. Fraser about this?
A. I don't remember.
Q. Mr. Fraser was what type of representative that would be knowledgeable about this site?
A. He was one of the owners.
Q. He was -- of Johnnie Dodds Redevelopment or Johnnie Dodds Ventures?
A. Johnnie Dodds Redevelopment. He put together the group that bought that and was going

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to do a big master plan, mixed-use deal, and they couldn't get the density in the back so it kind of fell through. That's got Mickey Seabrook's building tied up into it as well as two of the little commercial sites on that dental -- where those little dental offices are. So they just ended up selling the front to try to do something with it.
Q. So that's what land sale one reflects?
A. Yes.
Q. Is the sale of the front?
A. Yes, sir.
Q. And what information did Mr. Fraser verify to you?
A. Just what was going on and what it was selling for and how it sold and the size and -- the terms of the deal as much as I could get out of him, you know.
Q. The second land sale with former Ryan's Steakhouse property?
A. Yes.
Q. From Hipp Property Investments?
A. Uh-huh.
Q. Did you verify that with whom?
A. Preston Hipp.

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Q. And was that personal verification on your part?
A. Yes. I appraised the property.
Q. So you did the appraisal for Hipp Properties?
A. Yes.
Q. As part of a loan package or for some other purpose?
A. For some other purpose.
Q. What was the other purpose?
A. They had a car dealer who wanted to buy -- I appraised it when they bought it. Then they had an auto dealer that wanted the site, and they also had a medical user that wanted the site. Medical user wanted to keep the building -- they had two or three potential offers going on, and couldn't figure out which one to take. And so I did a second appraisal for them to try to give them an idea of which would be the most advantageous for them to do, because one of the offers they were going to subdivide the property and keep the back. And Preston's a lifelong friend of mine.
Q. Was the appraisal done before the sale date of June 23, 2008?
A. Yes.

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Q. So does the sale amount equal the amount of your appraisal?
A. No.
Q. And was your appraisal higher or lower than the sale amount?
A. Lower.
Q. And how much lower?
A. I don't remember exactly.
Q. 100,000? 200,000?
A. No. It seems like it was about 3 or 400,000 maybe.
Q. And that appraisal was still in your files?
A. It should be, yeah.
Q. And it would be identified how?
A. I'd have to go back and look.
Q. But how would you -- how do you keep your appraisal files? By name?
A. By file number.
Q. How do you know Preston Hipp's files?
A. There's a file number. I've got a log.
Q. You have a log? Some correlation between ownership and your file number, correct?
A. Yes.
Q. And if I asked you for Preston Hipp's appraisal prior to June 23, 2008, is that

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sufficient information?
A. I could find it.
Q. You could find it and produce it to me?
A. Uh-huh.
Q. Land sale three. Did you personally verify that sale?
A. No.
Q. Who verified this sale?
A. Chris Donato.
Q. And for what purpose did Mr. Donato provide the sales writeup?
A. I don't know.
Q. Do you know who Mr. Donato consulted with as far as verification was concerned?
A. He says Chris Anderson.
Q. And do you know what information Mr. Anderson provided to Mr. Donato?
A. Other than what's in the writeup, no.
Q. Land sale four was verified by whom?
A. Myself.
Q. And who did you verify it with?
A. Steve Varn.
Q. And what did Mr. Varn tell you?
A. You know, they were going to put a hotel there.

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Q. Where is this?
A. Behind -- you know where that Holiday Inn is behind the old Captain D's and -- what was there? Fish place. No. Captain D's was the fish place. Well, anyhow. Shoney's and Captain D's, that hotel site.
Q. Was that before the Holiday Inn was constructed?
A. Yeah. They were the developer. They bought it to do the Holiday Inn.
Q. So this is the Holiday Inn?
A. Yes. So anyhow, he just told me about the sale and, you know, they did kind of a funny purchase that didn't reflect it on -- the true consideration wasn't reflected in the deed.
Q. And can you explain that to me, please?
A. The deed was 1 million, 550, but as he described it, that was an LLC selling it, but within the LLC there was an interest purchased outside of that closing that was the difference between 1 million, 550 and the 2.9 million.
Q. How did you verify the sale of the LLC interest at 2.9?
A. He told me the deed -- the true consideration.

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Q. No, no.
A. I mean if you read it, he attributed 900,000 --
Q. Am I dealing with 2.9 versus 1 million, 550 or am I dealing with 2 million versus one-five-five-O?
A. He had the true consideration at $2,900,000.
Q. Varn did.
A. Varn did.
Q. And you verified that how? What was his role in the transaction to the LLC member?
A. I don't remember, Rick, exactly, you know, the conversation other than what I've written down here. But he said that what's reflected on the deed is not the true consideration.
Q. And then gave you the 29 number.
A. Yes.
Q. The adjustments on your charts at page 39. The only adjustment you made for location was that Holiday Inn?
A. Yes.
Q. And why did you make the .8 adjustment?
A. It's just closer to the city.
Q. The Porter-Gaud school, the new one, is closer to the city but there was no adjustment

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there?
A. Right. But that -- when I say closer to the city, the sales that are right around that little quadrant at Northcutt going into the city sell for more just because of the proximity to the city.
Q. The intersection of Mathis Ferry and 17 Bypass?
A. Right in there, all that -- even the condos that sold in there just sold at premium.
Q. Then at page 40, as you were testifying earlier, you were doing what with these ground rents? How did you extract your 9 percent cap rate from these ground rents?
A. Well, that's what they based the ground rent on. When you negotiate a ground lease, an owner will -- basically is asking for a return on his investment.
Q. Yes, sir. How did you ascertain that that's what the landowner wanted or calculated as far as arriving at his rental --
A. That's what they told us it was.
Q. So for the Palmetto Ford site who did you interview?
A. Graham Eubanks.
Q. And Mr. Eubanks was the buyer or the seller?

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A. No. He's the tenant. These weren't sales. These were leases --
Q. I apologize for the wrong terminology. But Mr. Eubanks was the tenant.
A. Right. Go ahead.
Q. How did you ascertain a 9 percent of market value for the rent for the ground lease?
A. That's what they ascertained when he negotiated with the owners, and every three years they have the property reappraised. And then they apply 9 percent to the value, and they have to pay more rent. So they've been in and out of a litigation over the owner trying not to pay so much rent for the property, but the lease has escalated greatly because property values along there have skyrocketed.
Q. So the answer to the question is that the 9 percent factor was contained in the lease itself.
A. Yes.
Q. It was written into the lease.
A. Yes.
Q. And did you have a copy of the lease?
A. Yes.
Q. Did you appraise this property?
A. No.

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Q. And you obtained the lease how?
A. From -- my partner appraised the property.
Q. And which partner was that?
A. Chris Donato.
Q. And did he have a copy of the lease in your appraiser's appraisal office?
A. Yes.
Q. The CVS in Mount Pleasant, at Ben Sawyer and McCants Street, how did you establish that the rent for the ground lease was 9 percent of the market value?
A. We talked to the owner of the property at the time. The CVS is on a separate parcel from the little shopping center that's behind it. They ground leased the CVS, and built the shopping center and leased the space. And the owner/developer told us that he based rent on a 9 percent return.
Q. Was that actually in the lease or that's just what --
A. No. That's what he --
Q. -- his personal calculation was?
A. That was his personal calculation.
Q. And who was that?
A. I don't remember his name offhand.

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Q. Was that information you obtained directly from the developer or was that something from your office?
A. A combination of both, because I've appraised the center and that site in the past, my partner's appraised the ground lease, the actual value of the ground lease, I think once or twice in the past. So --
Q. Your partner being Donato?
A. Yes.
Q. All right. So you and Chris would have discussed the percentage as indicative of the market value? Is that what you're telling me?
A. Well, that's just what -- when the rent was established, when it was leased, you know, six years ago -- in this case it would have been about seven now -- the owner in his head said, I want a 9 percent return, what's this property worth? It was appraised, that site, and he said, okay, I want a 9 percent return. He applied 9 percent to that value, and he told CVS, that's what I want my first year rent.
Q. The last ground lease that you have here is the OL Thompson concerning some property near the airport.

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A. Right.
Q. Who was that verified with?
A. I ran that down, and I don't remember who turned me onto it, but I made a call and verified it with someone at OL Thompson's office and it might have been OL himself.
Q. How long ago was that?
A. When I was doing this.
Q. When you were doing this report?
A. Right.
Q. So within the last year.
A. Yes.
Q. And you don't have any notes to reflect who you talked to?
A. I don't see them in there, but then again, that was just something that somebody in my office or someone told me he had done or just done or was -- and to call me, find out about it.
Q. Then the bullet below it, at the very bottom of page 40, market value before the taking, what does that 2 million, 440 reflect?
A. That would be the market value of the 2.95 acres. And then you apply the cap -- the land cap rate, which is basically the return to the owner in the first year, net, against the value, and that

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calculates the rent that you would charge for that site. And that's an annual rent. If you were going to convert it to monthly, you'd just divide it by 12.
Q. The next sentence says, adding the market rent for the K-Mart space to market rent for the surplus land indicates potential gross income of $876,615. What is the market rent for the K-Mart space you're speaking about?
A. Their rent for their space now that they're in. Market rent is what you could get if it were available for rent today as opposed to contract rent is what it is rented for under the lease.
Q. And how did you establish the market rent for the K-Mart building as of date of -- I would presume that's date of acquisition; is that right?
A. Yeah. There should be a section in here on K-Mart rent. On page 25 there's a section called market rent K-Mart space.
Q. Are any of these market rent comps written up in your office?
A. No. That's -- I ran all of that down myself as part of this.
Q. So this is -- and the documentation as far as the numbers, are they in your notes?

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A. They're somewhere in here.
Q. Would you find that for me, please?
A. It's on these pages right here.
Q. Okay. Let's mark them, please, and are they -- can you distinguish between your notes for the former Circuit City space --
A. Well --
Q. -- from the others?
A. It's right here. It's in this.
Q. Pull that out, please.
A. There's some reference to it right there.
Q. Well, so that's the Michaels space?
A. I believe that's what's in there. Then I think that's it right there where he talked about it again.
Q. All right. So these -- basically these two pages of your notes are relating to your market rent estimate?
A. Yes. I spoke with a gentleman named Tim Metzler.
Q. Before we get to Mr. Metzler, who was Stephen Blackman?
A. He owned the property.
Q. Is that part of the market --
A. No.

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Q. -- rent for K-Mart space?
A. I don't believe so.
Q. What was Mr. Blackman's property?
A. I think that was the one that was up in North Charleston that -- I know that TMS number is in North Charleston. I think that he and his mother owned a bunch of the movie deals, and they went dark and released -- if -- I believe that's the same fellow.
Q. Was that information utilized in this appraisal in any fashion?
A. No.
Q. So it's just irrelevant.
A. (Nodded.)
Q. Do you keep notes just on a chronological basis?
A. You're looking at it.
Q. I understand. I'm asking, is the reason it's on this page is because even though it had nothing to do with this appraisal --
A. Yeah. Right. I just write notes down in my pad as I go.
Q. In a chronological fashion?
A. Should be, yeah.
Q. And Mr. Metzler, who is he?

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A. He is a broker who specializes in big box retail marketing, leasing development. He's very difficult to get in touch with, but he's a wealth of information if you can get him to stop and talk to you. And he was kind enough to spend a little time with me and help me understand what's going on in the retail market at this time.
Q. And which of these properties did he inform you about?
A. All of it. He was the guy who knew about all this stuff. I got some other local guys to give me some information, but basically he's got the ability to talk to these national managers and brokers who won't take my phone call and won't give me any information. He can get it from them. So he's a really good -- a valuable person to be able to talk to about that kind of stuff.
Q. All right. So at page 25 where it's talking about the retail space at the Wando Crossing.
A. Yeah.
Q. Was all of that information from Mr. Metzler?
A. Yes.
Q. And the Michaels lease, what -- is that -- is that the former Circuit City?

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A. Part of it. They split the space. Part of it went to Michaels and part of it went to PetSmart.
Q. And did you obtain the details on PetSmart?
A. I got the information on the Michaels but not all the information on the PetSmart, not enough to understand it.
Q. And the information that you got on the square footage and the triple net was from Mr. Metzler?
A. Yes.
Q. And his role in that transaction was what?
A. He just knew about it. The lady that had it wouldn't talk to me. So he got it and asked me to be limited about where it came from.
Q. He was not the broker.
A. No.
Q. He was not involved in the sale.
A. It was a lease.
Q. Or he was not involved in the lease.
A. No. He -- he knows the lady that did the lease, and so he got the information from her, the broker that handled the lease, and he passed it on to me.
Q. So he talked to the broker involved and then

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you talked to him.
A. Yes. He did that -- he knew I wanted to know about that, so he knew the lady so he called her.
Q. The next sentence says, the landlord spent a confidential amount of money on the upfit. And then you amortized the cost of the upfit over the initial term of the lease and deducted it from the negotiated rent rate. If you didn't know what the upfit was, how did you amortize it?
A. I know what it was. I just didn't report it in the appraisal because it was given to me in confidence and asked not to be published.
Q. By Mr. Metzler.
A. Yes.
Q. Is that correct?
A. Yes.
Q. So the broker that he talked to, what was her name?
A. I can't remember.
Q. She gave him that number?
A. Or he got it -- he knew the number.
Q. He knew the number. But he had -- he wasn't involved in it so he had to have been told by the broker the number, the best you know?

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A. By somebody.
Q. Right. So when you amortized it, you amortized a confidential amount that you didn't put in the report. What was the amount?
A. It's confidential. I think it was --
Q. That ain't going to cut it.
A. I think it was a million dollars.
Q. Is that what you did? You took a million dollars?
A. It's in my note.
Q. Show me in your notes.
A. It's 35 bucks a square foot on TI.
Q. TI meaning?
A. Tenant improvements.
Q. Tenant improvements? Yeah. Okay.
A. Yeah. Some of that went to PetCo -- what they did is they had to tear out the demising wall for Circuit City. In other words, this was Circuit City space. Well, they didn't want all of it, so they had to tear this wall out and rebuild it right here to make Michaels space, and then they leased PetCo with the larger space.
The thing to understand about that is that these tenants are in a major -- at the time the tenants were holding the big stick, and the

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landlords were having to pay all of the TI to put them into the space. That's why the rent for the K-Mart is at 750 a foot. Five years ago that might have been as much as 15. But the tables have turned.
If you read what I said there, the landlords are doing everything they can to put tenants in -- these retail tenants. They took a haircut of about 25 to 30 percent almost overnight in October of 2008.
Q. So you had an upfitted amount that you don't know what portion PetSmart was responsible for, but you do know it was a global million dollars.
A. Oh, no, no. The landlord paid it.
Q. And how much of it -- when you told me you didn't know what PetSmart's share was, what did you mean?
A. No. I'd say that a little bit of that was on PetCo's deal, because they had to tear a demising wall down. So it wasn't all just for that, but --
Q. How did you estimate the PetCo demising wall discount or deduct in order to calculate your number if you didn't know what it was?
A. He told me the amount. I got $800,000 is

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what I amortized.
Q. I'm trying to figure out how you got the number.
A. That's what he gave me.
Q. He allocated between PetSmart and Michaels?
A. Rick, I'm looking at my notes. I amortized $800,000.
Q. I understood that's what your notes reflect. I'm just trying to understand what happened and how -- where that information came from. Certainly not market data in the traditional sense.
A. Never is.
Q. Never is with respect to market rents. Is that what you mean?
A. No. Never is when landlords are spending money and they don't like to tell people how much they spent. That's not published information. So you have to get it secondhand from somebody, architect, contractor, leasing broker. Somebody has to tell you how much they spent. Generally they don't like to tell you that. Most of these guys don't like to tell you their leasing rates either. That's why it's so hard to get with these national REITs -- that's a REIT that owns that place. That's why they were so hard-nosed about

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it. So I did the best I could.
Q. So the best you could was an interview with this guy?
A. To get the information.
Q. And saw no documentation or lease documentation or cost documentation, right?
A. Right.
Q. Marshall's, can you tell me about that information? Did you also rely on this same gentleman for that data?
A. Yeah, I got that from the two different sources, a combination of the two, but he knew about it as well. And there was some cost information. There's also some published data on that, and I think it was in CoStar, one of these national services.
Q. Did you see the lease that reflects the $9 a square foot rental rate?
A. No.
Q. The publication that you saw, did it support or list the $9 a square foot rental rate?
A. I don't remember.
Q. And what was the amount the landlord spent to upfit it? Is that reflected in your notes?
A. Marshall's paid $9 a square foot turnkey.

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They're next to Kohl's. They spent a million dollars on TI. It's a 10-year term. The net is a $7 deal.
Q. So all of that information is what he told you as opposed to documentation of costs.
A. Right.
Q. And that would have been Mr. Metzler.
A. Yes.
Q. Then the next paragraph concerns confidential negotiations for a property you're not even identifying to me, I guess. What is this about?
A. I've got to tell you, right?
Q. Yes.
A. Okay.
Q. I mean if you put it in here --
A. It's confidential.
Q. It's fair game, Jody.
A. I know it is. I'm just messing with you. That's the Gregg tract, Rick. That --
MR. MURPHY: Well, we can do some type of protective order agreement.
MR. BYBEE: I'll sign whatever protective order you want.
A. I'm not worried about it. It's the Gregg

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tract.
Q. All right. So what was the source of information? What was the information?
A. I talked to Kit Regnery about that, who's been marketing that deal for Bill Gregg forever. I've actually appraised it for two different people in the past who tried to buy it from him. There was a deal going on with this character who came to town and got everybody all mad at him trying to buy it and develop it.
Q. This is the guy that was in front of the zoning people in the last six months?
A. Right.
Q. All right.
A. Very nice guy. But what's happened is the bank has stepped in on Bill Gregg's behalf and is now making decisions. So now they've gotten to a point where they can actually agree to something and stick to the agreement. They had a bunch of ground leases to big box tenants in place, but they were ground leases where the tenants were going to build the space.
Metzler told me more about it than Kit would, but both of them were very, very tight-lipped about what was going on and who did

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what. And the main thing that you can glean out of that is there is interest in space in Mount Pleasant for big box retail. The only thing out of that that really is meaningful to the K-Mart was the fact that Best Buy placed an offer on the table at 10 bucks a square foot and they turned it down. And that was for a turnkey space, you know.
That's -- out of all of that, that's what's important for the K-Mart space. Best Buy is trying to get turnkey space at 10 bucks a foot, and they turned it down.
Q. Okay. Then the last -- on the next page at 26, you say the developer did not counter that offer. That would have been the Best Buy offer?
A. Yes.
Q. And adjusting it for the landlord upfit, how much was that?
A. My guess would be it's probably about the 35 bucks a foot.
Q. Your guess or you've got notes to reflect it?
A. Well, when I say -- let me rephrase that. Based on what I was told and everything, there's a number there that it cost to upfit this space. That would have been at about 25 to $35 a foot upfit on

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a turnkey deal.
Q. And where in your notes is that reflected?
A. In talking to Metzler about tenant upfit and what they were willing to spend to put them in there.
Q. But I don't see that calculation or that number in these notes.
A. It's not in there.
Q. Well, you tell me where it is.
A. I'm talking about with TI. Just when Metzler was telling me about TI.
Q. So how did you remember the number if it's not written down?
A. No. The calculated number there, I didn't have in there. When I was talking to Tim, Tim was telling me that TI's about like that.
Q. About like that what?
A. 25 to $35 a foot. I know you're frustrated with the lack of my detail, but I try to do the best I can.
Q. Any other analysis or market data you reviewed to establish a market rent for the K-Mart space?
A. No.
(Exhibit No. 11 was marked for

identification.)
Q. Was there a DCF calculation that was printed out or kept on your electronic file?
A. The DCF is on page --
Q. There it is. 44?
A. Yeah.
Q. Is that it?
A. Uh-hum.
Q. I'm sorry. Overlooked it. Give me five. We'll try to -- hopefully we're about to wrap this up. I am going to need to go back through the rest of these files.
(A recess was taken.)
Q. I just want to make sure. I may have already asked you this. If I did, I apologize. You never saw the subordination agreement in this case?
A. No.
Q. Have you ever formulated an opinion about subordination agreements relative to condemnation claims?
A. No.
Q. And so you have no such opinion in this case.
A. No.

Q. The notes that were left that we didn't disassemble from your notepad, run through those for me, and tell me what they're about. First page is what?
A. I was interested in big box rents so I knew what was going on on the Gregg tract. These are some people that do big box work that I could call, understand about. These were some places that I knew that we had -- I had prior knowledge of the size of the buildings and all, just so I could know to go back and look.
There's where I talked to Kit initially. This were some tax map numbers of the big box retail that I could find. I was interested in going and trying to see what rent was back a while ago as compared to now.
Q. Relative to the appraisal, is this in the early stages of your appraisal?
A. Yeah.
Q. All right.
A. This is where I was going to find some fairly quick information.
Q. Okay.
A. These are some file numbers where I could get it if I wanted it.

Q. Your internal file?
A. Right.
Q. Okay.
A. There's some old rental information, 2004, I fished out of some appraisals that I had done real quickly to kind of see what it was.
Here's some properties I knew we had appraised and their file numbers so I could go look at rent then, which didn't have anything to do with now. I was just trying to start on a base to see where we were going with it.
Radikopf, he was representing Neal Baker on East Cooper Plaza. I knew that. I had appraised it in the past. I was trying to update some rents to see where they were now compared to what they were in 2006 or whenever it was I appraised it. That's what all of this is. Okay?
Q. What is this series of numbers here at the top that --
A. I believe that would be my parking numbers.
Q. Now, again, we've got a total in the 600s instead of 730. What -- can you explain why?
A. I don't think that's the spaces on the outside, just the spaces in the middle.
Q. And when you say spaces in the middle, what

do you mean?
A. In the parking lot in front of the building. Not the -- there's some spaces on the outside. I think that's what that means.
Q. Why would you only count spaces in the middle?
A. Well, I didn't. I just added -- see, I think on my drawing when you ask what the 666 number -- I think that's when I was sitting in my car trying to add it up in my head how many spaces I had just counted in that one column, not the 15 and 30 which add up to a total. Does that make sense?
Q. Yes.
A. Because I could look at the other ones real quick. I think that's what I was doing.
Q. Okay.
A. All right. And this was just some parking information right there that I had gathered under zoning.
Q. Interpolate it for me, please.
A. Well, you know, retail's one space for 200 square feet plus a space for employee. Planned shopping center is four spaces per thousand square feet.

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Q. And that was the last one that you used. That was the zoning characterization you used?
A. Right.
MR. BYBEE: Mark that, please, ma'am.
(Exhibit No. 12 was marked for identification.)
A. This is the appraisal.
Q. How much did you charge for the appraisal?
A. $8,500.
MR. BYBEE: Mark that, please, ma'am.
(Exhibit No. 13 was marked for identification.)
Q. Did you have a written fee arrangement?
A. Yes.
Q. Where is that? Mark 14 as fee agreement.
(Exhibit No. 14 was marked for identification.)
Q. What's that stuff there?
A. This is just the invoice, the first one.
Q. The same -- did you do more than one invoice?
A. Well, they gave me a retainer. So --
Q. Okay. Total is $8,500?
A. Total is $8,500.
Q. All right.

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A. This is just the UDO zoning. You can look at it if you want.
Q. Oh, the ordinance on --
A. The new change, the new zoning.
Q. Okay.
A. This is some discount rate information just out of Korpax and some IRR. It's Integra dealer. These are just some drawings I created at the DOT plans.
Q. Are you adding the gray area or is that coming to you in that format? The shaded areas?
A. Oh, the lines, the colored lines? Or what I did, to show the area that was being -- the red is the present right-of-way. The blue is the new right-of-way, and the green line was the wetlands, because this area was wetlands.
Q. All right. I understand that. You can put it on that side.
A. Okay. This is the deed from Transwestern to Bowman MTP.
Q. Subject matter, deed. Okay.
A. This is --
Q. That's another sketch in another dimension of the buildings. Can you describe that for me? When was that developed -- is it any different than

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Exhibit 7?
A. This might be my field drawing.
Q. What is Exhibit 7 if that's your field drawing?
A. Just some -- where I was just trying to figure it out there as opposed to off of this.
Q. Was Exhibit 7 prepared before or after what you're calling the field drawing?
A. This would have been first.
Q. The field drawing would have been first?
A. Yeah.
MR. BYBEE: Mark that, please, ma'am.
(Exhibit No. 15 was marked for identification.)
Q. Between Exhibit 15 and Exhibit 7, which one did you use?
A. Well, again, I took this and put it on there and then started messing around with this, to figure out the size.
Q. So Exhibit 7 is the one that you really used.
A. Right. That's just the start of the chart for the --
Q. A draft of your sales chart?
A. Yeah.

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Q. All right.
A. Here are some -- when I was trying to figure out declining value, that's a resale. So I was trying to -- just my hand notes on how to read the time. These are just the written up sales of some stuff from -- in Mount Pleasant.
Q. That you used or didn't use?
A. Some of it I used, some I didn't. But it was what I started off with when I was just seeing what we had written up.
I don't even know if this belongs to this property. It doesn't look like it does.
Q. Just leave it in there.
A. That's a blank sheet. Here's all listing information, just big box rentals.
Q. Listing -- these are the asking prices?
A. Yeah. Of stuff around Charleston.
Q. Okay.
A. This is something I fished out of Donato's file when he did a shopping center. I ended up not using it.
Q. Which file did you --
A. He appraised a Harris Teeter at highway -- Rivertowne in front of Rivertowne.
Q. Okay. Yes, sir.

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A. Here's some stuff I fished out of something I had done. We just had some leases in it that I started just to get some information on what I knew.

Here's all kinds of stuff out of CoStar. This is out of another appraisal that I had done years ago, just starting with getting sizes of buildings and things like that.

Q. All right.

A. This is all CoStar information. Just property for lease. Same thing here. This is some CoStar information on like an occupancy report, tells you how much vacancy there is and stuff like that. This is their retail report and then here's DOT drawings.

This is a chart that I had set up on something I did in 2004. Just again, it had big box square footage so I could reference it real quick if I was wanting to know what it was. Here is some -- that's East Cooper Plaza. It's just got a listing of the size of units in it. This was from Joyce Beach, her answer to me about retail space.

Q. Who is Joyce Beach?

A. She's with CB Richard Ellis. All she does

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is retail.

Q. And what other items do you have in your email file that were not brought today?

A. I don't use email particularly. She's the only one that answered me back on email. That's the only way I could get ahold of her. I talk on the phone. I have a couple of messages between Chris and I that are just real brief. They don't have any meat to them. I'll be glad to send them if you want.

Q. All right.

A. And that's it for email. And like I say, I think I've got the amendments, that information in just electronic file. I can send that to you too.

Q. You're going to send me your emails, send me your electronic files, whatever else you used that is not in this file.

MR. BYBEE: Madam Court Reporter, could you mark that file as the next exhibit in its entirety? We'll take care of it.

(Exhibit No. 16 was marked for identification.)

A. Well, as far as emails go, I clean my email out periodically.

Q. You can't produce that which you don't have.

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A. I know. I can only go back to what I do have so --

Q. Very good. And this piece of paper, was that part of your appraisal?

A. It looks like it was where I was doing some hand calculations.

Q. Put it in there. Thank you so much.

MR. MURPHY: For the file, you marked the entire file as an exhibit.

MR. BYBEE: Yes.

MR. MURPHY: And he's got to retain it so how do you want to --

Q. Jody, it's up to you. Do you want to stick around and wait while my staff copies it or do you want to give it to the court reporter to copy it? Whichever is your pleasure?

A. I don't care. I mean it doesn't matter.

Q. Here's what I suggest. We let the court reporter handle it. That way my office is out of the loop and --

A. So I can't come back and accuse you of taking something out of it or something like that.

Q. You have to fuss with my court reporter, not me.

A. That's fine.

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MR. MURPHY: And he'll read and sign too.

(The deposition was concluded at 1:08 p.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, J. Lynn Clark, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on September 10, 2012 at Charleston, Charleston County, South Carolina.

J. Lynn Clark
NCRA MERIT REPORTER
REGISTERED PROFESSIONAL REPORTER
RPR, CP-CM, CSR(Iowa)
My Commission expires
February 5, 2017

DEPONENT CORRECTION SHEET

I, the undersigned, PLEDGER M. BISHOP, III, MAI, SRA, CRE, do hereby certify that I have read the foregoing deposition and wish to make the following clarifications and/or corrections, if any.

PAGE	LINE	CHANGE	REASON

PLEDGER M. BISHOP, III, MAI, SRA, CRE
Date

LC

COPY

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE is made and entered into this 10th day of April, 1989 between BAKER AND BAKER, a PARTNERSHIP, having its principal office at 1400 Pickens Street, Columbia, South Carolina 29211-2397 ("Landlord") and K MART CORPORATION, having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Tenant");

WITNESSETH

WHEREAS Landlord and Tenant have entered into a lease dated March 23, 1978 regarding leasehold premises located in the City of Mt. Pleasant, County of Charleston, State of South Carolina and more fully described in Exhibit "A" to the lease; and

WHEREAS the lease was amended by letter agreement dated June 26, 1979 (the lease together with its Amendment is hereinafter referred to as the "Lease"); and

WHEREAS, Landlord and Tenant desire to further amend the Lease as provided by this SECOND AMENDMENT TO LEASE.

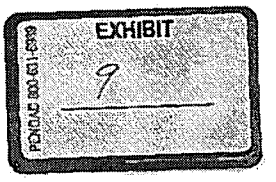
NOW THEREFORE, in consideration of the mutual covenants contained herein, the adequacy of which is acknowledged, Landlord and Tenant agree as follows:

1. Tenant may, but is not obligated to, at its sole cost expand the building (the "Building") leased to it within the area designataed as "K mart Expansion Area" as shown on Exhibit "B" attached hereto.

2. Exhibit "B" atlached hereto shall become Exhibit "B" to the Lease.

3. In the event Tenant expands the Building Tenants Additional Rental obligation pursuant to Article 4 shall be determined by multiplying Tenant's gross sales by the fraction 68,444/87,543 with the resulting product representing gross sales for purposes of determining Tenant's additional rent obligation. This addition rent adjustment shall be effective on the day after two (2) years after the day that sales of merchandise from the expanded portion of the Building are made to the public. If the day this adjustment starts is not the first day of the lease year, then the original method of determining percentage rent and this adjustment will be calculated separately by reducing the gross sales and breakpoint provided in the lease porportionately to the period being calculated relative to the lease year.

4. The excess tax credit provided for in Article 5 of the Lease shall not include any real estate taxes attributed to the expanded portion of the Building. In the event the tax records do not separately identify the portion of taxes attributed to the expansion then the taxes on the Building as expanded shall be multiplied by 21.8% to determine the taxes attributed to the expansion.



5. The Lease as amended is ratified and confirmed by Landlord and Tenant.

IN WITNESS WHEREOF the parties have executed this SECOND AMENDMENT TO LEASE which is to become effective as provided herein.

WITNESS

BAKER & BAKER, A PARTNERSHIP

By: _____, general partner

By: _____, general partner

WITNESS

K MART CORPORATION

By: M. L. Skiles, its Vice President

By: _____
C. E. Lotzar Jr., assistant secretary

ACKNOWLEDGMENTS

STATE OF MICHIGAN)
COUNTY OF OAKLAND) ss:

I do hereby certify that on this 10th day of April, 1989, before me, Mary E. Harker, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. L. Skiles ---------- and C. E. Lotzar, Jr. ----------, known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester, Michigan and Birmingham, Michigan ---------- respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the use, and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires: June 11, 1989 Mary E. Harker
Notary Public

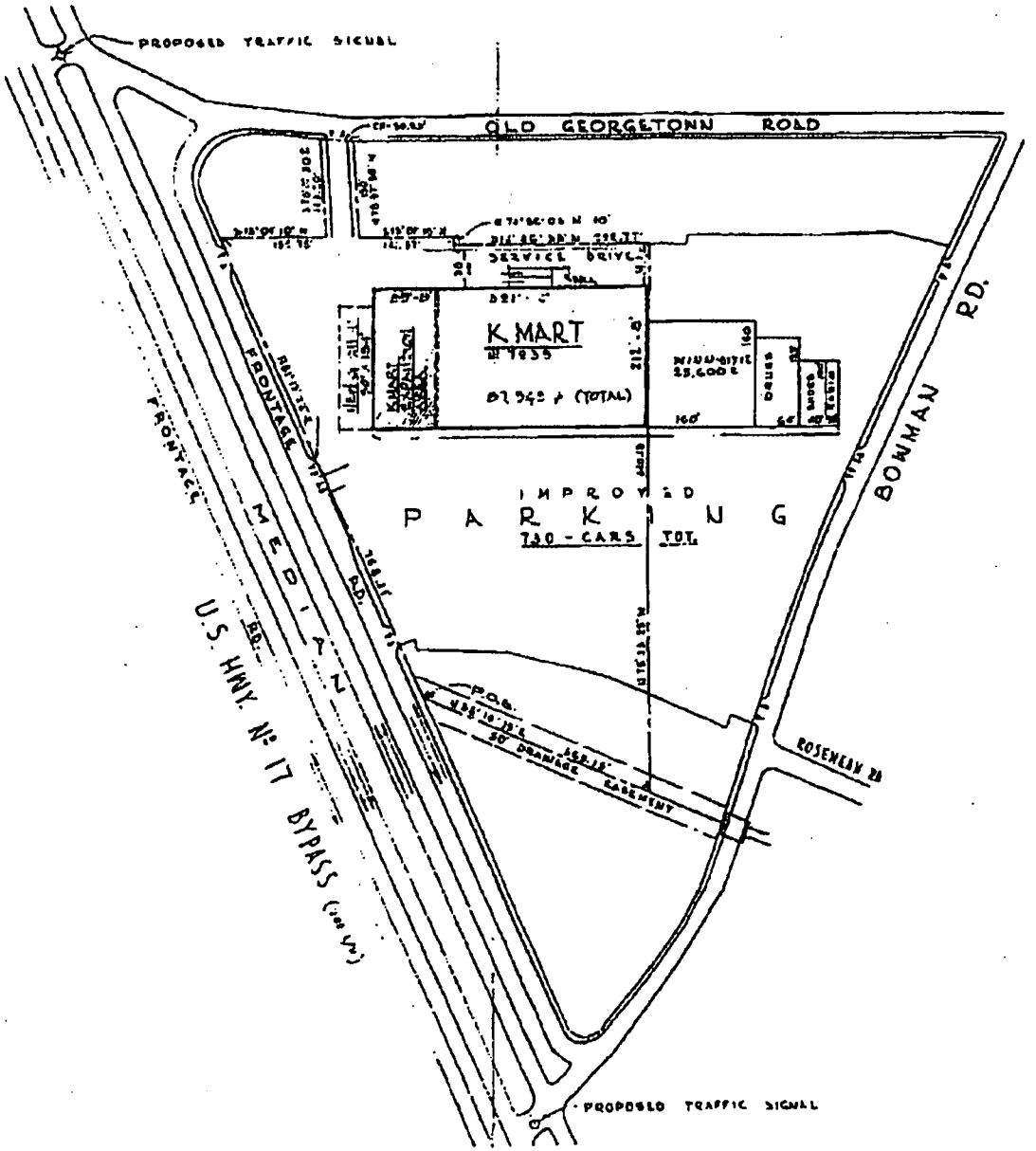
ACKNOWLEDGEMENT FOR PARTNERSHIP

STATE OF) South Carolina
) SS
COUNTY OF Richland)

On the 23rd day of March, 1989, before me personally came David Baker and Lee J. Baker, to me known, who, being by me duly sworn, did depose and say that he/she is/are a partner/partners in the firm of Baker and Baker, a partnership, and that he/they executed the foregoing instrument on behalf of said firm.

Janet Edwards
Notary Public

My Commission Expires September 6, 1994



STORE Nº 7239

N.W.C. OF U.S. HWY. 17 BYPASS & OLD GEORGETOWN RD.

MT. PLEASANT, S. CAROLINA.

N.

EXHIBIT 'B'

DATE:
3-23-78
5-31-89 (REV.)

SCALE:
100 FEET TO 1 INCH

0267

EXHIBIT F:

Affidavit of Ed Navarro

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS C/A NO.: 2011-CP-10-4324
Town of Mt. Pleasant, South Carolina, Condemnor, v. Bowman MTP Center, LLC, Landowner, and NBSC, a Division of Synovus Bank, Other Condemnee.	AFFIDAVIT OF EDMUND F. NAVARRO

Affiant, being duly sworn, deposes and states:

1. I am a member of the Bowman MTP Center, LLC and that I am familiar with the subject property and the condemnation by the Town of Mt. Pleasant.

2. The Town requested and received permission to enter the subject property before the date of condemnation and the Town's contractors have been in possession and constructing its road improvements, since, at least the date of condemnation in this matter.

3. K-Mart has never given notice of termination under any clause of the lease since the date of condemnation.

4. The attached documents are true and authentic and kept in the normal course of business of the LLC; the Lease, the Memorandum of Lease, the Second Amendment to the Lease, the Note, the Mortgage and the Subordination Agreement.

FUTHER AFFIANT SAYETH NOT.

Edmund F. Navarro

Sworn to before me this 13th day of September, 2012.

Donna M. Patterson

Notary Public of South Carolina
My Commission Expires: My Commission Expires May 31, 2021

EXHIBIT G:

Promissory Note and Mortgage

PROMISSORY NOTE

$3,000,000.00

Charleston, South Carolina
January 28, 2011

FOR VALUE RECEIVED, Bowman MTP Center LLC, a Delaware limited liability company (the "Borrower"), promises to pay to the order of NBSC, a Division of Synovus Bank (the "Lender"), at 158 Meeting Street, Charleston, South Carolina 29401, or such other address as Lender may designate in writing, the principal sum of Three Million and 00/100 ($3,000,000.00) Dollars (the "Loan"), with interest thereon at the fixed rate of four (4%) percent per annum. Commencing on February 28, 2011, and continuing on the 28th day of each month thereafter until July 28, 2012, Borrower shall pay monthly installments of accrued interest only. Thereafter, commencing on August 28, 2012, and continuing on the 28th day of each month thereafter until the Maturity Date (as defined herein) of the within Loan, Borrower shall pay monthly principal and interest payments in the amount of $18,267.35 each (said payment being based on a 20-year amortization of the original principal amount of the within Loan); the entire outstanding principal balance of this Note and any outstanding accrued interest shall be due and payable in full on or before November 28, 2013 (the "Maturity Date"). Interest shall be computed on the actual number of days elapsed divided by a 360-day year.

