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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE SOUTH CAROLINA COURT OF APPEALS

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

**Karl A. Folkens, Special Referee
Fifteenth Judicial Circuit**

APPELLATE CASE NO: 2026-000090

Jericho State Capital Corp. of Florida, Appellant,

v.

Chicago Title Insurance Company, Respondent, AND Lynx Jerico Partners,
LLC, Appellant, v. Chicago Title Insurance Company, Respondent.

.

RECORD ON APPEAL

VOLUME TWO

C. Scott Masel, S.C. Bar #12497
Newby, Sartip & Masel, LLC
4593 Oleander Drive
Myrtle Beach, SC 29577
(843) 449-9417
Attorneys for Appellants

Demitri K. Koutrakos, S.C. Bar #11318
Harry A. Dixon, S.C. Bar #103509
Callison, Tighe & Robinson, LLC
1812 Lincoln Street, Suite 200
Columbia, SC 29202
(803) 404-6900
Attorneys for Respondent

43900000013,

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **LYNX JERICHO PEACHTREE PHASE III LLC**, a Delaware limited liability company (the "**Grantor**") for and in consideration of the premises and the sum of TWO MILLION ONE HUNDRED TWO THOUSAND FIVE HUNDRED AND No/100 (\$2,102,500.00) DOLLARS to it in hand paid at and before the sealing of these presents by **LENNAR CAROLINAS, LLC**, a Delaware limited liability company, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, unto **LENNAR CAROLINAS, LLC**, a Delaware limited liability company (the "**Grantee**"), its successors and assigns forever, the following described property to wit:

SEE EXHIBIT "A" ATTACHED HERETO.

Grantee's Address: 1941 Savage Road, Suite 100-C
Charleston, South Carolina 29407

THIS CONVEYANCE is made subject only to those matters set forth on **EXHIBIT "B" ATTACHED HERETO** (the "**Exceptions**").

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, its successors and assigns forever.

AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against it, but no other, subject only to the Exceptions.

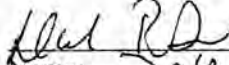
[signatures appearing on next page]

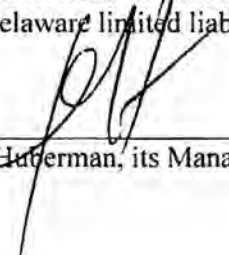
ELECTRONICALLY FILED - 2024 Jan 23 5:03 PM - HORRY - COMMON PLEAS - CASE#2013CP2605530

WITNESS the Grantor's Hand and Seal this 11 day of January, 2022.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

**LYNX JERICO PEACHTREE PHASE III
LLC**, a Delaware limited liability company

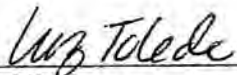

Name: GABRIEL VARELA

Name: Dale P. Swamy

By: 
Seth Huberman, its Manager

STATE OF FLORIDA)
COUNTY OF Palm Beach)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 11 day of January, 2022, by
Seth Huberman, as Manager of **LYNX JERICO PEACHTREE PHASE III LLC**, a Delaware
limited liability company, as his act and deed and as the act and deed of the limited liability
company.


Notary Public for _____ (SEAL)
Name: LUZ TOLEDO
My Commission Expires:
(AFFIX SEAL)

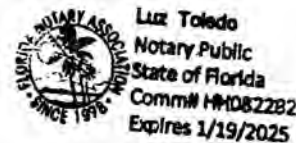


EXHIBIT "A"

Legal Description of Property

BEING that certain lot, parcel or tract of land located in Socastee Township, Horry County, South Carolina containing 35.27 acres and shown on a survey thereof entitled "**BOUNDARY SURVEY OF PEACHTREE PARCEL C TOTALING 35.27 AC.**" dated January 18, 2022, prepared by Matthew J. Svejksky (PLS No. 21233) of Thomas & Hutton Engineering Co. and recorded on January 31, 2022 in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 303, Page 32, reference to said survey made hereby for a more accurate and complete description of the foregoing property.

DERIVATION: This being the same property conveyed to Lynx Jericho Peachtree Phase III LLC by Deed of Jericho State Capital Corporation of Florida and Jericho All-Weather Opportunity Fund, L.P., dated September 14, 2020 and recorded September 18, 2020 in Deed Book 4344 at Page 2303 in the Office of the Register of Deeds for Horry County, South Carolina.

TMS/PIN No.: 178-00-05-032/439-00-00-0013

EXHIBIT "B"

Exceptions

1. Taxes and assessments for the year 2022 and subsequent years.
2. Terms and conditions of SC Department of Transportation case for Eminent Domain# 2009-CP-26-11956, Horry County Registry.
3. Easement in favor of Grand Strand Water and Sewer Authority recorded in Book 1438, Page 163.
4. Sewer line easement in favor of Grand Strand Water and Sewer Authority recorded in Book 3819, Page 342. Horry County Registry.
5. Right of way easement to Horry County Electric Cooperative recorded in Book 3873, Page 193.
6. Right of Way easement to the County of Horry recorded in Book 3917, Page 2718, Horry County Registry.
7. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variation, or other adverse circumstance affecting the Title disclosed by plat(s) recorded in Plat Book 43, Page 183; Plat Book 112, Page 65; Plat Book 215, Page 81; Plat Book 43, Pages 184A and 184B; Plat Book 292, Page 265, Horry County Registry.
8. Recreation Amenities, Use, Easement and Fee Agreement recorded in Deed Book 4327 at Page 1473, Horry County Registry.
9. Easement and Road Maintenance Agreement for Future Public Roadway, Water and Sewer Improvements, Marketing, Signage and Entry Monument Rights recorded in Deed Book 4327 at Page 1560, Horry County Registry.
10. Planning, Permitting and Development Agreement recorded in Deed Book 4327 at Page 1618, Horry County Registry.
11. Terms, provisions, options, right of first refusal, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in instrument(s) filed for record in Deed Book 4358 at Page 213 and amended in Deed Book 4401 at Page 528, and any related maps, plans, bylaws, and other document(s) and amendment(s), but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.
12. Horry County Stormwater Best Management Practices Permanent Maintenance Covenants recorded in Deed Book 4286 at Page 2732, and Deed Book 4360 at Page 2050, Horry County Registry.
13. Right(s)-of-way/Easement(s) to Horry Telephone Cooperative, Inc. recorded in Deed Book 4342 at Page 3262, Horry County Registry.
14. Right(s)-of-way/Easements to Time Warner Entertainment-Advance Newhouse Partnership dba Time Warner Cable recorded in Deed Book 4375 at Page 1894, Horry County Registry.
15. Right(s)-of-way/Easements to Horry Electric Cooperative, Inc., recorded in Deed Book 4410 at page 797, Horry County Registry.
16. Agreement for Underground Electric Service to a Residential Neighborhood to Horry Electric Cooperative, Inc., recorded in Deed Book 4410 at Page 1298; and Deed Book 4410 at Page 1302, Horry County Registry.
17. Rights or easements (recorded or unrecorded) in favor of the United States or Agencies thereof, including the U.S. Army Corps of Engineers, among others.
18. Title to that portion of the Land lying within the bounds of Carolina Bays Parkway, Peachtree Road and Renata Lane rights-of-way.
19. The creation or loss of land by natural or artificial changes along water forming part of the boundary of the Land; and rights of others in and to the continuous and uninterrupted flow of the waters bounding or crossing the Land and riparian and/or littoral rights incident to the Land.

STATE OF SOUTH CAROLINA

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

COUNTY OF HORRY

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is identified as A 35.27 +/- Acre Parcel, bearing Horry County PIN No.: 439-00-00-0013 was transferred by LYNX JERICHO PEACHTREE PHASE III LLC to LENNAR CAROLINAS, LLC. on ~~March~~ January 11, 2022.
3. Check one of the following: *The DEED is*
(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ EXEMPT from the deed recording fee because (Exemption # _____)
(Explanation if required _____.)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$2,102,500.00.
(b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
(a) \$2,102,500.00 the amount listed in item 4 above
(b) \$ 0.00 the amount listed in item 5 above (no amount place zero)
(c) \$2,102,500.00 subtract line 6(b) from line 6(a) and place the result.
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$7,779.25
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this
11 day of January, 2022.

Luz Toledo
Notary Public for Florida
Name: Luz Toledo
My Commission Expires: _____

LYNX JERICHO PEACHTREE PHASE III LLC, a
Delaware limited liability company

By: _____
Seth Huberman, its Manager



Luz Toledo
Notary Public
State of Florida
Comm# HM082282
Expires 1/19/2025

**HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET**

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY ,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Deed

DATE OF INSTRUMENT: .

DOCUMENT SHALL BE RETURNED TO:

NAME: St. Amand & Efird PLLC

ADDRESS:

3315 SPRINGBANK LN STE 308

CHARLOTTE, NC 28226-3198

TELEPHONE: (980) 474-4251

FAX: (980) 474-4251

E-MAIL ADDRESS: ahs@stamand-efird.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: \$ 2102500.00

BRIEF PROPERTY DESCRIPTION: BEING that certain lot, parcel or tract of land located in Socastee Township, Horry County, South Carolina containing 35.27 acres and shown on a survey thereof entitled "BOUNDARY SURVEY OF PEACHTREE PARCEL C TOTALING 35.27 AC." dated January 18, 2022, prepared by Matthew J. Svejovsky (PLS No. 21233) of Thomas & Hutton Engineering Co. and recorded on January 31, 2022 in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 303, Page 32, reference to said survey made hereby for a more accurate and complete description of the foregoing property.

TAX MAP NUMBER (TMS #) 1780005032 / PIN NUMBER: .

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. LYNX JERICHO PEACHTREE PHASE III LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. LENNAR CAROLINAS, LLC

EXHIBIT O

(Southern Remainder Deed)

43900000038,

STATE OF SOUTH CAROLINA)
) **LIMITED WARRANTY DEED**
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS that LYNX JERICHO PEACHTREE PHASE II LLC, a Delaware limited liability company (hereinafter called "Grantor"), for and in consideration of the covenants and conditions hereinafter contained and the sum of **One Million One Hundred Thousand and No/100 (\$1,100,000.00) Dollars** and other valuable consideration, to Grantor in hand paid by BEVERLY HOMES, LLC, each a South Carolina limited liability company (hereinafter called "Grantee"), whose address is 9007 Highway 544, Myrtle Beach, South Carolina 29578, the receipt and legal sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to all easements, covenants, restrictions, reservations, rights-of-way, dedications, encumbrances, declarations and agreements, and other matters set forth as Permitted Exceptions in the attached Exhibit "B" which is incorporated herein by reference (collectively, the "Exceptions") unto BEVERLY HOMES, LLC, subject to the Exceptions, their Successors and Assigns, the following described property, to wit:

SEE EXHIBIT A ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE

TOGETHER WITH, subject to the Exceptions, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said Property before mentioned unto Grantee, its Successors and Assigns, forever.

AND Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend, all and singular, the said Property, subject to the Exceptions, unto Grantee, its Successors and Assigns, against it, but no other.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

ELECTRONICALLY FILED - 2024 Jan 23 5:03 PM - HORRY - COMMON PLEAS - CASE#2013CP2605530

IN WITNESS WHEREOF, the Grantor has executed this Limited Warranty Deed this
24 day of August, 2023.

GRANTOR:

LYNX JERICHO PEACHTREE PHASE II
LLC, a Delaware limited liability company

By: [Signature]
Seth Huberman, its Chief Executive Manager

[Signature]
Name: Gabriela Romero
[Signature]
Name: RANDY STEIN

STATE OF Florida)
COUNTY OF Alachua)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 24th day of August, 2023 by Seth
Huberman, as Chief Executive Manager of LYNX JERICHO PEACHTREE PHASE II LLC,
a Delaware limited liability company, on behalf of said company.

[Signature] (SEAL)
Print Name of Notary Gina M Puccio
Notary Public for Florida
My Commission Expires: 06/11/2025



ELECTRONICALLY FILED - 2024 Jan 23 5:03 PM - Horry - COMMON PLEAS - CASE#2013CP2605530

affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars
or imprisoned not more than one year, or both.

LYNX JERICO PEACHTREE PHASE II LLC,
a Delaware limited liability company

By: _____ (SEAL)
Seth Huberman, its Chief Executive Manager

SWORN to before me this
24 day of August, 2023

Notary Public for
Print Name: Gina M Puccio
My Commission Expires: 06/11/2025

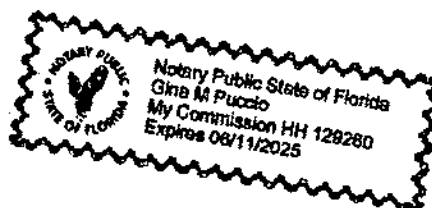


EXHIBIT "A"

Property Description

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, designated as **PARCEL B, 27.57 AC.**, as shown on that certain plat entitled "**SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPERS BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA**", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded May 7, 2020 in Plat Book 292 at Page 265 through 266 in the Office of the Register of Deeds for Horry County, South Carolina (the "**Plat**"), referenced to said Plat being craved for a more complete description thereof.

TOGETHER WITH all of Grantor's right, title and interest in and to that certain Recreation Amenities Use, Easement and Fee Agreement recorded July 17, 2020 in Deed Book 4327 at Page 1473, that certain Easement and Road Maintenance Agreement for Future Public Roadway, Water and Sewer Improvements, Marketing, Signage and Entry Monument Rights recorded July 17, 2020 in Deed Book 4327 at Page 1560, each in the Office of the Register of Deeds for Horry County, South Carolina.

DERIVATION: This being the identical property conveyed to Lynx Jericho Peachtree Phase II LLC by Quitclaim Deed of Jericho State Capital Corporation of Florida and Jericho All-Weather Opportunity Fund, L.P., recorded on September 18, 202 in Deed Book 4344 at Page 2310, in the Office of the Register of Deeds for Horry County, South Carolina.

PIN No.: 439-00-00-0038

EXHIBIT "B"

THE PROPERTY IS BEING CONVEYED SUBJECT TO THE FOLLOWING PERMITTED EXCEPTIONS: (i) any lien, encumbrance or security interest created by Grantee at closing in connection with Grantee's acquisition of the Property, (ii) zoning ordinances and regulations, (iii) mechanic's liens caused by Grantee or its agents, (iv) the lien of real estate taxes not yet due and payable, and (v) the following title exceptions which Grantee has approved:

1. Taxes for the year 2023, and subsequent years, not yet due and payable.
2. This policy does not insure against loss or damages by reason of the following:
 - a. Roadways, easements or claims of easements not shown by the Public Records.
 - b. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law, and not shown by the Public Records.
 - c. Pending assessments by any taxing authority not yet filed in the Public Records.
3. Rights of claims of parties in possession not shown by the public records.
4. Any encroachment, encumbrance, violation or adverse circumstances affecting title to the property that would be disclosed by a current, accurate and complete survey.
5. No insurance is afforded as to the exact amount of acreage contained in the subject property.
6. Rollback Taxes on the property which may be assessed under the rollback provisions of Section 12-43-220 of the code of Laws of South Carolina (1976, as amended).
7. Interest created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulation or by South Carolina Code 48-39-360, as amended or any regulations promulgated pursuant to said state or federal law.
8. This policy does not insure title to that portion of the subject property, if any, lying below the mean high-water mark of abutting tidal Intracoastal Waterway.
9. Riparian rights incident to the premises.
10. Easements, setback lines, notes, and all other matters as shown upon plat prepared for the Estate of John C. Spivey, prepared by J. F. Thomas, Surveyor, dated September 1, 1965, and recorded November 16, 1965, in Plat Book 43 at Page 183, in the public records of Horry County, South Carolina.
11. Plat of Meter Vault Site for Grand Strand Water & Sewer Authority owned by Ruth L. McClam, prepared by Engineering and Technical Services, Inc., dated November 1, 1990 and recorded in Plat Book 112 at Page 65, in the public records of Horry County, South Carolina.

12. Right of Way Easement from Ruth Ludlam McClam, Martin Louis McClam, Patricia Ann McClam and Stephan Boyd McClam to Grand Strand Water and Sewer Authority, recorded November 29, 1990, in Deed Book 1438 at Page 163, in the public records of Horry County, South Carolina.
13. Easements, setback lines, notes, and all other matters as shown upon Plat entitled, "Plat Showing 131.40 Acres Located on the Intracoastal Waterway Prepared for Jeff Shoup, Socastee Township, Horry County, South Carolina," prepared by Trico Engineering Consultants, Inc., dated March 28, 2006, and recorded on July 11, 2006, in Plat Book 215, Page 81, in the public records of Horry County, South Carolina.
14. Rights of the public generally in and to the use of that subject property used as Renata Lane as shown upon Plat entitled, "Plat Showing 131.40 Acres Located on the Intracoastal Waterway Prepared for Jeff Shoup, Socastee Township, Horry County, South Carolina," prepared by Trico Engineering Consultants, Inc., dated March 28, 2006, and recorded on July 11, 2006, in Plat Book 215, Page 81, in the public records of Horry County, South Carolina.
15. Deed of Master in Equity from J. Stanton Cross, Jr., Master in Equity to Jericho State Capital Corporation of Florida, dated February 25, 2008, and recorded on February 26, 2008, in Deed Book 3317, Page 969, in the public records of Horry County, South Carolina.
16. Sewer Line Easement by and between Jericho State Capital Corporation of Florida and Grand Strand Water and Sewer Authority, dated April 1, 2015, and recorded on May 11, 2015, in Deed Book 3819, Page 344, in the public records of Horry County, South Carolina.
17. Right-of-Way Easement Overhead & Underground by and between Jericho State Capital Corp-Florida and Horry Electric Cooperative, Inc., dated July 15, 2015, and recorded on November 20, 2015, in Deed Book 3873, Page 193, in the public records of Horry County, South Carolina.
18. Right of Way Easement between Jericho State Capital Corporation of Florida, a Florida Corporation and Horry County, A Body Politic, dated May 11, 2016, and recorded on May 24, 2016, in Deed Book 3917, Page 2718, in the public records of Horry County, South Carolina.
19. Horry County Stormwater Practices Permanent Maintenance Covenants by and between Jericho All-Weather Opportunity Fund LP and Horry County, South Carolina, dated February 26, 2020, and recorded on March 3, 2020, in Deed Book 4292. Page 1590, in the public records of Horry County, South Carolina.
20. A Plat entitled "SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded on May 7, 2020, in Plat Book 292 at Page 265 (the "Plat"), in the public records of Horry County, South Carolina.
21. Recreation Amenities Use, Easement and Fee Agreement by and between Lennar Carolinas, LLC, a Delaware limited liability company and Jericho State Capital

- Corporation of Florida, a Florida Corporation and Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, dated July 17, 2020, and recorded on July 17, 2020, in Deed Book 4327, Page 1473, in the public records of Horry County, South Carolina.
22. Easement and Road Maintenance Agreement for Future Public Roadway, Water and Sewer Improvements, Marketing, Signage and Entry Monument Rights, by and between Jericho State Capital Corporation of Florida, a Florida Corporation, Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership and Lennar Carolinas, LLC, a Delaware limited liability company, dated July 17, 2020 and recorded on July 17, 2020, in Deed Book 4327, Page 1560, in the public records of Horry County, South Carolina.
 23. Planning, Permitting and Development Agreement, dated July 17, 2020, by and between Lennar Carolinas, LLC, a Delaware limited liability company and Jericho State Capital Corporation of Florida, a Florida Corporation and Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, recorded on July 17, 2020, in Deed Book 4327, Page 1618, in the public records of Horry County, South Carolina.

EXHIBIT P

(Southern Remainder Release)

Marion D. Foxworth III
Horry County, SC Registrar of Deeds

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PARTIAL RELEASE OF MORTGAGE LIEN
Mortgage Book 4629 at Page 255

PURSUANT TO SECTION 29-3-330(B)(3) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED

The undersigned being the mortgagee of record, or the legal representative, agent or officer, or attorney-in-fact of the mortgagee of record, with respect to the Mortgage (hereafter defined), hereby certifies as follows:

(1) The instrument as to which this Partial Release of Mortgage Lien (this "**Partial Release**") applies is entitled Commercial Mortgage of Real Property and Security Agreement from Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company (the "**Mortgagor**") in favor of Lynx Jericho Partners, LLC, a Florida limited liability company, as assignee (the "**Mortgagee**") dated July 5, 2006 and recorded July 25, 2006 in the Office of the Register of Deeds for Horry County, South Carolina (the "**Recording Office**") in Book 46299 at Page 255, as last assigned in Book 5500 at Page 2940 and last modified in Book 6000 at Page 825 (as amended and assigned, the "**Mortgage**").

(2) The real property described in **Exhibit "A"** attached hereto, which is incorporated herein by reference (the "**Real Property**"), is hereby released and forever discharged from the lien, operation and effect of the Mortgage and all claims and interest of the Mortgagee in and to the Real Property are forever terminated.

The Recording Office shall enter this Partial Release of record and mark the Mortgage and related indexes to reflect that the Real Property has been released of record from the lien of the Mortgage.

Under penalties of perjury, the undersigned declares that it has, by its duly authorized officers, examined this affidavit this 22nd day of DECEMBER, 2023, and to the best of its knowledge and belief, it is true, correct and complete.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

MORTGAGEE:

Lynx Jericho Partners, LLC

Witness #1 MICHELLE GATONAR
Witness #2 DAWN OCECIA

By: [Signature]
Printed Name: MICHAEL MCCARTY
Its: PRESIDENT

STATE OF NEW JERSEY)
COUNTY OF MONMOUTH)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of NEW JERSEY, do hereby certify that MICHAEL MCCARTY the PRESIDENT of Lynx Jericho Partners, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

[Signature]
Notary Public for State of _____
Printed Name of Notary Public: SHELIA SMITH
My Commission Expires: NOTARY PUBLIC OF NEW JERSEY
10/27/24

[NOTARY SEAL]

EXHIBIT "A"

Legal Description of Released Real Property

ALL AND SINGULAR, that certain piece, parcel of lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, designated as **PARCEL B, 27.57 AC.**, as shown on that certain plat entitled **"SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, Horry County, SOUTH CAROLINA"**, prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 202, in Plat Book 292 at Page 265 (the "**Plat**"), reference to said Plat being made for the complete metes and bounds description thereof.

PIN NO.: 439-00-00-0038

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Jericho State Capital Corp. of Florida,

Plaintiff,

vs.

Chicago Title Insurance Company,

Defendant.

Case No. 2013-CP-26-5530

Lynx Jericho Partners, LLC,

Plaintiff,

vs.

Chicago Title Insurance Company,

Defendant.

Case No. 2015-CP-26-1084
(Consolidated with the above case)

FILED
CLERK OF COURT
JUL 11 2015
12:41:37

DEFENDANT CHICAGO TITLE INSURANCE COMPANY'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

Defendant Chicago Title Insurance Company ("Chicago Title") submits this memorandum of law in support of its Motion for Summary Judgment.

INTRODUCTION

On July 9, 2002, Horry County recorded an ordinance amending its official map to show the future location of a proposed highway. The official map allows proposed future roadway improvements to be identified and provides opportunities for Horry County or other governmental entities to purchase property prior to building permits being issued as a means to reduce acquisition costs. The ordinance was indexed in the Register of Deeds only under Horry County, not under property owners that may be interested in the amendment to the official map.

Plaintiffs are two mortgagees insured under loan policies of title insurance issued by Chicago Title in 2006. The policies exclude, among other matters, zoning laws, ordinances, regulations, and eminent domain.

In 2009, three years after the policies were issued, a condemnation action was filed regarding the proposed highway. Prior to that, no third party, other than the owner and the mortgagees, had any interest in or claimed title to the subject property. In 2014, a jury awarded Plaintiffs \$2,100,000 just compensation for the 2009 partial taking of the subject property.

The policies insure title to real property. The ordinance is a land planning instrument, it does not result in a taking, and does not affect or encumber title. The policies do not provide coverage because the ordinance is not a title defect, not an encumbrance, and it did not cause title to be unmarketable. Even if the ordinance, for sake of argument, falls within the insuring provisions of the policies, the policies exclude zoning laws, ordinances, regulations, eminent domain, and post-policy matters.

Plaintiffs failed to present evidence of loss, a required element of their case.

Finally, Plaintiffs presented no evidence to support their bad faith and breach of the implied covenant of good faith and fair dealing causes of action.

The Court should therefore grant Chicago Title's motion for summary judgment.

STATEMENT OF FACTS¹

1. The Property.

The subject property is approximately 131.40 acres located in Socastee Township, Horry County, South Carolina ("the Property"). The Property borders the Intracoastal Waterway. The McClam family owned the Property for decades until it sold the Property in July 2006.²

¹ The exhibits referenced herein are to exhibits filed in conjunction with Plaintiffs' motion for summary judgment.

² Plaintiffs' Ex. 5, *Deed*; Defendant's Ex. 1, *Plat*.

2. The Ordinance.

On July 2, 2002, the Horry County Council adopted Ordinance 88-202 ("the Ordinance"), which amended the official map of Horry County to show the future locations of a proposed highway to provide opportunities for Horry County or other governmental entities to purchase property and to reduce acquisition costs.³ The Ordinance added to the official map "the right-of-way identified as Alternative 1 for the proposed Carolina Bays Parkway from Highway 501 to Highway 17 By-pass as shown in the document entitled Carolina Bays Parkway, Phase V FEIS Conceptual Roadway Plans." The conceptual roadway plan is attached to the Ordinance.

The Ordinance does not mention the property affected by the possible future construction of the Carolina Bay Parkway. The Ordinance does not contain a list of property owners who may be affected in the future. The conceptual roadway plan attached to the Ordinance does not identify the property that may be affected in the future by the name of the owner or by tax map number. The McClam family, owners of the Property at that time, are not mentioned in the Ordinance or in the conceptual plan attached thereto.

On July 9, 2002, the Ordinance, which was neither witnessed nor notarized, was recorded with the Horry County Register of Deeds. It is indexed under the name of Horry County. The Ordinance was not indexed under the names of the property owners who may be affected by the possible future construction of the Carolina Bays Parkway or under the names of any McClam family members, who owned the Property on the date the Ordinance was recorded. Therefore, one searching title to the properties affected would not find the Ordinance.⁴

³ Plaintiffs' Ex. 3, *Ordinance* 88-202.

⁴ Plaintiffs' expert abstractor testified the Ordinance was not indexed by the Register of Deeds in the grantor-grantee indices, except under the name of Horry County. *Turner Dep. P. 35*, Defendant's Ex. 2. He also testified a person searching and examining title to the Property would not find the Ordinance in the chain of title. *Id.* at 36.

3. Purchase of the Property, the Mortgages, and the Policies.

In July 2006, Peachtree Properties of North Myrtle Beach, LLC (“Peachtree”) purchased the Property from the McClam family for \$22,500,000.⁵ To finance its purchase of the Property, Peachtree obtained mortgage loans from R.E. Loans, LLC (“REL”) and Jericho State Capital Corp. of Florida (“Jericho State”).

Peachtree gave an \$18,520,000.00 first mortgage covering the Property to REL (“REL Mortgage”). Chicago Title issued a loan policy of title insurance to REL. The policy date is July 25, 2006, and the insured amount is \$17,071,873.33 (“REL Policy”).⁶

Peachtree gave a \$4,263,888.00 second mortgage covering the Property to Jericho State (“Jericho State Mortgage”). Chicago Title issued a loan policy of title insurance to Jericho State. The policy date is July 25, 2006, and the insured amount is \$4,263,888.00 (“Jericho State Policy”).⁷

The Jericho State Policy and the REL Policy will be collectively referred to at times as “the Policies.”

4. The Bridge and Zoning Letter.

Prior to the closing, Jericho State’s attorney provided Peachtree’s attorney with a closing checklist.⁸ One item required “[s]atisfactory resolution of the determination by municipality not to build a bridge.” On July 17, 2006, Peachtree’s attorney asked Jericho State and its attorneys to remove that item from the checklist.⁹ The item was removed from the checklist.¹⁰

Another item on the checklist was the receipt of a zoning verification letter. On July 19,

⁵ Plaintiffs’ Ex. 5, *Deed*.

⁶ Plaintiffs’ Ex. 6, *REL Mortgage*; Plaintiffs’ Ex. 8 *REL Policy*.

⁷ Plaintiffs’ Ex. 7 *Jericho State Mortgage*; Plaintiffs’ Ex. 9, *Jericho State Policy*.

⁸ Plaintiffs’ Ex. 26.

⁹ *Id.*

¹⁰ Defendant’s Ex. 3, *Revised Checklist*.

2006, Peachtree's attorney sent to Jericho State's attorney a zoning verification letter stating the Property is "currently zoned R-1 on the Horry County Zoning Maps." The zoning verification letter said nothing about a planned highway or any restriction from use.¹¹

5. **Approval of Funding and Agreement to Construct the Carolina Bays Parkway.**

According to a verified complaint filed by Jericho State in an another action, described below as the Zoning Rescission Action, and supporting documentation attached to the verified complaint, the agreement to construct and fund the applicable part of the Carolina Bays Parkway was entered into by and between Horry County and the SCDOT on June 20, 2007, almost one year after the Policies were issued.¹²

6. **Rezoning of the Property.**

On May 15, 2007, Horry County Council adopted ordinance 76-07, which rezoned the Property as the Peachtree Plantation Planned Development District (the "PDD Ordinance").¹³ The PDD Ordinance approved development of the Property as a mixed-use development with numerous residential parcels. The PDD Ordinance states it was adopted based on an application submitted by Peachtree and that Peachtree agreed to donate part of the Property to Horry County:

The property owner *has agreed to donate* to Horry County at no cost, property sufficient to construct that portion of the 300 ft. wide Highway 31 (Carolina Bays Parkway) right-of-way that traverse the property in issue. *The property will be conveyed* to Horry County by general warranty deed, free of all encumbrances within 120 days of third reading of this ordinance. (emphasis added)

The PDD Ordinance set forth other agreements between Horry County and Peachtree about the land Peachtree agreed to donate and convey (the "Parkway Parcel"). The PDD Ordinance was recorded May 17, 2007.¹⁴

¹¹ Defendant's Ex. 4, *Zoning Verification Letter and Fax*.

¹² Plaintiffs' Ex. 12, *PDD Lawsuit*.

¹³ *Id.*

¹⁴ *Id.*

7. **Foreclosure of the Jericho State Mortgage.**

On June 8, 2007, Jericho State filed a foreclosure action seeking to foreclose the Jericho State Mortgage and a mortgage it held on other property given by T & J Development of North Myrtle Beach.¹⁵ A foreclosure hearing was held on October 30, 2007, at which counsel for Jericho State testified as follows:

[W]e have conducted a title examination of the public records maintained by Horry County pertaining to the Defendants and to the mortgaged property, ***and we find no other parties holding or claiming any interest of record*** in and to any of the [the Property] . . . as described in the [Jericho State] Mortgage . . . We therefore advise the Court that the [Jericho State] Mortgage is and remains a valid second mortgage lien upon the Peachtree Property . . . subject only to the . . . interests of the [REL Mortgage]. (emphasis added).¹⁶

The court entered a foreclosure order on November 7, 2007, ordering the Property be sold subject to the REL Mortgage and finding \$7,490,000 was due under the note secured by the Jericho State Mortgage.¹⁷ Jericho State was the successful bidder with a bid of \$9,000,000, a bid exceeding the amount due under the note. Jericho State received a master's deed for the Property recorded February 26, 2008.¹⁸ Thus, on February 26, 2008, the Property was owned by Jericho State subject to the REL Mortgage.

8. **Jericho State's Lawsuit Against the SCDOT and Horry County.**

On October 12, 2009, Jericho State filed with the Horry County Court of Common Pleas a verified complaint against Horry County and the SCDOT seeking an order finding the PDD Ordinance was not binding, rescinding the rezoning granted by the PDD Ordinance, and terminating the obligation to donate the Parkway Parcel ("Zoning Rescission Action").¹⁹

¹⁵ Defendant's Ex. 5, *Foreclosure Complaint*.

¹⁶ Defendant's Ex. 6, *Foreclosure Transcript of Hearing* at 12.

¹⁷ Plaintiffs' Ex. 10, *Foreclosure Order*.

¹⁸ Plaintiffs' Ex. 11, *Master's Deed*.

¹⁹ Plaintiffs' Ex. 12, *PDD Lawsuit*.

The Zoning Rescission Action does not reference the Ordinance. Jericho State alleged it owned the Property, including the Parkway Parcel.

On March 18, 2010, the parties dismissed the Zoning Rescission Action. The Stipulation of Dismissal states that “[i]nsofar as the South Carolina Department of Transportation, as agent for Horry County, County, South Carolina, has filed an eminent domain action bearing Civil Action Number 2009-CP-26-11956, and which action resolves the issues raised in the present declaratory judgment matter,” Jericho State desired to dismiss the Zoning Rescission Action.²⁰

9. The Condemnation Action.

The eminent domain action referenced in the dismissal of the Zoning Rescission Action was filed by the SCDOT on December 15, 2009 against Jericho State, REL, and Mortgage Fund ‘08, LLC, and it was amended on April 20, 2011, (the “Condemnation Action”).²¹ SCDOT alleged Jericho State was the owner of the Property and condemned 10.18 acres of the Property—the Parkway Parcel—for highway purposes, as part of the Carolina Bays Parkway project. The SCDOT alleged “[t]he property sought herein is to be acquired for public purposes, more particularly for the construction of a section of SC Route 31 (Carolina Bays Parkway).” (emphasis added).

During the course of the Condemnation Action, Jericho admitted “[t]hat the date of taking for valuation purposes is December 15, 2009.”²² No attempt was made by Jericho State or Lynx Jericho to seek valuation of the Property on a date earlier than December 15, 2009. Neither Jericho State nor Lynx Jericho claimed the valuation date should be earlier based on the Ordinance or on an inverse condemnation theory.²³

²⁰ Defendant’s Ex. 7, *Stipulation of Dismissal of Zoning Rescission Action*.

²¹ Defendant’s Ex. 10, *Condemnation Notice and Amended Condemnation Notice*.

²² Defendant’s Ex. 11, *Landowner’s Responses to Condemnor’s First Requests to Admit, answer No. 1*.

²³ Defendant’s Ex. 12, *Trial Transcript—Condemnation Action*.

Jericho State and Lynx Jericho claimed the condemnation of the Parkway Parcel resulted in a \$4,010,000 loss. The SCDOT argued the loss totaled \$998,000. On November 19, 2014, the jury awarded \$2,100,000 just compensation for the taking of the Parkway Parcel to Jericho State and Lynx Jericho.²⁴ Jericho State released its interest in the judgment proceeds to Lynx Jericho.²⁵

10. Assignment of the REL Mortgage to Lynx Jericho.

REL assigned the REL Mortgage to Mortgage Fund '08, LLC by an instrument recorded May 16, 2008.²⁶ Mortgage Fund '08, LLC filed for bankruptcy in 2011. With approval of the bankruptcy court in 2012, the REL Mortgage was assigned to Susan L. Uecker as trustee of the Mortgage Fund '08 Liquidating Trust (the "Liquidating Trust").²⁷ The Liquidating Trust assigned the REL Mortgage to Lynx Jericho by instrument recorded May 22, 2013.²⁸

11. Jericho State's Title Insurance Claim.

By letter dated February 26, 2009, Jericho State submitted a claim to Chicago Title based on the assertion that the Jericho State Policy protected against the Condemnation.²⁹ Chicago Title denied that claim.³⁰

12. Lynx Jericho's Title Insurance Claim.

Lynx Jericho submitted a claim on the Lynx Jericho Policy by letter dated June 21, 2013.³¹ Chicago Title requested documents from Lynx Jericho as part of its investigation. Lynx

²⁴ *Id.* at 362; Defendant's Ex. 13, *Condemnation Judgement*.

²⁵ Plaintiffs' Ex. 21, *Payment to LAS*.

²⁶ Plaintiffs' Ex. 16, *Assignments*.

²⁷ Defendant's Ex. 8, *Bankruptcy Court Order*.

²⁸ Plaintiffs' Ex. 20, *Assignment to Lynx Jericho*.

²⁹ Defendant's Ex. 14, *Jericho State claim letter*.

³⁰ Plaintiffs' Ex. 22, *Jericho State claim denial letter*.

³¹ Defendant's Ex. 15, *Lynx Jericho Claim Letter*.

Jericho provided documents to Chicago Title in December 2014. Chicago Title denied the claim on January 30, 2015.³²

13. Jericho State and Lynx Jericho's lawsuits.

On July 29, 2011, Jericho filed an action against Chicago Title asserting causes of action entitled Breach of Contract-Recovery of Insurance Benefits; Breach of Contract-Breach of the Covenant of Good Faith and Fair Dealing; and Tortious Bad Faith Refusal to Pay Insurance Benefits and Bad Faith Failure to Investigate an Insurance Claim. Chicago Title filed its answer on February 16, 2012, denying the material allegations of the complaint and asserting defenses therein.

On February 12, 2015, Lynx Jericho filed an action against Chicago Title asserting the same causes of action that Jericho State asserted. Chicago Title filed its answer on May 13, 2015, denying the material allegations of the complaint and asserting defenses therein.

ARGUMENT

The Ordinance is a land planning and zoning instrument that does not affect or encumber title to the Property. The Ordinance does not fall within the insuring provisions of the Policies. Even if, for sake of argument, the Ordinance falls within the insuring provisions of the Policies, the Policies exclude any loss related to the Ordinance and the Condemnation Action.

Moreover, Plaintiffs have suffered no loss and have failed to present evidence of loss, a required element of their case. Finally, Plaintiff is not entitled to relief on its breach of the implied covenant of good faith and fair dealing and bad faith because there is no evidence to support these claims.

³² Plaintiffs' Ex. 23, *Lynx Jericho Denial Letter*.

1. Rules of Construction.

Insurance policies are subject to the general rules of contract construction. *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 514 S.E.2d 327, 330 (1999). When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used. *Id.* The court must enforce, not write, contracts of insurance and must give policy language its plain, ordinary, and popular meaning. *Id.*

An insurer's obligation is defined by the terms of the policy and cannot be enlarged by judicial construction. *S.C. Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471, 474 (Ct. App. 1990). "[I]f the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend coverage that was never intended by the parties." *S.C. Farm Bureau Mut. Ins. Co. v. Wilson*, 344 S.C. 525, 544 S.E.2d 848, 850 (Ct. App. 2001). Courts are not authorized to pervert policy language or to exercise inventive powers to create an ambiguity where none exists. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000). "The rule of strict construction against the insurer does not apply where the language used in the policy is so plain and unambiguous as to leave no room for construction. Nor does the rule of strict construction authorize a perversion of language or the exercise of inventive powers for the purpose of creating an ambiguity where none exists." *S.S. Newell & Co. v. American Mutual Liability Ins. Co.*, 199 S.C. 325, 19 S.E.2d 463, 466 (1942).

2. The Ordinance does not fall within the insuring provisions of the Policies.

a. Insuring provisions of the Policies.

The Policies insure title to the Property. The covered risks of the Policies are invoked only if title to the Property fails, in whole or in part, or if the title is encumbered by a lien or encumbrance that is not excluded from coverage.

The insuring provisions of the Policies at issue are

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

2 Any defect in or lien or encumbrance on the title;

3 Unmarketability of the title;

The insured has the burden of showing a claim falls within coverage of an insurance contract. *Gamble v. Travelers Ins. Co.*, 251 S.C. 98, 160 S.E.2d 523, 525 (1968). Plaintiffs contend the Ordinance falls under insuring provision 2, “[a]ny defect in or lien or encumbrance on the title,” and provision 3, “[u]nmarketability of the title.” Plaintiffs cannot meet their burden. The Ordinance does not fall within these insuring provisions of the Policies.

b. The Ordinance is a land planning tool.

The adoption of an official map is a land planning tool available to counties and municipalities. The Ordinance directly concerns the official map of Horry County, as it amends the official map to show the future location of a proposed highway and to provide opportunities for Horry County or other governmental entities to purchase property and to reduce acquisition costs.

An official map is “a map or maps showing the location of existing or *proposed public street, highway*, and public utility rights-of-way, public building sites and public open spaces adopted by the governing authority of a municipality or county.” S.C. Code Ann. § 6-7-1210 (emphasis added). Counties and municipalities “establish official maps to *reserve future locations* of any street, highway, or public utility rights-of-way, public building site or public

open space for *future public acquisition* and to regulate structures or changes in **land use** in such rights-of-way, building sites or open spaces.” S.C. Code Ann. § 6-7-1220 (emphasis added).

To the extent there is doubt as to whether the Ordinance is a land planning tool, the Ordinance is administered by the zoning administrator and the statutes authorizing the adoption of an official map, which are cited in the Ordinance, state an official map is “one of the several instruments of land use control authorized by this chapter.” *Id.*; Ordinance 107-98 § 6.0.³³

c. **The Ordinance does not affect title to the Property, it is not an encumbrance or defect, and does not render title unmarketable.**

Title insurance policies indemnify for loss related to title to the property, not physical defects or government regulations which inhibit the use of property. R. Cunningham, W. Stoeck & D. Whitman, *The Law of Property* § 11.14 at 274 (1984); 11 COUCH ON INSURANCE § 159:48 (“a title insurer does not make any representation or assume any liability with respect to whether the insured will be able to procure government permits authorizing him or her to use the land in any particular manner; title insurance policy provides protection against defects in, or liens or encumbrances on, title, rather than against governmentally imposed impediments on use of land or for resulting impairments in the value of the land.”).

The Policies define “unmarketability of title” as “an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.”

³³ Plaintiffs’ Ex. 1, *Ordinance 107-98*.

Our case law defines “encumbrance” as “a right of interest in the land granted ‘which may subsist in third persons to the diminution in value of the estate although consistent with the passing of the fee.’” *Martin v. Floyd*, 282 S.C. 47, 51, 317 S.E.2d 133, 136 (Ct. App. 1984).

Our courts have recognized the distinct concepts of title to property and non-title matters that affect the use of property. In *McMaster v. Strickland*, 305 S.C. 527, 409 S.E.2d 440 (Ct. App. 1991), the property was designated as wetlands by the federal government and the city. Even though a purchaser possibly would not be able to use the property for the purpose he intended, the Court of Appeals held this did not establish the sellers were incapable of providing marketable title. In so holding, it concluded the trial court “confused the concepts of title and marketability with use and value.” The Court of Appeals found there was no evidence “the sellers do not own the property, therefore they have title.” Even though a “purchaser may not be able to use the property for the purpose for which he sought, such does not mean the sellers cannot deliver marketable title.” *Id.* at 530, 409 S.E.2d at 442.

Similarly, in *Truck South, Inc. v. Patel*, 339 S.C. 40, 528 S.E.2d 424 (2000), the South Carolina Supreme Court held a declaration that part of the property was federally-protected wetlands, which prevented the purchaser from constructing a hotel on the property, was not an encumbrance. It did not render the title unmarketable. *Id.* at 49, 528 S.E.2d at 429.

In *Martin v. Floyd*, 282 S.C. 47, 317 S.E.2d 133 (Ct. App. 1984), the Court of Appeals found residential lots that were in either marsh or water were free from encumbrances. The court stated that “[w]hile marsh or water might be a burden upon the property, it is certainly not a lien, easement, or right existing in a third party.” *Id.* at 52, 317 S.E.2d 136.

In *Stanley v. Atlantic Title Ins. Co.*, 377 S.C. 405, 661 S.E.2d 62 (2008), a drainage field rendered part of the property useless. The South Carolina Supreme Court concluded “[t]he fact

that property may be useless or may be put to only limited use does not mean that the property is not marketable.” *Id.* at 411, 661 S.E.2d at 65.

Ordinances and resolutions that regulate the use of property do not affect title. Courts in other jurisdictions agree. *See, e.g., Notaro Homes, Inc. v. Chicago Title Ins. Co.*, 722 N.E.2d 208 (Ill. Ct. App. 1999) (“... the [zoning ordinance] does not constitute a lien upon the subject property. Nor does it constitute a defect that would cloud the title to the property. Plaintiff has confused marketability of title with marketability of land.”); *Hocking v. Title Ins. and Trust Co.*, 234 P.2d 625, 629 (Cal. 1951) (finding a violation of subdivision laws resulting in restricted use affected market value not marketability of title; one “can hold perfect title to land that is valueless; one can have marketable title to land while the land itself is unmarketable.”); *Somerset Sav. Bank v. Chicago Title Ins. Co.*, 649 N.E.2d 1123, 1127-28 (Mass. 1995) (holding building or zoning laws are not encumbrances or defects affecting title; therefore the existence of a statutory restriction requiring governmental approval prior to issuance of a building permit does not give rise to coverage under a title insurance policy); *Wolf v. Commonwealth Land Title Ins. Co.*, 690 N.Y.S.2d 880, 881 (N.Y. App. Div. 1999) (“Since zoning laws regulate the manner in which the property can be used and do not impair title, the damages claimed by plaintiffs do not fall within the scope of the title insurance policy”); *Bear Fritz Land Co. v. Kachemak Bay Title Agency, Inc.*, 920 P.2d 759, 76 (Alaska 1996) (“It is well established that building or zoning laws are not encumbrances or defects affecting title to property. Such restrictions are concerned with the use of land”).

In *Haw River Land & Timber Co. v. Lawyers Title Ins. Corp.*, 152 F.3d 275 (4th Cir. 1998), ordinances were filed in the register of deeds that prohibited timber harvesting in a flood plain buffer zone. Some of the property was within the buffer zone, negating the insured’s ability

to exercise its timber rights on the land. The Fourth Circuit acknowledged the economic effect on the insured but found the ordinance did not impair title:

While it is true that the ... ordinances have effectively frustrated [timbering], thereby substantially reducing the economic value of the interest purchased, Haw River Timber raises no issue about whether it received legal title to the timber from the grantors. And the Lawyers Title policy insuring marketable title under the timber deed only guarantees Haw River Timber a title that could be enforced in a suit for specific performance, not the economic value of the timber purchased. Indeed, the explicit definition of marketable title provided in the policy limits any more expansive notion by insuring against only those title defects that would entitle a purchaser "to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title." The ordinances on which Haw River relies as a title defect do not impair the grantor's ability to convey a timber deed.

Id. at 279.

Here, there is no evidence that on the date the Policies were issued, any party other than Peachtree, the owner, and the two mortgagees had any claims, liens, or interest in and to the Property. While the Ordinance may have made it difficult to develop certain parts of the Property, as zoning laws, ordinances, and regulations tend to do, the Ordinance, like other land planning tools, simply affected the use of the Property, not its title.

The Ordinance is not a defect or encumbrance. It did not impair title to the Property and did not impair the ability to convey title to the Property. *See Somerset Sav. Bank v. Chicago Title Ins. Co.*, 649 N.E.2d 1123, 1126-28 (Mass. 1995) ("An individual can hold clear title to a parcel of land, although the same parcel is valueless or considered economically unmarketable because of some restriction or regulation on its use. A title insurance policy provides protection against defects in, or liens or encumbrances on, title. Such coverage affords no protection for governmentally imposed impediments on the use of the land or for impairments in the value of the land."); *Dave Robbins Const., LLC v. First American Title Co.*, 249 P.3d 625, 628 (Wash. Ct. App. 2010) (finding lots on which developer planned to build homes were not rendered

“unmarketable,” within meaning of title insurance policies because the lots were located in historical district, even though the historical district designation burdened the ability to develop the land; there were no defects affecting legally recognized rights and incidents of ownership of the lots).

“A title insurance commitment or policy is not a zoning or building code due diligence report, or a substitute for that due diligence.”³⁴ In that regard, as mentioned above, Jericho State requested a letter from the municipality confirming that a bridge would not be built.³⁵ Jericho State’s attorneys were asked to remove that item from the closing checklist. Jericho State and its attorneys, at their own peril, decided not to proceed with this due diligence, and Jericho State cannot rely on Chicago Title to stand in the place of that failure to complete that due diligence. The Policies simply do not cover zoning matters and use regulations. That is why Jericho State’s attorneys requested additional information regarding the bridge and zoning in the first place. *See Aldrich v. Hawrylo*, 656 A.2d 1304, 1309 (N.J. Super. Ct. App. Div. 1995) (finding zoning ordinances and resolutions are not title matters and the title policy at issue “squarely places on the prospective purchaser and his attorney the burden of investigation and compliance with local ordinances and land use resolutions as they may affect a particular property”).

The Ordinance does not fall within the insuring provisions of the Policies.

3. Plaintiffs’ claims are excluded.

The insurer bears the burden of establishing exclusions to coverage. *Boggs v. Aetna Cas. & Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565, 568 (1979). “[I]nsurers have a right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition.” *S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C.

³⁴ J. Bushnell Nielsen, *Title and Escrow Claims Guide*, at 11-2 (2016 Ed.).

³⁵ Plaintiffs’ Ex. 26, *Gwinn Email*.

353, 638 S.E.2d 103, 104–05 (Ct. App. 2006). Courts cannot “torture the ordinary meaning of language to extend coverage expressly excluded by the terms of the policy.” *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 474, 438 S.E.2d 275, 277 (Ct. App. 1993). If there is no coverage under the insuring provisions of an insurance policy, coverage cannot be created based on the exceptions or qualifications contained in the exclusions. 8 Allan D. Windt, *Insurance Claims & Disputes: Representation of Insurance Companies and Insureds*, § 6:2.

To the extent the Ordinance falls under the insuring provisions of the Policies, which Chicago Title denies, coverage is excluded by Exclusion 1, removing coverage against various forms of governmental regulation of the use of property, Exclusion 2, eliminating coverage for condemnation or eminent domain, and other exclusions.

a. Any claimed loss related to the Ordinance is excluded by Exclusion 1.

The Policies exclude various forms of governmental regulation of the use of property. The Policies exclude coverage for loss or damage which arises by reason of any law, ordinance, or government regulation. More specifically, the Policies exclude loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

- 1 (a) *any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or change in the dimensions or area of the land or any parcel of which the land is or was a part of; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. (emphasis added).*

The Ordinance is a land planning tool in the nature of a zoning matter. S.C. Code Ann. § 6-7-1220 (an official map is “one of the several instruments of land use control.”).

Despite the plain language of the statutes referring to the map as a land planning tool, Plaintiffs will argue the purpose of the Ordinance is not to regulate use but rather to designate a right-of-way and transfer title. Plaintiffs will argue this exclusion applies to laws relating to land use only, not those affecting title itself, and Plaintiff will argue the Ordinance is not such a law.

However, as detailed below, a right of way could not have existed and title to that right of way could not have vested in any governmental entity until a condemnation action was filed, which is consistent with official map ordinance.³⁶ A right of way is not created by changes to an official map. No deprivation of property or rights occurred as a matter of law.

“Upon the adoption of an official map, or even amendments to the map, there is not an immediate deprivation of either property or rights.” 3 *Rathkopf’s The Law of Zoning and Planning* § 50:11 (4th ed. 2016). The designation of a “particular property or area as a potential or future site for a public program or project does not constitute a taking.” 2A *Nichols on Eminent Domain* § 6.01[17][a] (3rd ed. 2004). Similarly, “the adoption, filing, or recording of maps or plans for future roadway development does not constitute a taking.” *Id.* §6.01[17][b].

³⁶ The ordinance setting forth Horry County’s right to adopt an official map, Ordinance 107-98, Plaintiffs’ Ex. 1, *Ordinance 107-98*, provides landowners with an opportunity to challenge decisions made by Horry County zoning officials related to property that may be affected in the future by the official map. If challenged, the Planning Commission must recommend one of the following actions to the County Council: (a) “exempt the land from the restrictions of the Official Map,” (b) “issuance of desired permits with specified conditions,” or (c) initiate appropriate action *to acquire* the property.” (emphasis added). County Council must then (a) take official action to exempt the land; (b) take official action to authorize the issuance of denied permits subject to conditions accepted by the owner; or (c) “enter into *an agreement to acquire or institute condemnation proceedings to acquire the affected property*,” with the condemnation proceedings being instituted by County Council or another appropriate governmental agency. (emphasis added). If a right of way already had been established, as Plaintiffs disingenuously contend, there would have been no need to condemn the Parkway Parcel or to provide the County with the ability to grant permits for construction.

A public right of way is created only by the filing of a condemnation action. A condemnation action was filed after the effective dates of the Policies and after the date funding was approved for the Parkway Project.³⁷

The Ordinance is an attempt to control use of the Property. The Ordinance states its purpose is to provide opportunities for governmental entities to reduce “future acquisition cost” by “limiting development.” The Ordinance is a zoning law or regulation that restricts, regulates, and prohibits “the occupancy, use, or enjoyment of the land,” falling squarely within Exclusion 1(a).

The Ordinance is excluded by the plain meaning of Exclusion 1(a).³⁸

b. The exception to Exclusion 1 does not apply.

Exclusion 1(a) contains an exception “to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance *resulting from a violation or alleged violation* affecting the land has been recorded in the public records at Date of Policy.”

First, there is no evidence of a notice of the enforcement³⁹ of any “law, ordinance or governmental regulation,” including “building and zoning laws, ordinances, or regulations.” The

³⁷ See *Danforth v. United States*, 308 U.S. 271, 286 (1939) (“The mere enactment of legislation which authorizes condemnation of property cannot be a taking. Such legislation may be repealed or modified, or appropriations may fail.”).

³⁸ See *Aldrich v. Hawrylo*, 656 A.2d 1304, 1309 (N.J. Super. Ct. App. Div. 1995) (finding zoning ordinances and resolutions are not title matters and “they are excluded from coverage in title insurance policies.”); *Dyer & Moody, Inc. v. Dynamic Constructors, Inc.*, 357 So. 2d 615, 619 (La. Ct. App. 1978) (finding code restrictions prohibiting improvements that would prevent the natural run-off of water were excluded by the exclusion for any law, ordinance or governmental regulation relating to building requirements); *Haw River Land & Timber Co. v. Lawyers Title Ins. Corp.*, 152 F.3d 275 (4th Cir. 1998) (holding ordinances which prohibited certain uses of property within a designated distance from the shore of a river were found not to affect title and to be excluded by Exclusion 1); *Sonnett v. First American Title Ins. Co.*, 309 P.3d 799, 805-806 (Wyo. 2013) (finding a “master plan” of use restrictions that an owner imposed on his own property in order to get a zoning change were part of the zoning use conditions, not a declaration of restrictions, and therefore were excluded from coverage under Exclusion 1).

³⁹ “Enforcement” is defined as “The act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command.” *Black’s Law Dictionary* 528 (6th ed. 1990).

Ordinance, an amendment to the official map, alone cannot be the notice of the enforcement of its own provisions *See Notaro Homes, Inc. v. Chicago Title Ins. Co.*, 722 N.E.2d 208, 214 (Ill. Ct. App. 1999) (finding an amendment to a zoning ordinance recorded “adds nothing in terms of its enforcement” and therefore the exception to the exclusion was found inapplicable); *Elysian Investment Group v. Stewart Title Guar. Co.*, 129 Cal.Rptr.2d 372 (Cal. Ct. App. 2002) (finding a recorded municipal notice of structures classified as either hazardous, substandard or a nuisance, did not comprise either a defect, lien, or encumbrance on the title or unmarketability of title under the policy, even if subsequent events might result in enforcement ultimately affecting title; the notice related to the physical condition of the property, and building restrictions created by ordinance, for which there is no coverage, was not a notice of enforcement under municipal procedures).

There is no evidence of a notice of a defect, lien, or encumbrance resulting “from a violation or alleged violation affecting the land.” Because there was never a violation,⁴⁰ neither alleged nor existing, of the Ordinance, there cannot be a notice of a violation or alleged violation. The Ordinance is not a notice of a violation or alleged violation of the Ordinance. There is no notice in the public records resulting from a violation or alleged violation of a law, ordinance, or governmental regulation. *See Haw River Land & Timber Co.*, 152 F.3d at 281 (holding even though the ordinance was recorded, “there is no evidence that any enforcement proceeding was ever initiated or ‘notice’ given to enforce the buffer zone established by Garner’s ordinances. Nor is there any indication that a notice of a violation of that buffer zone was ever issued.”).

⁴⁰ “Violation” is defined as “Injury; infringement; breach of right, duty or law. The act of breaking, infringing, or transgressing the law. *Rabon v. South Carolina State Highway Dept.*, 258 S.C. 154, 187 S.E.2d 652, 654.” *Black’s Law Dictionary* 1570 (6th ed. 1990).”

The Ordinance does not set forth a notice of enforcement of its own provisions. The Ordinance is not notice of any violation or alleged violation of its own terms. Therefore, the exception to Exclusion 1 does not apply.

c. Plaintiffs' claims are excluded by Exclusion 2.

The Policies exclude coverage for loss or damage arising from rights of eminent domain. More specifically, the Policies exclude loss or damage which arise by reason of:

- 2 Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which occurred prior to the Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

Eminent domain is "the power to take private for public use by the state, municipalities, and private corporations authorized to exercise functions of public character." *Black's Law Dictionary* 523 (6th ed. 1990).

Although incorrect as a matter of law, Plaintiffs will argue the Ordinance resulted in a deprivation of title to part of the Property. In other words, Plaintiffs claim the Ordinance amounts to a taking or the exercise of eminent domain rights.

Exclusion 2 unambiguously excludes any damages resulting from rights of eminent domain.

d. The exception to Exclusion 2 does not apply.

The eminent domain exclusion contains an exception when "notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which occurred prior to the Date of Policy which would be binding on the rights of a purchaser for value without knowledge."

The only way for the government to exercise its right of eminent domain is under the South Carolina Eminent Domain Procedure Act (the "Act"). The Act provides that a "condemnor

may commence an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose.” S.C. Code Ann. § 28-2-60. Most importantly, “The provisions of [the Act] shall constitute the exclusive procedure whereby condemnation may be undertaken in [South Carolina].” *Id.*

The Parkway Parcel was condemned, as a matter of law, on December 15, 2009, when the Condemnation Action was filed, not before. The Ordinance is not a condemnation or the notice of exercise of eminent domain rights. Under the Act, eminent domain rights are exercised, the taking is complete, and the condemning authority is entitled to take possession, when the condemnation notice is given. S.C. Code Ann. § 28-2-90.

The condemnation notice must contain certain information in order to be effective to cause a transfer of title. A condemnation notice must be captioned “CONDEMNATION NOTICE, TENDER OF PAYMENT,” must designate the condemning authority and all of the owners of the land being condemned, contain a legal description for the land being taken, state the basis for the right to take the land, attach a map or sketch, state where the owner may go to inspect the plans for the project, and contain a detailed notice promulgated by S.C. Code Ann. § 28-2-280. The Ordinance contains none of this.

If the landowner disputes the amount of compensation offered by the condemning authority, the matter goes to trial; however, the dispute over the amount of compensation does not delay the transfer of the property.⁴¹

The Parkway Parcel had not been condemned on the effective dates of the Policies—July 25, 2006. The SCDOT accordingly would have had no reason to file the Condemnation Action if the Parkway Parcel had already been condemned on July 25, 2006. If the Parkway Parcel had

⁴¹ S.C. Code Ann. §§ 28-2-220; 28-2-230. *See also Carolina Power & Light Co. v. Copeland*, 188 S.E.2d 188, 258 S.C. 206 (1972); *City of North Charleston v. Claxton*, 315 S.C. 56, 431 S.E.2d 610 (1994); *City of Folly Beach v. Atlantic House Properties, Ltd.*, 321 S.C. 241, 467 S.E.2d 928 (1996).

already been taken, Peachtree would not have offered in 2007 to convey the Parkway Parcel to Horry County;⁴² Jericho State's foreclosure counsel would not have testified in 2007 that there were no liens or encumbrances on the Property;⁴³ Jericho State would not have alleged in 2009 in the Zoning Rescission Action that it was the owner of the Parkway Parcel;⁴⁴ the SCDOT would not have alleged in 2009 in the Condemnation Action that Jericho State was the owner of the Parkway Parcel;⁴⁵ and Jericho State's attorney would not have argued to the jury that "[o]n December 15, 2009, the [Jericho State] owned 131.40 acres of land . . . They owned that. That land was intact."⁴⁶

Plaintiffs allege a taking occurred by the recording of the Ordinance. That claim is without merit because a governmental entity's threat to condemn or a governmental entity's publishing of plans to possibly do something in the future, including documenting such plans on an official map, does not amount to a taking.⁴⁷

The South Carolina Supreme Court analyzed this issue in *Kiriakides v. The School District of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). In *Kiriakides*, the landowner sued a school district, claiming the "stigmatization of [his] property as well as the unreasonable delay in commencing condemnation [proceedings] has amounted to an inverse condemnation of [his] property." *Id.* The master found no taking occurred. *Id.*

The South Carolina Supreme Court, in a unanimous opinion, affirmed the master and adopted his reasoning. The master concluded the school district's pre-condemnation activities "certainly did not give rise to a taking, regulatory or otherwise." *Id.* at 16, 675 S.E.2d at 443.

⁴² Plaintiffs' Ex. 12, *PDD Lawsuit*.

⁴³ Defendant's Ex. 6, *Foreclosure Transcript of Hearing* at 12.

⁴⁴ Plaintiffs' Ex. 12, *PDD Lawsuit*.

⁴⁵ Defendant's Ex. 10, *Condemnation Notice and Amended Condemnation Notice*.

⁴⁶ Defendant's Ex. 12, *Trial Transcript—Condemnation Action* at 32.

⁴⁷ "The adoption, filing, or recording of maps or plans for future roadway development does not constitute a taking." 2A *Nichols On Eminent Domain* §6.01[17][b], at 6-93 (3rd ed. 2004).

In adopting the master's reasoning, the Court stated as follows:

The master additionally observed his conclusion was supported by public policy, namely, the construction of public projects would be severely impeded if the government incurred liability for inverse condemnation as a result of merely announcing plans to condemn, citing *National By-Products, Inc. v. City of Little Rock*, 323 Ark. 619, 916 S.W.2d 745, 749 (1996) ("Construction of public-works projects would be severely impeded if the government could incur inverse condemnation liability merely by announcing plans to condemn property in the future."); *Santini v. Connecticut Hazardous Waste Management Service*, 251 Conn. 121, 739 A.2d 680, 691 (1999) ("[I]f the government were to be considered as having accomplished a compensable taking as a result of mere planning that, because of its publicity, harmed the value of property, public planning would be discouraged...."); *City of Buffalo v. J.W. Clement Co.*, 28 N.Y.2d 241, 321 N.Y.S.2d 345, 269 N.E.2d 895, 903-04 (1971) (stating the threat of condemnation generally does not constitute a taking and any changes in value are incidents of ownership). The master stated that Kiriakides's arguments, "if accepted, would have a devastating impact on government and its citizens."

We agree with the master's determination that Kiriakides did not establish a claim for inverse condemnation. We find no merit to his arguments that the mere threat of a condemnation suit stigmatized his property and that the School District's alleged delay in bringing this action entitled him to damages for an inverse condemnation.

Id. ⁴⁸

⁴⁸ The Supreme Court and the master cited favorably to the following authorities in support of their rulings: *Joseph M. Jackovich Revocable Trust v. Alaska Dep't of Transp.*, 54 P.3d 294, 302 (Alaska 2002) (stating "there is no indication the state did anything more than make announcements, prepare and publish plans, and provide publicity concerning the project" and no evidence the state interfered with the property rights of the landowners); *City of Chicago v. Loitz*, 295 N.E.2d 478, 480 (Ill. 1973) (observing "the weight of authority in other states and in the Federal courts, is that mere planning by a governmental body in anticipation of the taking of land for public use and preliminary steps taken to accomplish this, without the filing of proceedings and without physically taking or actual invasion of the real estate, is not actionable by the owner of the land"); 29A C.J.S. *Eminent Domain* § 90 (2007) (stating the mere planning in anticipation of a public improvement is not an actionable taking of property). Numerous other courts have held that pre-planning activity by government officials and targeting a property for possible future condemnation does not amount to a taking. See, e.g., *NBH Land Co. v. United States*, 576 F.2d 317, 318 (Ct. Cl. 1978) ("Mere candor by public officials about their plans has never been held to constitute a taking. Even a threat of condemnation is not a taking."); *Weintraub v. Flood Control Distr. of Maricopa County*, 456 P.2d 936, 939, 941 (Ariz. 1969) (noting that "[o]ther jurisdictions have uniformly held that the mere publication of the fact that particular or specified property may be" the subject of a future condemnation proceeding, "or the plotting or planning thereof, is not a taking or damaging of such property entitling the owner to be compensated therefor and "notice of preliminary proceedings of proposed actions which may result in taking land for public use is not a damaging of a property which would entitle the owner to compensation therefor," and holding no taking occurred as a matter of law."); *Calhoun v. City of Durant*, 970 P.2d 608, 611 (Okla. Ct. App. 1997) ("Future plans which include a landowner's property in a public use project are not sufficient to bring an inverse condemnation action. The constitution measures a taking of property not by what a state says, or what it intends, but by what it does."); *Westgate Ltd. v. State*, 843 S.W.2d 448, 453 (Tex. 1992) ("publicly targeting a property for condemnation, resulting in economic damage to the owner, generally does not give rise to an inverse condemnation cause of action unless there is some direct restriction on use of the property.").

In any event, the Ordinance is not a notice of the exercise of eminent domain rights. The exercise of eminent domain rights and the taking took place only upon the filing of the Condemnation Action—December 15, 2009.

Accordingly, the exception to Exclusion 2 does not apply and Exclusion 2 bars Plaintiffs' claims.

e. Plaintiffs' claims are excluded by Exclusion 3(d).

The Policies exclude coverage for matters that take place after the Policies were issued. More specifically, the Policies exclude loss or damage which arise by reason of: "3. Defects, liens, encumbrances, adverse claims or other matters: . . . (d) attaching or created subsequent to Date of Policy"

The SCDOT exercised its right of eminent domain for the first time pursuant to the Condemnation Action filed December 15, 2009, after the effective dates of the Policies. Any loss or damage claimed by Plaintiffs as result of the condemnation is therefore excluded.

4. Plaintiffs either have no loss or have not provided evidence of loss.

a. Plaintiffs' claims are excluded by Exclusion 3(c).

The Policies specifically exclude coverage for certain matters which result in no loss or damage to an insured claimant. More specifically, the Policies exclude "3. Defects, liens, encumbrances, adverse claims or other matters . . . (c) resulting in no loss or damage to the insured claimant."

Jericho State acquired title to the Property after foreclosing its second mortgage lien, subject to the \$18,520,000.00 REL Mortgage, an exception in the Jericho State Policy. The amount due on the REL Mortgage exceeds \$34,000,000.00.⁴⁹ According to Plaintiffs' appraisals,

⁴⁹ Defendant's Ex. 16, *Lynx Jericho First Supplemental Responses to Interrogatories*.

the value of the Property, even without the loss of the Parkway Parcel, does not come close to the original balance of the REL Mortgage.⁵⁰ Accordingly, Jericho State has not suffered a loss.

In addition, Plaintiffs have been compensated for any loss. Any loss Plaintiffs claim to have suffered was compensated by the jury award in the Condemnation Action. Accordingly, Plaintiffs have suffered no loss or damage.

b. Jericho State was fully paid and the Jericho State Policy amount has been reduced to zero.

The order foreclosing the Jericho State Mortgage found the debt due under the note it secured totaled \$7,490,000 as of December 3, 2007.⁵¹ At the foreclosure sale on December 3, 2007, Jericho State was the successful bidder with a bid of \$9,000,000.⁵²

In *Preservation Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 751 S.E.2d 256 (2013), the insured lender bid at foreclosure an amount that exceeded the policy amount, but was less than the amount owed under the note. The South Carolina Supreme Court, in construing identical policy language, affirmed the trial court's order reducing the amount due on the note by the amount bid at the foreclosure, and accordingly found the policy amount was reduced to the remaining amount due on the note.

Here, Jericho State's bid exceeded not only the policy amount, but also exceeded the amount due on the note. Jericho State has been fully paid and has suffered no loss. Under the formula set forth by our Supreme Court, the amount of coverage remaining under the Jericho State Policy is zero.

This finding is consistent with the theory that "a plaintiff can have but one satisfaction of his debt." *Ayers v. Guess*, 217 S.C. 233, 235, 60 S.E.2d 315, 315 (1950). The courts in South

⁵⁰ Plaintiffs' Ex. 14, *Jayroe Appraisal December 15, 2009*; Defendant's Ex. 17, *Jayroe Appraisal June 9, 2015*.

⁵¹ Plaintiffs' Ex. 10, *Foreclosure Order* at 11-12.

⁵² Plaintiffs' Ex. 11, *Master's Deed*.

Carolina disfavor any activities or practices which have the effect of “chilling” the bidding at a foreclosure sale. *Ex parte Keller*, 185 S.C. 283, 292, 194 S.E. 15, 19 (1937) (courts should be “particularly jealous of the integrity of judicial sales” and all such judicial sales “must be made on free, fair and competitive bidding.”).

Jericho State’s \$9,000,000 bid effectively chilled the bidding. To the extent there existed a bidder interested in buying the Property, Jericho State’s bid exceeding the amount due under the note reduced the possibility of third-parties bidding.

c. **Plaintiffs failed to provide evidence of loss and this failure is fatal to Plaintiffs’ case.**

Paragraph 7 of the Conditions and Stipulations of the Policies state they are “contract[s] of indemnity against actual monetary loss or damage.”⁵³ Without a loss, there can be no viable claim under the Policies, contracts of indemnity. For Plaintiffs to show there exists liability, they must show they have suffered a loss. *Marble Bank v. Commonwealth Land Title Ins. Co.*, 914 F. Supp. 1252, 1254 (E.D.N.C. 1996).

Plaintiffs have no competent evidence to show they suffered a loss.

Plaintiffs will argue the correct date to measure loss is the date the Policies were issued. Chicago Title disagrees with that date of valuation. Nonetheless, Plaintiffs have provided no evidence, expert or otherwise, showing the defect they claim exists resulted in any loss on that date. Although Plaintiffs provided appraisals as of the date of condemnation and a subsequent date,⁵⁴ Plaintiffs failed to provide any evidence showing a loss on the date the Policies were issued. No loss can be shown also because Lynx Jericho, as mentioned below, has not foreclosed the REL Mortgage.

⁵³ Plaintiffs’ Ex. 8 *REL Policy*; Plaintiffs’ Ex. 9, *Jericho State Policy*.

⁵⁴ Plaintiffs’ Ex. 14, *Jayroe Appraisal December 15, 2009*; Defendant’s Ex. 17, *Jayroe Appraisal June 9, 2015*.

5. **Lynx Jericho cannot suffer a loss, and loss cannot be measured, until Lynx Jericho forecloses the REL Mortgage.**

Jericho State foreclosed its junior mortgage and became owner of the Property in 2008. Lynx Jericho holds the first mortgage, the REL Mortgage, and has not foreclosed. If Lynx Jericho were to foreclose on the REL Mortgage, it would come into title. To the extent Lynx Jericho has a valid claim, that claim would become ripe only when it comes into title.

An insured lender that has not yet taken title to real estate is unable to prove any defect in the title will cause it to suffer a loan loss. *See J. Bushnell Nielsen, Title and Escrow Claims Guide*, at 3-52 (2016 Ed.). “An insured mortgagee has not suffered an identifiable loss unless and until it forecloses its insured deed of trust and a title defect reduces the value of the property, thereby preventing the mortgagee from recouping its loan amount upon resale. If a title defect exists, but the value of the property is nevertheless sufficient to pay the mortgagee the loan amount, then there is no damage compensable under the loan policy.” *First Citizens Bank & Trust Co. v. Stewart Title Guar. Co.*, 320 P.3d 406 (Colo. Ct. App. 2014).

Further, a claim concerning an alleged defect in title is not ripe under a loan policy until the lender has taken title to the property. Under a loan policy, the date of foreclosure is the date on which loss is measured. *See, e.g., Karl v. Commonwealth Land Title Ins. Co.*, 24 Cal.Rptr.2d 912, 920 (Cal Ct. App. 1993) (“At [foreclosure sale], the lender’s note is extinguished and replaced by assets recovered on foreclosure: either cash as paid by a third party bidder or the realty as bought in by the foreclosing lender. It is now possible to measure the value of the

recovery by the lender, and we believe the loss which is insured by the title policy should be recognized as of that time.”).⁵⁵

Plaintiffs will rely on *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 732 S.E.2d 626 (2012), for the proposition that loss is measured on the date of the policy. In *Whitlock*, the South Carolina Supreme Court answered the question certified to it by a federal court and announced that loss under an owner’s title insurance policy is measured as of the date of policy, not the date of discovery of the title defect, despite prevailing case law to the contrary. The court found the term “actual loss” in the residential owner’s policy under consideration to be ambiguous. In so holding, the court stated “[w]here the insurance contract unambiguously identifies a date for measuring the diminution in value of the insured property or otherwise unambiguously provides for the method of valuation as a result of the title defect, such date or method is controlling.” The residential owner’s policy at issue in *Whitlock* did not define actual loss and set forth no method of valuation; therefore, the court found the residential owner’s policy to be ambiguous.

Here, the Policies unambiguously provide a method of valuation:

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

⁵⁵ See also *Associated Bank, N.A. v. Stewart Title Guar. Co.*, 2012 WL 3067895, at *5 (D. Minn. 2012) (“[T]he majority of courts considering the [date of valuation] issue have held that such loss cannot be measured until the note has been repaid and the security for the mortgage is shown to be inadequate ... The majority view comports with the nature of a title insurance policy.”); *Marble Bank v. Commonwealth Land Title Ins. Co.*, 914 F. Supp. 1252 (E.D.N.C. 1996) (“Since a lender suffers loss only if the note is not repaid, the discovery of an insured-against lien does not trigger recognition of that loss. Further, even though the lender’s note is in default, an anticipated loss cannot be measured until completion of foreclosure because only then is there certainty the lender will not be paid in full. Consequently, it is clear that in the typical case the earliest a loss can be claimed on a lender’s policy is at the time of completion of foreclosure.”); *Hodas v. First American Title Ins. Co.*, 696 A.2d 1095, 1097 (Me. 1997) (“The presence of a title defect immediately results in a loss to the holder of a fee interest since resale value will always reflect the cost of removing the defect. In contrast, the holder of a loan policy incurs a loss only if the security for the loan proves inadequate to pay off the underlying insured debt due to the presence of undisclosed defects.”); *Blackhawk Prod. Credit Ass’n v. Chicago Title Ins. Co.*, 423 N.W.2d 521, 525 (Wis. 1988) (holding a mortgagee’s insured loss is sustained only if the “mortgagee’s debt is not repaid and the security for the mortgage proves inadequate,” so the loss must be measured as of that date).

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with section 4 of these Conditions and Stipulations.

Unlike the residential owner's policy in *Whitlock*, the Policies, which are loan policies, provide a detailed method of calculating loss, which cannot be ascertained until an insured lender forecloses or acquires title after foreclosure. Accordingly, the Policies are not ambiguous.⁵⁶

Plaintiffs will argue the Condemnation Action and the jury's award therein did not provide them full just compensation for the taking of the Parkway Parcel because the valuation date of the taking was December 15, 2009. However, Plaintiffs conceded that issue in that litigation, instead of arguing an earlier date should have been used.⁵⁷ Plaintiffs should have raised this issue in the Condemnation Action. Instead of looking to the constitutionally

⁵⁶ Plaintiffs will argue Chicago Title mistakenly chose the date of the condemnation action as the date of valuation. However, it is Plaintiffs' burden to establish its claimed loss. Plaintiffs' motion for summary judgment was the first time Chicago Title was made aware Plaintiffs contended the date of loss is the date the Policies were issued. Plaintiffs provided expert appraisals as of the date of the condemnation. That is why Chicago Title provided expert appraisals for the same date. Nonetheless, the date of the policy is not the correct valuation date for loss under a loan policy.

⁵⁷ Defendant's Ex. 11, *Landowner's Responses to Condemnor's First Requests to Admit*, answer No. 1. Plaintiffs' claims or argument that a taking occurred earlier are also barred under the doctrine of collateral estoppel or res judicata. Plaintiffs should have raised this issue in the Condemnation Action. See *Laughon v. O'Braitis*, 360 S.C. 520, 527, 602 S.E.2d 108, 112 (Ct. App. 2004) ("It is a fundamental principle of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form that the issue may take in the subsequent action.").

responsible party, the SCDOT, to provide just compensation, Plaintiffs now improperly seek additional just compensation from Chicago Title for a matter clearly not covered by the Policies.

6. **Lynx Jericho and Jericho State cannot both recover under the Policies.**

If the Court were to determine Chicago Title was required to pay a loss, the Policies state such loss would be payable to only one insured. Conditions & Stipulations 10 provides a payment to the senior lender is deemed to be a payment for the benefit of the junior lender also, negating the possibility that the insurer will pay both insureds for the same loss:

LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

When an insurer has policies in favor of two lenders and makes a claim payment, the money is delivered to the senior lienholder. In this case, if Chicago Title was obligated to make a loss payment, that money would be paid to Lynx Jericho as the holder of the senior lien. That payment would simultaneously extinguish the claims on both Policies.

7. **Chicago Title is entitled to summary judgment on Plaintiffs' breach of the covenant of good faith and fair dealing and bad faith claims as there is no coverage due under the Policies, there was a reasonable basis to contest coverage, and Plaintiffs submitted no evidence to support their claims.**

a. **Breach of the implied covenant of good faith and fair dealing.**

Plaintiffs assert claims against Chicago Title for breach of the implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing, however, "is not an independent cause of action separate from the claim for breach of contract." *RoTec Servs., Inc. v.*

Encompass Servs., Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). On that basis alone, Chicago Title is entitled to summary judgment.

In addition, there is no breach of an implied covenant of good faith “where a party to a contract has done what provisions of the contract expressly gave him the right to do.” *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). Here, Plaintiffs submitted claims to Chicago Title. Chicago Title investigated the claims and properly denied the claims. There is no coverage under the Policies and coverage was properly denied. Finally, Plaintiffs submitted no evidence to support their claims of a breach of the covenant of good faith and fair dealing. Accordingly, Plaintiffs’ claims for breach of the implied covenant of good faith and fair dealing are without merit.

b. Bad Faith.

The elements of an action for bad faith refusal to pay benefits under an insurance contract are as follows: “(1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits *due under the contract*; (3) resulting from the insurer’s bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.” *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996) (emphasis added).

Bad faith is “a knowing failure on the part of the insurer to exercise an honest and informed judgment in processing a claim. . . . [A]n insurer acts in bad faith where there is no reasonable basis to support the insurer’s decision.” *Doe v. South Carolina Medical Malpractice Liability Joint Underwriting Ass’n*, 347 S.C. 642, 557 S.E.2d 670, 674 (2001). Generally, if there is a reasonable ground for contesting a claim, the denial of the claim does not constitute bad faith. *Hansen ex rel. Hansen v. United Services Auto. Ass’n*, 350 S.C. 62, 565 S.E.2d 114 (Ct.

App. 2002); *see also Varnadore v. Nationwide Mut. Ins. Co.*, 289 S.C. 155, 345 S.E.2d 711 (1986) (“[T]he Plaintiff must prove that there was no reasonable basis to support the decision of the insurance company to deny certain insurance benefits . . . ‘[and] [I]f there is any reasonable ground for contesting the claim, there is no bad faith’”).

As mentioned above, there is no coverage under the Policies. Because there is no coverage under the Policies, Plaintiffs’ bad faith causes of action fail as a matter of law.

Moreover, Chicago Title had a reasonable basis to contest Plaintiffs’ claims.⁵⁸ Plaintiffs’ claims are based on an ordinance and eminent domain. The Policies expressly exclude such matters from coverage under exclusions that specifically reference ordinances and eminent domain. The exceptions to those exclusions are not implicated.

Accordingly, Chicago Title is entitled to summary judgment on Plaintiffs’ claims for bad faith.

CONCLUSION

The Policies do not provide coverage for the Ordinance because the Ordinance is neither a title defect nor an encumbrance and the Ordinance did not make title to the Property unmarketable. Zoning ordinances and resolutions are not title matters, and the Policies place on parties other than Chicago Title the burden of investigating and complying with local ordinances and land use resolutions affecting the Property.

Even if the Court were to conclude the Ordinance or the Condemnation Action falls within the insuring provisions of the Policies, such matters are not covered as the Policies exclude zoning laws, ordinances, and regulations, eminent domain, post-policy events, and matters resulting in no loss or damage.

Accordingly, there is no coverage afforded to Plaintiffs.

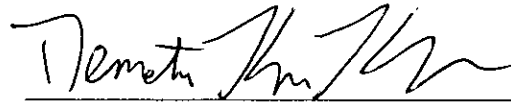
⁵⁸ See Affidavits of J. Bushnell Nielsen. Defendant’s Ex. 18 and Ex. 19.

Because there is no coverage under the Policies, Chicago Title could not have committed bad faith and could not have violated the covenant of good faith and fair dealing. For sake of argument, even if there is coverage, Chicago Title had a good faith basis to contest Plaintiffs' claims.

The Court should therefore grant Chicago Title's motion for summary judgment.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
CHICAGO TITLE INSURANCE COMPANY**

August 18, 2016

1020.566\Memo-SJM2

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Jericho State Capital Corp. of Florida,

Plaintiff,

vs.

Chicago Title Insurance Company,

Defendant.

Lynx Jericho Partners, LLC,

Plaintiff,

vs.

Chicago Title Insurance Company,

Defendant.

Case No. 2013-CP-26-5530

HORRY COUNTY
2016 JUL 11 AM 10:46
CLERK OF COURT

Case No. 2015-CP-26-1084
(Consolidated with the above case)

**DEFENDANT CHICAGO TITLE INSURANCE COMPANY'S
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT (as to Liability Only)**

Defendant Chicago Title Insurance Company ("Chicago Title") submits this memorandum of law in opposition to Plaintiffs' Motion for Summary Judgment.

INTRODUCTION

On July 9, 2002, Horry County recorded an ordinance amending its official map to show the future location of a proposed highway. The official map allows proposed future roadway improvements to be identified and provides opportunities for Horry County or other governmental entities to purchase property prior to building permits being issued as a means to reduce acquisition costs. The ordinance was indexed in the Register of Deeds only under Horry County, not under property owners that may be interested in the amendment to the official map.

Plaintiffs are two mortgagees insured under loan policies of title insurance issued by Chicago Title in 2006. The policies exclude, among other matters, zoning laws, ordinances, regulations, police powers, and eminent domain.

In 2009, three years after the policies were issued, a condemnation action was filed regarding the proposed highway. Prior to that, no third party, other than the owner and the mortgagees, had any interest in or claimed title to the subject property. In 2014, a jury awarded Plaintiffs \$2,100,000 just compensation for the 2009 partial taking of the subject property.

The policies insure title to real property. The ordinance is a land planning instrument that does not affect or encumber title. The policies do not provide coverage because the ordinance is not a title defect, not an encumbrance, and it did not cause title to be unmarketable. Even if the ordinance, for sake of argument, falls within the insuring provisions of the policies, the policies exclude zoning laws, ordinances, regulations, eminent domain, and post-policy matters. Moreover, Plaintiffs have failed to present evidence of loss, a required element of their case.

Accordingly, there is no coverage under the policies and Plaintiffs' motion for summary judgment should be denied.

STATEMENT OF FACTS

1. The Property.

The subject property is approximately 131.40 acres located in Socastee Township, Horry County, South Carolina ("the Property"). The Property borders the Intracoastal Waterway. The McClam family owned the Property for decades until it sold the Property in July 2006.¹

2. The Ordinance.

On July 2, 2002, the Horry County Council adopted Ordinance 88-202 ("the Ordinance"), which amended the official map of Horry County to show the future locations of a proposed

¹ Plaintiffs' Ex. 5, *Deed*; Defendant's Ex. 1, *Plat*.

highway to provide opportunities for Horry County or other governmental entities to purchase property and to reduce acquisition costs.² The Ordinance added to the official map “the right-of-way identified as Alternative 1 for the proposed Carolina Bays Parkway from Highway 501 to Highway 17 By-pass as shown in the document entitled Carolina Bays Parkway, Phase V FEIS Conceptual Roadway Plans.” The conceptual roadway plan is attached to the Ordinance.

The Ordinance does not mention the property affected by the possible future construction of the Carolina Bay Parkway. The Ordinance does not contain a list of property owners who may be affected in the future. The conceptual roadway plan attached to the Ordinance does not identify the property that may be affected in the future by the name of the owner or by tax map number. The McClam family, owners of the Property at that time, are not mentioned in the Ordinance or in the conceptual plans attached thereto.

On July 9, 2002, the Ordinance, which was neither witnessed nor notarized, was recorded with the Horry County Register of Deeds. It is indexed under the name of Horry County. The Ordinance was not indexed under the names of the property owners who may be affected by the possible future construction of the Carolina Bays Parkway or under the names of any McClam family members, who owned the Property on the date the Ordinance was recorded. Therefore, one searching title to the properties affected would not find the Ordinance.³

3. Purchase of the Property, the Mortgages, and the Policies.

In July 2006, Peachtree Properties of North Myrtle Beach, LLC (“Peachtree”) purchased the Property from the McClam family for \$22,500,000.⁴ To finance its purchase of the Property,

² Plaintiffs’ Ex. 3, *Ordinance 88-202*.

³ Plaintiffs’ expert abstractor testified the Ordinance was not indexed by the Register of Deeds in the grantor-grantee indices, except under the name of Horry County. *Turner Dep. P. 35*, Defendant’s Ex. 2. He also testified a person searching and examining title to the Property would not find the Ordinance in the chain of title. *Id.* at 36.

⁴ Plaintiffs’ Ex. 5, *Deed*.

Peachtree obtained mortgage loans from R.E. Loans, LLC ("REL") and Jericho State Capital Corp. of Florida ("Jericho State").

Peachtree gave an \$18,520,000.00 first mortgage covering the Property to REL ("REL Mortgage."). Chicago Title issued a loan policy of title insurance to REL. The policy date is July 25, 2006, and the insured amount is \$17,071,873.33 ("REL Policy").⁵

Peachtree gave a \$4,263,888.00 second mortgage covering the Property to Jericho State ("Jericho State Mortgage"). Chicago Title issued a loan policy of title insurance to Jericho State. The policy date is July 25, 2006, and the insured amount is \$4,263,888.00 ("Jericho State Policy").⁶

The Jericho State Policy and the REL Policy will be collectively referred to at times as "the Policies."

4. The Bridge and Zoning Letter.

Prior to the closing, Jericho State's attorney provided Peachtree's attorney with a closing checklist.⁷ One item required "[s]atisfactory resolution of the determination by municipality not to build a bridge." On July 17, 2006, Peachtree's attorney asked Jericho State and its attorneys to remove that item from the checklist.⁸ The item was removed from the checklist.⁹

Another item on the checklist was the receipt of a zoning verification letter. On July 19, 2006, Peachtree's attorney sent to Jericho State's attorney a zoning verification letter stating the Property is "currently zoned R-1 on the Horry County Zoning Maps." The zoning verification letter said nothing about a planned highway or any restriction from use.¹⁰

⁵ Plaintiffs' Ex. 6, *REL Mortgage*; Plaintiffs' Ex. 8 *REL Policy*.

⁶ Plaintiffs' Ex. 7 *Jericho State Mortgage*; Plaintiffs' Ex. 9, *Jericho State Policy*.

⁷ Plaintiffs' Ex. 26.

⁸ *Id.*

⁹ Defendant's Ex. 3, *Revised Checklist*.

¹⁰ Defendant's Ex. 4, *Zoning Verification Letter and Fax*.

5. **Approval of Funding and Agreement to Construct the Carolina Bays Parkway.**

According to a verified complaint filed by Jericho State in an another action, described below as the Zoning Rescission Action, and supporting documentation attached to the verified complaint, the agreement to construct and fund the applicable part of the Carolina Bays Parkway was entered into by and between Horry County and the SCDOT on June 20, 2007, almost one year after the Policies were issued.¹¹

6. **Rezoning of the Property.**

On May 15, 2007, Horry County Council adopted ordinance 76-07, which rezoned the Property as the Peachtree Plantation Planned Development District (the "PDD Ordinance").¹² The PDD Ordinance approved development of the Property as a mixed-use development with numerous residential parcels. The PDD Ordinance states it was adopted based on an application submitted by Peachtree and that Peachtree agreed to donate part of the Property to Horry County:

The property owner ***has agreed to donate*** to Horry County at no cost, property sufficient to construct that portion of the 300 ft. wide Highway 31 (Carolina Bays Parkway) right-of-way that traverse the property in issue. ***The property will be conveyed*** to Horry County by general warranty deed, free of all encumbrances within 120 days of third reading of this ordinance. (emphasis added)

The PDD Ordinance set forth other agreements between Horry County and Peachtree about the land Peachtree agreed to donate and convey (the "Parkway Parcel"). The PDD Ordinance was recorded May 17, 2007.¹³

7. **Foreclosure of the Jericho State Mortgage.**

On June 8, 2007, Jericho State filed a foreclosure action seeking to foreclose the Jericho State Mortgage and a mortgage it held on other property given by T & J Development of North

¹¹ Plaintiffs' Ex. 12, *PDD Lawsuit*.

¹² *Id.*

¹³ *Id.*

Myrtle Beach.¹⁴ A foreclosure hearing was held on October 30, 2007, at which counsel for Jericho State testified as follows:

[W]e have conducted a title examination of the public records maintained by Horry County pertaining to the Defendants and to the mortgaged property, ***and we find no other parties holding or claiming any interest of record*** in and to any of the [the Property] . . . as described in the [Jericho State] Mortgage . . . We therefore advise the Court that the [Jericho State] Mortgage is and remains a valid second mortgage lien upon the Peachtree Property . . . subject only to the . . . interests of the [REL Mortgage]. (emphasis added).¹⁵

The court entered a foreclosure order on November 7, 2007, ordering the Property be sold subject to the REL Mortgage.¹⁶ Jericho State was the successful bidder with a bid of \$9,000,000. Jericho State received a master's deed for the Property recorded February 26, 2008.¹⁷ Thus, on February 26, 2008, the Property was owned by Jericho State subject to the REL Mortgage.

8. Jericho State's Lawsuit Against the SCDOT and Horry County.

On October 12, 2009, Jericho State filed with the Horry County Court of Common Pleas a verified complaint against Horry County and the SCDOT seeking an order finding the PDD Ordinance was not binding, rescinding the rezoning granted by the PDD Ordinance, and terminating the obligation to donate the Parkway Parcel ("Zoning Rescission Action").¹⁸

The Zoning Rescission Action does not reference the Ordinance. Jericho State alleged it owned the Property, including the Parkway Parcel.

On March 18, 2010, the parties dismissed the Zoning Rescission Action. The Stipulation of Dismissal states that "[i]nsofar as the South Carolina Department of Transportation, as agent for Horry County, County, South Carolina, has filed an eminent domain action bearing Civil

¹⁴ Defendant's Ex. 5, *Foreclosure Complaint*.

¹⁵ Defendant's Ex. 6, *Foreclosure Transcript of Hearing* at 12.

¹⁶ Plaintiffs' Ex. 10, *Foreclosure Order*.

¹⁷ Plaintiffs' Ex. 11, *Master's Deed*.

¹⁸ Plaintiffs' Ex. 12, *PDD Lawsuit*.

Action Number 2009-CP-26-11956, and which action resolves the issues raised in the present declaratory judgment matter,” Jericho State desired to dismiss the Zoning Rescission Action.¹⁹

9. **Assignment of the REL Mortgage to Lynx Jericho and the Relationship between Lynx Jericho and Jericho State.**

REL assigned the REL Mortgage to Mortgage Fund '08, LLC by an instrument recorded May 16, 2008.²⁰ Mortgage Fund '08, LLC filed for bankruptcy in 2011. With approval of the bankruptcy court in 2012, the REL Mortgage was assigned to Susan L. Uecker as trustee of the Mortgage Fund '08 Liquidating Trust (the “Liquidating Trust”).²¹

On October 22, 2012, the trustee of the Liquidating Trust, Jericho State, and Jericho All-Weather Opportunity Fund LP (“Jericho All-Weather”) signed an Engagement Agreement with a law firm to have the law firm represent the three parties in the Condemnation Action described in detail below. The Engagement Agreement stated Jericho State and Jericho All-Weather had a first right of refusal to purchase the REL Mortgage loan if the trustee obtained a third-party offer to buy that loan. Jericho All-Weather was a participant in the Jericho State Loan.²²

On January 8, 2013, the Liquidating Trust gave notice to Jericho State and Jericho All-Weather of their opportunity to purchase the REL Mortgage for \$447,725, the price allocated to that loan in an offer received from a third party for the purchase of several loans.²³

Lynx Asset Services, LLC (“LAS”) formed Plaintiff Lynx Jericho Partners, LLC (“Lynx Jericho”) on April 4, 2013. SRKD-SAM Advisors LLC (“SRKD-SAM”) became the Class B member of Lynx Jericho on April 17, 2013. LAS was the manager of Lynx Jericho.²⁴

¹⁹ Defendant’s Ex. 7, *Stipulation of Dismissal of Zoning Rescission Action*.

²⁰ Plaintiffs’ Ex. 16, *Assignments*.

²¹ Defendant’s Ex. 8, *Bankruptcy Court Order*.

²² Defendant’s Ex. 9, *Engagement Agreement*.

²³ Plaintiffs’ Ex. 17, *Trustee Notice-ROFR*.

²⁴ Plaintiffs’ Ex. 19, *Operating Agt.* Glenn Chwatt signed the Operating Agreement as Manager/Member of SRKD-SAM and is manager of SRKD-SAM. Scott D. Svirsky is its registered agent. Chwatt is president of Jericho State. Svirsky is partner in Jericho All-Weather. *Chwatt Dep.* 13-14. 24-25, Plaintiffs’ Ex. 24.

Lynx Jericho purchased the REL Mortgage and the note it secures (the “REL Loan”) and another loan, termed the Saucepan Loan, secured by property in North Carolina. Lynx Jericho paid \$2,500,000 to purchase the REL Loan and the Saucepan Loan. The Liquidating Trust assigned the REL Mortgage to Lynx Jericho by instrument recorded May 22, 2013.²⁵

The Lynx Jericho Operating Agreement states that the REL Loan and the Saucepan Loan are the two “Portfolio Loans” that are assets of the company. Further, the members agreed they will use any condemnation proceeds and proceeds paid on any title claim other than the claim made on the Lynx Jericho Policy to repay the Portfolio Notes.

In the Lynx Jericho Operating Agreement dated April 17, 2013, the members agreed that, for three years after the effective date, there “shall be no action taken with regard to” the Portfolio Loans, or the collateral for those loans, without the approval of SRKD-SAM as the Class B member, “it being understood that the Class B Member is related to and/or an Affiliate of the owner of such Portfolio Property, and it is based upon such forbearance/action with regard to the Portfolio Notes, the Portfolio Loans and the Portfolio Loan Documents that they have entered into this Agreement.”

10. The Condemnation Action.

The SCDOT filed a condemnation notice on December 15, 2009, and an amended condemnation notice on April 20, 2011, against Jericho State, REL, and Mortgage Fund '08, LLC (the “Condemnation Action”).²⁶ SCDOT alleged Jericho State was the owner of the Property and condemned 10.18 acres of the Property—the Parkway Parcel—for highway purposes, as part of the Carolina Bays Parkway project. The SCDOT alleged “[t]he property sought herein is to be acquired for public purposes, more particularly for the construction of a

²⁵ Plaintiffs’ Ex. 20, *Assignment to Lynx Jericho*.

²⁶ Defendant’s Ex. 10, *Condemnation Notice and Amended Condemnation Notice*.

section of SC Route 31 (Carolina Bays Parkway).” (emphasis added).

During the course of the Condemnation Action, Jericho admitted “[t]hat the date of taking for valuation purposes is December 15, 2009.”²⁷ No attempt was made by Jericho State or Lynx Jericho to seek valuation of the Property on a date earlier than December 15, 2009. Neither Jericho State nor Lynx Jericho claimed the valuation date should be earlier based on the Ordinance or on an inverse condemnation theory.²⁸

Jericho State and Lynx Jericho claimed the condemnation of the Parkway Parcel resulted in a \$4,010,000 loss. The SCDOT argued the loss totaled \$998,000. On November 19, 2014, the jury awarded \$2,100,000 just compensation for the taking of the Parkway Parcel to Jericho State and Lynx Jericho.²⁹ Jericho State released its interest in the judgment proceeds to Lynx Jericho.³⁰

11. Jericho State’s Title Insurance Claim.

By letter dated February 26, 2009, Jericho State submitted a claim to Chicago Title based on the assertion that the Jericho State Policy protected against the Condemnation.³¹ Chicago Title denied that claim.³²

Jericho State filed suit against Chicago Title on July 29, 2011, bringing claims for breach of contract, breach of the covenant of good faith and fair dealing, and bad faith. Jericho State alleges Chicago Title committed bad faith in part for analyzing Jericho State’s claim under Exclusion 1, excluding zoning laws, ordinances, and regulations. This is the same exclusion under which Jericho State now, for the first time in its motion, seeks coverage.

²⁷ Defendant’s Ex. 11, *Landowner’s Responses to Condemnor’s First Requests to Admit, answer No. 1.*

²⁸ Defendant’s Ex. 12, *Trial Transcript—Condemnation Action.*

²⁹ *Id.* at 362; Defendant’s Ex. 13, *Condemnation Judgement.*

³⁰ Plaintiffs’ Ex. 21, *Payment to LAS.*

³¹ Defendant’s Ex. 14, *Jericho State claim letter.*

³² Plaintiffs’ Ex. 22, *Jericho State claim denial letter.*

12. Lynx Jericho's Title Insurance Claim.

Lynx Jericho submitted a claim on the Lynx Jericho Policy by letter dated June 21, 2013.³³ Chicago Title requested documents from Lynx Jericho as part of its investigation. Lynx Jericho provided documents to Chicago Title in December 2014. Chicago Title denied the claim on January 30, 2015, and Lynx Jericho filed suit on February 12, 2015.³⁴

ARGUMENT

The Ordinance is a land planning and zoning instrument that does not affect or encumber title to the Property. The Ordinance does not fall within the insuring provisions of the Policies. Even if the Ordinance falls within the insuring provisions of the Policies, the Policies exclude any loss related to the Ordinance and the Condemnation Action. Moreover, Plaintiffs have suffered no loss and have failed to present evidence of loss, a required element of their case.

1. Rules of Construction.

Insurance policies are subject to the general rules of contract construction. *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 514 S.E.2d 327, 330 (1999). When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used. *Id.* The court must enforce, not write, contracts of insurance and must give policy language its plain, ordinary, and popular meaning. *Id.*

An insurer's obligation under a policy of insurance is defined by the terms of the policy and cannot be enlarged by judicial construction. *S.C. Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471, 474 (Ct. App. 1990). "[I]f the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend coverage that was never intended by the parties." *S.C. Farm Bureau Mut. Ins. Co. v. Wilson*, 344 S.C. 525, 544 S.E.2d 848, 850 (Ct. App.

³³ Defendant's Ex. 15, *Lynx Jericho Claim Letter*.

³⁴ Plaintiffs' Ex. 23, *Lynx Jericho Denial Letter*.

2001). Courts are not authorized to pervert policy language or to exercise inventive powers to create an ambiguity where none exists. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000). "The rule of strict construction against the insurer does not apply where the language used in the policy is so plain and unambiguous as to leave no room for construction. Nor does the rule of strict construction authorize a perversion of language or the exercise of inventive powers for the purpose of creating an ambiguity where none exists." *S.S. Newell & Co. v. American Mutual Liability Ins. Co.*, 199 S.C. 325, 19 S.E.2d 463, 466 (1942).

2. The Ordinance does not fall within the insuring provisions of the Policies.

a. Insuring provisions of the Policies.

The Policies insure title to the Property. The covered risks of the Policies are invoked only if title to the Property fails, in whole or in part, or if the title is encumbered by a lien or encumbrance that is not excluded from coverage.

The insuring provisions of the Policies at issue are

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

- 2 Any defect in or lien or encumbrance on the title;
- 3 Unmarketability of the title;

The insured has the burden of showing a claim falls within coverage of an insurance contract. *Gamble v. Travelers Ins. Co.*, 251 S.C. 98, 160 S.E.2d 523, 525 (1968). Plaintiffs contend the Ordinance falls under insuring provision 2, "[a]ny defect in or lien or encumbrance on the title," and provision 3, "[u]nmarketability of the title." Plaintiffs cannot meet their burden. The Ordinance does not fall within these insuring provisions of the Policies.

b. The Ordinance is a land planning tool.

The adoption of an official map is a land planning tool available to counties and municipalities. The Ordinance directly concerns the official map of Horry County, as it amends the official map to show the future location of a proposed highway and to provide opportunities for Horry County or other governmental entities to purchase property and to reduce acquisition costs.

An official map is "a map or maps showing the location of existing or *proposed public street, highway*, and public utility rights-of-way, public building sites and public open spaces adopted by the governing authority of a municipality or county." S.C. Code Ann. § 6-7-1210 (emphasis added). Counties and municipalities "establish official maps to *reserve future locations* of any street, highway, or public utility rights-of-way, public building site or public open space for *future public acquisition* and to regulate structures or changes in **land use** in such rights-of-way, building sites or open spaces." S.C. Code Ann. § 6-7-1220 (emphasis added).

To the extent there is doubt as to whether the Ordinance is a land planning tool, the Ordinance is administered by the zoning administrator and the statutes authorizing the adoption of an official map, which are cited in the Ordinance, state an official map is "one of the several instruments of land use control authorized by this chapter." *Id.*: Ordinance 107-98 § 6.0.³⁵

c. The Ordinance does not affect title to the Property, it is not an encumbrance or defect, and does not render title unmarketable.

Title insurance policies indemnify for loss related to title to the property, not physical defects or government regulations which inhibit the use of property. R. Cunningham, W. Stoebeck & D. Whitman, *The Law of Property* § 11.14 at 274 (1984); 11 COUCH ON INSURANCE § 159:48 ("a title insurer does not make any representation or assume any liability with respect to

³⁵ Plaintiffs' Ex. 1, *Ordinance 107-98*.

whether the insured will be able to procure government permits authorizing him or her to use the land in any particular manner; title insurance policy provides protection against defects in, or liens or encumbrances on, title, rather than against governmentally imposed impediments on use of land or for resulting impairments in the value of the land.”).

The Policies define “unmarketability of title” as “an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.”

Our case law defines “encumbrance” as “a right of interest in the land granted ‘which may subsist in third persons to the diminution in value of the estate although consistent with the passing of the fee.’” *Martin v. Floyd*, 282 S.C. 47, 51, 317 S.E.2d 133, 136 (Ct. App. 1984).

Our courts have recognized the distinct concepts of title to property and non-title matters that affect the use of property. In *McMaster v. Strickland*, 305 S.C. 527, 409 S.E.2d 440 (Ct. App. 1991), the property was designated as wetlands by the federal government and the city. Even though a purchaser possibly would not be able to use the property for the purpose he intended, the Court of Appeals held this did not establish the sellers were incapable of providing marketable title. In so holding, it concluded the trial court “confused the concepts of title and marketability with use and value.” The Court of Appeals found there was no evidence “the sellers do not own the property, therefore they have title.” Even though a “purchaser may not be able to use the property for the purpose for which he sought, such does not mean the sellers cannot deliver marketable title.” *Id.* at 530, 409 S.E.2d at 442.

Similarly, in *Truck South, Inc. v. Patel*, 339 S.C. 40, 528 S.E.2d 424 (2000), the South Carolina Supreme Court held a declaration that part of the property was federally-protected wetlands, which prevented the purchaser from constructing a hotel on the property, was not an encumbrance. It did not render the title unmarketable. *Id.* at 49, 528 S.E.2d at 429.

In *Martin v. Floyd*, 282 S.C. 47, 51, 317 S.E.2d 133, 136 (Ct. App. 1984), the Court of Appeals found residential lots that were in either marsh or water were free from encumbrances. The court stated that “[w]hile marsh or water might be a burden upon the property, it is certainly not a lien, easement, or right existing in a third party.” *Id.* at 52, 317 S.E.2d 136.

In *Stanley v. Atlantic Title Ins. Co.*, 377 S.C. 405, 661 S.E.2d 62 (2008), a drainage field rendered part of the property useless. The South Carolina Supreme Court concluded “[t]he fact that property may be useless or may be put to only limited use does not mean that the property is not marketable.” *Id.* at 411, 661 S.E.2d at 65.

Ordinances and resolutions that regulate the use of property do not affect title. Courts in other jurisdictions agree. *See, e.g., Notaro Homes, Inc. v. Chicago Title Ins. Co.*, 722 N.E.2d 208 (Ill. Ct. App. 1999) (“... the [zoning ordinance] does not constitute a lien upon the subject property. Nor does it constitute a defect that would cloud the title to the property. Plaintiff has confused marketability of title with marketability of land.”); *Hocking v. Title Ins. and Trust Co.*, 234 P.2d 625, 629 (Cal. 1951) (finding a violation of subdivision laws resulting in restricted use affected market value not marketability of title; one “can hold perfect title to land that is valueless; one can have marketable title to land while the land itself is unmarketable.”); *Somerset Sav. Bank v. Chicago Title Ins. Co.*, 649 N.E.2d 1123, 1127-28 (Mass. 1995) (holding building or zoning laws are not encumbrances or defects affecting title; therefore the existence of a statutory restriction requiring governmental approval prior to issuance of a building permit does

not give rise to coverage under a title insurance policy); *Wolf v. Commonwealth Land Title Ins. Co.*, 690 N.Y.S.2d 880, 881 (N.Y. App. Div. 1999) ("Since zoning laws regulate the manner in which the property can be used and do not impair title, the damages claimed by plaintiffs do not fall within the scope of the title insurance policy"); *Bear Fritz Land Co. v. Kachemak Bay Title Agency, Inc.*, 920 P.2d 759, 76 (Alaska 1996) ("It is well established that building or zoning laws are not encumbrances or defects affecting title to property. Such restrictions are concerned with the use of land").

In *Haw River Land & Timber Co. v Lawyers Title Ins. Corp.*, 152 F.3d 275 (4th Cir. 1998), ordinances were filed in the register of deeds that prohibited timber harvesting in a flood plain buffer zone. Some of the property was within the buffer zone, negating the insured's ability to exercise its timber rights on the land. The Fourth Circuit acknowledged the economic effect on the insured but found the ordinance did not impair title:

While it is true that the ... ordinances have effectively frustrated [timbering], thereby substantially reducing the economic value of the interest purchased, Haw River Timber raises no issue about whether it received legal title to the timber from the grantors. And the Lawyers Title policy insuring marketable title under the timber deed only guarantees Haw River Timber a title that could be enforced in a suit for specific performance, not the economic value of the timber purchased. Indeed, the explicit definition of marketable title provided in the policy limits any more expansive notion by insuring against only those title defects that would entitle a purchaser "to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title." The ordinances on which Haw River relies as a title defect do not impair the grantor's ability to convey a timber deed.

Id. at 279.

Here, there is no evidence that on the date the Policies were issued, any party other than Peachtree, the owner, and the two mortgagees had any claims, liens, or interest in and to the Property. While the Ordinance may have made it difficult to develop certain parts of the

Property, as zoning laws, ordinances, and regulations tend to do, the Ordinance, like other land planning tools, simply affected the use of the Property, not its title.

In addition, Plaintiff's argument that the threat of a future condemnation action caused title to the property to be unmarketable is without merit. Mere preliminary steps or plans for the future appropriation of property, or of a portion thereof, do not constitute a defect or encumbrance rendering title unmarketable. In *Lansburgh v. Market St. Ry. Co.*, 98 220 P.2d 423 (Cal Ct. App. 1950), for example, the court rejected the contention that preliminary steps taken by the city, including incurring bonded debt for a street project, and the presence of a provisional map showing a contemplated future acquisition of part of the property, made the seller's title defective, or at least doubtful, and therefore not marketable. The Court stated there was no resulting "change in the legal relations of the city and county and the owner with respect to the property. The city and county had still in the property in question no more than the same inchoate right of eminent domain which it had in all other property within its boundaries, a right which clearly is not an encumbrance or defect of title." *Id.* at 426-427.

Plaintiffs liberally use the term "right of way" in their brief, trying to confuse the Court as to the effect of the Ordinance. The Ordinance did not establish a right of way and did not alter title to the Property. In fact, the Ordinance is simply an amendment to the official map.

The ordinance setting forth Horry County's right to adopt an official map, Ordinance 107-98,³⁶ provides landowners with an opportunity to challenge decisions made by Horry County zoning officials related to property that may be affected in the future by the official map. If challenged, the Planning Commission must recommend one of the following actions to the County Council: (a) "exempt the land from the restrictions of the Official Map," (b) "issuance of desired permits with specified conditions," or (c) initiate appropriate action *to acquire* the

³⁶ Plaintiffs' Ex. 1, *Ordinance 107-98*.

property.” (emphasis added). County Council must then (a) take official action to exempt the land; (b) take official action to authorize the issuance of denied permits subject to conditions accepted by the owner; or (c) “enter into *an agreement to acquire or institute condemnation proceedings to acquire the affected property*,” with the condemnation proceedings being instituted by County Council or other appropriate governmental agency.³⁷ (emphasis added). If a right of way already had been established, as Plaintiffs disingenuously contend, there would have been no need to condemn the Parkway Parcel or to provide the County with the ability to grant permits for construction.

The Ordinance is not a defect or encumbrance. It did not impair title to the Property and did not impair the ability to convey title to the Property. *See Somerset Sav. Bank v. Chicago Title Ins. Co.*, 649 N.E.2d 1123, 1126-28 (Mass. 1995) (“An individual can hold clear title to a parcel of land, although the same parcel is valueless or considered economically unmarketable because of some restriction or regulation on its use. A title insurance policy provides protection against defects in, or liens or encumbrances on, title. Such coverage affords no protection for governmentally imposed impediments on the use of the land or for impairments in the value of the land.”); *Dave Robbins Const., LLC v. First American Title Co.*, 249 P.3d 625, 628 (Wash. Ct. App. 2010) (finding lots on which developer planned to build homes were not rendered “unmarketable,” within meaning of title insurance policies because the lots were located in historical district, even though the historical district designation burdened the ability to develop the land; there were no defects affecting legally recognized rights and incidents of ownership of the lots).

³⁷ *Id.* at 5. This ordinance defines “condemnation” as “[t]he exercise by a governmental agency of the right of eminent domain.” This ordinance defines “eminent domain” as “[t]he authority of a government to take or to authorize the taking of private property for public use.” *Id.* at 2.

“A title insurance commitment or policy is not a zoning or building code due diligence report, or a substitute for that due diligence.”³⁸ In that regard, as mentioned above, Jericho State requested a letter from the municipality confirming that a bridge would not be built.³⁹ Jericho State’s attorneys were asked to remove that item from the closing checklist. Jericho State and its attorneys, at their own peril, decided not to proceed with this due diligence, and Jericho State cannot rely on Chicago Title to stand in the place of that failure to complete that due diligence. The Policies simply do not cover zoning matters and use regulations. That is why Jericho State’s attorneys requested additional information regarding the bridge and zoning in the first place. *See Aldrich v. Hawrylo*, 656 A.2d 1304, 1309 (N.J. Super. Ct. App. Div. 1995) (finding zoning ordinances and resolutions are not title matters and the title policy at issue “squarely places on the prospective purchaser and his attorney the burden of investigation and compliance with local ordinances and land use resolutions as they may affect a particular property”).

The Ordinance does not fall within the insuring provisions of the Policies.

3. Plaintiffs’ claims are excluded.

The insurer bears the burden of establishing exclusions to coverage. *Boggs v. Aetna Cas. & Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565, 568 (1979). “[I]nsurers have a right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition.” *S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 638 S.E.2d 103, 104–05 (Ct. App. 2006). Courts cannot “torture the ordinary meaning of language to extend coverage expressly excluded by the terms of the policy.” *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 474, 438 S.E.2d 275, 277 (Ct. App. 1993). If there is no coverage under the insuring provisions of an insurance policy, coverage cannot be created based

³⁸ J. Bushnell Nielsen, *Title and Escrow Claims Guide*, at 11-2 (2016 Ed.).

³⁹ Plaintiffs’ Ex. 26, *Gwinn Email*.

on the exceptions or qualifications contained in the exclusions. 8 Allan D. Windt, *Insurance Claims & Disputes: Representation of Insurance Companies and Insureds*, § 6:2.

To the extent the Ordinance falls under the insuring provisions of the Policies, which Chicago Title denies, coverage is excluded by Exclusion 1, removing coverage against various forms of governmental regulation of the use of property, Exclusion 2, eliminating coverage for condemnation or eminent domain, and other exclusions.

a. Any claimed loss related to the Ordinance is excluded by Exclusion 1.

The Policies exclude various forms of governmental regulation of the use of property. The Policies exclude coverage for loss or damage which arises by reason of any law, ordinance, government regulation, or any government police power. More specifically, the Policies exclude loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1 (a) *any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or change in the dimensions or area of the land or any parcel of which the land is or was a part of; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.*
- (b) *Any government police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. (emphasis added).*

The Ordinance is a land planning tool in the nature of a zoning matter. S.C. Code Ann. § 6-7-1220 (an official map is "one of the several instruments of land use control.").

Despite the plain language of the statutes referring to the map as a land planning tool, Plaintiffs argue the purpose of the Ordinance is not to regulate use but rather to designate a right-of-way and transfer title. Plaintiffs argue “this exclusion applies to laws relating to land use only, not those affecting title itself,” and “the Ordinance is not such a law.”

However, as detailed below, the right of way could not have existed and title to that right of way could not have vested in any governmental entity until a condemnation action was filed, which is consistent with official map ordinance. A right of way is not created by changes to an official map. No deprivation of property or rights occurred as a matter of law.

“Upon the adoption of an official map, or even amendments to the map, there is not an immediate deprivation of either property or rights.” 3 *Rathkopf’s The Law of Zoning and Planning* § 50:11 (4th ed. 2016). The designation of a “particular property or area as a potential or future site for a public program or project does not constitute a taking.” 2A *Nichols on Eminent Domain* § 6.01[17][a] (3rd ed. 2004). Similarly, “the adoption, filing, or recording of maps or plans for future roadway development does not constitute a taking.” *Id.* §6.01[17][b].

A public right of way is created only by the filing of a condemnation action. A condemnation action was filed after the effective dates of the Policies and after the date funding was approved for the Parkway Project.⁴⁰

The Ordinance is an attempt to control use of the Property. The Ordinance states its purpose is to provide opportunities for governmental entities to reduce “future acquisition cost” by “limiting development.” The Ordinance is a zoning law or regulation that restricts, regulates, and prohibits “the occupancy, use, or enjoyment of the land,” falling squarely within Exclusion

⁴⁰ See *Danforth v. United States*, 308 U.S. 271, 286 (1939) (“The mere enactment of legislation which authorizes condemnation of property cannot be a taking. Such legislation may be repealed or modified, or appropriations may fail.”).

1. If, for sake of argument, the Ordinance is not a law, ordinance or governmental regulation, then it is a government police power excluded from coverage by Section 1(b) of Exclusion 1.

Plaintiffs inappropriately rely on *Lyons v. Fidelity Nat. Title Ins. Co.*, 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015). *Lyons* involved a residential owner's title policy and the ability to place a mobile home on property. The residential owner's title policy contained expanded insuring provisions, including insuring the situation where the owner could not use the property because use as a single-family residence violated an existing zoning law. The zoning exclusion in the residential owner's policy stated it did not limit the coverage as to single family residences and zoning contained in the expanded insuring provisions. Here, the Policies contain no such provisions or carveouts.

The Ordinance is excluded by the plain meaning of Exclusion 1.⁴¹

b. The exception to Exclusion 1 does not apply.

Exclusion 1 contains an exception "to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance *resulting from a violation or alleged violation* affecting the land has been recorded in the public records at Date of Policy."

First, there is no evidence of a notice of the enforcement⁴² of any "law, ordinance or governmental regulation," including "building and zoning laws, ordinances, or regulations." The

⁴¹ See *Aldrich v. Hawrylo*, 656 A.2d 1304, 1309 (N.J. Super. Ct. App. Div. 1995) (finding zoning ordinances and resolutions are not title matters and "they are excluded from coverage in title insurance policies."); *Dyer & Moody, Inc. v. Dynamic Constructors, Inc.*, 357 So. 2d 615, 619 (La. Ct. App. 1978) (finding code restrictions prohibiting improvements that would prevent the natural run-off of water were excluded by the exclusion for any law, ordinance or governmental regulation relating to building requirements); *Haw River Land & Timber Co. v. Lawyers Title Ins. Corp.*, 152 F.3d 275 (4th Cir. 1998) (holding ordinances which prohibited certain uses of property within a designated distance from the shore of a river were found not to affect title and to be excluded by Exclusion 1); *Sonnett v. First American Title Ins. Co.*, 309 P.3d 799, 805-806 (Wyo. 2013) (finding a "master plan" of use restrictions that an owner imposed on his own property in order to get a zoning change were part of the zoning use conditions, not a declaration of restrictions, and therefore were excluded from coverage under Exclusion 1).

⁴² "Enforcement" is defined as "The act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command." *Black's Law Dictionary* 528 (6th ed. 1990).

Ordinance, an amendment to the official map, alone cannot be the notice of the enforcement of its own provisions *See Notaro Homes, Inc. v. Chicago Title Ins. Co.*, 722 N.E.2d 208, 214 (Ill. Ct. App. 1999) (finding an amendment to a zoning ordinance recorded “adds nothing in terms of its enforcement” and therefore the exception to the exclusion was found inapplicable); *Elysian Investment Group v. Stewart Title Guar. Co.*, 129 Cal.Rptr.2d 372 (Cal. Ct. App. 2002) (finding a recorded municipal notice of structures classified as either hazardous, substandard or a nuisance, did not comprise either a defect, lien, or encumbrance on the title or unmarketability of title under the policy, even if subsequent events might result in enforcement ultimately affecting title; the notice related to the physical condition of the property, and building restrictions created by ordinance, for which there is no coverage, was not a notice of enforcement under municipal procedures).

There is no evidence of a notice of a defect, lien, or encumbrance resulting “from a violation or alleged violation affecting the land.” Because there was never a violation,⁴³ neither alleged nor existing, of the Ordinance, there cannot be a notice of a violation or alleged violation. The Ordinance is not a notice of a violation or alleged violation of the Ordinance. There is no notice in the public records resulting from a violation or alleged violation of a law, ordinance, or governmental regulation. *See Haw River Land & Timber Co.*, 152 F.3d at 281 (holding even though the ordinance was recorded, “there is no evidence that any enforcement proceeding was ever initiated or ‘notice’ given to enforce the buffer zone established by Garner’s ordinances. Nor is there any indication that a notice of a violation of that buffer zone was ever issued.”).

⁴³ “Violation” is defined as “Injury; infringement; breach of right, duty or law. The act of breaking, infringing, or transgressing the law. *Rabon v. South Carolina State Highway Dept.*, 258 S.C. 154, 187 S.E.2d 652, 654.” *Black’s Law Dictionary* 1570 (6th ed. 1990).”

The Ordinance does not set forth a notice of enforcement of its own provisions. The Ordinance is not notice of any violation or alleged violation of its own terms. Therefore, the exception to the Exclusion 1 does not apply.

c. Plaintiffs' claims are excluded by Exclusion 2.

The Policies exclude coverage for loss or damage arising from rights of eminent domain. More specifically, the Policies exclude loss or damage which arise by reason of:

- 2 Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which occurred prior to the Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

The Parkway Parcel was condemned, as a matter of law, on December 15, 2009, when the Condemnation Action was filed, not before. The Ordinance is not a condemnation. Under South Carolina law, the taking is complete, and the condemning authority is entitled to take possession, when the condemnation notice is given. S.C. Code Ann. § 28-2-90. The condemnation notice must contain certain information in order to be effective to cause a transfer of title.⁴⁴ If the landowner disputes the amount of compensation offered by the condemning authority, the matter goes to trial; however, the dispute over the amount of compensation does not delay the transfer of the property.⁴⁵

The Parkway Parcel had not been condemned on the effective dates of the Policies—July 25, 2006. The SCDOT accordingly would have had no reason to file the Condemnation Action if the Parkway Parcel had already been condemned on July 25, 2006. If the Parkway Parcel had

⁴⁴ See S.C. Code Ann. § 28-2-280. A condemnation notice must be captioned "CONDEMNATION NOTICE, TENDER OF PAYMENT," must designate the condemning authority and all of the owners of the land being condemned, contain a legal description for the land being taken, state the basis for the right to take the land, attach a map or sketch, state where the owner may go to inspect the plans for the project, and contain a detailed notice promulgated by this section. The Ordinance contains none of this.

⁴⁵ S.C. Code Ann. §§ 28-2-220; 28-2-230. See also *Carolina Power & Light Co. v. Copeland*, 188 S.E.2d 188, 258 S.C. 206 (1972); *City of North Charleston v. Claxton*, 315 S.C. 56, 431 S.E.2d 610 (1994); *City of Folly Beach v. Atlantic House Properties, Ltd.*, 321 S.C. 241, 467 S.E.2d 928 (1996).

already been taken, Peachtree would not have offered in 2007 to convey the Parkway Parcel to Horry County;⁴⁶ Jericho State's foreclosure counsel would not have testified in 2007 that there were no liens or encumbrances on the Property;⁴⁷ Jericho State would not have alleged in 2009 in the Zoning Rescission Action that it was the owner of the Parkway Parcel;⁴⁸ the SCDOT would not have alleged in 2009 in the Condemnation Action that Jericho State was the owner of the Parkway Parcel;⁴⁹ and Jericho State's attorney would not have argued to the jury that "[o]n December 15, 2009, the [Jericho State] owned 131.40 acres of land . . . They owned that. That land was intact."⁵⁰

Plaintiffs claim a taking occurred by the recording of the Ordinance. That claim is without merit because a governmental entity's threat to condemn or a governmental entity's publishing of plans to possibly do something in the future, including documenting such plans on an official map, does not amount to a taking.⁵¹

The South Carolina Supreme Court analyzed this issue in *Kiriakides v. The School District of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). In *Kiriakides*, the landowner sued a school district, claiming the "stigmatization of [his] property as well as the unreasonable delay in commencing condemnation [proceedings] has amounted to an inverse condemnation of [his] property." *Id.* The master found no taking occurred. *Id.*

The South Carolina Supreme Court, in a unanimous opinion, affirmed the master and adopted his reasoning. The master concluded the school district's pre-condemnation activities "certainly did not give rise to a taking, regulatory or otherwise." *Id.* at 16, 675 S.E.2d at 443.

⁴⁶ Plaintiffs' Ex. 12, *PDD Lawsuit*.

⁴⁷ Defendant's Ex. 6, *Foreclosure Transcript of Hearing* at 12.

⁴⁸ Plaintiffs' Ex. 12, *PDD Lawsuit*.

⁴⁹ Defendant's Ex. 10, *Condemnation Notice and Amended Condemnation Notice*.

⁵⁰ Defendant's Ex. 12, *Trial Transcript—Condemnation Action* at 32.

⁵¹ "The adoption, filing, or recording of maps or plans for future roadway development does not constitute a taking." 2A *Nichols On Eminent Domain* §6.01[17][b], at 6-93 (3rd ed. 2004).

In adopting the master's reasoning, the Court stated as follows:

The master additionally observed his conclusion was supported by public policy, namely, the construction of public projects would be severely impeded if the government incurred liability for inverse condemnation as a result of merely announcing plans to condemn, citing *National By-Products, Inc. v. City of Little Rock*, 323 Ark. 619, 916 S.W.2d 745, 749 (1996) ("Construction of public-works projects would be severely impeded if the government could incur inverse condemnation liability merely by announcing plans to condemn property in the future."); *Santini v. Connecticut Hazardous Waste Management Service*, 251 Conn. 121, 739 A.2d 680, 691 (1999) ("[I]f the government were to be considered as having accomplished a compensable taking as a result of mere planning that, because of its publicity, harmed the value of property, public planning would be discouraged...."); *City of Buffalo v. J.W. Clement Co.*, 28 N.Y.2d 241, 321 N.Y.S.2d 345, 269 N.E.2d 895, 903-04 (1971) (stating the threat of condemnation generally does not constitute a taking and any changes in value are incidents of ownership). The master stated that Kiriakides's arguments, "if accepted, would have a devastating impact on government and its citizens."

We agree with the master's determination that Kiriakides did not establish a claim for inverse condemnation. We find no merit to his arguments that the mere threat of a condemnation suit stigmatized his property and that the School District's alleged delay in bringing this action entitled him to damages for an inverse condemnation.

Id. ⁵²

⁵² The Supreme Court and the master cited favorably to the following authorities in support of their rulings: *Joseph M. Jackovich Revocable Trust v. Alaska Dep't of Transp.*, 54 P.3d 294, 302 (Alaska 2002) (stating "there is no indication the state did anything more than make announcements, prepare and publish plans, and provide publicity concerning the project" and no evidence the state interfered with the property rights of the landowners); *City of Chicago v. Loitz*, 295 N.E.2d 478, 480 (Ill. 1973) (observing "the weight of authority in other states and in the Federal courts, is that mere planning by a governmental body in anticipation of the taking of land for public use and preliminary steps taken to accomplish this, without the filing of proceedings and without physically taking or actual invasion of the real estate, is not actionable by the owner of the land"); 29A C.J.S. *Eminent Domain* § 90 (2007) (stating the mere planning in anticipation of a public improvement is not an actionable taking of property). Numerous other courts have held that pre-planning activity by government officials and targeting a property for possible future condemnation does not amount to a taking. See, e.g., *NBH Land Co. v. United States*, 576 F.2d 317, 318 (Ct. Cl. 1978) ("Mere candor by public officials about their plans has never been held to constitute a taking. Even a threat of condemnation is not a taking."); *Weintraub v. Flood Control Distr. of Maricopa County*, 456 P.2d 936, 939, 941 (Ariz. 1969) (noting that "[o]ther jurisdictions have uniformly held that the mere publication of the fact that particular or specified property may be" the subject of a future condemnation proceeding, "or the plotting or planning thereof, is not a taking or damaging of such property entitling the owner to be compensated therefor and "notice of preliminary proceedings of proposed actions which may result in taking land for public use is not a damaging of a property which would entitle the owner to compensation therefor," and holding no taking occurred as a matter of law."); *Calhoun v. City of Durant*, 970 P.2d 608, 611 (Okla. Ct. App. 1997) ("Future plans which include a landowner's property in a public use project are not sufficient to bring an inverse condemnation action. The constitution measures a taking of property not by what a state says, or what it intends, but by what it does."); *Westgate Ltd. v. State*, 843 S.W.2d 448, 453 (Tex. 1992) ("publicly targeting a property for condemnation, resulting in economic damage to the owner, generally does not give rise to an inverse condemnation cause of action unless there is some direct restriction on use of the property.").

The Ordinance did not amount to a taking. The Parkway Parcel was not taken until such time that the SCDOT filed the Condemnation Action. Exclusion 2 excludes any damages resulting from the Condemnation Action.

d. The exception to Exclusion 2 does not apply.

The eminent domain exclusion contains an exception when “notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which occurred prior to the Date of Policy which would be binding on the rights of a purchaser for value without knowledge.”

As mentioned above, the only way for the government to exercise its right of eminent domain is under the South Carolina Eminent Domain Procedure Act (the “Act”). The Act provides that a “condemnor may commence an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose.” S.C. Code Ann. § 28-2-60. Most importantly, “The provisions of [the Act] shall constitute the exclusive procedure whereby condemnation may be undertaken in [South Carolina].” *Id.*

The Ordinance and the recording thereof is not contemplated by the Act and it is not an exercise of any part of the exclusive procedure set forth by the Act. The Act requires the filing of a condemnation notice and mandates certain language in the condemnation notice. S.C. Code Ann. §§ 28-2-230 and 28-2-280. The Ordinance is not required or contemplated by the Act.

The taking took place only upon the filing of the Condemnation Action, on December 15, 2009. No taking or inverse condemnation could have occurred as a result of the Ordinance. Accordingly, the exception to Exclusion 2 does not apply.

e. **Plaintiffs' claims are excluded by Exclusion 3(d).**

The Policies exclude coverage for matters that take place after the Policies were issued. More specifically, the Policies exclude loss or damage which arise by reason of: "3. Defects, liens, encumbrances, adverse claims or other matters: . . . (d) attaching or created subsequent to Date of Policy"

The SCDOT exercised its right of eminent domain for the first time pursuant to the Condemnation Action filed December 15, 2009, after the effective dates of the Policies. Any loss or damage claimed by Plaintiffs as result of the condemnation is therefore excluded.