All payments under this Note shall be applied first to accrued interest, then to principal and then to late charges, if any. All installments of principal and all interest are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any other document evidencing or securing this Note not cured within ten (10) days following the due date thereof, or (c) default under the Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement") or under the terms of any other Loan Document (as defined in the Loan Agreement) not cured within any applicable cure period provided therein (each of the foregoing being an "Event of Default" hereunder), then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of four (4%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender.

In the event the interest provisions hereof or any exactions provided for herein or in the lien documents or any other instruments securing this Note shall result, because of the periodic deduction of principal or any other reason related or unrelated to the interest provisions, at any time during the life of the loan, in an effective rate of interest which, for any period of time, transcends the limit of the usury or any other law applicable to the loan evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied to principal immediately upon receipt of such monies by Lender with the same force and effect as though the payor had specifically designated such and agreed to accept such extra payment(s) as a premium free payment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect, by notice in writing to the owners of the property affected by the lien document securing this Note, to reduce or limit the collection of any interest to such sums, which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirement of the preceding sentence.

This Note is secured by, *inter alia*, that certain Mortgage, Security Agreement and Fixture Filing of even date herewith (the "Mortgage"), to which reference is made from the terms thereof, and the same are made a part of this Note.

Lender may collect a late charge of five (5%) percent of any installment of principal or interest which is not paid within five (5) days of the due date thereof to cover the extra time and expense involved in handling delinquent payments. Such late charge shall apply to late payments prior to maturity or acceleration. Upon maturity or acceleration, Borrower shall pay the Default Rate of interest on all amounts due from the date of maturity or acceleration until the Note is paid in full. The collection of the late charge shall not be deemed a waiver by Lender of interest accruing after the due date of any installment or of any of Lender's other rights under this Note or any of the Loan Documents.

Borrower agrees that the late charge provided above is fair and reasonable compensation to Lender for the additional administrative time and effort incurred in collecting and processing delinquent payments. Borrower further agrees that the Default Rate is a fair and reasonable rate of interest to be charged after maturity or acceleration of this Note in light of the increased risks to Lender inherent in a past due loan and the administrative time and effort incurred in collecting a past due loan.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified or the security described in the lien document securing the Note

released in whole or in part, or increased, changed or exchanged by agreement between Lender and any owner of premises affected by said lien document securing this Note without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on any of the collateral described in the Loan Documents for the payment of the Note in the event of default by the Borrower, but may proceed directly against the Borrower, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder is to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

This Note may be prepaid in whole or in part at any time without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Borrower further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE MORTGAGE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

[Remainder of Page Intentionally Left Blank]

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. Pursuant to Section 29-3-680 of the Code of Laws of South Carolina, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, Borrower has executed this Note under seal, as of the date first above written.

WITNESSES:

BORROWER:

BOWMAN MTP CENTER LLC

By: Grove Property Fund LLC
Its Co-Managing Member

By: _____
Edmund Navarro
Its: Manager, President and
Chief Operating Officer

RECD. PAYMENT 1/28/11
PER CLERK
RMC OFFICE SW
CHARLESTON COUNTY, SC

MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT ("Mortgage") is made and entered into as of the 28 day of January, 2011, by Bowman MTP Center LLC, a Delaware limited liability company ("Mortgagor"), whose address is c/o Grove Property Fund LLC, 95 Glastonbury Blvd., Suite 214, Glastonbury, CT 06033, in favor of NBSC, a Division of Synovus Bank ("Mortgagee"), whose address is 158 Meeting Street, Charleston, South Carolina 29401.

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of up to Three Million and 00/100 ($3,000,000.00) Dollars, together with interest thereon, as evidenced by that certain promissory note of even date herewith, executed by Mortgagor and delivered to Mortgagee, the final payment of which is due on or before November 28, 2013 unless extended by written agreement of Mortgagor and Mortgagee (the "Maturity Date"), which by reference is made a part hereof to the same extent as though set out in full herein (the "Note");

NOW, THEREFORE, (a) to secure the performance and observance by Mortgagor of all covenants and conditions contained in the Note, and any renewal, extension or modification thereof, in this Commercial Mortgage of Real Property and Security Agreement and in all other instruments securing the Note, including the terms and conditions of that certain Loan Agreement of even date herewith, under the terms of which funds may be advanced, paid back and readvanced; and (b) also to secure in accordance with Section 29-3-50, Code of Laws of South Carolina (1976), as amended, all future advances and re-advances that may subsequently be made to Mortgagor by Mortgagee, evidenced by the aforesaid Note, or any other promissory notes, and all modifications, renewals and extensions thereof (provided, however, that nothing contained herein shall create an obligation on the part of Mortgagee to make future advances or re-advances to Mortgagor) the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by Mortgagee, including court costs, and reasonable attorneys' fees; and (c) also in order to charge the properties, interests and rights hereinafter with such payment, performance and observance; and (d) for and in consideration of the sum of One and no/100 ($1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage,

---

TO THE EXTENT PROVIDED IN THE NOTE, INTEREST OR DISCOUNT WILL BE DEFERRED, ACCRUED OR CAPITALIZED.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT COVERS FIXTURES AND CONSTITUTES A FIXTURE FINANCING STATEMENT. PROCEEDS OF THE NOTE SECURED HEREBY SHALL BE USED FOR LAND ACQUISITION OR CONSTRUCTION OF IMPROVEMENTS ON THE LAND.

{02037263.2}

hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns forever all right, title and interest of Mortgagor in and to:

THE MORTGAGED PROPERTY

(A) THE LAND. All the land located in the County of Charleston, State of South Carolina (the "Land"), described in Exhibit "A" attached hereto and made a part hereof.

(B) THE IMPROVEMENTS. TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf (the "Improvements").

(C) EASEMENTS OR OTHER INTERESTS. TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B), and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof.

(D) ASSIGNMENTS OF RENTS. TOGETHER WITH all rents, royalties, issues, profits, revenue, income, license fees and other benefits from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums secured hereby, provided however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such default hereunder, the permission hereby given to Mortgagor

to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permission shall not be reinstated upon a cure of the default without Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) ASSIGNMENT OF LEASES. TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. The foregoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and Mortgagor agrees to fully perform all obligations of the lessor under all such leases. Upon Mortgagee's request, Mortgagor agrees to send to Mortgagee a list of all leases covered by the foregoing assignment and as any such lease shall expire or terminate or as any new lease shall be made, Mortgagor shall so notify Mortgagee in order that at all times Mortgagee shall have a current list of all leases affecting the property described in paragraphs (A), (B) and (C) hereof. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Mortgaged Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property to Mortgagee, subject to the right of the Mortgagor to collect, receive, take, use and enjoy the same as provided hereinabove; provided, further, that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) FIXTURES AND PERSONAL PROPERTY. TOGETHER WITH a security interest in (i) all personal property and fixtures now or hereafter acquired and affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property, (ii) all articles of personal property now or hereafter acquired and all materials delivered to the property described in paragraphs (A), (B) and (C) hereof (including such property for use in any construction being conducted thereon) and owned or leased by Mortgagor, including, but not limited to, all equipment, furniture, furnishings, inventory, apparatus, machinery, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades,

screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto, telephone systems, television and television systems, computer systems and fixtures and appurtenances thereto, and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to said Land and Improvements in any manner, (iii) all leases of personal property, contract rights, general intangibles, permits, approvals, management contracts, trade names, trademarks, service marks, patents pending, goodwill, utility service bonds and/or cash deposits, site improvement bonds and/or cash deposits, building permits, sewer and water connection and/or tap-in permits, curb-cut permits, utility service agreements, actions and rights in action now or hereafter acquired pertaining to the Mortgaged Property, including all rights to insurance proceeds and condemnation proceeds; (iv) all warranties and guaranties covering any appliances and fixtures now or hereafter located upon the Land or used in connection with the Improvements including without limitation, air-conditioning, heating and other appliances and equipment, (v) all sales agreements, reservation agreements, deposit receipts, escrow agreements, and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Land, together with all deposits and other proceeds of the sale thereof, (vi) all of the water, sanitary and storm sewer systems now or hereafter owned by Mortgagor which are now or hereafter located by, over and/or upon the Land or the Improvements or any part and parcel thereof, including all water and sewer lines, equipment and appurtenances, (vii) any and all materials (stored on-site or off-site), reserves, deferred payments, deposits or advance payments for materials (stored on-site or off-site), undisbursed loan proceeds, insurance refunds, insurance proceeds, impound accounts, refunds for overpayment of any kind to the extent the same arise out of or occur in connection with the construction of the Improvements, and (viii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing (collectively, the "Collateral"). Mortgagor (Debtor) hereby grants to Mortgagee (Secured Party) a security interest in all fixtures, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. Mortgagor agrees to pay Mortgagee's charge, to the maximum amount permitted by law, for any statement by Mortgagee regarding the obligations secured by this Commercial Mortgage of Real Property and Security Agreement requested by Mortgagor or on behalf of Mortgagor. On demand, Mortgagor will promptly pay all costs and expenses of filing financing statements, continuation statements, partial releases, and termination statements deemed necessary or appropriate by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code (South Carolina) with respect to such property, and it is expressly agreed in accordance with the provisions of the Uniform Commercial Code (South Carolina), 10 days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code (South Carolina) requiring such notice; provided, however, that the Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property

pursuant to the provisions of this Commercial Mortgage of Real Property and Security Agreement, in lieu of proceeding under the Uniform Commercial Code (South Carolina).

Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Commercial Mortgage of Real Property and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Mortgagee, as Secured Party, or the Mortgagor, as Debtor, at the address first shown above.

Everything referred to in paragraphs (A), (B), (C), (D), (E), and (F) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or intended to be so is herein referred to as the "Mortgaged Property" or "Property."

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein:

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed by Mortgagor, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE ONE
REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

Mortgagor represents and warrants to Mortgagee as follows (which warranties and representations survive the delivery of the Note and shall be continuing until the Note is paid in full):

1.01 No Litigation Against Mortgagor. There is no litigation or proceeding pending against the Mortgagor, nor to the knowledge of the Mortgagor threatened which, if decided adversely to the Mortgagor, would have a material adverse effect upon the financial condition or business of Mortgagor.

1.02 Mortgagor's Financial Statements. The most recent financial statements of the Mortgagor as delivered to Mortgagee (hereinafter collectively referred to as "Mortgagor's Financial Statements"), fairly reflect, to the best knowledge of the Mortgagor, the financial condition of the Mortgagor as of the date of the Mortgagor's Financial Statements, and show all known liabilities,

direct and contingent, of the Mortgagor as of the date stated. There have been no material changes in the financial condition of the Mortgagor since the date of the Mortgagor's Financial Statements. The Mortgagor has made no investments in, have no interest in, loans to, advances to, or guarantees of the obligations of any company, individual or other entity except as disclosed in the Mortgagor's Financial Statements.

1.03 Tax Returns and Payment of Taxes. The Mortgagor has filed or caused to have been filed all required federal, state, local and foreign tax returns and have paid or have caused to have been paid all taxes as shown on such returns or on any assessments received by them to the extent that such taxes have become due.

1.04 Binding Effect of Obligation. The Note, this Mortgage, and all other instruments securing the Note constitute legal, valid and binding obligations of the Mortgagor, and each of them are enforceable against the Mortgagor in accordance with their respective terms.

1.05 Injury to Properties. Neither the business nor the properties of Mortgagor are affected by any prior or existing fire, explosion, accident, strike, lock-out or other labor disputes, storm, act of God or other casualty (whether or not covered by insurance), adversely affecting such business or the properties or operations of the Mortgagor.

1.06 Inducement for Loan. No information, exhibit or report furnished by the Mortgagor to the Mortgagee in connection with the negotiation of the loan evidenced by the Note contains any material misstatement of fact or omits to state any material fact or facts necessary to make the statements contained therein not misleading.

1.07 Validity and Enforceability of Documents; No Conflicts; No Defaults.

(a) The execution, delivery and performance by the Mortgagor of the Note, this Mortgage, the borrowings hereunder, and delivery of the guarantees and other instruments securing the Note have been duly authorized by all requisite corporate, partnership or other action, and do not and will not (1) require any further consent or approval of the directors or shareholders or partners (as applicable) of the Mortgagor; (2) violate any provision of law, rule, regulations, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Mortgagor; (3) result in a breach or constitute default under any indenture, loan or credit agreement, or any other agreement to which the Mortgagor is a party or by which they or the properties or entities with which they are involved may be bound or affected; or (4) result in or require the creation or imposition of any mortgage, deed of trust, pledge or liens, security interest or other charge or encumbrance of any nature other than that contemplated hereunder. To the extent approvals of any kind are required, the Mortgagor has obtained: (i) all governmental approvals and authorizations, together with any required registrations or filings with the appropriate governmental authorities; and (ii) all necessary consents, approvals, waivers, notifications of tenants, creditors, lessors, and other nongovernmental persons required in connection with the indebtedness secured hereby.

(b) The Mortgagor is not in material default under any law, rule, regulation or writ, judgment, injunction, decree, determination or warrant or any indenture agreement, lease or instrument.

(c) Except as provided above, no authorization, consent, approval, license, exemption of or filing or a registration with any court, governmental department, commission, board, bureau, agency or instrumentality, is or will be necessary for the valid execution, delivery or performance by the Mortgagor of the Note, this Mortgage, and all other instruments and documents securing the Note.

ARTICLE TWO
COVENANTS OF MORTGAGOR

2.01 Performance of Note, Mortgage, Etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

2.02 Performance of Loan Agreement. Mortgagor shall perform, observe and comply with all provisions of that certain construction loan agreement between Mortgagor and Mortgagee of even date herewith (the "Loan Agreement"), which Loan Agreement is by this reference herein incorporated to the same extent and effect as thought it were set forth in full herein.

2.03 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Land and real property hereby mortgaged, has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Land and real property hereby mortgaged and every part thereof; that the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for the property taxes not yet due and payable and those permitted encumbrances, if any, described in Exhibit A. Mortgagor shall and will make such further assurances to perfect Mortgagee's fee simple title to the Land and the real property hereby mortgaged, and the title to the personal property hereby mortgaged or made subject to the security interest hereby created as may reasonably be required. Mortgagor fully warrants the title to the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

2.04 Zoning and Environmental Laws.

(a) Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements and further covenants and warrants to comply with all such laws, ordinances and regulations, including, but not limited to, all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Property or the use thereof. Without limiting the generality of the foregoing, Mortgagor warrants and represents to Mortgagee after thorough investigation that: (a) the Mortgaged Property described herein is now and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613, and any amendments thereto, and (b)(i) as of the date hereof there are no hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, any materials containing asbestos) located on, in or under the Mortgaged Property or used in connection therewith, or (ii) Mortgagor has fully disclosed to Mortgagee in writing the existence, extent and nature of any such hazardous materials, substances, wastes or other environmentally regulated substances, which Mortgagor is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and Mortgagor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. Mortgagor further warrants and represents that it will promptly notify Mortgagee of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will transmit to Mortgagee copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

(b) Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against Mortgagee as a direct or indirect result of any warranty or representation made by Mortgagor in the preceding paragraph being false or untrue in any material respect or any requirement under any law, regulation or ordinance, local, state or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by Mortgagee, Mortgagor or any transferee of Mortgagor or Mortgagee.

(c) Mortgagor's obligations hereunder shall not be limited to any extent by the term of the Note secured hereby, and, as to any act or occurrence prior to payment in full and satisfaction of said Note which gives rise to liability hereunder shall continue, survive and remain in full force and effect notwithstanding payment in full and satisfaction of said Note and this Mortgage or foreclosure under this Mortgage, or delivery of a deed in lieu of foreclosure.

2.05 Taxes and Liens.

(a) Mortgagor shall pay or bond promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred.

(b) Mortgagor shall not permit or suffer more than thirty (30) days any mechanics', laborers', materialmen's, statutory or other lien upon any of the Mortgaged Property.

(c) Mortgagee may, if it deems in its reasonable judgment that its security for the Note is impaired, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making any required payments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such taxes, assessments and similar charges. In the event of a default under any of the terms, covenants and conditions of the Note, this Mortgage or any other instruments security the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit.

(d) In the event of the enactment of any law by the State of South Carolina, except for a change only in state income tax rates applicable to Mortgagee generally, after the date of this Mortgage, deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this Mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby (unless payment of such by Mortgagor is prohibited by law), and in the event Mortgagor fails to pay such obligation within thirty (30) days after written notice by Mortgagee, the whole of the indebtedness secured by this mortgage, together with the interest due thereon, shall, at the option of Mortgagee, become immediately due and payable.

2.06 Insurance.

(a) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies with replacement cost endorsements, for the full insurable value, insuring the Mortgaged Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may require including flood damage, and business interruption or loss of rental income protection, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies, the coverages provided, and the companies issuing them, and the coverages provided shall be acceptable to Mortgagee. All such policies and renewals thereof shall be held by Mortgagee and shall contain a noncontributory mortgagee endorsement making losses payable to Mortgagee. The coverage under such policies shall be limited to the improvements now or hereafter located on the Mortgaged Property. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. Delivery of the insurance policies and renewals thereof shall constitute an assignment to Mortgagee, as further security, of all unearned premiums. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. Mortgagee may at any time at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in like amount, as it may determine without prejudice to its right to foreclose hereunder should Mortgagor fail or refuse to keep said premises so insured.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies, and Mortgagee and Mortgagor shall jointly participate in the adjustment or compromise of any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses to Mortgagee and Mortgagor jointly, and not to Mortgagor and Mortgagee jointly. In the event the Mortgaged Property is entirely destroyed or is partially destroyed to the extent that restoration will in the opinion of Mortgagee cost in excess of Two Hundred Fifty Thousand and no/100 ($250,000.00) Dollars, or in the event restoration costs will not exceed said amount but the conditions of the next sentence are not satisfied, all insurance proceeds shall, at the option of Mortgagee, be applied to the Note (first to expenses, then interest, and then principal) and the Note and all other amounts secured hereby shall, at the option of Mortgagee, become immediately due and payable. Notwithstanding any provisions of this Section to the contrary, (i) if the Mortgaged Property is only partially destroyed to the extent that in the opinion of Mortgagee the Mortgaged Property can be restored for a cost not to exceed Two Hundred Fifty Thousand and no/100 ($250,000.00) Dollars; (ii) if in the opinion of the Mortgagee the Mortgaged Property as restored will produce sufficient revenue to repay the Note; (iii) if rental insurance or business interruption insurance is available in amounts sufficient to pay all payments due on the Note during restoration, or if Mortgagor makes some other provision satisfactory to Mortgagee for making all

payments due on the Note during restoration; (iv) if tenants agree in writing to remain on the Mortgaged Property under their leases to the extent necessary to produce a debt service coverage ration of not less that 1.25 [**NOTE: NEED TO DISCUSS**] to 1.00, and, if applicable, any purchasers of the Mortgaged Property or portions thereof agree in writing that their purchase contracts shall remain in effect; (v) if the Mortgagee receives evidence satisfactory to it and its counsel that the Mortgaged Property as restored will comply with all local zoning ordinances and building restrictions; and (vi) if the Mortgagor covenants to make the necessary repairs and restoration and provides all additional funds necessary therefor, the Mortgagee will make the insurance proceeds (less expenses incurred in collecting the same) available to the Mortgagor for the purpose of such repair and restoration, disbursement procedures. If Mortgagee elects to restore the improvements, any balance of such monies after restoration shall, at the option of Mortgagee, either be applied toward the reduction of indebtedness and other sums secured hereby or be paid to Mortgagor. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, liability insurance policies relating to the Mortgaged Property, in such amounts, with such companies and in such form as may be reasonably required by Mortgagee. Mortgagee may require such policies to contain an endorsement, in form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals.

(d) After an Event of Default, Mortgagee may, in its sole discretion, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of regular installments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for all insurance. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to enable Mortgagee to pay such premiums when due. In the event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit and any refund of premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

2.07 Condemnation. In the event that by, or pursuant to, proper authority there is taken or condemned the entire Mortgaged Property or any part thereof, under power of eminent domain exercised by any actual or quasi governmental authority or public utility, the Mortgagor hereby assigns to the Mortgagee any and all awards that may be given, made or due the Mortgagor in any proceedings in connection therewith, and the amounts of such awards shall be applied by the Mortgagee to the reduction of the indebtedness secured hereby, and the Mortgagor agrees to execute any and all such further instruments of assignment of any and all such condemnation awards as may be required by the Mortgagee to carry out the purposes of this Section. The Mortgagor shall give written notice of such condemnation proceeding within ten (10) days of receipt of any service or

process in connection therewith. In any condemnation proceedings against the Mortgaged Property, the Mortgagee hereby reserves, and the Mortgagor hereby acknowledges, the Mortgagee's right to institute or intervene in any such condemnation proceedings to assert said interest. In the event the entire Mortgaged Property is taken or so much thereof that restoration will in the opinion of Mortgagee cost in excess of Fifty Thousand and no/100 ($50,000.00) Dollars, or in the event restoration costs will not exceed said amount but the conditions of the next sentence are not satisfied, all condemnation proceeds shall, at the option of the Mortgagee, be applied to the Note (first to expenses, then interest, and then principal) and the Note and all other amounts secured hereby shall, at the option of Mortgagee, become immediately due and payable. Notwithstanding any provisions of this Section to the contrary, (i) if the entire Mortgaged Property is not taken and in the opinion of Mortgagee the Mortgaged Property can be restored for a cost not to exceed Fifty Thousand and no/100 ($50,000.00) Dollars; (ii) if in the opinion of Mortgagee the Mortgaged Property as restored will produce sufficient revenue to repay the Note; (iii) if provision satisfactory to Mortgagee is made for making all payments due on the Note during restoration; (iv) if all tenants agree in writing to remain on the Mortgaged Property under their leases and, if applicable, any purchasers of the Mortgaged Property or portions thereof agree in writing that their purchase contracts shall remain in effect; (v) if the Mortgagee receives evidence satisfactory to it and its counsel that the Mortgaged Property as restored will comply with all local zoning ordinances and building restrictions; and (vi) if the Mortgagor covenants to make the necessary repairs and restoration and provides all additional funds necessary therefor, the Mortgagee will make said award (less expenses incurred in collecting the same) available to the Mortgagor for the purpose of such repair and restoration, disbursement of proceeds to be in accordance with Mortgagee's standard construction disbursement procedures. Any excess of the proceeds of the award over the cost of repair and restoration shall be applied to reduce the principal amount of the Note and accrued interest thereon.

2.08 Care of Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not remove, demolish, materially alter or materially change the use of any building, structure or other improvement presently or hereafter on the Land without the prior written consent of Mortgagee, except as provided in the Loan Agreement. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, or the Loan Agreement, no fixture, personal property or other part of the Mortgaged Property shall be removed, demolished or altered, without the prior written consent of the Mortgagee. Mortgagor may sell or otherwise dispose of, free from lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable or obsolete only if they are replaced immediately with similar items of at least equal value which shall, without further action, become subject to the lien of this Mortgage, except as otherwise provided in this Mortgage.

(c) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time during the life of this Mortgage.

(d) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be lost, damaged or destroyed by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee and, unless Mortgagee elects to apply available insurance proceeds to the Note instead of to restoration as permitted in Section 2.06(b) hereof, Mortgagor shall promptly restore the Mortgaged Property to the equivalent of its original condition regardless of whether or not there shall be sufficient insurance proceeds therefor. If a part of the Mortgaged Property shall be lost, physically damaged or destroyed through condemnation, unless Mortgagee elects to apply condemnation proceeds to the Note instead of to restoration as permitted in Section 2.07 hereof, Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to Mortgagee, regardless of whether condemnation proceeds are sufficient to pay for such restoration.

(f) If any work required to be performed under this Paragraph involves an estimated expenditure of more than five (5%) per cent of the face amount of the Note, no such work shall be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to Mortgagee, have been submitted to and approved in writing by Mortgagee.

2.09 Transfer of Property. Except as provided in the Loan Agreement, Mortgagor shall not sell, convey, transfer, mortgage, lease or further encumber any interest in or any part of the Mortgaged Property, without the prior written consent of Mortgagee in its sole discretion. If any person should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of Mortgagee in its sole discretion, further assign the rents from the Mortgaged Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof. If Mortgagor is a corporation, limited liability company, or a general or limited partnership, Mortgagor further covenants that no shareholder, member or partner, as applicable, shall transfer any stock, membership interest or partnership interest in the Mortgagor without the prior written consent of Mortgagee in its sole discretion; provided, however, that the death of a member, shareholder or partner and the resulting transfer in and out of an estate shall not be deemed a transfer requiring consent of the Mortgagee. This prohibition also applies to any transfer of interest by any member of the Mortgagor or any member, shareholder or partner owning an interest in an entity that owns an interest, as member, shareholder or as a general or limited partner, in Mortgagor. Notwithstanding the foregoing, the members of Mortgagor will be allowed to add new equity or redeem the interests of existing members in the ordinary course of business so long as the controlling managers do not change and so long as the controlling members of such managers do not change. The controlling members of Grove Property Fund LLC are Ed

Navarro, Damon Navarro and Joe LaBrosse; and the controlling members of EDANDJ Bowman, LLC are Ed Ross, Andrew Agostini and J. Luzuriaga. Any such transfer without Mortgagee's prior written consent shall be an Event of Default hereunder.

2.10 Further Assurances. At any time and from time to time, upon Mortgagee's request Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be rerecorded or refiled at such time and in such offices and places as shall be deemed desirable by Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, enlarge in accordance with the Loan Agreement or perfect, or to continue and preserve the obligations of Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, financing statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

2.11 After Acquired Property. The lien of this Mortgage of will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Mortgaged Property or any part thereof.

2.12 Leases Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor, if required by Mortgagee, shall furnish promptly to Mortgagee executed copies of all such leases now existing or hereafter created, all of which shall be in form and substance subject to the approval of Mortgagee. Mortgagor shall not, without the express written consent of Mortgagee, modify, surrender, terminate or extend any such lease now existing or hereafter created, or permit or suffer an assignment or sublease. Mortgagor shall not accept payment of rent more than one (1) month in advance without the prior written consent of Mortgagee.

2.13 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees and disbursements, and costs incurred or paid by Mortgagee in any action which is threatened, pending or completed or proceeding or in dispute in which Mortgagee is or might be made a party or appears as a party plaintiff or party defendant and which affects or might affect the Note, or the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this Mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect the security hereof. All costs, charges and expenses so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there be notice, demand, attempt to collect or suit pending. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

2.14 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessments, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance or observance of any other covenant, condition or term in this Mortgage or in any other instrument securing the Note, Mortgagee may at its option perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. The amounts so incurred or paid by Mortgagee, together with the interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

2.15 Books and Records. Mortgagor shall keep and maintain at all times complete, true and accurate books of accounts and records reflecting the results of the operation of the Mortgaged Property. Mortgagor shall furnish to Mortgagee a balance sheet and a statement of income and expenses. Mortgagor shall permit Mortgagee to inspect said books and records upon request. In addition, Mortgagor will deliver or cause to be delivered to Mortgagee with respect to the Mortgaged Property the financial statements required under the Loan Agreement.

2.16 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums.

2.17 Future Mortgage Modifications. Mortgagee may at any time and from time to time, without notice to, and without consent of, any other person or entity (except for Mortgagor in the case of a modification of the terms of the Note or this Mortgage), (a) extend or accelerate the time of payment of the indebtedness secured hereby, (b) agree to modify the terms of the Note or this Mortgage, including increasing payments of interest and principal, (c) release any person liable for payment of any indebtedness secured hereby or for performance of any obligation, (d) release all or any part of the security held for the indebtedness secured hereby, or (e) exercise or refrain from exercising or waive any right Mortgagee may have.

Mortgagee shall have such rights and may exercise them without affecting the lien or priority of this Mortgage upon the Mortgaged Property or any part thereof, and without affecting the liability of any guarantor or surety, notwithstanding the fact that guarantors, sureties, junior mortgages, judgments, or other claims or encumbrances may be impaired, prejudiced, or otherwise adversely affected thereby.

2.18 Use of Mortgaged Property. The Mortgaged Property shall be used by Mortgagor only as a retail center in accordance with existing zoning and land use laws and any future plans and

specifications approved by Mortgagee, which use shall not change without the prior written consent of Mortgagee.

ARTICLE THREE

SECURITY AGREEMENT

3.01 Security Agreement. This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code (South Carolina) ("UCC") for any portion of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the UCC, including the Collateral, and Mortgagor hereby grants to Mortgagee a security interest in the Collateral. Mortgagee shall have all rights and remedies of a secured party under the UCC as well as all other rights and remedies available at law or in equity.

3.02 Additional Covenants and Representations of the Mortgagor. The Mortgagor hereby warrants and represents to and covenants and agrees with the Mortgagee as follows:

(a) The Mortgagor is the owner of and has good and marketable title to the Collateral free from any liens other than the liens arising hereunder and under the other Loan Documents, and any liens explicitly permitted hereunder, and the Mortgagor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

(b) The address shown at the beginning of this Mortgage is the chief executive office and principal place of business of the Mortgagor and the location of all records concerning that portion of Collateral which consists of general intangibles. The Mortgagor will not change such chief executive office or principal place of business or any other place of business, or the location of any Collateral (including the records relating thereto), or make any change in its legal name or conduct business operations under any fictitious business or trade name without, in each such case (A) giving at least 30 days' prior written notice thereof to the Mortgagee and (B) executing, delivering, filing and recording all necessary financing statements (or amendments thereto) or other instruments and documents in order to maintain the validity, enforceability, priority and perfection of the liens arising hereunder.

(c) Except as explicitly permitted by the Loan Documents, (A) the Mortgagor will not sell or otherwise dispose of any of the Collateral or any interest therein and (ii) the Mortgagor will not create, assume, incur or suffer to exist any lien of any kind (whether senior, pari passu or subordinate) on the Collateral other than those arising hereunder and under the other Loan Documents.

(d) The Mortgagor will keep the Collateral in good repair, working order and condition and adequately insured at all times in accordance with the provisions of this Mortgage and the other Loan Documents.

(e) The Mortgagor will, without the necessity of any request by the Mortgagee, promptly make, execute, acknowledge and deliver and file and record in all proper offices and places such financing statements, continuation statements, certificates, collateral agreements and other agreements, documents or instruments as may be necessary to perfect or from time to time renew the liens arising hereunder and under the other Loan Documents, including those that may be necessary to perfect such liens in any additional Collateral hereafter acquired by the Mortgagor or in any replacements or proceeds thereof, and the Mortgagor will take all such action as may be deemed necessary or advisable by the Mortgagee to carry out the intent and purposes of the Loan Documents or for assuring and confirming to the Mortgagee the grant and perfection of the liens in the Collateral. To the extent permitted by law, the Mortgagor authorizes and appoints the Mortgagee to execute and file such financing statements, continuation statements, certificates, collateral agreements and other agreements, documents and instruments in its stead, with full power of substitution, as the Mortgagor's attorney-in-fact, coupled with an interest. To the extent permitted by law, the Mortgagor further agrees that a carbon, photographic or other reproduction of this Mortgage, or any security agreement, financing statement or continuation statement is sufficient as a financing statement or continuation statement.

3.03 Remedies. In case any one or more Events of Default (as defined herein or in any other Loan Document) under the Note, this Mortgage and/or any Loan Document shall have occurred and be continuing beyond any applicable cure period therefor, the Mortgagee shall have, in addition to all other rights and remedies given to it by this Mortgage, those allowed by law, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted and in effect in the applicable jurisdiction, and, without limiting the generality of the foregoing, the Mortgagee may immediately, without demand of performance and without other notice (except as set forth in the Note, this Mortgage or other documents executed and delivered pursuant thereto or in connection therewith) or demand whatsoever to Mortgagor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon in the county where the Premises are located, or elsewhere, the whole or, from time to time, any part of the Mortgaged Property (including the Collateral), or any interest which Mortgagor may have therein, and, after deducting from the proceeds of sale or other disposition of the Mortgaged Property (including the Collateral) all expenses (including all reasonable expenses for legal services), shall apply the residue of such proceeds towards the satisfaction of the Note and any other sums secured by this Mortgage. The remainder, if any, of the proceeds after satisfaction in full of the Note and any other sums secured by this Mortgage shall be paid to Mortgagor. Notice of any sale or other disposition shall be given to Mortgagor at least ten days before the time of any intended public sale or the time any intended private sale or other disposition of the Mortgaged Property (including the Collateral) is to be made, which the Mortgagor hereby agrees shall be reasonable notice of sale or other disposition. Mortgagor agrees to assemble, or cause to be assembled, at its own expense, the Mortgaged Property (including the Collateral) at such place or places as the Mortgagee shall designate by written notice. At any such sale or disposition, the Mortgagee may, to the extent permissible under applicable law,

purchase the whole or any part of the Mortgaged Property (including the Collateral) sold, free from any right of redemption on the part of Mortgagor, which right is hereby waived and released. Without limiting the generality of any rights and remedies conferred upon the Mortgagee under this Section, the Mortgagee may, to the full extent permitted by law: (a) enter upon the Mortgaged Property, exclude therefrom Mortgagor or any affiliate thereof, and take immediate possession of the Mortgaged Property (including the Collateral), either personally or by means of a receiver appointed by a court of competent jurisdiction, using all lawful, necessary force to do so; (b) use, operate, manage and control the Mortgaged Property (including the Collateral) in any lawful manner; (c) collect and receive all rents, income, revenue, earnings, issues and profits therefrom; and (d) maintain, repair, renovate, alter or remove the Mortgaged Property (including the Collateral) as the Mortgagee may determine in its discretion, and any monies so collected or received by the Mortgagee shall be applied to, or may be accumulated for application upon, satisfaction of the Note or any other sums secured by this Mortgage.

3.04 FINANCING STATEMENT. **THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT AND SERVES AS A FIXTURE FILING IN ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE.**

ARTICLE FOUR
DEFAULTS

4.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure to pay any payment due on the Note when due, no notice of such default being required unless otherwise provided in the Loan Agreement (if any).

(b) An event of default under the Loan Agreement not cured within any applicable cure period provided therein.

(c) A breach by Mortgagor of any other covenants, agreements contained in this Mortgage, not cured within thirty (30) days after written notice thereof by Mortgagee.

(d) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in the Note, this Mortgage and Security Agreement, or any other instrument securing the Note or any other instrument collateral to the Note or executed in connection with the sums secured hereby, not cured within any applicable cure period provided in such instrument.

(e) If either (A) Mortgagor or any endorser of the Note: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as a bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Mortgaged Property or of any or

all of the rents, revenues, issues, earnings, profits or income thereof, or (v) makes any general assignment for the benefit of creditors, or (vi) makes an admission in writing of its inability to pay its debts generally as they become due; or (B) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or (C) any trustee, receiver or liquidator of Mortgagor or endorser of the Note, or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(f) Default by Mortgagor under any agreement or obligation of Mortgagor affecting any portion of the Mortgaged Property, or any other documents or instruments securing any other indebtedness of Mortgagor to Mortgagee, if such default is not cured within any cure period permitted therein and if such default permits the holder to cause such obligation to become due prior to its stated maturity. Mortgagor shall notify Mortgagee in writing of the occurrence of such default, specifying the nature of such default.

(g) Material breach of any warranty or material untruth of any representation of Mortgagor contained in the Note, this Mortgage or any other instrument securing the Note, not cured (if such breach can be cured) within ten (10) days after written notice thereof by Mortgagee.

(h) If the Mortgagor suffers a material adverse change in financial condition.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

4.03 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Mortgagee may determine.

4.04 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agent and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Mortgagor shall pay to Mortgagee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) make all necessary and proper maintenance, repairs, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Mortgagee:

all as Mortgagee in its reasonable judgment from time to time may determine; and Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (1) the reasonable compensation, expenses and disbursements of the agents and attorneys; (2) the cost of insurance, taxes, assessments and other proper charges upon the Mortgaged Property or any part thereof; (3) the deposits for taxes and assessments and insurance premiums due; and (4) the payment of accrued interest on the Note.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of

the terms of this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.05 Leases. Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property. At Mortgagee's request, Mortgagor shall provide tenant estoppels and subordination, nondisturbance and attornment agreements from each tenant of the Mortgaged Property as a condition to the Loan and as a condition to any extension or modification of this Loan that may be agreed upon in writing by Mortgagee.

4.06 Purchase by Mortgagee. Upon any such foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.07 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Mortgagee may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

4.08 Waiver of Appraisement, Valuation, Stay, Extension, and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting in possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof or appraised for the purpose of reducing any deficiency judgment obtained by Mortgagee against Mortgagor and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor further waives, to the full extent permitted by law, the right to petition for the appointment of appraisers following foreclosure for the purpose of seeking to reduce a deficiency judgment or for any other reason.

4.09 Receiver. If an uncured Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the

Mortgaged Property and to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Land is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee, whether received pursuant to this paragraph or paragraph 4.04. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

4.10 Suits to Protect the Mortgaged Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

4.11 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

4.12 Mortgagor to Pay the Note on Any Default in Payment; Application of Monies by Mortgagee.

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note, then, upon Mortgagee's demand, Mortgagor will pay to Mortgagee the whole amount due and payable under the Note and all other sums secured hereby; and if Mortgagor shall fail to pay the same forthwith upon such demand, Mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Mortgagee's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Mortgagee shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of

Mortgagee to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Mortgagee and no attachment or levy of any execution upon any of the Mortgaged Property or any other property shall in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by Mortgagee under this paragraph shall be applied as follows:

(i) First, to the payment of reasonable compensation, expenses and disbursements of the agents and attorneys; and

(ii) Second, to payment of amounts due and unpaid under the Note, this Mortgage and all other instruments securing the Note.

4.13 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default than existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other instrument securing the Note; (e) consents to the filing of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments

executed by Mortgagee, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings: Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE FIVE
MISCELLANEOUS PROVISIONS

5.01 Heirs, Successors, and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

5.02 Addresses for Notices, Etc. Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be deemed given or furnished when mailed, postage prepaid, to that party at the address first shown above. Any party hereto may change the address for said notice by appropriately notifying the other parties in writing.