4. **Summary Judgment should be denied because Plaintiffs either have no loss or have not provided evidence of loss.**

a. **Plaintiffs' claims are excluded by Exclusion 3(c).**

The Policies specifically exclude coverage for certain matters which result in no loss or damage to an insured claimant. More specifically, the Policies exclude "3. Defects, liens, encumbrances, adverse claims or other matters (c) resulting in no loss or damage to the insured claimant."

Jericho State acquired title to the Property after foreclosing its second mortgage lien, subject to the \$18,520,000.00 REL Mortgage, an exception in the Jericho State Policy. The amount due on the REL Mortgage exceeds \$34,000,000.00.⁵³ According to Plaintiffs' appraisals, the value of the Property, even without the loss of the Parkway Parcel, does not come close to the original balance of the REL Mortgage.⁵⁴ Accordingly, Jericho State has not suffered a loss.

In addition, Plaintiffs have been compensated for any loss. Any loss Plaintiffs claim to have suffered were compensated by the jury award in the Condemnation Action. Accordingly,

⁵³ Defendant's Ex. 16, *Lynx Jericho First Supplemental Responses to Interrogatories*.

⁵⁴ Plaintiffs' Ex. 14, *Jayroe Appraisal December 15, 2009*; Defendant's Ex. 17, *Jayroe Appraisal June 9, 2015*.

Plaintiffs have suffered no loss or damage.

b. Jericho State was fully paid.

The order foreclosing the Jericho State Mortgage found the debt due under the note it secured totaled \$7,490,000 as of December 3, 2007.⁵⁵ At the foreclosure sale on December 3, 2007, Jericho State was the successful bidder with a bid of \$9,000,000.⁵⁶

In *Preservation Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 751 S.E.2d 256 (2013), the insured lender bid at foreclosure an amount that exceeded the policy amount, but was less than the amount owed under the note. The South Carolina Supreme Court, in construing identical policy language, affirmed the trial court's order reducing the amount due on the note by the amount bid at the foreclosure, and accordingly found the policy amount was reduced to the remaining amount due on the note.

Here, Jericho State's bid exceeded not only the policy amount, but also exceeded the amount due on the note. Jericho State has been fully paid and has suffered no loss.

This finding is consistent with the theory that "a plaintiff can have but one satisfaction of his debt." *Ayers v. Guess*, 217 S.C. 233, 235, 60 S.E.2d 315, 315 (1950). The courts in South Carolina disfavor any activities or practices which have the effect of "chilling" the bidding at a foreclosure sale. *Ex parte Keller*, 185 S.C. 283, 292, 194 S.E. 15, 19 (1937) (courts should be "particularly jealous of the integrity of judicial sales" and all such judicial sales "must be made on free, fair and competitive bidding.").

Jericho State's \$9,000,000 bid effectively chilled the bidding. To the extent there existed a bidder interested in buying the Property, Jericho State's bid exceeding the amount due under the note reduced the possibility of third-parties bidding.

⁵⁵ Plaintiffs' Ex. 10, *Foreclosure Order* at 11-12.

⁵⁶ Plaintiffs' Ex. 11, *Master's Deed*.

c. **Plaintiffs have provided no evidence of loss.**

Paragraph 7 of the Conditions and Stipulations of the Policies state they are “contract[s] of indemnity against actual monetary loss or damage.”⁵⁷ Without a loss, there can be no viable claim under the Policies, contracts of indemnity. Plaintiffs moved for summary judgment on liability, but to show there exists liability, they must show they have suffered a loss. *Marble Bank v. Commonwealth Land Title Ins. Co.*, 914 F. Supp. 1252, 1254 (E.D.N.C. 1996).

Plaintiffs have simply failed to submit competent evidence that they suffered a loss.

Plaintiffs argue the correct date to measure loss is the date the Policies were issued. Chicago Title disagrees with that date of valuation. Nonetheless, Plaintiffs have provided no evidence, expert or otherwise, that the defect they claim exists resulted in any loss on that date. Although Plaintiffs provided appraisals as of the date of condemnation and a subsequent date,⁵⁸ Plaintiffs failed to provide any evidence showing a loss on the date the Policies were issued.

At the very least, there is a genuine issue of material fact on this issue and Plaintiffs’ motion should be denied.

5. **Lynx Jericho cannot suffer a loss, and loss cannot be measured, until Lynx Jericho forecloses the REL Mortgage.**

Jericho State foreclosed its junior mortgage and became owner of the Property in 2008. Lynx Jericho holds the first mortgage, the REL Mortgage, and has not foreclosed. If Lynx Jericho were to foreclose on the REL Mortgage, it would come into title. To the extent Lynx Jericho has a valid claim, that claim would become ripe only when it comes into title.

⁵⁷ Plaintiffs’ Ex. 8 *REL Policy*; Plaintiffs’ Ex. 9, *Jericho State Policy*.

⁵⁸ Plaintiffs’ Ex. 14, *Jayroe Appraisal December 15, 2009*; Defendant’s Ex. 17, *Jayroe Appraisal June 9, 2015*.

An insured lender that has not yet taken title to real estate is unable to prove any defect in the title will cause it to suffer a loan loss. *See* J. Bushnell Nielsen, *Title and Escrow Claims Guide*, at 3-52 (2016 Ed.). “An insured mortgagee has not suffered an identifiable loss unless and until it forecloses its insured deed of trust and a title defect reduces the value of the property, thereby preventing the mortgagee from recouping its loan amount upon resale. If a title defect exists, but the value of the property is nevertheless sufficient to pay the mortgagee the loan amount, then there is no damage compensable under the loan policy.” *First Citizens Bank & Trust Co. v. Stewart Title Guar. Co.*, 320 P.3d 406 (Colo. Ct. App. 2014).

Further, a claim concerning an alleged defect in title is not ripe under a loan policy until the lender has taken title to the property. Under a loan policy, the date of foreclosure is the date on which loss is measured. *See, e.g., Karl v. Commonwealth Land Title Ins. Co.*, 24 Cal.Rptr.2d 912, 920 (Cal Ct. App. 1993) (“At [foreclosure sale], the lender’s note is extinguished and replaced by assets recovered on foreclosure: either cash as paid by a third party bidder or the realty as bought in by the foreclosing lender. It is now possible to measure the value of the recovery by the lender, and we believe the loss which is insured by the title policy should be recognized as of that time.”).⁵⁹

⁵⁹ *See also Associated Bank, N.A. v. Stewart Title Guar. Co.*, 2012 WL 3067895, at *5 (D. Minn. 2012) (“[T]he majority of courts considering the [date of valuation] issue have held that such loss cannot be measured until the note has been repaid and the security for the mortgage is shown to be inadequate ... The majority view comports with the nature of a title insurance policy.”); *Marble Bank v. Commonwealth Land Title Ins. Co.*, 914 F. Supp. 1252 (E.D.N.C. 1996) (“Since a lender suffers loss only if the note is not repaid, the discovery of an insured-against lien does not trigger recognition of that loss. Further, even though the lender’s note is in default, an anticipated loss cannot be measured until completion of foreclosure because only then is there certainty the lender will not be paid in full. Consequently, it is clear that in the typical case the earliest a loss can be claimed on a lender’s policy is at the time of completion of foreclosure.”); *Hodas v. First American Title Ins. Co.*, 696 A.2d 1095, 1097 (Me. 1997) (“The presence of a title defect immediately results in a loss to the holder of a fee interest since resale value will always reflect the cost of removing the defect. In contrast, the holder of a loan policy incurs a loss only if the security for the loan proves inadequate to pay off the underlying insured debt due to the presence of undisclosed defects.”); *Blackhawk Prod. Credit Ass’n v. Chicago Title Ins. Co.*, 423 N.W.2d 521, 525 (Wis. 1988) (holding a mortgagee’s insured loss is sustained only if the “mortgagee’s debt is not repaid and the security for the mortgage proves inadequate,” so the loss must be measured as of that date).

Plaintiffs cite *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 732 S.E.2d 626 (2012), for the proposition that loss is measured on the date of the policy. In *Whitlock*, the South Carolina Supreme Court answered the question certified to it by a federal court and announced that loss under an owner's title insurance policy is measured as of the date of policy, not the date of discovery of the title defect, despite prevailing case law to the contrary. The court found the term "actual loss" in the residential owner's policy under consideration to be ambiguous. In so holding, the court stated "[w]here the insurance contract unambiguously identifies a date for measuring the diminution in value of the insured property or otherwise unambiguously provides for the method of valuation as a result of the title defect, such date or method is controlling." The residential owner's policy at issue in *Whitlock* did not define actual loss and set forth no method of valuation; therefore, the court found the residential owner's policy to be ambiguous.

Here, the Policies unambiguously provide a method of valuation:

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with section 4 of these Conditions and Stipulations.

Unlike the residential owner's policy in *Whitlock*, the Policies, which are loan policies, provide a detailed method of calculating loss, which cannot be ascertained until an insured lender forecloses or acquires title after foreclosure. Accordingly, the Policies are not ambiguous.⁶⁰

Plaintiffs appear to argue the Condemnation Action and the jury's award therein did not provide them full just compensation for the taking of the Parkway Parcel because the valuation date of the taking was December 15, 2009. However, Plaintiffs conceded that issue in that litigation, instead of arguing an earlier date should have been used.⁶¹ Plaintiffs should have raised this issue in the Condemnation Action. Instead of looking to the constitutionally responsible party, the SCDOT, to provide just compensation. Plaintiffs now improperly seek additional just compensation from Chicago Title for a matter clearly not covered by the Policies.⁶²

6. Lynx Jericho's claim is excluded because it created, suffered, assumed or agreed to the claimed defect.

The Lynx Jericho Policy excludes from coverage loss that arises by reason of "defects, liens, encumbrances, adverse claims or other matters" that are "created, suffered, assumed or agreed to by the insured claimant."

Lynx Jericho knew of the Ordinance and the condemnation when it purchased the REL Loan in 2013. Lynx Jericho has the power to foreclose and take title to the Property free and clear of other interests, including the rights of Jericho State. Lynx Jericho then would own the 121.11 acres of land remaining, after the taking by condemnation of 10.18 acres by the SCDOT.

⁶⁰ Plaintiffs argue Chicago Title mistakenly chose the date of the condemnation action as the date of valuation. However, it is Plaintiffs' burden to establish its claimed loss. Plaintiffs' motion was the first time Chicago Title was made aware Plaintiffs contended the date of loss is the date the Policies were issued. Plaintiffs provided expert appraisals as of the date of the condemnation. That is why Chicago Title provided expert appraisals for the same date. Nonetheless, the date of the policy is not the correct valuation date for loss under a loan policy.

⁶¹ Defendant's Ex. 11, *Landowner's Responses to Condemnor's First Requests to Admit*, answer No. 1

⁶² Plaintiffs' claims or argument that a taking occurred earlier are also barred under the doctrine of collateral estoppel or res judicata.

Lynx Jericho's appraiser values the Property as of June 9, 2015, at \$2,500,000 *without* the condemned portion of the parcel.

Lynx Jericho "assumed" the condemnation, as that term is used in the Policy, by purchasing the REL Loan and the REL Mortgage. It "agreed to" take subject to the condemnation of the highway property, as that term is used in the Policy, when it purchased the Peachtree Loan for the offer price of \$447,725.⁶³

Lynx Jericho purchased the REL Loan and obtained the right to own the Property through foreclosure for less than a half million dollars. Its own appraiser opined the Property, minus the condemned land and subject to the noise and other issues created by the condemnation, is worth more than five times what Lynx Jericho paid for it.⁶⁴

An insured cannot establish that it has suffered "actual monetary loss or damage" due to a condition the insured knew existed, while at the same time admitting the Property is worth more than what the insured paid for it.⁶⁵

Exclusion 3(a) bars such claims, because an insured that has contracted to buy land at a certain price due to its known condition is not entitled to be "reimbursed" for a title condition

⁶³ Plaintiffs' Ex. 17, *Trustee Notice-ROFR*.

⁶⁴ Chwatt testified Lynx Jericho purchased the Peachtree Loan and the Saucepan Note together for \$2,500,000. Even if the collateral securing the Saucepan Note had no value, Lynx Jericho would be fully secured as to its purchase price for both loans by the value of the Peachtree Property. Plaintiffs' Ex. 14; Plaintiffs' Ex. 24, Chwatt Dep. at. 22.

⁶⁵ "There is no duty to indemnify an insured when there is no evidence that the defect lessens the value of the property." *Nielsen*, § 3.2.3, at 3-12, n. 31. For example, in *Summer Pond Properties, Inc. v. Transamerica Title Ins. Co.*, 1998 WL 283052 (Wash. Ct. App. 1998), the policy mistakenly included some land which the seller did not own and which the insurer argued the insured had not intended to purchase. The trial court found the insured had failed to submit credible evidence of the value of the land. The appellate court affirmed, finding the insurer did not owe anything because the insured had failed to establish a value for the parcel mistakenly insured. In *Zeiger v. Shons*, 2001 WL 470175 (Ohio Ct. App.), the court said the insured had not suffered a loss due to the fact that the insured parcel was smaller than the insured had thought, when his own appraiser put the value of the property actually owned by the insured at more than policy limits. The "no loss" exclusion, 3(c), states in the negative that there is no coverage if the insured does not suffer a loss in the value of the property. See *Nielsen*, § 3.2.3, at 3-12, n. 31.

that was factored into its purchase price.⁶⁶ Payment of such a claim would convert the policy from an indemnity contract to a windfall.

7. **Lynx Jericho and Jericho State cannot both recover under the Policies.**

If the Court were to determine Chicago Title was required to pay a loss, the Policies state such loss would be payable to only one insured. Conditions & Stipulations 10 provides a payment to the senior lender is deemed to be a payment for the benefit of the junior lender also, negating the possibility that the insurer will pay both insureds for the same loss:

LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

When an insurer has policies in favor of two lenders and makes a claim payment, the money is delivered to the senior lienholder. In this case, if Chicago Title was obligated to make a loss payment, that money would be paid to Lynx Jericho as the holder of the senior lien. That payment would simultaneously extinguish the claims on both Policies.

CONCLUSION

The Policies do not provide coverage for the Ordinance because the Ordinance is neither a title defect nor an encumbrance and the Ordinance did not make title to the Property unmarketable. Zoning ordinances and resolutions are not title matters, and the Policies place on parties other than Chicago Title the burden of investigating and complying with local ordinances and land use resolutions affecting the Property.

⁶⁶ See *Nielsen*, §§ 11.2.1, 11.2.2.

Even if the Court were to conclude the Ordinance or the Condemnation Action falls within the insuring provisions of the Policies, such matters are not covered as the Policies exclude zoning laws, ordinances, and regulations, police powers, eminent domain, post-policy events, matters resulting in no loss or damage, and matters created, suffered, assumed or agreed to by the insured.

Accordingly, there is no coverage afforded to Plaintiffs under the Policies and Plaintiffs' motion for summary judgment should be denied.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
CHICAGO TITLE INSURANCE COMPANY**

July 8, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Jericho State Capital Corp. of Florida,))
)
Plaintiff,)
v.)
)
Chicago Title Insurance Company,)
)
Defendant.)

C/A: 2013-CP-26-5530

Lynx Jericho Partners, LLC,)
)
Plaintiff,)
v.)
)
Chicago Title Insurance Company,)
)
Defendant.)

C/A: 2015-CP-26-1084

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
(As to Liability Only)**

In these consolidated cases, Plaintiffs assert Defendant Chicago Title Insurance Company wrongfully denied their claims for title insurance benefits and each have filed actions alleging: (1) breach of contract, (2) breach of the covenant of good faith and fair dealing, and (3) bad faith refusal to pay insurance benefits. Plaintiffs seek summary judgment for liability on the breach of contract actions only.

SUMMARY OF CASE

Generally, title insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title which are in existence at the time the insured takes title. *Lyons v. Fidelity Nat. Title Ins. Co.*, 415 S.C. 115 (Ct. App. 2015). The purpose of title insurance is to place the insured in the position that he thought he occupied when the policy was first issued. *Whitlock v. Steward Title*, 399 S.C. 610 (2012).

Plaintiffs are insureds under two (2) Chicago Title Loan Policies. The Policies insure title to a tract of land known as Peachtree Plantation, which consists of approximately 131 acres in Horry County. Plaintiff Lynx Jericho Partners ("Lynx Jericho") owns by assignment a first mortgage on the property. Plaintiff Jericho State Capital Corp. of Florida ("Jericho State") owned a second mortgage on the property, upon which it subsequently foreclosed, and is now the owner of the property. As insureds, Plaintiffs seek damages under the Loan Policies for losses caused by a title defect on the property.

The title defect is a highway "right-of-way" running through the middle of the Peachtree Property. The right-of-way is designated by a 2002 Horry County Ordinance that "reserves for future acquisition" property to be used for a four-lane highway known as the Carolina Bays Parkway. The Ordinance, together with an Index Map that specifically shows the location of the right-of-way, was recorded at the Horry County Register of Deeds on July 9, 2002. Because the Ordinance grants the County a "right or interest in" the right-of-way property, it is a defect and encumbrance on the land and is a covered loss as defined by the title policies.

Although the highway right-of-way was a matter of public record at the time Chicago Title issued the Loan Policies on July 25, 2006, Chicago Title failed to identify the defect or except the defect from coverage. Unaware of the highway right-of-way, Plaintiff Jericho State entered into its loan transaction relying on the Chicago Title policy showing clean title.

To be sure, Plaintiffs suffered substantial damage because of the title defect. Following a condemnation action initiated in 2009, there is now a four-lane highway and bridge under construction through the middle of Plaintiffs' property.



(Aerial View of Subject Property)

Chicago Title wrongfully denied Plaintiffs' claims for policy benefits. Plaintiffs acknowledge there remain factual issues as to the measure of damages and bad faith; however, there are no material issues of fact pertaining the recorded Ordinance and the plain language of Chicago Title's Loan Policies and therefore summary judgment as to contractual liability is proper at this time.

STATEMENT OF FACTS

To provide the court an efficient reference for the voluminous factual background discussed below, Plaintiffs have prepared a summary timeline referencing each exhibit which is attached at the end of this memorandum.

The Property

The property in this case is known as Peachtree Plantation ("Peachtree Property") and consists of 131 acres of raw land adjacent to the Intracoastal Waterway. The Property is located in the Socastee Township of Horry County and is subject to the laws and ordinances of Horry County.



(photo from Jayroe's Appraisal, Exhibit 14)

The Title Defect **(2002)**

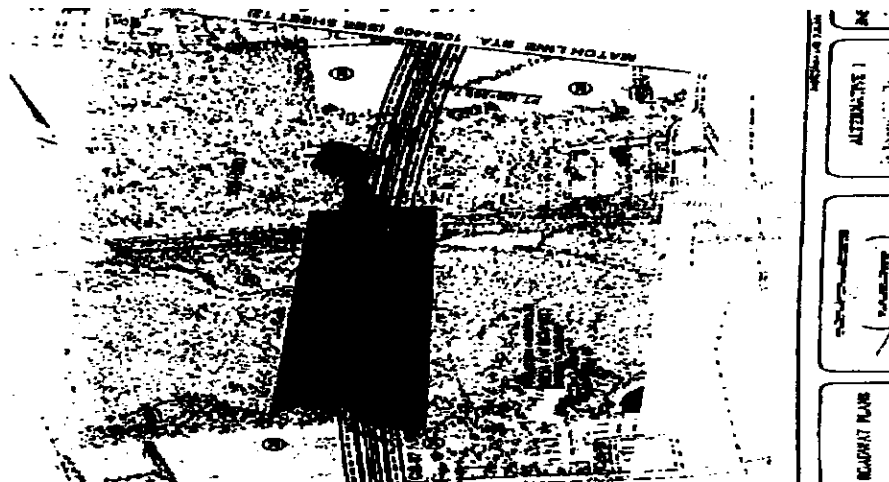
South Carolina's Official Map Statute permits a county to create an "Official Map" to show the location of proposed highways for "future acquisition" by the county. S.C. Code, § 6-7-1210, *et seq.* In 1999, Horry County created its Official Map for the purpose of "designating and reserving future locations of streets [and] highways for future public acquisition."¹ Under this law, once the County designates land for acquisition, those affected landowners are prohibited from any construction or enlargement of any improvements on the reserved land. Subsequently, Horry County adopted an Index Map for the Official Map, which incorporates SCDOT plans showing the "proposed right-of-way alignment for the Carolina Bays Parkway and Conway Bypass."² Initially, the Index Map included only the first leg of the Carolina Bays Parkway.

On July 2, 2002, Horry County passed Ordinance 88-202 (the "Ordinance"), which amends the Index Map to expand the County's right-of-way to include the Peachtree Property, "upon which

¹ EXHIBIT 1, 1999 Ordinance 107-98.

² EXHIBIT 2, 1999 Ordinance 153-99.

the construction of the Carolina Bays Parkway from Highway 501 to Highway 17 By-pass **will occur**" (emphasis added).³ Specifically, attached to the Ordinance are several maps depicting the "addition of the right-of-way" and showing the four-lane highway going through the middle of the Peachtree Property and across the Intracoastal Waterway.



(Sheet 10 of the Right-of-Way Map, Exhibit __)

On July 9, 2002, the Ordinance was recorded at the Horry County Register of Deeds in Deed Book 2497, Page 0986. Thus, by recording the Ordinance, the County put the world on notice of the location of the highway right-of-way and where construction of the Carolina Bays Parkway will occur. Moreover, the Ordinance declares the government's right to purchase the right-of-way property prior to issuing building permits or rezoning approvals "as a means of reducing acquisition costs."

Purchase of the Peachtree Property **(2006)**

Several years after Horry County recorded the Ordinance, Jeffrey Shoup and Tom Hix entered into a contract to purchase the Property through their company Peachtree Properties of

³ EXHIBIT 3, 2002 Ordinance #88-202.

North Myrtle Beach, LLC.⁴ On July 25, 2006, the company purchased the property from the McClam family for \$22,520,000.00.⁵ Shoup and Hix planned to develop the land as a large residential complex with beautiful views and waterway access.

To finance the purchase, Peachtree Properties entered into two (2) loan agreements. First, R.E. Loans, LLC ("REL") loaned the purchaser \$18,520,000.00, securing the loan with a first mortgage on the Property ("First Mortgage").⁶ The second loan was from Plaintiff Jericho State for \$4,263,888.00, which was secured by a second mortgage ("Second Mortgage").⁷

Prior to the closing of the Property, Shoup and Hix informed Jericho State that a new highway was going to be built near the Peachtree Property, but not on the Property, which would be very beneficial to their planned project.⁸ In fact, Shoup and Hix provided Jericho State with an appraisal which said "the subject [property] is only a few miles from the new Highway 31 [and] you can drive to the north or south end of the strand in less than 20 minutes."⁹ Had Jericho State known this was untrue and that the government actually possessed a right-of-way and planned to build this highway through the middle of the Property, it would have never made the loan.¹⁰

The Chicago Title Insurance Policies **(2006)**

At closing, Defendant Chicago Title issued a Loan Policy to each lender. The buyer's closing attorney, Robert H. Gwinn, III, served as insurance agent for Chicago Title. As Chicago Title's agent, Attorney Gwinn performed a title search on the Property and prepared, signed and

⁴ EXHIBIT 4, Fully Executed Contract of Sale

⁵ EXHIBIT 5, Deed

⁶ EXHIBIT 6, First Mortgage

⁷ EXHIBIT 7, Second Mortgage. Jericho All Weather Opportunity Fund, LP ("JAWOF") was a funding partner in the second Peachtree loan. JAWOF made a separate loan to Shoup and Hix on different property in North Carolina known as the "Saucepan Property", which was cross-collateralized with this loan.

⁸ EXHIBIT 24, Chwatt Transcript, p. 66-68, 71; EXHIBIT 25, Svirsky Transcript, p. 72

⁹ EXHIBIT 24, Chwatt Transcript, p. 66-68.

¹⁰ EXHIBIT 24, Chwatt Transcript, p. 63, 71, 92, 134, 141; Svirsky Transcript, p. 92, 93, 94, 96.

delivered two Chicago Title Loan Policies. The First Loan Policy was issued to REL, insuring REL's interest in the Property as holder of the First Mortgage, and a Second Loan Policy was issued to Jericho State insuring its interest in the Property as lender under the Second Mortgage.¹¹

Policy Coverage. The first page of each Loan Policy describes the coverage afforded to Insureds subject to policy exceptions and exclusions. Specifically, the Policies state that Chicago Title "insures, as of the Date of Policy shown in Schedule A, against loss or damage sustained or incurred by the insured by reason of...any defect in or lien or encumbrance on the title [or] unmarketability of title", among other types of losses.

Schedule A. Each Policy includes a Schedule A, which identifies the Date of Policy, the insured parties, the limits of coverage, and a full property description. Both Policies share a Date of Policy of July 25, 2006, which is the date of closing.¹² The First Loan Policy identifies the Insured as REL and its successors and/or assigns and provides coverage for title defects up to a limit of \$17,071,873.33. The Second Mortgage Loan Policy identifies Plaintiff Jericho State and its successors and/or assigns as the named Insured and provides insurance for title defects up to \$4,263,888.00.

Schedule B. Each Policy also includes a Schedule B, which describes the status or condition of title as of the Date of Policy to be insured by Chicago Title. Specifically, Exhibit B lists "Exceptions from Coverage". These Exceptions are specific items known by Chicago Title to have some effect on the Property's title. When title to property passes subject to a listed exception, a title insurance company will not afford coverage for the potential defect because the policy affirmatively discloses that defect to the insured in Exhibit B.

¹¹ EXHIBIT 8, First Loan Policy
EXHIBIT 9, Second Loan Policy

Attorney Gwinn writes title insurance and acts as agent for Chicago Title through his company, Oleander Title Agency. In this capacity, Attorney Gwinn executed both Loan Policies on behalf of Chicago Title.

¹² The first Loan Policy contains a typographical error showing the year as 2007, but all parties agree 2006 is the correct year.

For example, Attorney Gwinn's title search revealed a recorded utility easement over the Property in favor of Grand Strand Water and Sewer Authority. Thus, because Chicago Title provided notice of the easement to the Insureds as an exception on Schedule B, the Policy insures title subject to the easement and provides no coverage for any loss suffered as a result.

Notably, in both Loan Policies, Chicago Title failed to identify the recorded Ordinance and the forthcoming highway in its Exceptions to Coverage. As such, Chicago Title failed to give the Insureds notice of the highway right-of-way and therefore the Loan Policies do not except this title defect from coverage.

Exclusions from Coverage. Each Policy includes the same boilerplate "Exclusions from Coverage". As discussed more fully below, the Policies list general exclusions, such as certain zoning laws, certain rights of eminent domain, defects created or agreed to by the insured, and defects resulting in no damage to the insured, among others.

Conditions and Stipulations. The Policies also contain boilerplate "Conditions and Stipulations", which extend coverage to mortgage assignees (such as Lynx Jericho) and to mortgagees who take title to the property by foreclosure (such as Jericho State), and further provide policy definitions, descriptions of each party's duties and responsibilities and limitations on liability.

At the time Chicago Title issued the Loan Policies, Jericho State did not know of the highway right-of-way nor that Horry County reserved for acquisition and ownership a portion of the Peachtree Property.¹³ Instead, Jericho State completely relied on Chicago Title's Policy showing clean title.¹⁴ To be sure, had Chicago Title revealed the defect, Jericho State would have never engaged in this transaction.¹⁵

¹³ EXHIBIT 24, Chwatt Transcript, p. 63, 71, 92, 134, 141

¹⁴ Id., at p. 136

¹⁵ Id., at p. 43, 63, 134, 136, 137, 140, 141

The Foreclosure **(2007)**

Peachtree Properties defaulted on both loans shortly after the purchase and Jericho State filed for foreclosure. By Order dated November 7, 2007, the Master-In-Equity ordered foreclosure and sale of the Property.¹⁶ In the Order, the court concluded Peachtree Properties owed Jericho State \$7,490,031.71, which consisted of the full principal amount of the Second mMortgage plus accrued interest, fees and expenses, plus \$2,379,952.50 of cure payments made by Jericho State to keep the First Mortgage in good standing and to preserve Jericho State's interest in the Property.

Jericho State's bid of \$9,000,000.00 was the only bid at the judicial sale. As such, Jericho State took title to the Peachtree Property, subject to the First Mortgage, by Master's Deed filed February 26, 2008.¹⁷ The Property remained subject to the First Mortgage with an outstanding balance of approximately \$18,918,047.50.¹⁸ Throughout this process, Jericho State remained unaware that the Peachtree Property was subject to the Ordinance and highway right-of-way.¹⁹

Knowledge of the Defect and the PPD Lawsuit **(2008-2009)**

Jericho State learned in 2008, for the first time, that the government planned to build the Carolina Bays Parkway through the middle of its land.²⁰ At the same time, the real estate market began its downward spiral, particularly affecting property values in coastal areas such as Myrtle Beach. Because Jericho State relied on the Chicago Title Loan Policy showing clean title, it found itself in 2008 owning property that was diminishing in value and currently serving as the designated and reserved location of the government's forthcoming four-lane highway and bridge.

¹⁶ EXHIBIT 10, Foreclosure Order.

¹⁷ EXHIBIT 11, Master's Deed

¹⁸ Based on the promissory note: original balance plus interest less cure payments made by Jericho State

¹⁹ EXHIBIT 24, Chwatt Transcript, p. 63, 133; EXHIBIT 25, Svirsky Transcript, p. 92, 93

²⁰ EXHIBIT 24, Chwatt Transcript, p. 64-66; EXHIBIT 25, Svirsky Transcript, p. 93.

Jericho State also learned in 2008, for the first time, that Shoup and Hix agreed in 2007 to donate the right-of-way land to Horry County in return for a PPD rezoning. In an effort to preserve as much value in the Property as possible, Jericho State filed suit against Horry County on October 12, 2009, seeking to set aside the Shoup and Hix donation.²¹ In response, the SCDOT filed a condemnation proceeding to simply take the highway property. With condemnation filed, the PPD lawsuit became moot and was dismissed.

The Condemnation Lawsuit **(2009)**

On December 15, 2009, the SCDOT filed its condemnation proceeding to take 10.18 acres of the Peachtree Property for the Carolina Bays Parkway as previously identified by the Ordinance.²² The SCDOT presented evidence that the state's taking resulted in a \$998,000 loss to the Property's value as of the condemnation date of December 15, 2009.²³ On the other hand, Jericho State presented evidence that the highway taking resulted in a \$4,010,000 loss to the Property.²⁴ This litigation lasted 5 years, ultimately resulting in a jury verdict of \$2,100,000, which was paid by Jericho State to the First Mortgage holder as more fully described below.

The First Mortgage Assignments and Bankruptcy

While Jericho State spent time and money protecting its rights to the Peachtree Property, the First Mortgage was transferred and assigned many times. Ultimately, by Corrective Assignment dated July 28, 2011, REL assigned the First Mortgage to Mortgage Fund '08 (hereinafter, "MF08").²⁵ Less than two months later, MF08 filed Chapter 11 bankruptcy.

²¹ EXHIBIT 12, PPD Lawsuit; EXHIBIT 24, Chwatt Deposition, p. 113, 117

²² EXHIBIT 13, Condemnation Lawsuit

²³ EXHIBIT 14, Haskell Condemnation Appraisal

²⁴ EXHIBIT 15, Jayroe Condemnation Appraisal

²⁵ EXHIBIT 16, The Corrective Assignment corrected the following previous transactions: In 2007, REL assigned the First Mortgage to Wells Fargo, but then again assigned it in 2008 to MF08. Later that year, Wells Fargo assigned the First Mortgage back to REL presumably so REL could properly assign to MF08 in 2011.

The bankruptcy court transferred all mortgages owned by MF08 to the Mortgage Fund '08 Liquidating Trust. True to its name, the Liquidating Trust sought to liquidate MF08 assets and therefore listed all mortgages, including the Peachtree First Mortgage, for sale to third parties.

Because the Peachtree Property had decreased in value and remained subject to the First Mortgage, Jericho State recognized that a new mortgage owner could take ownership of the Property through foreclosure, leaving Jericho State unable to recoup any of its investment and costs.²⁶ To safeguard its interests in the Property, Jericho State obtained from the Trustee a first right of refusal to purchase the First Mortgage in return for Jericho State paying back taxes on the Property.²⁷ When a third party offered to purchase a portfolio of 5 loans that included the Peachtree First Mortgage, the Trustee gave Jericho State three (3) days to exercise its first right of refusal, conditioned upon purchasing all 5 loans.²⁸

Lynx Jericho Partners, LLC
(2013)

Jericho State could not afford to purchase all five loans.²⁹ Therefore, Jericho State communicated its dilemma to an investment company known as Lynx Asset Services, LLC ("LAS"), who could afford such a purchase.³⁰ Jericho State is not affiliated with LAS but it had worked with one of its principals on prior occasions.³¹ LAS agreed to purchase the loans and created Lynx Jericho for this purpose on April 3, 2013.

With funds provided by LAS, Lynx Jericho purchased the 5 loan portfolio for \$1,950,000, of which \$950,000.00 was allocated by the Trustee to the Peachtree First Mortgage based on a pro-

²⁶ EXHIBIT 25, Svirsky Transcript, p. 34, 35, 51

²⁷ Id., at p. 29, 40, 41. This package of loans included the first mortgage on the N.C. Saucepan Property, which JAWOF owned by foreclosure.

²⁸ EXHIBIT 17, Trustee Letter. EXHIBIT 25, Svirsky Transcript, p. 45, 49, 50.

The portfolio of loans included the first mortgage on the North Carolina Saucepan Property, which JAWOF owned by foreclosure of its second mortgage in a prior NC foreclosure proceeding.

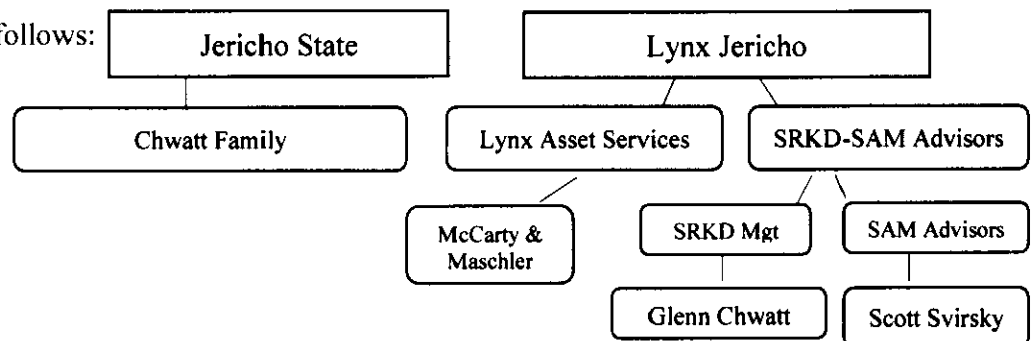
²⁹ EXHIBIT 25, Svirsky Transcript 32

³⁰ Id., at p. 32, 33

³¹ Id., at p. 44, 49, 50

rata measurement of each loan's face value.³² LAS also provided an additional \$500,000 to satisfy back taxes and contractor liens on the other properties and related legal fees.³³ By Assignment dated April 17, 2013, the Trustee executed the transfer and Lynx Jericho became owner of the Peachtree First Mortgage.³⁴

The members of Lynx Jericho are (i) LAS, which owns 100% of the Class A membership, and (ii) SRKD-SAM Advisors, LLC, which owns 100% of the Class B membership shares.³⁵ For clarity, LAS shares no common ownership with Jericho State and is owned by Mike McCarty and the Maschler family.³⁶ Jericho State, on the other hand, is owned by Glenn Chwatt and his family.³⁷ Chwatt is the President of Jericho State and he also owns SRKD Management, which is a member of SRKD-SAM Advisors.³⁸ Under the Lynx Jericho Operating Agreement, SRKD-SAM is related to and/or an affiliate of the property owner. Ownership of the Plaintiffs is more easily visualized as follows:



As the sole Class A member, LAS agreed that Lynx Jericho would not foreclose on the Peachtree Property for at least three years.³⁹ However, this forbearance was not gratuitous, as LAS will be repaid its \$2.5 million contribution at an interest rate of 12%, plus it will additionally

³² EXHIBIT 18, Bankruptcy Court Orders approving sale; EXHIBIT 25, Svirsky Transcript, p. __.

³³ Id., at p 50

³⁴ EXHIBIT 20, Assignment to Lynx Jericho.

³⁵ EXHIBIT 19, Lynx Jericho Operating Agreement

³⁶ EXHIBIT 24, Chwatt Transcript, p. 25; EXHIBIT 25, Svirsky Transcript, p. 36

³⁷ Id., p. 19

³⁸ Id., p. 32, 33; Chwatt Transcript, p. 13, 26

³⁹ EXHIBIT 19, Operating Agreement; EXHIBIT 25, Svirsky Transcript, p. 51.

receive 10% of any funds derived from the loan portfolio including the Peachtree First Mortgage title claim.⁴⁰

Payment of Condemnation Award
(2014)

On December 5, 2014, the jury awarded Jericho State \$2,100,000.00 for the condemnation taking of the 10.18 acres of the highway right-of-way and damage to the remainder of the Property. After taking into account prejudgment interest and attorney fees and costs, Jericho State paid the judgment's net proceeds of \$1,941,737.32 to Lynx Jericho as First Mortgage holder, who directed the attorneys to wire the funds directly to LAS pursuant to the Operating Agreement.⁴¹

Denied Title Insurance Claims

Both Jericho State and Lynx Jericho filed title claims with Chicago Title asserting damages arising from the title defect which was not identified as an exception from coverage. Initially, Chicago Title denied Jericho State's claim based on the Policy's Government Regulation Exclusion, which pertains to losses arising from zoning and land-use laws.⁴² Thereafter, Chicago Title denied Lynx Jericho's claim based on the following: (i) the Ordinance did not create a "defect, lien or encumbrance", (ii) the Ordinance is not recorded in the "public records", (iii) the Ordinance does not constitute eminent domain or a taking, (iv) the condemnation proceeds fully compensated Lynx Jericho, (v) the Ordinance was known by Lynx Jericho but not Chicago Title at the time Lynx Jericho became an insured, and (vi) Lynx Jericho knew of the Ordinance at the time it purchased the First Mortgage.⁴³ This litigation followed.

⁴⁰ EXHIBIT 19, Operating Agreement; EXHIBIT 25, Svirsky Transcript p. 39

⁴¹ EXHIBIT 21, Judgment and Disbursement; EXHIBIT 25, Svirsky Transcript, p. 60, 61

⁴² EXHIBIT 22, Second Loan Policy Claim and Denial of Claim

⁴³ EXHIBIT 23, First Loan Policy Claim and Denial of Claim

SUMMARY JUDGMENT STANDARD

Summary Judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

There are no genuine issues of any material fact pertaining to the plain language of the Loan Policies or the Ordinance's effect on the Property. Interpretation of ambiguous terms in the Policies are matters of law that are resolved by the court in favor of coverage. Therefore, summary judgment as to liability only on Plaintiffs' breach of contract actions are proper at this time.

ARGUMENT

Insurance contracts are construed against the drafter, and in favor of coverage for the insured. *General Acc. Ins. Co. v. Safeco Ins. Companies*, 314 S.C. 63, 443 S.E. 2d 813 (Ct. App. 1994). Insurance policy exclusions are construed "most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 614 S.E.2d 611, 614 (2005). The rule that insurance contracts must be construed against the insurer applies to title insurance contracts. *First Carolinas Joint Stock Land Bank of Columbia v. New York Title*, 172 S.C. 435, 174 S.E. 402 (1934). Title insurance "is designed to save (the insured) harmless from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it." *Firstland Village Associates v. Lawyer's Title Insurance Co.*, 277 S.C.184, 284 S.E.2d 582 (1981).

When evaluating a title insurance claim, the analysis generally involves: (i) determining whether a covered loss occurred, (ii) if there was a covered loss, determining whether the policy's Exceptions from Coverage specifically identify and exclude that particular loss from coverage, (iii) if there was a covered loss not specifically excepted by the policy, determining whether the

loss falls into the policy's general Exclusions from Coverage, and (iv) if there was a covered loss not excepted and not excluded by the policy, what damages are paid by the policy.

Plaintiffs have the burden of proof to establish the title defect is a covered loss. On the other hand, Defendant Chicago Title bears the burden to prove Plaintiffs' loss is barred by an Exclusion to Coverage. As set forth below, the facts show the Ordinance is a title defect and covered loss which is not excepted or excluded from coverage under the Policies.

A. THE RIGHT-OF-WAY IS A COVERED LOSS

Title insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title which are in existence at the time the insured takes title. *Lyons v. Fidelity Nat. Title Ins. Co.*, 415 S.C. 115 (Ct. App. 2015).

1. Title Defect and Encumbrance.

The Chicago Title Loan Policies insure against loss or damage sustained or incurred by the Insured by reason of "any defect in or lien or encumbrance on the title." While Chicago Title's Policies fails to define the terms "defect, lien or encumbrance", South Carolina defines an "encumbrance" as a third party's "right to or interest in land" resulting in diminution in value and generally includes liens, easements and other claims. *Martin v. Floyd*, 282 S.C. 47 (S.C. App. 1984); *Truck South v. Patel*, 339 S.C. 40 (2000). An encumbrance is a third party's "right or interest in the land" resulting in diminution in value and generally includes liens, easements and other claims. *Martin v. Floyd*, 282 S.C. 47 (S.C. App. 1984).

No doubt, the Ordinance establishes Horry County's claim, right or interest in the highway right-of-way land. First, Horry County created its Official Map and Index Map for the purpose of "designating and reserving" locations of streets and highways for "future acquisition". Moreover, the Ordinance unambiguously declares this acquisition for the Carolina Bays Parkway "will occur", thus removing any uncertainty as to the existing status and forthcoming use of the land.

Second, Horry County designates the location of its future highway as a "right-of-way" and attaches maps specifically showing where the highway will run. Indeed, the County defines right-of-way as "land reserved, used, or to be used for a road, cross walk, railroad...or other public purpose."⁴⁴ By creating this right-of-way, the County could not more clearly designate its highway right-of-way on the Peachtree Property.

Finally, as soon as the Ordinance was filed in the public records, the County actively enforced its right and interest in the right-of-way land. In this regard, the Ordinance affirmatively bars any change in use of the property to "minimize its acquisition costs". In fact, the County takes steps to aggressively protect its property interest, as any person violating the Ordinance "shall be guilty of a misdemeanor, and upon conviction shall be imprisoned for a period not to exceed thirty (30) days and/or fined not more than five hundred (\$500) dollars for each offense."⁴⁵ No doubt, the County is willing to send someone to jail in an effort to protect its property interests.

When it denied Lynx Jericho's claim, Chicago Title cited cases from New York, California and Florida and explained "the ordinance merely sets forth a proposed route (as envisioned in 2002) of an extension of the Carolina Bays Parkway" and creates no third party interest in the Property.⁴⁶ Plaintiffs believe such a position lacks good faith because (i) it conflicts with a plain reading of the Ordinance and (ii) ignores South Carolina law. To the extent Chicago Title applies a meaning to these undefined policy terms (defect, lien or encumbrance) which is inconsistent with well established South Carolina law or renders them ambiguous, these terms must be strictly construed against Chicago Title and in favor of Plaintiffs. To be sure, if Chicago Title desired to bar coverage for title defects that include a highway right-of-way that is established by law, then it should have defined those policy terms to say so.

⁴⁴ EXHIBIT 1, Ordinance 107-98, Section 2.1

⁴⁵ Id., at Section 6.3

⁴⁶ EXHIBIT 23, Denial Letter. See also, Defendant's Answers to Plaintiffs' Complaints.

Because the Ordinance plainly creates a highway right-of-way and establishes the County's claim, right or interest in the land, Plaintiffs are entitled to Summary Judgment finding that the Ordinance is a "defect, lien or encumbrance" on the Property and is therefore a covered loss under the Policies.

2. Unmarketability of the Title.

The Chicago Title Loan Policies also insure against loss or damage sustained or incurred by the Insured by reason of "unmarketability of title." The Policies define unmarketability of title as "an alleged or apparent matter affecting the title to the land, not excluded or excepted from a coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title." In other words, Chicago Title essentially defines an unmarketable title as one that is not marketable, which offers little guidance to this claim.

South Carolina defines the term more clearly. "A purchaser of realty cannot be required to take doubtful title, and if there is a reasonable probability of litigation with respect to the title, it is unmarketable." *Scalise Development, Inc. v. Tidelands Investments*, 392 S.C. 27 (Ct. App. 2011), quoting *Sanders v. Coastal Capital Ventures*, 296 S.C. 132 (Ct.App. 1988). "To be marketable, a title need not be flawless; rather, a marketable title is one free from encumbrances and any reasonable doubt to its validity." *Id.*

In this case, the Ordinance is not only a defect and encumbrance, it creates a reasonable probability of litigation with respect to the right-of-way. Because the Property was reserved for future acquisition where construction of the highway "will occur", a future condemnation proceeding was at least a "reasonable probability", if not a near certainty. Indeed, the SCDOT did file litigation, taking the very land described in the Ordinance. Because the Ordinance creates a reasonable probability of litigation with respect to the government's claim, right or interest in the

right-of-way land, it meets South Carolina's definition of unmarketable title and Plaintiffs are entitled to Summary Judgment finding that the Ordinance creates a covered loss under the Policies.

B. THE COVERED LOSS IS NOT EXCEPTED FROM COVERAGE.

Once it is determined that a covered loss occurred, the analysis shifts to whether Chicago Title disclosed the covered loss in the Policies as an Exception from Coverage. Again, the Exceptions listed in Schedule B inform the Insureds of the condition and status of title to the Property and that Chicago Title will not cover losses for these items. In this case, Chicago Title failed to include the Ordinance and highway right-of-way on Schedule B and therefore the Policies do not except this title defect from coverage.

When a covered loss is not excepted from coverage, the next step in the analysis is whether one of the policy's boilerplate exclusions apply.

C. THE COVERED LOSS IS NOT EXCLUDED BY POLICY EXCLUSION #1 (GOVERNMENT REGULATION).

Chicago Title bears the burden of establishing an exclusion's applicability. *Lyons v. Fidelity*, 415 S.C. 115 (2015). The exclusion must be construed liberally in favor of Plaintiffs and strictly against the Chicago Title. *See, Whitlock v. Stewart Title*, 399 S.C. 610 (2012); *First Carolinas Joint Stock Land Bank of Columbia v. New York Title*, 172 S.C. 435 (1934).

Chicago Title contends Policy Exclusion #1 ("Government Regulation Exclusion") excludes the covered loss from coverage. This Exclusion generally includes governmental use restrictions, such as building codes and zoning laws. Moreover, there is an exception to the exclusion, which applies when a notice of enforcement of the law has been recorded in the public records. The Government Regulation Exclusion excludes coverage for:

1. (a) any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) occupancy, use, or enjoyment of the land; (ii) the character dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or change in the dimensions or area of the

land or any parcel of which the land is or was a part of; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

1. The Ordinance is Not Merely a Land Use Restriction or Regulation.

While building and zoning laws may restrict the use of land, they are not intended to establish future governmental ownership rights that “will occur”. The Ordinance’s purpose is not to regulate occupancy, or to govern the character and dimensions of improvements, or to protect the environment. The purpose of the Ordinance is to designate a right-of-way, reserve the land for future acquisition and to reduce the costs of acquiring that property.

The Loan Policies’ Government Regulation Exclusion does not reference the creation of highway right-of-ways or any other type of government claim or right to future property ownership. On its face, this exclusion applies to laws relating to land use only, not those affecting title itself. The Ordinance is not such a law. As such, Chicago Title seeks to broaden the scope of this exclusion beyond its plain language⁴⁷ and thus, at its best, creates an ambiguity that must be construed against Chicago Title. The Government Regulation Exclusion is inapplicable to the Ordinance and Plaintiffs are therefore entitled to summary judgment on this issue as a matter of law.

2. The Ordinance Meets the “Public Records” Exception to the Exclusion.

To the extent the Government Regulation Exclusion applies to the Ordinance, which Plaintiffs deny, this exclusion still does not bar coverage because the Ordinance is recorded in the public records, which meets the exception to the exclusion. Chicago Title, on the other hand,

⁴⁷ EXHIBITS 22 and 23, Denial Letters. See also, Defendant’s Answers to Plaintiffs’ Complaints.

asserts this exception is not met because the Ordinance was not indexed by property owner name and therefore fails to give constructive notice.⁴⁸

The Policies define public records as “records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.” However, the Policy does not say the “public records” must be indexed in any particular way.

South Carolina has already specifically addressed this issue. In *Lyons v. Fidelity National Title Insurance Company*, 415 S.C. 115 (Ct.App. 2015), the title insurance company (a related entity to Chicago Title) asserted this same exclusion to deny coverage for an Horry County “no build” resolution because it was not recorded at the Register of Deeds. While the Plaintiff argued that a governmental regulation is an inherently public record, the insurer argued the resolution was not recorded in the public records and was not available for title examination on the date the policy was issued. After considering the policy’s definition of public records (which is nearly identical to Chicago Title’s definition) and the applicable South Carolina statute, S.C. Code §30-7-10, the Court of Appeals determined the term “public records” was ambiguous. Because ambiguous terms are interpreted against the drafter, the *Lyons* Court rejected the insurer’s argument and interpreted the policy in favor of coverage, concluding the resolution met the public records exception to the exclusion.

The facts of this case clearly show the Ordinance meets the public records exception to the exclusion. First, the Ordinance was recorded at the Horry County Register of Deeds as of the Date of Policy. As such, the Ordinance is recorded in a manner entirely consistent with the plain language of the Policy’s “public records” definition and it provides notice to the world of its enforcement provisions for any violation. Second, any argument the Ordinance is not properly

⁴⁸ EXHIBIT 23, Denial Letter. See also, Defendant’s Answers to Plaintiffs’ Complaints.

indexed for a title search is without merit because this is not required by the Policy and as previously decided to be futile by the *Lyons* Court. Finally, if Chicago Title desired a definition of public records to exclude items recorded in the Deed Books of the Horry County Register of Deeds in a manner consistent with S.C. Code §30-7-10, it could have simply drafted its contract to say so. Based on *Lyons*, the Ordinance meets the public records exception and the Government Regulation Exclusion is inapplicable to this claim as a matter of law.

**D. THE COVERED LOSS IS NOT EXCLUDED BY POLICY EXCLUSION #2
(EMINENT DOMAIN)**

Upon information and belief, Chicago Title does not assert this exclusion bars coverage for Ordinance, as the condemnation proceeding took place after the Date of Policy and the Policies do not insure for events that occur subsequent to the Date of Policy.⁴⁹ To the extent this is true, no further analysis is required.

The Eminent Domain Exclusion excludes coverage for losses resulting from:

“Rights of Eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.”

To the extent Chicago Title does assert this exclusion, the exception to the exclusion applies. In this regard, the Ordinance constitutes a “taking” that occurred prior to the Date of Policy. As stated in *Lucas v SC Coastal Council*, 505 US 1003 (1992), “when the owner of real property has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.” In this case the Ordinance deprived the owner of the Peachtree Property all economically beneficial use

⁴⁹ While Plaintiffs have previously referred to the Ordinance as notice of a projected condemnation, their claims are not based on the subsequent condemnation itself but instead on the Ordinance’s designation of the right-of-way and the County’s plans for “future acquisition” of the property where construction of the highway “will occur”.

of the portion designated within the right-of-way, as the Ordinance prohibits any change of use of this raw land. This deprivation continued until the subject land was condemned and taken through legal force by the SCDOT. As such, this Exclusion does not bar coverage as a matter of law.

**E. THE COVERED LOSS IS NOT EXCLUDED BY POLICY EXCLUSION #3(a)
(CREATED, SUFFERED, ASSUMED OR AGREED TO BY INSURED)**

Chicago Title contends Policy Exclusion #3(a) excludes the covered loss from coverage. This Exclusion bars coverage for defects and encumbrances that are “created, suffered, assumed or agreed to by the insured claimant.” Chicago Title bears the burden of establishing an exclusion’s applicability. *Lyons v. Fidelity*, (2015). The exclusion must be construed liberally in favor of Plaintiffs and strictly against the Chicago Title. *See, Whitlock v. Stewart Title*, 399 S.C. 610 (2012); *First Carolinas Joint Stock Land Bank of Columbia v. New York Title*, 172 S.C. 435 (1934).

Obviously this exclusion is limited to those matters which were actually known by the Insured as of the Date of Policy, as it is impossible for an Insured to assume or agree to something it does not know exists. The Policies define “knowledge or known” as “actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting title.” This exclusion does not apply because the Insureds had no actual knowledge of the Ordinance at the Date of Policy.

1. Plaintiff Jericho State.

Chicago Title asserts Jericho State knew of the highway right-of-way as of the Date of Policy while Chicago Title did not know of the defect. Curiously, Chicago Title seeks to prove this with documents prepared or negotiated by its own agent prior to closing.⁵⁰ The first document is an email from Chicago Title’s agent to Plaintiff’s counsel with a “cc” to Glenn Chwatt of Jericho

⁵⁰ EXHIBIT 23, Denial Letter

State.⁵¹ In this email, Chicago's agent requests to "delete the following requirements from the preliminary checklist: Page 3 Satisfactory resolution of the determination by municipality not to build a bridge...." This checklist requirement was thereafter deleted and there was no further mention of the highway and bridge in any other due diligence paperwork by Chicago Title's agent or the other lawyers.⁵²

Chicago Title also relies on an exhibit to an early, unsigned draft of the sale contract between their agent's client, Peachtree Properties, and the McClams.⁵³ The exhibit is a letter "To Whom It May Concern" from Horry County stating the County is "considering the addition of the future right-of-way for the Carolina Bays Parkway" and "your property is either directly affected by the proposal or is adjacent to the property affected by this proposal." Subsequently, reference to this letter was deleted and the fully executed Real Estate Sales Contract makes no reference to the highway right-of-way.⁵⁴ Notably, Jericho State was not even a party to this contract.

While Chicago Title plucks a couple items from a plethora of closing documents and uses hindsight to assert what it believes Jericho State knew in 2006, these documents actually support Jericho State's understanding that the highway was going to be located on neighboring property. First, Jericho State's testimony in this regard is unambiguous and unrebutted. At most, Chicago Title could assert the documents establish some very weak form of constructive notice, but that is clearly insufficient under the terms of the Policies. Second, the County letter was specifically sent to owners of property *adjacent to* the property affected by the highway right-of-way. Third, all references to any alleged concerns were removed from the due diligence and final sale documents.

⁵¹ EXHIBIT 26, 7/17/06 Email from Attorney Gwinn with attached preliminary checklist.

⁵² EXHIBIT 24, Chwatt Transcript, p. 84

⁵³ EXHIBIT 27, 5/15/02 Letter from Horry County

⁵⁴ EXHIBIT 4, Fully Signed Sales Contract; EXHIBIT 24 Chwatt Transcript, p. 93, 94, 96

The most bizarre part of Chicago Title's argument is its reliance on documents that were prepared or negotiated by their own Agent. When an agent contracts with the authority of his principal, the principal's liability to the third party is contractual and direct. *South Carolina Ins. Co. v. James C. Green*, 290 S.C. 171 (Ct. App. 1986). If these documents provided unambiguous and actual knowledge of the defect, then Chicago Title would have listed it on the Policies' Exceptions to coverage. It is absurd to conclude the documents gave Jericho State notice of the defect but were insufficient to give the same notice to Chicago Title.

Finally, the evidence clearly shows that once Jericho State learned the Peachtree Property was subject to the highway right-of-way in 2008, it quickly filed a lawsuit against the County. Indeed, as is consistent with the entirety of the evidence of record, Jericho State did not know of the defect and it would have never made the loan in the first place had Chicago Title disclosed the Ordinance in its Policy.⁵⁵

2. Plaintiff Lynx Jericho.

Chicago Title argues Lynx Jericho "assumed or agreed to" the title defect because (i) it asserts the knowledge of Jericho State is imputed to Lynx Jericho and (ii) Lynx Jericho purchased the First Mortgage subsequent to the Date of Policy with actual knowledge of the defect.⁵⁶

In this regard, Chicago Title claims any information known by Glenn Chwatt and Scott Svirsky at the Date of Policy was also known by Lynx Jericho. This reasoning is flawed for several reasons. First, there is no evidence that Jericho State knew of the defect on or before the Date of Policy. Glenn Chwatt (as part owner of Jericho State) and Scott Svirsky (who participated in the Jericho State loan transaction in 2006) testified repeatedly that if they had known of the highway right-of-way on the Peachtree Property, Jericho State would never entered into the loan transaction.

⁵⁵ EXHIBIT 24, Chwatt transcript

⁵⁶ EXHIBIT 23, Denial Letter. See also, Defendant's Answer to the Lynx Jericho Complaint.

Second, Lynx Jericho did not even exist on the Date of Policy. The company was formed in 2013 and could not have possibly possessed any knowledge about anything on the Date of Policy in 2006.

Third, Chicago Title disregards its own policy terms to the extent it asserts Lynx Jericho's claim is barred because it assumed or agreed to the defect approximately 7 years *after* the Date of Policy. Again, the Chicago Title Policy insures risks "as of the Date of Policy". It defies logic to suggest that a title defect is excluded from coverage because the insured learns of it at some time after the policy is issued. If that were true, this exclusion would preclude any claim whatsoever and defeat the whole purpose of title insurance.

Fourth, Lynx Jericho's status as mortgage assignee does not change the date upon which the law measures whether an insured assumed or agreed to the defect. In South Carolina, it is well established that an "assignee ... stands in the shoes of its assignor When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor." *Twelfth RMA Partners v. National Safe*, 335 S.C. 635 (S.C.App.1999). As such, Lynx Jericho stands in the shoes of REL, the original lender, and is subject to the same rights and benefits as REL as of the Date of Policy.

Actually, the Loan Policy embraces Lynx Jericho's rights as a mortgage assignee. Pursuant to Section 1(a)(2), the Policy explains that an Insured includes each successor in ownership of the indebtedness, "reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured." Therefore, the Policy provides that Chicago Title can only apply this exception to Lynx Jericho by proving that REL, the predecessor insured, assumed or agreed to the defect as of the Date of Policy. Because Chicago Title cannot prove, and has not even alleged, that REL assumed or agreed to the defect, this exclusion is inapplicable.

Finally, other jurisdictions that have addressed this issue hold that the Date of Policy applies, not the date of mortgage assignment. *See, Fidelity Nat'l Title Ins. Co. v. Matrix Financial Services Corp.*, 255 Fla.App. 874 (Ga.App.2002)(An original lender that became an assignee when it repurchased its loan after being informed of a title defect did not assume or agree to the defect without evidence that it knew of the defect at the time it originated the loan); *Steward Title Guar. Co. v. National Enterprises, Inc.*, 1997 WL 800294, p. 1 (9th Cir. Cal)(unpublished)(Neither the assignee nor its predecessors in interest knew of the defect on the date the policy was issued and therefore the assumed or agreed to exclusion does not apply).

Because neither Jericho State nor Lynx Jericho assumed or agreed to the defect before the Date of Policy, this exclusion does not apply as a matter of law.

F. THE COVERED LOSS IS NOT EXCLUDED BY POLICY EXCLUSION #3(b)
(NOT KNOWN BY COMPANY BUT KNOWN BY INSURED)

Chicago Title contends Policy Exclusion #3(b) excludes the covered loss from coverage. This Exclusion bars coverage for defects and encumbrances that are “not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this title policy.” Chicago Title bears the burden of establishing this exclusion’s applicability and any ambiguity as to the terms of the exclusion must be construed liberally in favor of the insured and strictly against the insurer. *Lyons v. Fidelity*, (2015); *Whitlock v. Stewart Title*, 399 S.C. 610 (2012).

A simple reading of this exclusion shows that it does not apply when the defect is recorded in the public records at Date of Policy. Again, the Ordinance and highway right-of-way was recorded at the Register of Deeds and in the public records of Horry County as of the Date of Policy, and therefore this exclusion does not apply as a matter of law.

G. THE COVERED LOSS IS NOT EXCLUDED BY POLICY EXCLUSION #3(c)
(NO LOSS OR DAMAGE SUFFERED)

Chicago Title contends Policy Exclusion #3(c) excludes the covered loss from coverage. This Exclusion bars coverage for defects and encumbrances that “result in no loss or damage to the Insured claimant.” Chicago Title bears the burden of establishing an exclusion’s applicability. *Lyons v. Fidelity*, (2015). The exclusion must be construed liberally in favor of Plaintiffs and strictly against the Chicago Title. *See, Whitlock v. Stewart Title*, 399 S.C. 610 (2012); *First Carolinas Joint Stock Land Bank of Columbia v. New York Title*, 172 S.C. 435 (1934).

Under Section 7(a) of the Policy, Chicago Title’s contractual liability is capped at the policy limits⁵⁷ and damages are measured by “the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.” Since the value of a mortgagee’s interest is the amount by which the property secures its loan, a lender’s damages equals its lost security due to the defect.

Chicago Title claims Plaintiffs have already been fully compensated by the condemnation award and therefore they have suffered no further loss to be covered by the Policies.⁵⁸ However, Chicago Title fails to measure Plaintiffs’ losses as of the Date of Policy, and it instead measures damages for the defect at the subsequent condemnation date, which is a date nowhere to be found in its Policy. This is a date of financial convenience, as Chicago Title seeks to wrongly benefit from the massive depreciation of the Property’s value and ignores that the purpose of title insurance is “to place the insured in the position that he thought he occupied when the policy was first issued.” *Whitlock v. Stewart Title*, 399 S.C. 610 (2012). While Jericho State acknowledges

⁵⁷ Section 7(a)(i) directs attention to Section 2(c) of the Policy when the insured lender takes title by foreclosure, in which case the amount of coverage is the stated liability limits, not to exceed the amount of principal indebtedness plus interests, cost and amounts advanced to protect the property, less payments received.

⁵⁸ EXHIBIT 23, Denial Letter. See also, Defendant’s Answers to Plaintiffs’ Complaints.

the condemnation award is an offset to its damages, Plaintiffs contend the proper date to measure loss is the Date of Policy, as that is the date of purchase and consistent with South Carolina law.

1. The Importance of Timing.

In *Whitlock v. Steward Title*, 399 S.C. 610, (2012), the insured owner measured its damages as of the date of purchase (which was the same as the date of policy), while the title insurance company sought to use a later date (date of discovery) to establish a lower measurement of damages. The Supreme Court of South Carolina analyzed the issue as follows:

[T]he rubric of loss-valuation is not limited only to mathematical considerations. The specific matter of timing is an inherent part of the task of measuring damages. The question is thus answered by the insurance contract. Consequently, where the insurance contract unambiguously identifies a date for measuring the diminution in value of the insured property or otherwise unambiguously provides for the method of valuation as a result of the title defect, such date or method is controlling. Where, as here, the insurance contract does not unambiguously identify a date for measuring the diminution in value of the insured property or otherwise unambiguously provide for the method of valuation as a result of the title defect, such ambiguity requires a construction allowing for the measure of damages most favorable to the insured. In this case, the policy merely references "actual loss," but does not define the term or provide any guidance for determining the valuation date. Because of the ambiguity in the policy, the insured's damages should be measured as of the date of purchase of the property.

Whitlock, at 613.

The time at which the property is valued is important because the value of a lender's security will fluctuate depending the date but the amount of coverage does not. In this case, the Peachtree Property was purchased in 2006 on the Date of Policy at a value of \$22.5 million⁵⁹, thus providing the lenders near 100% security for their loans. On the other hand, at the condemnation date in 2009, in the depths of the Great Recession, the Property without defect was valued at between \$5.2 million and \$9.2 million.⁶⁰ At these depressed values, the First Mortgage had less

⁵⁹ The price paid for property at an actual, voluntary, and bona fide sale thereof is presumptive evidence of the property's value. *Rutledge v. St. Paul Fire & Marine Ins. Co.*, 286 S.C. 360 (1985).