5.03 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

5.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the

remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

5.05 Changes, Etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

5.06 Governing Law. This Mortgage is made by Mortgagor and accepted by Mortgagee in the State of South Carolina, with reference to the laws of such State, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

5.07 Default Rate. The Default Rate shall be the rate of interest after default as provided in the Note; in the event no such rate is provided therein, the Default Rate shall be the maximum rate of interest permitted by law at the time of default or fifteen (15%) per cent per annum, whichever is less.

ARTICLE SIX
LENDING PROVISIONS

6.01 Breach of Loan Agreement and Other Documents. Notwithstanding anything to the contrary contained in this Mortgage or in the Note, or in any other instrument securing the loan evidenced by such Note, upon an Event of Default, Mortgagee may at its option declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Mortgagee hereunder, immediately due and payable and/or exercise all additional rights accruing to it under this Mortgage in the event of a breach by Mortgagor of any covenant contained in this Mortgage, the Note, or in the Loan Agreement. The proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in the Loan Agreement. All advances and indebtedness arising and accruing under the Loan Agreement from time to time shall be secured hereby.

6.02 Partial Foreclosure. In the event the Mortgaged Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Mortgaged Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the Mortgaged Property prior to the foreclosure of exercise of said remedies against other portions of the Mortgaged Property.

6.03 Future Advances. Mortgagee, at its option, may make future advances to Mortgagor in accordance with the Loan Agreement and the Note, provided, however, that nothing contained herein shall constitute an obligation to do so. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when

evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Mortgagee may make such future advances (a) at the request of Mortgagor, whether or not there is any obligation to make future advances, or (b) to pay, with or without the consent or request of Mortgagor, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Mortgaged property.

6.04 Instrument Under Seal. This Mortgage is intended to be and shall be construed as an instrument under seal.

6.05 WAIVER OF JURY TRIAL. MORTGAGOR WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, THE RIGHT TO A JURY TRIAL IN ANY LITIGATION CONCERNING THIS AGREEMENT OR ANY DEFENSE, CLAIM, COUNTERCLAIM, CLAIM OF SET-OFF OR SIMILAR CLAIM OF ANY NATURE THAT MORTGAGOR MAY ASSERT AGAINST MORTGAGEE.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

6.08 WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. Pursuant to Section 29-3-680 of the Code of Laws of South Carolina, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. The Mortgagor specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below:

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year above first written.

WITNESSES:

MORTGAGOR:

Bowman MPT Center, LLC
a South Carolina limited liability company

By: Grove Property Fund LLC
Its Co-Managing Member

By: _____
Edmund Navarro
Its: Manager, President and
Chief Operating Officer

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF Charleston)

I, David M Granson (Notary Public), do hereby certify that Bowman MPT Center LLC, by Grove Property Fund LLC, Its Co-Managing Member, by Edmund Navarro, its Manager, President and Chief Operating Officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 28th day of January, 2011.

David M Granson
Notary Public for South Carolina
My Commission Expires: 10/20/20

Exhibit A

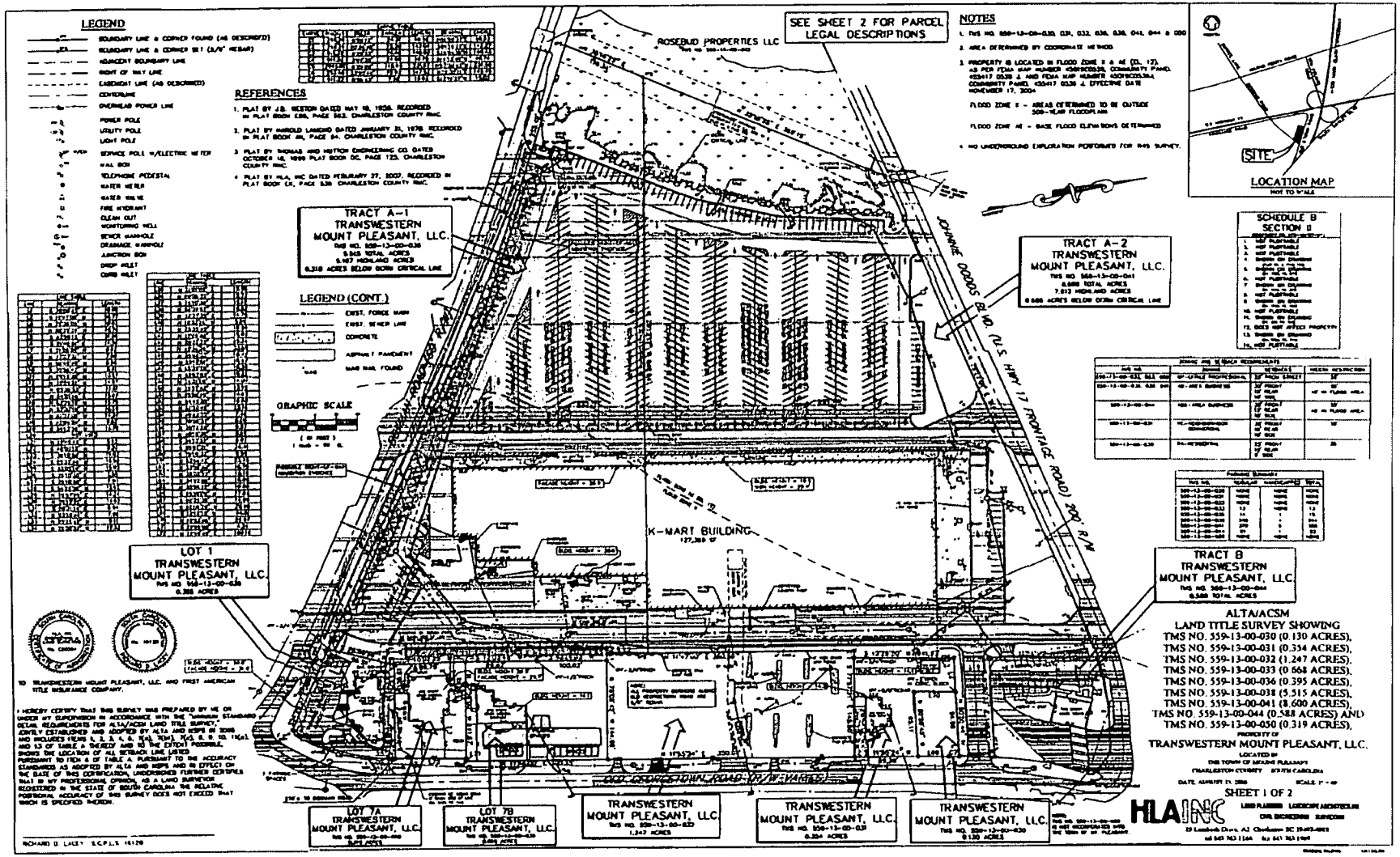
Legal Description for Loan Documents
Loan from NBSC, a Division of Synovus
To Bowman MTP Center LLC

Tract 1:

All those certain pieces, parcels, or tracts of land, situate, lying and being in the Town of Mount Pleasant, Charleston County, South Carolina, shown and designated as **"TRACT A-1, BAKER & BAKER, TMS# 559-13-00-038, 5.515 TOTAL ACRES;" "TRACT A-2, BAKER & BAKER, TMS# 559-13-00-041, 8.600 TOTAL ACRES;" "TRACT B, BAKER & BAKER, TMS# 559-13-00-044,"** on a plat entitled: "PLAT SHOWING TRACT A-1 (5.515 ACRES), TRACT A-2 (8.600 ACRES), AND TRACT B (0.588 ACRES), PROPERTY OF BAKER AND BAKER, LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by HLA INC, dated February 22, 2007, and recorded in Plat Book EK, Page 536, in the RMC Office for Charleston County. Said Parcels having such sizes, shapes, dimensions, buttings and boundings as shown on said plat.

TMS# 559-13-00-038 (Tract A-1)
TMS# 559-13-00-041 (Tract A-2)
TMS# 559-13-00-044 (Tract B)

Being the same property conveyed to Bowman MTP Center LLC by deed of Transwestern Mount Pleasant, L.L.C., a Delaware limited liability company dated as of January 28, 2011, and recorded in the RMC Office for Charleston County.


SEE SHEET 2 FOR PARCEL LEGAL DESCRIPTIONS
ROSEBUD PROPERTIES LLC
LEGEND
REFERENCES
NOTES
LOCATION MAP
SITE
TRACT A-1 TRANSWESTERN MOUNT PLEASANT, LLC.
TRACT A-2 TRANSWESTERN MOUNT PLEASANT, LLC.
TRACT B TRANSWESTERN MOUNT PLEASANT, LLC.
LOT 1 TRANSWESTERN MOUNT PLEASANT, LLC.
LOT 7A TRANSWESTERN MOUNT PLEASANT, LLC.
LOT 7B TRANSWESTERN MOUNT PLEASANT, LLC.
TRANSWESTERN MOUNT PLEASANT, LLC.
TRANSWESTERN MOUNT PLEASANT, LLC.
TRANSWESTERN MOUNT PLEASANT, LLC.
K-MART BUILDING
JOHNNIE DODDS BLVD. (U.S. HWY 17 FRONTAGE ROAD) 200' R/W
LEGEND (CONT.)
GRAPHIC SCALE
SCHEDULE B SECTION II
ALTA/ACSM
LAND TITLE SURVEY SHOWING
TMS NO. 559-13-00-030 (0.130 ACRES),
TMS NO. 559-13-00-031 (0.334 ACRES),
TMS NO. 559-13-00-032 (1.247 ACRES),
TMS NO. 559-13-00-033 (0.668 ACRES),
TMS NO. 559-13-00-036 (0.395 ACRES),
TMS NO. 559-13-00-038 (5.515 ACRES),
TMS NO. 559-13-00-041 (8.600 ACRES),
TMS NO. 559-13-00-044 (0.588 ACRES) AND
TMS NO. 559-13-00-050 (0.319 ACRES),
PROPERTY OF
TRANSWESTERN MOUNT PLEASANT, LLC.
LOCATED IN
THE TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY SOUTH CAROLINA
SHEET 1 OF 2
HLA INC

0307

π E.2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO. 2011-CP-10-4324
COUNTY OF CHARLESTON	)	

Town of Mt. Pleasant, South Carolina, Condemnor, vs. Bowman MTP Center, LLC, Landowner, and NBSC, a Division of Synovus Bank; K Mart Corporation, Other Condemnees.	)

K Mart Corporation's Memo In Support of Partial Summary Judgment

FILED
2011 SEP 14 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT

FACTS:

K Mart Corporation leases approximately 8.6 acres of property on the corner of US 17 and Bowman Road in Mt. Pleasant, South Carolina. (Ex 1 - lease of property). The lease defines this 8.6 acres as the 'demised premises'. However, the lease also guarantees K Mart the use of 730 parking spaces, (Ex 1, ¶10), many of which fall outside the 'demised premises'. (Bishop deposition p. __).

On July 17, 2011, the Town of Mt. Pleasant filed a condemnation action seeking to acquire .68 acres along Bowman Road for its widening project and deposited $435,925.00 with the clerk of court. The condemned property includes land outside the 'demised premises' and eliminates 57 parking spaces. (Bishop deposition p. __). K Mart hired Jody Bishop to appraise its leasehold interest both before and after the condemnation. He basically determined K Mart

possessed a right to use parking spaces outside the 'demised premises' and that the loss of the 57 spaces reduced K Mart's ability to either construct an additional building or add onto the existing building by 7,500 square feet based on applicable parking ratio.

Although not initially included in the condemnation action, the pleadings were amended to include the K Mart as an "Other Condemnee" by virtue of its leasehold interest in the property. The parties have since settled the *just compensation* issues with the Town of Mt. Pleasant for $435,925.00 and it was dismissed as a party. The funds currently sit in an account with the clerk of court. The matter was referred to the Master to determine the allocation of the $435,925.00 between K Mart and the landowner.

K Mart moves for partial summary judgment on the sole issue of entitlement to such funds under the lease while landowner claims K Mart waived its right to share in the award via the lease and subordination agreement. Once the Court rules on the issue of entitlement, the parties will seek a hearing to determine apportionment of the funds if necessary.

ARGUMENT AND THE LAW

Summary judgment is proper where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Dawkins v. Fields, 345 S.C. 23, 545 S.E.2d 515. When ruling on a motion for summary judgment, the trial judge must first consider all of the documents and evidence in the record, including the pleadings, depositions, answers to interrogatories, admissions on file and affidavits. Higgins v. Medical Univ. of S.C., 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997). Summary judgment must not be granted until opposing counsel has had a full and fair opportunity to complete discovery. Doe ex rel Doe v. Batson, 548 S.E.2d 854 (SC 2001); Baird v. Charleston County, 511 S.E.2d 69 (SC 1999).

The sole issue in this case is whether the lease allows K Mart to seek its diminished leasehold interest or not. The construction of a clear and unambiguous contract presents a question of law for the court. Ward v. West Oil Co., Inc., 379 S.C. 225, 665 S.E.2d 618 (Ct. App. 2008); *see also* Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001). K Mart submits the lease clearly and unambiguously allows it to share in the award thereby making this a legal issue for the court.

I. The law does not favor forfeiture clauses in eminent domain actions.

The apportioning of a condemnation award is one of equity, S.C. Code § 28-2-460, and where the lease is silent as to allocation, tenant has a common law right to a portion of a condemnation award. Hamiton v. Martin, 270 S.C. 223, 241 S.E. 2nd 569 (1978); South Carolina Dept of Transportation v. M&T Enterprises, 379 S.C. 645, 667 S.E. 2nd 7 (2008). The law does not look favorably on clauses causing the forfeiture of the lessee's interest in a condemnation. 2 *Nichols on Eminent Domain*, §5.02[6][f] (3rd ed. 2006). Eminent Domain clauses must be construed to avoid waiver and will only be found to extinguish a lessee's right to share in compensation only where the parties' intent is clearly and expressly stated. Id.; Burkhart v. U.S. 227 F.2d 659. 662-63 (9th Cir. 1955). A lessees' compensable interest in the property remains intact unless the lessors and lessees clearly contract otherwise. Gawzner v. Lebenbaum, 9 Cir., 180 F.2d 610; United States v. 1010.8 Acres of Land, D.C., 62 F.Supp. 277. *fn 3 in* Burkhart, 227 F.2d 659. *See also* Reilly Trust v. Anthony Wayne Oil Corp., 574 N.E.2d 318 (Ind App. 1981); Winn-Dixie Stores, Inc. v. Dept of Transportation, 839 So. 2nd 727 (Fla App. 2003); Maxey v. Redevelopment Authority of the City of Racine, 288 N.W. 2nd 794 (Wisc. 1980).

II. The lease clearly allows tenant to share in the award.

The original parties to the lease included the Baker and Baker partnership and K Mart Corporation. (Ex 1). Landowner inherited this lease when it purchased the property in 2007. Paragraph 21 of the lease addresses the parties' rights in the event a public or quasi-public agency acquires a potion of the property through eminent domain.

The condemnation clause is complicated and provides remedies based on a number of situations. However, the last sentence in the Eminent Domain section clearly allows the tenant to share in an award in this instance. It states:

> . . . however, the Tenant's right to receive compensation for damages or to share in any award shall not be affected in any manner hereby if said compensation, damages, or award is made by reason of the expropriation of land or buildings or improvements constructed or made by Tenant. (¶21 of the lease).

Since the condemnation does not include the expropriation of any buildings or improvements made the tenant, that portion is irrelevant and can be removed all together for purposes of this case. In short, the lease reads, "Tenant's right to . . . share in the award shall not be affected . . . if . . . award is made by . . . expropriation of land."

When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense. C.A.N. Enters., Inc. v. South Carolina Health and Human Servs. Fin. Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it. Ebert v. Ebert, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct.App. 1995). The Court lacks authority to alter an unambiguous contract by

construction or to make new contracts for the parties. C.A.N. Enters., Inc., 296 S.C. at 378, 373 S.E.2d at 587. The Court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness or the parties' failure to guard their rights carefully. Lindsay v. Lindsay, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct.App. 1997).

The lease allows K Mart to share in the award since the award is made by expropriation of land. The language of the this sentence does not differentiate between the expropriation of the 'demised premises' or property outside the 'demised premises'. This makes sense since K Mart owns a recognizable interest in parking spaces outside the demised premises. Here, only a portion of the 730 parking spaces fall within the 'demised premises'. However, K Mart pays rent and bargained for the right to use 730 parking spaces in the shopping center. The loss of the 57 parking spaces effects K Mart's development rights in the 'demised premises' which reduces its leasehold interest.

Since the lease allows K Mart to share in award, the Court should find as a matter of law that K Mart is entitled to recover the loss of its leasehold interest in this action. Such a ruling not only follows common sense but is also consistent when reading the document as a whole. K Mart pays an annual rent of $227,838.00, (¶3 of Ex 1), and is guaranteed 730 parking spaces. (¶ 10 of Ex 1). It makes no sense that K Mart could lose 57 parking spaces guaranteed under the lease and still be obligated to pay the same annual rents without any remedy. Finding K Mart is not entitled to any apportionment effectively leaves K Mart less that what it bargained for and a reduced leasehold interest while requiring it to continue to pay the same annual rents.

An Appellate Court in Florida agreed when presented with the identical situation. K-Mart Corporation v. State of Florida Dept of Transportation, 636 So.2d 131 (Fla App 1994), (Ex

2). In the Florida K Mart case, the DOT acquired a portion of property leased by K Mart. The lower court misinterpreted the identical language finding K-Mart contracted away its right to share in the award. The Appellate Court reversed the ruling, stating:

> The lease in this case contains two pertinent provisions. The first states that the lessee is precluded from sharing in any award made for a taking if the taking involves the "expropriation of landlord buildings on the demised premise." The trial court apparently relied on this provision in determining that K Mart had no right to compensation. It is the second provision, however, that is controlling. That provision, in pertinent part, states that "the tenant's right to receive compensation or damages or to share in any award shall not be effected in any manner hereby if said compensation damages or award is made by reason of expropriation of the land" Id. 132.

The Appellate Court in the Florida K Mart case interpreted the same language present in the instant matter and correctly determined that the tenant can share in the award unless it involves the taking of landlord's building.

An Appellate Court in the State of Washington also faced identical apportionment questions and almost identical lease language. City of Puyallup v. Carl R. Hogan, Case No. 41017-6-II, (Washington State May 6, 2012). (Ex 3). Again, the city condemned a small portion of a commercial shopping owned by Carl Hogan. Border's Inc. was the anchor tenant in the center and sought apportionment of the award after the jury rendered a verdict on the value of the acquisition. Id. Paragraph 22 of the Hogan lease uses very similar language to the last two paragraphs of the K Mart lease. Like the K Mart lease, the Eminent Domain Section's last sentence of the Hogan lease stated:

> although [Border's] right to receive compensation for damages or to share in any award shall not be affected in any manner hereby if said compensation, damages or award is made by reason of the expropriation of any land or buildings constructed, made or owned by [Border's].

The trial judge ruled Border's Inc. was entitled to share in the award based on lack of clear evidence indicating the tenant intended to waive its common law right to apportionment. Id. at 6-7. The ruling was upheld by Washington's Appellate Court. Hogan, Case No. 41017-6-II.

Not only does the K Mart lease lack any clear evidence intending to waive or contract away its right to share in the award, it clearly states K Mart may share in the award when the taking does not include landlord's building and at least two other courts agreed. Accordingly, the court should find K Mart can recover its loss of leasehold interest.

III. The SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT does not apply to the instant situation.

Landowner alleges K Mart's right to share in the award is subordinate Synovus Bank's right. This is not the case. No written document exists in which K Mart agreed to waive its interest in the proceeds of this action. Landowner takes the position that the SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT somehow prohibits K Mart from sharing in the award. (Ex 4). This agreement has nothing to do with the allocation of proceeds from a condemnation action and does not interfere with any of K Mart's rights under Eminent Domain section of the lease.

First, the Subordination portion of the agreement subordinates the lease to any present or future mortgages of the property made by the owner registered against title only to the property. Therefore, in the event of foreclosure, the lender can evict the tenant if it is paying below market rents. The subordination portion in ¶ 2 of the agreement clearly states, "Lender hereby consents to the Lease terms and provisions." (Ex 4). This paragraph goes on to state, "Any options or rights or first refusal contained in the Lease to acquire title to the Premises are hereby made

subject and subordinate to the rights of Lender under Section 14 of the lease." (¶2 of Ex 4). Clearly, the Subordination agreement applies only to title issues and the First Refusal to Purchase Option. It does not apply to K Mart's rights to share in the award under ¶21 of the lease.

The Nondisturbance portion of the agreement restores the tenant to the same position it had been in had the lease continued to have priority over the mortgage and places the lender in the same position as a lender enforcing a security on the property with a prior ranking unsubordinated lease. Paragraph 3 of the agreement titled 'Tenant Not to Be Disturbed' provides that subject to subordination in ¶14 of the lease and as long as K Mart is not in default, any lender, purchaser or subsequent owner "(a) shall not diminish or interfere with Tenant's possession of the Demised Premised and its rights and privileges under the Lease . . ." (¶3 of Ex 4). Clearly, K Mart enjoys and will continue to enjoy its rights under Eminent Domain portion of the lease.

The Attornment portion of the agreement prohibits the tenant from vacating the property in the event of foreclosure if the tenant is paying above market rent. This protects the lender by preventing the tenant from getting out of an unfavorable lease. Paragraph 4, titled 'Tenant to Attorn to Lender' states, that if Lender obtains possession of the property, "Lender shall be bound to Tenant under all terms, covenants and conditions of the Lease, . . ." (¶ 4 of Ex 4). Again, no mention of K Mart waiving any rights under the Eminent Domain section of the lease.

Paragraph 5 of the agreement, titled 'Successor Landlord' states, "If the Lender should succeed the interest of the Landlord under the Lease, Lender shall be bound to Tenant under all terms, covenants and conditions of the Lease, . . ." (¶ 5 of Ex 4). Again, no mention of K Mart waiving any rights under the Eminent Domain section of the lease.

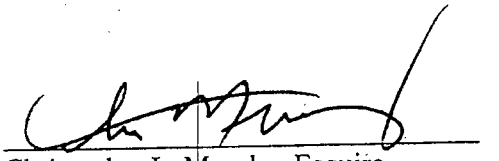
In short, the agreement does not alter K Mart's rights under the lease in any with the exception of its right of first refusal to purchase the property. No where in the agreement does it clearly state or even suggest that K Mart waived its right to share in the condemnation award or collect its diminished leasehold interest and no case law exists to the contrary. In fact, the agreement goes out of its way to state several times that K Mart enjoys all rights and privileges under the lease. Accordingly, the Court should deny landowners motion for summary judgment.

CONCLUSION

Although the lease is lengthy and complicated, the Eminent Domain section clearly and unambiguously allows K Mart to share in an award for the expropriation of land. K Mart clearly possesses a right to use parking spaces outside the 'demised premises' and the loss of 57 spaces clearly effects its leasehold interest. The Appellate Court in Florida quickly came to that conclusion when interpreting an identical lease and a Washington State Appellate Court reached the same conclusion when interpreting similar language.

In addition, the Court should disregard counsel's reference to the SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT as irrelevant. It clearly states that the lease will be subordinate to any rights to acquire title to the property. K Mart is not seeking to acquire any title to the property, thereby rendering this agreement moot.

Therefore, the Court should find as a matter of law that K Mart is entitled to share in the condemnation award and scheduling a hearing to determine the amount of K Mart should receive based on its diminished leasehold interest.



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Attorney for K Mart Corporation

September ___, 2012

Charleston, South Carolina

G:\Sears v. Mt Pleasant(11-3278)\1. Mt. Pleasant\Pleadings\SJ.Memo.#2.8-13-12.wpd

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO. 2011-CP-10-4324
COUNTY OF CHARLESTON	)	
Town of Mt. Pleasant, South Carolina, Condemnor, vs. Bowman MTP Center, LLC, Landowner, and NBSC, a Division of Synovus Bank; K Mart Corporation, Other Condemnees.	)	**K Mart Corporation's Reply Memo**

I. Landowner misapplies the lease and the condemnation clause in the lease.

A. The right to use the parking spaces is the shopping center is a statutorily defined property right.

The lease consists of two components - the demised 8.6 acres and the remaining parking spaces in the shopping center. ¶ 1 of the lease states, "Landlord does demise unto Tenant and Tenant does taking from Landlord for the lease term the following property: Tenant's completed building . . . together with site improvements to be constructed as hereinafter specified by landlord at its expense together with land compromising not less that eight plus (-8+ -)- acres . . . (¶1 of Ex 1). The lease addresses these improvements in ¶10 and addresses the parking requirement as follows:

> Landlord further covenants that the aggregate area provided for parking of automobiles shall during the lease term be sufficient to accommodate

> not less than Seven Hundred Thirty ---- (---730---) automobiles on the basis of arrangement depicted on Tenant's working drawings and specifications. (Ex 1 ¶10).

Since the shopping center consists of 739 spaces, K Mart's lease includes all of those spaces. Any loss of the use of those spaces reduces K Mart's leasehold interest. Clearly K Mart can only develop the property within the 'demised area' and it clearly possesses the right to use all the parking spaces in the shopping center. "A lessee, as the holder of a constitutional property interest, or as an "owner" under eminent domain statutes, is entitled to just compensation when all or part of the leasehold interest is lost by condemnation." South Carolina State Highway Dept. v. Hammond, 238 S.C. 317, 120 S.E.2d 21 (1961). S.C. Code § 28-2-30(17) of the Eminent Domain Act defines "Property", "real property", or "land":

> as all lands, including improvements and fixtures thereon, lands under water, easements and hereditaments, corporeal or incorporeal, every estate, interest and right, leagal or equitable, in lands or water and all rights, interests, privileges, easements, encumburances, and franchises relating thereto, including terms for years and liens by way of judgment, mortgage, or otherwise.

K Mart's right to use the parking spaces outside the demised area is included in the lease and defined as a property right by statute. Therefore, K Mart is entitled to just compensation resulting from the loss of the 57 parking spaces outside the 'demised area'. If the court finds K Mart does not possess a right to use all the spaces outside the 'demised area' then K Mart's theory fails. However such a ruling conflicts with the clear unambiguous language of the lease.

B. The relevant portion of the condemnation clause in the lease does not differentiate between land acquired from the 'demised area' or not.

The only relevant portion of the condemnation clause includes the last portion of the sixth paragraph which reads:

> . . . however, the Tenant's right to receive compensation for damages or to share in any award shall not be affected in any manner hereby if said compensation, damages, or award is made by reason of the expropriation of land or buildings or improvements constructed or made by Tenant. (¶21 of Ex 1).

Landowner argues this clause does not apply since the Town did not acquire a portion of the 8.6 acres referred to as the 'demised premises'. However, this clause does not differentiate between the land expropriated within the 'demised premises' or not. It simply refers to expropriated land. Had the parties intended to limit K Mart's right to share in the award for only land inside the 'demised premises', the lease would say so as it did in other portions. This is consistent with ¶10 of lease which guarantees at least 730 spaces. Otherwise K Mart lacks any remedy for loss of parking spaces which would diminish its development rights.

Landowner cites two cases in support of its theory. The first is Norman's Inc. v. Wise 747 S.W.2d 475 (TX App Ct 1988) in which tenant leased two separately defined tracts of property. This case does not apply since Norman's Inc. sought to terminate the lease as a result of the partial taking of one of the tracts. In that case, the condemnation clause clearly stated the lease only terminated if both tracts were condemned in total. The court stated the lease should have included the language, "the demised premises of any part thereof." Id. at 477. This case supports K Mart's claim that its lease did not use the term 'demised land' but chose to use the word 'land' which is all encompassing of the shopping center.

The second case landowner cites is Winn-Dixie Stores, Inc. v. Department of Transportation, 839 So. 2d 727 (FL App Ct 2003), which also supports K Mart's position. This case is almost directly on point with the case at hand. In Winn-Dixie, the DOT acquired a number of parking spaces outside the 'demised area' of the lease. As here, the Winn-Dixie

landowner argued that tenant was not entitled to leasehold interest since the taking occurred outside the 'demised area' of the lease. The Florida Appellate Court rejected this argument finding that the lease contemplates a leasehold interest in the common areas of the shopping center for three reasons stating:

> First, the lease refers to the leased premises as the "store building and related improvements." "Related improvements" include the specifications for the parking area which require a minimum ratio of 4.85 parking spaces per 1000 square feet if building area. Second, the terms of the lease indicate that is continuation or termination was contingent upon the availability of adequate parking. Third, Winn-Dixie paid separate consideration ("additional rent") for the monthly maintenance and repair of the parking area. Id. at 730.

Applying this criteria, K Mart's lease includes the parking spaces outside the 'demised area'. First, ¶1 of the lease states, "Landlord does demise unto Tenant and Tenant does taking from Landlord for the lease term the following property: Tenant's completed building . . . together with site improvements to be constructed as hereinafter specified by landlord at its expense together with land compromising not less that eight plus (-8+ -)- acres . . .(¶1 of Ex 1). The lease defines these "site improvements" in ¶10.

Second, the lease required landlord to complete these site improvements or common areas prior to commencement of the lease term and continue throughout the term. (¶ 10 of the lease). Therefore, the K Mart lease satisfies the second prong.

Finally, landowner argues, K Mart did not pay a separate maintenance fee for the parking area which somehow prohibits recovery. Although it is true that K Mart does not pay a monthly fee for the maintenance of the common areas, the lease does require it to be responsible for all the maintenance of the common areas. ¶ 15 (c) of the lease requires Tenant to pay for the

maintenance of the common areas to include "all sweeping, striping and snow and ice removal." Unlike the Winn-Dixie tenant who only had to pay a portion of the maintenance cost of the common areas, K Mart must bear the entire maintenance costs of all the common areas including that outside the 'demised area'. Clearly the K Mart lease contemplates a leasehold interest in the common areas under the Winn-Dixie case. Therefore, case law allows K Mart to share in the award since it possesses a recognized constitutional right in the parking area outside the 'demised premises'.

II. Landowner improperly interprets the subordination clause.

Landowner argues the Subordination, Nondisturbance and Attornment Agreement, (SNDA) eliminates K Mart's right to share in the condemnation award. Here landowner essentially merges two arguments: 1) K Mart waived any right to apportionment under the SDNA and 2) Equity requires the award be applied to mortgage.

With regard to the first argument, the SNDA clearly references ¶14 of the lease where K Mart agreed to subordinate its 'right of first refusal option' to purchase the property. It does not reference the eminent domain section nor affect K Mart's right to share in the award. Landowner appears to concede this point as it references the 'Tenant Not to be Disturbed' clause within the SDNA.

Landowner's second argument is one of equity and cites number of cases which don't apply. The authorities landowner cites all appear to allow the mortgage holder to collect the condemnation award to the extent the security has been impaired. Clearly equity requires a mortgagor or lien holder to receive priority in the event its security interest is damaged. However, such is not the case in this matter. Here, the property is encumbered by a

$3,000,000.00 mortgage to NBSC Bank. (Ex 5 - Discovery Response). As part of the condemnation, Stuart Saunders appraised the property for the Town of Mt. Pleasant at $18.50 per square foot or an after value of $10,189,475. (Ex 6). Landowners did not dispute this value. Jody Bishop opined the property equaled $19.00 per square foot which translates to an after value of $10,464,866. (Ex 7). Based on the only two appraisals in this case, the acquisition does not impact the bank's security of the mortgage and the amount K Mart seeks is roughly 4% of the value of the site.

Landowner cites Raiford v. Department of Transportation, 114 S.E.2d 789 (GA App Ct 1992) to support its argument. However that cases involves the total acquisition of a 1.024 acre tract of land used as laundromat by tenant. In that case, two mortgages existed which the court satisfied out of the condemnation proceeds. As stated above, equity requires a mortgagor holder receive priority to the proceeds to the extent the acquisition impairs its security interest. The landowner in Raiford lost the entire property and equity does not grant a tenant priority to receive compensation for its lost leasehold while at the same time continuing landowner's obligations under a mortgage without any security interest.

None of the authorities cited by landowner apply to the instant case since the landowner possesses over $7,000,000 equity in the property. The $3,000,000 mortgage is more than adequately secured which allows K Mart to share in the award. To hold otherwise, would effectively eliminate all tenant's rights to collect a leasehold interest if the property were mortgaged.

III. K Mart's theory of damages constitutes a question of fact and thus is not properly before the Court at this time.

Landowner argues K Mart's damages theory fails as a matter of law citing three reasons: no right to construct additional buildings or additions; 2) violation of the larger parcel theory or unity rule; and 3) no damages.

A. K Mart maintains the right to further develop the 'demised area' under the lease and its amendments.

Landowner argues K Mart cannot develop the property referred to as the 'demised area' based on the Second Amendment to the lease attached as Exhibit 8. Landowner believes this amendment precludes any further development by K Mart in the 'demised area'. First, the original lease allows landowner to construct additions or additional buildings within the demised area. (¶ 16 of Ex 1). The lease does not limit nor restrict K Mart in any way from constructing structurally sound additions or new buildings. The second amendment does not limit K Mart's right to construct new buildings or additions in any way nor does the amendment reference or alter the language of ¶ 16 of the original lease.

The second amendment does nothing more than substitute Exhibit B of the lease to accurately reflect the site as-built and address any implications triggered by ¶¶ 4 and 5 of the lease. This amendment is necessary pursuant to ¶16 of the lease which requires K Mart to obtain landowner's written consent to make any alterations, additions or changes to the building. In addition, landowner cannot withhold its consent if the alterations do not effect the structural the building. (¶16 of Ex 1). The second amendment does nothing more than demonstrate K Mart received written permission to alter the buildings pursuant to the lease.

B. The larger parcel or unity theory does not apply in this case.

Landowner argues the appraisal fails as a matter of law because it violates the larger parcel theory which requires unity of use, ownership and proximity. S.C. St. Hwy Dept. v. Terrain, 267 S.C. 186, 227 S.E.2d 184 (1976); Arnold v. S.C. Public Serv. Auth., 292 S.C. 396, 356 S.E.2d 837 (1987). The authority relied on by landowner does not apply to the instant case. First, the unity rule or larger parcel theory only applies to acquisition of land. No cases can be found that apply the larger parcel theory to leasehold interests. That make sense since leasehold interest can overlap separate tracts.

Second, K Mart clearly possesses a property right in the parking spaces outside the 'demised area'. Landowner has not presented any evidence of the other tenant leases despite K Mart's specific discovery request. At this point, the Court cannot make any assumptions on the terms of leases not in evidence. Regardless, K Mart does not claim ownership of another's lease hold interest. K Mart merely seeks compensation for the reduction of its development rights caused by the loss of 57 parking spaces. Again, landowner focuses on the 'demised premises' and disregards the contractual obligation to provide at least 730 parking spaces for K Mart to use.

C. K Mart suffered damages to its leasehold interest as a result of this acquisition.

Finally, landowner argues K Mart suffered no damages to its leasehold interest and that K Mart loses nothing as a result of this condemnation. He cites the South Carolina Department of Trans. v. M&T Enterprises, 379 S.C. 645, 667 S.E.2d 7 (App Ct 2008) to support this argument. However, the M&T case offers little support. In M&T, the Court found that in partial takings, damages are measured by the difference between the fair market value of the lease before and

after the taking. Id at 663. K Mart's expert provided this analysis and determined that prior to the take, K Mart could develop a 37,5000 square foot building and that the loss of the 57 parking spaces reduced K Mart's ability to develop the 'demised premises' by 7,500 square feet. Thus K Mart can only build a 30,000 square foot building in the after. Again, landowner focuses on the 'demised area' ignoring K Marts development rights. Clearly, K Mart cannot develop the property in the after to the extent it could in the before - thus the acquisition diminished K Mart's leasehold interest.

CONCLUSION

The lease to K Mart includes all the parking area and the 8.6 acres referred to as the 'demised area'. Under the lease, both sides agree that K Mart is entitled to share in the award for the expropriation of land. However, Landowner seems to argue K Mart can share only in the award for expropriation of land within the 'demised area.' The owners in the Winn-Dixie case made the same arguments and lost. 839 So.2d 727. The Court in Winn-Dixie held that the tenant had right to use the parking outside its 'demised area' based on the 4.85 parking space per 1,000 square foot building ratio. Id. Landowner also misapplied the Subordination Agreement which applies only to title issues, not apportionment. Landowner also incorrectly interprets the second amendment to the lease required by ¶16 of the lease to demonstrate permission to build - not any limit the development. Landowner also misapplies the law since the larger parcel theory does not apply to leasehold interest but only applies to land acquisitions. Finally, landowner refuses to acknowledge the reduction of K Mart's development rights which compose its damages. K Mart suffers damages of a result of the diminution of its ability to develop the property by 7,500 square feet.

Accordingly, the Court should grant K Mart's motion for partial summary judgment finding it is entitled to share in the award and schedule an apportionment hearing.

Christopher L. Murphy, Esquire
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, SC 29401
Telephone: 843-577-9323
Facsimile: 843-577-3635
Email: clmurphy@stuckeylaw.com
Attorney for K Mart Corporation

September 17, 2012

Charleston, South Carolina

G:\Sears v. Mt Pleasant(11-3278)\1. Mt. Pleasant\Pleadings\SJ.Memo.Reply.9-14-12.wpd

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS C/A NO.: 2011-CP-10-4324
Town of Mt. Pleasant, South Carolina, Condemnor, v. Bowman MTP Center, LLC, Landowner, and NBSC, a Division of Synovus Bank; K-Mart Corporation, Other Condemnees.	LANDOWNER'S ANSWERS TO K-MART'S SECOND SET OF INTERROGATORIES

TO: CHRISTOPHER L. MURPHY, ESQUIRE; ATTORNEY FOR OTHER CONDEMNEE, K-MART CORPORATION:

Landowner Bowman MTP Center, LLC, by and through its undersigned counsel, hereby answers Other Condemnee K-Mart Corporation's Second Set of Interrogatories, pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure as follows:

1. State the name of the attorney who handled the closing for the purchase of the property at issue in this matter.

ANSWER: David M. Swanson, Esquire

2. State whether Landowner agreed with the before and after values of the indicated by the Town's appraiser. If Landowner disagreed, please explain the differences and rationale for the disagreement.