⁶⁰ In the condemnation case, Jayroe valued the Property at \$9.2m without defect and Haskell valued the property at \$5.26m without defect. Chicago Title's expert values the Property at \$5.915m without defect as of the condemnation date.

than half of its original security before considering the effect of the defect, and the Second Mortgage had no security. This is certainly not the position the insureds thought they occupied when the Policies were first issued.

To illustrate, Jayroe opined the defect reduced the Property value by 44% on the condemnation date, from \$9.2m to \$5.19m. Applying this loss percentage to the value at Date of Purchase, the Peachtree Property decreased in value from \$22.5m to \$12.6m due to the defect. As such, the First Mortgage lost security from \$18.52m (fully secured) to \$12.6m (security with defect), which equals a \$5.92m loss. Similarly, the Second Mortgage lost security from \$3.98m (security without defect after First Mortgage) to \$0 (security with defect), which equals a \$3.98m loss. On the other hand, measuring the loss in value as of the condemnation date as set forth by Chicago Title's expert, the First Mortgage lost security of \$1.08m due to the defect and the Second Mortgage had no security to lose due to the defect. Thus, depending on the date of valuation, the difference is nearly \$9 million of lost security.

2. The Policy is Ambiguous as to the Date to Measure Damages.

Exclusion 3(c) does not set forth a date to measure loss or damage. Although the Policies insure against loss or damage by reason of a defect "as of the Date of Policy", Chicago Title arbitrarily asserts such loss or damage is measured at some different time not found anywhere in its Policies. Therefore, this exclusion is ambiguous at best and "must be construed liberally in favor of the insured and strictly against the insurer." *Whitlock, supra*.

3. Date of Purchase is the Proper Date to Calculate Damages.

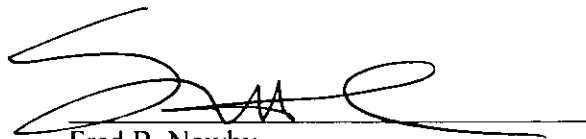
As the Court concluded in *Whitlock*, Plaintiffs assert the purchase date is the proper date to measure damages, as this places them in the position they thought they occupied when the Policies were first issued. Moreover, this date is consistent with a plain reading of the Policies which state Chicago Title shall insure against loss or damage by reason of a defect "as of the Date

of Policy.” To be sure, if Chicago Title desired that damages be measured by some future condemnation date, or any other date, it could have said so in the Policy.

As stated above, Plaintiffs do not seek summary judgment as to a specific amount of damages. However, Exclusion 3(c) does not bar Plaintiffs’ claims as a matter of law, because Plaintiffs suffered damages as of the Policy Date, and the condemnation award, while acting as a set-off, is a measurement based on date that is arbitrary and inconsistent with South Carolina law, and is a value far lower than what would restore Plaintiffs to the position they occupied at the time the Policies were first issued.

CONCLUSION

There are no material issues of fact as to the effect of the Ordinance and the plain language of the Loan Policies. The highway right-of-way created by the Ordinance and recorded in the public records is a defect and encumbrance on the Peachtree Property. Moreover, the Policies fail to identify the Ordinance as an Exception and the Exclusions are inapplicable as a matter of law. Therefore, Plaintiffs are entitled to summary judgment as to liability on their breach of contract actions, with the issue of damages reserved for a future proceeding along with the cause of action for bad faith.



Fred B. Newby
C. Scott Masel
NEWBY, SARTIP, MASEL & CASPER, LLC
P.O. Box 808, Myrtle Beach, SC 29578
(843) 449-9417
Attorneys for Plaintiffs

Date: 5/13/16

685798

COUNTY OF HORRY)
STATE OF SOUTH CAROLINA)

FILED
HORRY COUNTY, S.C.
99 JUN 23 PM 3:00
ORDINANCE NO. 107-98
REGISTER OF DEEDS

AN ORDINANCE PROVIDING FOR AN OFFICIAL MAP FOR THE UNINCORPORATED SECTIONS OF HORRY COUNTY.

WHEREAS, Title 6, Chapter 7, Code of Laws of South Carolina 1976 as amended, authorizes counties to prepare and adopt an Official Map in order to promote and preserve the public safety, economy, good order, appearance, convenience, prosperity, and general welfare.

WHEREAS, The Horry County Planning Commission after due notice has reviewed and conducted public hearings and recommends the adoption of the Official Map ordinance.

NOW, THEREFORE, PURSUANT TO THE AUTHORITY GRANTED BY THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA, AND THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA, BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA:

Section 1. The Horry County Code of Ordinances is hereby amended by the addition of the following language, to be entitled "Official Map:"

SECTION 1 - GENERAL

- 1.0 **AUTHORITY** - This Chapter is adopted pursuant to the authority granted under the South Carolina Code of Laws 1976, Title 6, Chapter 7, Article 13, as amended.
- 1.1 **PURPOSE** - It is the purpose of this ordinance to protect and promote the public safety, economy, good order, appearance, convenience, prosperity and general welfare, by designating and reserving future locations of streets, highways and public utility rights-of-way, public building sites and public open space for future public acquisition.
- 1.2 **JURISDICTION** - This Ordinance shall be effective in the unincorporated portions of Horry County, South Carolina.
- 1.3 **TITLE** - This Ordinance shall be known and may be cited as the "Official Map Ordinance of Horry County."
- 1.4 **SEVERABILITY** - If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections subsections and clauses shall not be affected thereby.
- 1.5 **CONFLICTING ORDINANCES REPEALED** - All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.
- 1.6 **EFFECTIVE DATE** - This ordinance shall be effective upon third reading.

Official Map Ordinance

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SECTION 2 - DEFINITIONS

2.0 **WORDS TO HAVE CUSTOMARY MEANINGS** - Except as specifically defined herein, the word and phrases used in this ordinance shall have their customary meanings, as defined in a standard dictionary.

2.1 **INTERPRETATION OF TERMS** - The following terms shall be defined as follows:

Access - A way or means of approach to provide vehicular or pedestrian entrance or exit to a property.

Access Road - A street designed to provide vehicular access to abutting property and to discourage through traffic.

Activity Node (Center) - A location where numerous transportation trips are generated because of a dense, compact concentration of similar or complimentary land uses. Examples of Activity Nodes are office complexes or regional malls (shopping centers).

Condemnation - The exercise by a governmental agency of the right of eminent domain.

Eminent Domain - The authority of a government to take or to authorize the taking of private property for public use.

Encroachment - Any obstruction in a delineated right-of-way or easement.

Official Map - A map or maps showing the location of existing or proposed public streets, highways, public utility rights-of-way, public building sites and public open spaces. A public building site is one on which a public building will be constructed using public funds.

Right-of-Way - Land reserved, used, or to be used for a road, cross walk, railroad, electric transmission lines, oil or gas pipeline, waterline, sanitary storm sewer or other public purpose.

Right-of-Way Cost - All costs of acquired property, special damages, tenant and lessee right, legal and appraisal fees, relocation assistance payments, and all other incidental expenses and costs incurred in connection with the acquisition of said right-of-way.

Setback - The perpendicular distance between the property line and the primary structure running the length of the distance, excluding uncovered porches, decks, and 18" overhangs.

Street - Any public or private way set-aside for vehicular travel. The word "street" shall include the words "roads", "roadway", and "thoroughfare".

1. **Arterial** - Carry longer-distance major traffic flows between important activity centers. Conveys traffic between centers. They are designed to provide high-speed.

Official Map Ordinance

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high level service for efficient movement of people and goods.

2. **Frontage Road** - A public or private drive which generally parallels a public street between the right-of-way and the front building setback line. The frontage road provides access to private properties while separating them from the arterial street.
3. **Collector** - A street which is used or intended to be used for moving traffic from minor or local streets to arterial streets including the principal entrance and circulation street or streets of a residential developer.
4. **Residential Street** - A street which carries no through traffic and which is used or intended to be used primarily for access to abutting residential lots.
5. **Cul-de-sac** - A local street having one (1) end open to traffic and the other end terminated by a circular vehicle turn-around.
6. **Alley** - A minor way intended to be used primarily for vehicle service access to the rear or side of properties otherwise abutting a street.

SECTION 3 - MAP CREATION

- 3.0 **PREPARATION AND MODIFICATION OF OFFICIAL MAP** - The Planning Commission may receive, make or cause to be made, maps showing the location of lines of proposed new, extended, widened and otherwise improved streets and highways; boundary lines of proposed new and enlarged sites for public buildings, public parks, public playgrounds, public utilities; and other public open spaces in the whole or in any portion of the unincorporated areas of Horry County. When complete, such maps shall become part of, or be considered, the Official Map for Horry County. As necessary, the County Council or Planning Commission may require that surveys showing the exact location of proposed, new, extended, widened or otherwise improved public use areas be completed.

From time to time, as appropriate, the Planning Commission may modify the Official Map. Such modifications shall require that maps showing the location of lines of proposed new, extended, widened and otherwise improved streets and highways; boundary lines of proposed new and enlarged sites for public buildings, public parks, public playgrounds, public utilities; and other public open spaces in the whole or in any portion of the unincorporated areas of Horry County. As necessary, the County Council or Planning Commission may require that surveys showing the exact location of proposed, new, extended, widened or otherwise improved public use areas.

SECTION 4 - MAP ADOPTION

- 4.0 **ADOPTION OF OFFICIAL MAPS** - Official Maps may show the location of existing or proposed public streets, highways and utility right-of-ways, public building sites and public open spaces. The Official Map may include the whole or any part or parts of the unincorporated area of Horry County. County Council shall certify the fact of the establishment of the Official Maps to the Clerk of the Circuit Court of Horry County. The Official Map may consist of any number of separate maps which need not be drawn

Official Map Ordinance

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to the same scale; however, such maps shall be indexed on a single map depicting unincorporated areas of Horry County.

- 4.1 **PUBLIC HEARING** - Before enacting the Official Map Ordinance, or amending the adopted Official Map, the County Council shall hold a public hearing thereon; notice of the time and place of which shall be published in a newspaper of general circulation in the county at least fifteen (15) days in advance of the scheduled public hearing date. For property owners whose property lies within an area to be reserved for public use, a letter of notification shall be sent informing them of the date, time and location of the public hearing.
- 4.2 **AMENDMENTS** - County Council may from time to time make additions to or modifications of the Official Map and this ordinance.
- 4.3 **PROCEDURES FOR ADDITIONS AND MODIFICATIONS** - The following procedures shall be followed in making additions and modifications: No change in or departure from the maps shall be made until such proposed changes or departures shall first have been submitted to the Planning Commission for review and recommendation. The Planning Commission shall have thirty (30) days within which to submit its report. If the Planning Commission fails to submit a report within the thirty (30) day period, it shall be deemed to have recommended the proposed amendment.

Once the Planning Commission recommendation has been received by the County Council, a public hearing shall be held.

SECTION 5 - REGULATION

- 5.0 **CONSTRUCTION OR ENLARGEMENT OF IMPROVEMENTS PROHIBITED** - After adoption of any Official Map by the county, no building, structure, or other improvement, shall hereafter be erected, constructed, enlarged or placed within the reservation area, or setbacks beyond such area, without prior exemption or exception as established by this ordinance or amendments hereto.
- 5.1 **CONFLICTING PERMITS** - No department, office or employee of Horry County vested with the duty or authority to issue permits or grant approval of the subdivision of land shall issue a permit or approval for uses, buildings, structures, or subdivision where the same would be in conflict with the reservations of the Official map. Any such permit or approval shall be null and void if issued in conflict with the provision of this ordinance.
- 5.2 **PROCEDURE FOR APPEALING BUILDING PERMIT AND LAND USE RESTRICTIONS** - In cases where any permit has been refused under this authority, the following appeal procedure may be utilized by any affected property owner:
- a. An Appeal shall be presented to the Planning Commission.
 - b. The Planning Commission shall evaluate the appeal and make a report within thirty

Official Map Ordinance

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(30) days to the County Council and other appropriate public agency. If no report is made within thirty (30) days, the Planning Commission shall be deemed to have recommended that the appeal be granted.

5.2.1 REVIEW - PLANNING COMMISSION

The local Planning Commission shall recommend one of the following actions to the County Council:

- a. Exempt the affected land from the restrictions of the Official map.
- b. Issuance of desired permits with specified conditions.
- c. Initiate appropriate action to acquire the property.

5.2.2 OFFICIAL ACTION - COUNTY COUNCIL

Upon receipt of the report of the Planning Commission, the County Council shall within one hundred (100) days:

- a. Take official action to exempt the affected land from the restrictions of the Official map provided that such exemption shall have no effect on any applicable zoning restrictions pertaining to the property.
- b. Take official action to authorize the issuance of the denied permits subject to specified conditions accepted by the owner, provided that such conditions shall not be contrary to any applicable zoning restrictions pertaining to permitted uses.
- c. Either enter into an agreement to acquire or institute condemnation proceedings to acquire the affected property. Action to acquire such property may be instituted by the County Council or other appropriate public agency.

5.2.3 TIME LIMITS ON COUNCIL ACTION - Failure of the County Council to act within one hundred (100) days of the receipt of the report of the Planning Commission shall be deemed to constitute approval of the proposed appeal. Thereupon denied permits shall be issued upon demand.

5.2.4 PUBLIC HEARING - Before taking final action, County Council shall hold a public hearing as prescribed in Section 4-1 of this ordinance.

SECTION 6 - ADMINISTRATION, ENFORCEMENT, COMPLAINTS AND REMEDIES

6.0 ADMINISTRATION AND ENFORCEMENT - The Zoning Administrator shall administer and enforce this ordinance. The Zoning Administrator may be provided with the assistance of such other persons as the Planning Director may direct. It is the intent of this chapter that all questions of administration and enforcement shall first be presented to the Zoning Administrator and that such questions shall be presented to the Planning

Official Map Ordinance

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Commission only upon reference by or appeal from the decisions of the Zoning Administrator.

No building shall be issued a zoning permit or certificate of zoning compliance under the terms and conditions of the Official Map Ordinance of Horry County until all plans for the development proposal have been submitted to the Zoning Administrator for review and approval.

- 6.1 **FILING FEES** - A non-refundable fee of \$150.00 will be charged for appeal and exemption of properties from the restrictions of the Official Map.
- 6.2 **COMPLAINTS REGARDING VIOLATIONS AND REMEDIES** - Whenever a violation of this ordinance occurs or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate and take whatever action is necessary to assure compliance with the ordinance.
- 6.3 **REMEDIES** - In case any building or structure is proposed to be, or is erected, constructed, reconstructed, altered, maintained, or used; or any land is proposed to be or is used in violation of this ordinance, the Zoning Administrator or any other person aggrieved may in addition to other remedies provided by law institute an injunction, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove, such unlawful erection, construction, reconstruction, alteration, maintenance, or use.
- 6.5 **PENALTIES FOR VIOLATION** - Any person violating any provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be imprisoned for a period not to exceed thirty (30) days and/or fined not more than five hundred (\$500) dollars for each offense. Each day such violation continues shall constitute a separate offense.

Dated this _____ day of _____, 1998.

HORRY COUNTY COUNCIL

Raymond J. Brown, Acting Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Chandler Brigham, District 4

Chandler C. Prosser, District 5

James R. Frazier, District 7

Official Map Ordinance

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Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan, District 11

ATTEST

Roseella H. Carroll, Clerk to Council

Approved:

County Staff Attorney

FIRST READING: 8-18-98

SECOND READING: 9-1-98

THIRD READING: 6-22-99

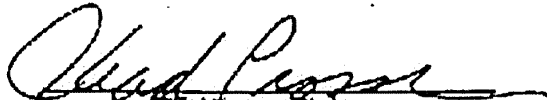
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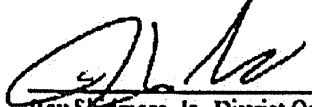
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HORRY COUNTY COUNCIL


Chad Prosser, Chairman

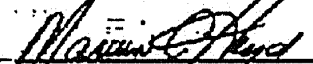

Ray Skidmore, Jr., District One

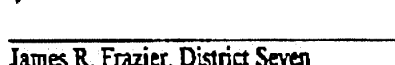

John Kost, District Two


Ray Brown, District Three


Chandler Brigham, District Four


Terry B. Cooper, District Five


Marvin C. Heyd, District Six


James R. Frazier, District Seven

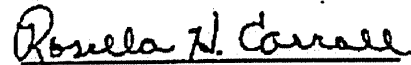

Liz Gilland, District Eight


Ulysses Dewitt, District Nine


Johnny Shello, District Ten


Janice G. Jordan, District Eleven

ATTEST:


Rosella H. Carroll, Clerk to Council

Section A - [24 x 80]

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FILED
COUNTY OF HORRY Horry County, S.C.
STATE OF SOUTH CAROLINA
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525410
ORDINANCE NO. 153-99

R.M.C.
AN ORDINANCE PROVIDING FOR THE ADOPTION OF AN OFFICIAL MAP FOR
THE UNINCORPORATED SECTIONS OF HORRY COUNTY.

Whereas, Title 6, Chapter 7, Code of Laws of South Carolina 1976 as amended, authorizes
counties to prepare and adopt an Official Map, and

Whereas, Horry County Council developed and adopted Ordinance # 107-98 allowing an
Official Map to be created for the purpose of promoting and preserving the public health, safety,
and welfare in Horry County, and

Whereas, one purpose of the Official Map is to designate and preserve future locations of streets
and highways, and

Whereas, the Carolina Bays Parkway and Conway By-Pass are two important roadways that are
needed in Horry County to promote and preserve the public safety, economy, prosperity, and
general welfare, and

Whereas, the Horry County Planning Commission has reviewed the plans for the Carolina Bays
Parkway and Conway By-Pass and recommends that their locations be shown on an Official
Map,

NOW, THEREFORE BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY
COUNTY, SOUTH CAROLINA:

Ordinance 107-98 is amended as follows:

Section 1. The attached map shall be adopted as the Index Map for the Official Map. The index
map shows the proposed right-of-way alignment for the Carolina Bays Parkway and Conway
By-Pass.

Section 2. Further, the following supporting maps, right-of-way plans, and effected tax map lists
shall be included as attachments to the Official Map. These documents include detailed
descriptions and information that provide accurate locations for the Carolina Bays Parkway and
Conway By-Pass. The supporting materials are:

1. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway
Horry County Carolina Bays Parkway S.C. Route 31 (Segment "A") Dated April 1999.
2. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway
Horry County Carolina Bays Parkway S.C. Route 31 (Segment "B") Dated April 1999.

DEED
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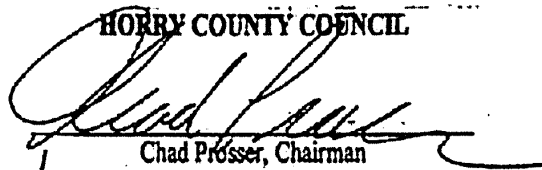
3. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Carolina Bays Parkway S.C. Route 31 (Segment "C") Dated April 1999.
4. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 1), Dated January 1993, Certified by S.C.P.E. 13500 May 1994.
5. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 2), Revised May, 1998.
6. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 3), Revised May, 1998.
7. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 4), Revised May, 1998.

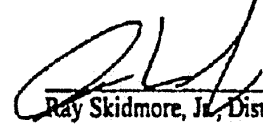
Section 3. Effective Date. This ordinance shall become effective on third reading.

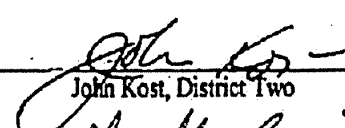
FIRST READING: 9-7-99
Second Reading: 9-21-99
Third Reading: 10-5-99

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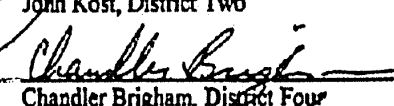
HORRY COUNTY COUNCIL

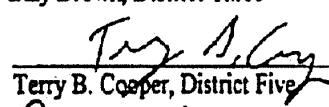

Chad Prosser, Chairman

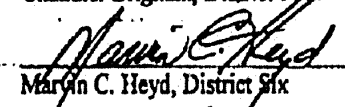

Ray Skidmore, Jr., District One

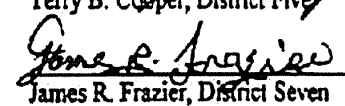

John Kost, District Two

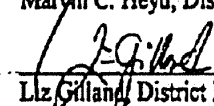

Ray Brown, District Three

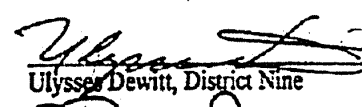

Chandler Brigham, District Four

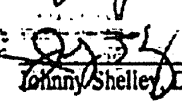

Terry B. Cooper, District Five

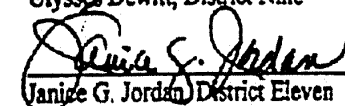

Martin C. Heyd, District Six


James R. Frazier, District Seven

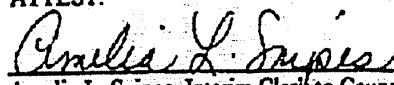

Liz Gilland, District Eight


Ulysses Dewitt, District Nine

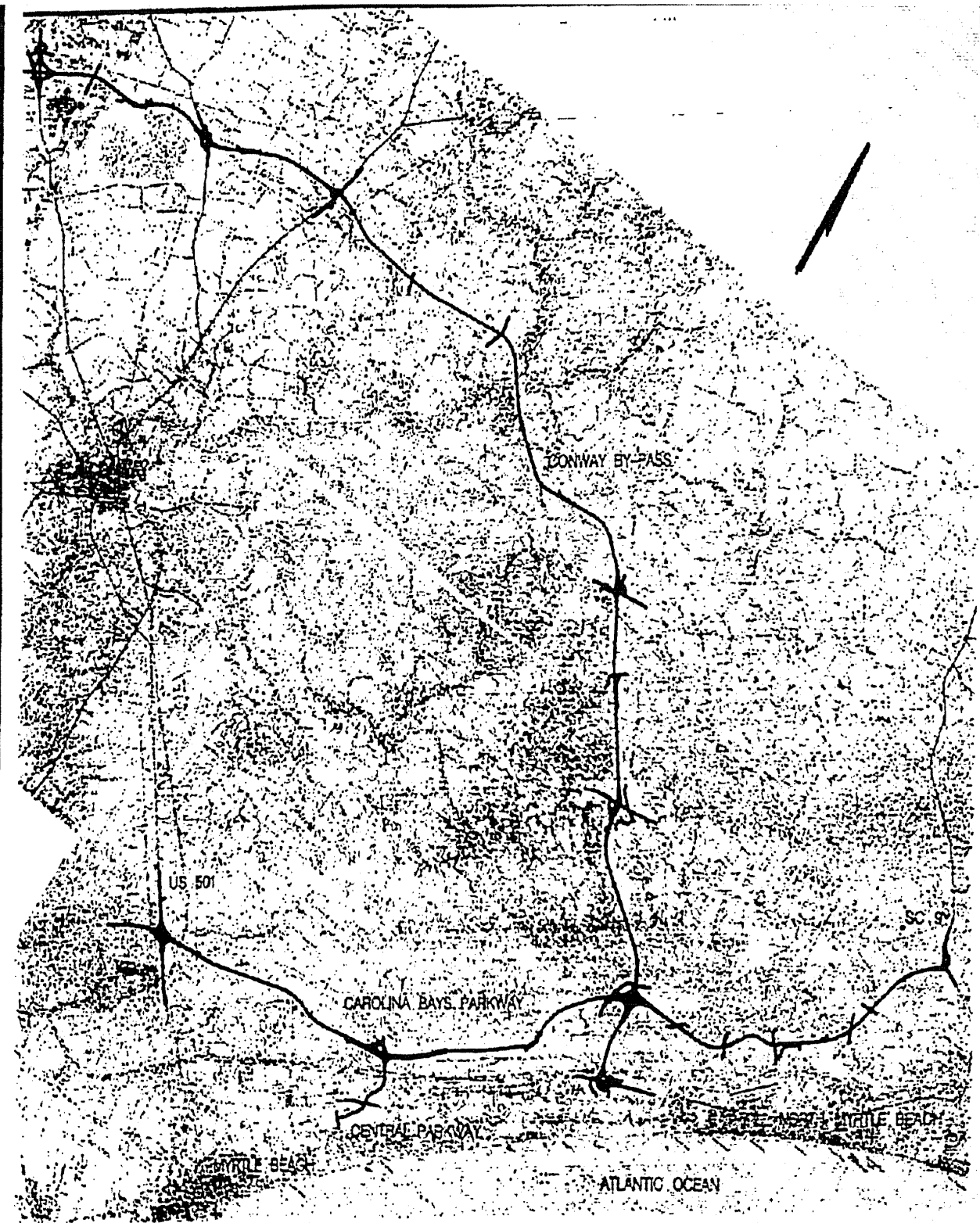

Johnny Shelley, District Ten


Janice G. Jordan, District Eleven

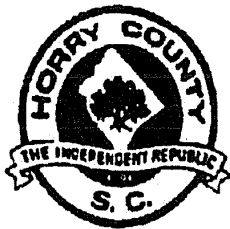
ATTEST:


Amelia L. Snipes, Interim Clerk to Council

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COUNTY COUNCIL OFFICE

COUNTY OF HORRY
COUNTY COUNCIL MEMORANDUM

TO COUNTY COUNCIL:

FROM: Janet L. Carter *JLC*

DIVISION: Economic Development Division

COMMITTEE WITH JURISDICTION:

- ☐ General Government ☐ Public Safety ☐ Finance
☐ Human Services ☐ Public Works ☒ Economic Development

SUBJECT OF RESOLUTION OR ORDINANCE: Official Map Ordinance

PURPOSE OF RESOLUTION OR ORDINANCE: _____

DATE OF FIRST SUBMISSION: September 7, 1999

BRIEF DESCRIPTION: _____

Costs to other County Programs:

- ☐ Mandated ☐ Budgeted ☐ Budget Revision Necessary

FINANCIAL IMPACT:

	Balance Of:			
Projections:	YR1	YR2	YR3	YR4
County Cost:	\$ _____	\$ _____	\$ _____	\$ _____
State Funds:	\$ _____	\$ _____	\$ _____	\$ _____
Federal Funds:	\$ _____	\$ _____	\$ _____	\$ _____
Other:	\$ _____	\$ _____	\$ _____	\$ _____

IF NONE Check Here: ☐

County Administrator Approval

016
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COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

ORDINANCE NO. 88-208

FILED
HORRY COUNTY
JUL -9 PM 12:27

AN ORDINANCE TO AMEND THE INDEX MAP OF THE OFFICIAL MAP
ORDINANCE FOR HORRY COUNTY ADDING THE RIGHT-OF-WAY FOR THE
CAROLINA BAYS PARKWAY FROM HIGHWAY 501 TO HIGHWAY 17 BY-PASS.

WHEREAS, Title 6, Chapter 7, Sections 1210 through 1280 of the Code of Laws of the State South Carolina, as amended, authorizes local governments to adopt an Official Map Ordinance for their jurisdictions; and

WHEREAS, the Horry County Council under such authority adopted Ordinance 107-98 creating an Official Map for Horry County; and

WHEREAS, the Horry County Council established an Index Map for the Official Map (Ordinance 153-99) which provides for the specific location of current and future roadway improvements within the county; and

WHEREAS, the establishment of such map allows the location of current and future roadway improvements to be identified and provides opportunities for Horry County or other governmental entities to purchase such properties prior to issuance of building permits or granting of rezoning approvals as a means of reducing acquisition costs; and

WHEREAS, the Index Map does not include the property upon which the construction of the Carolina Bays Parkway from Highway 501 to Highway 17 By-pass will occur; and

WHEREAS, adding this property to the Index Map is in the public interest since it provides an alternative north/south route of travel for residents and tourists as well as provides opportunities to reduce future acquisition cost by limiting development in the path of such improvements.

NOW THEREFORE by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained that:

1) Amendment of the Index Map of the Official Map Ordinance, Ordinance 153-99:

The Index Map of the Official Map Ordinance (Ordinance 153-99) shall be amended as follows:

Addition of the right-of-way identified as Alternative 1 for the proposed Carolina Bays Parkway from Highway 501 to Highway 17 By-pass as shown in the document entitled "Carolina Bays Parkway, Phase V FEIS Conceptual Roadway Plans", dated May 1998 prepared by the LPA Group of Columbia, South Carolina, attached hereto and incorporated herein by reference.

2) Severability: If a Section, Sub-section or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that Official Map Addition- CBP (501 to Hwy 17 Bypass)

DEED
2497 0986

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Section, Sub-section or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

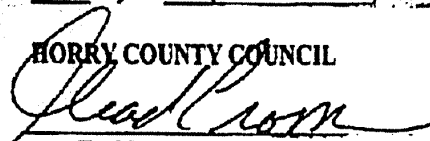
3) **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

4) **Effective Date:** This ordinance shall become effective on third reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 2nd day of July, 2002.

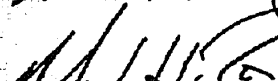
HORRY COUNTY COUNCIL

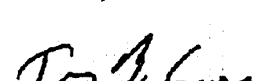

Chad Prosser, Chairman


Ray Skidmore, Jr., District 1


John Kost, District 2


District 3


Michael L. Ryan, District, 4


Terry B. Cooper, District 5

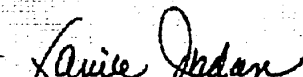

Gene R. Smith, Jr., District 6


James R. Frazier, District 7


Elizabeth Gilland, District 8


W. Paul Prince, District 9


Kevin J. Hardee, District 10


Janice Jordan, District 11

ATTEST:

Patricia S. Hartley, Clerk to Council

FIRST READING: May 7, 2002

SECOND READING: June 18, 2002

THIRD READING: July 2, 2002

Official Map Addition: CBP (501 to Hwy 17 Bypass)

27

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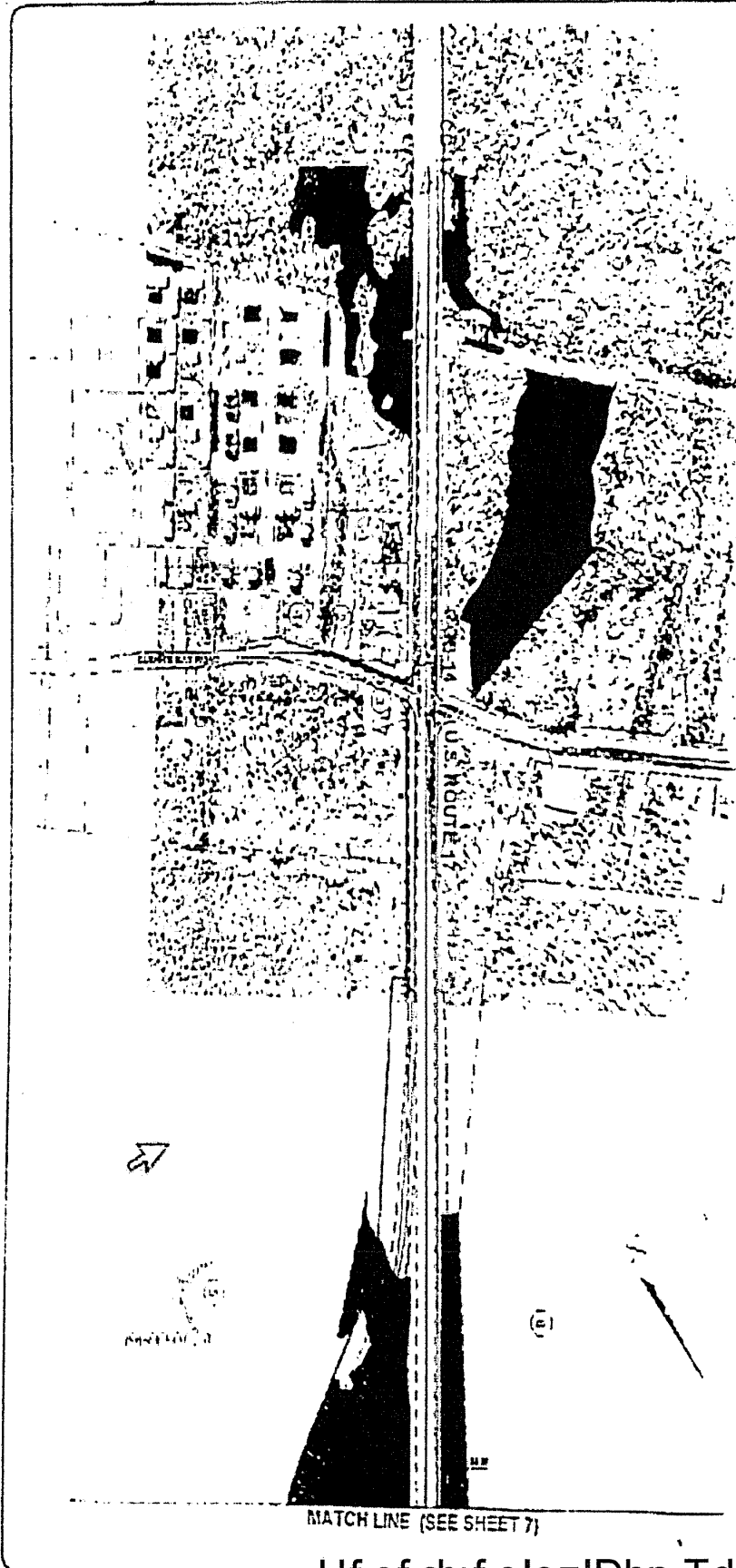
137 CAROLINA BAYS PARKWAY

CONCEPTUAL ROADWAY PLANS

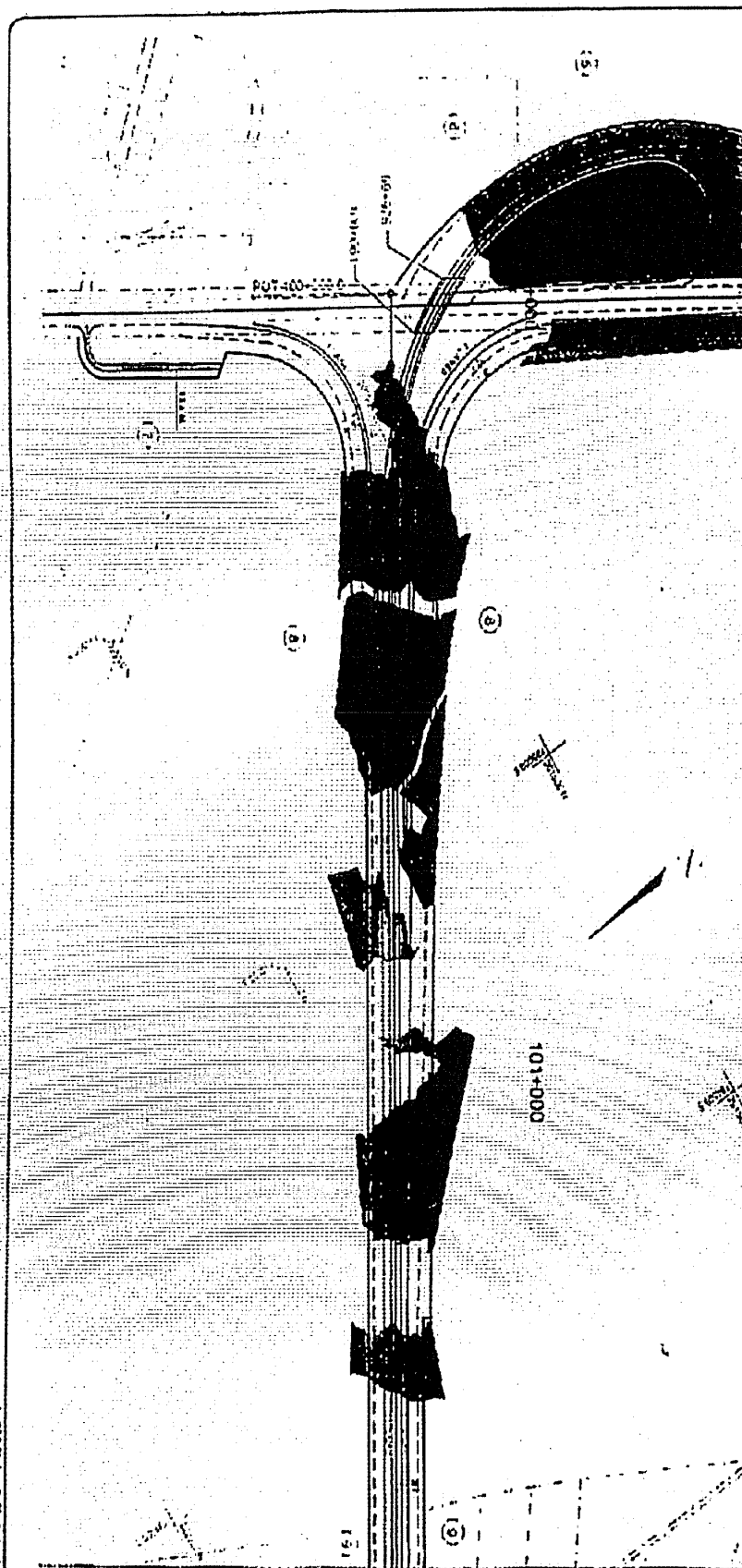
()

ALTERNATIVE 1

SHEET 6



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MATCH LINE STA. 101+600 (SEE SHEET 8)

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Image Size: 8.5 x 11

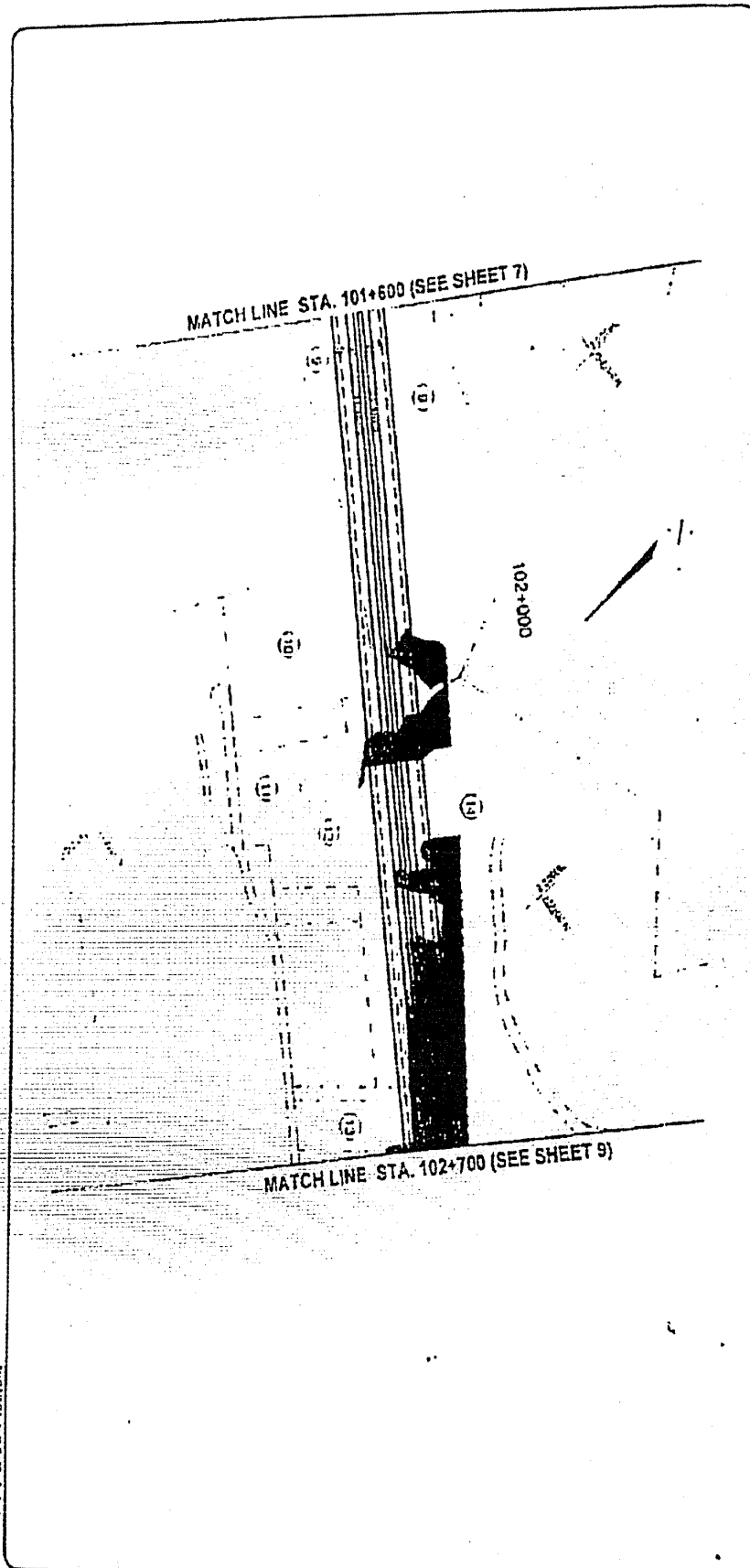
CAROLINA BAYS PARKWAY

CONCEPTUAL ROADWAY PLANS

ALTERNATIVE 1

SHEET 3

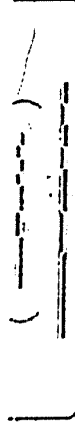
PROPOSED OUT 2.5m/s



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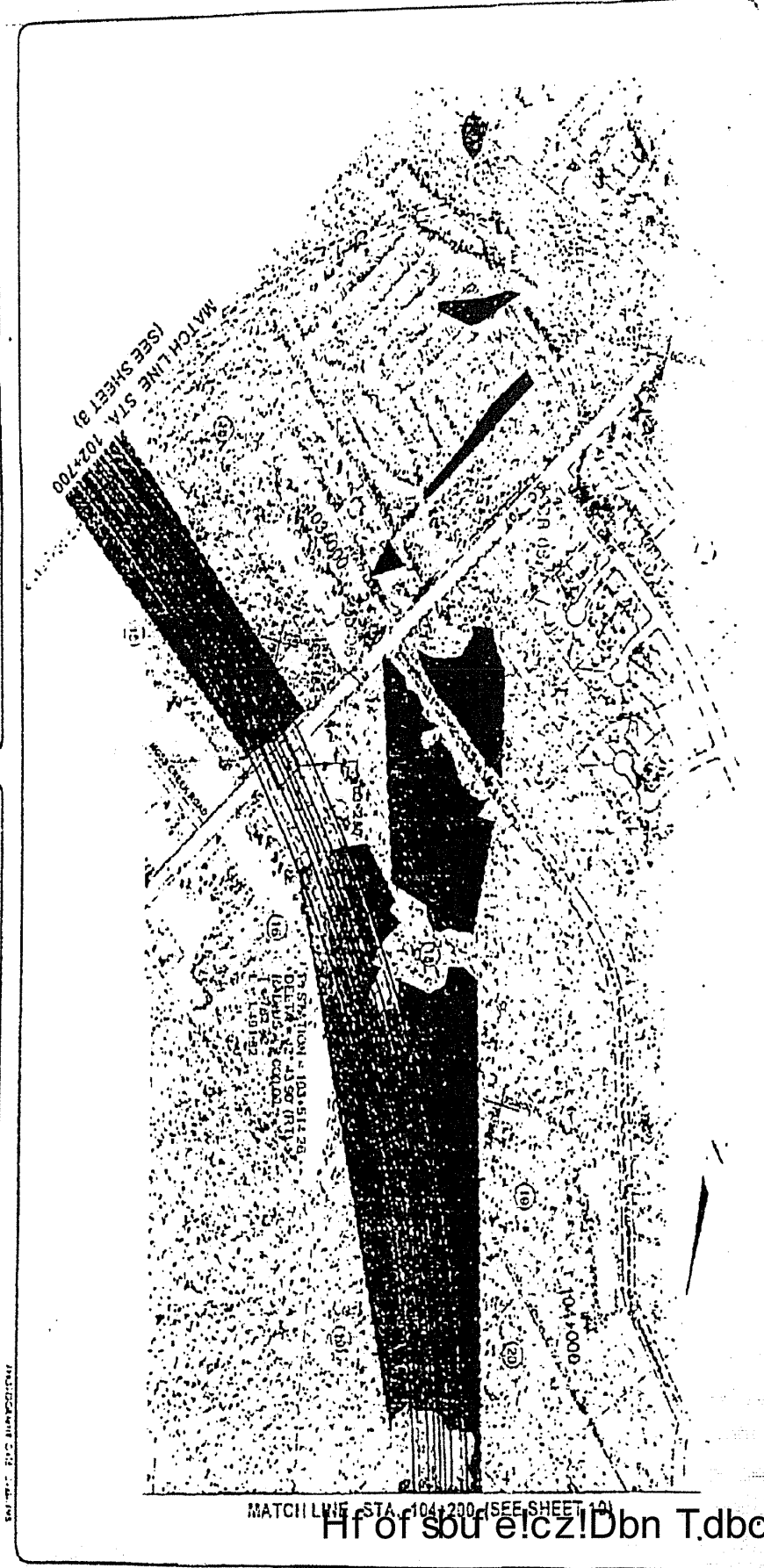
COASTAL BAYS PARKWAY

CONNECTIONAL ROADWAY PLANS



ALTERNATIVE 1

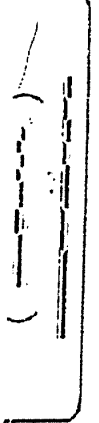
SHEET 3



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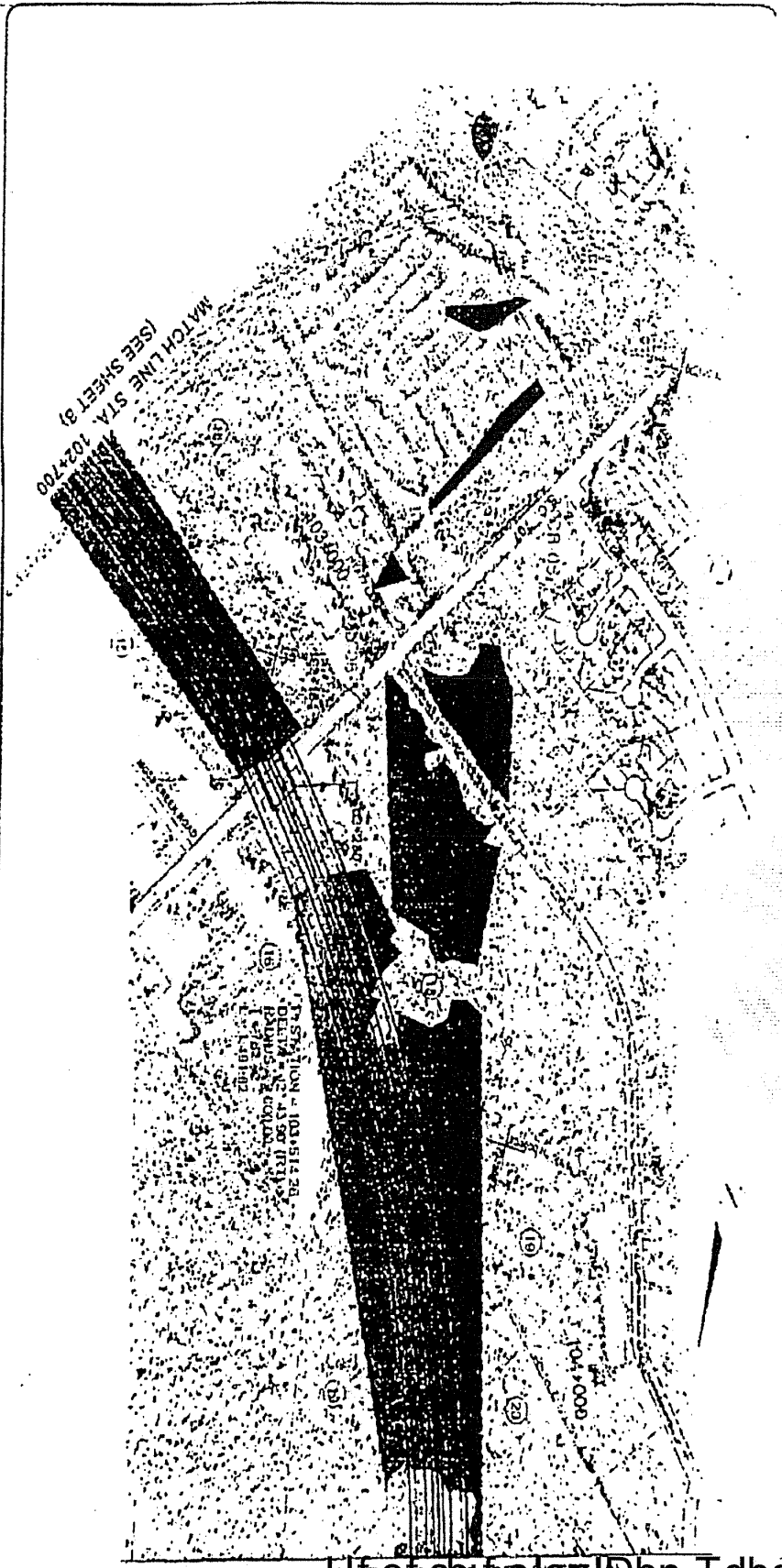
17) COASTLINE RAYS PARKWAY

CONCEPTUAL ROUTEWAY PLANS



ALTERNATIVE 1

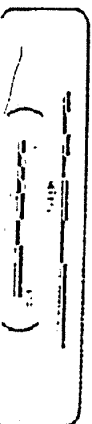
SHEET 3



Match Line Sta 104+000

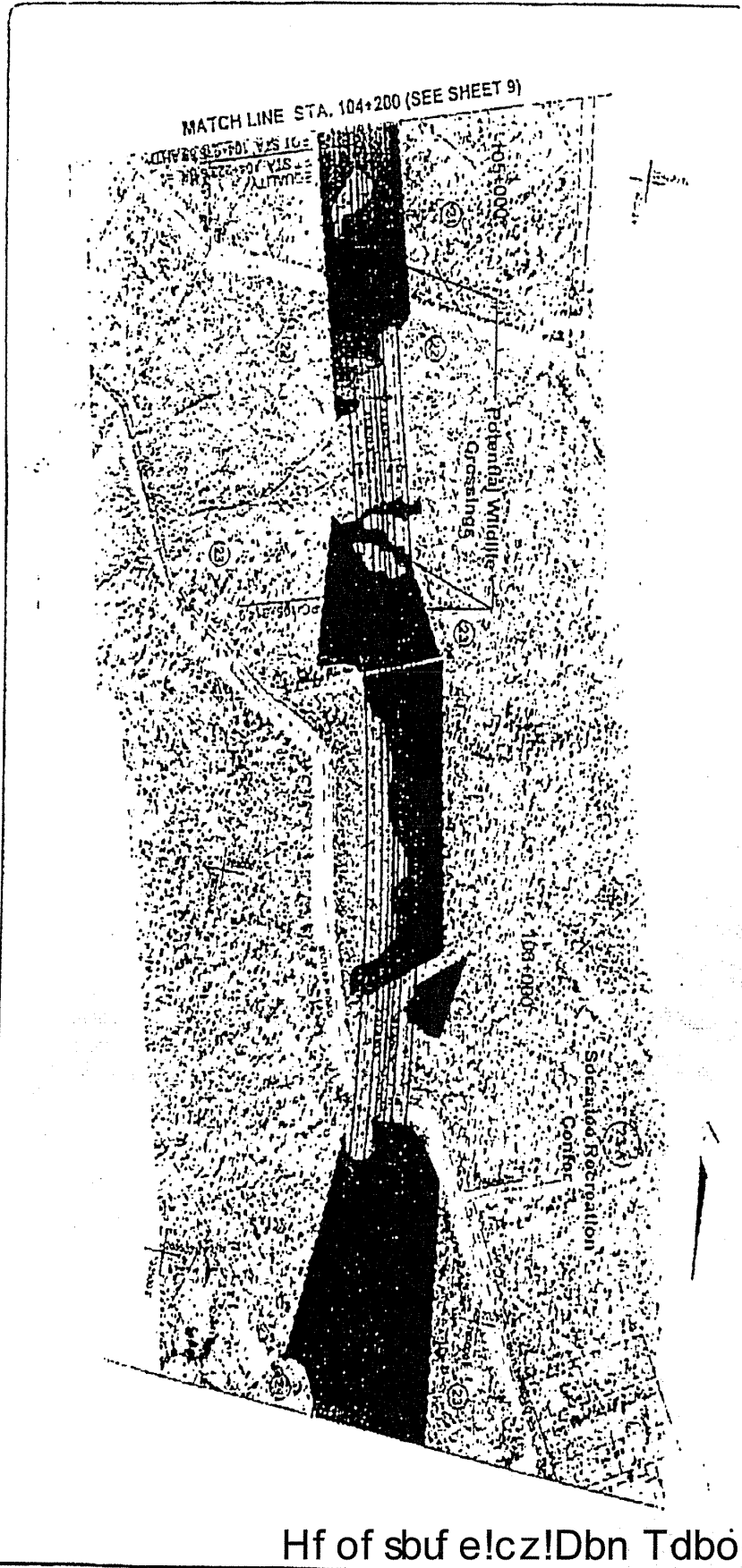
17 CAROLINA RAYS PARKWAY

CONCEPTUAL ROADWAY PLANS



ALTERNATIVE 1
104+000 TO 104+200

SHEET
10



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CAROLINA BAYS PARKWAY

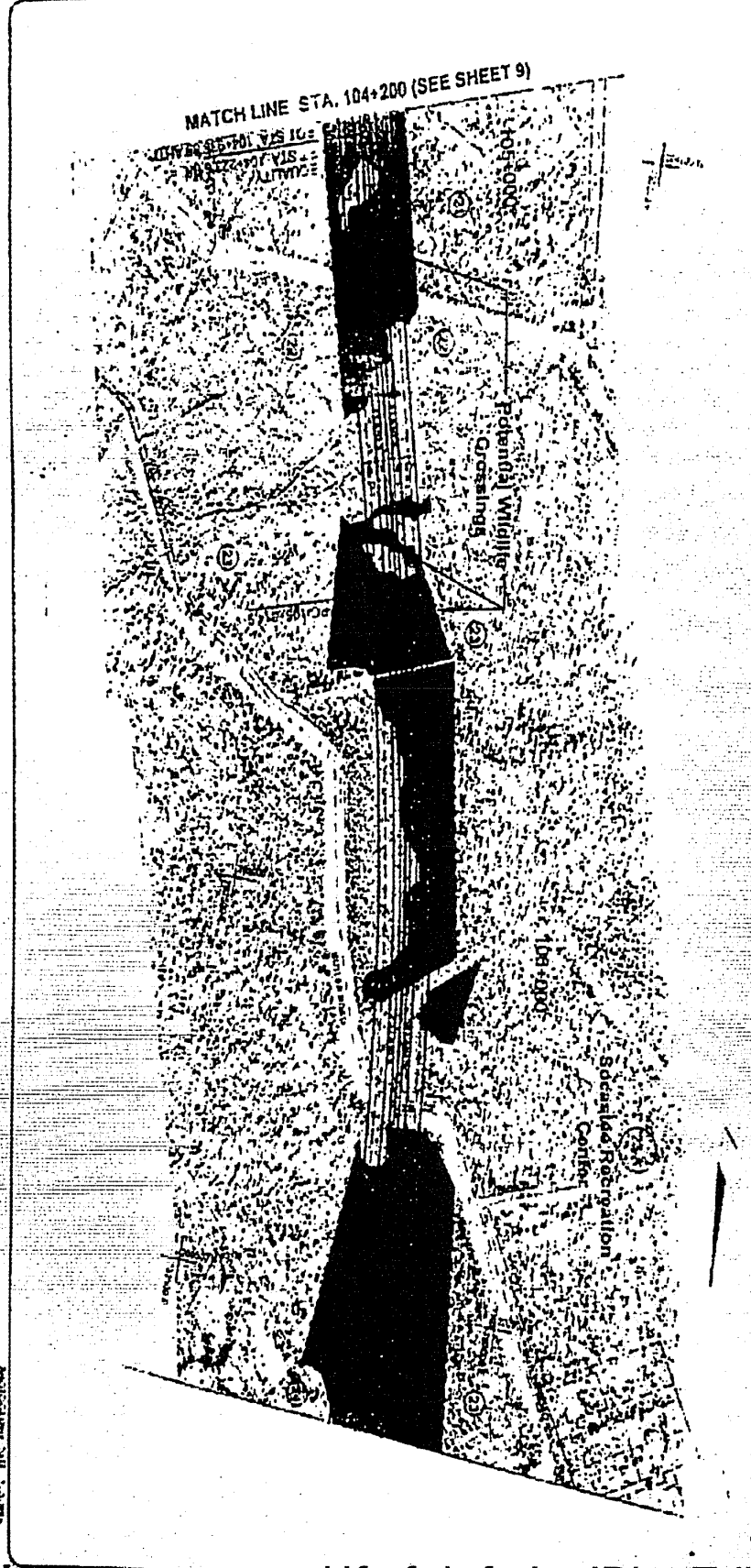
CONCEPTUAL ROADWAY PLANS



ALTERNATIVE 1
STA. 104+00 TO 104+200

SHEET
10

PROPOSED 2011 3.0 PM



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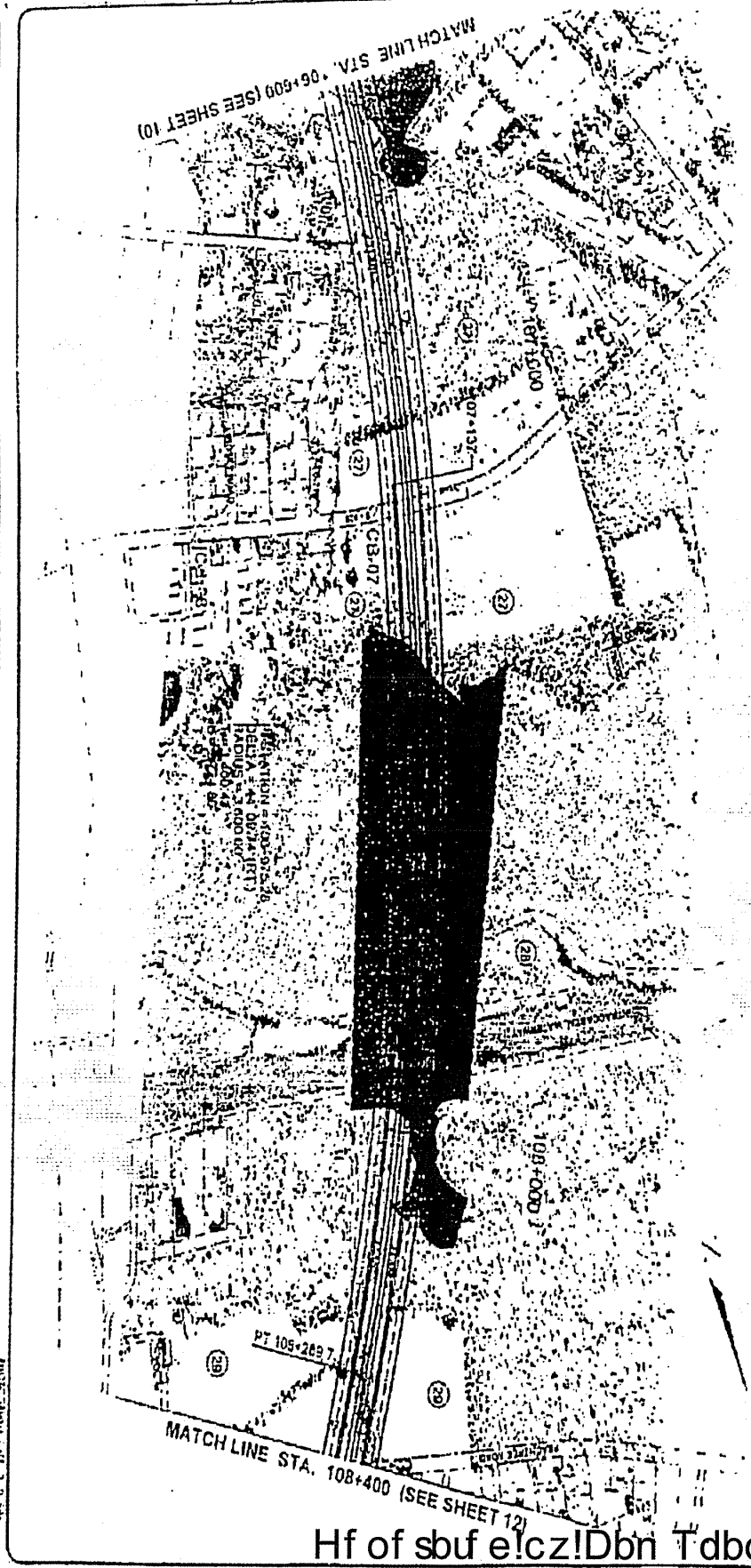
7 CAROLINA EAVS PARKWAY

CONCEPTUAL ROADWAY PLANS

1

ALTERNATIVE 1

SHEET



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13

CAROLINA BAYS PARKWAY

CONCEPTUAL ROADWAY PLANS



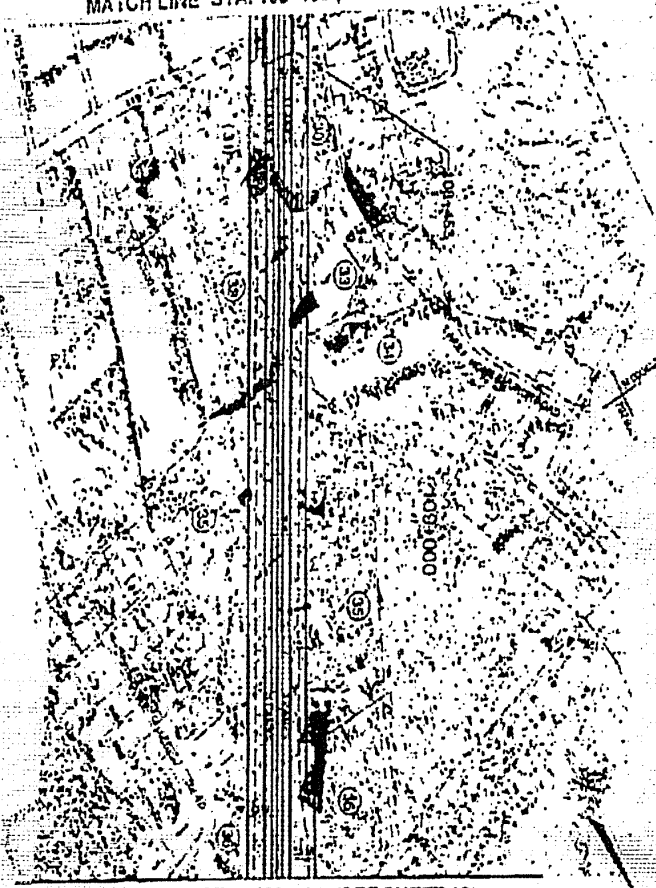
ALTERNATIVE 1

100-100-100-100-100-100

SHEET 13

100-100-100-100-100-100

MATCH LINE STA. 108+400 (SEE SHEET 11)



MATCH LINE STA. 109+400 (SEE SHEET 13)

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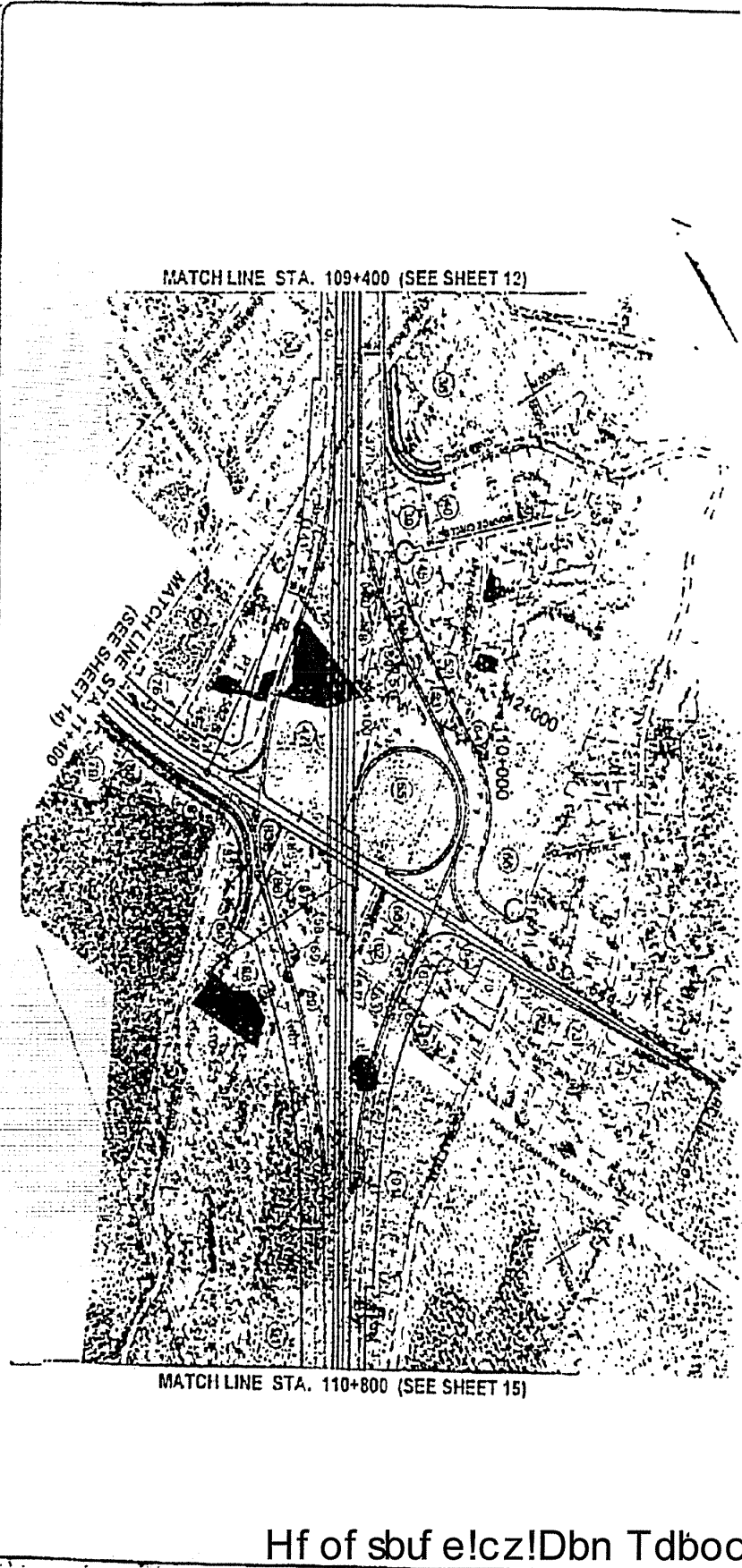
17
CARLENA 3425 PARKWAY

CONCEPTUAL ROADWAY PLANS



ALTERNATIVE 1
STA. 109+400 TO STA. 110+800

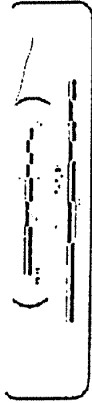
SHEET
12



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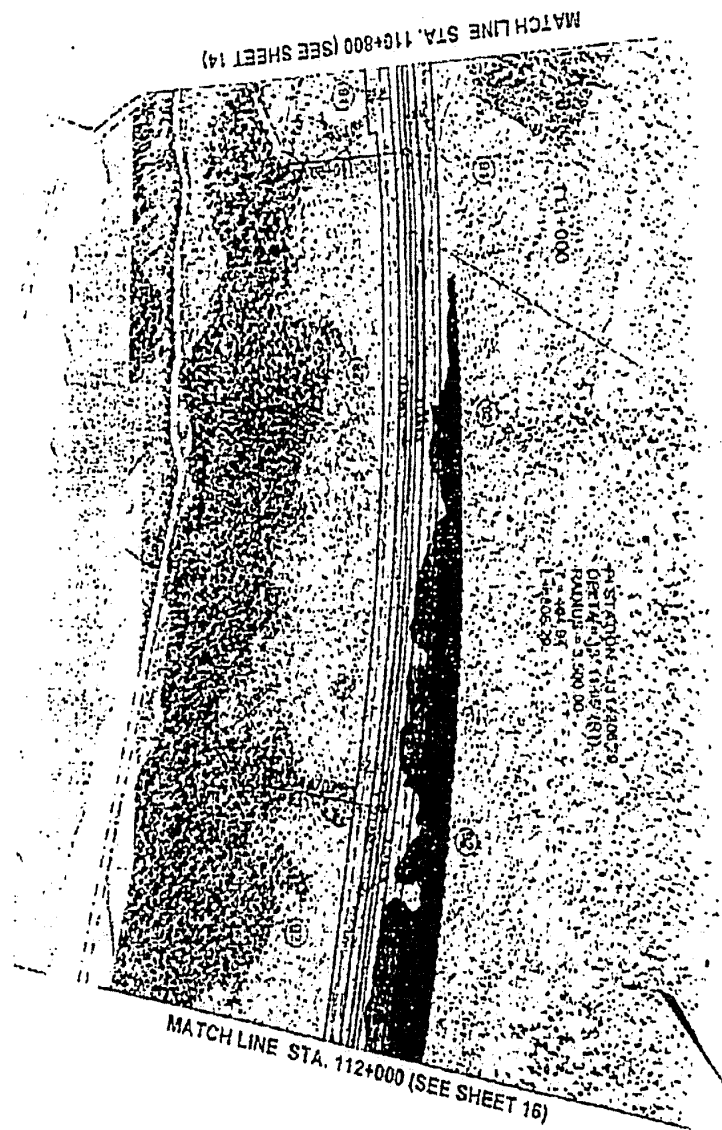
17 CAROLINA BAYS PARKWAY

CONCEPTUAL ROADWAY PLANS



ALTERNATIVE 1
112.00 - 500.00 ST. P.M.

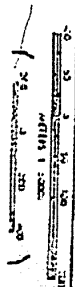
SHEET
15



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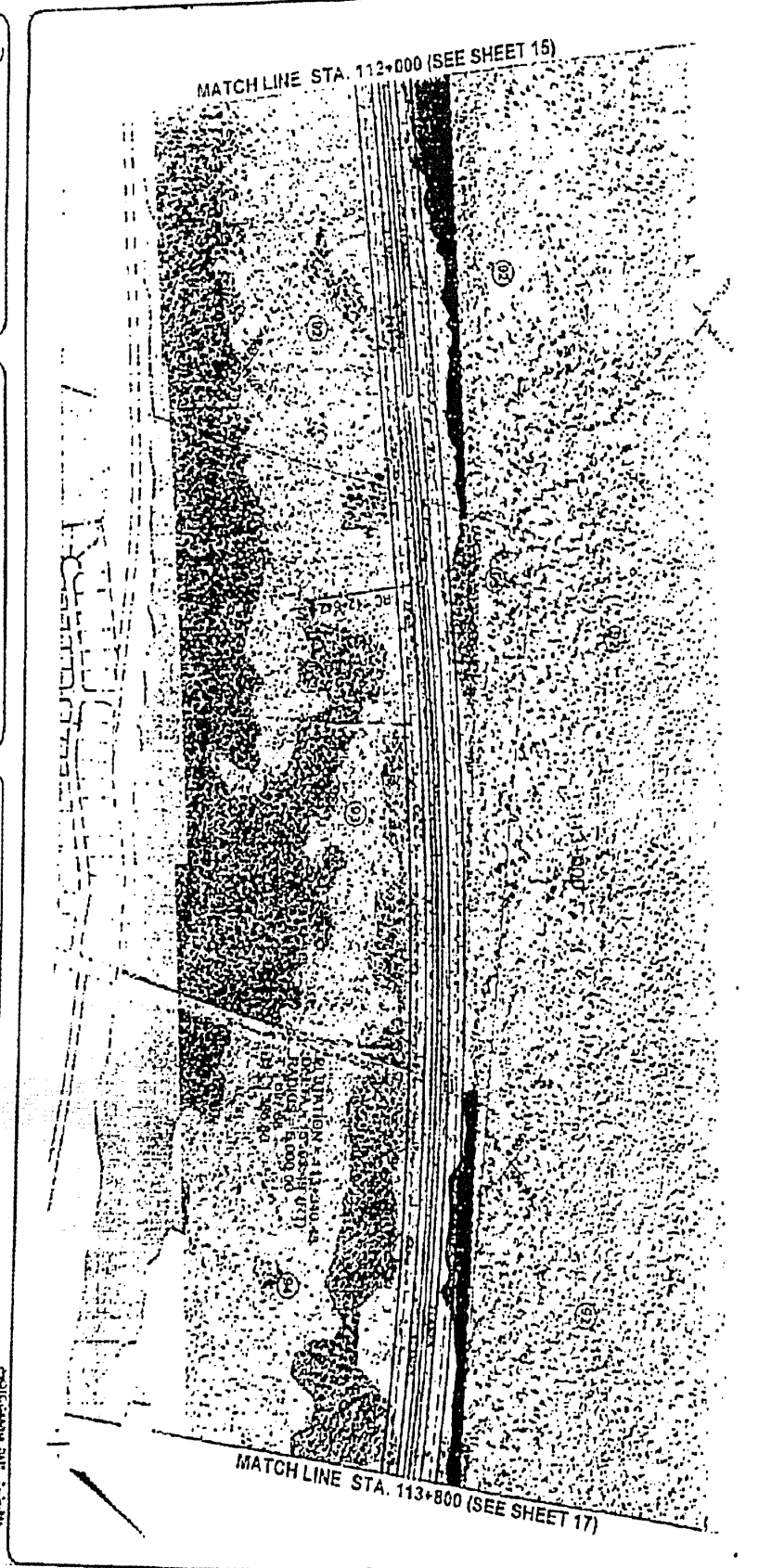
17) CAROLINA BAYS PARKWAY

CONCEPTUAL ROADWAY PLANS



ALTERNATIVE 1

SHEET



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CAROLINA BAYS PARKWAY

CONCEPTUAL ROADWAY PLANS

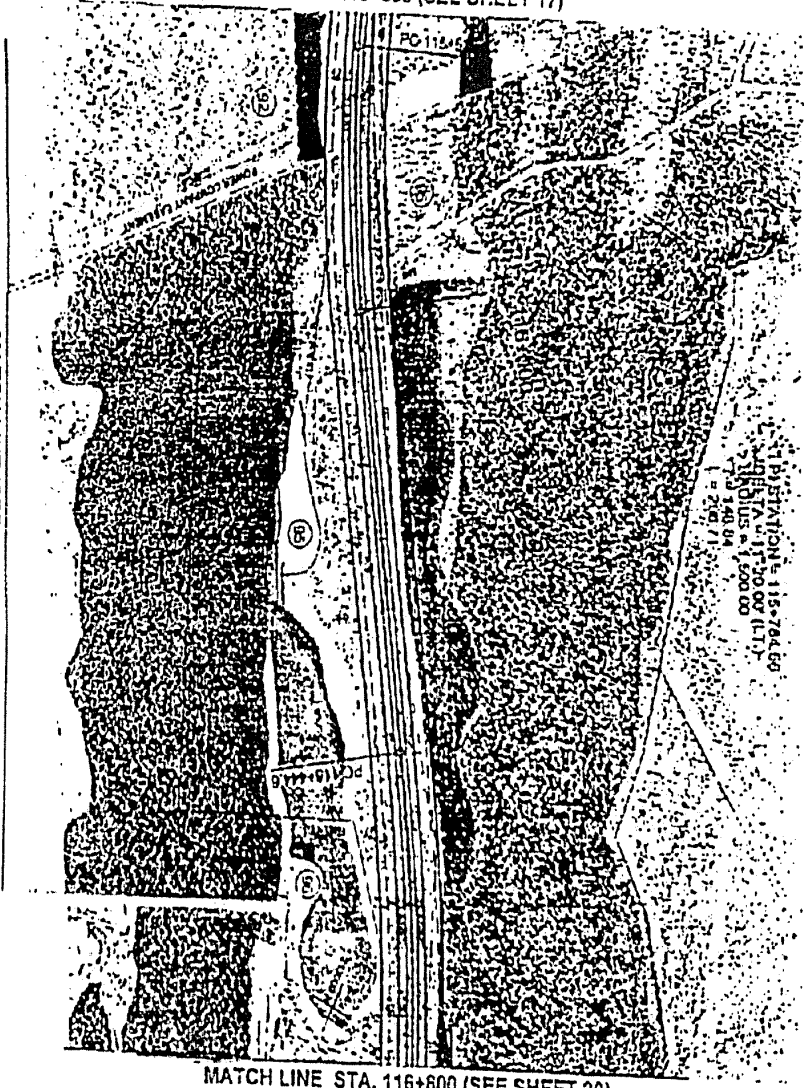
ALTERNATIVE 1

SHEET 19

19

MATCH LINE (SEE SHEET 19)

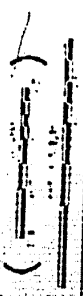
MATCH LINE STA. 115+600 (SEE SHEET 17)



MATCH LINE STA. 116+800 (SEE SHEET 20)

157 CAROLINA BAYS PARKWAY

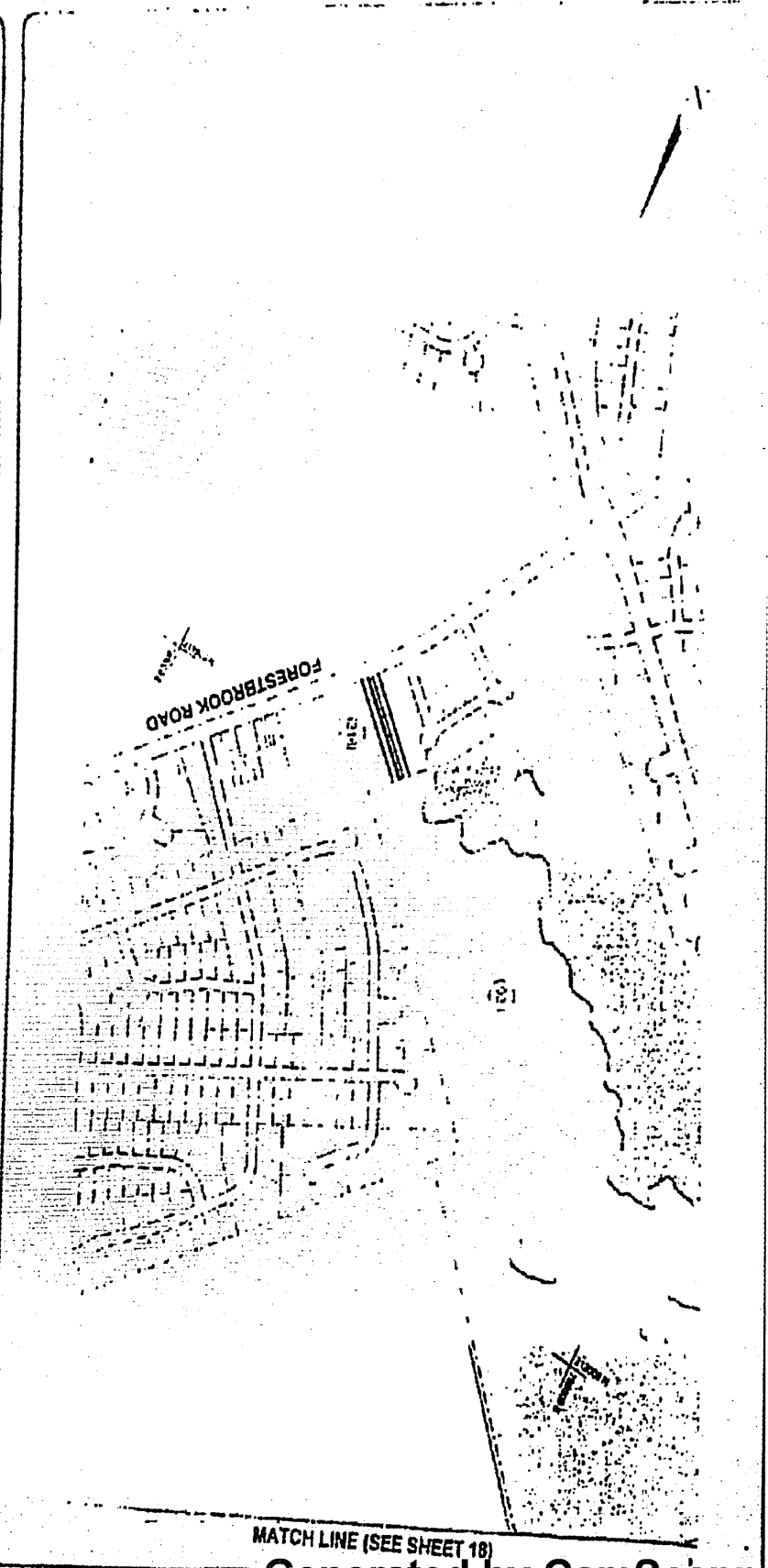
CONCEPTUAL ROADWAY PLANS



ALTERNATIVE 1

SHEET 19

PROPOSED GATE 2-3-11A



MATCH LINE (SEE SHEET 18)

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1001

(7) CASOLINA SAN PARKWAY

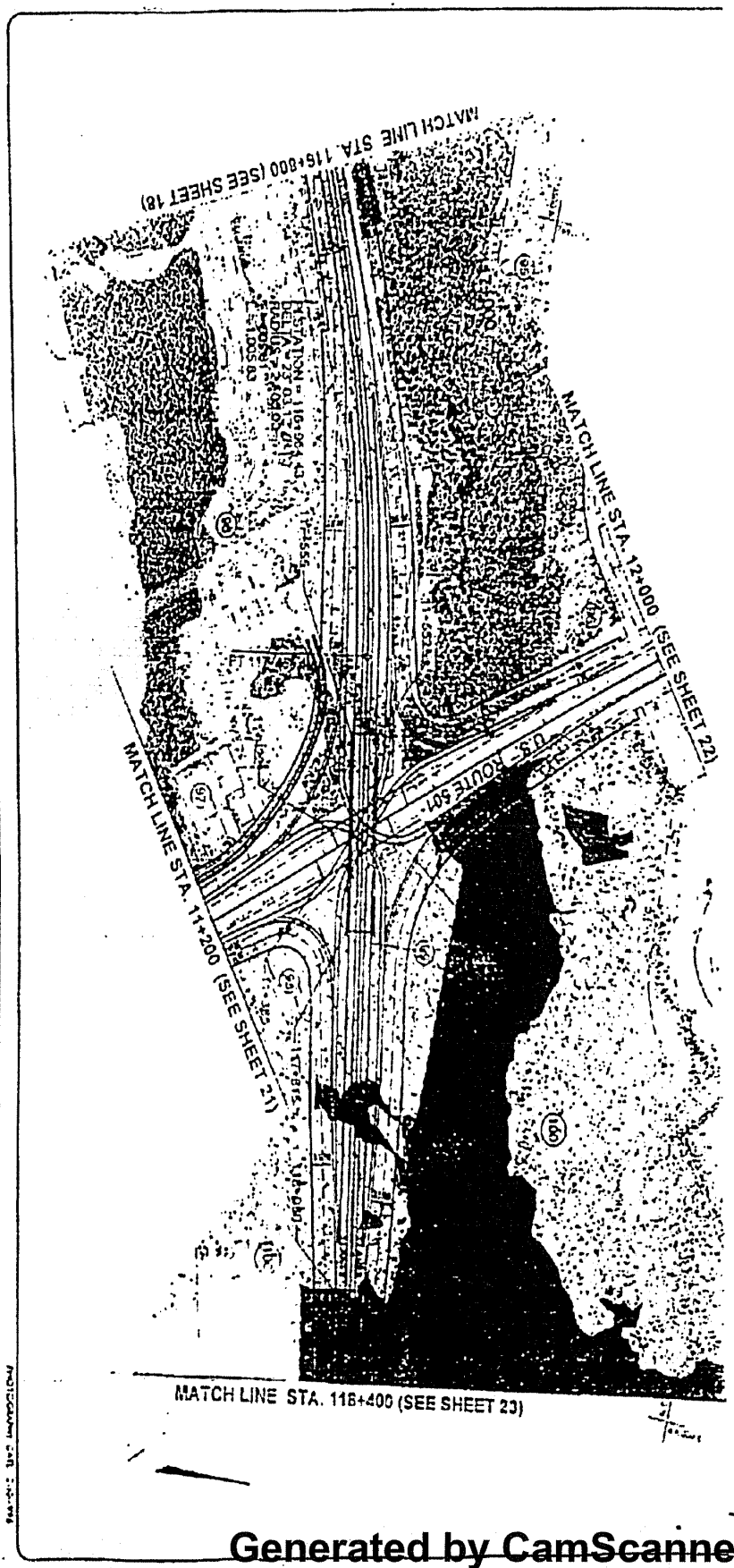
CONCEPTUAL ROADWAY PLANS

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ALTERNATIVE 1
STA 116+000 TO 116+400

SHEET
20

PROPOSED PLAN 116+000 TO 116+400





PAOLINA ELLIS PARKWAY

CONCEPTUAL ROADWAY PLAYS

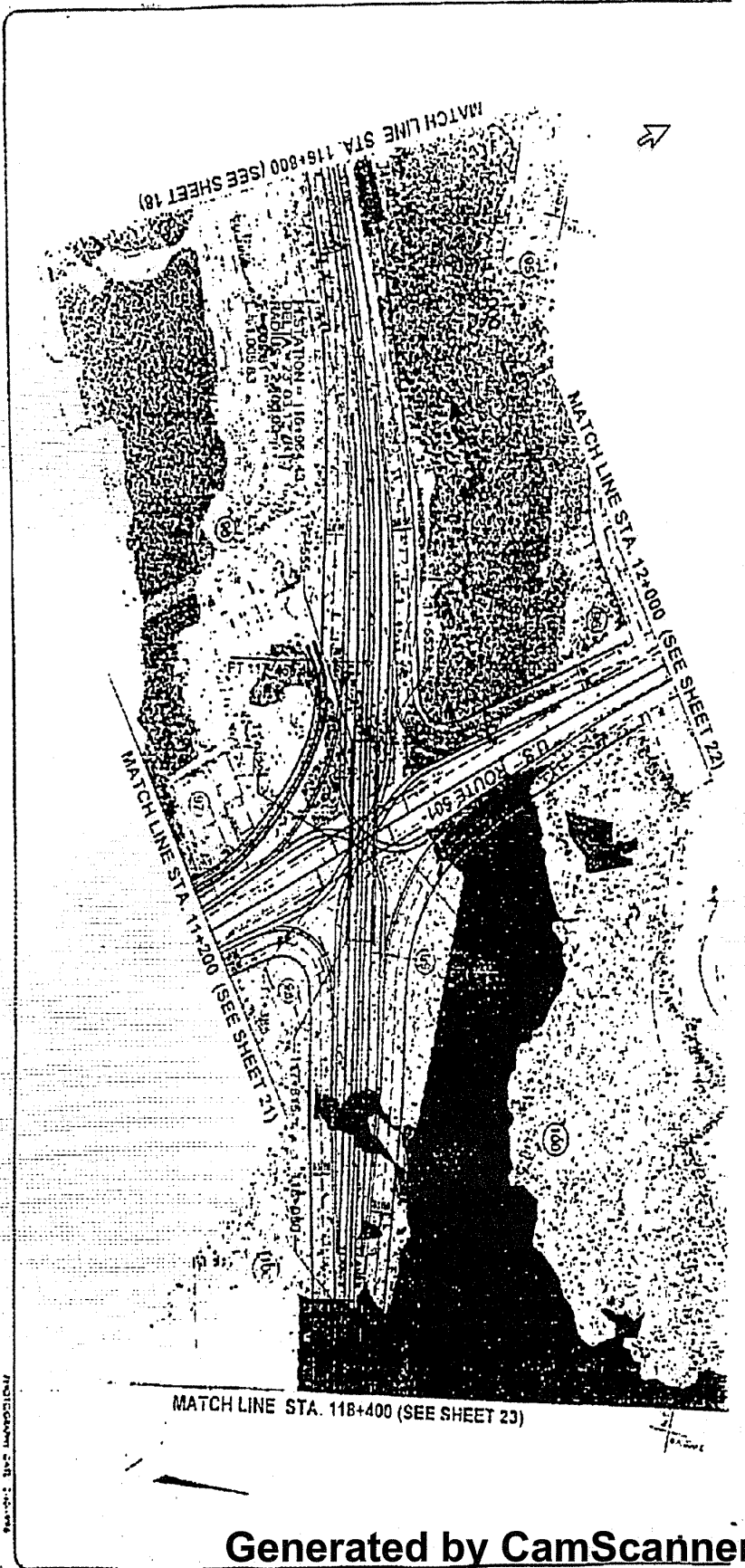


ALTERNATIVE 1

7-11-2000

5.
 6.
 7.
 8.
 9.

18



Generated by CamScanner

580498

Prepared By and Return to:
Gwin Law Offices, LLC
2105-B Cromley Circle
Myrtle Beach, SC 29577
Telephone: 843-839-2239 Fax: 843-839-2244
File No.: 06-RE-388

FILED
JUL 25 2006
DALLEY V. SKIPPER
REGISTRAR OF DEEDS

STATE ~~58,500.00~~ COUNTY ~~24,750.00~~

EXEMPT YES ☒ NO

ASSESSOR 178-00-05-032 + 178-00-06-024 + 025
07/26/06 SEP

(Please do not write above this line - Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that RUTH LUDLAM MCCLAM (A/K/A RUTH L. MCCLAM), MLM I, LLC, PATRICIA ANN MCCLAM AND STEPHEN BOYD MCCLAM, in the State aforesaid, for and in consideration of the sum of TWENTY TWO MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$22,500,000.00), unto us paid by PEACHTREE PROPERTIES OF NORTH MYRTLE BEACH, LLC, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell, and release unto the said Peachtree Properties of NORTH MYRTLE BEACH, LLC, its successors and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

SEE ATTACHED EXHIBIT "A"

Tax Map #: 178-00-05-032
Property Address: Myrtle Beach, SC 29588
Grantee(s) Address: 408 Sea Mountain Hwy, North Myrtle Beach, SC 29582

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

DEED
0108 0279

3/32-229

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Peachtree Properties of NORTH MYRTLE BEACH, LLC, its successors and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND Grantors do hereby bind themselves and their heirs and assigns, to warrant and forever defend all and singular the said premises unto the said Peachtree Properties of NORTH MYRTLE BEACH, LLC, its successors and assigns, forever, in fee simple, together with every contingent remainder and right of reversion against the Grantors' heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

THIS PORTION INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF our Hands and Seals this 6 day of July, 2006.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

J. Allen Haven
1st Witness

Ruth L. McClam (L.)
Ruth L. McClam

J. Blanchard
2nd Witness or Notary

STATE OF North Carolina)
COUNTY OF Wake)

PROBATE

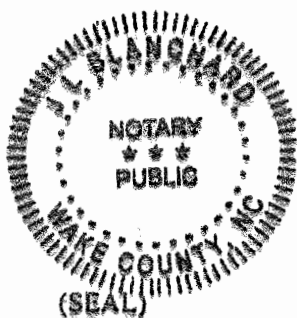
PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantors sign, seal, and as act and deed, deliver the within Warranty Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN to before me this
7 day of July, 2006.

J. Blanchard

J. Blanchard
Notary Public for Wake Co., NC
My Commission Expires: 06-08-2008

J. Allen Haven
Witness



File # 06-RC-388

IN WITNESS WHEREOF our Hands and Seals this 6 day of July, 2006.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

J. Nisel Hansen
1st Witness

MLM I, LLC (L.)
MLM I, LLC

J. Blanchard
2nd Witness or Notary

By: Theresa J. McLean

STATE OF NORTH CAROLINA)
COUNTY OF Wake)

PROBATE

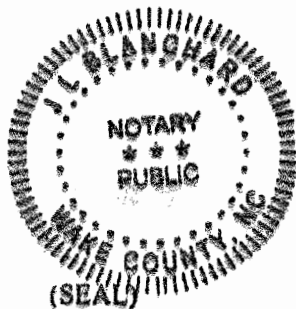
PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantors sign, seal, and as act and deed, deliver the within Warranty Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN to before me this
6 day of July, 2006.

J. Blanchard

J. Blanchard
Notary Public for Wake Co
My Commission Expires: 06-08-2008

J. Nisel Hansen
1st Witness



File # 06-22-388

IN WITNESS WHEREOF our Hands and Seals this 6 day of July, 2006.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Rechel Thompson
1st Witness

Patricia Ann McClam (L.
Patricia Ann McClam

Lea J. Woods
2nd Witness or Notary

STATE OF Tennessee
COUNTY OF Knox }

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantors sign, seal, and as act and deed, deliver the within Warranty Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN to before me this
6 day of July, 2006.

Lea J. Woods

Notary Public for Knox County Tennessee
My Commission Expires: June 5, 2010

Rechel Thompson
1st Witness



(SEAL)

File # 06-RE-388

IN WITNESS WHEREOF our Hands and Seals this 6 day of July, 2006.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

1st Witness

Stephen Boyd McClam

2nd Witness or Notary

STATE OF Florida

COUNTY OF Orange

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantors sign, seal, and as act and deed, deliver the within Warranty Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN to before me this
6 day of July, 2006.

Notary Public for Florida
My Commission Expires: 7/20/2009

1st Witness

(SEAL)

File # 06-RE-388



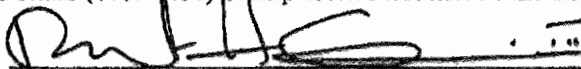
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. The property being transferred is located at Myrtle Beach, SC 29588, bearing Horry County Tax Map Number 178-00-05-032, was transferred by Ruth L. McClam, MLM I, LLC, Patricia Ann McClam and Stephen Boyd McClam to Peachtree Properties of North Myrtle Beach, LLC on July 24, 2006.
2. ☒ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$22,500,000.00*.
☐ NOT an arm's length real property transaction and the fair market value of the property is \$.
3. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, *et seq.*, because the Deed is:
4. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: ATTORNEY FOR PURCHASER
5. I further understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand and no/100 Dollars (\$1,000.00) or imprisoned not more than one year, or both.



Purchaser, Seller, Legal Representative of the Purchaser or other Responsible Person Connected with this Transaction

SWORN to before me this
24th day of July, 2006.



Notary Public for South Carolina

My Commission Expires: 9/17/14

- The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a realty of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

A

EXHIBIT "A"

All that certain lot or parcel of land situate in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly described as follows:

PARCEL ONE

ALL AND SINGULAR those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

PARCEL TWO:

ALL AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

PARCEL THREE:

ALL AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, on hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of

intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10' East 516 feet to Concrete N; thence South 13°55' West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°40' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed, highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly, of Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

SEE ATTACHED EXHIBIT "A" FOR DERIVATION

DERIVATION

The respective interests of the Grantors were acquired as follows:

Ruth Ludlum McClam

1. A portion of the property was conveyed to Ruth L. McClam by deed of T. B. Ludlum dated October 21 1966 and recorded on January 23 1967 in the Office of the Clerk of Court for Horry County in Deed Book 360 at Page 199.
2. A portion of the property was conveyed to Ruth L. McClam by deed of Larry W. Paul dated February 15, 1982 and recorded on February 18, 1982 and recorded on February 18, 1982 in the Office of the Clerk of Court for Horry County in Deed Book 737 at Page 818.
3. The remaining portion of the property was devised to Ruth Ludlam McClam by Item VIII of the Last Will and Testament of John C. Spivey, Deceased, and conveyed by deed of Lucy S. Kolb Executrix, T. B. Ludlum, and C. A. Spivey as Executors of the Last Will and Testament of J. C. Spivey, dated November 13, 1965 and recorded on November 16, 1965 in the office of the Clerk of Court for Horry County n Deed Book 336 at Page 482.
4. The interest of Ruth Ludlam McClam was mistakenly conveyed by her to McClam Family Limited Partnership on November 23, 1999 and recorded in Deed Book 2214 at Page 1410 in the Office of the Register of Mesne Conveyances for Horry County, South Carolina, and reconveyed to her by Corrective Deed from the McClam Family Limited Partnership on December 4, 2000 and recorded in Deed Book 2324 at Page 1205 in the Office of the Register of Mesne Conveyances for Horry County, South Carolina.

Patricia Ann McClam

The interests of Patricia Ann McClam were acquired by various deeds from Ruth Ludlum McClam as set forth hereinbelow:

<u>Interest</u>	<u>Date</u>	<u>Recording Date</u>	<u>Deed Book</u>	<u>Page No.:</u>
1/49	March 19, 2004	April 2, 2004	2717	290
1/49	May 23, 2003	July 3, 2003	2614	1051
1/49	April 19, 2002	June 14, 2002	2490	392
1/49	April 9, 2001	April 27, 2001	2366	241
1/49	December 14, 2000	December 15, 2000	2326	1012
1/49	June 8, 1998	August 21, 1998	2065	999
1//49	June 23, 1997	November 19, 1997	1992	21
<u>Interest</u>	<u>Date</u>	<u>Recording Date</u>	<u>Deed Book</u>	<u>Page No.:</u>

1/49	July 30, 1966	August 22, 1996	1885 (1896)	328 (657)
1/49	July 25, 1995		1817	1431
1/49	July 21, 1994	July 25, 1994	1743	825
1/70	March 2, 1993	March 4, 1993	1618	345
1/70	February 28, 1992	March 3, 1992	1530	895
1/70	February 27, 1992	March 4, 1991	1454	430
1/70	February 2, 1991	February 5, 1990	1368	670
1/70	November 10, 1989	November 15, 1989	1352	565

Stephen Boyd McClam

The interests of Stephen Boyd McClam were acquired by various deeds from Ruth Ludlum McClam as set forth hereinbelow:

<u>Interest</u>	<u>Date</u>	<u>Recording Date</u>	<u>Deed Book</u>	<u>Page No.:</u>
1/49	March 19 2004	April 2, 2004	2717	276
1/49	May 23, 2003	July 3, 2003	2614	1058
1/49	April 19, 2002	June 14, 2002	2490	400
1/49	April 9, 2001	April 27, 2001	2366	234
1/49	December 14, 200	December 15, 2000	2326	1006
1/49	June 8, 1998	September 4, 1998	2358	1023
1/49	June 23, 1977	November 19, 1997	1992	27
1/49	July 30, 1996	August 22, 1996	1885 (1896)	322 (651)
1/49	July 25, 1995		1817	1425
1/49	July 21, 1994	July 25, 1994	1743	815
1/70	March 2, 1993	March 4, 1993	1618	350
1/70	February 28, 1992	March 3, 1992	1530	885
1/70	February 27, 1991	March 4, 1991	1454	440
1/70	February 2, 1990	February 5, 1990	1368	665
1/70	November 10, 1989	November 15, 1908	1352	

MLM 1, LLC

The interests of the MLM 1, LLC were acquired by a deed from Marvin Louis McClam dated 3/32, and recorded July 25th, 2006 in Deed Book 3132 at Page 774, records of Horry County, South Carolina.

988

580498

FILED
Horry County, S.C.
2006 JUL 25 PM 3:23
DALLAY V. SKIPPER
REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2024 Jan 23 5:03 PM - HORRY - COMMON PLEAS - CASE#2013CP2605530

Insert recording information above

Loan No. P0095

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

COMMERCIAL MORTGAGE
OF REAL PROPERTY
AND SECURITY AGREEMENT

THIS COMMERCIAL MORTGAGE OF REAL PROPERTY AND SECURITY AGREEMENT, is dated as of July 5, 2006, and is made by Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company ("Borrower"), whose mailing address is 408 Sea Mountain Highway, N Myrtle Beach, SC 29582 in favor of R.E. LOANS LLC, a California limited liability company ("Lender"), whose mailing address is c/o Bar K, Inc., Attention Barney Ng, 201 Lafayette Circle, 2nd Floor, Lafayette, California 94549.

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION and in order to secure the payment of a promissory note from Borrower to Lender of even date herewith in the principal amount of \$18,520,000.00 (the "Note") plus interest thereon and costs of collection, including attorneys' fees and to secure in accordance with Section 29-3-50, as amended, of the South Carolina Code of Laws, all existing indebtedness to Lender evidenced by the Note and all modifications, renewals and extensions thereof; all future advances that may be made to Borrower in accordance with the provisions herein or to be evidenced by other promissory notes and all modifications, renewals and extensions thereof; all other sums or indebtedness of Borrower to Lender accruing pursuant to the terms and conditions of this Mortgage provided, the maximum amount of existing indebtedness and future advances outstanding at any one time secured hereby shall not exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by the Lender, including court costs and reasonable attorneys fees; and to charge the properties, interests and rights hereinafter described with the performance and observance of the terms of this Mortgage and the Note, Borrower has granted, bargained, sold and released to Lender and the heirs, successors and assigns of Lender, and by this Mortgage does grant, bargain, sell, and release to Lender and the heirs, successors and assigns of Lender, the real property described in Exhibit A attached hereto and made a part hereof, which together with the property described below is hereinafter referred to

TO THE EXTENT, IF ANY, PROVIDED IN THE NOTE, INTEREST OR DISCOUNT WILL BE DEFERRED, ACCRUED, OR CAPITALIZED.

THIS MORTGAGE AND SECURITY AGREEMENT COVERS FIXTURES AND CONSTITUTES A FIXTURE FINANCING STATEMENT. PROCEEDS OF THE NOTE SECURED HEREBY SHALL BE USED FOR LAND ACQUISITION OR REFINANCING AND CONSTRUCTION OF IMPROVEMENTS ON THE LAND.

MORTGAGE
4629 0255

ORIGINAL
4629-255
RB

as the "Property" (Note: all references, representations, warranties and covenants contained herein to the Property shall be deemed made by and applicable to the record owner of such portion of the Property as indicated on Exhibit A).

TOGETHER WITH:

(1) all and singular rights, members, privileges, easements, hereditaments and appurtenances belonging or in any way incident or appertaining to the above-described real property; all buildings and improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto;

(2) All fixtures, fittings, furnishings, appliances, apparatus, equipment, and machinery; all other fixtures and personal property of whatever kind and nature at present contained in or hereafter placed in any building standing on the above-described real property; and all renewals or replacements thereof or articles in substitution thereof; and all proceeds and profits thereof and all of the estate, right, title and interest of the Borrower in and to all property of any nature whatsoever, now or hereafter situated on the above - described real property and improvements or intended to be used in connection with the operation thereof;

(3) All rents, incomes, profits, revenues, royalties, bonuses, rights, accounts, contract rights, instruments, chattel paper, cash, rights to withdraw cash, general intangibles and benefits under any and all leases or tenancies now existing or hereafter created on the above-described real property and improvements or any part thereof with the right to receive and apply the same to said indebtedness, which Lender may demand, sue for and recover such payments but shall not be required to do so; and

(4) A security interest in (i) all property and fixtures now or hereafter acquired and affixed to or located on the above-described real property which, to the fullest extent permitted by law shall be deemed fixtures and a part of said real property, (ii) all articles of personal property now or hereafter acquired, including without limitation all fixtures, inventory, equipment, appliances and machinery, and all materials, now or hereafter located on or related to the above-described real property owned by Borrower; (iii) all sanitary sewer tap certificates and water tap certificates and all other contract rights of Borrower concerning the provision of water, sanitary sewer, storm drainage and other utility services to the Property; (iv) all personal property, accounts, contract rights, instruments, chattel paper, cash, rights to withdraw cash, general intangibles, actions and rights in action now or hereafter acquired pertaining to the above-described real property and improvements, including all rights to insurance proceeds; and (v) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Borrower (Debtor) hereby grants to Lender (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 Borrower agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Lender may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. on demand, Borrower will promptly pay all costs and expenses of filing statements, continuation statements, partial releases, and termination statements deemed necessary or appropriate by Lender to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof, and all costs and expenses of any searches reasonably required by Lender. Lender may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code (South Carolina) including the right to pursue any deficiency judgments. Ten (10) days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code (South Carolina) requiring such notice; provided, however, that Lender may at its option dispose of the collateral in accordance with Lender's rights and remedies in respect to the real property pursuant to the provisions of

this Mortgage and Security Agreement, in lieu of proceeding under the Uniform Commercial Code (South Carolina).

As to items of property described herein which are goods that are or are to become fixtures related to the real estate described herein, it is intended that, as to those goods, this Mortgage 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 Lender, as Secured Party, or the Borrower, as Debtor, at the addresses first shown above.

TO HAVE AND TO HOLD all and singular the Property unto Lender and the successors and assigns of Lender forever.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Borrower and Lender, that if Borrower pays or causes to be paid to Lender the debt secured hereby, the estate hereby granted shall cease, determined and be utterly null and void; otherwise said estate shall remain in full force and effect.

IT IS AGREED that Borrower shall be entitled to hold and enjoy the Property until an Event of Default as herein defined has occurred.

ARTICLE I

AGREEMENTS AND COVENANTS OF BORROWER

1.1 Warranty of Title. Borrower covenants and warrants that Borrower is lawfully seized of the Property in fee simple absolute, that Borrower has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as shown in the title insurance policy accepted by Lender. Borrower further covenants to warrant and forever defend all and singular the Property unto Lender and all persons whomsoever lawfully claiming the same or any part thereof.

1.2 Transfer of Property. Borrower shall not transfer the Property without the prior written consent of Lender, which consent may be withheld in lender's sole discretion. Consent to one transfer shall not be deemed to be a waiver of the right to require consent to other transfers. Except for a transfer resulting in a partial reconveyance of this Mortgage if the Note, any Loan Agreement between Borrower and Lender, or this Mortgage has a partial release clause, if Borrower transfers the Property or any portion thereof, or any interest therein, without first obtaining the written consent of Lender, all indebtedness secured by this Mortgage shall, at the option of Lender and without notice or demand, become immediately due and payable. As used herein, transfer includes, but is not limited to, the sale, option to sell, contract to sell, convey, encumber, mortgage (including encumber by a mortgage), pledge, hypothecate, or lease with option to purchase of the Property, or any portion thereof, or any interest therein, whether voluntary, involuntary, by operation of law, or otherwise, or the transfer of more than a 50% interest of Borrower if Borrower is anything other than a natural person.

1.3 Payment of Note. The Borrower shall promptly and punctually pay all principal and interest, prepayment premiums, and all other sums to become due under the Note, together with any modification or renewals thereof, according to the true intent and meaning thereof.

1.4 Performance of Loan Agreement. Borrower shall perform, observe and comply with all provisions of that certain Loan Agreement entered into by and between Borrower and Lender of event date herewith (the "Loan Agreement").

1.5 Maintenance Repair and Inspection. The Borrower covenants to keep the Property in good operating order, repair and condition and shall not commit or permit any waste thereof. Borrower shall make all repairs, replacements, renewals, additions and improvements and shall complete and restore promptly and in good workmanlike manner any improvements that may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred thereof. Borrower shall not remove any of the Property, demolish any of the Property, or materially alter such Property without the prior written consent of the Lender. Borrower agrees to permit and shall permit Lender or its agents the opportunity to inspect the Property, including the interior of any structures, at any reasonable time.

1.6 Expenses. Borrower agrees to pay or reimburse Lender for all costs, charges and expenses, including reasonable attorneys fees and disbursements, and costs incurred or paid by Lender in any action which is threatened, pending or completed or proceeding or dispute which affects or might affect this Mortgage, the Note, or the Property or any part thereof. The amounts so incurred or paid by Lender, together with interest thereon at the Event of Default Rate as hereinafter defined from the date incurred until paid by Borrower, shall be added to the indebtedness and secured by the lien of this Mortgage.

1.7 Compliance with Laws. The Borrower shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property or the operation thereof, and shall pay all fees or charges of any kind in connection therewith.

1.8 Zoning and Environmental Laws.

(a) Borrower covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Property permit the use and occupancy of the Property 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 Property or the use thereof. Without limiting the generality of the foregoing, Borrower warrants and represents to Lender that to the best of Borrower's knowledge: (a) the 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 Property or used in connection therewith, or (ii) Borrower has fully disclosed to Lender in writing the existence, extent and nature of any such hazardous materials, substances, wastes or other environmentally regulated substances, which Borrower is legally authorized and empowered to maintain on, in or under the Property or use in connection therewith, and Borrower 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. Borrower further warrants and represents that it will promptly notify Lender of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Property or used in connection therewith, and will transmit to Lender 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 Property.

(b) Borrower shall indemnify and hold Lender 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 Lender as a direct or indirect result of any warranty or representation made by Borrower 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 Lender, Borrower or any transferee of Borrower or Lender.

(c) Borrower'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.

1. Insurance. (a) Borrower agrees to keep all improvements and fixtures which are now or hereafter part of the Property and which are subject to possible casualty insured by such company or companies as Lender may reasonably approve for the full insurable value thereof, including replacement cost endorsement, against all risks including, if coverage is available, flood and earthquake. Such insurance will be payable to Lender as the interest of Lender may appear pursuant to the standard form of mortgagee clause or such other form of mortgagee clause as may be required in South Carolina and will not be cancelable by either the insurer or the insured without at least thirty (30) days prior written notice to Lender. Borrower will keep the Property continuously insured as herein required and will deliver to Lender the original of each policy of insurance required hereby. Borrower will pay each premium coming due on any such policy of insurance and will deliver to Lender upon demand by Lender proof of such payment at least thirty (30) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Borrower will furnish to Lender at least thirty (30) days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements hereof. If Borrower fails to insure the Property as herein required, Lender may, but shall not be obligated to, after giving ten (10) days written notice to Borrower so insure the Property in the name of Borrower or in the name of Lender or both in such amounts as Lender may deem necessary to protect its lien, and the premiums for any such insurance obtained by Lender shall be the obligation of Borrower. Upon foreclosure of this Mortgage, all right, title and interest of Borrower in and to any policy of insurance upon the Property which is in the custody of the Lender, including the right to unearned premiums, shall vest in the purchaser of the Property at foreclosure, and Borrower hereby appoints Lender as the attorney in fact of Borrower to assign all right, title and interest of Borrower in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

(b) In the event the Property is entirely destroyed or is partially destroyed to the extent that restoration will in the opinion of Lender cost in excess of One Hundred Thousand (\$100,000.00) 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 Lender, 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 Lender, become immediately due and payable. Notwithstanding any provisions of this Section to the contrary, (i) if the Property is only partially destroyed to the extent that in the opinion of Lender the Property can be restored for a cost not to exceed One Hundred Thousand (\$100,000.00) Dollars; (ii) if in the opinion of Lender the 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 Borrower makes some other provision satisfactory to Lender for

making all payments due on the Note during restoration; (iv) if all tenants agree in writing to remain on the Property under their leases and, if applicable, any purchasers of the Property or portions thereof agree in writing that their purchase contracts shall remain in effect; (v) if the Lender receives evidence satisfactory to it and its counsel that the Property as restored will comply with all local zoning ordinances and building restrictions; and (vi) if the Borrower covenants to make the necessary repairs and restoration and provides all additional funds necessary therefor, the Lender will make the insurance proceeds (less expenses incurred in collecting the same) available to the Borrower for the purpose of such repair and restoration, disbursement of proceeds to be in accordance with Lender's standard disbursement procedures. If Lender elects to restore the improvements, any balance of such monies after restoration shall, at the option of Lender, either be applied toward the reduction of indebtedness and other sums secured hereby or be paid to Borrower. Lender 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.

1.10 Taxes and Assessments. Borrower agrees to pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property and will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same become delinquent; provided, however, that Borrower shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Borrower deposits with the authority to which such tax, assessment or charge is payable or with Lender appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.

1.11 Expenditures by Lender. If Borrower fails to make payment for restoration or repair of the Property, for insurance premiums or for taxes, assessments or other charges as required in this Mortgage, Lender may, but shall not be obligated to, pay for the same, and any such payment by Lender will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the Event of Default Rate, as defined. Borrower shall pay to Lender in cash on demand an amount equal to any payment made by Lender pursuant to this paragraph plus interest thereon as herein provided.

1.12 Condemnation. In the event that by, or pursuant to, proper authority there is taken or condemned the entire Property or any part thereof, under power of eminent domain exercised by any actual or quasi governmental authority or public utility, the Borrower hereby assigns to the Lender any and all awards that may be given, made or due the Borrower in any proceedings in connection therewith, and the amounts of such awards shall be applied by the Lender to the reduction of the indebtedness secured hereby, and the Borrower agrees to execute any and all such further instruments of assignment of any and all such condemnation awards as may be required by the Lender to carry out the purposes of this Section. The Borrower 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 Property, the Lender hereby reserves, and the Borrower hereby acknowledges, the Lender's right to institute or intervene in any such condemnation proceedings to assert said interest. In the event the entire Property is taken or so much thereof that restoration will in the opinion of Lender cost in excess of One Hundred Thousand (\$100,000.00) 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 Lender, 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 Lender, become immediately due and payable. Notwithstanding any provisions of this Section to the contrary, (i) if the entire Property is not taken and in the opinion of Lender the Property can be restored for a cost not to exceed One Hundred Thousand (\$100,000.00) Dollars; (ii) if in the opinion of Lender the Property as restored will produce sufficient revenue to repay the Note; (iii) if provision satisfactory to Lender is made for making all payments due on the Note during restoration; (iv)

if any purchasers of the Property or portions thereof agree in writing that their purchase contracts shall remain in effect; (v) if the Lender receives evidence satisfactory to it and its counsel that the Property as restored will comply with all local zoning ordinances and building restrictions; and (vi) if the Borrower covenants to make the necessary repairs and restoration and provides all additional funds necessary therefor, the Lender will make said award (less expenses incurred in collecting the same) available to the Borrower for the purpose of such repair and restoration, disbursement of proceeds to be in accordance with Lender's standard 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.

1.13 Escrow. Lender may, in its sole discretion, require Borrower to deposit with Lender, in addition to making regular payments of principal and/or interest, an amount sufficient to enable Lender to pay when due all insurance premiums and real property taxes, which deposits shall be made in installments satisfactory to Lender. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. No interest shall be payable in respect thereof. Upon demand by Lender, Borrower shall deliver to Lender such additional monies as are necessary to enable Lender to pay such premiums or taxes 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 Borrower, Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount under this paragraph refining to Borrower's credit and any return premium received from cancellation of any insurance policy by Lender upon foreclosure of this Mortgage.

1.14 Use of Property. Borrower shall develop the Property pursuant to the terms and conditions of the planned development approved by Horry County, as amended, which use or uses, shall not change without the prior written consent of Lender.

ARTICLE II

DEFAULT AND REMEDIES

2.1 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 the Note in full on its maturity date.
- (b) Failure to pay any other payment due on the Note, which failure shall continue for ten (10) days after written notice provided in accordance with the Loan Agreement.
- (c) Failure of the Borrower to fulfill any of the obligations contained in the Note, this Mortgage, any Loan Agreement, or any other agreement between the parties.

2.2 Acceleration of Maturity. If an Event of Default shall have occurred, Lender 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.

2.3 Lender's Power of Enforcement. If an Event of Default shall have occurred, Lender 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 Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Lender may determine.

2.4 Lender's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession, and if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all the Property, and may exclude Borrower and its agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower.

(b) If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after Lender's demand, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Borrower to deliver immediate possession of all or part of the Property to Lender along with all books, papers and accounts of Borrower, to the entry of which judgment or decree Borrower hereby specifically consents.

(c) Borrower shall pay to Lender, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Lender, 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, Lender may hold, store, use, operate, manage and control the Property and conduct the business thereof, and, from time to time:

- (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personally and other property;
- (ii) insure or keep the Property insured;
- (iii) manage and operate the Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same;
- (iv) enter into agreements with others to exercise the powers herein granted Lender;

all as Lender in its reasonable judgment from time to time may determine; and Lender 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 Lender in such priority as Lender 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 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.

2.5 Leases. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the 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 Borrower to be, a

defense to any proceedings instituted by Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

2.6 Purchase by Lender. Upon any such foreclosure sale, Lender may bid for and purchase the 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.

2.7 Application of Indebtedness Toward Purchase Price. In the event Lender purchases any portion of the Property at any foreclosure sale, Lender may, to the extent permitted by law, apply toward payment of the foreclosure purchase price, in lieu of cash, any portion of or all sums due to Lender under the Note, this Mortgage or any other instrument securing the Note.

2.8 Waiver of Stay, Extension, Redemption and Appraisal Laws. Borrower agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any 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 Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Borrower, 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 Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. In the event this Mortgage is foreclosed, Borrower also waives, to the extent such waiver may be enforceable at the time of foreclosure, any right to have the Property appraised after foreclosure for the purpose of reducing a deficiency judgment.

2.9 Receiver. If an Event of Default shall have occurred, Lender, 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 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 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. Lender shall be liable to account only for such rents, issues and profits actually received by Lender, whether received pursuant to this paragraph or paragraph 2.4. Notwithstanding the appointment of any receiver or other custodian, Lender 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, Lender.

2.10 Suits to Protect the Property. Lender shall have the power and authority to institute and maintain any suits and proceedings as Lender may deem advisable (a) to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the 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 Lender's interest.

2.11 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Borrower, any person, partnership or corporation guaranteeing or endorsing any of Borrower's obligations, its creditors or its property, Lender, 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 Borrower 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 Borrower after such date.

2.12 Borrower to Pay the Note on Any Event of Default in Payment; Application of Monies by Lender.

(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 Lender's demand, Borrower will pay to Lender the whole amount due and payable under the Note and all other sums secured hereby; and if Borrower shall fail to pay the same forthwith upon such demand, Lender 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 Lender's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Lender 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 Lender 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 Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Lender 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) Borrower hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Lender and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Mortgage upon the Property or any part thereof or any lien, rights, powers or remedies of Lender hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by Lender 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.

2.13 Delay or Omission No Waiver. No delay or omission of Lender 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 Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

2.14 No Waiver of One Event of 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 then existing, or impair any rights, powers or remedies consequent thereon. If Lender (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 Property from the lien of this Mortgage or any other instrument securing the Note; (e) consents to the filing of any map, plat or re-plat 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 Borrower, 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 Lender 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 Lender, 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 Property, Lender, 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 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.

2.15 Discontinuance of Proceedings; Position of Parties Restored. If Lender 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 Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had occurred or had been taken.

2.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender 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 III

MISCELLANEOUS

3.1 Waiver. Lender may, in the sole discretion of Lender, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Lender of any other right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

3.2 Event of Default Rate. The Event of Default Rate shall be the rate of interest after default as set forth in the Note.

3.3 Future Advances. Lender, at its option, may make future advances to Borrower; provided, 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. Lender may make such future advances (a) at the request of Borrower, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of Borrower, any amounts which may be due under any other mortgage or lien affecting the Property.

3.4 Construction. This Mortgage shall be construed and enforced in accordance with the laws of South Carolina. Paragraph captions are included herein only for convenience of reference and shall not be deemed to limit or define the purpose or effect of any provision hereof. The provisions of this Mortgage are severable, and the invalidity of one or more provisions shall not be deemed to invalidate the remainder. This Mortgage shall be binding upon the Borrower and the heirs, successors and assigns of Borrower and shall inure to the benefit of Lender and the heirs, successors and assigns of Lender. Borrower agrees that time is of the essence hereof. The terms "Borrower" and "Lender" as used herein shall be deemed to include the respective heirs, successors and assigns of Borrower and Lender.

3.5 Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid to the party to whom directed at the address of such party stated above. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

3.6 Modifications. This Mortgage may not be amended or modified or the terms hereof waived except by an instrument in writing signed by the party against which enforcement of such amendment, modification or waiver is sought.

3.7 Jurisdiction. Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Mortgage, the Note or any other loan document, 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, to the Borrower at Borrower's address set forth above or any new address of which Lender has been notified by Borrower in writing.

3.8 Subordinate Liens. Borrower shall not further encumber the title to the Property without the prior written consent of the Lender.

3.9 Partial Releases. Lender shall release parcels from the lien of this Mortgage only as provided in the Loan Agreement.

3.10 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 MORTGAGE, THE NOTE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE

INDEBTEDNESS SECURED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

(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 SECTION 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 SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN SECURED HEREBY.

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. THE UNDERSIGNED HEREBY WAIVE AND RELINQUISH 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 caused this Mortgage to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of



Peachtree Properties of North Myrtle Beach, LLC,
a South Carolina limited liability company

By: 
Jeffrey T. Shoup, Manager

NOTARY ACKNOWLEDGEMENT(S) ON NEXT PAGE

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF Horry

I, ROBERT H. GWIN, JR., do hereby certify that **Jeffrey T. Shoup**, a Manager of Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 24 day of JULY, 2006.


Notary Public for South Carolina
My Commission expires: 8/8/2012

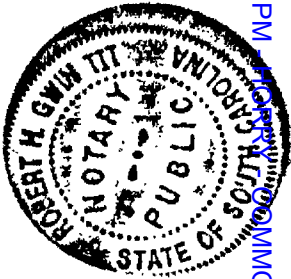


EXHIBIT A

All that certain lot or parcel of land situate in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly described as follows:

All and singular those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 73 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of T.S. Ludlam dated October 21, 1966, and recorded January 23, 1967, in the Office of the Clerk of Court for Horry County in Deed Book 360 at Page 199.

ALSO:

All and certain lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of Larry W. Paul dated February 15, 1982, and recorded on February 18, 1982, in the office of the Clerk of Court for Horry County in Deed Book 737 at Page 818.

ALSO:

PARCEL No. 1: All and singular, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, on hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referred to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10' East 516 feet to Concrete N; thence South 13°55' West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence 78°50' West 750 feet to Pipe O and Concrete N; thence North 27°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°40' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center the proposed, highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on

the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly, of Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

Being the same lands and premises conveyed to Peachtree Properties of North Myrtle Beach, LLC by Deed from McClam, et al, dated 7/24/06 and recorded in Deed Book 3132 @ page 779, public records Horry County, South Carolina,

580478

FILED

2006 JUL 25 PM 3:27

DALLEY V. SKIPPER
REGISTRAR OF DEEDS

PEACHTREE PROPERTIES OF NORTH MYRTLE BEACH, LLC,

Mortgagor,

JERICO STATE CAPITAL CORP. OF FLORIDA,

Mortgagee.

MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS

Mortgage Amount: \$4,263,888.00

Date: July 24, 2006

131.4 acres +/-
County: Horry

Record and Return to:

Westerman Ball Ederer Miller & Sharfstein, LLP
170 Old Country Road, 4th Floor
Mineola, New York 11501
Attn: Philip L. Sharfstein, Esq.

MORTGAGE
4629 0277

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ORIGINAL

4629-277

MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

This MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS is made and entered into on the 24th day of July, 2006 by PEACHTREE PROPERTIES OF NORTH MYRTLE BEACH, LLC, a South Carolina limited liability company having an address at 408 Sea Mountain Highway, North Myrtle Beach, South Carolina 29582 ("Mortgagor"), in favor of JERICHO STATE CAPITAL CORP. OF FLORIDA, a Florida corporation having an address at 2500 N. Military Trail, Suite 240, Boca Raton, Florida 33431 ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is the lawful owner of the fee estate in certain vacant land located in Horry County, Myrtle Beach, South Carolina, as more particularly described on Exhibit A attached hereto (the "Premises"); and

WHEREAS, Mortgagor has this date borrowed \$4,263,888.00 from Mortgagee and is making this Mortgage as security therefor as a second priority lien in the principal amount of \$4,263,888.00.

THE GRANTING CLAUSE:

NOW, THEREFORE, in consideration of the premises and covenants herein contained, and in order to secure the payment of the principal, interest and other sums due under that certain Mortgage Note executed the date hereof by Mortgagor to the order of Mortgagee in the original principal amount of \$4,263,888.00 (as same may be hereafter modified, amended, extended, renewed or substituted for, the "Note"), and in order to secure the payment of all other indebtedness which this Mortgage by its terms secures and the compliance with all of the terms hereof, of the Note and any other document executed in connection herewith (provided, however, that the maximum principal sum secured by this Mortgage at execution or which under any contingency may be secured hereby at any time in the future shall not exceed the principal sum stated above);

Mortgagor does hereby grant, bargain, sell, mortgage, warrant, pledge, assign, transfer and convey to Mortgagee, and to its participants, successors and assigns, subject to a first mortgage in favor of R.E. Loans LLC, a California limited liability company, securing a note in the principal sum of \$18,520,000.00 (the "Superior Mortgage"), the following property (collectively hereinafter referred to as the "Mortgaged Property"):

- (a) the Premises;

(b) all additional lands and estates hereafter acquired by Mortgagor for use in connection with the Premises and all lands and estates that may, from time to time, by supplemental mortgage or additional agreement be made subject to the lien of this Mortgage;

(c) any improvements, structures and buildings and any alterations thereto or replacements thereof, now or hereafter erected upon the Premises, all fixtures, fittings, appliances, apparatus, equipment, machinery, material and replacements thereof (other than those articles of personal property owned by tenants under the "Leases" (as defined in clause (d) below)) now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Land or such improvements, and any and all structures or buildings, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, ovens, disposals, dishwashers, hood and fan combinations, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, kitchen equipment, laundry equipment, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every nature whatsoever now or hereafter owned or acquired by Mortgagor and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the Premises, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, and all extensions, additions, improvements, betterments, renewals, substitutions 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, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (collectively, the "Improvements");

(d) all leases and all other occupancy agreements (written or oral), by concession, license or otherwise (including any guarantees or sureties of any of the foregoing), of the Mortgaged Property, or any part thereof, now existing or hereafter entered into between Mortgagor (or any predecessor in interest as owner of the Mortgaged Property or otherwise) and tenants of Mortgagor (or such predecessor in interest), and all right, title and interest of Mortgagor therein and thereunder, including cash, securities, letters of credit or other security deposited thereunder to secure performance by the tenants under the Leases of their obligations thereunder and any proof of claim in any bankruptcy proceeding instituted by or against any such tenant or guarantor and the right to enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements thereof (hereinafter collectively referred to as the "Leases");

(e) all furniture, furnishings, equipment and other articles of personal property, together with all replacements and renewals thereof, other than those articles of trade fixtures and other personal property owned by tenants under the Leases, now or at any time hereafter placed upon, located in or used in any way in connection with the complete and

comfortable use, enjoyment, occupancy and operation of the Property (hereinafter collectively referred to as the "Furniture, Furnishings and Equipment");

(f) Mortgagor's interest in all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of any structure or building now or hereafter erected on the Land or to the sale of any direct or indirect interest in the Property, including any purchase money mortgage or security agreement securing the payment of any portion of the purchase price due to Mortgagor for such interest, and all right, title and interest of Mortgagor therein and thereunder, including the right upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(g) Mortgagor's interest in the franchises, permits, licenses and rights therein and thereto respecting the use, occupation and operation of the Mortgaged Property and any part thereof and respecting any business or activity conducted on the Mortgaged Property and any part thereof, including to the extent permitted by law the name or names, if any, now or hereafter used for the Improvements, and the good will associated therewith;

(h) Mortgagor's interest in all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Mortgaged Property described in the preceding clauses (a) through (g), or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

(i) Mortgagor's interest claims and causes of action relating directly or indirectly to the Mortgaged Property (including, without limitation, tax appeals and tax and other refunds), whether such claims or causes of action arise in Mortgagor's name or such claims or causes of action are acquired by Mortgagor, directly or indirectly, by subrogation or otherwise;

(j) Mortgagor's interest in all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Mortgaged Property described in the preceding clauses (a) through (i) (including, without limitation, insurance proceeds and proceeds from governmental or charitable grants or loans including without limitation grants or loans from the Federal Emergency Management Agency or any other federal, state or local agency or instrumentality or any charitable organization);

(k) all rents, income and other benefits to which the Mortgagor may now or hereafter be entitled from the Mortgaged Property described in the preceding clauses (a) through (j), to be applied against the indebtedness and other sums secured hereby; provided, however, that permission is hereby given to the Mortgagor, so long as no Event of Default has occurred hereunder, to collect and use such rents, income and other benefits as they become due and payable, but not in advance thereof;

(l) all air rights and unused development rights (including, without limitation, rights (whether or not transferable to other parties) to restrict the use of the Mortgaged Property);

(m) the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Mortgaged Property, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Mortgaged Property;

(n) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(o) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(p) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(q) all title insurance policies, management, franchise and service agreements, accounts, occupancy permits and licenses, building and other permits, governmental approvals, licenses, agreements with utilities companies, water and sewer capacity reservation agreements, bonds, governmental applications and proceedings, feasibility studies, maintenance and service contracts, marketing agreements, development agreements, surveys, engineering work, architectural plans and engineering plans, site plans, landscaping plans, engineering contracts, and all other consents, approvals and agreements which Mortgagor may now or hereafter own in connection with the Mortgaged Property and/or improvements constructed thereon, and all deposits, down payments and profits paid or deposited thereunder, now existing or hereafter obtained by or on behalf of Mortgagor; and

(r) the proceeds of any loan secured by any interest in the Mortgaged Property described in the preceding sections (a) through (q).