ANSWER: The Town's appraiser estimated before and after values on the purchase of the subject property immediately prior to the condemnation. The Landowner chose not to litigate with the Town concerning the valuation of the property.

3. State Landowner's opinion on the value before the acquisition and the value after the acquisition in this action.

ANSWER: Landowner never formed an independent opinion of value on a before and after basis but agreed to accept the amount offered by the Town to avoid the expense and risk of litigation.

4. State the amount of NBSC's, a division of Synovus Bank's mortgage on the property.

ANSWER: The amount of the NBSC mortgage is $3,000,000.00.

5. State the name of the appraiser who performed the appraisal for NBSC, a division of Synovus Bank as part of the mortgage process.

ANSWER: Landowner does not know the name of the appraiser who performed the appraisal for NBSC.

6. State the document and paragraph Landowner relies on in claiming K-Mart Corporation agreed to subordinate its interest.

ANSWER: See attached Subordination Agreement executed by K-Mart.

Richard D. Bybee
Smith, Bundy, Bybee & Barnett
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
(843) 881-1623
rdb@s3blaw.com

ATTORNEY FOR LANDOWNER
BOWMAN MTP CENTER, LLC

9/38, 2012

CERTIFICATE OF MAILING

I, Deborah L. Bussey, of Smith, Bundy, Bybee & Barnett, do hereby certify that I have this day mailed, via U.S. Mail, postage paid, a true and accurate copy of:

LANDOWNER'S ANSWERS TO K-MART'S SECOND SET OF INTERROGATORIES
TRACT 56

in the foregoing action to the following as follows:

Christopher L. Murphy, Esquire
Stuckey Law Offices
123 Meeting Street
Charleston, SC 29401
Attorney for K-Mart Corporation

This 30 day of August, 2012

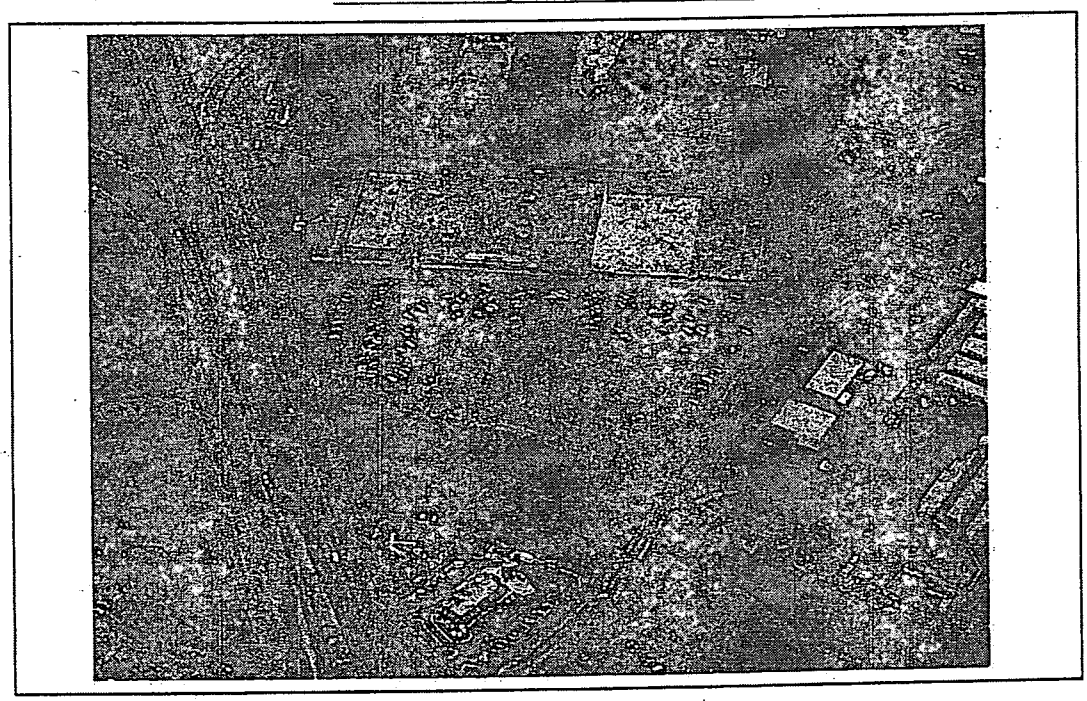
Deborah L. Bussey

Deborah L. Bussey

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

COMPLETE APPRAISAL – SUMMARY REPORT

(1) Tract Location: East side of Bowman Road
Property Owner: Bowman MTP Land LLC
Address: 1545/1551 Highway 17, Mt. Pleasant, South Carolina



Aerial View of Subject

PREPARED FOR:
Town of Mount Pleasant

(2) Prior to inspection the owner was contacted by telephone and invited to be present during inspection of this property. The tract was inspected on February 4, 2011 and again on March 16, 2011. I was accompanied by Mr. Jeremy Glen Denning and other representatives of the owner on the initial inspection.
Required by Sec. 301(2) of Uniform Act.
Explain: (Why not accompanied, relation of representative, items discussed, etc.)

I originally appraised this property for the project on January 11, 2011 when it was owned by Transwestern Mt. Pleasant LLC. The subject was subsequently sold to Bowman MTP Land LLC on January 28, 2011. Due to the transfer of ownership and recorded sale price, of which I was not aware when performing the first appraisal, I was asked to re-appraise the subject property.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

I met representatives of the new ownership at the subject on the morning of February 4, 2011. Mr. Jeremy Glendenning with JLWoode Ltd. was the primary contact. We discussed the project and walked the acquisition together. Mr. Glendenning provided me surveys and lease information at a later date.

I re-inspected the subject alone on March 16, 2011. Photographs were taken at this time.

PREPARED BY:

(3) Appraiser: Stuart M. Saunders, MAI, CCIM

S.C. State Certified General R/E Appraiser #: CG 1405

Firm Name: Saunders & Associates, Inc.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

APPRAISAL SUMMARY

(4) Property Owner: Bowman MTP Land LLC
Tract Location: 1545/1551 Highway 17, Mt. Pleasant, Charleston County, S.C.
Date of Appraisal: March 17, 2011 Date of Value: March 16, 2011

(5)

DESCRIPTION	BEFORE	AFTER
Present Use:	Shopping Center (Describe if "Other")	Same (Describe if "Other")
Number of Buildings:	1	Same
Primary Improvement Size: (Stated in units of comparison)	127,369 S.F.	Same
Building Setback (Feet)	Side setback is 52'+/- at closest point.	Side setback is 17'+/- at closest point.
# of Feet Building is Above (+), at (0), or Below (-) Road Grade:	0	Same
# Parking Spaces:	724 +/- striped on-site spaces	666 +/- striped on-site spaces
Corner Influence:	No Corner	No Corner
Primary Frontage (Linear Feet):	941' +/- Bowman Road	Same
Total Frontage(s) (Linear Feet):	1,761' +/-	Same
Ingress/Egress: Primary Road Secondary Road(s)	Full Access Full Access	Full Access Full Access
Zoning Conformity:	Legal Conforming	Legal Non-Conforming due to loss of landscape buffer along Bowman Road

(6)

Site Size (SF):	614,849	584,965
Site Size (Ac.):	14.115	13.429
Present or Intended Use of Site:	Shopping Center (Describe if "Other")	Same (Describe if "Other")
Shape:	Regular	Regular
Size of Acquisition:	.686 acres or 29,884 square feet	

(7)

HIGHEST AND BEST USE		
As Vacant:	Retail/Mixed-Use/Speculation	Same
As Improved:	Spec/Redevelopment	Same

(8)

Annual Market Rent per SF:	$ N/A	$ N/A

(9)

VALUE INDICATIONS		
Land Value:	$ 10,567,525	$ 10,189,475
Sales Comparison Approach:	$ N/A	$ N/A
Cost Approach:	$ 10,625,400	$ 10,189,475
Income Approach:	$ N/A	$ N/A
Final Value Indications:	$ 10,625,400	$ 10,189,475

(10)

Value of Acquisition:	$435,925

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

APPRAISAL DETAILS AND REQUIREMENTS

(11) PROPERTY RIGHTS APPRAISED: Fee Simple

(12) PURPOSEk OF THE APPRAISAL: To estimate the difference in the market value of this property caused by the acquisition of the right of way for the proposed construction of this project.

(13) INTENDED USE: To assist The Right of Way Agent and the Town of Mount Pleasant in negotiations with the property owner concerning an eminent domain acquisition.

Market value is defined as "The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.
SOURCE: The Appraisal Institute, The Dictionary of Real Estate Appraisal, 4th Edition

(14) EXPOSURE TIME: Eighteen months

(15) FIVE-YEAR SALE HISTORY:

Date	Sale Price	Deed Reference
D-03/15/07, R-03/16/07	$5.00	G638/856
D-03/15/07, R-03/16/07	$13,800,000	U618/023
D-01/28/11, R-01/31,11	$4,460,000	0168/975
Comments: The purchase prices included the adjacent bank property which is now operated as a Hertz Rental Car business.		

(16) CURRENT LISTING: N/A PENDING CONTRACT: N/A

(17) ASSESSMENT AND TAXES:

Tax Parcel ID #: 559-13-00-038 & 041

Tax Year: 2010

Land Value: $ 7,774,000 Improvement Value: $ 2,000 Total Assessed Value: $ 466,560

Real Estate Taxes: $ 94,525.06

(18) CURRENT ZONING ANALYSIS:

District: AB (Areawide Business) Current Conformity: Legal Conforming

MININUM REQUIREMENTS:

Front Setback: 30'

Rear Setback: 15'

Side Setback: 15', or 30' for corner lot

Building Height: Varies

Parking Spaces: 4 on-site spaces for every 1,000 S.F. of gross leaseable area

Road Frontage: N/A

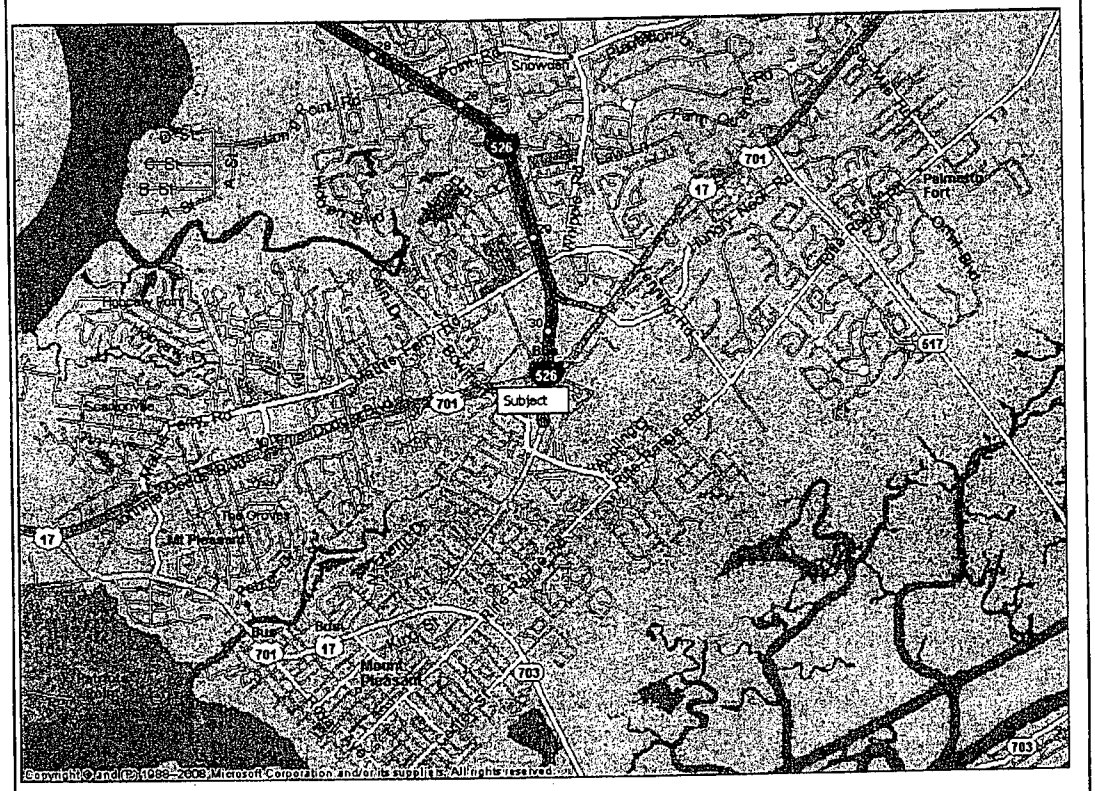
Maximum Building Size: N/A

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

Comments: Subject property is located in the proposed Urban Corridor Overlay District. The proposed Zoning Code text to this overlay district is scheduled for first reading on 01/11/11 at the Town Council meeting. The intent of the subject's portion of the Overlay District is discussed later in the Highest and Best Use section of the report.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

SUBJECT LOCATION MAP

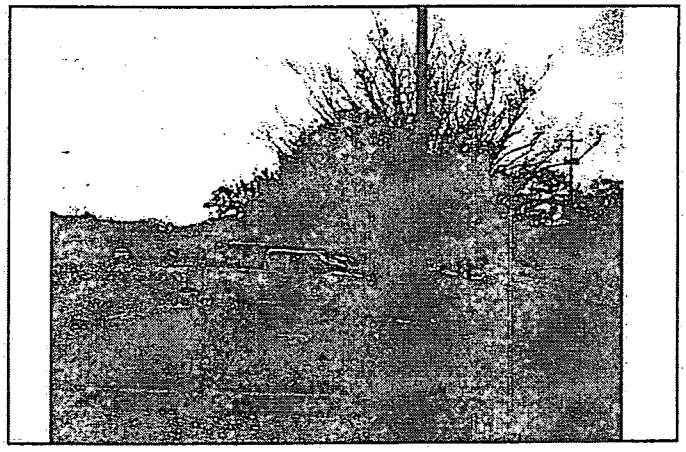


File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

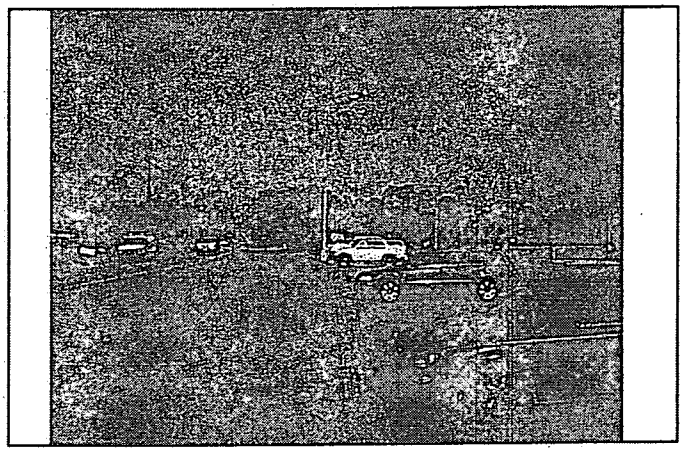
SUBJECT PHOTOGRAPHS (1-3)

Address/Location: 1545/1551 Highway 17 North, Mt. Pleasant, Charleston County, S.C.

Photos Taken By: Stuart M. Saunders, MAI, CCIM Date of Photos: 03/16/2011



1. Southerly view along acquisition.



2. Northerly view along acquisition.

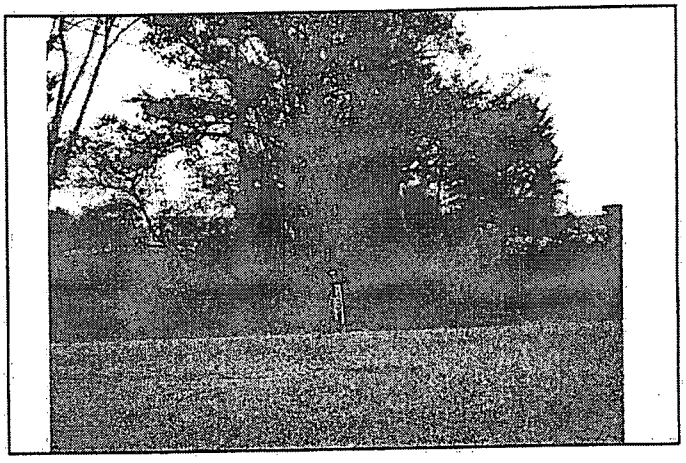
3. Northerly view along acquisition.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

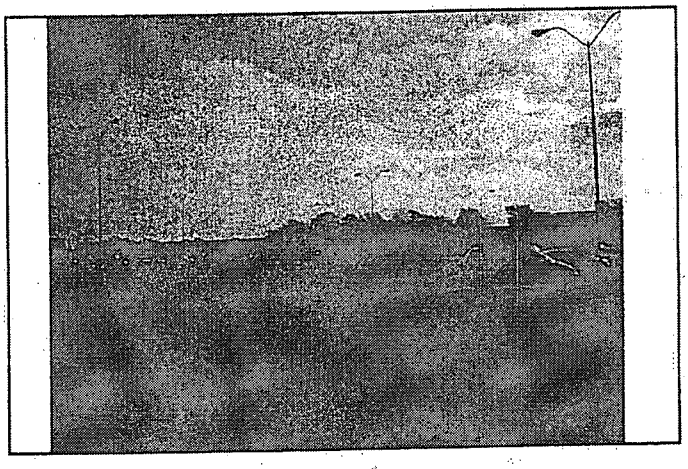
SUBJECT PHOTOGRAPHS (4-6)

Address/Location: 1545/1551 Highway 17 North, Mt. Pleasant, Charleston County, S.C.

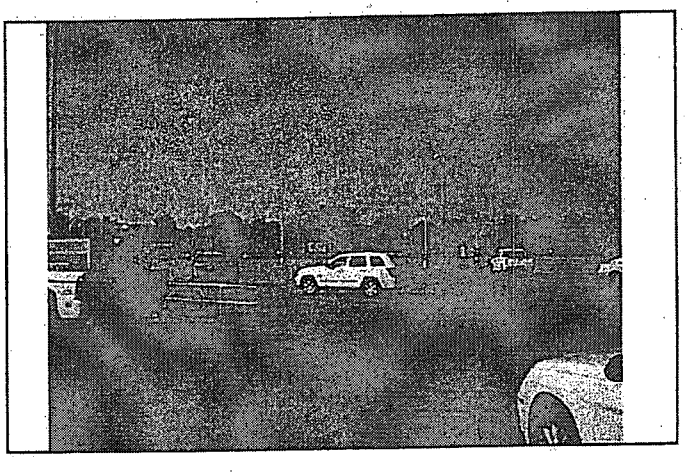
Photos Taken By: Stuart M. Saunders, MAI, CCIM Date of Photos: 03/16/2011



4. Front view of marsh from across Bowman Road.



5. Easterly view across parking lot.



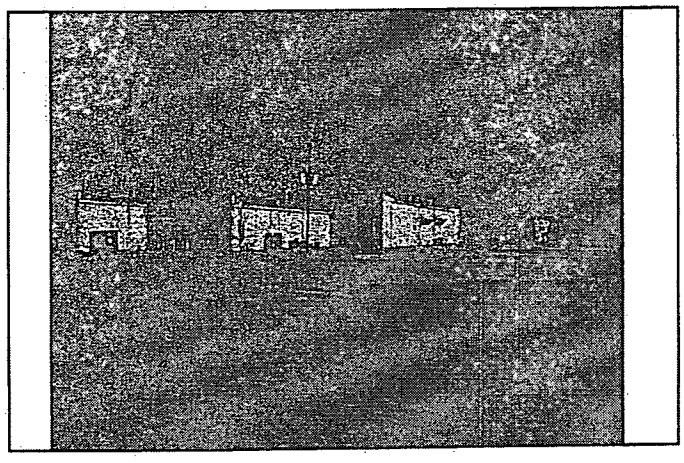
6. Westerly view across parking lot.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

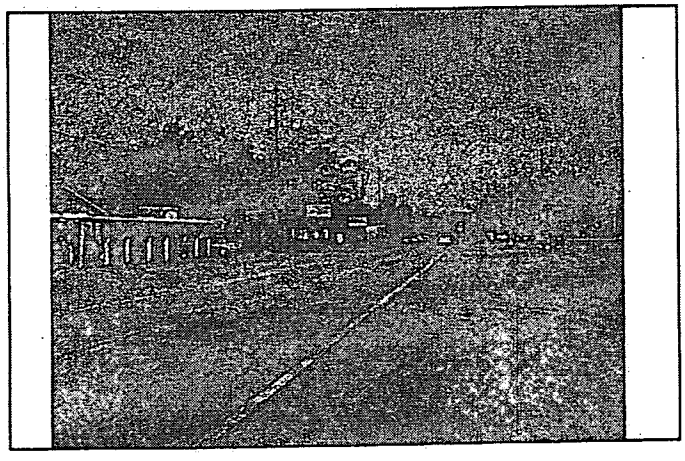
SUBJECT PHOTOGRAPHS (7-8)

Address/Location: 1545/1551 Highway 17 North, Mount Pleasant, Charleston County, S.C.

Photos Taken By: Stuart M. Saunders, MAI, CCIM Date of Photos: 03/16/2011



7. Rear view of property.



8. Northerly view of subject's frontage along Bowman Road.

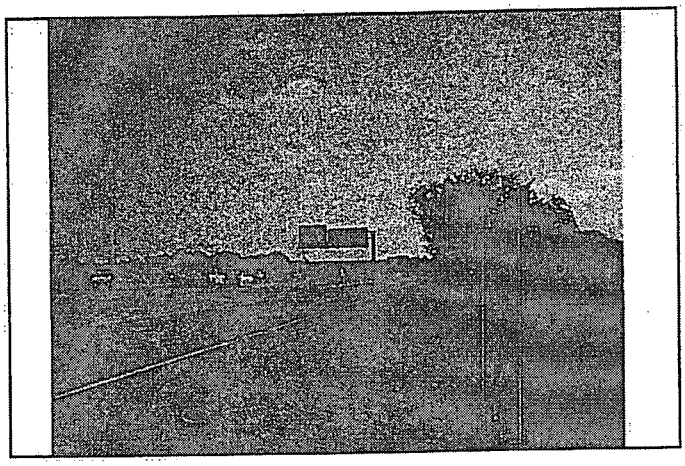
9. Southerly view of subject's frontage along Bowman Road.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

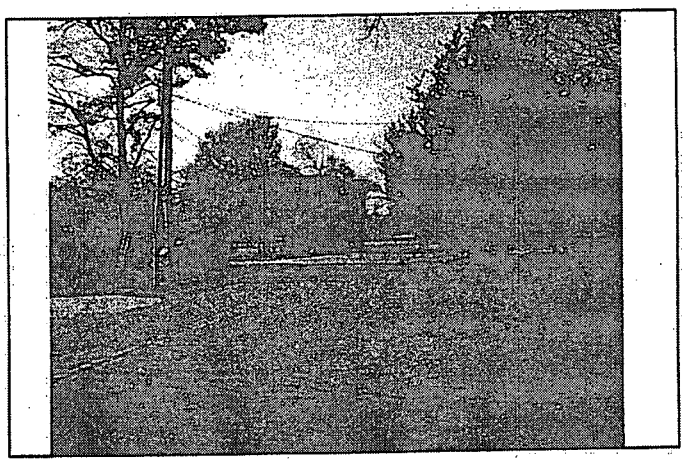
SUBJECT PHOTOGRAPHS (10-11)

Address/Location: 1545/1551 Highway 17 North, Mount Pleasant, Charleston County, S.C.

Photos Taken By: Stuart M. Saunders, MAI, CCIM Date of Photos: 03/16/2011



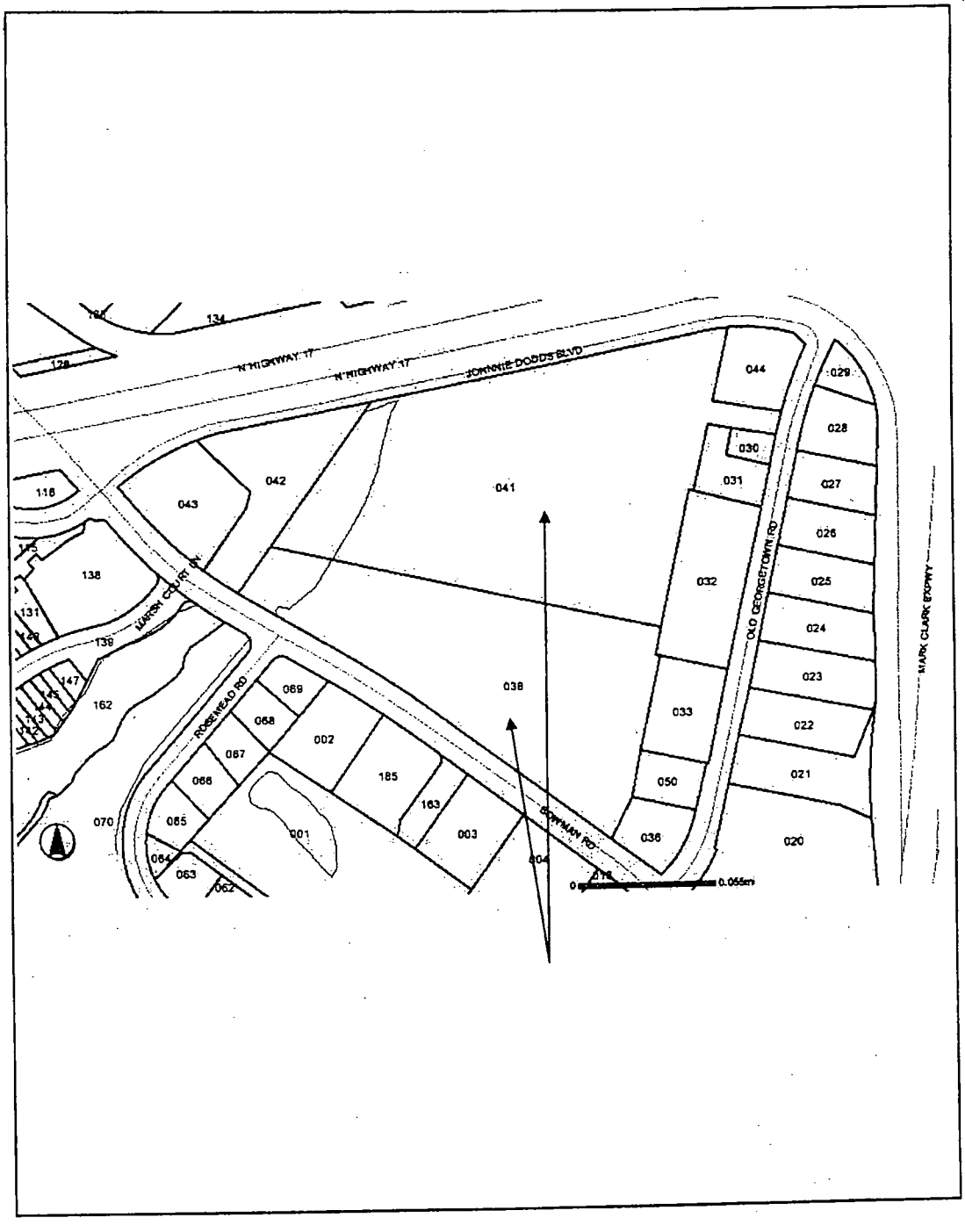
10. Easterly view of subject's frontage along Frontage Road and Highway 17.



11. Subject's frontage on Old Georgetown Road.

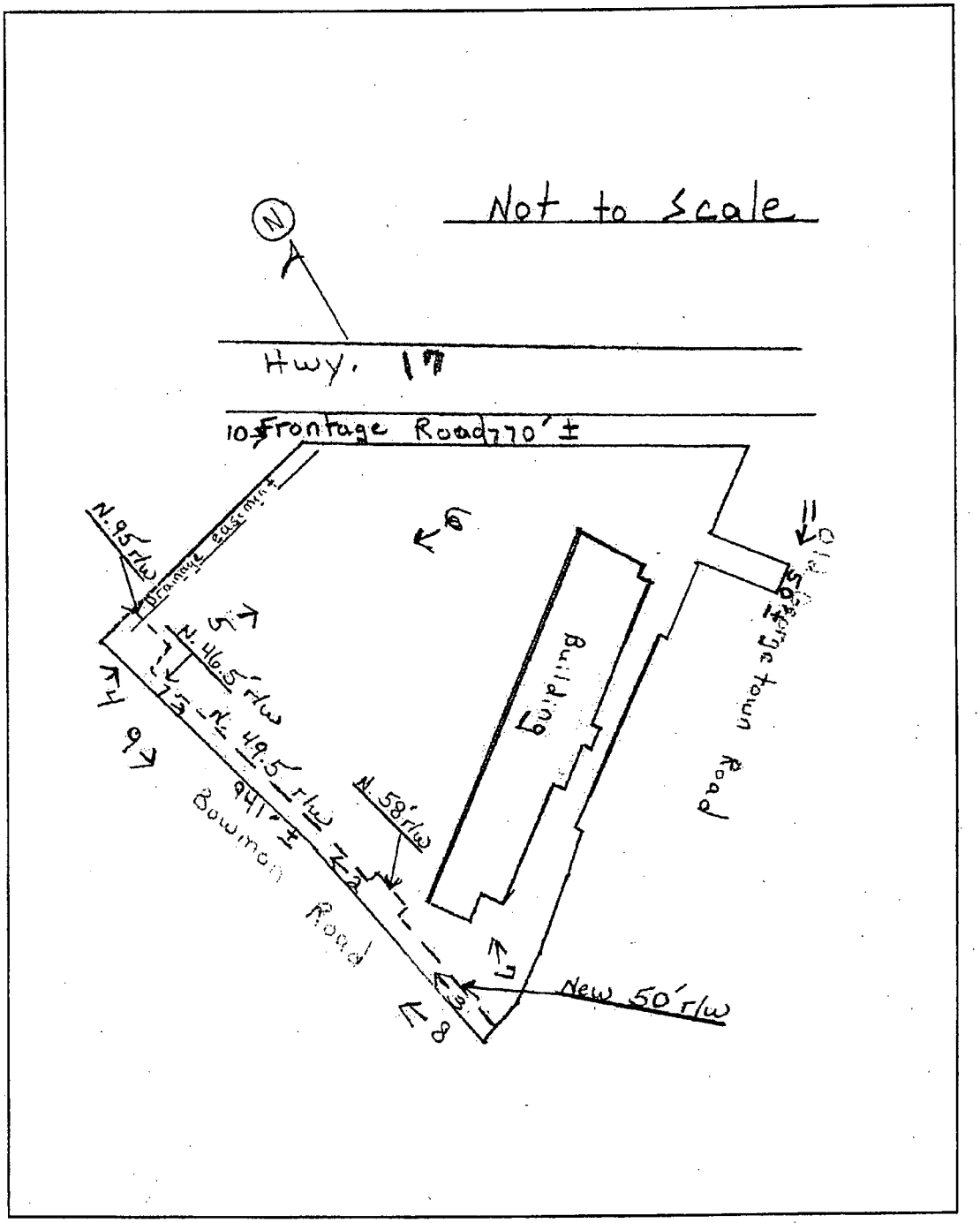
File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

SUBJECT TAX PARCEL



File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

PROPERTY SKETCH



Paragraph 19. Scope of Work:

This appraisal involves an inspection of the subject property, a thorough research of market data including comparable unit sales, and prevailing asking prices and terms for similar properties. I have analyzed trends in the market that would impact the value of the property and made a determination of the Highest and Best Use of the property. Also, I have applied the appropriate valuation techniques based on market data and analysis in concert with the Highest and Best Use conclusion. The Sales Comparison Approach is used to arrive at an opinion of market value for the subject land before and after the acquisition. The Cost Approach is used to estimate the contributing value of the site improvements located within the acquisition. The Income Capitalization Approach is not applicable to the assignment. The steps taken in completion of this assignment are outlined as follows:

Property Identification/History: The subject property has been identified by Charleston County public records and plans for the project.

Property Inspection: Stuart M. Saunders, MAI, CCIM inspected the subject property on February 4, 2011 and March 16, 2011.

Property Description: A description of the subject property has been based upon the on-site inspection, public records, surveys and plans for the project.

Zoning and Restrictions: The subject's zoning was verified with the Town of Mount Pleasant.

Sales Comparison Approach: Comparable land sales were used to arrive at an opinion of the market value of the subject land before and after the acquisition. The comparables were inspected in the field when possible and verified via public records, MLS, broker, grantor or grantee.

Cost Approach: This approach was used to estimate the contributing value of the improvements within the acquisition.

Income Capitalization Approach: This approach was not applicable to the appraisal assignment.

The difference between the before and after values of the subject property was reconciled to arrive at an opinion of just compensation.

This narrative appraisal report is presented in a summary format. The report is completed in conformance with the Uniform Standards of Professional Appraisal Practice and with the Code of Ethics and the Standards of Professional Practice of the Appraisal Institute.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

PARAGRAPH 20-A. DESCRIPTION OF REALTY (BEFORE):

SITE DESCRIPTION

Present Use	Shopping Center
Site Size	14.115 acres or 614,849 square feet of gross land area. There is approximately 13.109 acres or 571,028 square feet of highland, and 1.006 acres or 43,821 square feet of wetlands or marsh. It is recommended that a qualified surveyor inspect the subject for existing property lines and easements that are unable to be detected by the appraiser(s).
Curb and Gutters	No
Sidewalk	No
# of Lanes	Bowman Road, Johnnie Dodds Boulevard and Old Georgetown Road all have two lanes in front of the subject. The subject also has good visibility from Highway 17 North.
Traffic Level	Traffic flow along Bowman Road is moderate in front of the subject with an average daily traffic count of approximately 15,000 vehicles. Traffic flow on Johnnie Dodds Boulevard and Old Georgetown Road is light. Hwy. 17 has about 40,000 vehicles per day.
Traffic Control	N/A
Shape	Regular
Ingress/Egress	Full access is available from Bowman Road, Johnnie Dodds Boulevard and Old Georgetown Road.
Access to the Improvements	Adequate
Frontage	Subject has about 941' of frontage on Bowman Road, 770' of frontage on Johnnie Dodds Boulevard and 50' of frontage on Old Georgetown Road.
Grade at Road Level	At Grade
Visibility/Exposure	Adequate

Topography	Site is generally level and mostly clear. There is approximately 571,028 square feet of highland and approximately 43,821 square feet of wetlands/marsh.
Drainage	Drainage of highland appears to be adequate.
Flood Plain:	
Map Number	45019C0536J
Date	11/14/2004
Zone	AE & X
Landscaping	Minimal
Utilities	
Water	Present
Sewer	Present

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Electricity	Present
Natural Gas	Present
Telephone	Present

Zoning	
Designation	AB or Areawide Business by the Town of Mt. Pleasant; also, an Urban Corridor Overlay District is planned for the subject which would allow mixed-uses.
Uses Allowed	Commercial, special purpose and some residential
Easements/ Encroachments	Based upon my inspection and examination of the subject site, as well as my review of plats and deeds of the property, I did not detect adverse easements other than normal utility easements and rights of way. These are not believed to have a detrimental impact on property value. Describe adverse conditions, if any. **It should be noted that I am not qualified to detect easements and encroachments and legal counsel should be retained if there are any indications of title defects.**
Environmental	I am unawareof potential environmental hazards on the property. Describe adverse hazards, if known or suspected. Environmental aspects of the subject property are beyond my expertise. If necessary, I recommend a professional in environmental expertise be retained.
Comments	N/A
Personal Property, FF&E, etc. (Included in the estimate of value)	N/A
Relocation Items (Not included in the estimate of value)	N/A

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PARAGRAPH 20-B. DESCRIPTION OF REALTY (BEFORE):

IMPROVEMENT DESCRIPTION

Business Name (If applicable)	N/A
Improvement Size (Stated in Units of Comparison)	According to the most recent survey by the owner, a 127,369 square foot shopping center is situated upon the site. The building is not described in detail because I believe it is unaffected by the acquisition.
Year Built	1977/1978
Estimated Effective Age	33 years
Estimated Economic Life	0 years
Type/Quality of Construction	Average
Additions/Renovations	N/A
Foundation	Slab
Exterior Walls/Windows	Block
Roof	Gravel/tar
Special Features	N/A
Exterior Condition	Overall exterior condition is fair to average.

Interior Walls/Ceilings	Typical
HVAC	Yes
Flooring Covering	Typical
Lighting	Adequate
Plumbing	Adequate
Interior Condition	Overall interior condition is assumed average.

Site Improvements	Typical; site improvements in the acquisition include a metal pole for a sign, 13,850 S.F. +/- asphalt paving, 550 S.F. of concrete, 810 L.F. curb, 4 parking light poles and landscaping items.
Parking	Adequate
Utility	The property appears to have N/A utility and amenities for the existing utilization.
Comments	Tenants include Kmart, Carolina Carpet, Dollar General, Little Ceaser's Pizza and The Keg.
Personal Property, FF&E, etc. (Included in the estimate of value)	N/A
Relocation Items (Not included in the estimate of value)	Pole for the advertising sign is a moving item.

PARAGRAPH 21. HIGHEST AND BEST USE (BEFORE):

Highest and Best Use is defined in The Appraisal of Real Estate – 12th Edition as, "The reasonably probable and legal use of vacant land or an improved property, that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value."

AS VACANT:

Physically Possible:

The subject parcel has a regular shape with 14.115 acres, or 614,849 square feet, of gross land area. Gross land area is allocated with approximately 13.109 acres, or 571,028 square feet of highland, and 1.006 acres, or 43,821 square feet, of wetlands/marsh. The parcel has about 941 feet of frontage on Bowman Road, 770 feet of frontage on a frontage road for US Highway 17 North and 50 feet of frontage on Old Georgetown Road. It has full access as well as good visibility from all three roads. It also has good visibility, but no access, from US Highway 17 North. The parcel is level and appears to have adequate drainage of the highland. Public water and sewer are available.

Legally Permissible:

The subject is zoned AB or Areawide Business by the Town of Mount Pleasant. This district allows commercial, special purpose and some residential uses. The current use of the subject as a shopping center is permitted.

The subject is also located in a proposed Urban Corridor Overlay District. The Zoning Code text pertaining to this overlay district was scheduled for first reading at the Town Council meeting on January 11, 2011.