AND, without limiting any of the other provisions of this Mortgage, Mortgagor expressly grants to Mortgagee, as secured party, a security interest in all of those portions of the Mortgaged

Property which are or may be subject to the provisions of the Uniform Commercial Codes of the state in which the Mortgaged Property is located and of the state in which Mortgagor was organized, applicable to secured transactions.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns forever.

AND Mortgagor further covenants and agrees with Mortgagee as follows:

ARTICLE I

The Note

1.01 Payment of the Note. Mortgagor will duly and punctually pay (a) the principal of and premium, if any, and interest and other charges on the Note at the time outstanding in accordance with the terms thereof and hereof, and (b) when and as due and payable from time to time as provided herein, all other sums payable hereunder or secured hereby, together with, to the extent permitted by applicable law, interest at the Default Rate on any sums as shall not be paid when due and payable from the date when due and payable (whether during a grace period, if any, or otherwise) until payment thereof.

1.02 Late Charge. In the event that any payment due hereunder or under the Note shall not be made by Mortgagor within five (5) days from the date when such payment is due and payable, a late charge of five cents (\$.05) for each dollar (\$1.00) so over due, may be charged by Mortgagee for the purpose of defraying the expense incident to handling such delinquent payment.

1.03 Prepayment of the Note. The Note may only be prepaid to the extent provided in the Note.

1.04 Guaranty. Mortgagor has delivered to Mortgagee simultaneously with the execution and delivery of this Mortgage, the unconditional guaranty (the "Guaranty") of the payment of and performance under the Note, this Mortgage and any other document evidencing or securing the performance of the obligations secured hereby, duly executed by the Guarantors.

1.05 Disbursement of Loan Proceeds. The proceeds of the loan secured hereby will be disbursed by Mortgagee, upon the execution and delivery of the Note, the Guaranty and this Mortgage, to acquire the Premises, and to pay the necessary expenses incidental to such transaction and the perfection of the lien hereof, including recording costs, documentary and intangible taxes, title insurance premiums and Mortgagee's and Mortgagor's counsels' fees and disbursements, all in accordance with the terms and conditions of this Mortgage and of the commitment letter (the "Mortgage Commitment Letter"), if any, issued by Mortgagee to

Mortgagor in connection with the loan evidenced by the Note as the Mortgage Commitment Letter may be amended herein or in other instruments executed contemporaneously herewith.

ARTICLE 2

OWNERSHIP, CONDITION, ETC., OF MORTGAGED PROPERTY

2.01 Representations, Covenants and Warranties as to Title to Mortgaged Property, etc. Mortgagor represents, covenants and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is and shall be seized of an indefeasible estate in fee simple in, and has and shall have good, marketable and absolute title to, the Mortgaged Property, and has good right, full power and lawful authority to mortgage and pledge the same as provided herein and Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; the Mortgaged Property is and shall be free and clear of all liens, security interests, charges and encumbrances whatsoever except those exceptions to title as are specified in the title insurance policy to be issued pursuant to the title insurance commitment endorsed and redated on the date hereof and accepted by the Mortgagee (the "Permitted Encumbrances"); (b) Mortgagor has good and lawful right, power and authority to execute this Mortgage and to mortgage the Mortgaged Property, to assign its right, title and interest as landlord under the Leases and to grant a security interest in the Mortgaged Property; (c) this Mortgage has been duly executed and delivered by the duly authorized representatives of Mortgagor and constitutes the legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms; (d) all costs arising from construction of any Improvements and the purchase of all equipment located on the Mortgaged Property have been paid; and (e) neither Mortgagor nor any prior owner or present or former tenant or other person has taken any action (or been responsible for any omission) that would cause the Mortgaged Property or any part thereof or any interest therein to be subject to forfeiture under applicable laws, and (f) the Mortgaged Property is not subject to rent control, rent stabilization or other governmental rent regulations. Notwithstanding anything to the contrary contained herein, this Mortgage is subject to and subordinate to the lien of the Superior Mortgage. Mortgagor at its expense will warrant and defend to Mortgagee such title to the Mortgaged Property and the lien and security interest of Mortgagee thereon and therein, against all claims and demands and will maintain and preserve such lien and security interest and will keep this Mortgage a lien upon and a priority perfected security interest in the Mortgaged Property, subject only to the Permitted Encumbrances.

2.02 Title Insurance.

2.02.01 Title Insurance Policy. Prior to or concurrently with the execution and delivery of this Mortgage, Mortgagor, at its own cost and expense, will obtain and deliver to Mortgagee a mortgagee's title insurance policy in the amount of this Mortgage, issued by a title

insurance company satisfactory to Mortgagee and in form and substance satisfactory to Mortgagee and its counsel, naming Mortgagee as the insured, insuring title to and priority of the lien of this Mortgage upon the Land and the Improvements, together with such reinsurance and co-insurance as Mortgagee may require.

2.02.02 Current Survey. Prior to the execution and delivery of this Mortgage, Mortgagor, at its own cost and expense, has obtained and delivered to Mortgagee a current survey of the Land and Improvements satisfactory to Mortgagee and to the title insurance company specified pursuant to Section 2.02.01.

2.02.03 Title Insurance Proceeds. All proceeds received by Mortgagee for any loss under the title insurance policy or policies delivered to Mortgagee under Section 2.02.01 or otherwise in connection with this Mortgage, or under any title insurance policy or policies delivered to Mortgagee in substitution therefor or in replacement thereof, shall be the property of Mortgagee and applied in the manner provided in Section 5.08.

2.03 Recordation. Mortgagor, at its expense, will at all times cause this Mortgage and any instruments amendatory hereof or supplemental hereto and any instruments of assignment hereof or thereof (and any appropriate financing statements or other instruments and continuations thereof with respect to any thereof) to be recorded, registered and filed and to be kept recorded, registered and filed, in such manner and in such places, and will pay all such recording, registration, filing fees and other charges, and will comply with all such statutes and regulations as may be required by law in order to establish, preserve, perfect and protect the lien of this Mortgage as a valid, direct mortgage lien and priority perfected security interest in the Mortgaged Property, subject only to the Permitted Encumbrances. Mortgagor will pay or cause to be paid, and will indemnify Mortgagee in respect of, all taxes (including interest and penalties) at any time payable in connection with the filing and recording of this Mortgage and any and all supplements and amendments thereto.

2.04 Payment of Impositions, etc. Subject to Section 2.07 (relating to permitted contests) and Section 2.08 (relating to escrow deposits), Mortgagor will pay or cause to be paid when due and payable all taxes, assessments (including, but not limited to, all assessments for public improvements or benefits), water and sewer rates, ground rents, maintenance or common charges, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Mortgaged Property, charges for public or private utilities, license permit fees, inspection fees and other governmental levies or payments, of every kind and nature whatsoever, general and special, ordinary and extraordinary, unforeseen as well as foreseen, which at any time may be assessed, levied, confirmed, imposed or which may become a lien upon the Mortgaged Property, or any portion thereof, or which are payable with respect thereto, or upon the rents, issues, income or profits thereof, or on the occupancy, operation, use, possession or activities thereof, whether any or all of the same be levied directly or indirectly or as excise taxes or as income taxes, and all taxes, assessments or charges which may be levied on the Note, or the

interest thereon (collectively, the "Impositions"). Mortgagor will deliver to Mortgagee, upon request, copies of official receipts or other satisfactory proof evidencing such payments.

2.05 Insurance and Legal Requirements. Subject to Section 2.07 (relating to permitted contests), Mortgagor, at its expense, will comply, or cause compliance with:

(a) all provisions of any insurance policy covering or applicable to the Mortgaged Property or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or any part thereof or any use or condition of the Mortgaged Property or any part thereof (collectively, the "Insurance Requirements"), and

(b) all laws, statutes, codes, acts, ordinances, orders, permits, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements (including, without limitation, those relating to the protection of the environment) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, or any of the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, or any use or condition of the Mortgaged Property or any part thereof (collectively, the "Legal Requirements");

whether or not compliance therewith shall require structural changes in or interference with the use and enjoyment of the Mortgaged Property or any part thereof and whether or not such compliance could be foreseen or is unforeseen.

2.06 Liens, etc. Except for the Superior Mortgage and its related security documents, Mortgagor will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or any part thereof or the interest of Mortgagor or Mortgagee therein or any rents or other sums arising therefrom, other than (a) the Permitted Encumbrances and (b) liens of mechanics, materialmen, suppliers or vendors or rights thereto which are at the time being contested as permitted by Section 2.07. Mortgagor is prohibited from placing any subordinate or other mortgages or liens on the Mortgaged Property and to the fullest extent permitted by law any such purported mortgages or liens (which are not a Permitted Encumbrance) placed on all or any portion of the Mortgaged Property shall be deemed void ab initio. Mortgagor will not postpone the payment of any sums for which liens of mechanics, materialmen, suppliers or vendors or rights thereto have then incurred (unless such liens or rights thereto are at the time being contested as permitted by Section 2.07), or enter into any contract under which payment of such sums is postponable (unless such contract expressly provides for the legal, binding and effective waiver of any such liens or rights thereto), in either case, for more than 30 days after the completion of the action giving rise to such liens or rights thereto.

2.07 Permitted Contests. Mortgagor at its expense, may, with the prior written consent of Mortgagee or, in the case of tax certiorari proceedings, upon notice to Mortgagee, contest, or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of application, in whole or in part, of any Imposition, Legal Requirement or Insurance Requirement or of any lien, encumbrance or charge referred to in Section 2.06, provided that (a) in the case of an unpaid Imposition, lien, encumbrance or charge, such proceedings shall suspend the collection thereof from Mortgagor, Mortgagee, the Mortgaged Property and any rent or other income therefrom and shall not interfere with the payment of any such rent or income, (b) neither the Mortgaged Property nor any rent or other income therefrom nor any part thereof or interest therein would be in any danger of being sold, forfeited, lost or interfered with, (c) in the case of a Legal Requirement, neither Mortgagor nor Mortgagee would be in danger of any civil or criminal liability for failure to comply therewith, (d) Mortgagor shall have furnished such security, if any, as may be required in the proceedings or as may be reasonably requested by Mortgagee, (e) the nonpayment of the whole or any part of any tax, assessment or charge will not result in the delivery of a tax deed to the Mortgaged Property or any part thereof because of such nonpayment, (f) the payment of any sums required to be paid under the Note or under this Mortgage (other than any unpaid Imposition, lien, encumbrance or charge at the time being contested in accordance with this Section 2.07) shall not be interfered with or otherwise affected, and (g) in the case of any Insurance Requirement, the failure of Mortgagor to comply therewith shall not affect the validity of any insurance required to be maintained by Mortgagor under Section 3.01.

2.08 Deposits for Impositions, Insurance Premiums, etc. To the extent not being escrowed for payment by Superior Mortgagee (as hereinafter defined in this Mortgage), Mortgagor will pay or cause to be paid to Mortgagee, on the first day of each month following the date hereof, such amounts as Mortgagee from time to time estimates as necessary to create and maintain a reserve fund to be held by Mortgagee, without interest, from which to pay one month before the same become due, all Impositions (including all taxes, assessments, liens and charges on or against the Mortgaged Property and any part thereof) and premiums for insurance required to be maintained by Mortgagor under Section 3.01. Payments from such reserve fund for such purposes may be made at Mortgagee's discretion even though subsequent owners of the Mortgaged Property or any part thereof may benefit thereby. In the event of any default under the terms of this Mortgage, any part or all of such reserve fund may be applied to any part of the indebtedness secured hereby. In refunding any part of such reserve fund, Mortgagee may deal with whomever is represented to be the owner of the Mortgaged Property or such part thereof at the time. If one month prior to the due date of any of the aforementioned obligations the amount then on deposit therefor shall be insufficient for the payment of such obligation in full, Mortgagor, within ten (10) days after written notice from Mortgagee, shall deposit the amount of the deficiency with Mortgagee. Until expended or applied as above provided, any amounts in the reserve fund shall constitute additional security for the payment of the Indebtedness. The reserve fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the reserve fund shall be payable to Mortgagor.

2.09 Leases.

2.09.01 Subordination of Leases; Attornment. Except as otherwise consented to in writing by Mortgagee, all of the Leases shall be made expressly subject and subordinate to this Mortgage and shall contain provisions obligating the tenants thereunder, at Mortgagee's option, to attorn to Mortgagee in the event Mortgagee succeeds to the interest of Mortgagor under such Lease.

2.09.02 Enforcement, etc. Mortgagor will faithfully keep and perform all of the obligations of the lessor under each of the Leases in accordance with their terms. Mortgagor will maintain the Leases in full force and effect, and will not, without the prior written consent of Mortgagee, (a) terminate or cancel any Lease or consent to or accept any termination, cancellation or surrender thereof, or permit any condition or event to exist or to occur that would, or would entitle the tenant thereunder to, terminate or cancel the same, (b) amend, modify or otherwise change the terms of any Lease except to increase the rent or other charges or assessments payable by tenants thereunder upon any renewal or extension of any such lease, (c) waive any default under or breach of any Lease, (d) consent to or permit any prepayment or discount of rent or payment of advance rent under any Lease (other than the usual prepayment of rent as would result from the acceptance on the first day of each month of the rent for the ensuing month and a reasonable and customary security deposit of not more than two months' rent in accordance with the terms of any such lease), (e) enter into any Lease not in effect on the date hereof without the prior written consent of Mortgagee, (f) give any waiver, consent or approval under any Lease or take any other action in connection with any such Lease that would or might impair the value of Mortgagor's interest thereunder or of the Mortgaged Property subject thereto, or impair the interest of Mortgagee therein, (g) collect any rent more than one (1) month in advance of the date due, (h) collect any sums from or settle any claim with any tenant in bankruptcy or guarantor of any Lease without the prior written consent of Mortgagee; any such sums shall be paid directly to Mortgagee and applied first against accrued but unpaid interest due under the Note and then in reduction of the principal balance due under the Note, or (i) consent to any assignment of or subletting or other matter requiring the lessor's consent under any Lease without the prior written consent of Mortgagee.

2.09.03 Assignment of Leases, etc. Subject to the Superior Mortgage and related security documents, Mortgagor hereby assigns to Mortgagee all its right, title and interest as landlord under Leases now existing or hereafter entered into, and all rents and other sums payable to Mortgagor under each such Lease, together with the right to collect and receive the same, provided that, if and so long as no Event of Default (as defined in Section 5.01) shall have occurred and be continuing, Mortgagor shall be permitted to exercise its rights and perform its obligations as landlord under the Leases and to collect and receive such rents and other sums for its own uses and purposes but nonetheless subject to Section 2.09.02 hereinabove. Upon the occurrence of an Event of Default, such permission shall terminate and shall not be reinstated upon a cure of such Event of Default without Mortgagee's express written consent. Such

assignment shall be fully operative without any further action on the part of either party and Mortgagee shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property whether or not Mortgagee takes possession of the Mortgaged Property. Mortgagor hereby further grants to Mortgagee the right, at Mortgagee's option, to (i) enter upon and take possession of the Mortgaged Property for the purpose of collecting the said rents, income and other benefits, (ii) dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Mortgagee, (iii) let the Mortgaged Property or any part thereof, and (iv) apply such rents, income and other benefits, after payment of all necessary charges and expenses, on account of the indebtedness and other sums secured hereby. Such assignment and grant shall continue in effect until the indebtedness and other sums secured hereby are paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Mortgagee pursuant to such grant, whether or not foreclosure has been instituted. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default, Event of 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. Upon the occurrence of an Event of Default, all such rents and other sums shall be collected and held by Mortgagee and shall be applied as provided in Section 5.08.

2.09.04 Further Assignments. Subject to the Superior Mortgage and related security documents, Mortgagor shall assign to Mortgagee, upon request, as further security for the indebtedness secured hereby, Mortgagor's interests in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments in form satisfactory to Mortgagee; but no such assignment shall be construed as a consent by Mortgagee to any agreement, contract, license or permit so assigned, or to impose upon Mortgagee any obligations with respect thereto.

2.09.05 Rent Roll. If any of the Property is rented, Mortgagor shall furnish to Mortgagee, annually on or before March 1 of each year, and, in addition, within ten (10) days after a request by Mortgagee to do so, a certified statement containing the names of all tenants of the Mortgaged Property or any part thereof, the term of their respective leases, the space occupied, the rents payable and the securities deposited thereunder, together with true copies of each Lease and any amendments and supplements thereto.

2.09.06 No Commingling. All securities deposited by tenants of the Mortgaged Property shall be treated as trust funds not to be commingled with any other funds of Mortgagor and Mortgagor shall, upon demand, furnish to Mortgagee satisfactory evidence of compliance with this provision, together with a verified statement of all securities deposited by the tenants.

2.09.07 Successor Not Bound. To the extent not so provided by applicable law, each Lease of the Mortgaged Property, or of any part thereof, entered into after the date hereof, shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by

law or by this Mortgage, any person succeeding to the interest of Mortgagor as a result of such enforcement shall not be bound by any payment of rent or additional rent for more than one month in advance.

2.10 Use of Property, etc. Mortgagor shall continue to operate the Mortgaged Property for the purposes for which used on the date hereof and for no other purpose, and shall not acquire any fixtures, equipment, furnishings or apparatus covered by this Mortgage subject to any security interest or other charge or lien taking precedence over the security interest and lien of this Mortgage. Mortgagor shall not make or suffer any improper or offensive use of the Mortgaged Property or any part thereof and will not use or permit to be used any part of the Mortgaged Property for any dangerous, noxious, offensive or unlawful trade or business or for any purpose which will reduce the value of the Mortgaged Property in any respect or will cause the Mortgaged Property or any part thereof or interest therein to be subject to forfeiture. In the case of any action or omission of any party which may cause the Mortgaged Property or any part thereof or any interest therein to be subject to forfeiture under applicable laws, then the Mortgagor shall, within 5 days thereafter, (1) give notice to the Mortgagee thereof, (2) take at its expense all action (including, without limitation, the commencement of all summary proceedings required to evict any party responsible for such act or omission) required to prevent such forfeiture and (3) bond the forfeiture proceeding so that it no longer constitutes a lien against any portion of the Mortgaged Property. Mortgagor will not do or permit any act or thing which is contrary to any Legal Requirement or Insurance Requirement or any document of record affecting the Property, or which might impair the value or usefulness of the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property or any part thereof, and will not cause or maintain any nuisance in, at or on the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property. Mortgagor at its expense will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all instruments relating or evidencing the same, in each case, to the extent compliance therewith is required of Mortgagor under the terms thereof. Mortgagor will not take any action which results in a forfeiture or termination of the rights afforded to Mortgagor under any such instruments and will not, without the prior written consent of Mortgagee, amend in any material respect any of such instruments. Mortgagor shall at all times comply with any instruments of record at the time in force affecting the Mortgaged Property or any part thereof and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Mortgaged Property or any part thereof then being made, and for the proper erection, installation, operation and maintenance of the Improvements or any part thereof.

2.11 Utility Services. Mortgagor will pay or cause to be paid all charges for all public and private utility services, all public or private communications services and all sprinkler systems and protective services at any time rendered to or in connection with the Mortgaged Property or any part thereof, will comply or cause compliance with all contracts relating to any such services, and will do all other things required for the maintenance and continuance of all such services.

2.12 Maintenance and Repair, etc. Subject to Section 2.13, Mortgagor will keep or cause to be kept all presently and subsequently erected or acquired Improvements and the sidewalks, curbs, vaults and vault space, if any, in good and substantial order and repair and in such a fashion that the value and utility of the Mortgaged Property will not be diminished, and, at its sole cost and expense, will promptly make or cause to be made all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be at least equal in quality and class to the original Improvements. Mortgagor's obligation to repair shall include the obligation to rebuild in the event of destruction however caused, provided that damage by fire or other cause for which Mortgagor is obligated to maintain insurance by any of the provisions of Section 3.01 shall be governed by the provisions of Sections 3.01 and 3.02, and damage by any taking shall be governed by the provisions of Section 3.02. Mortgagor at its expense will do or cause to be done all shoring of foundations and walls of any building or other Improvements and (to the extent permitted by law) of the ground adjacent thereto, and every other act necessary or appropriate for the preservation and safety of the Mortgaged Property by reason of or in connection with any excavation or other building operation upon the Mortgaged Property and upon any adjoining property, whether or not Mortgagor shall, by any Legal Requirement, be required to take such action or be liable for failure to do so.

2.13 Alterations, Additions, etc. Except as set forth in this Section 2.13, Mortgagor shall make no alterations of or additions to the Mortgaged Property (nor shall Mortgagor demolish all or any portion of the Mortgaged Property). So long as no Event of Default shall have occurred and be continuing, and with the prior written consent of Mortgagee, Mortgagor shall have the right at any time and from time to time to make or cause to be made reasonable alterations of and additions to the Property or any part thereof. Mortgagee agrees to not unreasonably withhold or delay its consent to any alteration or addition provided that such alteration or addition (a) shall not change the general character of the Property or reduce the fair market value thereof below its value immediately before such alteration or addition, or impair the usefulness of the Property, (b) is effected with due diligence, in a good and workmanlike manner and in compliance with all Legal Requirements and Insurance Requirements, (c) is promptly and fully paid for, or caused to be paid for, by Mortgagor when due, (d) is made, in case the estimated cost of such alteration or addition exceeds \$25,000, only after Mortgagee shall have consented thereto in writing and shall have reviewed and approved in writing the plans and specifications therefor, (e) is made under the supervision of a qualified architect, engineer or other professional approved by Mortgagee in writing, and (f) is made only after Mortgagor shall have furnished to Mortgagee, if Mortgagee so requires, a payment and performance bond or other security reasonably satisfactory to Mortgagee. Mortgagor shall not demolish all or any portion of the Mortgaged Property without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole and absolute discretion.

2.14 Acquired Property Subject to Lien. All property at any time acquired by Mortgagor and required by this Mortgage to become subject to the lien and security interest hereof, including any property acquired as provided in Section 2.13, whether such property is acquired by exchange, purchase, construction or otherwise, shall forthwith become subject to the lien and security interest of this Mortgage without further action on the part of Mortgagor or Mortgagee. Mortgagor, at its expense, will execute and deliver to Mortgagee (and will record and file as provided in Section 2.03) an instrument supplemental to this Mortgage, satisfactory in substance and form to Mortgagee, whenever such an instrument is necessary under applicable law to subject to the lien and security interest of this Mortgage all right, title and interest of Mortgagor in and to all property required by this Mortgage to be subject to the lien and security interest hereof and acquired by Mortgagor since the date of this Mortgage or the date of the most recent supplemental instrument so subjecting property to the lien hereof, whichever is later.

2.15 No Claims Against Mortgagee, etc. Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or shall be construed to permit the making of any claim against Mortgagee in respect of labor or services or the furnishing of any materials or other property or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

2.16 Indemnification Against Liabilities. Mortgagor will protect, indemnify, save harmless and defend Mortgagee from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of a mortgagee's interest in the Mortgaged Property, (b) any accident, injury to or death of persons or loss of or damage to or loss of the use of property occurring on or about the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (c) any use, non-use or condition of the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof made or suffered to be made by or on behalf of Mortgagor, (f) any negligence or tortious act on the part of Mortgagor or any of its agents, contractors, lessees, licensees or invitees, (g) any work in connection with any alterations, changes, new construction or demolition of or additions to the Property, or (h) any agreement between Mortgagor and the Mortgagee originally named herein in connection with the closing of the loan evidenced by the Note. If any action or proceeding be commenced, including an action to foreclose this Mortgage or to collect the indebtedness secured hereby, to which action or proceeding the Mortgagee is made a party by reason of the execution of this Mortgage or the Note, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created hereby, shall be paid by Mortgagor to Mortgagee as hereinafter

provided. Mortgagor will pay and save Mortgagee harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the state in which the Mortgaged Property is located or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Mortgagee in respect of this Mortgage or the Note. All amounts payable to Mortgagee under this Section 2.16 shall be deemed indebtedness secured by this Mortgage and any such amounts that are not paid within ten (10) days after written demand therefor by Mortgagee shall bear interest at the Default Rate from the date of such demand. In case any action, suit or proceeding is brought against Mortgagee by reason of any such occurrence, Mortgagor, upon request of Mortgagee, will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended, by counsel designated by Mortgagor and approved by Mortgagee. The obligations of Mortgagor under this Section 2.16 shall survive any discharge of this Mortgage and payment in full of the Note.

2.17 Mortgagee's Exculpation. Mortgagor is advised and agrees that this Mortgage is made on the express condition that any obligation hereunder of Mortgagee shall be enforceable only against Mortgagee's interest in this Mortgage, and that no trustee, officer, director, beneficiary, shareholder, employee or representative of Mortgagee shall be personally liable for any matter in connection with, or arising out of this Mortgage. The foregoing shall not be deemed in any way to impose any obligations on Mortgagee except as expressly provided herein. In particular, and without implied limitation, Mortgagee shall not be liable for the failure, seizure or similar circumstance of any financial institution in which Mortgagee shall have deposited sums on account of Mortgagor (for example, without implied limitation, tax escrow deposits and Proceeds (hereafter defined) held for the restoration and/or replacement of all or part of the Mortgaged Property) regardless whether or not such financial institution shall be affiliated with Mortgagee and whether or not the sums on deposit shall have exceeded the maximum amount covered by any applicable federal or other insurance.

2.18 Disposition of the Mortgaged Property.

(a) Mortgagor shall not, during the term hereof, sell, assign, convert the Mortgaged Property or any part thereof into a condominium or cooperative, mortgage, pledge or hypothecate or otherwise transfer, encumber or dispose of the Mortgaged Property or any part thereof or any interest therein or any of the rents or other sums to be earned therefrom or of any direct or indirect interest in Mortgagor, if Mortgagor is a partnership, limited liability company, corporation or any other entity (in each of the foregoing cases, either of record or beneficially), without Mortgagee's prior written consent.

(b) A sale, assignment, mortgage, pledge, hypothecation or transfer within the meaning of this Section 2.18 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in, Mortgagor's right, title and

interest in and to any Leases; (iii) if Mortgagor, Guarantors, or any general partner of Mortgagor or Guarantors is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Mortgagor, Guarantors, or any general partner of Mortgagor or Guarantors is a limited liability company, the voluntary or involuntary sale, conveyance or transfer of direct or indirect interests in such limited liability company (or interests in any limited liability company directly or indirectly controlling such limited liability company by operation of law or otherwise) or the creation or issuance of membership interests by which an aggregate of more than 10% of such limited liability company's membership interests shall be vested in a party or parties who are not now members; (v) if Mortgagor, Guarantors or any general partner of Mortgagor or Guarantors is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner or the transfer of the partnership interest of any general partner or managing partner; (vi) if Mortgagor, Guarantors, or any general partner of Mortgagor or Guarantors is a limited or general partnership, the voluntary or involuntary sale, conveyance or transfer of direct or indirect interests in such partnership (or interests in any partnership directly or indirectly controlling such partnership by operation of law or otherwise) or the creation or issuance of partnership interests by which an aggregate of more than 10% of such partnership's partnership interests shall be vested in a party or parties who are not now partners; (vii) the removal or resignation of the managing agent for the Mortgaged Property or the transfer of ownership, management or control of such managing agent to a person or entity other than the general partner or managing partner of Mortgagor.

2.19 Tax Appeals and Refunds. Mortgagor shall not collect any sums from any governmental authority or settle any claim with any governmental authority in respect of a claim by Mortgagor for a reduction in any taxes (real property or otherwise) due in respect of any of the Mortgaged Property (regardless of whether such claims or sums shall relate to a period prior to the date of this Mortgage) without the prior written consent of Mortgagee. Subject to the terms of the Superior Mortgage, any such sums shall be paid directly to Mortgagee and applied first against accrued but unpaid interest due under the Note and then in reduction of the principal balance due under the Note. If acquired directly by Mortgagor, subject to the terms of the Superior Mortgage, such sums shall be held in trust and immediately paid over to Mortgagee. Upon an Event of Default hereunder, subject to the terms of the Superior Mortgage, Mortgagee (i) may prosecute any tax protests in respect of the Mortgaged Property, (ii) may settle any claims therein in the name of and on behalf of Mortgagor and collect any sums on account thereof.

2.20 Mortgage Foreclosure Moratorium Laws. If this Mortgage is now or hereafter protected or affected by moratorium laws, or by any other statutes, preventing the Mortgagee from foreclosing for nonpayment of the principal at the expiration date hereof, the Mortgagor shall continue or commence to pay amortization to the Mortgagee (if the Mortgagee so elects,

and only so long as such laws or statutes protect the Mortgagee from foreclosure for nonpayment of the balance of the principal debt), based upon the greater of (i) a five (5) year amortization schedule (subject to the highest rate permitted by law) or (ii) the same rate (if any) existing immediately preceding the maturity date of this Mortgage. If, however, applicable laws require or permit, in connection with mortgages so protected or affected, that installment payments to the Mortgagee amortizing such debt be in greater annual amounts than the aggregate per annum of the payments that would be due if based on such year's payments, the Mortgagee may elect, as soon as permitted after the debt matures, that the installments payable after the maturity date hereof, shall be at the rate and as provided for in such laws. If the Mortgagor defaults in payment of any such amortization installment beyond any applicable grace period, such default shall constitute an Event of Default hereunder entitling Mortgagee to exercise all of its rights and remedies including, without limitation, instituting foreclosure proceedings solely by reason of such default. Nothing in this Section 2.20 shall be deemed to extend the maturity date of the Note and no acceptance of a payment by Mortgagee on account of the Note pursuant to this Section 2.20 or otherwise shall be deemed to extend the maturity date of the Note unless Mortgagee shall have agreed to such extension in writing.

ARTICLE 3

Insurance; Damage, Destruction or Taking, etc.

3.01 Insurance.

3.01.01 Risks to be Insured. Mortgagor shall carry the insurance required under the Superior Mortgage and this Mortgage. Mortgagor will, at its expense, maintain or cause to be maintained with insurers approved by Superior Mortgagee (a) insurance with respect to the Improvements (which shall not include development and site work at the Mortgaged Property) against loss or damage by perils customarily included under standard "all-risk" policies, in amounts sufficient to Superior Mortgagee (b) public liability, including bodily injury and property damage, insurance, with personal injury endorsement, applicable to the Mortgaged Property in such amounts as are usually carried by persons operating similar properties in the same general locality, (c) flood hazard insurance if Mortgagee determines that the Mortgaged Property is in a flood zone and that the Improvements (which does not include site work and development) located on the Mortgaged Property should be insured., (d) all-risk builders' risk insurance with respect to the Mortgaged Property during any period in which there is any construction occurring at the Improvements (which shall not include development and site work at the Mortgaged Property), against loss or damage by fire and such other risks, including vandalism, malicious mischief and sprinkler leakage, as are included in so-called "extended coverage" clauses at the time available with respect to similar property, in an amount to be determined by Superior Mortgagee, and (e) such other insurance with respect to the Mortgaged Property in such amounts and against such insurable hazards as Superior Mortgagee and Mortgagee from time to time may reasonably require. Notwithstanding any provisions to the

contrary, Mortgagor shall not be required to carry any insurance or amount of insurance coverage not required by the Superior Mortgagee.

3.01.02 Policy Provisions. Subject to the terms of the Superior Mortgage, all insurance maintained by Mortgagor pursuant to subsection 3.01.01, shall (a) name Mortgagor as owner and Mortgagee as loss payee under a mortgagee endorsement satisfactory to Mortgagee, (b) (except public liability insurance) provide that the proceeds for any losses shall be adjusted by Mortgagor, subject to the approval of Mortgagee in the event the proceeds shall exceed \$25,000, and shall be payable to Mortgagee, to be held and applied as provided in Section 3.03, (c) include effective waivers by the insurer of all rights of subrogation against any named insured, the indebtedness secured by this Mortgage and the Mortgaged Property and all claims for insurance premiums against Mortgagee, (d) provide that any losses shall be payable notwithstanding (i) any foreclosure or other action or proceeding taken by Mortgagee pursuant to any provision of this Mortgage, or (ii) any change in title or ownership of the Mortgaged Property, (e) provide that no cancellation, reduction in amount or material change in coverage thereof or any portion thereof shall be effective until at least 30 days after receipt by Mortgagee of written notice thereof, and (f) be satisfactory in all other respects to Mortgagee.

3.01.03 Delivery of Policies, etc. Mortgagor will deliver, or cause to be delivered, to Mortgagee, promptly upon request, (a) the original or true copies of all policies evidencing all insurance required to be maintained under subsection 3.01.01 or certificates of insurance and a letter from an insurance broker or agent satisfactory to Mortgagee to the effect that the insurance policies maintained by Mortgagor comply with the terms of this Mortgage, and (b) evidence as to the payment of all premiums due thereon (with respect to public liability insurance policies, all installments for the current year due thereon to such date), provided that Mortgagee shall not be deemed by reason of its custody of such policies to have knowledge of the contents thereof. Mortgagor will also deliver to Mortgagee, promptly upon request, a certificate of a principal of Mortgagor (a "Compliance Certificate") setting forth the particulars as to all such insurance policies and certifying that the same comply with the requirements of this Section, that all premiums due thereon have been paid and that the same are in full force and effect. Mortgagor will also deliver to Mortgagee not later than 30 days prior to the expiration of any policy a binder or certificate of the insurer evidencing the replacement thereof and not later than 15 days prior to the expiration of such policy an original copy (or true copy) of the new policy. In the event Mortgagor shall fail to effect or maintain any insurance required to be effected or maintained pursuant to the provisions of this Section 3.01: (i) Mortgagor will indemnify Mortgagee against any damage, loss or liability resulting from all risks for which such insurance should have been effected or maintained; and (ii) Mortgagee shall have the right, but not the obligation, to obtain any such insurance and any amount expended by Mortgagee in connection therewith shall be deemed indebtedness secured by this Mortgage and shall be repaid by Mortgagor, on demand, together with interest thereon from the date of expenditure at the Default Rate.

3.01.04 Separate Insurance. Mortgagor will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 3.01.

3.02 Damage, Destruction or Taking; Mortgagor to Give Notice; Assignment of Awards. In case of (a) any damage to or destruction of the Mortgaged Property or any part thereof, or (b) any taking (whether for permanent or temporary use) of all or any part of the Mortgaged Property or any interest therein or right accruing thereto, as the result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade affecting the Mortgaged Property or any part thereof (a "Taking"), or the commencement of any proceedings or negotiations which might result in any such Taking, Mortgagor will promptly give written notice thereof to Mortgagee (including providing copies of any and all papers from time to time served in connection with such proceedings), generally describing the nature and extent of such damage or destruction or of such Taking or the nature of such proceedings or negotiations and the nature and extent of the Taking which might result therefrom, as the case may be. Subject to the provisions of the Superior Mortgage, Mortgagee shall be entitled to all insurance proceeds payable on account of such damage or destruction and to all awards or payments allocable to the Mortgaged Property on account of such Taking, and Mortgagor hereby irrevocably assigns to Mortgagee all rights of Mortgagor to any such proceeds, award or payment and irrevocably authorizes and empowers Mortgagee, at its option, in the name of Mortgagor or otherwise, to file and prosecute what would otherwise be Mortgagor's claim for any such proceeds, award or payment and to collect, receipt for and retain the same for disposition in accordance with Section 3.03. Mortgagor shall continue to pay the Indebtedness at the time and in the manner provided for its payment in the Note and in this Mortgage and the Indebtedness shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of the Indebtedness. Subject to the provisions of the Superior Mortgage, Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided for herein and in the Note. Mortgagor will pay all reasonable costs and expenses incurred by Mortgagee in connection with any such damage, destruction or Taking and seeking and obtaining any insurance proceeds, award or payment in respect thereof.

3.03 Application of Proceeds. Subject to the rights of the holder of the Superior Mortgage, Mortgagee may at its option apply all amounts recovered under any insurance policy maintained by Mortgagor hereunder, and all net awards received by it on account of any Taking (collectively, "Proceeds") in any one or more of the following ways: (a) as provided in Section 5.08, regardless of whether part or all of the indebtedness secured hereby shall then be matured or unmatured (provided that to the extent that any sums shall remain outstanding under this Mortgage or the Note after such application, the obligations of Mortgagor to repay such sums shall continue in full force and effect and Mortgagor shall not be excused in the payment thereof), or (b) to fulfill any of the covenants contained herein as Mortgagee may determine, or (c) released to Mortgagor for application to the cost of restoration and/or replacement of all or

part of the Mortgaged Property. Any Proceeds which Mortgagee shall determine to release to Mortgagor for the restoration and/or replacement of all or part of the Mortgaged Property shall be held by Mortgagee without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Mortgagor with such provisions and requirements as may be imposed by Mortgagee (which provisions and requirements shall provide, among other things, that disbursements shall only be made in reimbursement of invoices previously paid for work done in accordance with plans and specifications approved of by Mortgagee and then only upon (i) a certification of compliance by a licensed architect that the work to be reimbursed was performed in accordance with the approved plans and specifications and performed in a good and workmanlike manner and (ii) the delivery of lien waivers for the sums being paid). Proceeds held by Mortgagee pursuant to this Section shall not be deemed trust funds, shall not bear interest and Mortgagee may commingle same with its other funds.

3.04 Total Taking and Total Destruction. In case of (a) a Taking of the entire Mortgaged Property, or (b) a Taking of less than the entire Mortgaged Property, or any material damage to or destruction of the Mortgaged Property, in either case which, in the good faith judgment of Mortgagee, renders the Mortgaged Property remaining after such Taking, damage or destruction unsuitable for restoration for use as property of substantially the same value, condition, character and general utility as the Mortgaged Property prior to such Taking, damage or destruction (any such Taking being herein called a "Total Taking" and any such damage or destruction being herein called a "Total Destruction"), then, subject to the terms of the Superior Mortgage, the Proceeds received by Mortgagee or Mortgagor on account of such Total Taking or Total Destruction shall be applied by Mortgagee in the manner specified in Section 5.08.

ARTICLE 4

Miscellaneous Covenants of Mortgagor

4.01 Maintenance of Existence, etc. Mortgagor will at all times maintain, preserve and keep in full force and effect its existence, good standing, franchises, rights and privileges as an entity under the laws of the state of its organization and the state in which the Mortgaged Property is located and its right to own and operate the Mortgaged Property and to transact business in such states.

4.02 Restrictions on Business Activities. Mortgagor will not, so long as any amounts are payable under the Note or otherwise secured by this Mortgage, directly or indirectly engage in any activity in a manner which would impair the security value to Mortgagee of the Mortgaged Property or any part thereof or which would impair in any material respect the position or interest of Mortgagee.

4.03 Inspection, etc. Upon reasonable notice and during regular business hours, Mortgagor will permit Mortgagee and any representatives designated by Mortgagee to visit and

inspect the Mortgaged Property or any part thereof, to inspect the books of account of Mortgagor and all other property, books and records relating to the Mortgaged Property and to make copies thereof and extracts therefrom, and to discuss its affairs, finances and accounts with, and to be advised as to the same by, the officers, employees, agents and independent accountants of Mortgagor, all at such reasonable times and intervals as from time to time may be requested. Mortgagee shall not have any duty to make any such inspection and shall not incur any liability or obligation for not making any such inspection or, once having undertaken any such inspection, for not making the same carefully or properly, or for not completing the same; nor shall the fact that such inspection may not have been made by Mortgagee relieve Mortgagor of any obligations that it may otherwise have under this Mortgage.

4.04 Certificates as to No Default; Notice by Mortgagor, etc.

4.04.01 Certificate as to No Default, etc. by Mortgagor.

(a) Within five (5) days after a request therefor by Mortgagee, Mortgagor will furnish to Mortgagee a Compliance Certificate certifying (i) the principal amount then outstanding on the Note, (ii) the rate of interest on the Note, (iii) that there are no offsets or defenses to the payment of the Indebtedness, (iv) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified, except as specified in such Compliance Certificate and (v) that there is no condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default or, if any such condition or event exists, specifying the nature and period of existence thereof and what action Mortgagor is taking or proposes to take with respect thereto.

(b) Within five (5) days after a request therefor by Mortgagee, Mortgagor will furnish to Mortgagee estoppel certificates from any of the lessees under the Leases, as required by their respective Leases.

4.04.02 Notice by Mortgagor. Mortgagor shall give prompt notice to Mortgagee of (a) a default or Event of Default, (b) any notice given or any other action taken or, to Mortgagor's knowledge, intended to be taken by (i) a tenant under any Lease, (ii) a holder of any indebtedness of Mortgagor or otherwise encumbering the Mortgaged Property, or (iii) any other Person, if such notice is given or such other action is taken with respect to (x) a claimed default under such Lease or other indebtedness, (y) a default or Event of Default under this Mortgage, or (z) a claimed default involving a potential liability in excess of \$5,000, under any other indenture, lease, assignment, agreement or other instrument to which Mortgagor or any Guarantor is a party or by which it or the Mortgaged Property may be bound or affected, and (c) any proceedings instituted by or against Mortgagor in any federal or state court or by any governmental department, agency or instrumentality, or any such proceedings threatened against Mortgagor in any federal or state court or by any governmental department, agency or instrumentality, affecting the Mortgaged Property or any portion thereof or which, if adversely determined, would have a material adverse effect upon Mortgagor's business, assets or condition,

financial or other, or upon the lien of this Mortgage. Any notice so given shall specify the nature and period of existence of such event or condition and what action Mortgagor or such Guarantor is taking or causing to be taken and proposes to take or cause to be taken with respect thereto and shall include a copy of any documents relevant thereto.

4.05 No Credit for Payment of Taxes. Mortgagor shall not be entitled to any credit against the principal of or interest on the Note or any other sum which may become payable under the terms thereof or hereof by reason of the payment of any tax on the Mortgaged Property or any part thereof or by reason of the payment of any other Imposition, and shall not apply for or claim any deduction from the taxable value of the Mortgaged Property or any part thereof by reason of this Mortgage.

4.06 Books and Records; Financial Statements. Mortgagor covenants to keep adequate records and books of account in which complete entries will be made in accordance with generally accepted accounting principles consistently applied reflecting all financial transactions of Mortgagor in respect of the Mortgaged Property. Mortgagor further covenants that it will, at any reasonable time and from time to time, permit Mortgagee or any agents or representatives thereof to examine and make copies of and abstracts from such books and records of account and visit the Mortgaged Property to discuss the affairs, finances and accounts with respect thereto with Mortgagor and any of its officers, directors or agents in respect of the Mortgaged Property. Mortgagor shall deliver to Mortgagee, not later than thirty (30) days after the end of each quarter and three months after the end of each fiscal year of Mortgagor, (a) financial statements in detail satisfactory to Mortgagee, certified by a principal of Mortgagor and prepared in accordance with generally accepted accounting principles consistently applied by a firm of certified public accountants acceptable to Mortgagee, of annual income and expenses with respect to the ownership and operation of the Mortgaged Property for such fiscal year, setting forth in comparative form the figures for the previous fiscal year, and (b) balance sheets in detail satisfactory to Mortgagee, certified by a principal, of (i) Mortgagor, as at the end of such fiscal year, setting forth in comparative form the figures as at the end of the preceding fiscal year, and (ii) the Guarantors. Mortgagor shall also deliver to Mortgagee such other information and data with respect to the business, operations, affairs, prospects, condition, properties and assets of Mortgagor, each Guarantor and the Mortgaged Property as Mortgagee may from time to time reasonably request.

ARTICLE 5

Events of Default; Remedies, etc.

5.01 Events of Default; Declaration of Note Due. If any one or more of the following events (herein sometimes called "Events of Default") shall occur:

(a) Mortgagor shall default in the due and punctual payment of any principal of or interest on the Note when and as due and payable (whether at maturity or as an installment of interest or by reason of any prepayment requirement or by declaration of acceleration or otherwise) and such default shall continue for five (5) or more days; or

(b) Mortgagor shall default in the payment, when and as due and payable, of any other indebtedness or other sums payable pursuant to the Note, this Mortgage, or if Mortgagor shall be in default on any other mortgage or instrument encumbering the Mortgaged Premises or any note or bond secured by any of the foregoing, or if there shall be a default under any other mortgage or other instrument securing payment due under the Note and such default shall continue for five (5) or more days; or

(c) Mortgagor shall default in the due performance or observance of any term of Section 2.01, 2.02, 2.03, 2.04, 2.06, 2.08, 2.09, 2.18, 3.01, 9.04, 13.01, 13.02, 13.04, 13.05, 14.02 and 14.05 and such default shall continue for ten (10) or more days from notice thereof sent by Mortgagee to Mortgagor; or

(d) Mortgagor shall default in the due performance or observance of any of the terms of this Mortgage, the Note or any other Loan Document other than those referred to in subdivisions (a), (b), and (c) of this Section 5.01, and such failure shall continue for fifteen (15) or more days from notice thereof sent by Mortgagee to Mortgagor; or

(e) any warranty, representation or other statement made by or on behalf of Mortgagor in or pursuant to this Mortgage or in connection with the application of the loan secured hereby (including, without limitation, any financial statement delivered pursuant to Section 4.06) is false, incorrect or misleading in any material respect; or

(f) Mortgagor or the Guarantors shall make an assignment for the benefit of creditors, or shall be generally not paying its debts as they become due, or shall commence a case under the federal bankruptcy laws, or shall file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, custodian, receiver or liquidator of Mortgagor or any Guarantor, or any material part of its properties or assets, or if Mortgagor or the Guarantor shall take any action for the purpose of the foregoing; or

(g) within 30 days after the commencement of an action against Mortgagor or the Guarantors seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such action shall not have been dismissed or all orders entered therein or proceedings thereunder affecting its business, operations and properties stayed, or if the stay of any such order or proceeding shall thereafter be set aside, or if, within thirty (30) days after the appointment, without the consent or

acquiescence of Mortgagor or the Guarantors, of any trustee, custodian, receiver or liquidator of Mortgagor or any Guarantor, or of any material part of its properties or assets, such appointment shall not have been vacated; or

(h) Mortgagor shall take any action looking to its dissolution or liquidation; or

(i) Mortgagor or the Guarantors shall default (as principal or surety) in the payment of any principal of, premium, if any, or interest on any indebtedness for borrowed money in the amount of \$25,000 or more in any one case or in the aggregate, or if Mortgagor shall default in the due performance or observance of any of the terms of any such indebtedness or of any lease, mortgage, indenture or other agreement or instrument relating thereto beyond any grace period provided with respect thereto; or

(j) subsequent to the date of this Mortgage the laws of the state in which the Mortgaged Property is located shall be changed by statutory enactment, judicial decision, regulation or otherwise, so as (i) to deduct from the value of land for the purpose of taxation (for state, county, municipal or other purpose) any lien or charge thereon, or (ii) to change the taxation of mortgages or debts secured by land or the manner of collecting any such taxation, so as to affect this Mortgage, and thereafter, within 30 days following receipt of a written request from Mortgagee, Mortgagor shall have failed to enter into a lawful and binding agreement with Mortgagee, satisfactory in substance and form to Mortgagee, obligating Mortgagor to reimburse Mortgagee for any increase in taxation imposed on Mortgagee by reason of any of the foregoing; or

(k) a final judgment shall be entered against Mortgagor or the Guarantors, and if, within thirty (30) days after entry thereof, such judgment shall not have been discharged or execution thereof stayed pending appeal, or if, within thirty (30) days after the expiration of any such stay, such judgment shall not have been discharged, or

(l) Except as provided in this Mortgage, Mortgagor, or any of its successors or assigns, shall make any conveyance of all or any part of the Mortgaged Property or any interest therein; or

(m) the Guarantors shall default in the full and timely performance of any obligation under the Guaranty; or

(n) there shall be any default, beyond applicable grace periods under any mortgage, or any note secured by any mortgage, which is prior, equal or subordinate to the lien of this Mortgage (including but not limited to the Superior Mortgage) or the mortgagee under any such prior, equal or subordinate mortgage commences a foreclosure action in connection with such mortgage; or

(o) any act or omission on or relating to the Mortgaged Property or any part thereof or any interest therein shall render it to or any such part or interest subject to forfeiture under applicable law; or

(p) the amendment or modification of any mortgage, or any note secured by any mortgage, which is prior, equal or subordinate to the lien of this Mortgage; or

(q) Mortgagor's failure to cure any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property within fifteen (15) days of the violation;

(r) there shall be a default, beyond applicable grace periods, in any agreement, other than the Note, the Guaranty and this Mortgage, between Mortgagee and Mortgagor, Guarantors or any "principal" (as hereafter defined) of Mortgagor or Guarantors. For purposes of this Section 5.01, "principal" of an entity shall mean any person or entity which owns, directly or indirectly, an interest in such entity of 50% or more; or

(s) Mortgagor or any entity affiliated therewith shall default, beyond applicable grace periods, in any agreement relating to other property owned by Mortgagor or any entity affiliated therewith which is secured by a mortgage between Mortgagee and Mortgagor or any entity affiliated therewith.

then and in any such event (i) interest at the Default Rate shall be due and payable on the principal of and (to the extent permitted by law) interest and other charges thereon as due under the Note at the time outstanding together with all other indebtedness secured hereby, from the date of the Event of Default until actual receipt by Mortgagee of payment in full of the Indebtedness and (ii) Mortgagee may, at any time after any Event of Default, declare, by written notice to Mortgagor, the Note, and all other indebtedness secured hereby to be due and payable upon the date specified in such notice and upon such date the same shall become due and payable, together with interest accrued thereon, without presentment, demand, protest or notice, all of which Mortgagor hereby waives. Mortgagor will pay on demand all costs and expenses (including reasonable attorneys' fees and expenses) incurred by or on behalf of Mortgagee in enforcing this Mortgage or the Note, or occasioned by any default or Event of Default under this Mortgage, or incurred in connection with any foreclosure action or other proceeding brought by Mortgagee to enforce and protect its rights and interest under the Mortgage or Note. Without limiting the foregoing, Mortgagee shall have the right to recover all such costs and expenses, including reasonable attorneys' fees and expenses, in any judgment of foreclosure and sale. For purposes of this Section 5.01, the rendering of a judgment in an action to foreclose this Mortgage shall not be deemed "payment in full of the Indebtedness" and it is the intention of the Mortgagee and Mortgagor that any such judgment shall bear interest at the Default Rate.

5.02 Security Agreement; Legal Proceedings; Foreclosure, etc. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Indebtedness, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code. If an Event of Default shall have occurred and be continuing, Mortgagee at any time may, at its election, do one or more of the following: (i) Mortgagee may proceed at law or in equity or otherwise to enforce the payment of the Note at the time outstanding in accordance with the terms hereof and thereof, (ii) Mortgagee may foreclose the lien of this Mortgage as against all or any part of the Mortgaged Property and have the same sold under the judgment or decree of a court of competent jurisdiction, or Mortgagee may, in an uncontested foreclosure, foreclose the lien of this Mortgage as against all or any part of the Mortgaged Property and have the same sold pursuant to any non-judicial foreclosure remedy available to mortgages under applicable South Carolina law, and/or (iii) Mortgagee may exercise any or all of the remedies of a secured party under the Uniform Commercial Code with respect to any personal property covered hereby. If Mortgagee should proceed to dispose of any personal property in accordance with the provisions of the Uniform Commercial Code, five (5) days' notice by Mortgagee to Mortgagor shall be deemed to be commercially reasonable notice under any provision of the Uniform Commercial Code requiring notice. Mortgagor, however, agrees that all other property of every nature and description, whether real or personal, covered by this Mortgage, together with all personal property used on or in connection with the Mortgaged Property or any business conducted thereon by the Mortgagor and covered by separate security agreements, are encumbered as one unit, that this Mortgage and such security interests, at Mortgagee's option, may be foreclosed or sold in the same proceeding, and that all property encumbered (both realty and personalty), at Mortgagee's option, may be sold as such in one unit as a going business, subject to the provisions of applicable law. In any action service of process may be made upon the Mortgagor by mailing a copy of the papers to be served to the Mortgagor at the address set forth on the first page hereof, and such service shall be deemed complete upon the posting of such papers in any mail box regularly maintained by the United States Post Office.

This Mortgage shall constitute a security agreement for purposes of the Uniform Commercial Code.

5.03 Power of Sale. Upon or at any time the occurrence of an Event of Default, Mortgagee may, either with or without entry or taking possession of the Mortgaged Property as provided in this Mortgage or otherwise, personally or by its agents or attorneys and without prejudice to the right to bring an action for foreclosure of this Mortgage, subject to the terms of the Superior Mortgage, sell the Mortgaged Property or any part thereof pursuant to any procedures provided by applicable law, and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales in its entirety or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or

permitted by applicable law. All notices relating to or in connection with such a sale or under any applicable law pertaining thereto shall be in writing and shall be deemed by sufficient given or served for all purposes when delivered (i) by personal service or courier service, and shall be deemed given on the date when signed for or, if refused, when refused by Mortgagor's agent, or (ii) by United States certified mail, return receipt requested, postage prepaid, and shall be deemed given two (2) days after being sent, to any party hereto at its applicable address as set forth herein. For purposes hereof, notices may be given by Mortgagee or by its attorneys.

5.04 Purchase of Mortgaged Property by Mortgagee. Mortgagee may be a purchaser of the Mortgaged Property or of any part thereof or of any interest therein at any sale thereof, whether pursuant to foreclosure or otherwise, and may apply upon the purchase price thereof the indebtedness secured hereby owing to Mortgagee. Mortgagee shall, upon any such purchase, acquire good title to the properties so purchased, free of the lien of this Mortgage and free of all rights of redemption in Mortgagor.

5.05 Waiver of Appraisal, Valuation, etc. Mortgagor hereby waives, to the fullest extent it may lawfully do so, the benefit of all appraisal, valuation, stay, extension and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale of the Mortgaged Property or any part thereof or any interest therein.

5.06 Sale a Bar Against Mortgagor. Any sale of the Mortgaged Property or any part thereof or any interest therein under or by virtue of this Mortgage, whether pursuant to foreclosure or otherwise, shall forever be a bar against Mortgagor.

5.07 Sale in One or More Parcels. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at Mortgagee's discretion, be sold in one or more parcels or in several interests or portions in any order or manner.

5.08 Application of Proceeds of Sale and Other Moneys. The proceeds of any sale of the Mortgaged Property or any part thereof or any interest therein under or by virtue of this Mortgage, whether pursuant to foreclosure or otherwise, and all other moneys at any time held by Mortgagee as part of the Mortgaged Property, shall be applied as follows:

First: to the payment of the costs and expenses of such sale (including, without limitation, attorneys' fees and expenses, the cost of evidence of title and the costs and expenses, if any, of taking possession of, retaining custody over, repairing, managing, operating, maintaining and preserving, the Mortgaged Property or any part hereof prior to such sale), all costs and expenses of any receiver of the Mortgaged Property or any part thereof, and any taxes, assessments or charges prior to the lien of this Mortgage, which Mortgagee may consider necessary or desirable to pay;

Second: to the payment of any indebtedness secured by this Mortgage, other than indebtedness with respect to the Note at the time outstanding, which Mortgagee may consider necessary or desirable to pay;

Third: to the payment of all amounts of principal of, premium, if any, and interest at the time due and payable on the Note at the time outstanding (whether due by reason of maturity or as an installment of interest or by reason of any prepayment requirement or by declaration of acceleration or otherwise), including interest at the Default Rate on any overdue principal and premium, if any, and (to the extent permitted under applicable law) on any overdue interest; and in case such moneys shall be insufficient to pay in full the amounts so due and unpaid upon the Note at the time outstanding, then, first, to the payment of all amounts of interest and other charges at the time due and payable on the Note, and second to the payment of all amounts of principal at the time due and payable on the Note; and

Fourth: the balance, if any, held by Mortgagee after payment in full of all amounts referred to in subdivisions First, Second and Third above, shall, unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal, be paid to or upon the direction of Mortgagor.

5.09 Appointment of Receiver. Subject to the terms of the Superior Mortgage, if an Event of Default shall have occurred and be continuing, then for so long as, and until, the indebtedness secured hereby is repaid in full, Mortgagee shall, as a matter of right and without regard to the adequacy of any security for the indebtedness secured hereby and without regard to whether Mortgagee has commenced an action to foreclose the lien of this Mortgage and without requirement for prior notice, be entitled to the appointment of a receiver for all or any part of the Mortgaged Property, whether such receivership be part of the Mortgaged Property or otherwise, and without regard to the nature of the action in which the appointment of a receiver is sought, and Mortgagor hereby consents to, and waives prior notice of, the appointment of such a receiver and will not oppose any such appointment. Mortgagee may also seek a temporary restraining order or other injunctive relief with respect to any act of omission constituting an Event of Default.

5.10 Possession, Management and Income. If an Event of Default shall have occurred and be continuing, Mortgagee, without notice to Mortgagor, may enter upon and take possession of the Mortgaged Property or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Mortgagor and all other Persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof. Mortgagor, if it is then the occupant of the Mortgaged Property or any part thereof, shall immediately surrender possession of the space so occupied to Mortgagee and if Mortgagor is permitted to remain in possession, the possession shall be as a month-to-month tenant of Mortgagee, and, on demand, Mortgagor shall pay to Mortgagee monthly, in advance, a fair market rental as determined by Mortgagee, for the space so occupied, and in default thereof Mortgagor may be

dispossessed by the usual summary proceedings. Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management, except that any amounts so received by Mortgagee shall be applied to pay all reasonable costs and expenses of so entering upon, taking possession of, holding, operating, maintaining, repairing, preserving, and managing the Mortgaged Property or any part thereof, and any taxes, assessments or other charges prior to the lien and security interest of this Mortgage which Mortgagee may consider necessary or desirable to pay, and any balance of such amounts shall be applied as provided in Section 5.08. The covenants herein contained may be (or if required pursuant to applicable law, shall be) enforced by a receiver of the Mortgaged Property or any part thereof.

5.11 Right of Mortgagee to Perform Mortgagor's Covenants, etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without notice to or demand upon Mortgagor, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Property for such purpose and take all such action thereon as, in Mortgagee's opinion, may be necessary or appropriate therefor. No such entry and no such action shall be deemed an eviction of any tenant of the Mortgaged Property or any part thereof. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring, shall constitute additional indebtedness secured by this Mortgage and shall be paid by Mortgagor to Mortgagee on demand.

5.12 Remedies, etc., Cumulative. Each right, power and remedy of Mortgagee provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Mortgagee of any one or more of the rights, powers or remedies provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Mortgagee of any or all such other rights, powers or remedies.

5.13 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of such term shall not be affected thereby.

5.14 No Waiver, etc. No failure by Mortgagee or any holder of the Note to insist upon the strict performance of any term hereof or thereof, or to exercise any right, power or remedy

consequent upon a breach hereof or thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach. By accepting payment of any amount secured hereby before or after its due date, neither Mortgagee nor any holder of the Note shall be deemed to waive its right either to require prompt payment when due of all other amounts payable hereunder or to declare a default for failure to effect such prompt payment. Any and all special notations or endorsements on checks by Mortgagor to Mortgagee shall be of no effect against Mortgagee and will not result in an accord and satisfaction.

5.15 Compromise of Actions, etc. Any action, suit or proceeding brought by Mortgagee pursuant to any of the terms of this Mortgage or otherwise, and any claim made by Mortgagee hereunder may be compromised, withdrawn or otherwise dealt with by Mortgagee without any notice to or approval of Mortgagor, except as shall be required by law and cannot be waived.

5.16 Intentionally Deleted.

5.17 Mortgage Includes All Mortgaged Property. Upon the foreclosure of this Mortgage and the sale of the Mortgaged Property resulting therefrom including to Mortgagee or its designee, and regardless of the amount bid at the foreclosure sale and whether or not there is a deficiency remaining on the Note, the purchaser shall acquire all of Mortgagor's interest in and to all of the Mortgaged Property including, without limitation, the proceeds relating to all or any part thereof. By way of example, without implied limitation, the purchaser shall be deemed to have acquired all tax refunds, insurance proceeds and any other claims attributable to the Mortgaged Property even if actually received or collected after such foreclosure sale.

5.18 Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Mortgaged Property. Mortgagee is hereby granted an irrevocable power of attorney, coupled with an interest, to act, after the occurrence of an Event of Default, in the stead of Mortgagor for the purpose of commencing, continuing and/or maintaining any tax certiorari proceeding in respect of the Mortgaged Property for any period, whether before, during or after the date of such Event of Default. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Indebtedness, and any such subrogation rights shall constitute additional security for the payment of the Indebtedness.

5.19 Waiver of Counterclaim. MORTGAGOR HEREBY WAIVES THE RIGHT TO ASSERT A COUNTERCLAIM, OTHER THAN A MANDATORY OR COMPULSORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST IT BY MORTGAGEE, AND WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER OR IN ANY

COUNTERCLAIM ASSERTED BY MORTGAGEE AGAINST MORTGAGOR, OR IN ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE, THE NOTE, ANY OTHER DOCUMENTS EXECUTED IN CONNECTION THEREWITH, OR THE INDEBTEDNESS.

5.20 Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

5.21 Remedies of Mortgagor. Mortgagor understands and agrees that in no event shall Mortgagee (or any of its partners, shareholders, trustees, officers, directors, employees, agents, attorneys or representatives) have any personal liability hereunder or be liable for any consequential damages hereunder. In particular but without implied limitation, in the event that a claim or adjudication is made that Mortgagee has acted unreasonably or has unreasonably delayed acting in any case where by law or under the Note, this Mortgage or other documents executed in connection therewith, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's exclusive remedies shall be limited to injunctive relief or declaratory judgment.

5.22 Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time: (a) insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "moratorium law" now or at any time hereafter in force; or (b) claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained or prior to any decree, judgment or order of any court of competent jurisdiction; or (c) claim or exercise any rights under any statute now or hereafter in force to redeem the property, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to reinstatement and redemption, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor hereby waives any statute of limitations applicable to this Mortgage or the other Loan Documents. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or

otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

ARTICLE 6

Representations and Warranties

Mortgagor represents and warrants and covenants and agrees that, as of the date of delivery of this Mortgage:

6.01 Organization, Standing, etc., of Mortgagor. If Mortgagor is a partnership, limited partnership, corporation, limited liability company or other entity (whichever is set forth after the name of Mortgagor in the Preamble to this Mortgage) duly formed, it is validly existing and in good standing under the Uniform Partnership Act, Uniform Limited Partnership Act, business corporations law, limited liability company law or other applicable law, as the case may be, of the state in which the Mortgagor was organized, and is in good standing in the state in which the Mortgaged Property is located, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and proposed to be conducted, and to execute, deliver and perform this Mortgage and to issue and sell the Note. Mortgagor and the Guarantors are now able to meet their respective debts as they mature, the fair market value of their respective assets exceeds their respective liabilities and no bankruptcy or insolvency proceedings are pending against or by or contemplated by the Mortgagor or the Guarantors. The execution of this Mortgage, the Note, the Guaranty and the documents executed and/or delivered in connection therewith will not defraud, hinder or delay any of the creditors of the Mortgagor or the Guarantors and neither the Mortgagor nor the Guarantors is or will be rendered insolvent by reason of the execution of this Mortgage, the Note, the Guaranty or the documents executed in connection therewith. The Mortgagor and the Guarantors are, to the best of their knowledge, not in default, nor have either of them received any notice of any uncured default, under the terms of any instrument evidencing or securing any indebtedness of the Mortgagor or the Guarantors, respectively, and there has, to the best of their knowledge, occurred no event, which, if uncured or uncorrected would constitute a default under any such instrument upon notice or lapse of time or both. All reports, statements and other data furnished by the Mortgagor and the Guarantors to the Mortgagee in connection with the loan evidenced by the Note are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. This Mortgage, the Note, the Guaranty and other instruments securing the Note or otherwise executed in connection therewith are valid and binding obligations enforceable in accordance with their respective terms.