The subject is located in what would be referred to as the Johnnie Dodds Boulevard Urban Corridor Overlay District. This portion of the district is designed to encourage research and medical office uses or medical campus use, higher density residential and workforce housing to facilitate hospital expansion, ancillary retail and service related uses and accommodations for hospital visitors.

Financially Feasible:

Retail or mixed-use development is considered to be financially feasible for the subject parcel. It is also financially feasible to hold the property as a vacant site, which is called speculation.

Maximally Productive
Financially feasible uses are also maximally productive.

Therefore, based on the preceding discussion my opinion of the highest and best use of the property, as vacant and available for development, is for retail, mixed-use or speculation.

AS IMPROVED:

Physically Possible:

The site is improved with a 127,369 square foot shopping center that was constructed in 1977/78, according to the tax records. The center is anchored by Kmart and Dollar General. In addition to significant physical deterioration, the shopping center also has incurable functional obsolescence.

Legally Permissible:

The subject is zoned AB or Areawide Business by the Town of Mount Pleasant. This district allows commercial, special purpose and some residential uses. The subject is a legal conforming use.

Financially Feasible:

The subject improvements are almost 35 years old. Based upon my examination of the subject leases, it appears as though the subject improvements no longer contribute value to the land.

Maximally Productive

Based on the preceding discussion my opinion of the highest and best use of the property, as improved, is to continue to lease the building until it is financially feasible to redevelop the site.

PARAGRAPH 22. VALUATION BEFORE THE ACQUISITION:

LAND VALUATION (BEFORE):

Land value is derived separately using the sales comparison approach and a minimum of three comparable sales. The South Carolina Department of Transportation requires that the Sales Comparison Approach be demonstrated for all improved properties unless unusual circumstances preclude its development or the improvements are determined to be unaffected by the acquisition. The Cost Approach is required when the impacted improvements are less than ten years old, a special-use property, or when sufficient comparable sale or lease information is not available. The SCDOT requires application of the Income Approach on all investment and income-producing properties where existing improvements might be impacted by the project.

Valuation of Subject's Highland

EXPLANATION OF ADJUSTMENTS:

Five commercial land sales have been selected to appraise the highland for the subject property by the Sales Comparison Approach. They are identified as C1, C2, C3, C4 and C5 in the Sales Brochure for the project. The comparable sales are located near the subject in Mount Pleasant and are mapped on the following page.

An adjustment grid is located within the following pages. Adjustments are given for location/exposure, frontage/access, size and zoning. The adjustments are discussed within the following pages. The price per square foot is the chosen unit of comparison.

Analysis of Most Recent Sale of Subject Property

The subject property was recently part of a sale of a larger parcel that included several other improved properties along Old Georgetown Road. The transfer totaled $5,400,000 or $7.26 per square foot of effective land area. It was encumbered by a long term lease to Kmart and is reflective of the leased fee estate. A write up of the sale is located in the Appendix of the report.

Kmart leases 87,630 square feet or approximately 69% of the building. The lease was originally negotiated in November 1978 and is fixed at the current base rental rate of $2.60 per square foot until November 2053. This is a modified gross lease in which the tenant is responsible for real estate taxes, insurance and utilities. There is percentage rent on gross sales over $8 million. Kmart has not percentage rent in at least several years.

I have reconstructed an Income and Expense Statement for the subject based upon the leases currently in place. The statement, which is located on the following page, indicates that the subject does not generate a positive cash flow. As a result, the leased fee sale of the property is not indicative of the fee simple value of the land, and it is not used to arrive at an opinion of the fee simple value of the subject land.

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Income and Expense Statement
K-Mart Shopping Center
Mount Pleasant, Charleston County, South Carolina

YEAR			1
POTENTIAL GROSS INCOME			
The Keg Club, Inc.			$15,600
Low Country Pizza Investments (Little Caesers)			$22,388
Kmart			$227,838
Dollar General			$54,000
Carolina Carpet of Mount Pleasant			$36,000
Att (Land Lease)			$9,000
Total Base Rent	$	2.86	$364,826
PASS THROUGH EXPENSES			
Repairs, Maintenance, Insurance, Taxes, CAM			$146,802
Total Pass-Through Expenses			$146,802
Potential Gross Income			$511,628
Less Vacancy & Collection Loss		0.00%	0%
EFFECTIVE RENTAL INCOME		$4.02	$511,628
ANCILLARY INCOME			$0
EFFECTIVE GROSS INCOME		$4.02	$511,628
EXPENSES:			
Replacement for Reserves		0.25	$31,842
Management (4% of Effective Base Rent)			$14,593
Real Estate Taxes			$157,252
Building Insurance			$44,579
Building Repairs, Maintenance, CAM			$275,803
Leasing Commissions			$0
Tenant Improvement Allowances			$0
TOTAL EXPENSES		$524,069	$524,069
NET CASH FLOW			($12,441)

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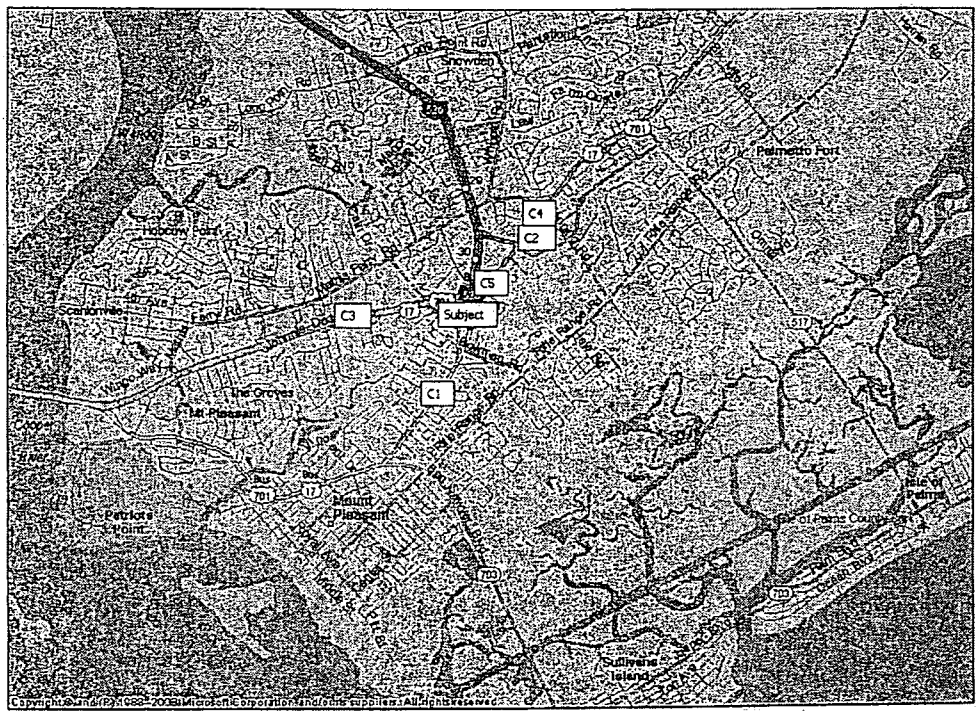
Land Sales Map



Quantitative Adjustment

Elements of Comparison

Property Rights Conveyed

None of the sale properties were subject to long-term land leases when sold, indicating a transfer of the fee simple estate. Therefore, no adjustments were necessary for property rights conveyed.

Financing

The definition of market value assumes that on the date of value the subject would be purchased on a cash or cash-equivalent basis. All of the sales involved cash, or were adjusted to a cash equivalent on the data sheets. Therefore, no additional adjustments for financing terms are warranted.

Conditions of Sale

This adjustment accounts for any unusual factors involved in the sale. These could include a non-arm's-length relationship of the parties to the transaction, duress on the part of the buyer and/or seller, or other unusual motivations. Also, if a comparable were a listing rather than a completed transaction, a downward adjustment to the listing price would be warranted, since properties seldom achieve their asking prices.

An adjustment for this element of comparison is not required.

Market Conditions

The sales are all fairly recent, and an adjustment for this element of comparison is not required.

Location/exposure

Sales C1 and C2 do not have visibility from Highway 17, which is inferior to the subject. They have been given upward adjustments of 15%.

Sale C3 is located at the corner of Johnnie Dodds Boulevard and Pinehollow Lane, which is considered inferior to the subject. An upward adjustment of 15% has been applied.

Frontage/access

Sale C4 has frontage and access along Highway 17 and Mathis Ferry Road. This is considered superior to the subject, and a downward adjustment of 20% has been applied.

Sale C5 is located on a frontage road, close to the signalized intersection of Highway 17 and across the Highway from Wando Crossing shopping center. It has been given a downward adjustment of 10%.

Size

Smaller sized properties tend to sell for more on a price per unit basis than larger size properties, all other elements of comparison being equal. The subject would most likely be used by multiple tenants or owners and require an extended sell-off period or lease-up period. Considering this, all the sales have been given downward adjustments of 25% for size.

Shape

An adjustment for shape is not required.

Topography

An adjustment for this element of comparison is not required.

Utilities

An adjustment for this element of comparison is not required.

Zoning

Sale C2 is part of a planned unit development and was approved for construction of an 80,000 square foot medical office building at the time of sale. This reflects a land to building ratio of 2.18 to 1, which is very intensive. A downward adjustment of 15% is given to this sale, because the intensity of the zoning is superior to the subject.

Easements

An adjustment for this element of comparison is not in order.

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Land Sales Adjustment Grid - Highland

Comparable Sale	C1	C2	C3	C4	C5
Sale Date	Aug-09	Mar-10	Mar-10	Jul-10	Jun-08
Size (SF)	57,600	174,390	41,556	97,139	136,778
Price / SF	$20.83	$23.28	$20.45	$30.88	$29.98
Adjustments					
Property Rights	0%	0%	0%	0%	0%
Sub-Total	$20.83	$23.28	$20.45	$30.88	$29.98
Financing Terms	0%	0%	0%	0%	0%
Sub-Total	$20.83	$23.28	$20.45	$30.88	$29.98
Conditions of Sale	0%	0%	0%	0%	0%
Sub-Total	$20.83	$23.28	$20.45	$30.88	$29.98
Market Conditions	0.00%	0.00%	0.00%	0.00%	0.00%
Sub-Total	$20.83	$23.28	$20.45	$30.88	$29.98
Location / Exposure	15%	15%	15%	0%	0%
Frontage / Access	0%	0%	0%	-20%	-10%
Size	-25%	-25%	-25%	-25%	-25%
Shape	0%	0%	0%	0%	0%
Topography	0%	0%	0%	0%	0%
Utilities	0%	0%	0%	0%	0%
Zoning	0%	-15%	0%	0%	0%
Easements	0%	0%	0%	0%	0%
Sub-Total Adjustments	-10%	-25%	-10%	-45%	-35%
Adjusted Price	$18.75	$17.46	$18.41	$16.98	$19.49

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LAND VALUATION (BEFORE) CONCLUSION:

The comparables have adjusted prices of $18.75, $17.46, $18.41, $16.98 and $19.49 per square foot. All of the sales have been considered in arriving at an opinion of value.

The indicated market value of the subject highland is shown as follows:

571,028 S.F. (Highland)	X	$ 18.50 per square foot	=	$ 10,564,018
Rounded to:	**$ 10,564,020**			

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Valuation of Subject's Marsh/Wetlands

EXPLANATION OF ADJUSTMENTS:

Five wetland/marsh sales have been selected to appraise the wetlands for the subject property by the Sales Comparison Approach. They are identified as W1, W2, W3, W4 and W5 in the Sales Brochure for the project. They are mapped on the following page.

An adjustment grid is located within the following pages. The sales compared fairly well to the subject, except for size and in some cases the presence of buildable highlands. Instead of adjustments, these two elements of comparison have been considered in the process of reconciliation.

LAND VALUATION (BEFORE) CONCLUSION:

The adjusted sales range from $.02 to $.08 per square foot. Considering the small size of the subject's marsh/wetlands area, an opinion of value at the upper end of the range has been chosen for the subject.

The indicated market value of the subject marsh/wetland area is shown as follows:

43,821 S.F. (Wetlands)	X	$ .08 per square foot	=	$ 3,506
Rounded to:		**$ 3,505**		

Final Reconciliation of Subject Land Value Before the Acquisition

Value of Highlands:	$10,564,020
Value of Marsh/Wetlands:	3,505
Market Value of Subject Land:	**$10,567,525**

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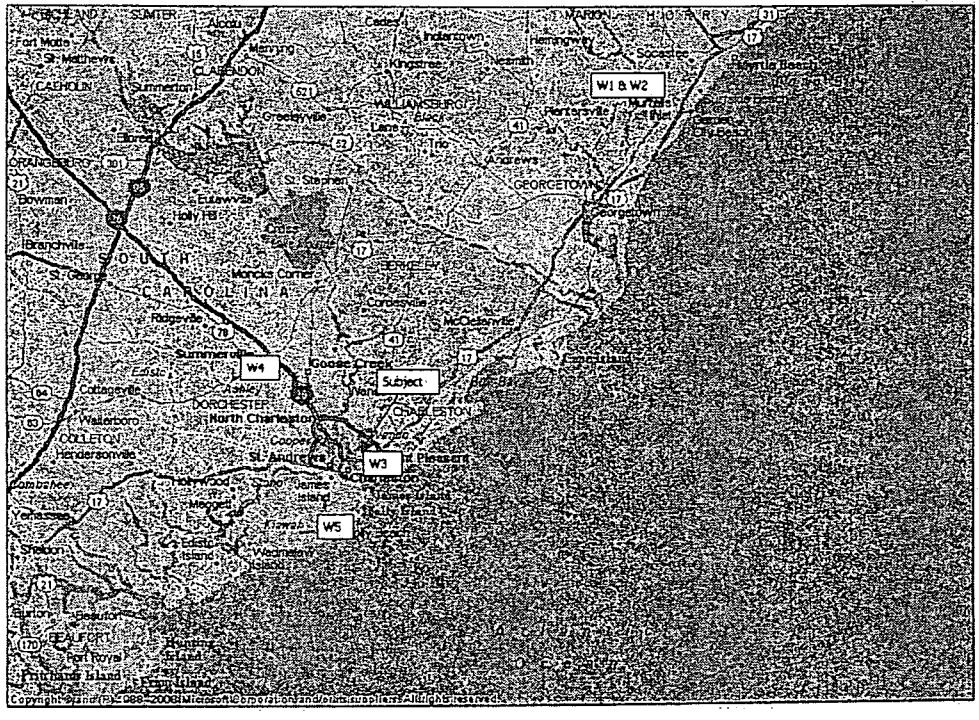
Land Sales Map



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Land Sales Adjustment Grid - Wetlands

Comparable Sale	W1	W2	W3	W4	W5
Sale Date	Oct-07	Oct-07	May-07	Feb-10	Feb-08
Size (SF)	59,279,520	59,328,720	12,848,022	13,412,124	9,496,080
Price / SF	$0.03	$0.03	$0.02	$0.04	$0.08
Adjustments					
Property Rights	0%	0%	0%	0%	0%
Sub-Total	$0.03	$0.03	$0.02	$0.04	$0.08
Financing Terms	0%	0%	0%	0%	0%
Sub-Total	$0.03	$0.03	$0.02	$0.04	$0.08
Conditions of Sale	0%	0%	0%	0%	0%
Sub-Total	$0.03	$0.03	$0.02	$0.04	$0.08
Market Conditions	0.00%	0.00%	0.00%	0.00%	0.00%
Sub-Total	$0.03	$0.03	$0.02	$0.04	$0.08
Location / Exposure	0%	0%	0%	0%	0%
Frontage / Access	0%	0%	0%	0%	0%
Size	0%	0%	0%	0%	0%
Shape	0%	0%	0%	0%	0%
Topography	0%	0%	0%	0%	0%
Utilities	0%	0%	0%	0%	0%
Zoning	0%	0%	0%	0%	0%
Easements	0%	0%	0%	0%	0%
Sub-Total Adjustments	0%	0%	0%	0%	0%
Adjusted Price	$0.03	$0.03	$0.02	$0.04	$0.08

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PARAGRAPH 22-A. SALES COMPARISON APPROACH TO VALUE (BEFORE)

The following steps are applied in deriving a value via the Sales Comparison Approach:

1) Comparable data in the subject market and/or competing market(s) are researched.
2) Data is verified as accurate and representative of an arms-length transaction.
3) The proper unit(s) of comparison is determined.
4) Differences between the subject and the comparables are identified and evaluated.
5) Adjustments are applied to the comparables for the relevant elements of comparison.
6) The resulting value indications are reconciled into a single value.

EXPLANATION OF ADJUSTMENTS:

N/A

SALES COMPARISON APPROACH (BEFORE) CONCLUSION:

Number comparable sales have been identified and analyzed on the following adjustment grid(s). A complete description of each comparable is provided in the Comparable Data Brochure.

Comments and Summary on the Sales Comparison Approach (Before)

The indicated market value of the subject is shown as follows:

	X	$	per S.F.	=	$
	X	$	per S.F.	=	$
Rounded to:			**$**		

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Paragraph 22-B. Cost Approach to Value (Before):

The following steps are applied in deriving a value via the Cost Approach:

1) Estimate the land value as though vacant.
2) Estimate the direct and indirect costs of the improvements new as of the date of appraisal.
3) Estimate an appropriate entrepreneurial profit.
4) Estimate the total accrued depreciation from physical deterioration, functional obsolescence, and external obsolescence.
5) Subtract total depreciation from the total cost new of the improvements.
6) Estimate the contributory value of any remaining site improvements
7) Add land value to the depreciated cost of the improvements.
8) Adjust the indicated value for any personal property or any intangible asset value that may be included in the cost estimate.

Compensation is provided for landscaping items, 13,850 S.F. +/- of asphalt paving, 550 S.F. +/- of concrete, 810 L.F. +/- of concrete curb and 4 light poles. The property owner will likely replace the light poles behind the right of way. As a result, depreciation is not deducted from the replacement cost new of this site improvement.

A metal sign pole is treated as a moving item.

Direct Cost		$	
Plus Indirect Cost @	%		
Total		$	
Plus Entrepreneurial Profit at	%		
Total Reproduction Cost - New		$	

Landscaping		=	$15,025
Asphalt paving	13,850 S.F. x $4.00/S.F. x 50%	=	27,700
Concrete paving	550 S.F. x $4.00/S.F. x 50%	=	1,100
Concrete curb	810 L.F. x $10.00/S.F. x 50%	=	4,050
Parking Lot Lights	4 x $2,500/each. x 100%	=	10,000
Total			**$57,875**

ACCRUED DEPRECIATION:

Depreciation for the asphalt and concrete is estimated at 50%. Depreciation is not deducted from the replacement cost new of the parking lights because they should be replaced by the owner.

LAND VALUE (From Paragraph 22):

The value of the subject land was opined at $10,567,525.

COST APPROACH (BEFORE) CONCLUSION:

Based on this analysis the indication of value provided by the Cost Approach is $10,625,400 ($10,567,525 + $57,875 = $10,625,400).

PARAGRAPH 22-C INCOME CAPITALIZATION APPROACH TO VALUE (BEFORE)

Under the Income Approach, value is created by the anticipation of future benefits to the owner in the form of cash flows and reversion. Anticipated benefits are converted to value using either direct capitalization or yield capitalization. Direct capitalization is normally used to appraise properties with stabilized income and expense patterns, while yield capitalization is used to value more complex properties and those with unstable income and expense patterns. This approach considers the property from the investor's point of view.

EXPLANATION OF ADJUSTMENTS (MARKET RENT):

The survey of comparable rentals indicates annual market rent to be $ per .

VACANCY AND COLLECTION LOSS:

The effective gross income for the subject property is estimated to be $.

OPERATING EXPENSES:

Summarize Expense Deductions

Based on the preceding analysis, total operating expenses for the subject property are estimated at $, indicating a net operating income of $.

CAPITALIZATION RATE / MULTIPLIER:

Demonstrate development of capitalization rate or income multiplier

INCOME APPROACH (BEFORE) CONCLUSION:

Number comparable rents have been identified and analyzed on the following adjustment grid(s). A complete description of each lease is provided in the Comparable Data Brochure.

Comments and Summary on the Income Approach (Before)

Based on this analysis the indication of value provided by the Income Approach is $N/A.

PARAGRAPH 23. RESOLUTION OF BEFORE VALUE AND VALUE ESTIMATE:

Sales Comparison Approach - N/A

Cost Approach - This approach provides a reliable indication of value for the subject property. It is reflected at $10,625,400.

Income Approach - N/A

Therefore, based on the information contained in this report, the market value of the subject as of the date of this report is estimated to be $10,625,400.

PARAGRAPH 24. DESCRIPTION OF THE ACQUISITION:

Land

29,884 square feet, or .686 acres, is being acquired across the front of the subject common with Bowman Road. The acquisition has a rectangular/irregular shape, is generally level and mostly clear. The acquisition contains approximately 9,490 square feet of wetlands and 20,394 square feet of highlands.

Improvements

Compensation is provided for approximately 13,850 square feet of asphalt paving, 550 square feet of concrete paving, 810 linear feet of curb, 4 parking lights and landscaping items.

Moving Items

A metal pole for a sign is treated as a moving item.

PARAGRAPH 25. DESCRIPTION OF THE REMAINDER:

Bowman Road is being widened to 4 travel lanes with a middle turn lane in front of the subject. The new right of way will measure 95 feet, 46.6 feet, 49.5 feet, 58 feet and 50 feet. The grade of the road will remain essentially the same.

Land

The site has a remaining land area of 584,965 square feet. There are 550,634 square feet of highland and 34,331 square feet of wetlands. The shape, topography, visibility and access to the subject are virtually unchanged. In my opinion there are no damages to the remaining land area.

Improvements

The remaining improvements will be unaffected by the acquisition.

PARAGRAPH 26. HIGHEST AND BEST USE (AFTER):

AS VACANT:

The highest and best use of the subject property is the same as before the acquisition.

Therefore, based on the preceding discussion, my opinion of the highest and best use of the subject property, as vacant and available for development, after the proposed road construction is for retail, mixed-use or speculation.

AS IMPROVED:

The highest and best use of the property as improved remains the same as before the acquisition.

Therefore, based on the preceding discussion, my opinion of the highest and best use of the subject property, as improved, after the proposed road construction is for continued use as shopping center until financially feasible to redevelop the site.

PARAGRAPH 27. VALUE AFTER THE ACQUISITION:

"After" values and conclusions are based upon plans provided by the SCDOT and the completion of the proposed road construction.

Consideration has been given to relevant aspects of the property affected by the acquisition for analysis and comparison to the subject's "before" condition and the comparable data.

LAND VALUATION (AFTER):

EXPLANATION OF ADJUSTMENTS:

The price per unit of the remainder is the same as before the acquisition.

LAND VALUATION (AFTER) CONCLUSION:

The indicated market value of the subject's highland is shown as follows:

550,634 S.F. (Highland)	X	$ 18.50 per square foot	=	$ 10,186,729
Rounded to:		**$ 10,186,730**		

The indicated market value of the subject's marsh/wetland area is shown as follows:

34,331 S.F. (Wetlands)	X	$ .08 per square foot	=	$ 2,746
Rounded to:		**$ 2,745**		

Final Reconciliation of Subject Land Value After the Acquisition

Value of Highlands:	$10,186,730
Value of Marsh/Wetlands:	2,745
Market Value of Subject Land:	**$10,189,475**

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PARAGRAPH 27-A. SALES COMPARISON APPROACH TO VALUE (AFTER):

EXPLANATION OF ADJUSTMENTS:

This section was addressed previously in the Land Valuation section of the report.

SALES COMPARISON APPROACH (AFTER) CONCLUSION:

Number comparable sales have been identified and analyzed. A complete description of each comparable is provided in the Comparable Data Brochure.

Comments and Summary on the Sales Comparison Approach (After)

The indicated market value of the subject is shown as follows:

	X	$	per S.F.	=	$
	X	$	per unit	=	$
Rounded to:			$		

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PARAGRAPH 27-B. COST APPROACH TO VALUE (AFTER):

Discussion of Reproduction/Replacement Cost - New (if different from "Before".

Direct Cost		$
Plus Indirect Cost @	%	
Total		$
Plus Entrepreneurial Profit at	%	
Total Reproduction Cost - New		$

DEPRECIATION AND/OR COST TO CURE ANALYSIS:

N/A

LAND VALUE (From Paragraph 27):

$10,189,475

COST APPROACH (AFTER) CONCLUSION:

Comments and Summary on the Cost Approach (After)

Based on this analysis the indication of value provided by the Cost Approach is $10,189,475.

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PARAGRAPH 27-C. INCOME CAPITALIZATION APPROACH TO VALUE (AFTER)

EXPLANATION OF ADJUSTMENTS (MARKET RENT):

The survey of comparable rentals indicates annualmarket rent to be $ per .

VACANCY AND COLLECTION LOSS:

The effective gross income for the subject property is estimated to be $.

OPERATING EXPENSES:

Summarize Expense Deductions

Based on the preceding analysis, total operating expenses for the subject property are estimated at $, indicating a net operating income of $.

CAPITALIZATION RATE / MULTIPLIER:

Demonstrate development of capitalization rate or income multiplier

INCOME APPROACH (AFTER) CONCLUSION:

Number comparable rents have been identified and analyzed on the following adjustment grid(s). A complete description of each lease is provided in the Comparable Data Brochure.

Comments and Summary on the Income Approach (After)

Based on this analysis the indication of value provided by the Income Approach is $N/A.

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DISTRIBUTION OF VALUES

(30)	Value Components:	Before (Paragraph 22)	After (Paragraph 27)	Difference
	Land Value:	$10,567,525	$10,189,475	$378,050
	Building Value:	$0	$0	$0
	Site Improvements:	$57,875	$0	$57,875
	TOTAL:	**$10,625,400**	**$10,189,475**	**$435,925**

(31)	Value Components of the Acquisition:				
	Right of Way Acquired:				
	Land:	29,884	square feet @:	$12.6500	**$378,050**
	Value of Buildings within the Acquisition Area:				0
	Value of Site Improvements within the Acquisition Area:				57,875
	Total for the Acquisition:				**$435,925**
	plus Damages (if any to the remainder)				0
	less Benefits (if any to the remainder)				0
	Total for the Acquisition (Right of way, plus damages, less benefits):				**$435,925**

(32)	Final Statement of Value:	
a)	Having considered all applicable approaches, it is my opinion that the indicated value of the whole property before the acquisition is:	**$10,625,400**
b)	Having considered all applicable approaches, it is my opinion that the indicated value of the whole property after the acquisition is:	**$10,189,475**
c)	The difference between the indicated value of the property before the acquisition, and the indicated value of the remainder, after the acquisition is:	**$435,925**

(33) Based on this report, the fair market rental for this property is: **N/A** per month.

(Indicate monthly rental if building improvement is located within the new right of way or if the current occupant will be displaced as a result of the acquisition.

The appraisal is made as of: 16-Mar-11

Date of Report 17-Mar-11

Stuart M. Saunders, MAI, CCIM

S.C. Certified General Real Estate Appraiser

CG 1405

Stuart M. Saunders

S.C. Real Estate Appraiser

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

GENERAL ASSUMPTIONS AND LIMITING CONDITIONS

General Assumptions - This appraisal has been completed and the appraisal report prepared with the following **general assumptions**:

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. The titles to the property are assumed to be good and marketable unless otherwise stated. Any plats, maps, or photographs in this appraisal are used merely to help the reader visualize the property and its surroundings and are not certified to be accurate.
2. Any liens or encumbrances (except for any lease encumbrance that might be referred to in the appraisal) which may exist have been disregarded, and the property has been appraised as though no delinquency in the payment of general taxes or special assessment exists and as though free of indebtedness.
3. It is assumed that the utilization of the land and improvements are within the boundaries of the lines of the property described and that there is no encroachment or trespass unless noted in the report. No survey of the subject property was made or caused to be made by us, and no responsibility is assumed for the occurrence of such matters.
4. A visual inspection of the subject site was made and all engineering is assumed to be correct. The plot plan and illustrative materials in this report are included only to assist the reader in visualizing the property and to show the reader the relationship of its boundaries. The appraiser is not a construction engineer and is not responsible for structural or cosmetic inadequacies associated with any of the improvements unless otherwise noted in the report.
5. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them. The soil for the area under appraisal appears to be firm and solid, unless otherwise stated. Subsidence in the area is unknown or uncommon, and the appraiser(s) does not warrant against this condition or occurrence.
6. Subsurface rights (minerals and oil) were not considered in this appraisal unless otherwise stated. In addition, no potential timber value was considered.

General Assumptions Continued

7. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report. Unless otherwise stated in this report, the appraiser did not observe the existence of hazardous materials or gases, which may or may not be present on the property. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there are no such materials on or in the property, which would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconforming use has been stated, defined, and considered in the appraisal report.
9. It is assumed that all required licenses, certifications of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. This appraisal assumes water and sewer services will always be provided for the subject.
11. Responsible ownership and competent property management are assumed.
12. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. I (we) have not made a specific compliance survey and an analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative impact on the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider

General Assumptions Continued

non-compliance with the requirements of ADA in estimating the value of the property.

13. There is currently a good deal of discussion regarding the potential hazards of Electro-Magnetic Fields and the possible health risk of being located near high voltage transmission lines. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not there are potentially hazardous effects from EMF's. It is possible that a compliance survey of the property together with a detailed analysis could reveal that there is EMF levels, which are above a safe level. If so, this fact could have a negative impact on the value of the subject property. Since I (we) have no direct evidence relating to this issue, I (we) did no consider EMF levels in estimating the value for the property.

General Limiting Conditions – This appraisal has been completed and the appraisal report has been prepared with the following **general limiting conditions**.

1. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used. The value estimates provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division or interests has been set forth in this report.
2. Neither possession of this appraisal or copy thereof carries with it the right to publication, nor may it be used for any purpose by anyone but the applicant without previous consent of the appraiser(s).
3. The appraiser, by reason of this appraisal, is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
4. Neither all no part of the contents of this report (especially as to value, the identity of the appraiser, or the firm with which the appraiser is associated) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.

General Limiting Conditions Continued

5. Information, estimates, and opinions contained in this report are obtained from sources considered reliable, however the appraiser assumes no liability for such sources.
6. The information supplied to the appraiser is considered to be accurate. The information supplied by the client has been accepted without further verification as correctly reflecting the property's current condition unless otherwise noted.
7. The various estimates of value presented in this report apply to this appraisal only and may not be used out of the context presented herein. This appraisal is valid only for the appraisal date or dates specified herein and only for the appraisal purpose specified herein.

File #: 10.193B PIN #: 32505_RD01 Project #: S-1326 Tract #: 56

CERTIFICATE OF APPRAISER

I Hereby certify:

That I have personally inspected the property herein and that I have also made a personal field inspection of the comparable sales relied upon in making this appraisal. The subject and the comparable sales relied upon in making the appraisal were as represented in the comparable data brochure which supplements this appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and information upon which the opinions expressed therein are based is correct: subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with acquisition of right of way for a highway to be constructed by Town of Mount Pleasant with the assistance of Federal-aid highway funds, or other Federal Funds.

That such appraisal has been made in conformity with the appropriate State and Federal laws regulations, policies and procedures applicable to that appraisal of right of way for such purposes; and that to the best of my knowledge, no portion of the value assigned to such property consists of items, which are non-compensable under the established law of South Carolina.

That neither my employment nor my compensation for preparing this appraisal report is in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of Town of Mount Pleasant or officials of the Federal Highway Administration and I will not do so until so authorized by the State officials or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That the owner or his designated representative was given the opportunity to accompany me during my inspection of the property.

That any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is being acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to the physical deterioration with in the reasonable control of the owner, has been disregarded in determining the compensation for the property.

That my opinion of the fair market value of the acquisition as of March 16, 2011 is **$435,925** based upon my independent appraisal and the exercise of my professional judgment.

No one provided significant professional assistance to the person signing this report.

As of the date of this report, I have completed the requirements for continuing education as set forth by the Uniform Standards of Professional Appraisal Practice.

Stuart M. Saunders

Date: March 17, 2011

Stuart M. Saunders, MAI, CCIM
Inspecting Appraiser
State Certified General Real Estate Appraiser
#CG 1405

Atlantic Appraisals, LLC
REAL ESTATE APPRAISERS AND CONSULTANTS

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December 12, 2011

Christopher L. Murphy, Esquire
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, South Carolina 29401

RE: An appraisal of 1545 – 1551 Bowman Road in Mount Pleasant, South Carolina

Dear Mr. Murphy:

At your request, I have prepared the attached real estate appraisal estimating the market value of the leasehold interest in the referenced property both before and after The Town of Mount Pleasant completes road widening improvements along Bowman Road. It is my understanding this appraisal will be utilized for litigation support.

The referenced property is a retail shopping center anchored by K-Mart. It was built in 1978. K-Mart occupies 87,602 square feet and there is 39,750 square feet of in-line retail space leased to other tenants. K-Mart holds a lease that has a 25 year term plus 10 five year renewal option periods. If K-Mart elects to exercise every renewal option, the lease will expire at the end of October 2053.

The lease allows K-Mart to construct additional buildings or expand the existing K-Mart Building at K-Mart's cost but no additional minimum rent is due. The original lease stipulates that the developer provides a minimum of 730 parking spaces and there are 739 spaces on-site. Current zoning requires 509 spaces (350 for the K-Mart and 159 spaces for the in-line retail) so there is a surplus of 230 parking spaces. If K-Mart expands the existing store footprint or constructs additional buildings, the developer is not responsible for replacing any parking spaces lost due to a new building or expansion of the existing building so existing parking can be utilized for additional space without penalty to K-Mart.

Understanding this, it appears there is sufficient parking and land area to accommodate an additional 37,500 square feet of building area on this site. The land area necessary to accommodate that building area and parking as required by zoning is 2.95 acres.

The current lease to K-Mart encompasses the existing store footprint and 580 parking spaces (excluding 159 spaces for the in-line local space) and the rent payment covers in addition to the building footprint the surplus parking and underlying land. Minimum rent for K-Mart is $227,838 annually. There are provisions for additional rent when sales exceed certain levels but according to K-mart no additional rent has been paid as a result of exceeding minimum sales.

Market rent for 87,602 square feet of building area which K-Mart currently occupies and necessary parking as required by zoning is $657,015 ($7.50 per square foot). Market rent for the 2.95 acres of surplus land is $219,600. Therefore, total market rent is $876,615 compared to minimum contract rent of $227,838. The difference is a significant leasehold interest held by K-Mart.

The shopping center is separated into two adjacent parcels. One parcel is improved with surface parking and the K-Mart building and the other parcel is improved with surface parking and the in-line retail space. None of the parking is designated or controlled so K-Mart and in-line retail customers can park in any space. Both parcels are owned by the same entity and have similar use. Therefore, I have appraised them as a single property under the principle of the larger parcel.

The Town of Mount Pleasant has started a road widening project along Bowman Road that will require acquisition of .686 acres or about 29,882 square feet. All of the area acquired is situated along Bowman Road. About 20,161 square feet of that taking is highland utilized for landscaping and parking and about 9,721 square feet is wetland that serves no beneficial purpose to the developer/owner.

There are 57 parking spaces situated within the new right of way so after this taking, the number of surplus parking spaces is reduced to 173. This taking reduces the potential additional retail space from 37,500 square feet to 30,000 square feet. The loss of the parking spaces in the right of way taking will reduce the potential future retail space by 7,500 square feet and the land area available for the surplus parking after the taking is reduced to about 2.3 acres.

The loss of this potential future retail space as a result o this taking reduces the leasehold interest. The difference between the market value of the leasehold interest before the taking and the market value of the leasehold interest after the taking is loss in leasehold interest value as a result of the Town of Mount Pleasant's land taking.

After due consideration of all of the factors involved as outlined in the attached report, a reasonable opinion of the market value of the leasehold interest in the referenced property as of December 12, 2011 is:

Market Value – Leasehold Interest
Before the Taking

SIX MILLION SIX HUNDRED THIRTY THOUSAND DOLLARS

$6,630,000

The value after acquisition assumed the road widening improvements are completed and in place. That is a hypothetical assumption that is not true but is assumed to be true for the purposes of this appraisal. After considering the various market factors as analyzed herein, a reasonable estimate of the market value of the leasehold interest in the referenced property, on December 12, 2011, assuming the road widening improvements are completed and in place, is:

Market Value – Leasehold Interest
After Taking

SIX MILLION TWO HUNDRED THOUSAND DOLLARS

$6,200,000

The difference between the market value of the leasehold interest before the taking and the market value of the leasehold interest after the taking is the loss in leasehold interest value as a result of the taking.

Loss In Leasehold Interest Value

FOUR HUNDRED THIRTY THOUSAND DOLLARS

$430,000

I have not appraised this property within the past 36 months.

I hereby certify that to the best of my knowledge and belief, the statements and opinions contained in this report are full, true and correct, and that this appraisal is subject to the attached Certification, Underlying Assumptions, and General Limiting Conditions.

In the preparation of this Appraisal report, I have made the assumption that there is no environmental pollution or hazardous material present in any part of the referenced property or nearby properties. I have made no environmental survey or study and assume no responsibility in connection with such matters or for any studies that might be required to discover such matters.

I have prepared appraisals on commercial properties in this market and have the experience and knowledge to competently complete an assignment of this type. The value reported in this appraisal is not contingent upon a specific minimum value, a requested value or the approval of a loan.

Thank you for the opportunity of providing this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact us. Your attention is invited to the attached report, which summarizes the pertinent data, reasoning and analyses used to arrive at the value conclusions.

Pledger M. Bishop, III, MAI, SRA
State Certified General
Real Estate Appraiser
Certification No. CG795

File No. 11-0529 PMB

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SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS

Location:	1545 – 1551 Bowman Road, Mount Pleasant, SC 29464
Tax Map Number:	559-13-00-038 & 041
Owner of record:	Bowman MTP Center LLC
Effective Date of Appraisal:	December 12, 2011
Land Area – **Before Acquisition:**	12.97 AC Highland
Land Area – **After Acquisition:**	12.28 AC Highland
Land Area –**Acquired:**	.686 acres of highland
Zoning:	Areawide Business; Part of the Urban Corridor Overlay District
Market Value – Leasehold Before Acquisition:	$6,630,000
Market Value – Leasehold After Acquisition:	$6,200,000
Compensation to Leaseholder:	**$430,000**
Appraiser:	Pledger M. Bishop, III, MAI, SRA, CRE
Appraisal File No:	11-0529 PMB

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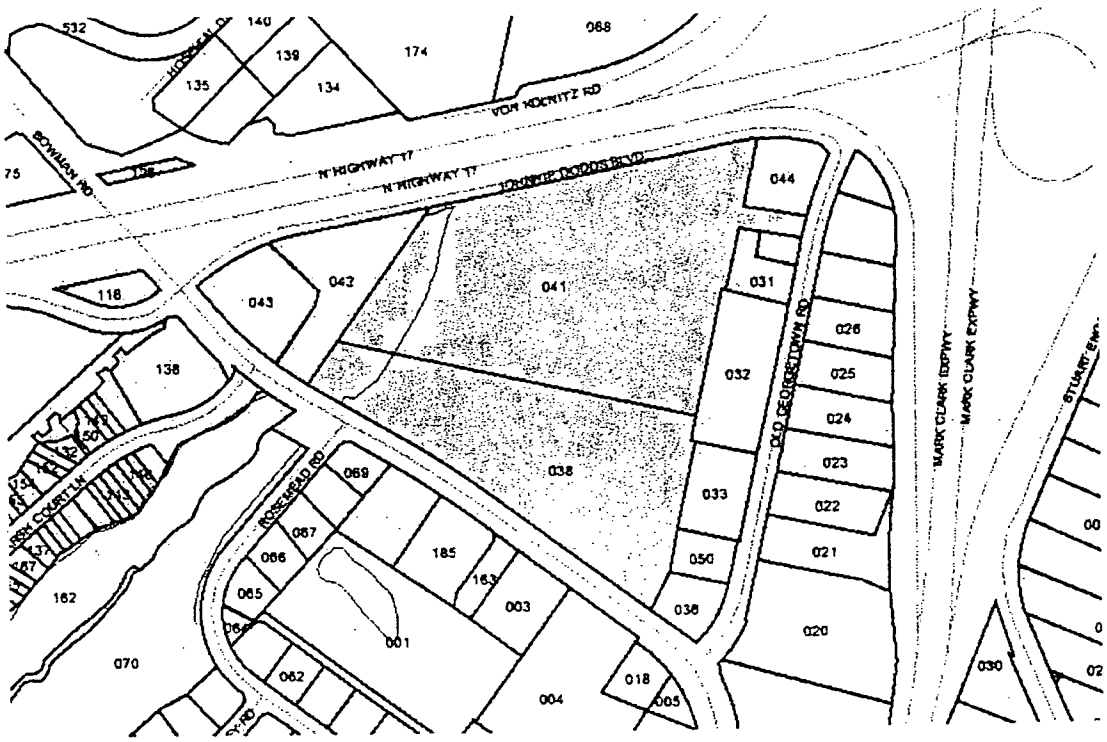
SCOPE OF THE APPRAISAL

Identification of the Property Appraised

The property appraised is a shopping center anchored by K-Mart and located off Bowman Road. The property address is 1545 – 1551 Bowman Road in Mount Pleasant, 29464.

The property is identified by the Charleston County Assessor's office as tax map reference 559-13-00 parcels 038 and 041. A copy of the tax map is included below.

Tax Map



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Aerial Photograph per Charleston County Assessor

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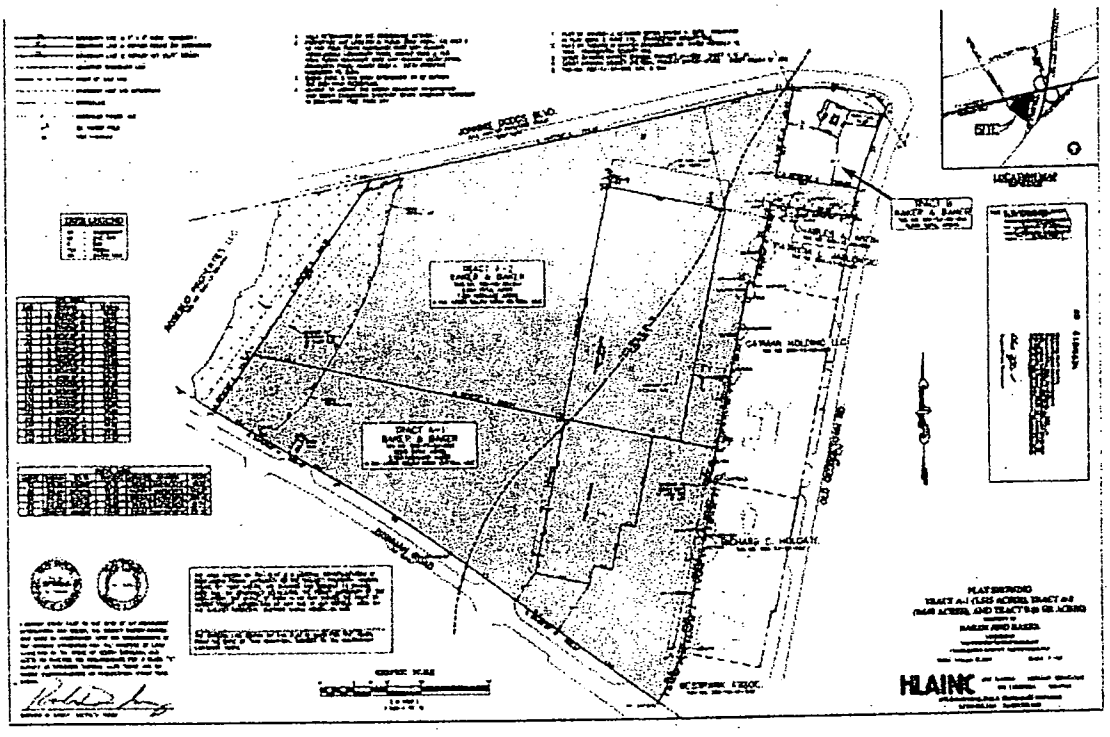
Survey



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Date of Appraisal

This property was inspected several times between December 8 and December 12, 2011. The effective date of this appraisal is December 12, 2011. The date of this writing is December 13, 2011.

Owner of Record

This property is currently owned by Bowman MTP Center LLC. It was acquired from Transwestern Mount Pleasant LLC on January 28, 2011. That transaction is recorded in deed book 0168 on page 975. A copy of this deed is included in the addenda.

The purchase price on the deed is $10 and other consideration but the affidavit of sale indicates a purchase price of $4,460,000. That included TMS Parcel 044 which is not part of this appraisal.

Transwestern Mount Pleasant LLC acquired this property from Baker and Baker Real Estate Developers LLC on March 7, 2007. The purchase price was $13,800,000. That included TMS parcel 044 as well. The deed for that transaction is recorded in book U618 on page 023.

Property Rights Appraised

The property rights appraised are those of the leasehold interest. Leasehold interest is defined "As the interest held by the lessee (tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions."

The Appraisal of Real Estate, Twelfth Addition

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Client, Intended Use and Intended Users of the Report

The client is Christopher L. Murphy. The appraisal was commissioned for use in litigation support. The intended users include Mr. Murphy and those with whom he chooses to share this report.

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the subject property.
Market Value is defined as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus."

Implicit in this definition is the consummation of a sale as a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and Seller are typically motivated.
2. Both parties are well informed or well advised, and acting in what they consider their own best interests.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash of U.S. dollars or in terms of financial arrangements comparable thereto.
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.[123]

[1] Department of the Treasury, Office of Thrift Supervision. 12 CFR 564.2, dated Thursday, August 12, 1990.

[2] Department of the Treasury, Office of the Comptroller of the Currency. 12 CFR Part 34.42, dated Friday, August 24, 1990.

[3] Federal Deposit Insurance Corporation, 12 CFR Part 323.2, dated Monday, August 20, 1990.

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Appraisal Process

As part of this appraisal, a number of independent investigations and analyses were conducted. In addition to data compiled by Atlantic Appraisals on a regular basis, the investigation undertaken and major data sources used are listed below.

Area & Neighborhood Analysis - Information on the Trident area, Charleston County and Mount Pleasant was obtained from the Chamber of Commerce and local municipalities. A personal inspection of the neighborhood was conducted.

Site Description & Analysis - The site was physically inspected several times. The site inspection was conducted using a copy of the most recent survey and Town of Mount Pleasant Road plan exhibits that were made available.

Improvement Description and Analysis – The improvements were inspected from the exterior and the interior. Details on the physical characteristics were gathered during this walk through.

Highest and Best Use – Since this is a valuation of a leasehold interest and the property owner cannot change the use of this property until the K-Mart lease expires or is given up by K-Mart, no analysis of highest and best use is necessary.

Value of Leasehold Interest – Since this is an appraisal of the leasehold interest, an income approach is utilized. First, contract rent is analyzed. This includes an estimate of contract rent through the entire term of the lease.

The second step is to estimate market rent for the property. This was accomplished by locating examples of recent rent negotiations for larger retail space in the area and comparing those leases to the K-Mart space. From that comparison market rent for the K-Mart space is established.

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Since the rent comparables did not include surplus land on which the tenant could construct additional retail square footage, it is necessary to establish market rent for the surplus land. This was accomplished by first estimating market value for the surplus land area using a traditional sales comparison approach. A land capitalization rate was then established from examples in this market and that rate applied to the market value estimate for the surplus land. The result is market rent for the surplus land.

A discounted cash flow analysis (DCF) is then utilized to estimate the market value of the leasehold interest. This is essentially the difference between market rent and contract rent in terms of cash over the remaining term of the lease. Vacancy and credit loss is deducted from that difference as well as some miscellaneous expenses to the tenant and the net cash flow for each year is discounted to present value. The individual annual present value cash flows over the remaining term of the lease are then added together to arrive at the value of the leasehold interest.

Report Preparation - The final phase of the appraisal process is the preparation of the appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The report is also intended to conform to the code of ethics as adopted by the Appraisal Institute.

REGION DESCRIPTION

The Charleston - North Charleston Metropolitan Statistical Area (MSA) is also known as the Trident Region. It area is located along the central and southern coastal region of South Carolina and consists of Charleston, Berkeley and Dorchester Counties. The area covers nearly 90 miles of Atlantic Coastline; reaches inland approximately 50 miles; and contains a total of 3,163 square miles. It has a diversified economy comprised of the military, the Port of Charleston, tourism, the medical community, and manufacturing and has enjoyed significant growth in both population and jobs in recent years, and continued growth is anticipated.

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Interstate 26 is an east/west controlled access highway that runs inland and intersects with Interstate 95 (north/south) approximately 59 miles northwest of Charleston. Interstate 526 (Mark Clark Expressway) is a 19-mile inner belt freeway connecting Mount Pleasant at the intersection with Highway 17 North to North Charleston, and West Ashley. The completion of this interstate in 1993 changed traffic patterns tremendously and initially reduced traffic congestion and greatly improved vehicular access in the Trident area. However, over the past 5 years as traffic has increased Interstate 526 has become prone to massive congestion during periods of heavy commuter traffic. US Highway 17 is a four lane highway that parallels the coast connecting Myrtle Beach to the north with Savannah, Georgia to the south. It runs in a north/south direction through Charleston area and basically parallels the coast. Like I526, US 17 experiences congestion during commute hours.

Other roadways in the Charleston area that have had a strong positive impact on the Charleston transportation network include the Isle of Palms Connector, a fixed bridge connector running from Highway 17 north in the Mount Pleasant area to the Isle of Palms. The James Island Connector connects the Peninsula City of Charleston with James Island and has had a tremendous impact on property values in the James Island area.

Tremendous gains have been made in attracting new industry and jobs to the area. Despite the current economic downturn, the local economy has been bolstered by the relocation of Boeing to a site adjacent to the Airport in North Charleston. Boeing is nearing completion of a second large manufacturing facility to continue to build its Dream Line plane in Charleston.

This new facility is anticipated to create about 3,000 new jobs plus additional spin off companies who are already locating to this market. This is a potentially tremendous shot in the arm for the local economy as many employees are already relocated to the area and the facility recently announced it had reached the "topping" off where the roof and siding on the structure are complete.

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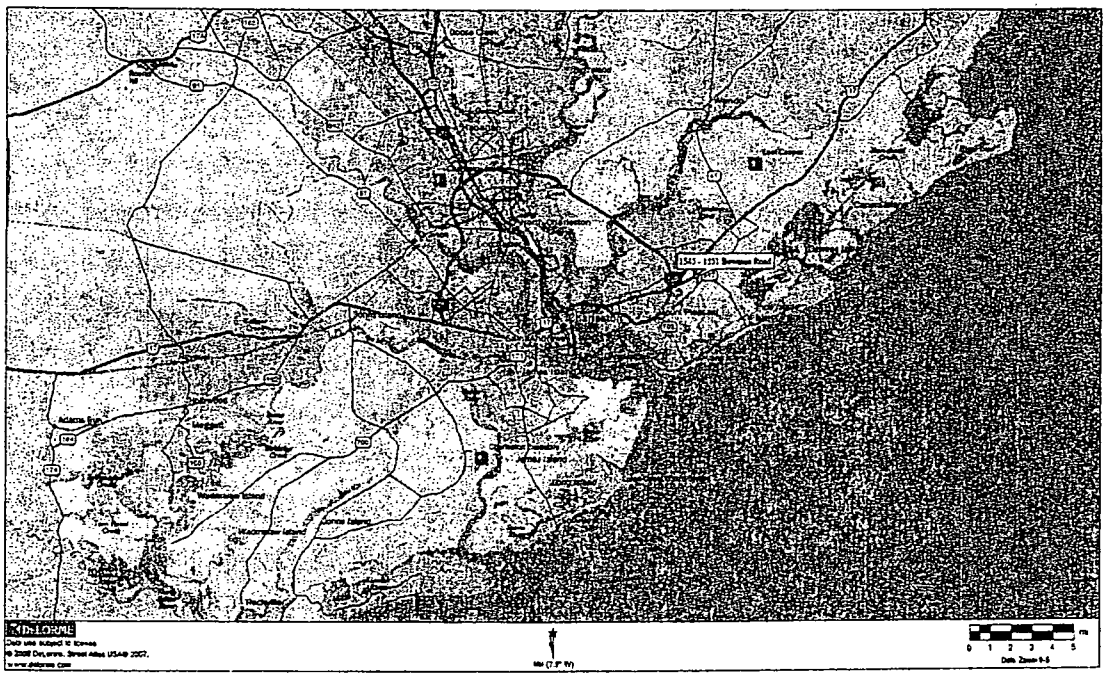
The Trident area has always weathered economic downturns better than the Nation as a whole and has recovered well ahead of the nation as a whole. The coastal location along with quality of life has been an attraction for many people who visit and then decide to relocate to the area. This trend appears to be continuing despite the economic downturn. Boeing locating here has exposed this area to a large portion of the population that had never heard of Charleston. This will only increase the opportunities for visitors to continue to relocate.

The outlook for the area is positive. It may take a few more years for the national economy to completely recover but as in the past, Charleston's recovery should be well ahead of the Nation so if the economic pundits are correct then Charleston should be well down the road to recovery.

Location Map



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NEIGHBORHOOD DESCRIPTION

Mount Pleasant is a bedroom community located east of the City of Charleston across Charleston Harbor and the Wando and Cooper Rivers. The Town has grown rapidly over the past fifteen years.

For nearly 70 years, Mt. Pleasant was connected to the City of Charleston by fixed span bridges. The Grace Memorial Bridge was built in the 1930's and the Silas Pearman Bridge was completed in 1966. Those bridges were outmoded and were replaced in 2005 by a single cable stay bridge known as The Ravenel Bridge. This has become the center point for Charleston.

Mount Pleasant is an affluent bedroom community. Growth has been to the north off US 17. As part of the Town's ten-year master plan water and sewer service is in place north of the Town and this has enhanced development in those areas.

Traffic congestion has been a major controversy in Mount Pleasant and the Town has taken an active role in initiating and funding several significant road projects over the past five years and more are planned. The completed projects include the widening of Highway 17 North to six lanes from Wando Crossing Center to Six Mile Road; Hungry Neck connector (frontage road from Wando Crossing to Six Mile Road) (partially completed); re-alignment of the US 17 North and Venning Road intersection; re-alignment of the US 17 North and Highway 41 intersection; widening of Long Point Road from Egypt Road to Whipple Road and two "Round-Abouts" at key intersections on Rifle Range Road have been completed.

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Major road improvement projects under construction include widening of US 17 North from Isle of Palms Connector to Darryl Creek Trail; intersection improvements and road widening at all 6 existing intersections on Johnnie Dodds Blvd (By-Pass); Overpass and intersection improvements at I526/Hungryneck Boulevard Connector and US 17 North Intersection; Overpass and intersection improvements at Johnnie Dodds Blvd (By-Pass) and Bowman Road; and widening of Bowman Road from Mathis Ferry Road to Chuck Dawley Boulevard.

Mount Pleasant is bounded on three sides by water and, as a result, as an elongated geography (see map at the end of this section). Because of the rapid growth that this suburban area has experienced the distance from one end of town to the other has quickly become substantial. To provide commercial services this population demands a system of hubs has been developed. These commercial hubs provide proximate services to nearby residents and help keep traffic off the length and breadth of Highway 17.

In conclusion, this area has experienced excellent demand for new development and prior to the economic downturn, property values increased rapidly. The outlook for this area remains positive and Mount Pleasant is expected to remain one of the most desirable Towns in the area.

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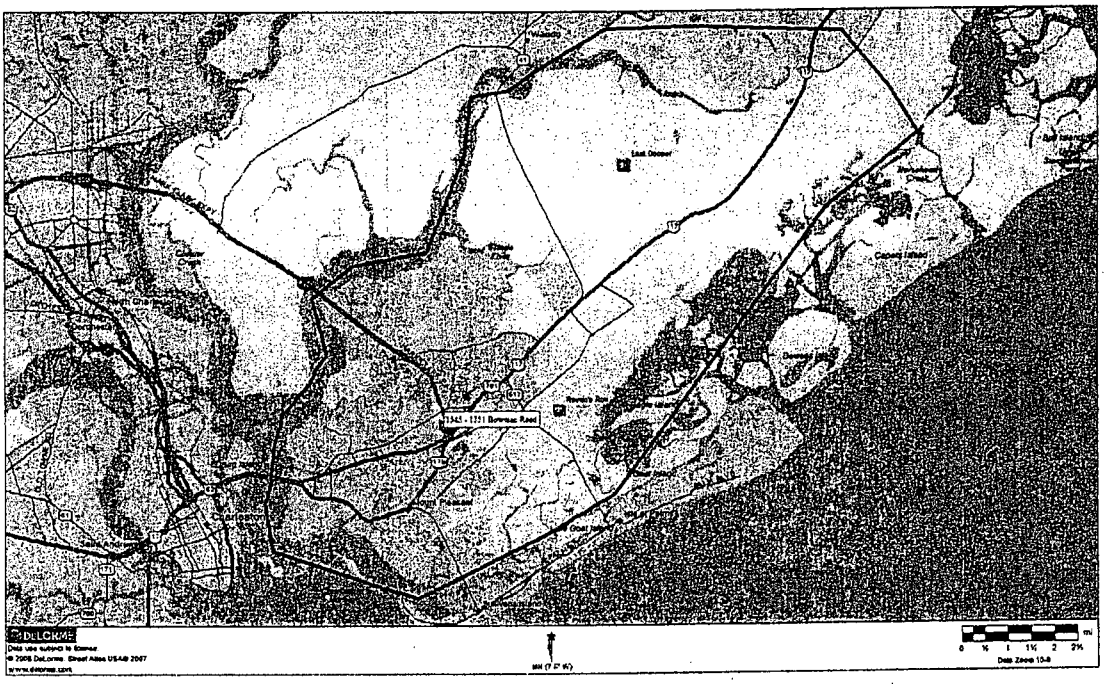
Location Map – App Town Boundary in Blue



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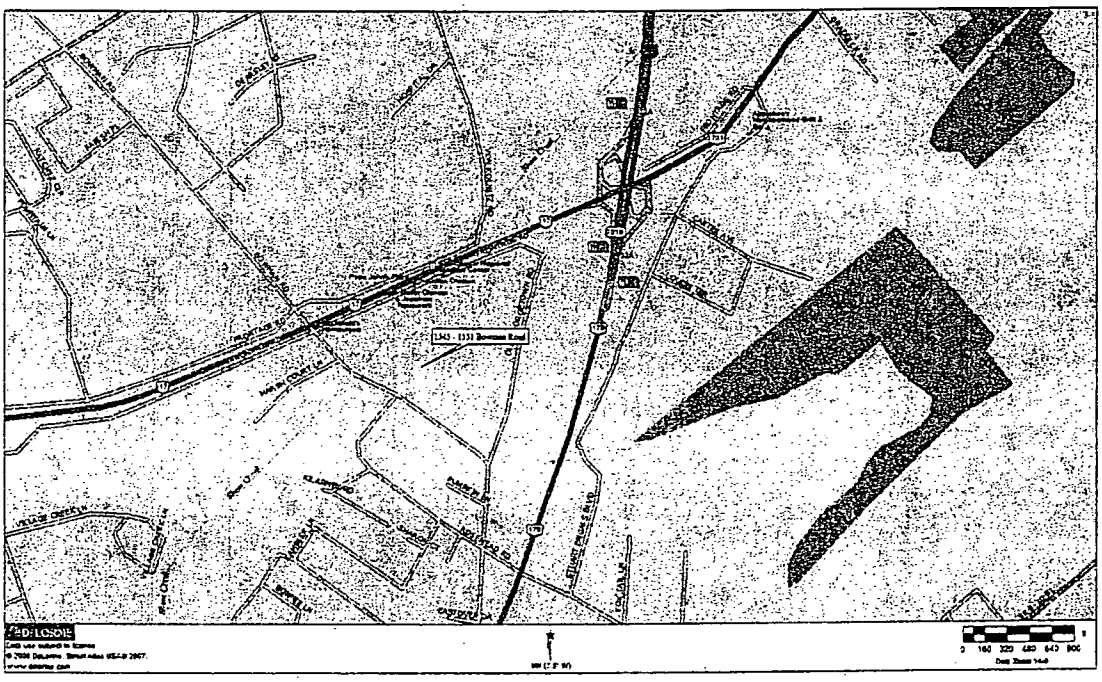

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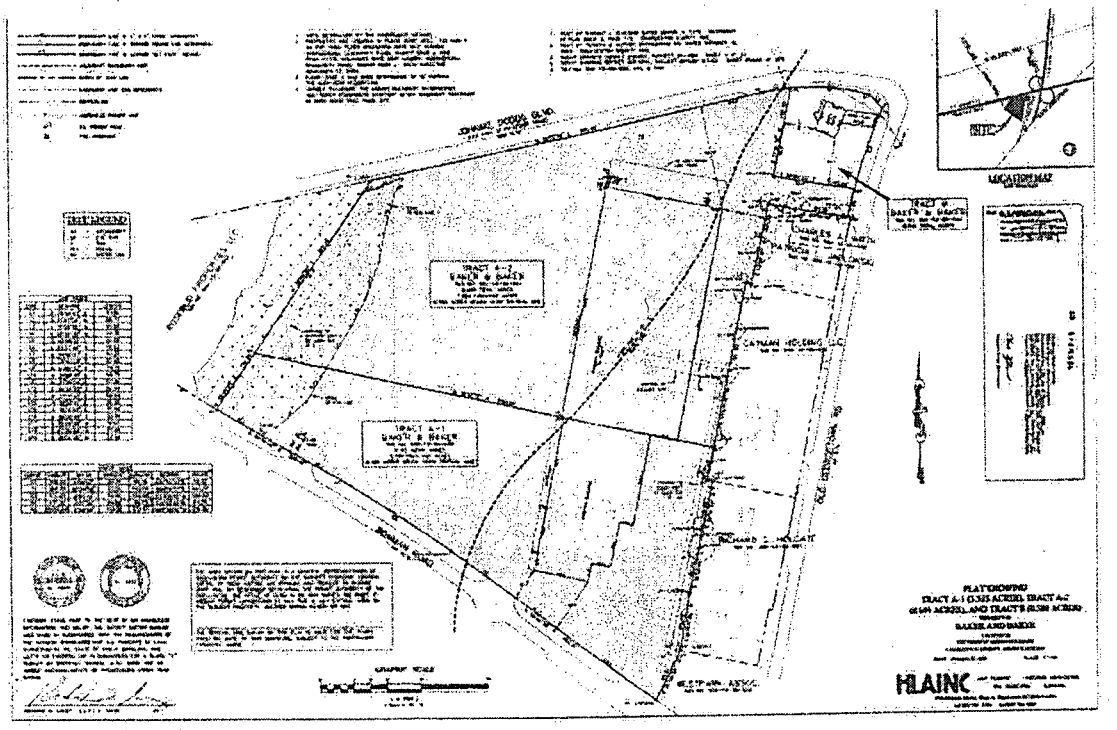
SITE DESCRIPTION – Before Taking

Introduction – A plat prepared by Hoffman, Lester and Associates was utilized to visualize this property. This plat is dated February 22, 2007. A copy of this plat is included here.



Dimensions, Size & Shape – This survey depicts an irregular parcel with street frontage on Bowman Road, the frontage road of Johnnie Dodds Boulevard and Old Georgetown Road. The survey indicates a total area is:

	TMS 038	TMS 041	Total
Highland	5.15	7.82	12.97
Wetland	0.37	0.78	1.15
Gross Area	5.52	8.6	14.12

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Topography & Drainage – The site is basically level with a slope toward a wetland area which is the headwaters of Shem Creek. The majority of the property is covered with asphalt paving and there were no signs of standing water at the time of inspection.

Soil & Subsoil – In the preparation of this report, the assumption has been made that there is no environmental pollution or hazardous materials present in any part of this property or nearby properties. No environmental survey or study has been made and no responsibility in connection with such matters or for any studies, which might be required to discover such matters, is assumed.

Access – There are 3 curb cuts on Bowman Road and 3 curb cuts to the frontage road of Johnnie Dodds Boulevard. This is adequate access for a commercial site.

Visibility – This site is highly visible from Bowman Road; the frontage Road; and Johnnie Dodds Boulevard.

Easements & Encroachments – There are typical drainage and utility easements located at the property lines that do not affect the development potential of the property. No adverse easements are noted.

Utilities – All public utilities except for natural gas are available at the site.

Conclusion – The site is a mostly level, with adequate access and visibility. The site has the necessary frontage and depth for commercial development.

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DESCRIPTION OF THE IMPROVEMENTS

The improvements consist of 127,352 square feet. Of that area, 87,602 square feet is the space leased by K-Mart and 39,750 square feet is in-line retail space. The lease indicates the K-Mart space to encompass 87,543 square feet which is 59 square feet smaller than the size concluded by me. The building was measured from the exterior and those measurements were cross checked with the dimensions cited on the survey. Because the current lease is not based upon a price per square foot, I have used the size concluded by me.

The improvements were completed in 1978. They appear to be in average condition. This is a concrete block and steel structure situated in a concrete slab foundation that is reinforced with steel. The roof is a standard metal truss system with a slightly sloped pitch. The decking on top of the trusses is metal panels and they are covered with a rubber coating.

The interior is a typical retail design with a large open floor and some partitioning in the rear. The floors are asphalt tile and the ceiling is covered with acoustic drop tiles. The finishes vary by tenant.

Site improvements include 739 marked parking spaces situated in front of the retail buildings; along Bowman Road in front of and to the side of the building; and along the frontage road both in front of and to the side of the building. There is landscaping along Bowman Road and exterior lighting in the parking areas.

This structure is 33 years old and appears to be in average condition. The effective age is estimated to be 25 years. Based upon an economic life of 70 years, depreciation from all causes is about 35%.

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REAL ESTATE TAXES – Before Taking

The Charleston County Assessor's Office is responsible for appraising this property for property tax purposes. The property taxes are reported as follows:

	Appraised Value	2011 Tax Due
TMS 038	$3,030,000	$36,626
TMS 041	$3,219,000	$38,911
Total	$6,249,000	$75,537

For 2011 the Assessor implemented a reassessment program and the effective date of that appraisal is December 31, 2008. The value is also based upon the fee simple interest.

The SC Legislation enacted a change to the property tax law in 2007 and now any property that undergoes an "assessable transfer of interest" (ATI) will be re-appraised by the Assessor in the following year. The January 2011 sale is an ATI so this property will be re-appraised by the Assessor for the 2012 tax year. That appraisal is to be at current market levels for that tax year (December 31, 2011 effective date of appraisal) so more than likely the Assessor will re-appraise this property at or near the recent sale price. Therefore property taxes should be reduced in 2012.

ZONING

According to the Town of Mount Pleasant Planning and Zoning Department, the current zoning for this property is AB or area wide business zoning. The purpose of this zoning category is to create commercial development targeted to uses which need location adjacent to arterial roads. Legal uses under this zoning category are plentiful and include most retail and office uses.

In addition to the AB zoning, this property is located within the Urban Corridor Overlay District recently created by the Town of Mount Pleasant. This overlay district was enacted and signed into law on February 9, 2011.

The UC-OD (Urban Corridor Overlay District) pertains to the areas of Coleman – Ben Sawyer Boulevard and Chuck Dawley Boulevard and Johnnie Dodds Boulevard. According to Ordinance #10081, the UC-OD is intended to "facilitate the development of this area into the urban core of the Town with an emphasis on mixed use commercial and residential development in a pedestrian and bicycle friendly, walkable style of development. Appropriate development form will include taller buildings, higher density residential use, and compact development form with multimodal access to facilitate pedestrian, bicycle, and mass transit-type modes of transportation to include buses and shuttle service."

The UC-OD is divided into several different sections and this property is located in the UC-JDB Health and Wellness/Economic Development District. This section is designed for research and medical office uses or medical campus use; higher density residential and workforce housing to facilitate hospital expansion; ancillary retail and service related uses; and accommodations for hospital visitors.

The maximum density for single use residential development is 20 units per acre and the maximum density for mixed use development is 30 units per acre. Buildings fronting on frontage roads must be a minimum of 2 stories and buildings fronting on side streets (non-frontage roads) or located at intersections between the frontage road and Johnnie Dodds Boulevard may utilize a single story.

The maximum building height is 80' except for buildings that are located within 50' of an abutting residential property line or an abutting street right of way adjoining residential property outside of the UC-JDB. Those buildings shall be a maximum of 40' and should not exceed 3 stories.

The front set back is 20' to 30' with a minimum 5' sidewalk. The side yard setback is 10' on either side and 15' at the rear. There is a provision upon approval through the Design and Review Process for development utilizing an integrated site plan involving multiple parcels may forego side and rear yard setbacks along parcel lines except when abutting residential parcels.

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This is an analysis of the leasehold interest and the term of the lease if all options are exercised is about 43 years. Therefore the likelihood of the property being redeveloped under the overlay district concept is remote without a interested developer acquiring the leasehold interest.

HIGHEST AND BEST USE ANALYSIS – Before Acquisition

Introduction – Highest and Best Use, as defined by *The Dictionary of Real Estate Appraisal*, 3rd Edition, (Appraisal Institute, Chicago, 1993), is:

> The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

The analysis of the highest and best use is considered in three steps. The first step is to determine the highest and best of the site as though vacant. The conclusion must be either to leave the site vacant or to improve it for some use. If the highest and best is for development, then the second step is to determine the ideal improvements for the property, which is utilized in the final step. The final step in this analysis is the comparison of the ideal improvements with the existing improvements, if present. A conclusion is made as to whether the existing improvements should remain in its current state, be modified, or be razed and the site developed with the ideal improvements.

Highest and Best Use As Though Vacant – Before the Acquisition

As described in the definition of highest and best use above, this analysis considers the following four factors.

1. Legally Permissible
2. Physically Possible
3. Financially Feasible
4. Maximally Productive

This is an analysis of a leasehold interest so there is no highest and best use analysis to consider. Therefore it is not employed in this appraisal.

VALUATION METHODOLOGY

In the valuation of real estate, any one or any combination of the three traditional appraisal methods may be used. These three methods are known as the Cost, Sales Comparison and Income approaches. All three approaches are based on the economic principle of substitution, which holds that when several goods or services are available, the one with the lowest price attracts the highest demand.

The cost approach methodology suggests that the value of the property being appraised can be estimated from the cost of acquiring an equally desirable substitute property without undue delay. This includes the acquisition of a comparable site and the construction of improvements having a comparable utility. Since this is an appraisal of the leasehold interest, the cost approach is not employed herein.

The sales comparison approach methodology suggests that the value of a property being appraised can be estimated from the cost to acquire an equally desirable substitute property without undue delay. The estimated market value of a property is determined from an analysis of recent sales of similar or comparable properties in this market. A sales comparison approach is utilized in the estimate of market rent for the surplus land.

The income approach methodology suggests that the value of the property being appraised can be estimated from the present worth of its future benefits (net operating income potential). Since this is an appraisal of a leasehold interest, a discounted cash flow analysis is employed. Contract rent is analyzed and calculated over the remaining term of the lease.

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Market rent is then estimated. Examples of recent rent negotiated for larger retail spaces in the market were analyzed and used to compare to the existing K-Mart space. From that, market rent for the K-Mart space is estimated.

In order to estimate market rent for the surplus land, a sales comparison approach is utilized to estimate the market value of that area and then a land capitalization rate is applied. The result is market rent for the surplus land.

The difference between contract rent and market rent in the first year and each year thereafter until the lease expires is the potential gross income to the leaseholder. This can be expressed as potential dollars under a sublet situation or in savings from paying rent that is less than market.

Vacancy and operating expenses are deducted in each year of the remaining lease term and the result is net operating income to the leaseholder. NOI is then discounted to present value using a discount rate. The sum of the present value cash flow for each year of the remaining lease term is the present value of the leasehold interest.

MARKET VALUE - LEASEHOLD INTEREST - Before the Taking

The leasehold interest is essentially the market value of the net income received by the tenant after paying contract rent and then receiving sub-tenant rent and paying operating expenses or it can be the rent savings by virtue of having below market rent. The first step in this analysis is to analyze the lease (contract rent). The lease is summarized as follows:

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Lessor	Baker & Baker
Lessee	K Mart Corporation
Lease Start Date	11/9/1978
Lease Termination Date	10/31/2003
Renewal Options	10 - 5 Year Options
Building Size	68,377 SF
Minimum Base Rent	$227,838
Rent Escalations	None
Additional Rent	1% of "Gross Sales"
	exceeding $8,8M - $15M
	.5% of "Gross Sales"
	exceeding $15M - $18,750M
Property Taxes	Tenant pays but property tax
	in excess of $22,000 is applied
	against additional rent
Minimum # Parking Spaces	730
Demised Premises	Parcel A - 14.1 AC
In 1989, a 19,206 SF additional was constructed. The gross area increased to 87,543 SF.	

The lease indicates the lessee has a right to expand the building or construct new buildings on the surplus land at their cost with no additional rent due to the Lessor. Lessee controls excess parking and any parking lost due to new building will not have to be replaced by the Lessor.

The lease is on triple net terms with the tenant responsible for practically all costs excluding property management and major building repairs. There are 42 years and 10 months left on the lease if all renewal options are exercised.

Potential gross income from contract rent is calculated as follows:

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		Original Lease			164 Bonnie
	Date	69.37 SF	$SF	% Increase	12/206 SF
Year 1	November 9, 1978	$227,838.00	$3.33		0
Year 2	November 1, 1979	$227,838.00	$3.33	0.00%	
Year 3	November 1, 1980	$227,838.00	$3.33	0.00%	
Year 4	November 1, 1981	$227,838.00	$3.33	0.00%	
Year 5	November 1, 1982	$227,838.00	$3.33	0.00%	
Year 6	November 1, 1983	$227,838.00	$3.33	0.00%	
Year 7	November 1, 1984	$227,838.00	$3.33	0.00%	
Year 8	November 1, 1985	$227,838.00	$3.33	0.00%	
Year 9	November 1, 1986	$227,838.00	$3.33	0.00%	
Year 10	November 1, 1987	$227,838.00	$3.33	0.00%	
Year 11	November 1, 1988	$227,838.00	$3.33	0.00%	
Year 12	November 1, 1939	$227,838.00	$2.60	0.00%	
Year 13	November 1, 1990	$227,838.00	$2.60	0.00%	
Year 14	November 1, 1991	$227,838.00	$2.60	0.00%	
Year 15	November 1, 1992	$227,838.00	$2.60	0.00%	
Year 16	November 1, 1993	$227,838.00	$2.60	0.00%	
Year 17	November 1, 1994	$227,838.00	$2.60	0.00%	
Year 18	November 1, 1995	$227,838.00	$2.60	0.00%	
Year 19	November 1, 1996	$227,838.00	$2.60	0.00%	
Year 20	November 1, 1997	$227,838.00	$2.60	0.00%	
Year 21	November 1, 1998	$227,838.00	$2.60	0.00%	
Year 22	November 1, 1999	$227,838.00	$2.60	0.00%	
Year 23	November 1, 2000	$227,838.00	$2.60	0.00%	
Year 24	November 1, 2001	$227,838.00	$2.60	0.00%	
Year 25	November 1, 2002	$227,838.00	$2.60	0.00%	
Year 26	November 1, 2003	$227,838.00	$2.60	0.00%	
Year 27	November 1, 2004	$227,838.00	$2.60	0.00%	
Year 28	November 1, 2005	$227,838.00	$2.60	0.00%	
Year 29	November 1, 2006	$227,838.00	$2.60	0.00%	
Year 30	November 1, 2007	$227,838.00	$2.60	0.00%	
Year 31	November 1, 2008	$227,838.00	$2.60	0.00%	
Year 32	November 1, 2009	$227,838.00	$2.60	0.00%	
Year 33	November 1, 2010	$227,838.00	$2.60	0.00%	
Year 34	November 1, 2011	$227,838.00	$2.60	0.00%	
Year 35	November 1, 2012	$227,838.00	$2.60	0.00%	
Year 36	November 1, 2013	$227,838.00	$2.60	0.00%	
Year 37	November 1, 2014	$227,838.00	$2.60	0.00%	
Year 38	November 1, 2015	$227,838.00	$2.60	0.00%	
Year 39	November 1, 2016	$227,838.00	$2.60	0.00%	
Year 40	November 1, 2017	$227,838.00	$2.60	0.00%	
Year 41	November 1, 2018	$227,838.00	$2.60	0.00%	
Year 42	November 1, 2019	$227,838.00	$2.60	0.00%	
Year 43	November 1, 2020	$227,838.00	$2.60	0.00%	
Year 44	November 1, 2021	$227,838.00	$2.60	0.00%	
Year 45	November 1, 2022	$227,838.00	$2.60	0.00%	
Year 46	November 1, 2023	$227,838.00	$2.60	0.00%	
Year 47	November 1, 2024	$227,838.00	$2.60	0.00%	
Year 48	November 1, 2025	$227,838.00	$2.60	0.00%	
Year 49	November 1, 2026	$227,838.00	$2.60	0.00%	
Year 50	November 1, 2027	$227,838.00	$2.60	0.00%	
Year 51	November 1, 2028	$227,838.00	$2.60	0.00%	
Year 52	November 1, 2029	$227,838.00	$2.60	0.00%	
Year 53	November 1, 2030	$227,838.00	$2.60	0.00%	
Year 54	November 1, 2031	$227,838.00	$2.60	0.00%	
Year 55	November 1, 2032	$227,838.00	$2.60	0.00%	
Year 56	November 1, 2033	$227,838.00	$2.60	0.00%	
Year 57	November 1, 2034	$227,838.00	$2.60	0.00%	
Year 58	November 1, 2035	$227,838.00	$2.60	0.00%	
Year 59	November 1, 2036	$227,838.00	$2.60	0.00%	
Year 60	November 1, 2037	$227,838.00	$2.60	0.00%	
Year 61	November 1, 2038	$227,838.00	$2.60	0.00%	
Year 62	November 1, 2039	$227,838.00	$2.60	0.00%	
Year 63	November 1, 2040	$227,838.00	$2.60	0.00%	
Year 64	November 1, 2041	$227,838.00	$2.60	0.00%	
Year 65	November 1, 2042	$227,838.00	$2.60	0.00%	
Year 66	November 1, 2043	$227,838.00	$2.60	0.00%	
Year 67	November 1, 2044	$227,838.00	$2.60	0.00%	
Year 68	November 1, 2045	$227,838.00	$2.60	0.00%	
Year 69	November 1, 2046	$227,838.00	$2.60	0.00%	
Year 70	November 1, 2047	$227,838.00	$2.60	0.00%	
Year 71	November 1, 2048	$227,838.00	$2.60	0.00%	
Year 72	November 1, 2049	$227,838.00	$2.60	0.00%	
Year 73	November 1, 2050	$227,838.00	$2.60	0.00%	
Year 74	November 1, 2051	$227,838.00	$2.60	0.00%	
Year 75	November 1, 2052	$227,838.00	$2.60	0.00%	

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First year contract rent is $227,838.