6.02 Compliance with Other Instruments, etc. The execution, delivery, recordation and performance of this Mortgage and the consummation of the transactions contemplated hereby (including the issue and sale of the Note) will not result in any violation of any term or condition of any contract, agreement, lease, instrument, judgment, decree, order, statute, rule, regulation, ordinance, franchise, certificate, permit or the like applicable to Mortgagor or the Guarantors or by which Mortgagor or the Guarantors or its or their properties or assets are bound or affected.

6.03 Governmental Consent. No consent, approval or authorization of, or registration, declaration or filing with, any governmental or public authority, body or agency is required in connection with the valid execution, delivery and performance by Mortgagor of this Mortgage and the issue and sale of the Note except the recordation of this Mortgage in the appropriate recording office or offices and the filing of all necessary financing statements with respect thereto.

6.04 Litigation, etc. There is no action, suit, proceeding or investigation pending or threatened; or, to the best of Mortgagor's knowledge, any basis therefor known to Mortgagor, which questions the validity of this Mortgage or the Note, or any action taken or threatened to be taken pursuant thereto. No notice has been given by any governmental authority of any proceeding to condemn, purchase or otherwise acquire the Mortgaged Property or any part thereof or interest therein and, to the best of Mortgagor's knowledge, no such proceeding is contemplated.

6.05 No Violations, etc. Mortgagor is in compliance in all respects with all governmental laws, rules and regulations and other requirements which are applicable to the Mortgaged Property or any part thereof, or any use or condition of the Mortgaged Property or any part thereof. Mortgagor has no knowledge of any violation, nor is there any notice or other record of violation, of any zoning, health, safety, building, fire, labor, environment, or other statute, ordinance, rule, regulation or restriction applicable to the Mortgaged Property or any part or use thereof.

6.06 Use of Proceeds. Mortgagor has applied and will apply the proceeds of the Note for such purpose as does not and will not constitute a use of any part thereof, directly or indirectly, for the purpose of purchasing or carrying any "margin security" within the meaning of Regulation G, 12 C.F.R. 207, as amended, and no part of the proceeds of the Note was used or will be used for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" within the meaning of such Regulation G or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose. Mortgagor does not own or have any present intention of acquiring any such margin security and will not otherwise knowingly take or permit any action which would involve a violation of such Regulation G or any other Regulation of the Board of Governors of the Federal Reserve System.

6.07 Easements and Utility Services. Mortgagor has all easements, including those for use, maintenance, repair and replacement of and access to structures, facilities or space for support, mechanical systems, utilities (including water and sewage disposal) and any other private or municipal improvements, services and facilities, necessary for the proper operation, repair, maintenance, occupancy and use of the Mortgaged Property for its current and any proposed uses. Electric, gas, sewer and water facilities and all other necessary utilities are available in sufficient capacity to satisfactorily service the Mortgaged Property.

6.08 Disclosure. Neither this Mortgage nor any other document or certificate furnished to Mortgagee or to counsel for Mortgagee in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

6.09 Offering of the Note. Neither Mortgagor nor anyone acting on its behalf has directly or indirectly offered the Note or any part thereof or any similar instrument for sale to, or solicited any offer to buy any of the same from, anyone other than Mortgagee. Neither the Mortgagor nor anyone acting on its behalf has taken or will take any action which would subject the issuance of the Note to the provisions of Section 5 of the Securities Act of 1933, as amended, or similar state or local laws.

ARTICLE 7

Definitions

7.01 Definitions. For all purposes of this Mortgage, the following terms have the following respective meanings unless the context otherwise requires:

Compliance Certificate: a certificate of the Mortgagor, executed and delivered by a principal of the Mortgagor, or if the Mortgagor is an individual or individuals, by such individual or individuals, setting forth in reasonable detail the investigation upon which the matters set forth in such certificate are based and the section of this Mortgage pursuant to which the certificate is being delivered.

Default: any condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default.

Default Rate: the meaning specified in the Note but if not so specified than an interest rate equal to twenty four and one-half (24-1/2%) percent per annum, or the highest interest rate permitted by law, whichever is lower.

Due and Payable: when used with reference to the principal of, or premium or interest on, or when referring to any and all other sums secured by this Mortgage shall mean due

and payable, whether at the monthly or other date of payment or at the date of maturity specified in the Note or this Mortgage; or, in the case of Impositions, the last day upon which any charge may be paid without penalty and/or interest and/or without becoming a lien upon the Mortgaged Property.

Event of Default: the meaning specified in Section 5.01.

Furniture, Furnishings and Equipment: the meaning specified in the Granting Clause.

Guarantors: Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC and T&J Development Inc.

Guaranty: the meaning specified in Section 1.04.

Herein, Hereof, Hereto and Hereunder: shall refer to this Mortgage and all amendments, modifications, extensions and renewals hereof.

Impositions: the meaning specified in Section 2.04.

Improvements: the meaning specified in the Granting Clause.

Including: shall mean "including but not limited to".

Insurance Requirements: the meaning specified in Section 2.05.

Land: the meaning specified in the recitals.

Leases: the meaning specified in the Granting Clause.

Legal Requirements: the meaning specified in Section 2.05.

Loan Documents: shall mean the Note, this Mortgage and each and every other document executed and delivered in connection therewith.

Mortgage: this Mortgage (and Assignment of Leases and Rents and Security Agreement), dated the date hereof between Mortgagor and Mortgagee.

Mortgage Commitment Letter: the meaning specified in Section 1.05.

Mortgaged Property: the meaning specified in the Granting Clause.

Note: the meaning specified in the Granting Clause.

Permitted Encumbrances: the meaning specified in Section 2.01.

Person: a corporation, an association, a partnership, a limited liability company or partnership, an entity, an organization, a business, an individual, a trust, a government or political subdivision thereof or a governmental or quasi-governmental agency.

Property: the same as the Mortgaged Property.

Superior Mortgage: the meaning specified in the Granting Clause.

Superior Mortgagee: shall mean R.E. Loans LLC, and its successors as holder of the Superior Mortgage.

Taking: the meaning specified in Section 3.02.

Total Destruction: the meaning specified in Section 3.04.

Total Taking: the meaning specified in Section 3.04.

ARTICLE 8

Miscellaneous

8.01 Further Assurances. Mortgagor at its expense will execute, acknowledge and deliver all such instruments and take all such actions as Mortgagee from time to time may reasonably request (a) to better subject to the lien and security interest of this Mortgage all or any portion of the Mortgaged Property, (b) to perfect, publish notice or protect the validity of the lien and security interest of this Mortgage, (c) to preserve and defend the title to the Mortgaged Property and the rights of Mortgagee therein against the claims of all persons and parties so long as this Mortgage shall remain undischarged, (d) to better subject to the lien and security interest of this Mortgage with respect to any replacement or substitution for any Improvements or any other after-acquired property, or (e) in order to further effectuate the purpose of this Mortgage and to carry out the terms hereof and to better assure and confirm to the Mortgagee its rights, powers and remedies hereunder. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this Section 8.01.

8.02 Certificates. At Mortgagee's request, Mortgagor shall without charge, at any time and from time to time, deliver promptly to Mortgagee or its designee a certificate duly executed by Mortgagor and each Guarantor certifying the principal amount then outstanding

hereon, or on the Note, the date to which interest has been paid, and that no condition exists and no event has occurred under this Mortgage or the Note which constitutes a default hereunder, or which, with the passage of time or giving of notice or both, would constitute a default hereunder or, if any such condition exists or event has occurred, specifying the nature and period of existence thereof or the date of occurrence.

8.03 Additional Security. Without notice to or consent of Mortgagor, and without impairment of the lien and rights created by this Mortgage, Mortgagee may accept from Mortgagor or from any other Person additional security for the Note; neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent Mortgagee from resorting, first, to such additional security, or, first, to the security created by this Mortgage, or concurrently to both, in any case without affecting Mortgagee's lien and rights under this Mortgage.

8.04 Notices, etc. All notices, demands, requests, consents, approval and other instruments under this Mortgage or the Note shall be in writing and shall be deemed to have been actually or properly given if and when mailed by first-class registered or certified mail, return receipt requested, postage prepaid, addressed (a) if to Mortgagor, to it at its address set forth above with a copy to Robert Gwin, Esq., Robert Gwin Law Offices, LLC, 2105 Cromley Circle Suite B, Myrtle Beach South Carolina 29577, (b) if to Mortgagee originally named herein to it at Suite 240, 2500 N. Military Trail, Boca Raton, Florida 33431, Attention: Richard Chwatt, with a copy to Westerman Ball Ederer Miller & Sharfstein, LLP, Suite 400, 170 Old Country Road, Mineola, New York 11501, Attention: Philip L. Sharfstein, Esq., or at such other address as Mortgagee may have designated by notice to Mortgagor, or (c) if to any other holder of any Note, at such address as such holder shall have designated by notice in writing to Mortgagor, or, until an address is so designated, to and at the address of the last holder so designating an address. The foregoing insertion of Mortgagor's mailing address shall be deemed to be a request by Mortgagor that a copy of any notice of default and of any notice of sale hereunder be mailed to Mortgagor at such address as provided by law. Mortgagor hereby irrevocably appoints Robert Gwin, Esq. as Mortgagor's agent for the service of process ("Agent") in any action on the Note, this Mortgage or any other document executed in connection therewith, and Agent hereby accepts such appointment. Mortgagor hereby agrees that service of process on Mortgagor may be made solely by serving Agent in any manner provided by law and that personal service upon Mortgagor is hereby waived. Agent may resign as Agent hereunder provided that (i) Agent shall give ten (10) days' prior written notice thereof to Mortgagee, (ii) Agent shall appoint a successor agent for the service of process on Mortgagor, which agent must acknowledge in writing its acceptance of such appointment and must be an attorney or law firm located within the State of South Carolina, and (iii) Agent shall include in its notice referred to in (i) above the name and address of the successor agent and an original of the acceptance of the appointment referred to in (ii) above. From and after the effective date of the notice referred to in the preceding sentence, the successor agent shall be referred to as the "Agent" hereunder. The rights given to Mortgagee in this Paragraph to just serve Agent shall be in addition to Mortgagee's permitted methods of service under applicable law and nothing in this Paragraph shall limit or restrict Mortgagee to

just serving Agent and Mortgagee shall be permitted to otherwise serve Mortgagor in any manner provided by law (with or without also serving Agent). Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

8.05 Amendments and Waivers. This Mortgage, the Note, and any term hereof or thereof may be amended, discharged or terminated and the observance of any term of this Mortgage or the Note may be waived (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party to be charged.

8.06 Expenses. Mortgagor will pay or cause to be paid (a) the cost of filing and recording of this Mortgage, the Uniform Commercial Code financing statements and any other documents to be filed or recorded in connection with the execution and delivery hereof or thereof; (b) all taxes (including interest and penalties) at any time payable in connection with the execution and delivery of this Mortgage and any other instruments or agreements relating hereto or thereto, any amendment or waiver relating hereto or thereto, the issue and acquisition of the Note and, where applicable, such filing and recording (Mortgagor agreeing to indemnify Mortgagee in respect of such taxes, interest and penalties); (c) the cost of Mortgagor's performance of and compliance with the terms and conditions of this Mortgage and of the other instruments mentioned herein; (d) the cost of title insurance, reinsurance, security interest searches and surveys required hereby or delivered in connection herewith; (e) the fees, expenses and disbursements of Mortgagee's counsel in connection with the subject matter of this Mortgage and any amendments, releases or other actions or waivers hereunder or in respect hereof; and (f) all reasonable out-of-pocket expenses incurred by Mortgagee in connection herewith. Mortgagor shall indemnify and hold Mortgagee harmless from and against all claims in respect of all fees of brokers and finders payable in connection with this Mortgage.

8.07 INTENTIONALLY OMITTED.

8.08 Limitation on Interest. Under no circumstances shall Mortgagor be charged under the Note or this Mortgage, more than the highest rate of interest which lawfully may be charged by the holder of the Note and paid by the Mortgagor on the indebtedness secured hereby. It is, therefore, agreed that if at any time interest on the indebtedness secured hereby would otherwise exceed the highest lawful rate, only such highest lawful rate shall be charged to or paid by Mortgagor. Should any amount be paid to Mortgagee in excess of such legal rate, such excess shall be deemed to have been paid in reduction of the principal balance of the Note.

8.09 Miscellaneous. All the terms of this Mortgage shall apply to and be binding upon the respective successors, assigns, heirs, legal representatives and beneficiaries of Mortgagor, and all Persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors, participants and assigns. The headings and table of contents, if any, in this Mortgage are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof. This Mortgage may be executed in several counterparts, each of which shall constitute one and the same instrument. This Mortgage and the Note shall be construed and enforced in accordance with and governed by the laws of the State of South Carolina without taking into effect its conflicts of law provisions. Mortgagor hereby irrevocably submits himself to the jurisdiction of the Courts of the State of South Carolina, for any litigation relating to the Note, this Mortgage or the Mortgaged Property.

8.10 Set-Offs. (i) From time to time in connection with the payment of interest due and payable under the Note, and (ii) in all other instances, after the occurrence and during the continuance of an Event of Default, the Mortgagor hereby irrevocably authorizes and directs Mortgagee from time to time to charge the Mortgagor's accounts and deposits with Mortgagee, (general or special, time or demand, provisional or final), and to pay over to the Mortgagee an amount equal to any amounts from time to time due and payable to the Mortgagee hereunder or under any other Loan Document. The Mortgagor hereby grants to the Mortgagee, subject to the terms and conditions of this Mortgage, a security interest in and to all such accounts and deposits maintained by the Mortgagor with Mortgagee.

8.11 Securitization/Participation. Mortgagee reserves the right at any time during the term of the Indebtedness and in its sole and absolute discretion to effect a so-called securitization of (or to sell a participation interest in) the Indebtedness in such manner and on such terms and conditions as Mortgagee shall deem to be appropriate in its sole and absolute discretion and with such domestic or foreign banks, insurance companies, pension funds, trusts or other institutional lenders or other persons, parties or investors (including, but not limited to, grantor trusts, owner trusts, special purpose corporations, real estate mortgage investment conduits, real estate investment trusts or other similar or comparable investment vehicles) as may be selected by Mortgagee in its sole and absolute discretion.

8.12 Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

8.13 No Oral Modification. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed

by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

8.14 Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

8.15 ERISA Compliance. Mortgagor represents and warrants that it has no employees and that it does not offer or maintain any pension, welfare or benefit plan for any managers, members, officers or employees, and that Mortgagor has not violated ERISA. Upon the hiring of any employees, Mortgagor shall at all times comply with ERISA and the contractual and legal requirements of any pension, welfare or benefit plan.

ARTICLE 9

Particular Provisions

9.01 INTENTIONALLY OMITTED

9.02 Joint and Several. If more than one party constitute Mortgagor hereunder, each such party shall be jointly and severally liable hereunder.

9.03 Owner Occupied. In the event that the Mortgaged Property shall be occupied by Mortgagor or any affiliate of Mortgagor, whether by lease or otherwise, upon an Event of Default hereunder Mortgagor and such affiliate shall be jointly and severally liable to pay to Mortgagee rent based on the higher of the rent called for in their lease, if any, or the then fair market rental value of the Mortgaged Property. Upon the default in the payment of such rent, Mortgagee, by itself or by its agent or receiver, shall be entitled to evict Mortgagor and all affiliates from the Mortgaged Property. The payment of such rent shall only serve to make Mortgagor and its affiliate a month to month tenant and shall in no manner affect a cure of the Event of Default hereunder.

9.04 Environmental Regulations. (a) Mortgagor has furnished to Mortgagee, at Mortgagor's expense, a report by an independent and licensed engineer satisfactory to Mortgagee, stating that the Mortgaged Property and any buildings and other improvements and additions thereon are (i) free of toxic waste, asbestos, PCB's, petroleum products or by-products, other "Hazardous Materials" (as defined below in this Section), or other deleterious materials which impair, in the opinion of Mortgagee, the value of the Mortgaged Property or otherwise may pose a health risk to persons, animals or vegetation, and (ii) in compliance with all applicable laws, rules, regulations or orders pertaining to health, the environment or Hazardous Materials. Such report shall be delivered to Mortgagee on the date hereof. If such engineer's report recommends that any work be done to the Mortgaged Property, or if Mortgagee requires that any work be done to the Mortgaged Property, to satisfy the conditions set forth in clauses (i) and (ii) of this paragraph, such work shall be done by Mortgagor within

-30 days of the date of this Mortgage, and, at Mortgagee's option, Mortgagor shall place in escrow with Mortgagee an amount which is sufficient, in the opinion of Mortgagee, to pay for the cost of such work. Mortgagor shall provide Mortgagee with documentation of the completion of such work. Mortgagee has accepted the reports furnished by Mortgagor.

(b) Mortgagor covenants, represents and warrants, to the best of its knowledge and belief (i) that the Mortgaged Property does not contain and will not contain (A) asbestos in any form; (B) urea formaldehyde foam insulation; (C) transformers or other equipment which contain dielectric fluid containing polychlorinated biphenyls (PCB's); (D) fuel oil, gasoline, other petroleum products or by-products, or (E) any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, controlled or toxic substances, or any pollutant or contaminant, or related materials defined in or controlled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601, et seq), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation; or which, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Mortgaged Property or the owners of the Mortgaged Property (the substances described in (A), (B), (C), (D) or (E) above are referred to collectively herein as "Hazardous Materials"), (ii) that the Mortgaged Property and any buildings and other improvements and additions previously, now or hereafter located thereon, are not now being used nor have ever been used and will never be used for any activities involving, directly or indirectly, the use, generation, treatment, transportation, storage or disposal of any Hazardous Materials whether by Mortgagor, any prior owner of the Mortgaged Property or any tenant or prior tenant of the Mortgaged Property; (iii) that there has never been any Hazardous Materials Release (as defined below in this section) on, from or affecting the Mortgaged Property; (iv) that none of the Mortgaged Property, any previous owner of the Mortgaged Property, nor Mortgagor are subject to any past, existing, pending, or threatened notice, summons, citation, directive, investigation, litigation, proceeding, inquiry, lien, encumbrance or restriction, settlement, remedial, response, cleanup or closure arrangement or any other remedial obligations by or with any governmental authority (collectively "Regulatory Actions") under, or are in violation of, any applicable laws, rules, regulations or orders pertaining to health, the environment or Hazardous Materials; and (v) that none of the Mortgaged Property and any buildings and other improvements and additions previously or now located thereon have ever been used as an industrial or manufacturing facility or as a petroleum storage, refining or distribution facility or terminal, or a gasoline station, whether by Mortgagor, any prior owner or any tenant or prior tenant of the Mortgaged Property. Mortgagor does not know and has no reason to know of any violation of the foregoing representations, warranties and covenants.

(c) Mortgagor represents, warrants and covenants that with respect to the Mortgaged Property and any buildings and other improvements and additions thereon, the

Mortgagor (i) shall comply with and ensure compliance by all tenants and other occupants with all applicable laws, rules and regulations or orders pertaining to health, the environment or Hazardous Materials, (ii) shall not store, utilize, generate, treat, transport or dispose (or permit or acquiesce in the storage, utilization, generation, transportation, treatment or disposal of) any Hazardous Materials on or from the Mortgaged Property, (iii) shall ensure that all tenant leases of the Mortgaged Property contain agreements requiring tenant's compliance with the requirements of the foregoing clauses (i) and (ii); and (iv) shall cause any tenant or other person or entity using and/or occupying any part of the Mortgaged Property to comply with the representations, warranties and covenants contained in this Section.

(d) In the event of any storage, presence, utilization, generation, transportation, treatment or disposal of Hazardous Materials on the Mortgaged Property or in the event of any Hazardous Materials Release, Mortgagor shall as soon as is possible, at the direction of Mortgagee or any federal, state, or local authority or other governmental authority, remove any such Hazardous Materials and rectify any such Hazardous Materials Release, and otherwise comply with the laws, rules, regulations or orders of such authority, all at the expense of Mortgagor, including without limitation, the undertaking and completion of all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Mortgaged Property. If Mortgagor shall fail to proceed with such removal or otherwise comply with such laws, rules, regulations or orders within any reasonable cure period set by Mortgagee, or within the cure period permitted under the applicable regulation or order, whichever period expires first, the same shall constitute an Event of Default under Article 5 hereof, and Mortgagee shall have the right, at its sole option, to accelerate the maturity of the Mortgage indebtedness and declare the indebtedness secured hereby due and payable, and either in addition to or in lieu of the foregoing, at Mortgagee's sole option, Mortgagee may, but shall not be obligated to, do whatever is necessary to eliminate such Hazardous Materials from the Mortgaged Property or otherwise comply with the applicable law, rule, regulation or order, acting either in its own name or in the name of Mortgagor pursuant to this Section, and the cost thereof shall be part of the indebtedness secured hereby and shall become immediately due and payable without notice. In addition to and without limiting Mortgagee's rights pursuant to this Mortgage, Mortgagor shall give to the Mortgagee and its agents and employees access to the Mortgaged Property and all buildings and other improvements and additions thereon for such purposes and hereby specifically grants to Mortgagee a license to remove the Hazardous Materials and otherwise comply with applicable laws, rules, regulations or orders, acting either in its own name or in the name of the Mortgagor pursuant to this Section.

(e) Mortgagor shall indemnify and save Mortgagee and each of its shareholders, subsidiaries, affiliates, officers, directors, partners, and trustees and any receiver, trustee or other fiduciary appointed for the Mortgaged Property harmless from, against, for and in respect of, any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of actions, encumbrances, fines, penalties, and costs and expenses suffered, sustained, incurred or required to be paid by any such indemnified party (including, without limitation,

fees and disbursements of attorneys, engineers, laboratories, contractors and consultants) because of, or arising out of or relating to any "Environmental Liabilities" (as defined below) in connection with the Mortgaged Property or any buildings previously, now or hereafter located thereon. For purposes of this indemnification clause, "Environmental Liabilities" shall include all costs and liabilities with respect to the past, present or future presence, removal, utilization, generation, storage, transportation, disposal or treatment of any Hazardous Materials or any release, spill, leak, pumping, pouring, emitting, emptying, discharge, injection, escaping, leaching, dumping or disposing into the environment (air, land or water) of any Hazardous Materials (each a "Hazardous Materials Release"), including without limitation, (i) cleanups, remedial and response actions, remedial investigations and feasibility studies, permits and licenses required by, or undertaken in order to comply with the requirements of, any federal, state or local law, regulation, or agency or court, any damages for injury to person, property or natural resources, claims of governmental agencies or third parties for cleanup costs and costs of removal, discharge, and satisfaction of all liens, encumbrances and restrictions on the Mortgaged Property relating to the foregoing and (ii) injury to person or property in any manner related to a Hazardous Materials Release on, near or from the Mortgaged Property or otherwise related to environmental matters on or near the Mortgaged Property. Hazardous Materials Release shall also include by means of any contamination, leaking, corrosion or rupture of or from underground or above ground storage tanks, pipes or pipelines.

(f) Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any Hazardous Materials Release or any pending or threatened Regulatory Actions, or any claims made by any governmental authority or third party, relating to any Hazardous Materials or Hazardous Materials Release on or from, the Mortgaged Property, or any buildings or other improvements or additions previously, now or hereafter located thereon and shall promptly furnish Mortgagee with copies of any correspondence or legal pleadings or documents in connection therewith. Mortgagee shall have the right, but shall not be obligated, to notify any governmental authority of any state of facts which may come to its attention with respect to any Hazardous Materials or Hazardous Materials Release on or from the Mortgaged Property.

(g) The liability of Mortgagor to Mortgagee pursuant to, by reason of or arising from the representations, warranties, covenants and indemnities provided for this Section is not limited by any exculpatory provision contained herein or in the Note or in the other documents further securing the indebtedness secured hereby and shall survive the payment in full of the Note and the satisfaction or assignment of this Mortgage following such payment, any foreclosure of this Mortgage, any transfer of the Premises by deed in lieu of foreclosure, any transfer of the Premises or interests therein or any change in ownership thereof.

(h) In the event this Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Mortgaged Property to Mortgagee free of any and all Hazardous Materials and any liens, encumbrances and restrictions relating to Environmental Liabilities, so that the conditions of the Mortgaged Property shall conform with all applicable

federal, state and local laws, rules, regulations and orders pertaining to health, the environment or Hazardous Materials.

(i) Mortgagor covenants, represents and warrants that to the best of its knowledge and belief, the Mortgaged Property, and any buildings and other improvements and additions previously, now or hereafter located thereon, do not now and never have, contained any underground or aboveground storage tanks, pipes or pipelines for the storage or transportation of Hazardous Materials, including without limitation, heating oil, fuel oil, gasoline and/or other petroleum products, whether such tanks are in operation, not operational, closed, removed or abandoned, except for such underground storage tanks heretofore disclosed to Mortgagee in writing and which are utilized solely for heating oil consumed on the Mortgaged Premises, and which are of a capacity of less than 2,000 gallons, all of which are in compliance with all federal, state and local legal requirements and do not have any leaks or corrosion. Without limiting the generality of the foregoing, Mortgagor is in full compliance with all registration and other requirements of 42 USC § 6991, "Regulation of Underground Storage Tanks" and all federal, state and local laws and regulations implementing the provisions of such act.

9.05 Modifications. Any written agreement or agreements hereafter entered into by Mortgagee which (i) extend the time of payment of the indebtedness secured by this Mortgage, (ii) change or modify the time or times of payment or the amount of the installments or fixed sums or the interest rate thereof, (iii) change, modify, extend, renew or terminate other terms, provisions, covenants or conditions of this Mortgage or the notes, bonds, or obligations which it secures, or (iv) consolidate, spread, release or sever the lien of the Mortgage, shall be effective in accordance with the terms and provisions thereof and shall be binding according to the tenor thereof on the owner or holder of subordinate, intervening or subsequent liens on any of the Mortgaged Property and any such liens shall continue.

9.06 Intentionally Deleted.

ARTICLE 10

Bankruptcy

10.01 Relief From Bankruptcy Stay. Mortgagor agrees that, in the event that Mortgagor, any Guarantor or any of the persons or parties constituting Mortgagor or a Guarantor shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended ("Bankruptcy Code"), (ii) be the subject of any order for relief issued under the Bankruptcy Code, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to

bankruptcy, insolvency, or other relief for debtors, (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Mortgagee shall thereupon be entitled and Mortgagor irrevocably consents to immediate and unconditional relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Mortgagee as provided for herein, in the Note, other loan documents delivered in connection herewith and as otherwise provided by law; and Mortgagor (a) hereby irrevocably waives any right to object to such relief and acknowledges that no reorganization in bankruptcy is feasible; (b) waives its exclusive right pursuant to Section 1121(b) of the Bankruptcy Code to file a plan of reorganization and irrevocably consents to Mortgagee filing a plan immediately upon the entry of an order for relief if an involuntary petition is filed against Mortgagor or upon the filing of a voluntary petition by such Mortgagor; and (c) in the event that Mortgagee shall move pursuant to Section 1121(d) of the Bankruptcy Code for an order reducing the 120-day exclusive period, Mortgagor shall not object to any such motion.

ARTICLE 11

Foreclosure Judgment

11.01 (a) Mortgagor agrees that the obligations and liabilities of Mortgagor under this Mortgage shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of any entry of any foreclosure judgment in respect of this Mortgage.

(b) All obligations of the Mortgagor under this Mortgage, (collectively, the "Payment Obligations") including but not limited to, payment of Impositions, insurance premiums, expenses of Mortgagee (including without limitation expenses to be reimbursed pursuant to Section 8.06, and all other expenses incurred by Mortgagee in connection with its ownership of this Mortgage and the Note, the enforcement of its right under this Mortgage and this Note, or the enforcement of any judgment of foreclosure or any deficiency judgment), in any proceeding whatsoever, including a bankruptcy proceeding, shall not merge into any foreclosure judgment and shall continue in full force and effect upon any entry of any foreclosure judgment.

(c) Upon the entry of a foreclosure judgment in respect of the Mortgage, Mortgagor shall continue to perform its obligations under the Mortgage, including, but not limited to, payment of all Payment Obligations.

(d) In the event, upon entry of a foreclosure judgment in respect of the

Mortgage, Mortgagor fails to perform any of its obligations under the Mortgage, including but not limited to, the Payment Obligations: (i) Mortgagee may, but shall not be obligated to, perform said obligations, (ii) Mortgagor shall remain liable to Mortgagee for Mortgagee's performance of Mortgagor's obligations under the Mortgage, and (iii) Mortgagee shall be entitled to any remedies available under the Mortgage for Mortgagor's failure to perform its obligations.

(e) The obligations and liabilities under this paragraph 11.01 shall survive any entry of any foreclosure judgment in respect of the Mortgage.

ARTICLE 12.

Future Advances

12.01 It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgagee at its option to the Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within twenty (20) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or record notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of \$8,527,776.00, plus interest, and any disbursements made for the payment of taxes, levies or insurance on the Mortgage Property with interest on those disbursements.

ARTICLE 13

Provisions Regarding Superior Mortgage

13.01 Mortgagor covenants and agrees as follows: (i) to promptly pay when due, all payments, additional payments and other sums or charges required to be paid by Mortgagor under the Superior Mortgage; (ii) to perform and observe all covenants and conditions to be performed and/or observed by Mortgagor under the Superior Mortgage; (iii) not to prepay, in whole or in part, any amounts owed pursuant to the Superior Mortgage; (iv) not to do, permit, suffer or refrain from doing anything as a result of which there could be a default under or breach of any of the terms of the Superior Mortgage; (v) not to waive, excuse or discharge any of the obligations and agreements of the Superior Mortgagee under the Superior Mortgage; and (vi) to do all things necessary to preserve unimpaired all of Mortgagor's rights under the Superior Mortgage.

13.02 The Mortgagor shall not consummate any agreement with the Superior Mortgagee to (i) increase the principal indebtedness or other amounts secured by the Mortgage, whether principal, interest or otherwise, (ii) increase the interest rate under loan secured by the Superior Mortgage, or (iii) shorten the term of the loan secured by the Superior Mortgage, either orally or in writing and whether or not permitted to do so by the terms of the Superior Mortgage (other than advances and other principal increases by Superior Mortgage permitted under the Superior Mortgage as such documents exist on the date hereof), without the prior written consent of the Mortgagee.

13.03 Any Event of Default under the Superior Mortgage or any instrument or agreement relating thereto shall ipso facto constitute an Event of Default under this Mortgage.

13.04 The Mortgagor shall (i) promptly notify the Mortgagee in writing of the occurrence of any default or Event of Default known to the Mortgagor under the Superior Mortgage or any instrument or agreement related thereto, (ii) promptly notify the Mortgagee of receipt by the Mortgagor of any notice noting or claiming the occurrence of any default or Event of Default under the Superior Mortgage or any instrument or agreement relating thereto and (iii) promptly cause a copy of each such notice received by the Mortgagor to be delivered by the Mortgagee.

13.05 The Mortgagor shall furnish to the Mortgagee ten (10) days after the mailing by the Mortgagee of a written request therefor, proof reasonably satisfactory to the Mortgagee of payment of all items which are required to be paid by the Mortgagor under the Superior Mortgage or any instrument or agreement related thereto.

13.06 The Mortgagee shall have the right, at its option, to perform the obligations of the Mortgagor under the Superior Mortgage upon the expiration of one-half of any applicable grace period for the curing of any defaults thereunder without the Mortgagee waiving any other of its rights under this Mortgage. Should the Mortgagee exercise its right hereunder to cure a default, the Mortgagor will reimburse the Mortgagee for any reasonable expenses the Mortgagee shall have incurred pursuant to the provisions of this Section 13.06, and any such expenditure shall become a lien upon the Mortgaged Property and shall be added to the principal of and be secured by this Mortgage. The Mortgagor will take all reasonable steps to insure the Mortgagee will have a reasonable opportunity to cure all defaults under the Superior Mortgage.

ARTICLE 14

Purchase Agreements

14.01 Subject to the terms of the Superior Mortgage, Mortgagor does hereby collaterally assign, transfer, set over, grant a security interest in, and deliver unto Mortgagee all the right, title and interest of Mortgagor in, under, and to any and all purchase agreements for the sale of building lots, together with any and all modifications or amendments thereof, which are in effect and which are hereinafter entered into by Mortgagor pursuant to the terms of this Mortgage (the "Purchase Agreements").

14.02 Mortgagor shall timely abide by, perform and discharge in all material respects each and every obligation, covenant, and condition of the Purchase Agreements to which it is a party to be performed by Mortgagor, and Mortgagor shall exercise its rights to enforce performance by the other party thereto of each and every obligation, covenant, condition and agreement to be performed by such other party, all in accordance with the terms of the Purchase Agreements, unless a waiver thereof is consented to in advance by Mortgagee.

14.03 Subject to the terms of the Superior Mortgage, at any time after the occurrence and during the continuance of an Event of Default hereunder, Mortgagee, at its option, without notice, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court at any time hereafter, may enforce for its own benefit the Purchase Agreements or any of them.

14.04 Subject to the terms of the Superior Mortgage, following an Event of Default, each party to the Purchase Agreements upon written notice from Mortgagee of the occurrence of an Event of Default, shall be and is hereby authorized by Mortgagor to perform under their respective Purchase Agreements for the benefit of Mortgagee in accordance with the terms and conditions thereof without any obligation to determine whether or not such an Event of Default has in fact occurred.

14.05 Mortgagor shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in the Purchase Agreements or any of them, except as permitted pursuant to the Mortgage. Mortgagor has not performed any act which will prevent Mortgagee from operating under or enforcing any of the terms and conditions of this Article or which would limit Mortgagee in such operation or enforcement.

ARTICLE 15

Waiver of Appraisal Rights

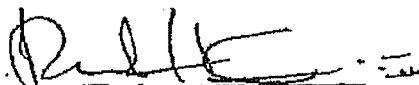
15.01 The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transactions. **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, Mortgagor has caused this Mortgage to be duly executed on the day and year first above written.

WITNESS:

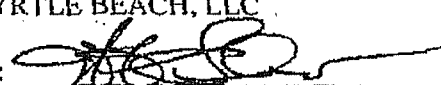
MORTGAGOR:

PEACHTREE PROPERTIES OF NORTH MYRTLE BEACH, LLC



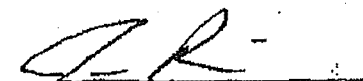
Print Name: ROBERT H. GWIN, III

By:



Jeffrey T. Shoup, Manager

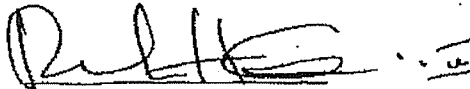
WITNESS:



Print Name:

Jon Row

The undersigned executes this Mortgage solely for the purpose of acknowledging and agreeing to the provisions of Paragraph 8.04 hereinabove and the undersigned hereby accepts his appointment as the "Agent" herein listed.



Robert Gwin, Esq.

ACKNOWLEDGEMENT

STATE OF SOUTH CAROLINA)
)ss.:
COUNTY OF HORRY)

I, Robert H. Gwin, III, a Notary Public in and for the County and State aforesaid, hereby certify that Jeffrey T. Shoup appeared before me this date and acknowledged that he executed the within instrument on behalf of Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, the Mortgagor, as its Manager.


Notary Public

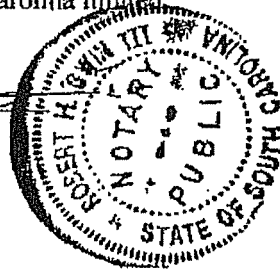


EXHIBIT A

Legal Description

All that certain lot or parcel of land situate in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly described as follows:

PARCEL ONE:

ALL AND SINGULAR those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of T.S. Ludlum dated October 21, 1966, and recorded January 23, 1967, in the Office of the Clerk of Court for Horry County in Deed Book 360 at Page 199.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

PARCEL TWO:

All AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of Larry W. Paul dated February 15, 1982, and recorded on February 18, 1982, in the office of the Clerk of Court for Horry County in Deed Book 737 at Page 818.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

PARCEL THREE:

All AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, on hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

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The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately $26^{\circ}5'$ East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South $68^{\circ}22'$ East 441 feet to point of intersection, as shown on the above Plat; thence South $62^{\circ}45'$ East 984.3 feet to point of intersection, as shown on the above Plat; thence South $75^{\circ}15'$ East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North $19^{\circ}5'$ East 473.5 feet to Pipe O; thence $53^{\circ}10'$ East 516 feet to Concrete N; thence South $13^{\circ}55'$ West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South $75^{\circ}15'$ East 710 feet to point of intersection as shown on the Plat; thence South $85^{\circ}11'$ minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South $21^{\circ}45'$ West 1045.5 feet to Pipe O and Concrete N; thence North $78^{\circ}50'$ West 750 feet to Pipe O and Concrete N; thence South $20^{\circ}55'$ West 438.5 feet to Concrete N; thence North $78^{\circ}10'$ West 566 feet to Concrete N; thence North $27^{\circ}10'$ East to Pipe N; thence North $78^{\circ}10'$ West 225 feet to Pipe N; thence South $27^{\circ}10'$ West 250 feet to concrete N; thence North $78^{\circ}10'$ West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North $78^{\circ}10'$ West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North $26^{\circ}25'$ West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North $63^{\circ}10'$ West 100 feet; thence North $54^{\circ}45'$ West 130 feet; thence South $70^{\circ}25'$ West 185 feet; thence North $89^{\circ}20'$ West 200 feet; thence North $61^{\circ}45'$ West 94 feet; thence North $70^{\circ}20'$ West 100 feet; thence South $86^{\circ}50'$ West 80 feet to Gum 3MO; thence North $27^{\circ}40'$ East 383.5 feet to Gum OM; thence North $27^{\circ}20'$ East 261 Feet to Gum OM; thence North $26^{\circ}05'$ East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed, highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly, of Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1961.

1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

PARCEL THREE (3) is a portion of the property devised to Ruth Ludlum McClam by Item VIII of the Last Will and Testament of John C. Spivey, Deceased, and conveyed by Deed of Lucy S. Kolb, Executrix, T.B. Ludlum and C.A. Spivey, as Executors of the Last Will and Testament of J.C. Spivey, dated November 13, 1965, and recorded in the Office of the Clerk of Court for Horry County in Deed Book 336 at Page 482 on November 16, 1965.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

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AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY
(10-17-92)

Policy No. SC2330-46-06-RE-388A-2006.7210740-72338570

CHICAGO TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

- 1 Title to the estate or interest described in Schedule A being vested other than as stated therein;
- 2 Any defect in or lien or encumbrance on the title;
- 3 Unmarketability of the title;
- 4 ~~Lack of a right of access to and from the land;~~
- 5 The invalidity or unenforceability of the lien of the insured mortgage upon the title;
- 6 The priority of any lien or encumbrance over the lien of the insured mortgage;
- 7 Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - a arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - b arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
- 8 The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

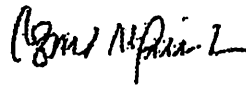
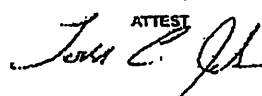
In Witness Whereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

SC2330 06-RE-388A
Oleander Title Agency
2105-B Cromley Circle
Myrtle Beach, SC 29577
Tel: (843) 839-2239
Fax: (843) 839-2244



CHICAGO TITLE INSURANCE COMPANY

By: 
ATTEST: 
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of a violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the Insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the Insured mortgage over any statutory lien for services, labor or material); or
 - (e) resulting in loss or damage which would not have been sustained if the Insured claimant had paid value for the Insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Insured": the insured named in Schedule A. The term "Insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "Insured claimant": an insured claiming loss or damage

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an Insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage deed of trust, trust deed, or other security instrument

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 12(a)(iv) of the Exclusions From Coverage "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title

2. CONTINUATION OF INSURANCE

(a) **After Acquisition of Title** The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an Insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title** The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured only so long as the Insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of covenants of warranty made by the Insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any

from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

- (i) the Amount of Insurance stated in Schedule A;
- (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
- (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the term of this policy, whether or not it shall be liable hereunder and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate including any liability or obligation to

defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

- (i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or
- (ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer assign, and convey the indebtedness and the insured mortgage, together with any collateral security to the Company upon payment therefore.

Upon the exercise by the Company of either of the options provided for in paragraphs a (i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has

under the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal interest, and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-Insured Obligor.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guarantees, other policies of insurance or bonds notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(ii) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary or validating officer or authorized signatory of the Company.

15. SEVERABILITY

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at the issuing office or to:

Claims Department
P.O. Box 45023
Jacksonville FL 32232-5023

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

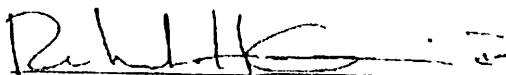
SCHEDULE A

OFFICE FILE NUMBER: 06-RE-388
POLICY NUMBER: 7210740-73317401
DATE OF POLICY: July 25, 2007 at 3:23 pm
AMOUNT OF INSURANCE: \$17,071,873.33

1. Name of Insured:
RE Loans, LLC, its successors and/or assigns as their interests may appear
2. The estate or interest in the land which is encumbered by the insured mortgage is:
Fee Simple
3. Title to the estate or interest in the land is vested in:
Peachtree Properties of North Myrtle Beach, LLC
4. The insured mortgage and assignments thereof, if any, are described as follows:
Mortgage from Peachtree Properties of North Myrtle Beach, LLC to RE Loans, LLC dated July 5, 2006, and recorded July 25, 2007, at 3:23 pm, in Book 4629, Page 255, in the Register of Deeds of City of Myrtle Beach, County of Horry, South Carolina.
5. The land referred to in this Policy is described as follows:
All that certain lot or parcel of land situate in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly described as follows:
PARCEL ONE
ALL AND SINGULAR those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November

Countersigned

Oleander Title Agency
2105-B Cromley Circle
Myrtle Beach, SC 29577


Authorized Signatory

SCHEDULE A
Loan Form (Rev. 1/89)

This Policy valid only if Schedule B is attached.

Exhibit B

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number: 7210740-73317401

16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersect with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

PARCEL TWO:

All AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern Bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

PARCEL THREE:

All AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, on hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number: 7210740-73317401

In Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

SEE ATTACHED EXHIBIT "A" FOR DERIVATION

04 April 2013 13:07:26 EST Scott Svirsky
thejerichogroup.com

SCHEDULE A continued
Loan Form (Rev. 1/89)

This Policy valid only if Schedule B is attached.

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number: 7210740-73317401

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 28°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10' East 516 feet to Concrete N; thence South 13°55' West 872.8 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710.3 feet to point of intersection as shown on the Plat; thence South 85°11' minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to Concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°10' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed, highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly, of Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as a Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded

SCHEDULE A continued
Loan Form (Rev. 1/89)

This Policy valid only if Schedule B is attached.

CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

SCHEDULE B

Policy Number: 7210740-73317401

Exceptions from Coverage

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Special Exceptions:

1. Taxes and assessments for the year 2006, and subsequent years, which are a lien but are not yet due and payable.
2. Timber Deed in favor of Canal Wood Corporation, dated June 25, 1988, recorded in Deed Book 1229, page 129, aforesaid records, conveying 2,985 pine trees. According to its terms, the timber Deed expired on July 1, 1990.
3. Easement in favor of Grand Strand Water and Sewer Authority, recorded in Deed Book 1438 at Page 1693, aforesaid records.
4. Riparian rights incident to the premises.
5. This policy does not insure title to that portion of the subject property, if any, lying below the mean high water mark of abutting tidal Intracoastal Waterway.
6. Interest created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulation, or by South Carolina Code §48-39-10 through 48-39-380, as amended, or any regulations promulgated pursuant to said state or federal laws.

PART II

In addition to the matters set forth in Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

1. Subject to a Mortgage from Peachtree Properties of North Myrtle Beach, LLC to Jericho State Capital Corp. of Florida, dated July 24, 2006 and recorded in Mortgage Book 4629 at Page 277, public records of Horry County, South Carolina.

**AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY
(10-17-92)**

Policy No. SC2330-46-06-RE-388A-2006.7210740-72338570

CHICAGO TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

- 1 Title to the estate or interest described in Schedule A being vested other than as stated therein;
- 2 Any defect in or lien or encumbrance on the title;
- 3 Unmarketability of the title;
- 4 ~~Lack of a right of access to and from the land;~~
- 5 The invalidity or unenforceability of the lien of the insured mortgage upon the title;
- 6 The priority of any lien or encumbrance over the lien of the insured mortgage;
- 7 Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - a arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - b arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
- 8 The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Whereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OR TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

SC2330 06-RE-388A
Oleander Title Agency
2105-B Cromley Circle
Myrtle Beach, SC 29577
Tel: (843) 839-2239
Fax: (843) 839-2244



CHICAGO TITLE INSURANCE COMPANY

By Agnes N. Pina
ATTEST
John E. Pina
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) an environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the Insured claimant and not disclosed in writing to the Company by the Insured claimant prior to the date the Insured claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the Insured mortgage over any statutory lien for services, labor or material); or
 - (e) resulting in loss or damage which would not have been sustained if the Insured claimant had paid value for the Insured mortgage.
4. Unenforceability of the lien of the Insured mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the Insured mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the Insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the Insured mortgage which at Date of Policy the Insured has advanced or is obligated to advance.
7. Any claim which arises out of the transaction creating the interest of the mortgagee Insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the Insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the Insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the Insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Insured": the Insured named in Schedule A. The term "Insured" also includes

(i) the owner of the indebtedness secured by the Insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the Insured mortgage, or any part thereof, whether named as an Insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "Insured claimant": an Insured claiming loss or damage

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an Insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage deed of trust, trust deed, or other security instrument

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the Insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

(a) **After Acquisition of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an Insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the Insured mortgage; (ii) a transferee of the estate or interest so acquired from an Insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the Insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the Insured mortgage.

(b) **After Conveyance of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured only so long as the Insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of covenants of warranty made by the Insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any

purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) Amount of Insurance. The amount of Insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

- (i) the Amount of Insurance stated in Schedule A;
- (ii) the amount of the principal of the Indebtedness secured by the insured mortgage as of Date of Policy, Interest thereon, expenses of foreclosure amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
- (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 80 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate including any liability or obligation to

defend, prosecute, or continue any litigation with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of Insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer assign, and convey the indebtedness and the insured mortgage, together with any collateral security to the Company upon payment therefore.

Upon the exercise by the Company of either of the options provided for in paragraphs (i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of Insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has

conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal interest and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guarantees, other policies of insurance or bonds notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary or validating officer or authorized signatory of the Company.

15. SEVERABILITY

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at the issuing office or to:

Claims Department
P.O. Box 45023
Jacksonville, FL 32232-5023

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

SCHEDULE A

OFFICE FILE NUMBER: 06-RE-388A
POLICY NUMBER: 7210740-72338570
DATE OF POLICY: July 25, 2006 at 3:27 P.M.
AMOUNT OF INSURANCE: \$4,263,888.00

1. Name of Insured:

Jericho State Capital Corp. of Florida, its successors and/or assigns as their interests may appear

2. The estate or interest in the land which is encumbered by the insured mortgage is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

Peachtree Properties of North Myrtle Beach, LLC

4. The insured mortgage and assignments thereof, if any, are described as follows:

Mortgage from Peachtree Properties of North Myrtle Beach, LLC to Jericho State Capital Corp. of Florida dated July 24, 2006, and recorded in the Land Records of Horry County, South Carolina, in Deed Book 4629 Page 277.

5. The land referred to in this Policy is described as follows:

All that certain lot or parcel of land situate in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly described as follows:

PARCEL ONE

ALL AND SINGULAR those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November

Countersigned

2105-B Cromley Circle
Myrtle Beach, SC 29577


Authorized Signatory

SCHEDULE A
Loan Form (Rev 1/89)

This Policy valid only if Schedule B is attached.

**LOAN FORM
CHICAGO TITLE INSURANCE COMPANY**

**SCHEDULE A
(continued)**

Policy Number:

16, 1985, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersect with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of T.S. Ludlam dated October 21, 1966, and recorded January 23, 1967, in the Office of the Clerk of Court for Horry County in Deed Book 360 at Page 199.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louls McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 580, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

PARCEL TWO:

All AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 78 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number:

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of Larry W. Paul dated February 15, 1982, and recorded on February 18, 1982, in the office of the Clerk of Court for Horry County in Deed Book 737 at Page 818.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

PARCEL THREE:

All AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, on hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10' East 516 feet to Concrete N; thence South 13°55' West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as

SCHEDULE A continued
Loan Form (Rev. 1/89)

This Policy valid only if Schedule B is attached.

**LOAN FORM
CHICAGO TITLE INSURANCE COMPANY**

**SCHEDULE A
(continued)**

Policy Number:

shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°40' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed, highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly, of Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

PARCEL THREE (3) is a portion of the property devised to Ruth Ludlum McClam by Item VIII of the Last Will and Testament of John C. Spivey, Deceased, and conveyed by Deed of Lucy S. Kolb, Executrix, T.B. Ludlum and C.A. Spivey, as Executors of the Last Will and Testament of J.C. Spivey, dated November 13, 1965,

SCHEDULE A continued
Loan Form (Rev 1/89)

This Policy valid only if Schedule B is attached.

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number:

and recorded in the Office of the Clerk of Court for Horry County in Deed Book 336 at Page 482 on November 16, 1965.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B

Policy Number:

Exceptions from Coverage

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Special Exceptions:

1. Taxes and assessments for the year 2006, and subsequent years, which are a lien but are not yet due and payable.
2. Easement in favor of Grand Strand Water and Sewer Authority, recorded in Deed Book 1438 at Page 1693, aforesaid records.
3. Riparian rights incident to the premises.
4. This policy does not insure title to that portion of the subject property, if any, lying below the mean high water mark of abutting tidal Intracoastal Waterway.
5. Interest created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulation, or by South Carolina Code §48-39-10 through 48-39-380, as amended, or any regulations promulgated pursuant to said state or federal laws.
6. Rights of the public generally is and to the use of that subject property used as Remote Lane as shown upon survey prepared for Jeff Shoup by Trico Engineering Consultants, Inc. dated March 28, 2006.
7. Mortgage from Peachtree Properties of North Myrtle Beach, LLC to R.E. Loans, LLC dated July 5, 2006 and recorded in the Land Records of Horry County, South Carolina in Deed Book 4629 at Page 255.

PART II

In addition to the matters set forth in Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

Schedule B of this Policy consists of 1 page(s).

SCHEDULE B
Loan Form (Rev. 1/89)

ENDORSEMENT

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

- 1 The existence at Date of Policy of any of the following:
 - (a) Covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
 - (b) Unless expressly excepted in Schedule B:
 - (1) Present violations on the land of any enforceable covenants, conditions or restrictions and any existing improvements on the land which violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.
 - (2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides a lien for liquidated damages; (iii) provides for a private charge or assessment; (iv) provides for an option to purchase a right of first refusal or the prior approval of a future purchaser or occupant.
 - (3) Any encroachment of existing improvements located on the land onto adjoining land, or any encroachment onto the land of existing improvements located on adjoining land.
 - (4) Any encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
 - (5) Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.
- 2 Any future violation on the land of any existing covenants, conditions or restrictions occurring prior to the acquisition of title to the estate or interest in the land by the insured, provided the violation results in:
 - (a) invalidity, loss of priority, or unenforceability of the lien of the insured mortgage; or
 - (b) loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.
- 3 Damage to existing improvements, including lawns, shrubbery or trees:
 - (a) which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
 - (b) resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.
- 4 Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B
- 5 Any final court order or judgment denying the right to maintain any existing improvements on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records

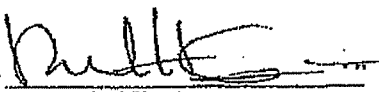
Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraphs 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and of any prior endorsements, nor does it extend the effective date of the policy and of any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers

Countersigned:

By 
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory

ALTÁ Endorsement - Form 9
(Restrictions, Encroachments, Minerals) (3/27/92)

ENDORSEMENT

Attached to and forming a part of

Policy No. _____

Issued by

CHICAGO TITLE INSURANCE COMPANY

3700 Forest Drive, Suite 201, Columbia, SC 29204

SURVEY ENDORSEMENT

The Company insures the Insured against loss or damage sustained by the Insured by reason of the failure of the Insured property to be the same as that delineated on the plat of survey prepared by Inco Engineering Consultant, dated March 20, 2000, designated as Job No. N/A.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the commitment or policy. It is subject to all of the terms of the commitment or policy.

Date:

CHICAGO TITLE INSURANCE COMPANY


Authorized Signatory

Note. This endorsement shall not be valid or binding until signed by an authorized signatory.

Survey End

and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amounts of the commitment or policy and prior endorsements are not changed.

Date:

CHICAGO TITLE INSURANCE COMPANY


Authorized Signatory

*Note: This endorsement shall not be valid or binding
until signed by an authorized signatory*

Survey End

ENDORSEMENT

Attached to and forming a part of

Policy No. SC2330-46-06-RE-388A.72

Issued by

CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

CONTIGUITY ENDORSEMENT

The Company insures the Insured against loss or damage sustained by the Insured by reason of the failure of the land described in Parcel 1 and the land described in Parcel 2-3 to be contiguous to each other and, taken as a tract, constitute one parcel of land.

This endorsement is made a part of the commitment or policy. It is subject to all the terms of the commitment or policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amounts of the commitment or policy and prior endorsements are not changed

DATE:

CHICAGO TITLE INSURANCE COMPANY



Authorized Signatory

Note: This endorsement shall not be valid or binding until signed by an authorized signatory

Form 3594 R 12/82

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, and Jericho State Capital Corporation of Florida, a Florida corporation

Plaintiffs,

vs.

T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T. J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, and McClam Investment Company, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 07-CP-26-3579

**ORDER AND DECREE OF
FORECLOSURE**

DEFICIENCY REQUESTED

FILED
HORRY COUNTY
07 NOV - 7 AM 5:09
RECEIVED
CLERK OF COURT

Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure and upon the stipulation and agreement of all non-defaulting parties, all causes of action under this proceeding were referred to the undersigned for the purpose of taking testimony and evidence and entering a final judgment or decree, with any appeal being directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to an Order of Reference dated October 10, 2007, a hearing was held on October 30, 2007 attended by S. Sterling Laney, III of Womble Carlyle Sandridge & Rice, PLLC, attorneys for Plaintiffs. Testimony of Plaintiffs was presented by Affidavit, and from the testimony and evidence I make the following findings of fact and conclusions of law and enter the following Order.

FINDINGS OF FACT

1. The Notice of Pendency of Action was filed on June 8, 2007.
2. The Summons and Complaint were filed on June 8, 2007.

3. The Motion for Reference was filed on October 10, 2007

4. Service was made upon the defendants as shown by Affidavits of Service on file in this action. Defendants Peachtree Properties of North Myrtle Beach, LLC ("Peachtree"); Jeffrey Shoup; Ocean Developers, LLC; T & J Development of NMB, LLC; David Hix; Paula Hix; Joyce Shoup; North Myrtle Beach Investment Group, LLC; Hortense G. Hancock; Durward W. Hancock and McClam Investment Company, LLC have filed Answers in this action. Defendants Glenn Michaels, T. J. Ungaro and Horst Goetz are in default as shown by Affidavits of Default on file in this action.

5. Affidavit is on file in this action pursuant to 50 App. U.S.C. §§ 501, *et seq.* stating that none of the defendants who are natural persons is in military service, a minor or incompetent.

6. Plaintiff Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership ("Jericho"), is a limited partnership organized under the laws of the State of Delaware with a principal place of business in Boca Raton, Florida has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

7. Plaintiff Jericho State Capital Corporation of Florida, a Florida corporation ("Jericho Florida"), is a corporation organized under the laws of the State of Florida with a principal place of business in Boca Raton, Florida has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

8. Jericho and Jericho Florida shall be collectively referred to herein as "Plaintiffs."

9. Defendant T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development, LLC ("T & J") is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Horry County, South Carolina, has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

10. Defendant Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company ("Peachtree"), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Horry County, South Carolina, has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

11. Defendant Jeffrey Shoup is a citizen and resident of Horry County, South Carolina, and as such, is subject to the jurisdiction of this Court.

12. Defendant Joyce Shoup is a citizen and resident of Horry County, South Carolina, and, and as such, is subject to the jurisdiction of this Court.

13. Defendant David Hix is a citizen and resident of Horry County, South Carolina, and as such, is subject to the jurisdiction of this Court.

14. Defendant Paula Hix is a citizen and resident of Horry County, South Carolina, and as such, is subject to the jurisdiction of this Court.

15. Defendant Ocean Developers LLC, a South Carolina limited liability company ("Ocean Developers"), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in North Myrtle Beach, South Carolina, and as such, is subject to the jurisdiction of this Court.

16. Defendant Glenn Michaels ("Michaels") has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

17. Defendants Manny Pappus ("Pappus") and T.J. Ungaro ("Ungaro") have an interest in the real property that is the subject of this action, and, as such, they are each subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

18. Defendant North Myrtle Beach Investment Group, LLC ("North Myrtle Beach") is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in North Myrtle Beach, South Carolina, and had an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

19. Defendant Horst Goetz ("Goetz") had an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

20. Defendant Durward W. Hancock ("D. Hancock") had an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

21. Defendant Hortense G. Hancock ("H. Hancock") had an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

22. Defendant McClam Investment Company, LLC ("McClam"), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Columbia, South Carolina, and claims an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

23. The real property which is the subject of this action is located in Horry County, South Carolina, and, as such, is subject to the jurisdiction of this Court.

24. The Order of Reference was filed on October 10, 2007.

25. A Notice of Hearing, giving notice of October 30, 2007, 2:30 p.m. hearing, was served upon all defendants as shown by a Certificate of Service dated October 16, 2007.

26. On July 24, 2006, for value received, Defendant Peachtree executed and delivered to Plaintiff Jericho Florida a promissory note in the original principal amount of \$4,263,888.00 (the "Peachtree Note"), pursuant to which Peachtree promised to pay to Jericho Florida said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein, and all expenses of collection or enforcement of payment of the Peachtree Note, including, but not limited to, reasonable attorney's fees and expenses. A copy of the Peachtree Note is attached and incorporated herein as Exhibit A.

27. In order to secure the payment of the Peachtree Note, for value received, Peachtree granted to Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated July 24, 2006 (the "Peachtree Mortgage"), covering certain real property, described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon, and all other contracts, contract rights, leases, rents and other personal property described more fully therein (collectively, the "Peachtree Property"). The Peachtree Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on July 25, 2006 in Mortgage Book 4629 at Page 277. A copy of the Peachtree Mortgage is attached hereto and incorporated herein as Exhibit B.

28. By its terms, the Peachtree Mortgage additionally secures any future or additional advances made by Jericho Florida at its option to Peachtree, up to a maximum principal secured indebtedness of \$8,527,776.00, plus interest and any disbursements made for the payment of taxes, levies, or insurance on the Peachtree Property, plus any sums expended to cure a default under the Peachtree Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Jericho Florida in connection with enforcing the Peachtree Note and Peachtree Mortgage, or incurred in connection with any foreclosure action or other proceeding brought by Jericho Florida to enforce and protect its rights and interest under the Peachtree Mortgage and Peachtree Note, whether incurred before or after any decree of judgment of foreclosure.

29. By its terms, the Peachtree Mortgage secures the covenant of Peachtree not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the Peachtree Property with any such mortgage or lien placed on the Peachtree Real Property to be deemed void *ab initio*. The Peachtree Mortgage further recites that it is subject to a first mortgage upon the Peachtree Property in favor of R. E. Loans, LLC, a California limited liability company, securing a note in the principal sum of \$18,520,000.00 (the "Peachtree Superior Mortgage").

30. In order to further secure Peachtree's obligations to Jericho Florida, Peachtree granted to Jericho Florida an Assignment of Leases and Rents dated July 24, 2006 (the "Peachtree Assignment"). The Peachtree Assignment was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on September 5, 2006, in Deed Book 3152 at Page 472. A copy of the Peachtree Assignment is attached hereto and incorporated herein as Exhibit C.

31. In order to further evidence the grant of a security interest in the personal property and fixtures described in the Peachtree Mortgage and Peachtree Assignment, Jericho filed a

UCC-1 Financing Statement on July 25, 2006 in the office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 333, that identifies Peachtree as debtor and Jericho Florida as secured party (the "Peachtree UCC"). A copy of the Peachtree UCC is attached hereto and incorporated herein as Exhibit D.

32. In order to further secure Peachtree's obligations to Jericho Florida, Defendants Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J (collectively, the "Peachtree Guarantors," individually, each a "Peachtree Guarantor") granted to Jericho Florida a Guaranty, dated July 24, 2006 (the "Peachtree Guaranty"), pursuant to which each Peachtree Guarantor unconditionally, jointly, severally and irrevocably guaranteed to Jericho Florida prompt and complete payment when due of the principal, together with any and all interest and other sums due and payable, and the performance, observance and discharge by Peachtree of all covenants and conditions set forth in the Peachtree Note, the Peachtree Mortgage, the Peachtree Assignment, the Peachtree UCC, and any and all other documents evidencing or securing the obligations set forth therein (collective, the "Peachtree Loan Documents"), and the payment of any and all expenses paid or incurred by Jericho Florida in collecting any or all of the sums due and in enforcing its rights under the Peachtree Guaranty or the Peachtree Loan Documents, including, but not limited to, attorneys fees. A copy of the Peachtree Guaranty is attached hereto and incorporated herein as Exhibit E.

33. On October 30, 2006, Peachtree gave to Defendant Michaels a Mortgage of Real Property upon the Peachtree Property purporting to secure the principal amount of \$1,500,000.00, which mortgage was recorded on November 7, 2006 in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 4762 at page 785 (the "Michaels Mortgage").

34. The Michaels Mortgage was granted and recorded after the Peachtree Mortgage was recorded. Further, it appears from the uncontroverted testimony of Glenn Chwatt, President of Plaintiff Jericho Florida that the Michaels Mortgage was additionally granted without the knowledge or consent of Jericho Florida. Accordingly, the Michaels Mortgage is subordinate to lien of the Peachtree Mortgage.

35. Defendant Michaels is in default as shown by the Amended Affidavit of Default on file and dated October 16, 2007. Defendant Michaels is now represented by attorney Charles Bernstein of the Charleston County Bar who has made an appearance on behalf of Defendant Michaels and joins in the request that the Michaels Mortgage be considered a subordinate mortgage to the Peachtree Mortgage.

36. On March 9, 2007, Defendants Pappus and Ungaro filed an Amended Lis Pendens (the "Amended Lis Pendens") in the Office of the Clerk of Court for Horry County South Carolina in File No. 06-LP-126 purporting to affect the title to the Peachtree Property.

37. No summons or complaint was filed by Pappus and Ungaro in connection with the Amended Lis Pendens within twenty (20) days after such filing or at any time subsequent thereto.

38. Based on the above and the uncontroverted testimony of Plaintiffs, any interest claimed by Defendants Pappus and Ungaro is considered null and void and the Amended Lis Pendens should be considered of no consequence to this action and cancelled as of record in the Clerk of Court's Office for Horry County.

39. On October 6, 2006, for value received, T & J executed and delivered to Plaintiffs a promissory note in the original principal amount of \$8,000,000.00 (the "T & J Note"), pursuant to which T & J promised to pay Plaintiffs said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein and all expenses of collection or enforcement of payment of the T & J Note, whether or not suit is brought, and if suit is brought, then through all appellate actions, including, but not limited to, reasonable attorneys' fees and expenses. A copy of the T & J Note is attached hereto and incorporated herein as Exhibit F.

40. In order to secure the payment of the T & J Note, for value received, T & J granted to Jericho and Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated October 6, 2006 (the "T & J Mortgage"), covering certain real property described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon and all other contracts, contract rights, leases, rents and other personal property described more fully therein (collectively, the "T & J Property"). Individual portions of the T & J Property are sometimes referred to herein and in the T & J Mortgage as Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6, Parcel 7 and Parcel 8. The T & J Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on October 9, 2006, in Mortgage Book 4724 at Page 685. A copy of the T & J Mortgage is attached hereto and incorporated herein as Exhibit G.