Market Rent – K-Mart Space

In order to estimate market rent, I have researched the area for examples of larger retail space that has been recently leased or is in the negotiations for leasing. Some of this is confidential so those properties are not described or identified in this report.

The most recent larger retail space in Mount Pleasant was the former Circuit City space in Wando Crossing. Wando Crossing is anchored by Super Wal-Mart, TJ Max, Office Depot; and Marshal's. Michaels leased 20,671 square feet at $13.50 per square foot on triple net terms. The landlord spent a confidential amount of money on the up fit for Michaels. Since the K-Mart space is not up fitted for a modern tenant, I have amortized the cost of the up fit spent on the Michaels space over initial term of the lease and deducted it from the negotiated rate. It indicates rent of about $8.50 per square foot for a retail shell.

Marshal's just recently leased 26,000 square feet in Ashley Center which is anchored by a Kohl's Department Store. The rental rate was $9.00 per square foot and that was for 26,000 square foot space. It was a turnkey deal. The Landlord spent a confidential amount on up fit. Amortizing that over the initial lease term indicates net rental of about $7.00 per square foot for a shell.

In Mount Pleasant there are several confidential negotiations in process for space in a proposed development nearby. The potential users are larger retailers associated with National chains. They range in size from 26,000 square feet to over 100,000 square feet. It is difficult to gauge what rental rates are for those spaces as they are negotiating ground leases for build to suit deals.

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On interested retail user who requires about 40,000 square feet made an offer of $10.00 per square foot for a turnkey space. The developer did not counter that offer. Adjusting it for the landlord up fit indicates a rental rate for a shell of about $5.50 per square foot.

Based upon the rent comparable activity in this market, it appears that rent for the K-mart space, as a single 87,602 square foot retail shell is $7.50 per square foot. This would be on triple net terms. Therefore, potential gross income for the existing K-Mart space is $657,015 in the first year.

Market Rent – Surplus Land

The rent estimate for the K-Mart space is for the existing building plus associated parking required by zoning. Zoning requires a 4 to 1 parking ratio or 4 spaces for every 1,000 square feet of retail space. For this K-Mart space, zoning requires 350 spaces and for the local space, zoning requires 159 spaces. That is a total of 509 spaces.

K-Mart has a right to expand their building or add additional buildings on the property as long as there is sufficient parking to satisfy zoning. If this is done, the landlord has no responsibility to replace any parking affected. There is also no provision for K-Mart to pay additional rent if an expansion is made or an additional building is constructed. There are 739 spaces on-site so 230 spaces are surplus and represent land area that has potential for K-Mart to expand on or construct additional buildings.

If K-Mart expands and it affects parking, then some of the 230 surplus parking spaces would be lost so it is not reasonable to expect K-Mart to achieve 100% efficiency in an expansion or future building. Some spaces would be lost.

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A land to building ratio of 3.427 is calculated for this development if the site were fully developed given the current parking design. Using that, I tested the size of an expansion or additional building that could be constructed on this site and how much parking would be lost to the new building footprint.

From this analysis, it appears that there is potential for 37,500 square feet of expansion or additional building area which would require 150 parking spaces while losing 70 spaces to the building or expansion area. This is demonstrated in the accompanying chart.

Future Bldg Area	# Spaces per Zoning	Land Area	Spaces Lost to Bldg	Total # Spaces
5,000	20	0.39	9	29
7,500	30	0.59	14	44
10,000	40	0.79	18	58
12,500	50	0.98	23	73
15,000	60	1.18	28	88
17,500	70	1.38	32	102
20,000	80	1.57	37	117
22,500	90	1.77	42	132
25,000	100	1.97	46	146
27,500	110	2.16	51	161
30,000	120	2.36	55	175
32,500	130	2.56	60	190
35,000	140	2.75	65	205
37,500	150	2.95	69	219
40,000	160	3.15	74	234

In order to estimate market rent for this surplus area, market value must be known as ground leases or rent for land are based upon a percentage of market value of the site. Therefore I have used a traditional sales comparison approach to estimate the market value of the 2.95 acres which supports the surplus parking and future building area.

A land to building ratio of 3.427 is calculated for this development if the site were fully developed given the current parking design. Using that, I tested the size of an expansion or additional building that could be constructed on this site and how much parking would be lost to the new building footprint.

From this analysis, it appears that there is potential for 37,500 square feet of expansion or additional building area which would require 150 parking spaces while losing 70 spaces to the building or expansion area. This is demonstrated in the accompanying chart.

Future Bldg Area	# Spaces per Zoning	Land Area	Spaces Lost to Bldg	Total # Spaces
5,000	20	0.39	9	29
7,500	30	0.59	14	44
10,000	40	0.79	18	58
12,500	50	0.98	23	73
15,000	60	1.18	28	88
17,500	70	1.38	32	102
20,000	80	1.57	37	117
22,500	90	1.77	42	132
25,000	100	1.97	46	146
27,500	110	2.16	51	161
30,000	120	2.36	55	175
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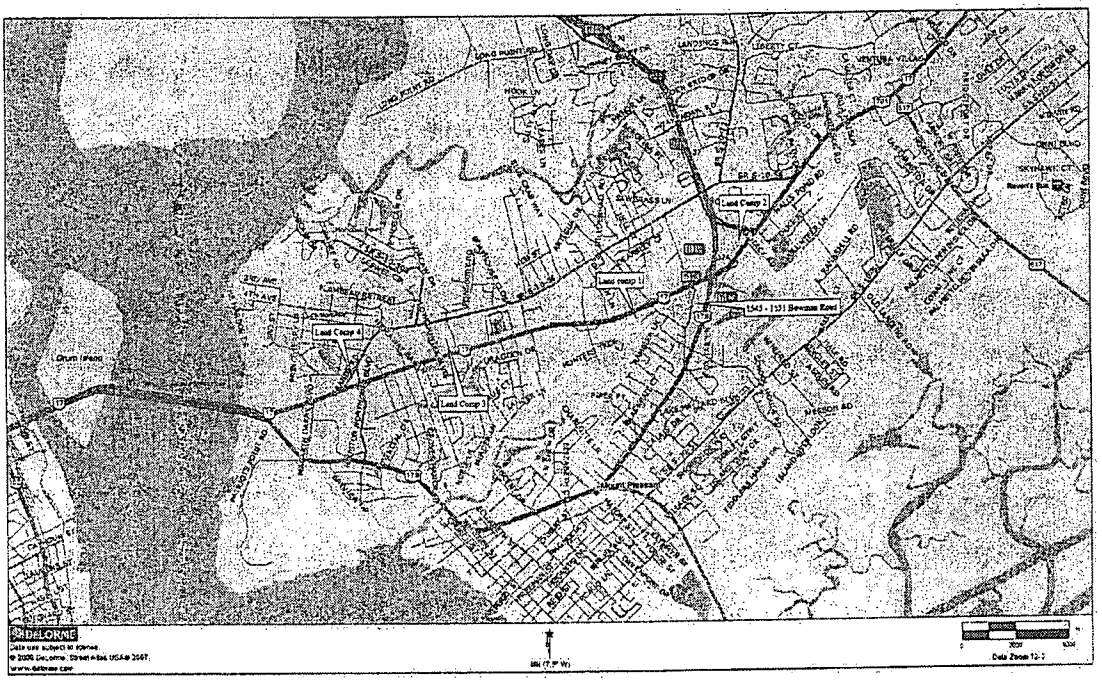
The sales comparison approach is a process of analyzing sales of similar recently sold vacant commercial properties in order to arrive at an indication of the most probable sales price of the property appraised. Several comparables from the area were selected to compare to his area.
The comparables are discussed in detail on the following pages and the map below shows the location of these comparables in relation to this property.

Location Map



Land Sale No. 1

Property Identification	
Record ID	3326
Property Type	2500, 2513
Address	1081 Johnnie Dodds Blvd, Mt. Pleasant, Charleston County, South Carolina 29464
Tax ID	535-00-00-014
Appraiser	006
Sale Data	
Grantor	Johnnie Dodds Redevelopment LLC
Grantee	Johnnie Dodds Ventures LLC
Sale Date	January 07, 2011
Deed Book/Page	0165/ 0387
Recorded Plat	L10 331
Property Rights	Fee Simple
Verification	Chris Fraser
Sale Price	$1,000,000
Land Data	
Zoning	Areawide Business
Topography	Level
Utilities	All Available
Shape	Rectangular
Land Size Information	
Gross Land Size	1.250 Acres or 54,450 SF
Actual/Planned Building SF	10,500
Indicators	
Sale Price/Gross Acre	$800,000
Sale Price/Gross SF	$18.37

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Remarks

This is part of a 5.0 acre tract located on the frontage road of the By-pass that was assembled for a mixed use development about 3 years ago. The mixed use concept was abandoned after the real estate market slowdown but this portion of the property is slated for medical office development.

The purchaser is a medical office developer/user and intends to construct a 10,000 to 11,000 SF medical office building. The property was listed for sale for $1,500,000 on March 1, 2010 and a contract was accepted within 30 days.

The price per SF of potential building area is $90 to $100.

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Land Sale No. 2

Property Identification	
Record ID	2757
Property Type	2500, 2514
Property Name	Former Ryans Steakhouse Property
Address	1470 Johnnie Dodds Blvd, Mt. Pleasant, Charleston County, South Carolina 29464
Tax ID	559-10-00-021
Appraiser	03
Sale Data	
Grantor	Hipp Properties Investments LLC
Grantee	NBSC
Sale Date	June 23, 2008
Deed Book/Page	B663/ 0127
Recorded Plat	EH/ 470
Property Rights	Fee Simple
Sale History	11/04/2004 sold for $2,500,000
Verification	Preston Hipp; 571-2332, May 29, 2008; Gregg Legerton, 843-725-7200, October 28, 2008
Sale Price	$4,100,000
Land Data	
Zoning	AWB, Areawide Business
Topography	Level/Wetlands
Utilities	All Available
Land Size Information	
Gross Land Size	5.570 Acres or 242,630 SF
Useable Land Size	3.145 Acres or 136,997 SF , 53.57%
Indicators	
Sale Price/ Acre	$1,303,657
Sale Price/ SF	$29.93

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Remarks

This is a sale of a 5.57 acre parcel located one site from a stop lighted interchange at the entrance to the Wando Crossing shopping center. It has excellent visibility from the intersection and functions similarly to a corner site. This property is improved with a former Ryan's Streak house building which has been vacant for a number of years and has no contributory value.

This site has a total of 5.57 acres, however; the rear 2.425 acres are wetlands resulting in a usable acreage area of 3.145 acres. The property is being purchased by NBSC which has a branch approximately 1 block away. The SCDOT is reportedly taking this property for the I-526 interchange improvements, and NBSC will be relocating to this site. Obviously, the bank does not need 3.145 acres and will sell the residual land for some other commercial use with a motel being a possibility.

The current owners purchased the property for 2.5 million on 11/04/2004. The indicated appreciation rate based on this contract is 20% annually.

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Land Sale No. 3

Property Identification	
Record ID	3731
Property Type	2500, 2512
Address	Mount Pleasant, Charleston County, South Carolina 29464
Location	South Shellmore Blvd.
Tax ID	514-00-00-416
Appraiser	02
Additional Tax Map #	514-00-00-417, 418 & 419
Sale Data	
Grantor	David N. Jordan, etal
Grantee	The Porter Academy d/b/a The Porter-Gaud School
Sale Date	January 18, 2011
Deed Book/Page	0167 / 439
Recorded Plat	L11 / 0023
Property Rights	Fee Simple
Verification	Chris Anderson, Broker; May 03, 2011
Sale Price	$2,750,000
Upward Adjustment	$850,000
Adjusted Price	$3,600,000
Land Data	
Zoning	AB, Areawide Business
Topography	Level
Utilities	All Available
Shape	Irregular
Landscaping	Wooded
Land Size Information	
Gross Land Size	4.380 Acres or 190,793 SF
Front Footage	Johnnie Dodds Blvd.;South Shellmore Blvd.

Indicators

Sale Price/Gross Acre	$821,918
Sale Price/Gross SF	$18.87

Remarks

This 4.38 acres is divided into four lots known as tax map numbers 514-00-00-416, 417, 418 & 419. The total site extends from Johnnie Dodds Blvd. to Mathis Ferry Road with an average depth of about 227 feet. The tract is located on a frontage road with no direct access to Johnnie Dodds. However, South Shellmore Blvd. has a stop lighted intersection with Johnnie Dodds that allows all turns. The seller negotiated to sell three of the lots and donated the fourth. According to the listing agent, the approximate value of the donated lot is $850,000. This is added to the price to obtain the total agreed upon value of the land. The buyer will build a new O'Quinn School on this site.

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Land Sale No. 4

Property Identification	
Record ID	2527
Property Type	2500, 2505
Address	224 Mathis Ferry Road, Mt. Pleasant, Charleston County, South Carolina
Tax ID	514-13-00-072
Appraiser	006
Additional Tax Map #	514-13-00-074
Sale Data	
Grantor	SPC MT.P., LLC
Grantee	KVH Hospitality Group, LLC
Sale Date	October 18, 2007
Deed Book/Page	S641 / 0032
Recorded Plat	EB / 521
Verification	Steve Varn, Buyer
Sale Price	$2,900,000 Deed shows $1,550,000
Adjusted Price	$2,900,000
Land Data	
Zoning	AB, Areawide Business
Land Size Information	
Gross Land Size	2.908 Acres or 126,673 SF
Planned Units	116
Indicators	
Sale Price/ Acre	$997,249
Sale Price/ SF	$22.89
Sale Price/Planned Unit	$25,000

Remarks

This is 2 adjacent sites purchased for development of a 116 room limited service Hotel. The site has a narrow configuration and there is about .75 acres available for an out parcel site. The purchaser initially attributed $900,000 to the potential out parcel site so the price paid for the land necessary for the Hotel component was$2,000,000. However, due to grand trees and the need for parking for the hotel, the total site was purchased for hotel use, at $25,000 / Key.

The deed price reflects $1,550,000, but the true sales price was cash and an interest in the purchasing LLC.

Explanation of Adjustments

Unit of Comparison – The most appropriate unit of comparison is price paid per square foot of land area. This appears to be the most common unit of comparison used by market participants.

Property Rights – All of the comparable sales involved the fee simple interest in the respective properties and no adjustments were necessary.

Financing – All of the comparables sold with market or equivalent financing and no adjustments were necessary.

Conditions of Sale – Comparable 4 involved an assemblage of four sites and the fourth was donated to the purchasing entity. The market value of that site was added as a condition of sale adjustment.

Time – A review of the immediate market indicates that properties had been appreciating at rates that range from 5% to 25% per year through 2007. In 2008 they appear to be flat and then they tended to decrease in 2009 and stabilize in 2010.

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Comparables 1 and 4 are recent so no adjustment is necessary. There is a sale of an out parcel site in Oakland which is a large retail shopping center anchored by Super Wal-Mart and Kohl's. It is located on Highway 17 North in Mount Pleasant. That site sold in November of 2006 for $1,200,000 (bank site) and then re-sold in June of 2011 for $1,075,000 (convenience store). It shows a decrease of about 2.36% per year on average from November 2006 to June 2011.

Comparable 3 is a re-sale from November 2004 when it sold for $2,500,000. The June 2008 sale at $4,100,000 indicates a nearly 20% per year appreciation rate.

Other sales and re-sales suggest significant increasing value through 2007 and flat value through 2008. Values declined in 2009 and have stabilized since then. Therefore, comparable 2 which occurred in October of 2007 was adjusted upward 10% per year through the end of 2007 and then negative 10% for the 2009 year.

Likewise, comparable 3 which occurred in 2008 was adjusted negative 10% for 2009.

Location – All 4 comparables are located in Mount Pleasant on Johnnie Dodds Boulevard and each is located either on a frontage road or on a side street. Those are similar in terms of proximity to Johnnie Dodds Boulevard as the K-Mart location.

Comparable 1 is located near the Ravenel Bridge which is the entrance to the City of Charleston. A study of properties closer to the Ravenel Bridge indicates increasing land value as compared to those further from the Bridge. This location is superior and a negative 20% adjustment is indicated.

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Corner Influence – The K-Mart property and comparables 1, 2 and 4 are similar in terms of frontage and access. Comparable 3, on the other hand, functions like a corner site as it is situated close to the traffic light at Johnnie Dodds Boulevard and Wando Crossing Way which is the primary entrance to Wando Crossing Shopping Center. A negative 30% adjustment is indicated for this characteristic.

Size – An analysis of the comparable sales indicates that larger properties typically sell for a lower unit price. Adjustments are made accordingly.

After the adjustments are made, the comparables indicate a range of value from about $14.70 per square foot to about $20.00 per square foot. Based upon this analysis, a reasonable estimate of market value of the surplus land is $19.00 per square foot or $2,440,000 rounded.

Adjustment Grid – Reference is made to the adjustment grid on the following page showing the adjustments made to the comparables.

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Surplus Land Value
Market Adjustment Chart – Before the Acquisition

TRANSACTION # -	1	2	3	4
TYPE TRANS	Sale	Sale	Sale	Sale
GRANTOR	Johnnie Dodds	SPC	Hipp	Jordan
GRANTEE	Johnnie Dodds	KVH	NBSC	The Porter
DATE	7-Jan-11	18-Oct-07	23-Jun-08	18-Jan-11
CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
PROP RIGHTS CONVEYED	Fee Simple	Fee Simple	Fee Simple	Fee Simple
ADJ FOR PROP RIGHTS	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
FINANCING	Typical	Typical	Typical	Typical
ADJ FOR FINANCING	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
CONDITIONS OF SALE ADJ	$0	$0	$0	$850,000
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$3,600,000
SIZE-SF	54,450	126,673	136,997	190,793
$/SF	$18.37	$22.89	$29.93	$18.87
	1.000	1.030	0.900	1.000
ADJUSTED CONSIDERATION	$18.37	$23.58	$26.95	$18.87
ADJ FOR PHYSCIAL DIFFERENCES - PER SF				
Location	1.00	0.80	1.00	1.00
Corner	1.00	1.00	0.70	1.00
Site Conditions	1.00	1.00	1.00	1.00
Size	0.80	1.00	1.00	1.05
TOTAL ADJUSTMENT	0.80	0.80	0.70	1.05
INDICATION/SF	$14.69	$18.86	$18.85	$19.81
			Market Value per SF	$19.00
		128,518 SF	at $19.00 per SF	$2,441,847
			Rounded to	$2,440,000

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In order to estimate market rent for the surplus land, a land capitalization rate should be applied against market value and the result is an indication of net rent that would be charged for a ground lease. There are several ways to estimate a land cap rate and the best was from market examples.

The Palmetto Ford site on Savannah Highway has been ground leased to the current owner for nearly 20 years. The rent for the ground lease is based upon 9% of market value. The property is re-appraised every three years to establish market rent for the next 3 years period.

There is a CVS Pharmacy located at Mount Pleasant at the corner of Ben Sawyer Boulevard and McCants Street. The site was ground leased to a developer who constructed the store and leased it to CVS Pharmacy about 6 years ago. Rent for the ground lease was established at 9% of market value.

OL Thompson Construction owns a light industrial property near the Air Port in North Charleston. It is ground leased to Valcor and the rent was established at 9% of market value.

Based upon those examples, a reasonable ground rent cap rate for the surplus land at K-Mart site is 9% of market value. Market rent for the surplus land before the taking is calculated as follows;

Market Value before Taking		$2,440,000
	Land Cap Rate	9%
Market Rent to Excess Land		$219,600

Adding the market rent for the K-Mart space to market rent for the surplus land indicates potential gross income of $876,615.

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I have had conversations with several Brokers who specialize in leasing retail space to larger National chain users and a typical rent escalation over the term of a lease is $.50 per square foot every five years. Likewise, rent escalations for ground rent leases are typically 5% every 5 years. Those have been implemented in the DCF.

There is currently minimal big box retail vacancy in Mount Pleasant. In addition to that, I am aware of ongoing negotiations for five proposed big box retail pads in Mount Pleasant and there are 6 or 7 retail companies vying for the space. Understanding this and the location of this property in the center of Mount pleasant which has limited land available for future development, vacancy and credit loss is estimated at 3%.

All retail leases are essentially absolute net which places all the responsibility of payment for operating expenses related to the real estate to the tenant. Those expenses would be passed on to a ub-let tenant. A sandwich lease tenant like K-Mart would still be required to manage the real estate between the lessor and sub-lessee and there would be professional fees involved with that as well as miscellaneous expenses. The total of these is estimated to be 5%.

At the end of all renewals, the lease expires and the property owner retains ownership of all leasehold improvements so there is no income from a reversion. The sum of the net cash flow for each holding period should be discounted to present value and the sum of the net present value cash flow for each period is the market value of the leasehold interest.

A future payment is discounted to present value by calculating the amount that, if invested today, would grow with compound interest at a satisfactory rate to equal the future payment. When a series of payments is expected, each payment (net operating income) is discounted to present value and the sum of the present value indications is the present value of the investment. A discounted cash flow analysis can be utilized to estimate the present value of the investment.

The net operating income for each year has already been estimated so the next step is to estimate a reasonable discount rate for investment of this type. In this process, expectations of market participants including buyers, sellers, advisers and brokers must be considered. While the actual return on an investment cannot be determined until the investment is sold, an investor may set a target for return on the investment before or during ownership.

Some sources of data from investments include historical rates of return abstracted from market sales, but they demonstrate past trends and do not address the future activity or forecasts. To accomplish this, the rates of return from comparable investments in today's market can be analyzed. This would include rates of return from investment in the financial markets, both long term and short term as well as rates of return from investment in real estate.

Realty Rates reports average discount rates for anchored retail properties are 8.57% to 13.25% with an average of 11.3%. Overall rates for anchored centers average 9.3%. Adding the anticipated average income increase over the holding period (about 1.27%) would suggest a discount rate of about 10.57%.

Korpac indicates an average discount rate of 8.61% with a range from 6.5% to 12.5%.
The two reports suggest a discount rate from 6.5% to 13.25% with an average of 8.6% to 9.3%. Adding the average increase in come over the holding period which reflects risk would increase the average 9.87% to 10.57%.

In order to make a comparison of those potential rates of return to the real estate investments, information on alternative investments is considered. Alternative yield comparisons from Korpacz are summarized in the following chart.

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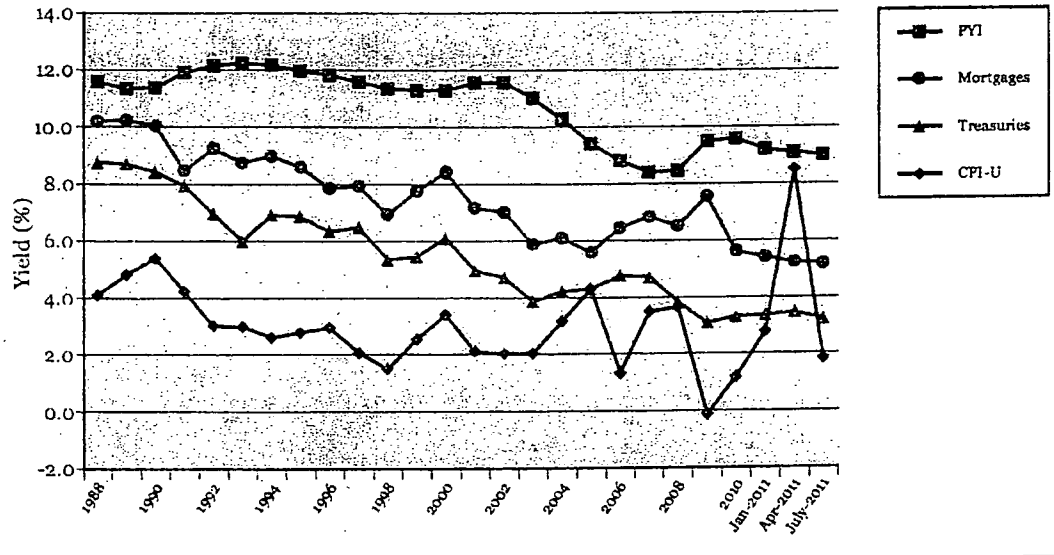
YIELD COMPARISONS
July 1, 2011

	2006 AVERAGE	2007 AVERAGE	2008 AVERAGE	2009 AVERAGE	2010 AVERAGE	2010 OCTOBER	2011 JANUARY	2011 APRIL	2011 JULY
PwC Yield Indicator (PYI)[a]	8.81%	8.41%	8.47%	9.49%	9.58%	9.32%	9.20%	9.10%	8.99%
Long-Term Mortgages[b]	6.45%	6.84%	6.50%	7.55%	5.60%	4.64%	5.41%	5.22%	5.17%
10-Year Treasuries[c]	4.76%	4.72%	3.82%	3.09%	3.31%	2.54%	3.36%	3.46%	3.22%
Consumer Price Index Change[d]	1.32%	3.50%	3.65%	(0.14%)	1.17%	1.28%	2.77%	8.51%	1.81%
SPREAD TO PYI (Basis Points)									
Long-Term Mortgages	236	157	197	194	398	468	379	388	382
10-Year Treasuries	405	369	465	640	627	678	584	564	577
Consumer Price Index Change	749	491	482	963	841	804	643	59	718

a. A composite IRR average of the markets surveyed (excluding hotels).
b. Fixed-rate mortgages; immediate funding. Source: CB Richard Ellis/L.J. Melody Capital Markets; reflects conventional funding, 70% average LTV commercial loans; fixed rates, 15-year average term.
c. Source: Federal Reserve; the annual average change is the mean of the four corresponding quarters.
d. Source: U.S. Department of Labor; quarterly changes are annualized based on the index change from the prior quarter; the annual average change is the mean of the four corresponding quarters.

COMPARATIVE YIELDS
July 1, 2011



Considering that the safest rates of return are nearing 1% to 2% and the bonds are at about 6.5%, returns sought by investors in real estate should be greater as the risk of investment increases. Based upon this information, a reasonable discount rate for this property is 10%. The discounted cash flow model is presented here.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
K-Mart Space - Market Rent / SF	$7.50	$7.50	$7.50	$7.50	$7.50	$8.00	$8.00	$8.00	$8.00	$8.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $	$657,015	$657,015	$657,015	$657,015	$657,015	$700,816	$700,816	$700,816	$700,816	$700,816
Excess Land - Market Rent	$219,600	$219,600	$219,600	$219,600	$219,600	$230,580	$230,580	$230,580	$230,580	$230,580
Total Market Rent	$876,615	$876,615	$876,615	$876,615	$876,615	$931,396	$931,396	$931,396	$931,396	$931,396
Contract Rent - $	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$648,777	$648,777	$648,777	$648,777	$648,777	$703,558	$703,558	$703,558	$703,558	$703,558
Less Vacancy @ 3%	($19,463)	($19,463)	($19,463)	($19,463)	($19,463)	($21,107)	($21,107)	($21,107)	($21,107)	($21,107)
Effective Gross Income - Leasehold	$629,314	$629,314	$629,314	$629,314	$629,314	$682,451	$682,451	$682,451	$682,451	$682,451
Less Operating Expenses @ 5%	($31,466)	($31,466)	($31,466)	($31,466)	($31,466)	($34,123)	($34,123)	($34,123)	($34,123)	($34,123)
NOI - Leasehold Interest	$597,848	$597,848	$597,848	$597,848	$597,848	$648,329	$648,329	$648,329	$648,329	$648,329
Discount Rate @ 10%	0.90909	0.82645	0.75131	0.68301	0.62092	0.56447	0.51316	0.46651	0.42410	0.38554
Net Present Value	$543,498	$494,089	$449,172	$408,338	$371,217	$365,965	$332,695	$302,450	$274,955	$249,959

	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
K-Mart Space - Market Rent / SF	$8.50	$8.50	$8.50	$8.50	$8.50	$9.00	$9.00	$9.00	$9.00	$9.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent - $	$744,617	$744,617	$744,617	$744,617	$744,617	$788,418	$788,418	$788,418	$788,418	$788,418
Excess Land - Market Rent	$242,109	$242,109	$242,109	$242,109	$242,109	$254,214	$254,214	$254,214	$254,214	$254,214
Total Market Rent	$986,726	$986,726	$986,726	$986,726	$986,726	$1,042,632	$1,042,632	$1,042,632	$1,042,632	$1,042,632
Contract Rent - $	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$758,888	$758,888	$758,888	$758,888	$758,888	$814,794	$814,794	$814,794	$814,794	$814,794
Less Vacancy @ 3%	($22,767)	($22,767)	($22,767)	($22,767)	($22,767)	($24,444)	($24,444)	($24,444)	($24,444)	($24,444)
Effective Gross Income - Leasehold	$736,121	$736,121	$736,121	$736,121	$736,121	$790,351	$790,351	$790,351	$790,351	$790,351
Less Operating Expenses @ 5%	($36,806)	($36,806)	($36,806)	($36,806)	($36,806)	($39,518)	($39,518)	($39,518)	($39,518)	($39,518)
NOI - Leasehold Interest	$699,315	$699,315	$699,315	$699,315	$699,315	$750,833	$750,833	$750,833	$750,833	$750,833
Discount Rate @ 10%	0.35049	0.31863	0.28966	0.26333	0.23939	0.21763	0.19784	0.17986	0.16351	0.14864
Net Present Value	$245,106	$222,823	$202,567	$184,152	$167,411	$163,403	$148,548	$135,044	$122,767	$111,607

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	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
K-Mart Space - Market Rent / SF	$9.50	$9.50	$9.50	$9.50	$9.50	$10.00	$10.00	$10.00	$10.00	$10.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent	$832,219	$832,219	$832,219	$832,219	$832,219	$876,020	$876,020	$876,020	$876,020	$876,020
Excess Land - Market Rent	$266,925	$266,925	$266,925	$266,925	$266,925	$280,271	$280,271	$280,271	$280,271	$280,271
Total Market Rent	$1,099,144	$1,099,144	$1,099,144	$1,099,144	$1,099,144	$1,156,291	$1,156,291	$1,156,291	$1,156,291	$1,156,291
Contract Rent - S	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$871,306	$871,306	$871,306	$871,306	$871,306	$928,453	$928,453	$928,453	$928,453	$928,453
Less Vacancy @ 3%	($26,139)	($26,139)	($26,139)	($26,139)	($26,139)	($27,854)	($27,854)	($27,854)	($27,854)	($27,854)
Effective Gross Income - Leasehold	$845,167	$845,167	$845,167	$845,167	$845,167	$900,600	$900,600	$900,600	$900,600	$900,600
Less Operating Expenses @ 5%	($42,258)	($42,258)	($42,258)	($42,258)	($42,258)	($45,030)	($45,030)	($45,030)	($45,030)	($45,030)
NOI - Leasehold Interest	$802,909	$802,909	$802,909	$802,909	$802,909	$855,570	$855,570	$855,570	$855,570	$855,570
Discount Rate @ 10%	0.13513	0.12285	0.11168	0.10153	0.09230	0.08391	0.07628	0.06934	0.06304	0.05731
Net Present Value	$108,498	$98,634	$89,667	$81,516	$74,105	$71,784	$65,261	$59,328	$53,935	$49,051

	Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37	Year 38	Year 39	Year 40
K-Mart Space - Market Rent / SF	$10.50	$10.50	$10.50	$10.50	$10.50	$11.00	$11.00	$11.00	$11.00	$11.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent	$919,821	$919,821	$919,821	$919,821	$919,821	$963,622	$963,622	$963,622	$963,622	$963,622
Excess Land - Market Rent	$294,285	$294,285	$294,285	$294,285	$294,285	$308,999	$308,999	$308,999	$308,999	$308,999
Total Market Rent	$1,214,106	$1,214,106	$1,214,106	$1,214,106	$1,214,106	$1,272,621	$1,272,621	$1,272,621	$1,272,621	$1,272,621
Contract Rent - S	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$986,268	$986,268	$986,268	$986,268	$986,268	$1,044,783	$1,044,783	$1,044,783	$1,044,783	$1,044,783
Less Vacancy @ 3%	($29,588)	($29,588)	($29,588)	($29,588)	($29,588)	($31,343)	($31,343)	($31,343)	($31,343)	($31,343)
Effective Gross Income - Leasehold	$956,680	$956,680	$956,680	$956,680	$956,680	$1,013,440	$1,013,440	$1,013,440	$1,013,440	$1,013,440
Less Operating Expenses @ 5%	($47,834)	($47,834)	($47,834)	($47,834)	($47,834)	($50,672)	($50,672)	($50,672)	($50,672)	($50,672)
NOI - Leasehold Interest	$908,846	$908,846	$908,846	$908,846	$908,846	$962,768	$962,768	$962,768	$962,768	$962,768
Discount Rate @ 10%	0.05210	0.04736	0.04306	0.03914	0.03558	0.03235	0.02941	0.02673	0.02430	0.02209
Net Present Value	$47,350	$43,045	$39,132	$35,575	$32,340	$31,145	$28,313	$25,739	$23,400	$21,272

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		Year 41	Year 42	10 months
K-Mart Space - Market Rent/SF		$11.50	$11.50	$11.50
K - Mart - Building Area		87,602	87,602	87,602
K-Mart Space - Market Rent - $		$1,007,423	$1,007,423	$839,519
Excess Land - Market Rent		$324,449	$324,449	$270,374
Total Market Rent		$1,331,872	$1,331,872	$1,109,894
Contract Rent - $		$227,838	$227,838	$227,838
Cash Flow to Leasehold		$1,104,034	$1,104,034	$882,056
Less Vacancy @	3%	($33,121)	($33,121)	($26,462)
Effective Gross Income - Leasehold		$1,070,913	$1,070,913	$855,594
Less Operating Expenses @	5%	($53,546)	($53,546)	($42,780)
NOI - Leasehold Interest		$1,017,368	$1,017,368	$812,814
Discount Rate @	10%	0.02009	0.01826	0.01660
Net Present Value		$20,435	$18,577	$13,493
Market Value Leasehold Interest		$6,627,343		
Rounded to		$6,630,000		

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MARKET VALUE OF LEASEHOLD INTEREST – After taking

The next step in this appraisal is to estimate the leasehold interest "after taking". In order to accomplish this, it is necessary to describe the changes and any affects they may have on this property.

Description of Acquisition

A portion of a Town of Mount Pleasant Road Design plan for this project on which this property is depicted was utilized to visualize this property after acquisition. According to the plans, the acquisition consists of .686 acres or 29,882 square feet. Of that area, about 9,721 square feet is wetlands in the headwater of Shem Creek so the highland area taken is .462 acres or about 20,161 square feet.

The area taken is situated along Bowman Road. It contains 57 parking spaces and landscaping. The acquisition has a depth ranging from about 16' to about 17.5'. There are two sections that jog into the property at greater depths.

Copies of portions of the Road Design Plans are included here:

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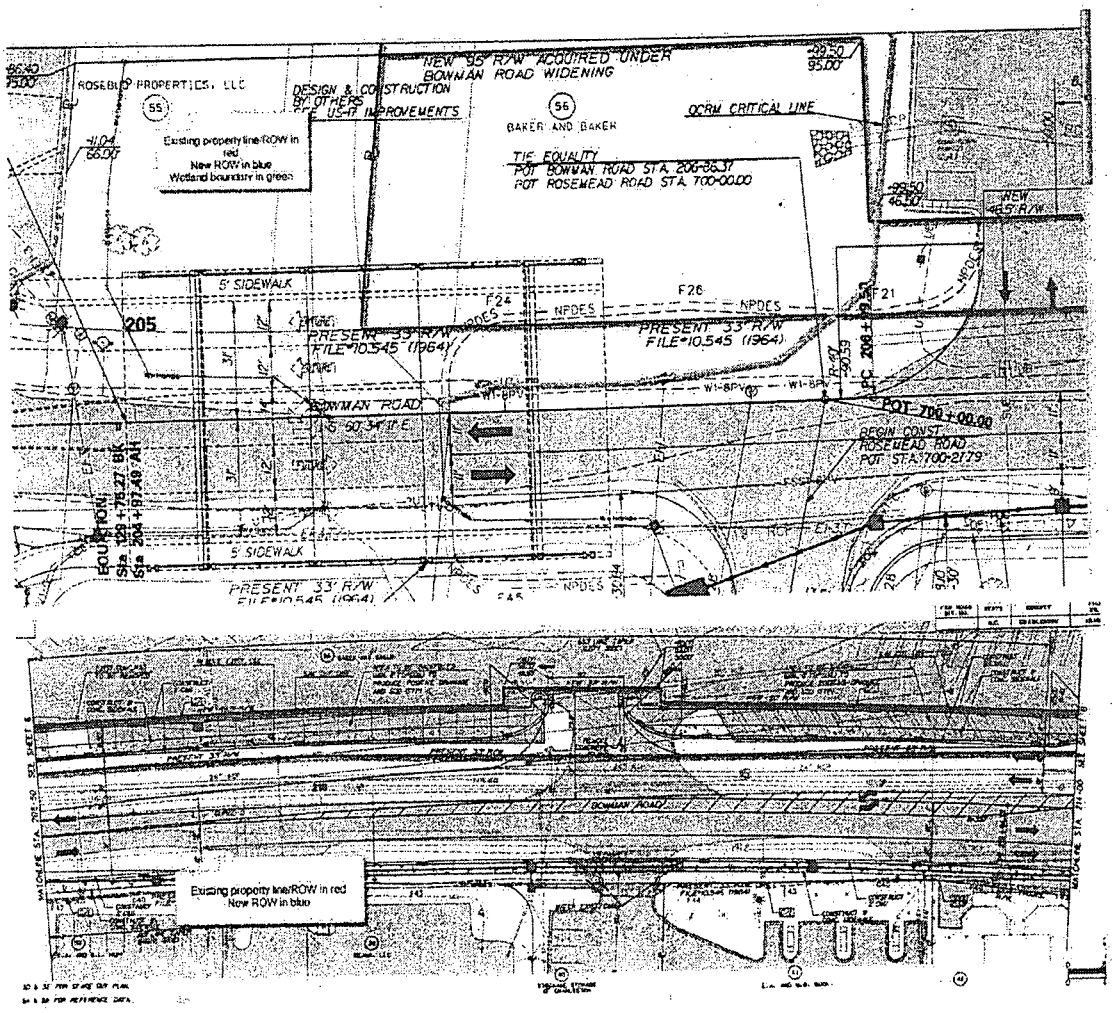
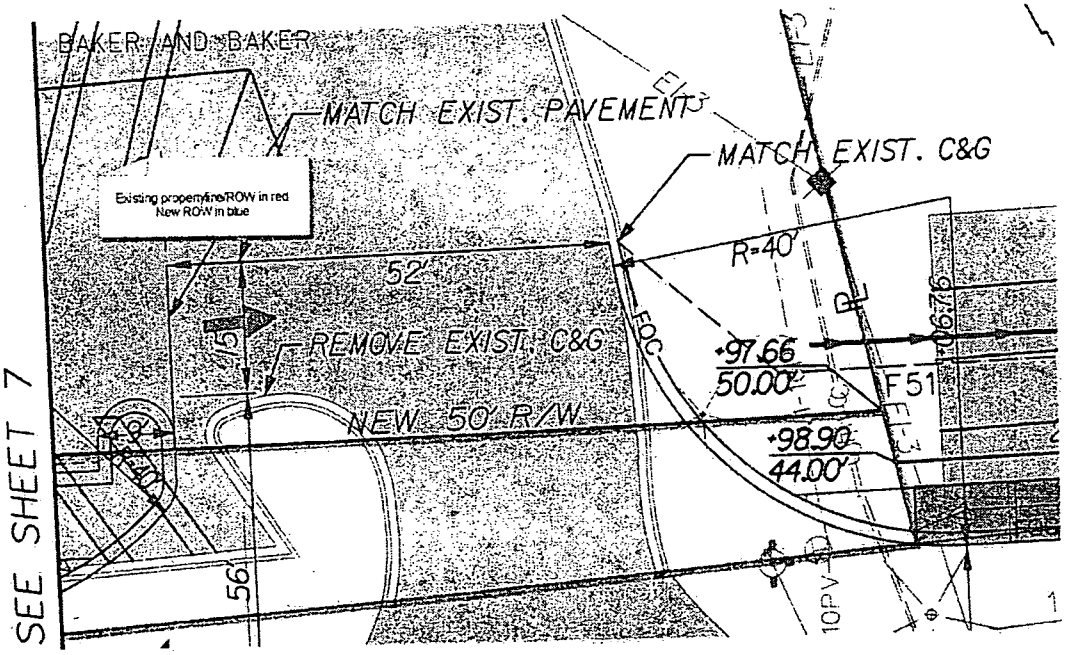
Road Plan


NEW 95' R/W ACQUIRED UNDER BOWMAN ROAD WIDENING
ROSEBUD PROPERTIES, LLC
DESIGN & CONSTRUCTION BY OTHERS
BAKER AND BAKER
OCRM CRITICAL LINE
TIE EQUALITY
POT BOWMAN ROAD STA 206+86.37
POT ROSEMEAD ROAD STA 700+00.00
Existing property line/ROW in red
New ROW in blue
Wetland boundary in green
5' SIDEWALK
PRESENT 33' R/W FILE #10,545 (1964)
BOWMAN ROAD
POT 706+00.00
BEGIN CONST. ROSEMEAD ROAD POT STA 700+21.79
205
NPDES
5' SIDEWALK
PRESENT 33' R/W FILE #10,545 (1964)
Existing property line/ROW in red
New ROW in blue



Description of the Remainder & Highest and Best Use – Assuming the Site is Vacant

The property remaining after the acquisition consists of 12.50 acres of highland and the on-site parking is reduced to 682 spaces. Since no parking is designated, the reduction in spaces affects the future development potential for K-Mart to construct additional space.

As demonstrated earlier, zoning requires 509 on-site parking spaces for K-Mart and the in-line space. 350 of those spaces are required for K-Mart and 159 spaces are required for the in-line space. The remaining spaces total 173 spaces which is a reduction of 57 from the number before the taking.

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Since K-Mart has a right by lease to expand the building pad or build additional buildings and that space can cover the existing surplus parking, the potential future square footage is reduced by the loss of 57 on-site spaces.

I have used the same formula to estimate the potential future area for K-Mart to expand or construct new building and it is shown in the accompanying chart.

Bldg Area	# Spaces Needed	Land Area	Spaces Lost to Bldg	# Spaces in Total
5,000	20	0.39	8.81	28.81
7,500	30	0.59	13.21	43.21
10,000	40	0.79	17.62	57.62
12,500	50	0.98	22.02	72.02
15,000	60	1.18	26.42	86.42
17,500	70	1.38	30.83	100.83
20,000	80	1.57	35.23	115.23
22,500	90	1.77	39.64	129.64
25,000	100	1.97	44.04	144.04
27,500	110	2.16	48.44	158.44
30,000	120	2.36	52.85	172.85

As you can see, the potential area for future expansion or new construction is reduced to 30,000 square feet after the taking. The potential future area before the taking was 37,500 square feet so the taking of 57 parking spaces reduces the future potential area by 7,500 square feet.

MARKET VALUE - LEASEHOLD INTEREST - After the Taking

The same analysis is applied to the market value of the leasehold interest after the taking as was applied in the market value of the leasehold interest before the taking.

Market rent for the K-Mart space and contract rent remain unchanged after the taking. Therefore, market rent is $657,015 or $7.50 per square foot for the K-Mart and parking required by zoning.

Market rent for the surplus land will be less because of the loss of 7,500 square feet of potential future space. In order to estimate the loss from this, I have re-appraised the surplus land site using the same comparables as in the before taking analysis. The market adjustment grid is shown here.

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Surplus Land Value
Market Adjustment Chart – After the Acquisition

TRANSACTION # -	1	2	3	4
TYPE TRANS	Sale	Sale	Sale	Sale
GRANTOR	Johnnie Dodds	SPC	Hipp	Jordan
GRANTEE	Johnnie Dodds	KVH	NBSC	The Porter
DATE	7-Jan-11	18-Oct-07	23-Jun-08	18-Jan-11
CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
PROP RIGHTS CONVEYED	Fee Simple	Fee Simple	Fee Simple	Fee Simple
ADJ FOR PROP RIGHTS	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
FINANCING	Typical	Typical	Typical	Typical
ADJ FOR FINANCING	$0	$0	$0	$0
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$2,750,000
CONDITIONS OF SALE ADJ	$0	$0	$0	$850,000
ADJUSTED CONSIDERATION	$1,000,000	$2,900,000	$4,100,000	$3,600,000
SIZE-SF	54,450	126,673	136,997	190,793
$/SF	$18.37	$22.89	$29.93	$18.87
	1.000	1.030	0.900	1.000
ADJUSTED CONSIDERATION	$18.37	$23.58	$26.93	$18.87
ADJ FOR PHYSCIAL DIFFERENCES - PER SF				
Location	1.00	0.80	1.00	1.00
Corner	1.00	1.00	0.70	1.00
Site Conditions	1.00	1.00	1.00	1.00
Size	0.80	1.00	1.00	1.05
TOTAL ADJUSTMENT	0.80	0.80	0.70	1.05
INDICATION/SF	$14.69	$18.86	$18.85	$19.81

		Market Value per SF	$19.00
	102,815 SF	at $19.00 per SF	$1,953,478
		Rounded to	**$1,955,000**

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A reasonable ground rent cap rate for the surplus land at K-Mart site is 9% of market value. Market rent for the surplus land after the taking is calculated as follows;

Market Value before Taking		$1,955,000
	Land Cap Rate	9%
Market Rent to Excess Land		$175,950

Adding the market rent for the K-Mart space to market rent for the surplus land indicates potential gross income of $832,965.

A similar DCF analysis is made with the same assumptions as in the before taking analysis. The DCF model is presented here.

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	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
K-Mart Space - Market Rent / SF	$7.50	$7.50	$7.50	$7.50	$7.50	$8.00	$8.00	$8.00	$8.00	$8.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent	$657,015	$657,015	$657,015	$657,015	$657,015	$700,816	$700,816	$700,816	$700,816	$700,816
Excess Land - Market Rent	$175,950	$175,950	$175,950	$175,950	$175,950	$184,748	$184,748	$184,748	$184,748	$184,748
Total Market Rent	$832,965	$832,965	$832,965	$832,965	$832,965	$885,564	$885,564	$885,564	$885,564	$885,564
Contract Rent	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$605,127	$605,127	$605,127	$605,127	$605,127	$657,726	$657,726	$657,726	$657,726	$657,726
Less Vacancy @ 3%	($18,154)	($18,154)	($18,154)	($18,154)	($18,154)	($19,732)	($19,732)	($19,732)	($19,732)	($19,732)
Effective Gross Income - Leasehold	$586,973	$586,973	$586,973	$586,973	$586,973	$637,994	$637,994	$637,994	$637,994	$637,994
Less Operating Expenses @ 5%	($29,349)	($29,349)	($29,349)	($29,349)	($29,349)	($31,900)	($31,900)	($31,900)	($31,900)	($31,900)
NOI - Leasehold Interest	$557,625	$557,625	$557,625	$557,625	$557,625	$606,094	$606,094	$606,094	$606,094	$606,094
Discount Rate @ 10%	0.90909	0.82645	0.75131	0.68301	0.62092	0.56447	0.51316	0.46651	0.42410	0.38554
Net Present Value	$506,931	$460,847	$418,952	$380,865	$346,241	$342,124	$311,022	$282,747	$257,043	$233,675

	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
K-Mart Space - Market Rent / SF	$8.50	$8.50	$8.50	$8.50	$8.50	$9.00	$9.00	$9.00	$9.00	$9.00
K - Mart - Building Area	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602
K-Mart Space - Market Rent	$744,617	$744,617	$744,617	$744,617	$744,617	$788,418	$788,418	$788,418	$788,418	$788,418
Excess Land - Market Rent	$193,985	$193,985	$193,985	$193,985	$193,985	$203,684	$203,684	$203,684	$203,684	$203,684
Total Market Rent	$938,602	$938,602	$938,602	$938,602	$938,602	$992,102	$992,102	$992,102	$992,102	$992,102
Contract Rent	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838
Cash Flow to Leasehold	$710,764	$710,764	$710,764	$710,764	$710,764	$764,264	$764,264	$764,264	$764,264	$764,264
Less Vacancy @ 3%	($21,323)	($21,323)	($21,323)	($21,323)	($21,323)	($22,928)	($22,928)	($22,928)	($22,928)	($22,928)
Effective Gross Income - Leasehold	$689,441	$689,441	$689,441	$689,441	$689,441	$741,336	$741,336	$741,336	$741,336	$741,336
Less Operating Expenses @ 5%	($34,472)	($34,472)	($34,472)	($34,472)	($34,472)	($37,067)	($37,067)	($37,067)	($37,067)	($37,067)
NOI - Leasehold Interest	$654,969	$654,969	$654,969	$654,969	$654,969	$704,269	$704,269	$704,269	$704,269	$704,269
Discount Rate @ 10%	0.35049	0.31863	0.28966	0.26333	0.23939	0.21763	0.19784	0.17986	0.16351	0.14864
Net Present Value	$229,563	$208,693	$189,721	$172,474	$156,794	$153,270	$139,336	$126,669	$115,154	$104,685

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		Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Ye
K-Mart Space - Market Rent / SF		$9.50	$9.50	$9.50	$9.50	$9.50	$10.00	$10.00	$10.00	$10.00	$1
K - Mart - Building Area		87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87
K-Mart Space - Market Rent - $		$832,219	$832,219	$832,219	$832,219	$832,219	$876,020	$876,020	$876,020	$876,020	$87
Excess Land - Market Rent		$213,868	$213,868	$213,868	$213,868	$213,868	$224,562	$224,562	$224,562	$224,562	$22
Total Market Rent		$1,046,087	$1,046,087	$1,046,087	$1,046,087	$1,046,087	$1,100,582	$1,100,582	$1,100,582	$1,100,582	$1,1
Contract Rent - $		$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$22
Cash Flow to Leasehold		$818,249	$818,249	$818,249	$818,249	$818,249	$872,744	$872,744	$872,744	$872,744	$87
Less Vacancy @	3%	($24,547)	($24,547)	($24,547)	($24,547)	($24,547)	($26,182)	($26,182)	($26,182)	($26,182)	($2
Effective Gross Income - Leasehold		$793,702	$793,702	$793,702	$793,702	$793,702	$846,561	$846,561	$846,561	$846,561	$84
Less Operating Expenses @	5%	($39,685)	($39,685)	($39,685)	($39,685)	($39,685)	($42,328)	($42,328)	($42,328)	($42,328)	($4
NOI - Leasehold Interest		$754,017	$754,017	$754,017	$754,017	$754,017	$804,233	$804,233	$804,233	$804,233	$80
Discount Rate @	10%	0.13513	0.12285	0.11168	0.10153	0.09230	0.08391	0.07628	0.06934	0.06304	0.0
Net Present Value		$101,891	$92,628	$84,207	$76,552	$69,593	$67,480	$61,345	$55,768	$50,698	$4

		Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37	Year 38	Year 39	Ye
K-Mart Space - Market Rent / SF		$10.50	$10.50	$10.50	$10.50	$10.50	$11.00	$11.00	$11.00	$11.00	$1
K - Mart - Building Area		87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87,602	87
K-Mart Space - Market Rent - $		$919,821	$919,821	$919,821	$919,821	$919,821	$963,622	$963,622	$963,622	$963,622	$96
Excess Land - Market Rent		$235,790	$235,790	$235,790	$235,790	$235,790	$247,579	$247,579	$247,579	$247,579	$24
Total Market Rent		$1,155,611	$1,155,611	$1,155,611	$1,155,611	$1,155,611	$1,211,201	$1,211,201	$1,211,201	$1,211,201	$1,2
Contract Rent - $		$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$227,838	$22
Cash Flow to Leasehold		$927,773	$927,773	$927,773	$927,773	$927,773	$983,363	$983,363	$983,363	$983,363	$98
Less Vacancy @	3%	($27,833)	($27,833)	($27,833)	($27,833)	($27,833)	($29,501)	($29,501)	($29,501)	($29,501)	($2
Effective Gross Income - Leasehold		$899,940	$899,940	$899,940	$899,940	$899,940	$953,862	$953,862	$953,862	$953,862	$95
Less Operating Expenses @	5%	($44,997)	($44,997)	($44,997)	($44,997)	($44,997)	($47,693)	($47,693)	($47,693)	($47,693)	($4
NOI - Leasehold Interest		$854,943	$854,943	$854,943	$854,943	$854,943	$906,169	$906,169	$906,169	$906,169	$90
Discount Rate @	10%	0.05210	0.04736	0.04306	0.03914	0.03558	0.03235	0.02941	0.02673	0.02430	0.0
Net Present Value		$44,541	$40,492	$36,811	$33,465	$30,422	$29,314	$26,649	$24,226	$22,023	$2

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		Year 41	Year 42	10 months
K-Mart Space - Market Rent / SF		$11.50	$11.50	$11.50
K - Mart - Building Area		87,602	87,602	87,602
K-Mart Space - Market Rent - $		$1,007,423	$1,007,423	$839,519
Excess Land - Market Rent		$259,958	$259,958	$216,632
Total Market Rent		$1,267,381	$1,267,381	$1,056,151
Contract Rent - $		$227,838	$227,838	$227,838
Cash Flow to Leasehold		$1,039,543	$1,039,543	$828,313
Less Vacancy @	3%	($31,186)	($31,186)	($24,849)
Effective Gross Income - Leasehold		$1,008,357	$1,008,357	$803,464
Less Operating Expenses @	5%	($50,418)	($50,418)	($40,173)
NOI - Leasehold Interest		$957,939	$957,939	$763,290
Discount Rate @	10%	0.02009	0.01826	0.01660
Net Present Value		$19,241	$17,492	$12,671
Market Value Leasehold Interest		$6,200,429		
Rounded to		$6,200,000		

RECONCILIATION

The difference between the market value of the leasehold interest before the taking and the market value of the leasehold interest after the taking is the loss in leasehold interest value as a result of the taking. The calculation is shown here.

Market Value of Leashold Before Taking	$6,630,000
Market Value of Leashold After Taking	$6,200,000
Loss in Value as a Result of the Taking	$430,000

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CERTIFICATION

The appraiser hereby certifies that Atlantic Appraisals, LLC was engaged to appraise the market value of the leasehold interest in the following real property, as of December 12, 2011:

1545 – 1551 Bowman Road
Mount Pleasant, South Carolina

The property was inspected by Pledger M. Bishop III, MAI, SRA several times between December 5, 2011 and December 12, 2011.

Neither Atlantic Appraisals, LLC nor the signatories of this Certification, have any present or contemplated future interest in the real estate that is the subject of this report.

The appraiser(s) have no personal interest or bias with respect to the subject matter of this report or to the parties involved other than as an unbiased advisor to the client. The reported analyses, opinions and conclusions are limited only by the special and General Assumptions and General Limiting Conditions set forth in this report.

To the best of the appraiser(s) knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct. No one other than the signatories of this Certification prepared the analyses, conclusions and opinions concerning the real estate set forth in this report.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Pledger M. Bishop, III, MAI, SRA has completed the requirements of the continuing education program of the Appraisal Institute.

I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of The Appraisal Institute.

I certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives.

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The compensation for this appraisal is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

Based on the appraiser's investigation, analysis and conclusions, an opinion has been formed that the market value of the leasehold interest, as of December 12, 2011:

Market Value of Leasehold Interest - Before the Taking

SIX MILLION SIX HUNDRED THIRTY THOUSAND DOLLARS

$6,630,000

Market Value of Leasehold Interest - After the Taking

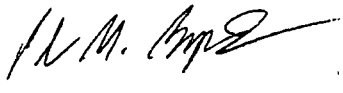
SIX MILLION TWO HUNDRED THOUSAND DOLLARS

$6,200,000

Loss in Leasehold Interest Value

FOUR HUNDRED THIRTY THOUSAND DOLLARS

$430,000



Pledger M. Bishop, III, MAI, SRA
State Certified General Real Estate Appraiser
Certification No. CG795

GENERAL UNDERLYING ASSUMPTIONS

This appraisal report has been made with, and is subject to, the following general assumptions:

- That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.

- That the definition of value together with other definitions and assumptions on which our analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included in their entirety.

- The property is considered to be free of all liens and encumbrances.

- That the facts, estimates and opinions furnished to the appraisers by others and contained in this report are considered to be from reliable sources and, where feasible, have been verified. However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.

- All engineering and/or surveys are assumed to be correct. The sketches, plot plans and drawings included in the report are included only to assist the reader in visualizing the property.

- It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property which would render them more or less valuable.

- Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances. The presence of potentially dangerous or hazardous materials, gases, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicted on the assumption that there is no such element on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.

- It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.

- It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined, and considered in the appraisal report.

- It is assumed that all required licenses, certificates of occupancy, legislative or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

- It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

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GENERAL LIMITING CONDITIONS

This appraisal report has been made with, and is subject to, the following General Limiting Conditions:

- The appraisers, by reason of this appraisal report, are not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.

- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.

- Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent and approval of the appraiser(s).

- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.

- This appraisal report has been prepared for the exclusive benefit of the stated client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk.

- The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report.

- Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

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QUALIFICATIONS OF THE APPRAISER

Pledger M. Bishop III, MAI, SRA, CRE

EDUCATION

Graduate of University of South Carolina, 1984 - B.S. Degree Finance & Insurance
Graduate of Porter-Gaud High School, 1979

PROFESSIONAL AFFILIATIONS

CRE – The Counselors of Real Estate 2003
MAI Designation - Appraisal Institute 1995
SRA Designation - Appraisal Institute 1989

South Carolina State Certified General Real Estate Appraiser #CG795

2011 Immediate Past President - SC State Chapter of the Appraisal Institute
2010 President - SC State Chapter of the Appraisal Institute
2009 1st Vice President - SC State Chapter of the Appraisal Institute
2008 2nd Vice President - SC State Chapter of the Appraisal Institute
2007 Treasurer - SC State Chapter of the Appraisal Institute
2006 Secretary - SC State Chapter of the Appraisal Institute

Member of the Appraisal Institute General Demonstration Report Grading Panel
2011 – 2012 Member of the Appraisal Institute Admissions Designations Qualifications Committee
2009 – 2010 Member of the Appraisal Institute Admissions Designations Qualifications Committee
Selected as Discussion Leader for Appraisal Institute 2005 Leadership Development and Advisory Council Conference

Member Charleston Trident Board of Realtors
Former Member of Board of Directors for Charleston Trident MLS
Former Member of Charleston Trident Board of Realtors Professional Standards Committee
Former Chairman Charleston Trident Board of Realtors Grievance Committee

Former Member Charleston County Board of Assessment Appeals
Recognized as an Expert Witness in various Courts of Law

Elder Mount Pleasant Presbyterian Church
Member Rotary Club of Mount Pleasant

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SPECIAL EDUCATION

Appraisal Institute:

Advanced Spreadsheet Modeling for Valuation Applications, May 2011
The Lending World in Crisis: What Clients Need Their Appraisers to Know, January 2011
Residential Design: The Makings of a Good House, June 2010
National USPAP Update, May 2010
Spotlight on USPAP: Appraisal Review, April 2010
Appraising Distressed Commercial Real Estate: Here We Go again, January 2010
Spotlight on USPAP: Agreement for Services-Instructions, January 2010
The Lender's Perspective; The Role of the Appraiser in the Lending Process, July 2009
Business Practice and Ethics, May 2009
National USPAP Update, June 2008
Analyzing Distressed Real Estate, January 2008
Spotlight on USPAP: Hypothetical Conditions & Extraordinary Assumptions, Oct 2007
The Valuation of Wetlands, July 2007
Analytics with the Site to Do Business, April 2007
Forecasting Revenue, March 2007
National USPAP Update, May 2006
Small Hotel/Motel Valuation: Appraising Limited Service Lodging Facilities, January 2006
Real Estate Investment and Development, January 2006
AI Leadership Development Advisory Council Conference, March 2005
AI Instructor Leadership Development Conference, November 2004
An Appraisers Primer to the International Building Code, April 2004
AI Leadership Development & Advisory Council Meeting, April 2004
Crossing the Line: Home Mortgage Fraud, January 2004
Business Practice and Ethics, May 2003
The National USPAP Update, May 2003
Establishing the Worth of an Appraisal to Your Client, April 2003
AI Leadership Development & Advisory Council Meeting, April 2003
AI Leadership Development & Advisory Council Meeting, April 2002
Appraisal Review, General, January 2001
Eminent Domain and Condemnation, January 2001
Introduction to Appraising for Conservation Easements, January 2001
Supporting Sales Comparison Approach Adjustments, January 2000
Cost Approach Applications, January 2000
Standards of Professional Practice Part C, May 1999
Residential Consulting, January 1999
USPAP in Cross Examination, January 1999
Understanding New Trends in Quality Appraisal Production, October 1998
Appraising Historic Properties, May 1998
Appraising High Value and Historic Homes, January 1998

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Appraisal Institute (cont)
Standards of Professional Practice Part A, March, 1996
Maximizing the Value of an Appraisal Practice, July 1995
Comprehensive Appraisal Exam, August 1994
Comprehensive Appraisal Workshop, August 1994
Commercial Demonstration Appraisal Report, June 1994
Advanced Applications - Court 550, November 1993
Report Writing & Valuation Analysis, Course 540 - March 1993
Standards of Professional Practice Parts A & B, May 1991
Real Estate Risk Analysis, February 1991

American Institute of Real Estate Appraisers:
Course A: Capitalization and Theory Techniques, July 1988
Course B: Capitalization and Theory Techniques, July 1988
Course 1: Real Estate Appraisal & Principles, February 1984
Course II: Basic Valuation Procedures, February 1984

Society of Real Estate Appraisers
Residential Demonstration Appraisal Report, March 1989
Casualty Loss Appraisal Seminar, October, 1989
Standards of Professional Practice Seminar, February 16, 1989
Course 102: Applied Residential Property Valuation, Challenge Exam, October, 1988
Residential Narrative Report Seminar, January 15-16, 1988
Federal Home Loan Bank Board Regulation R41C Seminar, 03/87

International Association of Assessing Officials:
Course II: The Income Approach to Valuation, July 31-August 5, 1985

Other
Author of Seminar "SC Property Tax Reform Act 2006 – It's affect on Market Value"
Author of Seminar "Appraising Historic Homes"
Speaker at Northern California Chapter of Appraisal Institute's Education Conference Fall 2005
CLE Eminent Domain Conference, February 2005
Guest Speaker - Appraising and Marketing Historic Properties, February 2002
May 2000 & May 1999
Guest Speaker at various seminars on Conservation Easements & Appraising Historic Properties

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EMPLOYMENT

Present Partner - Atlantic Appraisals, LLC

1990 - 1996 Atlantic Appraisals, Associated with Charles F. Middleton, MAI, Christopher D. Donato, MAI, G. Hammond Bamberg, III, MAI, and Gary L. Pruitt, MAI, as independent fee appraiser

1986 - 1990 Appraisal Consultants, Inc., Associated with A. Palmer Owings, MAI, and Charles F. Middleton, MAI, as independent fee appraiser

1983 - 1986 Charleston County Assessors Office, Charleston, S.C. Appraising real estate, beginning as Appraisal Assistant and advancing to Senior Staff Appraiser. Appraisal assignments covered many types of properties, condominiums and vacant land.

PARTIAL LIST OF CLIENTS

BB & T
Wachovia National Bank
Mortgage Guaranty Insurance Corporation
National Bank of South Carolina
Community First Bank
Thomas H. Brush, Esquire
Banks Construction
Wachovia Mortgage
Atlantic Services Group
Barkley Enterprises
SC Dept of Transportation
Smith and Collins, PA
SC State Budget and Control Board
Heritage Trust Federal Credit Union
MeadWestvaco Corporation
Christopher L. Murphy, Esquire
Joseph Qualey, Esquire
Robert Mozingo, Esquire
First Reliance Bank
Haynesworth, Sinkler, Boyd P.A.
Nelson, Mullins, Riley, & Scarborough LLP
First Federal of Charleston
T.D. Bank
Bank of America
SC Bank and Trust
Tidelands Bank
South Carolina Electric & Gasoline Co.
Southcoast Community Bank
Bank of America Mortgage Corporation
Professional Mortgage Company
The Nature Conservancy
McAlister Development, Inc
Ann Stirling, Esquire
Regions Bank
Alex Cash, Esquire
RBC Centura Bank
Stanley C. Rogers, Esquire
Richard D. Bybee, Esquire
South Carolina Bank and Trust
Palmetto First Bank
Ogletree, Deakins, Nash, Smoak & Stewart
Nexen, Pruitt, LLC

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ADDENDA

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SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE is made and entered into this 10th day of April, 1989 between BAKER AND BAKER, a PARTNERSHIP, having its principal office at 1400 Pickens Street, Columbia, South Carolina 29211-2397 ("Landlord") and K MART CORPORATION, having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Tenant");

WITNESSETH

WHEREAS Landlord and Tenant have entered into a lease dated March 23, 1978 regarding leasehold premises located in the City of Mt. Pleasant, County of Charleston, State of South Carolina and more fully described in Exhibit "A" to the lease; and

WHEREAS the lease was amended by letter agreement dated June 26, 1979 (the lease together with its Amendment is hereinafter referred to as the "Lease"); and

WHEREAS, Landlord and Tenant desire to further amend the Lease as provided by this SECOND AMENDMENT TO LEASE.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the adequacy of which is acknowledged, Landlord and Tenant agree as follows:

1. Tenant may, but is not obligated to, at its sole cost expand the building (the "Building") leased to it within the area designataed as "K mart Expansion Area" as shown on Exhibit "B" attached hereto.

2. Exhibit "B" attached hereto shall become Exhibit "B" to the Lease.

3. In the event Tenant expands the Building Tenants Additional Rental obligation pursuant to Article 4 shall be determined by multiplying Tenant's gross sales by the fraction 68,444/87,543 with the resulting product representing gross sales for purposes of determining Tenant's additional rent obligation. This addition rent adjustment shall be effective on the day after two (2) years after the day that sales of merchandise from the expanded portion of the Building are made to the public. If the day this adjustment starts is not the first day of the lease year, then the original method of determining percentage rent and this adjustment will be calculated separately by reducing the gross sales and breakpoint provided in the lease porportionately to the period being calculated relative to the lease year.

4. The excess tax credit provided for in Article 5 of the Lease shall not include any real estate taxes attributed to the expanded portion of the Building. In the event the tax records do not separately identify the portion of taxes attributed to the expansion then the taxes on the Building as expanded shall be multiplied by 21.8% to determine the taxes attributed to the expansion.

5. The Lease as amended is ratified and confirmed by Landlord and Tenant.

IN WITNESS WHEREOF the parties have executed this SECOND AMENDMENT TO LEASE which is to become effective as provided herein.

WITNESS

Gaye Spann

Janet Edwards

BAKER & BAKER, A PARTNERSHIP

By: _____, general partner

By: _____, general partner

WITNESS

Teresa L. Riddle

Cynthia Kawinski

K MART CORPORATION

By: M. L. Skiles, its Vice President

By: C. E. Lotzar Jr., assistant secretary

ACKNOWLEDGMENTS

STATE OF MICHIGAN)
COUNTY OF OAKLAND) ss:

I do hereby certify that on this 10th day of April, 1989, before me, Mary E. Harker, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. L. Skiles ---------- and C. E. Lotzar, Jr. ----------, known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester, Michigan and Birmingham, Michigan ---------- respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires: June 11, 1989 Mary E. Harker
Notary Public

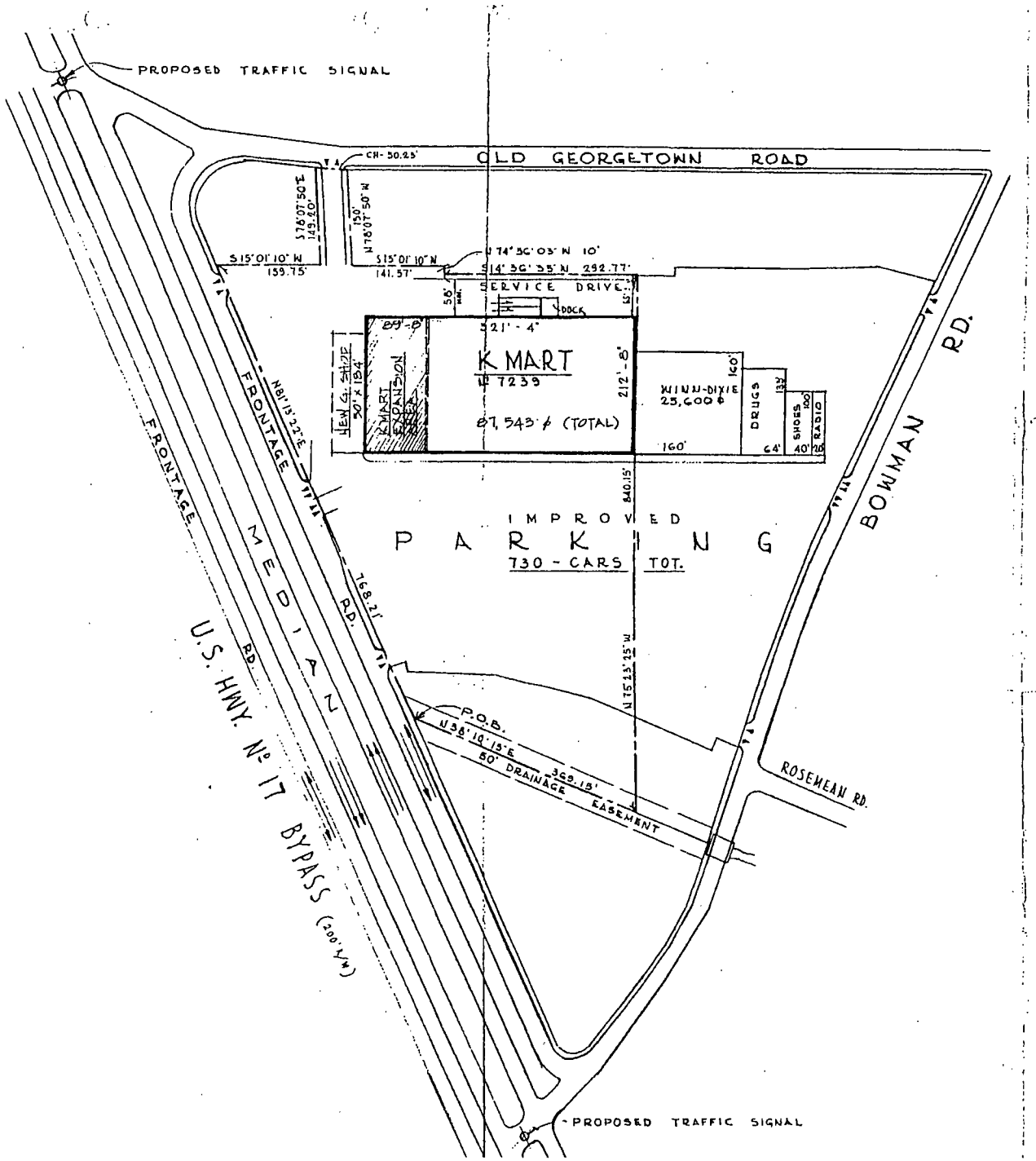
MARY E. HARKER
Notary Public, Oakland County, Mich.
My Commission Expires June 11, 1989

ACKNOWLEDGEMENT FOR PARTNERSHIP

STATE OF South Carolina
) SS
COUNTY OF Richland

On the 22nd day of March, 1989, before me personally came David Baker and Lee J Baker, to me known, who, being by me duly sworn, did depose and say that he/she is/are a partner/partners in the firm of Baker and Baker, a partnership, and that he/they executed the foregoing instrument on behalf of said firm.

Janet Edwards
Notary Public
My Commission Expires September 6, 1994



STORE Nº 7239

S.W.C. OF U.S. HY. Nº 17 & OLD GEORGETOWN RD.

MT. PLEASANT, S. CAROLINA.

N.

EXHIBIT "B"

DATE:
3-23-78
3-31-89 (REV.)

SCALE:
100 FEET TO 1 INCH

0451

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity

Mikell R. Scarborough

Case No. 2011-CP-10-4324

RECEIVED
MAY 0 3 2013
SC Court of Appeals

Town of Mount Pleasant, South Carolina, Condemnor,

v.

Bowman MTP Center, LLC, Landowner, and NBSC, a Division of Synovus Bank, and K-Mart Corporation, Other Condemnees,

Of whom K-Mart Corporation is the Appellant,

And

Of whom Bowman MTP Center, LLC is the Respondent.

CERTIFICATE OF COUNSEL

I CERTIFY that the Record on Appeal contains all material proposed to be included by all the parties and not any additional material.

CHRISTOPHER L. MURPHY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity

Mikell R. Scarborough

RECEIVED
MAY 03 2013
SC Court of Appeals

Case No. 2011-CP-10-4324

Town of Mount Pleasant, South Carolina, Condemnor,

v.

Bowman MTP Center, LLC, Landowner, and NBSC, a Division of Synovus Bank, and K-Mart Corporation, Other Condemnees,

Of whom K-Mart Corporation is the Appellant,

And

Of whom Bowman MTP Center, LLC is the Respondent.

PROOF OF SERVICE

I CERTIFY that I have served the Record of Appeal on counsel of record for Respondent by delivering a copy via U.S. Mail First-Class postage prepaid on the 2nd day of May, 2013, addressed as follows:

Richard D. Bybee, Esquire
1037 Chuck Dawley Blvd.
Suite 100, Building F
Mount Pleasant, SC 29464
(843) 881-1623
Attorney for Respondent

Sandra S. Garvin
SANDRA S. GARVIN