41. By its terms, the T & J Mortgage additionally secures any future or additional advances made by Plaintiffs at its option to T & J, up to a maximum principal secured indebtedness of \$16,000,000.00, plus interest and any disbursements made for the payment of taxes, levies or insurance on the T & J Property, plus any sums expended to cure a default under the T & J Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Plaintiffs in connection with enforcing the T & J Note and T & J Mortgage, or incurred in connection with any foreclosure action or other proceedings brought by Plaintiffs to enforce and protect their rights and interest under the T & J Mortgage and T & J Note, whether incurred before or after any decree or judgment of foreclosure.

42. By its terms, the T & J Mortgage secures the covenant of T & J not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the T & J Property with any such mortgage or lien placed on the T & J Property to be deemed void *ab initio*. The T & J Mortgage further recites that it is subject to a first mortgage upon the T & J Property in favor of R. E. Loans, LLC, a California limited liability company, securing a note in the principal sum of \$12,950,000.00 and a first mortgage upon Parcel 8 of the T & J Property in favor of First Palmetto Savings Bank FSB securing a note in the principal amount of \$1,100,000.00 (collectively, the "T & J Superior Mortgages").

43. In order to further secure T & J's obligations to Plaintiffs, T & J granted to Plaintiffs its Assignment of Leases and Rents dated October 6, 2006 (the "T & J Assignment"). The T & J Assignment was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on October 9, 2006, in Deed Book 3170 at Page 419. A copy of the T & J Assignment is attached hereto as Exhibit H.

44. In order to further secure T & J's obligations to Plaintiffs, Defendants Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and Peachtree (collectively, the "T & J Guarantors," and individually, each a "T & J Guarantor") granted to Plaintiffs a Guaranty, dated October 6, 2006 (the "T & J Guaranty"), pursuant to which each T & J Guarantor unconditionally, jointly, severally and irrevocably guaranteed to Plaintiffs the prompt and complete payment when due of the principal, together with any and all interest and other sums due and payable, and the performance, observance and discharge by T & J of all covenants and conditions set forth in the T & J Note, the T & J Mortgage, the T & J Assignment and any and all other documents evidencing or securing the obligations set forth therein (collectively, the "T & J Loan Documents"), and the payment of any and all expenses paid or incurred by Plaintiffs in collecting any or all of the sums due and in enforcing any rights under the T & J Guaranty or the T & J Loan Documents, including, but not limited to, attorneys fees. A copy of the T & J Guaranty is attached hereto and incorporated herein as Exhibit I.

45. On July 24, 2006, T & J gave a Mortgage covering parcels 4, 5, 6, and 7 of the T & J Property to Defendant McClam in the principal amount of \$2,942,286.09 that was recorded on July 25, 2006 in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 340 (the "McClam \$2MM Mortgage").

46. It appears from the testimony in this matter and the Answer on file from Defendant McClam, that the debt secured by the McClam \$2MM Mortgage was satisfied at the closing of the T & J Loan and the McClam \$2MM Mortgage is no longer a valid lien on Parcels 4, 5, 6 and 7 of the T & J Property and should be cancelled of record.

47. On January 4, 2004, T & J gave a Mortgage covering Parcels 6 and 7 of the T & J Property to Goetz in the principal amount of \$506,250.00 that was recorded on January 7, 2004 in the Office of the Register of Deeds for Horry County in Mortgage Book 3534 at page 951 (the "Goetz Mortgage").

48. Defendant Goetz is in default as shown by the Amended Affidavit of Default on file and dated October 16, 2007.

49. It appears from the testimony in this matter that the debt secured by the Goetz Mortgage was satisfied at the closing of the T & J Loan and the Goetz Mortgage is no longer a valid lien on Parcels 6 and 7 of the T & J Property and should be cancelled of record.

50. On March 4, 2004, T & J gave a mortgage covering parcel 8 of the T & J Property to Defendants Durward W. Hancock and Hortense G. Hancock ("Defendants Hancock") in the principal amount of \$200,000.00 that was recorded on March 5, 2004 in the Office of the

Register of Deeds for Horry County in Mortgage Book 3579 at Page 1469 (the "Hancock Mortgage").

51. It appears from the uncontroverted testimony of Plaintiffs, as well as the Answer of Defendants Hancock in this matter, that the debt secured by the Hancock Mortgage was satisfied at the closing of the T & J Loan and the Hancock Mortgage is no longer a valid lien on Parcel 8 of the T & J Property and should be cancelled of record.

52. On October 6, 2006, T & J gave a Mortgage, Assignment of Rents and Security Agreement covering the T & J Property to McClam in the principal amount of \$850,000.00 that was recorded on October 9, 2006 in the Office of the Register of Deeds for Horry County in Mortgage Book 4724 at Page 744 (the "McClam \$850M Mortgage").

53. From the testimony of Plaintiffs the lien of the McClam \$850M Mortgage was granted and recorded after the T & J Mortgage was granted and recorded without the knowledge or consent of Jericho Florida. It appears from the public records documents maintained in the Office of the Register of Deeds of Horry County that the McClam \$850M Mortgage was recorded after the T & J Mortgage and is therefore subordinate to lien of the T & J Mortgage, which fact is supported by the Answer on file by Defendant McClam.

54. As a condition to Plaintiff's issuing to T & J the T & J Loan, T & J and Defendant Peachtree Properties of North Myrtle Beach, LLC ("Peachtree") granted to Plaintiffs a Cross-Collateralization Agreement dated October 6, 2006 (the "Cross-Collateralization Agreement") whereby T&J and Peachtree each agreed that the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents as those terms are defined in the Complaint and the T&J Note, T&J Mortgage and other T&J Loan Documents as those terms are defined in the Complaint are and will be cross-collateralized and cross-defaulted with one another so that the Peachtree Mortgage, Peachtree Assignment, T&J Mortgage and T&J Assignment shall secure payment and performance of all of the Peachtree Note and T&J Note and that a default under any of the Peachtree Loan Documents shall also constitute a default under all of the T&J Loan Documents. A true and correct copy of the Cross-Collateralization Agreement is attached hereto and incorporated herein as Exhibit J.

55. On or about March 14, 2007, Plaintiff Jericho Florida gave written notice to Peachtree of its receipt of notification from the holder of the Peachtree Superior Mortgage of Peachtree's failure to make payment of a total past due amount of \$708,600.00 due under the Peachtree Superior Mortgage, which notice required Peachtree to cure such default under the Peachtree Superior Mortgage. On or about March 23, 2007, Plaintiff Jericho Florida gave additional written notice to Peachtree of its failure to pay such past due amount and advised Peachtree of Plaintiff Jericho Florida's intent to cure such Peachtree Superior Mortgage default by paying said past due amount on March 26, 2007, and further advising Peachtree that in the event that it failed to reimburse Plaintiff Jericho Florida in full within five days following the date of Plaintiff Jericho Florida's payment of the past due amount, Peachtree would thereupon be in default under the terms of the Peachtree Loan Documents. Plaintiff Jericho Florida paid the sum of \$713,152.50 to the holder of the Peachtree Superior Mortgage on March 26, 2007 to cure Peachtree's defaults under the Peachtree Superior Mortgage, and Peachtree has thereafter failed

or refused to reimburse all or any portion thereof to Plaintiff Jericho Florida. Copies of the foregoing letters dated March 14, 2007 and March 23, 2007 (the "Peachtree Demand Letters") are attached hereto and incorporated herein as Exhibit K.

56. Plaintiff Jericho Florida has subsequently paid seven additional monthly installments due to the holder of the Peachtree Superior Mortgage on April 10, 2007 in equal monthly amounts of \$185,200.00. No reimbursement of any such sums has been paid by Peachtree to Plaintiff Jericho Florida.

57. The sums so paid by plaintiff Jericho Florida on account of the Peachtree Superior Mortgage, totaling \$2,009,552.50, are a portion of the secured indebtedness under the terms of the Peachtree Mortgage. Peachtree's failure or refusal to pay the same within the time required by the Peachtree Demand Letters constitutes an event of default on the part of Peachtree under the terms of the Peachtree Note, Peachtree Mortgage and the other Peachtree Loan Documents.

58. Peachtree's grant of the Michaels Mortgage without the knowledge or consent of Plaintiff Jericho Florida also constitutes an event of default under the Peachtree Mortgage and Peachtree Note.

59. The foregoing events of default under the Peachtree Mortgage confer upon Plaintiff Jericho Florida the right to accelerate payment of the Peachtree Note in accordance with its term and to exercise all rights and remedies available to Plaintiff Jericho Florida under the terms and provisions of the Peachtree Loan Documents, including the right without limitation to institute this action for foreclosure of the Peachtree Mortgage and to seek and obtain a deficiency judgment against Peachtree and the Peachtree Guarantors, jointly and severally, in the amount of any deficiency remaining after the foreclosure sale of the Peachtree Property in accordance with applicable law.

60. As of the date of this Order, Plaintiff Jericho Florida is due from Peachtree the outstanding principal balance of the Peachtree Note in the sum of \$6,941,981.42, which includes principal, default interest, unreimbursed payments made by Plaintiff Jericho Florida to the Peachtree Superior Mortgage holder, together with all expenses associated with or incurred in connection with this action, including, but not limited to, reasonable attorneys' fees and costs.

61. Based on the foregoing, Plaintiffs are entitled to have an order entered foreclosing the Peachtree Mortgage and selling the Peachtree Property at public sale in accordance with law, subject to the Peachtree Superior Mortgage, but free and clear of all subordinate liens, including without limitation the Michaels Mortgage and the Amended Lis Pendens.

62. Further, Plaintiffs are entitled to a judgment against Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J jointly and severally, in the amount of any deficiency remaining after sale of the Peachtree Property. From the testimony of Plaintiffs, it appears Plaintiffs are reserving their right to waive such deficiency judgment by providing this Court with written notice, with copy to Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J prior to the publication of Notice of Sale for the foreclosure of the Peachtree Property and the T & J Property.

63. As seen by the terms and conditions of the Note, Mortgage and Guaranty, the Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J have waived the statutory right of appraisal, and the high bid at the judicial foreclosure sale shall be applied to the debt regardless of any appraised value of the Peachtree Property.

64. Pursuant to the terms of the Cross-Collateralization Agreement, the foregoing events of default under the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents constitute an event of default under the T & J Note, T & J Mortgage and other T & J Loan Documents.

65. Additionally, T & J's grant of the McClam \$850M Mortgage without the knowledge or consent of Plaintiffs constitutes an event of default under the T & J Mortgage.

66. The foregoing events of default under the Peachtree Note, Peachtree Mortgage, Peachtree Loan Documents, T & J Note, T & J Mortgage and other T & J Loan Documents confer upon Plaintiffs the right to accelerate payment of the T & J Note in accordance with its terms and to exercise all rights and remedies available to Plaintiffs under the terms and provisions of the T & J Loan Documents, including the right without limitation to institute this action for foreclosure of the T & J Mortgage and to seek and obtain a deficiency judgment against T & J and the T & J Guarantors, jointly and severally, in the amount of any deficiency remaining after the foreclosure sale of the T & J Property in accordance with applicable law. Plaintiffs are exercising their rights to accelerate and declare to be due and payable in full the T & J Note and all other enumerated sums secured by the T & J Mortgage, and to foreclose the T & J Mortgage.

67. As of the date of this Order, the following sum is due to Plaintiffs pursuant to the T & J Loan Documents and are secured by the T & J Mortgage: \$9,334,244.18, which includes principal, interest, and default interest through the date of this Order, unreimbursed payments made by Plaintiffs on account of the T & J Superior Mortgages, together with all expenses associated with or incurred in connection with this action, including, but not limited to, reasonable attorneys' fees and costs.

68. Plaintiffs are entitled to have an order entered, foreclosing the T & J Mortgage and selling the T & J Property at public sale in accordance with law, subject to the T & J Superior Mortgages, but free and clear of all subordinate liens, including without limitation the McClam \$850M Mortgage.

69. Plaintiffs are entitled to the entry of a further order awarding judgment against Defendants T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and Peachtree jointly and severally, in the amount of any deficiency remaining after sale of the T & J Property. From the testimony of Plaintiffs, it appears Plaintiffs are reserving their right to waive such deficiency judgment by providing this Court with written notice, with copy to Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J prior to the publication of Notice of Sale for the foreclosure of the Peachtree Property and the T & J Property.

70. From the uncontroverted testimony of Plaintiffs, Defendants Peachtree, Peachtree Guarantors, T & J and the T & J Guarantors have each waived the statutory right of appraisal, and the high bid at the judicial foreclosure sale shall be applied to the debt regardless of any appraised value of the T & J Property.

71. From the uncontroverted testimony of Plaintiffs, By deed dated January 23, 2004, Defendant North Myrtle Beach attempted to convey or conveyed Parcel 8 of the T & J Property to T & J Development, LLC (the "North Myrtle Beach Deed"). The North Myrtle Beach Deed was recorded in the Office of the Register of Deeds for Horry County in Deed Book 2691 at Page 456.

72. On January 23, 2004, T & J Development, LLC did not exist, nor does it currently exist according to the records of the South Carolina Secretary of State as of the date of the Complaint.

73. Through the North Myrtle Beach Deed, North Myrtle Beach intended to and did convey Parcel 8 to T & J.

74. Neither North Myrtle Beach nor T & J Development LLC has any remaining right, claim or interest of any kind in Parcel 8 of the T & J Real Property.

75. T & J is the current owner and holder of fee simple title to Parcel 8 of the T & J Property.

76. From the Affidavit for Attorneys' Fees on file in this matter and the affidavits of Plaintiffs, the sum of \$80,000.00 is a reasonable fee to allow as an attorney's fees under the terms of the Peachtree Note and T & J Note for Plaintiffs' attorneys' services performed and anticipated to be performed until final adjudication of this action.

77. The Plaintiffs have incurred taxable expenses to date in connection with this matter in the amount of \$300.00 which includes \$150.00 for the filing fee for the Complaint; \$125.00 for the Master-in-Equity's Reference Fee, and \$25.00 for motion fee, and will additionally incur advertising charges for the Notice of Sale.

78. If Plaintiffs make no payments prior to the projected Sales Date of December 3, 2007, the following items will constitute the full balance due to the Plaintiffs upon the Peachtree Note and the T & J Note as of the Projected Sales Date as follows:

Principal for Peachtree Mortgage	\$ 4,263,888.00
Interest	\$ 795,891.21
Unreimbursed payments for the Peachtree	

Superior Mortgage	\$ 2,379,952.50
Taxable Expenses as of October 23, 2007 ¹	\$ 300.00
Attorneys' fees	\$ 50,000.00
TOTAL	\$ 7,490,031.71 ²

Principal for T & J Mortgage	\$ 8,000,000.00
Interest	\$ 1,491,849.46
Unreimbursed payments for the T & J Superior Mortgage	\$ 401,317.53
Attorney's Fees and Insurance Payments	\$ 50,000.00
TOTAL	\$ 9,943,166.99 ³

GRAND TOTAL DUE PLAINTIFFS	\$ 17,433,198.70 ⁴
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CONCLUSIONS OF LAW

1. The Peachtree Mortgage is a good and valid second mortgage lien on the Peachtree Property, subject only to the Peachtree Superior Mortgage and any past due and applicable property taxes for the Peachtree Property.

2. Plaintiff Jericho Florida shall have judgment of foreclosure of its Peachtree Mortgage for the aforementioned amounts due and owing under the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents.

3. The T&J Mortgage is a good and valid second mortgage lien on the T&J Property, subject only to the T&J Superior Mortgages and any past due and applicable property taxes for the T&J Property.

4. Plaintiffs Jericho and Jericho Florida shall have judgment of foreclosure of their T&J Mortgage for the aforementioned amounts due and owing under the T&J Note, T & J Mortgage and other T & J Loan Documents.

5. The Peachtree Property and the T&J Property shall be ordered sold at public auction after due advertisement. The sale shall be made subject to the rights and interests of the Peachtree Superior Mortgage and T & J Superior Mortgages, and all taxes and assessments that are due on the day of the sale. After making the required deposit, the successful bidder shall be required to pay interest at the Default Rate set forth respectively in the Peachtree Note and T&J Note from the date of sale to the date of compliance.

¹ Plus advertising charges incurred for the Notice of Sale.

² Plus advertising charges and Prepayment Premium to be calculated at the time of sale.

³ Plus advertising charges and Prepayment Premium to be calculated at the time of sale.

⁴ Plus advertising charges and Prepayment Premium to be calculated at the time of sale.

6. The Peachtree Property and T&J Property shall be sold according to law and the practice of this Court, the equity of redemption shall be barred, and that the proceeds of sale shall be applied as follows: First: to the costs and expenses, including reasonable attorneys' fees, of this action and such sale; and Second: to the payment and discharge of all amounts due Plaintiffs pursuant to the Peachtree Note and the Peachtree Mortgage as aforesaid. Any surplus shall be held pending further order of this court.

7. At the conclusion of the aforementioned foreclosure sale of the Peachtree Property and T&J Property, Plaintiffs shall be granted judgments against Defendants Peachtree, T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers, personally, jointly and severally, in the amount of any deficiency remaining after sale of both the Peachtree Property and the T&J Property and Fixtures thereon, such deficiency to be based upon the high bid at the judicial foreclosure sale regardless of any appraised value of either or both the Peachtree Property and T&J Property and Fixtures thereon. Plaintiffs may waive their right to a deficiency judgment by providing this Court with written notice of such waiver with a copy to Defendants Peachtree, T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix and Ocean Developers at any time prior to the publication of the Notice of Sale of the Peachtree Property and T & J Property which is the subject of this action.

8. For the reasons set forth herein, the McClam \$2MM Mortgage is considered to be satisfied and should be cancelled as of record in the Office of the Register of Deeds for Horry County.

9. For the reasons set forth herein, the Michael Mortgage is considered to be subordinate to the lien, rights and interests of the Peachtree Mortgage.

10. For the reasons set forth herein, the Hancock Mortgage is considered to be satisfied and should be cancelled as of record in the Office of the Register of Deeds for Horry County.

11. For the reasons set forth herein, the Goetz Mortgage is considered to be satisfied and should be cancelled as of record in the Office of the Register of Deeds for Horry County

12. The McClam \$850M Mortgage is and shall be considered subordinate to the rights and interests set forth in the T & J Mortgage.

13. The deed from North Myrtle Beach Investment Group to T & J Development, LLC is considered reformed so that title to Parcel 8 of the T & J Property is fully vested in T & J.

14. The Amended Lis Pendens of Defendant Manny Pappus and T. J. Ungaro is declared null and void and should be cancelled of record in the Office of the Clerk of Court for Horry County.

ORDER

It is therefore Ordered, Adjudged and Decreed that:

1. Pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, this Order shall constitute a final judgment, and any appeal shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

2. The Peachtree Mortgage is a good and valid second mortgage lien on the Peachtree Property, subject only to the Peachtree Superior Mortgage and any past due and applicable property taxes for the Peachtree Property. Further, Plaintiff Jericho Florida shall have judgment of foreclosure of its Peachtree Mortgage for the aforementioned amounts due and owing under the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents.

3. The T&J Mortgage is a good and valid second mortgage lien on the T&J Property, subject only to the T&J Superior Mortgages and any past due and applicable property taxes for the T&J Property. Further, Plaintiffs Jericho and Jericho Florida shall have judgment of foreclosure of their T&J Mortgage for the aforementioned amounts due and owing under the T&J Note, T & J Mortgage and other T & J Loan Documents.

4. If the Defendants Peachtree, T&J, Peachtree Guarantors, T&J Guarantors make no payments prior to the projected Sales Date of December 3, 2007, the sum of \$17,433,198.70 (representing principal, interest, default interest, escrow payments, late fees, advanced funds, costs and attorneys fees) plus the costs of advertising the Notice of Sale, all calculated at the time of sale, will be due Plaintiffs under the Peachtree Note, the Peachtree Mortgage, the T&J Note and the T&J Mortgage.

5. The McClam \$2MM Mortgage is hereby ordered, adjudged and decreed to be satisfied and shall be cancelled as of record in the Office of the Register of Deeds for Horry County. is hereby ordered, adjudged and decreed to be satisfied

6. The Michael Mortgage is hereby ordered, adjudged and decreed to be subordinate to the lien, rights and interest of the Peachtree Mortgage.

7. The Hancock Mortgage is hereby ordered, adjudged and decreed to be satisfied and shall be cancelled as of record in the Office of the Register of Deeds for Horry County.

8. The Goetz Mortgage is hereby ordered, adjudged and decreed to be satisfied and shall be cancelled as of record in the Office of the Register of Deeds for Horry County

9. The McClam \$850M Mortgage is hereby ordered, adjudged and decreed to be subordinate to the lien, rights and interests set forth in the T & J Mortgage.

10. The Amended Lis Pendens is hereby ordered, adjusted and decreed to be null and void and is to be cancelled of record in the Office of the Clerk of Court for Horry County.

11. If Defendants Peachtree, T&J, Peachtree Guarantors or T&J Guarantors shall fail to pay the full amount set forth in paragraph 78 above to Plaintiffs prior to the Sales Date, the

Peachtree Property and T&J Property shall be sold by the Honorable J. Stanton Cross, Master in Equity for Horry County, South Carolina, at public auction, at the Horry County Courthouse, Conway, South Carolina, on December 3, 2007, or on some other convenient sales day. Should the regular day of judicial sales fall on a legal holiday, the sales day shall be on the Tuesday next succeeding such holiday. Sale shall be on the following terms:

- a. A good faith deposit of 5% of the amount of the bid (in cash or its equivalent) is required at the time of public sale. Such amount shall be applied to the purchase price only upon full compliance with the bid.
- b. Full compliance with the bid must occur within 20 days after the date of public sale. If the successful bidder does not comply within such time period, the good faith deposit shall be forfeited and applied to the costs and to the debt owed by Defendants to Plaintiffs.
- c. Interest on the balance of the bid must be paid to the day of full compliance at the Default Rate.
- d. The sale shall be subject to the rights and interests of the Peachtree Superior Mortgage and the T&J Superior Mortgages, as well as subject to any and all unpaid taxes and assessments, easements existing on the Peachtree Property and T & J Property and other easements and restrictions of record.
- e. Purchaser shall pay for the preparation of the deed, for deed stamps and for the cost of recording the deed.

12. If Plaintiffs are the successful bidder, for a sum not exceeding the amount due it under this Order, Plaintiffs shall pay to the undersigned the amount of the costs and expenses of the sale and credit the balance of its bid to its indebtedness.

13. Plaintiffs are currently seeking a deficiency judgment and therefore it is hereby ordered that Plaintiffs shall be entitled to the entry of an order of judgment against Defendants Peachtree, T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers, personally, jointly and severally which shall be entered at the conclusion of the aforementioned foreclosure sale of the Peachtree Property and T&J Property, in the amount of any deficiency remaining after sale of both the Peachtree Property and the T&J Property and Fixtures thereon, such deficiency to be based upon the high bid at the judicial foreclosure sale regardless of any appraised value of either or both the Peachtree Property and T&J Property and Fixtures thereon. However, Plaintiffs are reserving their right to waive such deficiency judgment provided such waiver is in writing by Plaintiffs to the Court with notice to Defendants Peachtree, Peachtree Guarantors, T & J and T & J Guarantors prior to the publication of the Notice of Sale. If such written waiver is given, then any sale of the Peachtree Property and T&J Property on the sales date shall be final. If Plaintiffs do not waive their right to a deficiency judgment by providing Notice to this Court and to Defendants Peachtree, Peachtree Guarantors, T & J and T & J Guarantors prior to the Notice of Sale being published then the bidding and sale shall remain open after the sales date for a period of thirty (30) days as required by South Carolina law.

14. The Master in Equity will, by advertisement according to law, give notice of the time and location of sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the Property. Plaintiffs or another party to this action may become a purchaser at such sale. If the purchaser or purchasers should fail to comply with the terms of sale within twenty (20) days after the date of sale, then the Master in Equity may advertise the Property for sale on the next or some other subsequent sales day, at the risk of the former highest bidder, and from time to time thereafter until full compliance shall have occurred. In the event Plaintiffs are the successful bidder, for a sum not exceeding the amount due it under this Order, at its option or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien on the Property.

15. The Master in Equity shall apply the proceeds of the sale as follows:

First, proceeds shall be applied to payment of the costs and expenses of this action and the sale, to any special assessments against the Property and to any taxable disbursements by Plaintiffs.

Second, proceeds shall be applied to payment to Plaintiffs, or Plaintiffs' attorneys, of the amount due Plaintiffs under this Order.

Third, any surplus shall be held by the Master in Equity pending further order of this Court as provided in Rule 71(c) of the South Carolina Rules of Civil Procedure.

16. In the event the successful bidder is other than one of the Defendants in possession herein, the Sheriff of Horry County is ordered and directed to take such action necessary to put the successful bidder or his assigns in full, quiet and peaceful possession of the property without delay and to keep the successful bidder or his assigns in such peaceful possession.

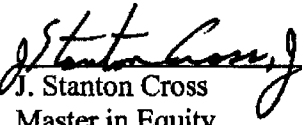
17. The deed from North Myrtle Beach to T & J is hereby ordered reformed to show the title to Parcel 8 of the T & J Property is fully vested in T & J.

18. Defendants Peachtree, T&J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers, and all persons whosoever claiming under them, shall be forever barred and foreclosed of all right, title, interest and equity of redemption in the Property, or any part thereof.

19. The deed of conveyance given pursuant to such sale shall contain the names of only the first-named Plaintiff and the first-named Defendant and the Defendant who was the titleholder of the mortgaged Peachtree Property and mortgaged T & J Property and mortgaged at the time of the filing of the notice of pendency of this action, and the name of the grantee, and the Office of Register of Deeds, is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

20. Attached as Exhibit L is a description of the mortgaged Peachtree Property and mortgaged T & J Property ordered to be sold pursuant to the Peachtree Mortgage and the T & J Mortgage.

Conway, South Carolina
October 6, 2007


J. Stanton Cross
Master in Equity

Grantee's Address: 3835 NW Boca Raton Blvd #200
Boca Raton, FL 33431

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

DEED OF MASTER IN EQUITY

Recitals

- A.** On June 8, 2007, Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, and Jericho State Capital Corporation of Florida, a Florida corporation filed its complaint in the Court of Common Pleas for Horry County, South Carolina, against T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T.J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, and McClam Investment Company, LLC, defendants, case number 07-26-3579, demanding foreclosure of its mortgage over (i) the real property described on attached **Exhibit A** (the **"Real Property"**); (ii) the fixtures located on the Real Property (the **"Fixtures"**); and (iii) the personal property (the **"Personal Property"**) described on attached **Exhibit B** (collectively, the Real Property, Fixtures, and Personal Properties shall be referred to as the **"Premises"**).
- B.** The matter was heard on October 30, 2007, and a decree was entered ordering that the Real Property, Fixtures, and the Personal Property be sold by J. Stanton Cross, Master in Equity for Horry County, on the terms set forth therein.
- C.** J. Stanton Cross, Master in Equity, after having duly advertised the Real Property, Fixtures, and Personal Property for sale by public outcry on December 3, 2007 openly and publicly, according to the custom of auction, sold the Real Property and Fixtures to Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever, for the sum of Nine Million and 00/100 Dollars (\$9,000,000.00), being at that price the highest bidder.

Now, therefore, know all men by these presents, that:

I, J. Stanton Cross, Master in Equity in and for Horry County, South Carolina, in consideration of the sum of Nine Million and 00/100 Dollars (\$9,000,000.00) to me paid by Jericho State Capital Corporation of Florida, a Florida corporation, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever, those certain pieces, parcels and tracts of land described on attached **Exhibit A** together with the Fixtures located thereon and all easements, rights-of-way and rights used in connection with such property and the improvements thereon or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and the Personal Property described on attached **Exhibit B**.

The above described Real Property, Fixtures, and Personal Property were sold subject to any past due or accruing property taxes and assessments, existing easements and restrictions of record, and to the security interests of R. E. Loans, LLC, a California limited liability company.

Together with all and singular the rights, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining and with all the estate, right, title, claim and interest of the parties to the cause aforesaid and of all other persons rightfully claiming from, under or by them or any of them.

To have and to hold, all and singular the premises before mentioned unto Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever.

In witness whereof, I, J. Stanton Cross, Master in Equity, under and by virtue of the aforesaid decree, have hereunto set my hand and seal this 25 day of February, 2008.

Signed, sealed and delivered in the presence of:

Deane H. Bishop
Anne H. Lawson

J. Stanton Cross (SEAL)
J. Stanton Cross, Master in Equity

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACKNOWLEDGMENT

The undersigned, a notary public for South Carolina, hereby certifies that J. Stanton Cross, Master in Equity, personally appeared before me this day and acknowledged the due execution of the foregoing Deed.

Witness my hand and official seal this 25 day of February, 2008.

Anne H. Lawrence (SEAL)
Signature of Notary Public
My commission expires: 10-4-15

WCSR 3831049x1

EXHIBIT A

Real Property

All those certain lots or parcels of land situate in the City of Myrtle Beach, County of Horry, State of south Carolina, and being more particularly described as follows:

Parcel One:

ALL AND SINGULAR those three (3) certain Lots 1 Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J. F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

Parcel Two:

ALL AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

Parcel Three:

ALL AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, one hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J. F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10' East 516 feet to Concrete N; thence South 13°55' West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to Concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence

North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°40' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, nor or formerly, of Roy Collins, in part, and in part by lands, nor or formerly, of Virginia Zeigler; on the South by lands, nor or formerly, of J. M. Cooper, in part, and lands, nor or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, nor or formerly, or Maggie L. Roberts.

Less and Except:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

These being the same properties conveyed to Peachtree Properties of North Myrtle Beach, LLC, by deed of Ruth Ludlam McClam et al, dated July 6, 2006, and recorded in the Office of the Register of Deeds for Horry County in Deed Book 3132 at Page 779.

WCSR 3831049v1

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EXHIBIT B

Personal Property

All present and future fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and articles of personal property and replacements thereof, other than those rented or owned by lessees, now or at any time hereafter affixed to, attached to, installed upon, placed upon, or used in any way or connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property described in Exhibit A attached hereto, or the improvements on the Real Property;

All proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and any unearned premiums accrued, accruing or to accrue under any and all insurance policies.

All leases of the Premises or any part thereof entered into and all right, title and interest of the Peachtree Properties of North Myrtle Beach, LLC thereunder; and including, without limitation, the Peachtree Properties of North Myrtle Beach, LLC right, if any, to cash or securities deposited thereunder whether or not same was deposited to secure performance by the lessees of their obligations thereunder, including, further, the right upon the happening of an Event of Default, to receive and collect the rents and other charges thereunder;

All utility or municipal deposits made by or on behalf of Peachtree Properties of North Myrtle Beach, LLC or made in connection with the Premises;

All plans, drawings, specifications, site plans, sketches, samples, contracts and agreements, however characterized from time to time prepared for use in connection with the construction of the improvements in and to the Premises;

All contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering or any services, and supply of any materials or the conduct of operations in and the management of the Premises including, without limitation, construction contracts, architect agreements, management agreements, options and other agreements, however characterized affecting the Premises and/or the improvements in and to the Premises;

Any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Premises and/or the improvements in and to the Premises and/or chattels, including, without limitation, building permits, environmental certificates, certificates of operation, warranties and guarantees;

Any and all "Purchase Agreements", as such term is defined in the Mortgage, Security Agreement and Assignment of Leases and Rents from Peachtree Properties of North Myrtle Beach, LLC, to Jericho State Capital Corp. of Florida, recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 277 All deposits and accounts of Peachtree Properties of North Myrtle Beach, LLC made with or for the benefit of Jericho State Capital Corporation of Florida, a Florida corporation; and

All of the right, title, and interest of Peachtree Properties of North Myrtle Beach, LLC in and to the items defined as Items (a) through (r) of the Granting Clause all as set forth in the Mortgage, Security Agreement and Assignment of Leases and Rents from Peachtree Properties of North Myrtle Beach, LLC, to Jericho State Capital Corp. of Florida, recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 277.

WCSB 383104891

9

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

DEED AFFIDAVIT

PERSONALLY appeared before me the undersigned, who duly sworn, deposes and says:

- 4) I have read the information on this affidavit and I understand such information.
- 5) The property being transferred bearing Horry County Tax Map No. 178-00-05-032 by J. Stanton Cross, Master in Equity for Horry County to Jericho State Capital Corporatin of Florida, a Florida coproation.
- 6) Check one of the following - the deed is:
- (c) _____ subject to the deed recording fees as a transfer for consideration paid in money or money's worth.
 - (d) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (e) ☒ exempt from the deed recording fee - see Item 13(See information section of this affidavit)
(If exempt, please skip items 4-7, and go to item 8 on this affidavit).
- 4) Check one of the following if either item 3(a) or 3(b) above has been checked (See information section of this affidavit):
- (b) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) The fee is computed on the fair market value of the realty which is _____.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
- 5) Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is _____.
- 6) The deed recording fee is computed as follows:
- (c) Place the amount listed in item 4 above here: \$ _____
 - (d) Place the amount listed in item 5 above here: \$ _____
(If no amount is listed, place zero here)
 - (e) Subtract line 6(b) from Line 6(a) and place result here: \$ _____
- 7) The deed recording fee due is based on the amount listed on line 6(c) above and the recording fee due is \$ _____
- 8) As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Foreclosure Attorney
- 9) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

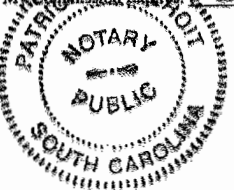
S. Sterling Loney, III

SWORN TO before me this 25th

day of February, 2008

Notary Public for South Carolina

My Commission Expires: 1-3-13



WGR 2316233v1

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantees, as long as no consideration is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;
- (14) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

WCER 2316233v1

STATE OF SOUTH CAROLINA

COUNTY OF Horry

South Carolina Department of Transportation
Plaintiff(s)

vs.

Fertisstate Capital Corporation of Florida
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

- 2009 CP 76 11956 -

(Please Print)

Submitted By: Hart Baker

Address: SC DOT

P.O. Box 191

Columbia, SC 29202-0191

SC Bar #: 15384

Telephone #: 803-737-1538

Fax #: 803-737-4671

Other:

E-mail: m.kent@scdot.org

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

☒ JURY TRIAL demanded in complaint.

☐ NON-JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

☐ Contracts
☐ Construction (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Future Case #
20 -CP-
☐ Notice/File Med Mal (230)
☐ Other (299)

☐ Torts - Personal Injury
☐ Assault/Stalking/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ LLa Petitions (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

☐ Administrative Law/Relief
☐ Reinstatement Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (980)
☐ Employment Security Comm (991)
☐ Other (999)

☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Acc. (610)
☐ Medical (620)
☐ Other (699)

☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature: Hart Baker

Date: 12-14-09

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Road/Route **SC Route 31 (Carolina Bays
Parkway)**
File **26.036775A**
Item
Project **HORR**
PIN **36775 RD01**

South Carolina Department of Transportation,
Condemnor,

VS.

Jericho State Capital Corporation of Florida,
Landowner(s).

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

NOTICE OF FILING

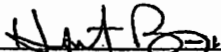
HORRY COUNTY
2009 DEC 15 AM 10:27
I.E. HARRIS, CLERK

TO THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-230(b), et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified that as you have rejected the amount tendered as just compensation as stated in the Condemnation Notice, the Condemnor has filed the Condemnation Notice with the Clerk of Court for Horry County pursuant to Section 28-2-90, Code of Laws of South Carolina, 1976,

Notice of Filing (continued)

as amended, may now proceed to take possession of the property or interest described in the
Condemnation Notice.


Hart Baker, Assistant Chief Counsel
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 4, 2009

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Road/Route SC Route 31 (Carolina Bays
Parkway)
File 26.036775A
Item
Project HERR
PIN 36775 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

2009 cl
11956

FILED
2009 DEC 15 AM 10:27
HORRY COUNTY

LIS PENDENS

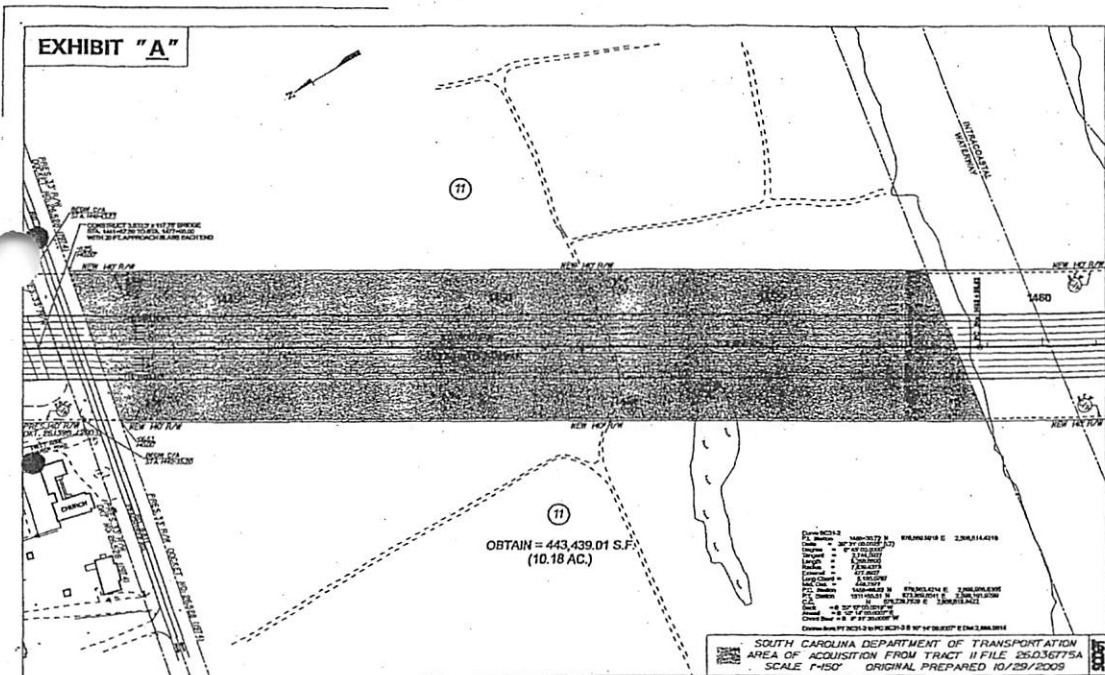
LP
09-5062

NOTICE IS HEREBY GIVEN that the Condemnor above named pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., of the South Carolina Code of Laws, 1976, as amended, has brought an action against the Condemnee(s) above named to acquire the real property described herein for public purposes, to-wit:

Lis Pendens (continued)

All that parcel or strip of land, in fee simple, containing 10.18 acres, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by Jericho State Capital Corporation of Florida, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 1442+00 and 1459+00, left and right of the survey centerline of SC Route 31 (Carolina Bays Parkway).

Tax Map Number 178-00-05-032



Lia Penders (cont'd)
Page 3 of 4 Pages

Lis Pendens (continued)

The property sought herein is to be acquired for public purposes, more particularly a section of
SC Route 31 (Carolina Bays Parkway).

Hart Baker
Assistant Chief Counsel

BY: Hart Baker
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 2009

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

Road/Route SC Route 31 (Carolina Bays
Parkway)
File 26.036775A
Item
Project HERR
PIN 36775 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

SUMMONS

HORRY COUNTY
2009 DEC 15 AM 10:27
HELENE J. COLEMAN

TO: THE LANDOWNER(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED, advised and notified, that pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., the within Condemnation Notice and Tender of Payment, a copy of which is herewith served upon you, has been filed with the Clerk of Court for Horry County. The purpose of this lawsuit is to enable the Condemnor, the South Carolina Department of Transportation, to acquire certain real property for its public purposes, as is more fully stated in the attached Condemnation Notice and Tender of Payment.

Summons (continued)

Responsive pleadings to the Condemnation Notice and Tender of Payment are not necessary.

Hart Baker
Assistant Chief Counsel

BY: Hart Baker
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 2009

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) C/A NO.

2009 CP 26 11956

Road/Route SC Route 31 (Carolina Bays
Parkway)
File 26.036775A
Item
Project HERR
PIN 36775 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

CONDEMNATION NOTICE
AND
TENDER OF PAYMENT

(JURY TRIAL DEMANDED)

HORRY COUNTY
2009 DEC 15 AM 10:27
HEL. AM. CLERK OF COURT

TO: THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.
2. Jericho State Capital Corporation of Florida is named as Landowner(s) in this action by virtue of their claim(s) of title (or other interests) as shown by that certain deed from J. Stanton Cross - Master dated February 25, 2008 and recorded February 26, 2008 in Deed Book 3317, Page 969 in the office of the RMC for Horry County.

Condemnation Notice and Tender of Payment (continued)

3. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 10.18 acres, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by Jericho State Capital Corporation of Florida, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 1442+00 and 1459+00, left and right of the survey centerline of SC Route 31 (Carolina Bays Parkway).

Tax Map Number 178-00-05-032

[illegible]

OBTAIN = 443,439.01 S.F.
(10.18 AC.)

1505 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA OF ACQUISITION FROM TRACT II FILE 2603675A
SCALE 1:150 ORIGINAL PREPARED 10/29/2009

Condemnation Notice and Tender of Payment (cont'd)
Page 3 of 6 Pages

Condemnation Notice and Tender of Payment (continued)

4. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

5. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of SC Route 31 (Carolina Bays Parkway).

6. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

7. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

8. Project plans may be inspected at the office of the South Carolina Department of Transportation, Horry County Maintenance Office, 4145 Highway 701 North, Conway, South Carolina 29526

9. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF BENEFITS EXCEED DAMAGES AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

10. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Oscar K. Rucker, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

Condemnation Notice and Tender of Payment (continued)

11. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. 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 THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

13. 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(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) 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(s) written notice by mail of the call of the case for trial.

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

Condemnation Notice and Tender of Payment (continued)

15. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

Hart Baker
Assistant Chief Counsel

BY: H. Baker
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 20 09

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) C/A NO.

Road/Route	SC Route 31 (Carolina Bays Parkway)
File	26.036775A
Item	
Project	HORR
PIN	36775 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

AFFIDAVIT

HARRY COUNTY
2009 DEC 15 AM 10:27
Held in Court
DAVIS

PERSONALLY APPEARED before me Daryl Hardwick who, being first duly sworn, says and deposes:

1. That the amount tendered by the Condemnor to the Landowner(s) in the Condemnation Notice has been rejected;
2. That the Condemnor demands a trial not earlier than sixty (60) days after the date of service of this affidavit upon the Landowner(s);
3. That the Condemnor demands a trial by jury;
4. That, at this time, the Condemnor does not demand that this action be given priority over other cases;
5. That the Clerk of Court should notify the following Landowner(s) of the call of the case.

Affidavit (continued)

Jericho State Capital Corporation of Florida
3835 NW Boca Raton Boulevard
Suite 200
Boca Raton, Florida 33431

Dayl Harbitt

SWORN to before me this 23rd

day of November, 2009

Porandi M. Anderson

NOTARY PUBLIC FOR South Carolina

My Commission Expires: 10-14-2018

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Road/Route	SC Route 31 (Carolina Bays Parkway)	)	
File	26.036775A	)	AGREEMENT AND REQUEST
Item		)	
Project	HORR	)	FOR PAYMENT
PIN	36775 RD01.	)	

I (we), the landowner(s), request payment of the amount determined by the South Carolina Department of Transportation as just compensation for the property and rights to be acquired for the project mentioned above. By making this request I (we) agree to execute the instruments necessary to convey to the South Carolina Department of Transportation the property interests and rights described in the Condemnation Notice and Tender of Payment. Upon signing and payment of the agreed upon amount, the landowner waives any and all rights pursuant to the Code of Laws of South Carolina, 1976, as amended by the Eminent Domain Procedure Act.

_____	(L.S.)	_____	(L.S.)
_____	(L.S.)	_____	(L.S.)
_____	(L.S.)	_____	(L.S.)

Dated the _____ day of _____

_____, 20____

Tract 11

NOTE: THERE IS NO CASH CONSIDERATION OFFERED FOR THIS RIGHT OF WAY.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO.: 2009-CP-26-11956

Road/Route SC Route 31 (Carolina
Bays Parkway)
File 26.036775A
Item Project HERR
PIN 36775 RD01

South Carolina Department of
Transportation,
Condemnor,
vs.
Jericho State Capital Corporation
of Florida,
Landowner,
and
R.E. Loans, LLC and Mortgage
fund '08, LLC,
Additional Condemnees.

AMENDED CONDEMNATION NOTICE
AND TENDER OF PAYMENT
(Jury Trial Demanded)

FILED
11 APR 20 PM 3:20
CLERK OF COURT

TO: THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10,
et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as
follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor
herein and seeks to acquire the real property described herein for public purposes.
2. Jericho State Capital Corporation of Florida is named as Landowner(s) in
this action by virtue of their claim(s) of title (or other interests) as shown by that certain

deed from J. Stanton Cross - Master dated February 25, 2008 and recorded February 26, 2008 in Deed Book 3317, Page 969 in the office of the RMC for Horry County.

3. R.E. Loans, LLC and Mortgage Fund '08, LLC are named as additional Condemnees as they may have claims or interest in and to the real property described herein based upon the records recorded in the office of the RMC for Horry County.

4. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 10.18 acres, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by Jericho State Capital Corporation of Florida, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 1442+00 and 1459+00, left and right of the survey centerline of SC Route 31 (Carolina Bays Parkway).

5. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

6. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of SC Route 31 (Carolina Bays Parkway).

7. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

8. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required

by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

9. Project plans may be inspected at the office of the **South Carolina Department of Transportation, Horry County Maintenance Office, 4145 Highway 701 North, Conway, South Carolina 29526.**

10. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF BENEFITS EXCEED DAMAGES AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

11. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Oscar K. Rucker, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

12. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the

tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

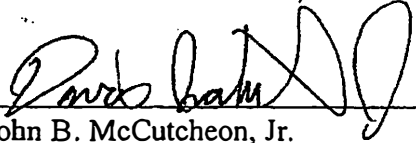
13. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

14. 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(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) 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(s) written notice by mail of the call of the case for trial.

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

16. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

THOMPSON & HENRY, PA



John B. McCutcheon, Jr.

E. B. Davis Inabnit, Jr.

Attorney for Condemnor (SCDOT)

Post Office Box 1740

Conway, SC 29528-1740

Telephone No: (843) 248-5741

Fax No: (843) 248-5112

Conway, South Carolina

April 11, 2011.

April 03, 2013

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



MACDONALD | FERNANDEZ LLP
IAIN A. MACDONALD (SBN 051073)
RENO F.R. FERNANDEZ III (SBN 251934)
221 Sansome Street, Third Floor
San Francisco, CA 94104
Telephone: (415) 362-0449
Facsimile: (415) 394-5544

The following constitutes
the order of the court. Signed April 3, 2013

Attorneys for Susan L. Uecker, Trustee of th
Mortgage Fund '08 Liquidating Trust


Roger L. Efremsky
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re:

MORTGAGE FUND '08 LLC,

Debtor.

Case No. 11-49803-RLE-11

Chapter 11

ORDER APPROVING SALE OF
PEACHTREE PLANTATION LOAN

Date: March 27, 2013

Time: 2:00 pm

Place: 1300 Clay Street, Courtroom 201
Oakland, California

Honorable Roger L. Efremsky

A hearing on the Motion for Authority to Sell Peachtree Plantation Loan (the "Motion"), filed by Susan L. Uecker, Trustee of the Mortgage Fund '08 Liquidating Trust, (the "Trustee"), was held before this Court on March 27, 2013, at 2:00 pm. Reno F.R. Fernandez III of Macdonald Fernandez LLP appeared for the Trustee; Linda Sorensen of Pinnacle Law Group LLP appeared for Jericho All-Weather Opportunity Fund LP and Jericho State Capital Corporation of Florida (collectively, "Jericho"); Jeffrey Olsen appeared *in pro per*.

Having considered the Motion and all related pleadings, any opposition thereto, and the arguments of counsel,

THE COURT FINDS THAT:

A. Notice of the Motion was proper and adequate.

B. The Buyer (as defined below) has acted in good faith and is entitled to the protections of Section 363(m) of the Bankruptcy Code.

Based on the foregoing and the findings of fact and conclusions of law stated orally in the record, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The notice of the Motion and the hearing thereon is approved as proper and adequate under the circumstances.

2. The objection of Jeffrey Olsen is overruled.

3. The Motion is granted and the sale to Jericho or its assignee ("Buyer") is approved as the highest and best offer.

4. The Trustee is authorized to sell all of the Trust's right, title and interest in and to that certain loan to Peachtree Properties of North Myrtle Beach, LLC in the original principal amount of \$18,520,000 dated as of July 5, 2006 (Loan No. P0095) ("Sale Assets") to Buyer for the purchase price of \$950,000.00, and in accordance with the terms and conditions of a purchase agreement with terms (other than price) materially equivalent to those that are set forth in the purchase agreement which is attached to the Declaration of Susan Uecker as Exhibit J.

5. Buyer has not assumed any liabilities of the Trustee.

6. The Trustee is authorized to execute any such releases, termination statements, assignments, consents or instruments on behalf of any third party that are necessary or appropriate to effectuate or consummate the sale.

7. The Trustee, and any escrow agent upon the Trustee's written instruction, shall be authorized to make such disbursements on or after the closing of the sale as are required by the purchase agreement or order of this Court, if any, including but not limited to brokers' commissions.

8. The Trustee and her employees and agents be and they hereby are authorized to execute the purchase agreement, or other related documents that are reasonably necessary or appropriate to complete the sale, and to undertake such other actions as may be reasonably necessary or appropriate to complete the sale.

9. Except as otherwise provided in the Motion, the Sale Assets shall be sold, transferred, and delivered to Buyer on an "as is, where is" and "with all faults" basis.

10. Buyer is approved as a buyer in good faith in accordance with Section 363(m) of the Bankruptcy Code, and Buyer shall be entitled to all protections of Section 363(m) of the Bankruptcy Code.

11. This Order shall be effective immediately upon entry. No automatic stay of execution, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure, or Bankruptcy Rules 6004(h) or 6006(d), applies with respect to this Order.

12. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and the purchase agreement, all amendments thereto, any waivers and consents thereunder, and each of the documents executed in connection therewith in all respects, including retaining jurisdiction to (a) compel delivery of the Sale Assets to the Buyer, (b) resolve any disputes arising under or related to the purchase agreement, and (c) resolve any disputes regarding liens, claims, or interests asserted against the Sale Assets, if any.

13. The purchase agreement and any related documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the bankruptcy estate.

****END OF ORDER****

COURT SERVICE LIST

Jeffrey Brett Olsen
7121 Norfolk Road
Berkeley, California 94705

All other parties in interest required to be served are registered ECF participants. B.L.R. 9022-1(a).

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

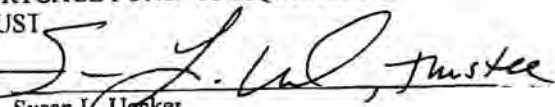
Lynx Jericho Partners LLC
Attention: Glenn Chwatt
3835 NW Boca Raton Blvd., Suite #200
Boca Raton, FL 33431

**ASSIGNMENT OF
TRANSFER AND ASSIGNMENT (PEACHTREE) OF
COMMERCIAL MORTGAGE OF REAL PROPERTY AND SECURITY
AGREEMENT AND CORRECTIVE ASSIGNMENT OF MORTGAGE**

For Value Received, the undersigned hereby grants, assigns and transfers to Lynx Jericho Partners, LLC, a Florida limited liability company, all beneficial interest under that certain Commercial Mortgage of Real Property and Security Agreement ("Commercial Mortgage") dated as of July 5, 2006, between Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, as Borrower, and R.E. Loans, LLC, a California limited liability company, as Lender recorded on July 25, 2006 in the Official Records of the County of Horry, South Carolina in Mortgage Book 4629 Page 255 and subsequently transferred and assigned by R.E. Loans, LLC to Mortgage Fund '08 LLC, pursuant to Transfer and Assignment (Peachtree) (the "Transfer and Assignment") dated effective January 4, 2008 executed by R.E. Loans, LLC, a California limited liability company, as Assignor, to Mortgage Fund '08 LLC, a Delaware limited liability company, as Assignee, recorded in the Official Records of the County of Horry County, South Carolina, in Mortgage Book 5071 Page 96 and subsequently corrected by Corrective Assignment of Mortgage dated April 26, 2011 by R.E. Loans, LLC transferring and assigning all rights, title and interest recorded on July 28, 2011 in the Official Records of the County of Horry, South Carolina in Mortgage Book 5336 Page 3001 describing land therein as any other security instruments, including but not limited to those described on Schedule I attached hereto, together with all the rights, powers and privileges conferred there under. Together with the money due and to become due thereon with interest and all rights accrued or to accrue under said Commercial Mortgage.

Dated as of April 17, 2013

MORTGAGE FUND '08 LIQUIDATING
TRUST

By: 

Susan L. Uecker,
Trustee

MF08/CBRENoteSale/JerichoFinslSale/Assignment-PeachtreePlantation

ELECTRONICALLY FILED - 2024 Jan 23 5:08 PM - Horry - COMMON PLEAS - CASE#2013CP2605530

STATE OF California

COUNTY OF San Francisco

BEFORE ME, the undersigned Notary Public, duly authorized in the County and State aforesaid, personally appeared Susan L. Uecker as Trustee of Mortgage Fund '08 Liquidating Trust, who is personally known by me, or who has produced CA DL as identification, who in my presence executed the foregoing instrument and who took an oath.

Witness my hand and official seal in the County and State last aforesaid this 17 day of April, 2013.

Notary Signature

Andrew F. Albright

Printed Notary Signature



As witnessed by:

Ali Amir Mo
Witness #1

Quashan Peyton
Witness #2

MF08/CBRENoteSale/JerichoFinalSale/Assignment-PeachtreePlantation

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP2611956

Department Of
Transportation South
Carolina

Jericho State Capital
Corporation of Florida

Lynx Jericho Partners
LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

WE THEY JURY, FIND FOR THE LANDOWNER IN THE AMOUNT OF TWO MILLION ONE HUNDRED THOUSAND DOLLARS AND NO/100 (\$2,100,000.00).

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

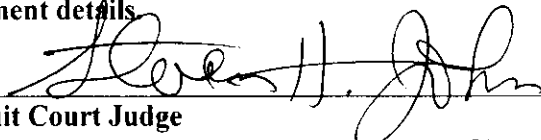
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
JERICO STATE CAPITAL CORPORATION OF FLORIDA, LANDOWNER AND LYNX JERICO PARTNERS LLC.	SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, CONDEMNOR	\$2,100,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed

2024 NOV 19 PM 4:16
CLERK OF COURT

such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge 129 11/19/2014
Judge Code Date
For Clerk of Court Office Use Only

11-19-14
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

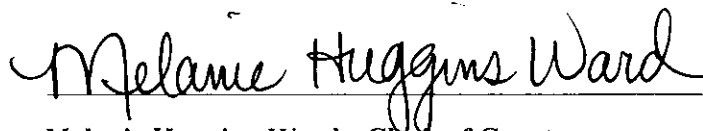
Franklin Hartselle Baker 38 Spruce Drive Suches, GA
30572
Edward B. Davis Inabnit Jr. PO Box 3646 Myrtle Beach,
SC 29578
John B. McCutcheon Jr. PO Box 1740 Conway, SC 29528

Howell V. Bellamy Jr. Bellamy Law Firm PO Box 357
Myrtle Beach, SC 29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter


Melanie Huggins-Ward - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

South Carolina Department of Transportation,

Condemnor,

vs.

Jericho State Capital Corporation of Florida,

Landowner,

and

Lynx Jericho Partners, LLC.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2009-CP-26-11956

VERDICT

FILED
2014 NOV 19 PM 4:16
CLERK OF COURT

We the jury, by unanimous decision, find that just compensation to be paid to the Landowner to be:

Two million one hundred thousand dollars ^{no}/₁₀₀ (\$2,100,000)

(Write out amount in words)

NOTE: You cannot return a verdict in an amount less than the offer of \$998,000.00 or more than the landowner's opinion of \$4,010,000.00


FOREPERSON'S SIGNATURE

November 19, 2014
Conway, South Carolina

PLEASE KNOCK ON THE DOOR AND NOTIFY THE BALIFF WHEN YOU ARE FINISHED.

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **JERICHO STATE CAPITAL CORPORATION OF FLORIDA**, a Florida corporation and **JERICHO ALL-WEATHER OPPORTUNITY FUND, L.P.**, a Delaware limited partnership (collectively the “Grantor”) for and in consideration of the premises and the sum of FOUR MILLION SEVEN HUNDRED THOUSAND AND No/100 (\$4,700,000.00) DOLLARS to it in hand paid at and before the sealing of these presents by **LENNAR CAROLINAS, LLC**, a Delaware limited liability company, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, unto **LENNAR CAROLINAS, LLC**, a Delaware limited liability company (the “Grantee”), its successors and assigns forever, the following described property to wit:

SEE EXHIBIT "A" ATTACHED HERETO.

Grantee's Address: 1941 Savage Road, Suite 100-C
Charleston, South Carolina 29407

THIS CONVEYANCE is made subject only to those matters set forth on EXHIBIT "B" ATTACHED HERETO (the "*Exceptions*").

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, its successors and assigns forever.

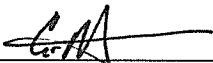
AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against it, but no other, subject only to the Exceptions.

[signatures appearing on next page]

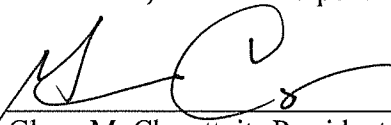
WITNESS the Grantor's Hand and Seal this 13 day of July, 2020.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

**JERICO STATE CAPITAL CORPORATION
OF FLORIDA**, a Florida corporation

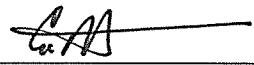

Name: ERIC METZ


Name: SCOTT SWIRSKY

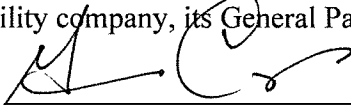
By: 
Glenn M. Chwatt, its President

**JERICO ALL-WEATHER OPPORTUNITY
FUND, L.P.**, a Delaware limited partnership

By: SRKD Management, LLC, a Florida limited
liability company, its General Partner


Name: ERIC METZ

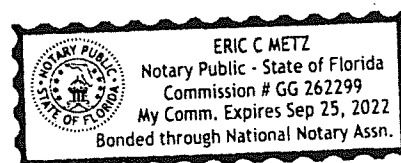

Name: SCOTT SWIRSKY

By: 
Glenn M. Chwatt, its Manager

STATE OF FLORIDA)
)
COUNTY OF Palm Beach) ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 13 day of July, 2020, by
Glenn M. Chwatt, as President of **JERICO STATE CAPITAL CORPORATION OF
FLORIDA**, a Florida corporation, as his act and deed and as the act and deed of the corporation.

 (SEAL)
Notary Public for GLENN M. CHWATT
Name: ERIC METZ
My Commission Expires:
(AFFIX SEAL)



STATE OF FLORIDA)
)
COUNTY OF Palm Beach) ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 13 day of July, 2020, by
Glenn M. Chwatt, as Manager of SRKD Management, LLC, General Partner of **JERICO ALL-
WEATHER OPPORTUNITY FUND, L.P.**, a Delaware limited partnership, as his act and deed
and as the act and deed of the limited partnership.

 (SEAL)
Notary Public for GLENN M. CHWATT
Name: ERIC METZ
My Commission Expires:
(AFFIX SEAL)

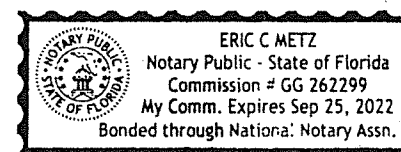


EXHIBIT "A"

Legal Description of Property

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, containing 58.12 acres, more or less, designated as **PARCEL A, 58.12 AC.**, as shown on that certain plat entitled "**SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA**", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 2020 in Plat Book 292 at Page 265 (the "**Plat**"), reference to said Plat being made for the complete metes and bounds description thereof.

PIN No.: 439-00-00-0037

DERIVATION: This being a portion of the property conveyed to Jericho State Capital Corporation of Florida by Deed of J. Stanton Cross, as Master-in-Equity for Horry County, recorded February 26, 2008 in Deed Book 3317 at Page 969, and a portion of the property conveyed to Jericho All-Weather Opportunity Fund, L.P. by Deed of J. Stanton Cross, as Master-in-Equity for Horry County, recorded February 26, 2008 in Deed Book 3317 at Page 979, in the Office of the Register of Deeds for Horry County, South Carolina.

EXHIBIT "B"

Exceptions

1. Taxes and assessments for the year 2020 and subsequent years.
2. Terms and conditions of SC Department of Transportation case for Eminent Domain# 2009-CP-26-11956.
3. Easement in favor of Grand Strand Water and Sewer Authority recorded in Book 1438, Page 163.
4. Sewer line easement in favor of Grand Strand Water and Sewer Authority recorded in Book 3819, Page 342.
5. Right of way easement to Horry County Electric Cooperative recorded in Book 3873, Page 193.
6. Right of Way easement to the County of Horry recorded in Book 3917, Page 2718.
7. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variation, or other adverse circumstance affecting the Title disclosed by plat(s) recorded in Plat Book 43, Page 183; Plat Book 112, Page 65; Plat Book 215, Page 81; Plat Book 43, Pages 184A and 184B; Plat Book 292, Page 265.

STATE OF SOUTH CAROLINA

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

COUNTY OF HORRY

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

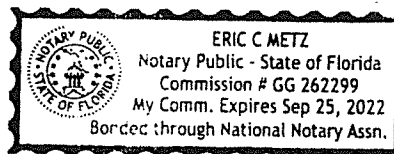
1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is identified as A 58.12 +/- Acre Parcel, bearing Horry County PIN No.: 439-00-00-0032 was transferred by **JERICO STATE CAPITAL CORPORATION OF FLORIDA and JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.** to **LENNAR CAROLINAS, LLC**, on July __, 2020.
3. Check one of the following: *The DEED is*
(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ EXEMPT from the deed recording fee because (Exemption # _____)
(Explanation if required _____.)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **\$4,700,000.00**.
(b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
(a) \$4,700,000.00 the amount listed in item 4 above
(b) \$ 0.00 the amount listed in item 5 above (no amount place zero)
(c) \$4,700,000.00 subtract line 6(b) from line 6(a) and place the result.
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: **\$17,390.00**
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: **GRANTOR**.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this
13 day of July, 2020.

G. Metz
Notary Public for Florida
Name: ERIC C METZ
My Commission Expires: 9/25/22

JERICO STATE CAPITAL CORPORATION OF FLORIDA, a Florida corporation

By: Glenn M. Chwatt, its President



**HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET**

TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.

**HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY ,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Deed

DATE OF INSTRUMENT: .

DOCUMENT SHALL BE RETURNED TO:

NAME: St. Amand & Efird PLLC

ADDRESS:

3315 SPRINGBANK LN STE 308
CHARLOTTE, NC 28226-3198

TELEPHONE: (980) 474-4251

FAX: (980) 474-4251

E-MAIL ADDRESS: ahs@stamand-efird.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: \$ 4700000.00

BRIEF PROPERTY DESCRIPTION: ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, containing 58.12 acres, more or less, designated as PARCEL A, 58.12 AC., as shown on that certain plat entitled "SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 2020 in Plat Book 292 at Page 265

TAX MAP NUMBER (TMS #) 43900000037 / PIN NUMBER: .

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. JERICHO STATE CAPITAL CORPORATION OF FLORIDA
2. JERICHO ALLWEATHER OPPORTUNITY FUND, LP

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. LENNAR CAROLINAS, LLC

43900000013,

STATE OF SOUTH CAROLINA)

)

QUIT-CLAIM DEED

COUNTY OF HORRY)

(No title examination performed by preparing attorney)

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS, THAT JERICHO STATE CAPITAL CORPORATION OF FLORIDA, a Florida corporation and **JERICHO ALL-WEATHER OPPORTUNITY FUND, L.P.**, a Delaware limited partnership (collectively "**Grantor**") in consideration of the premises and the additional sum of Five and No/100 (\$5.00) Dollars, to the said Grantor in hand paid at and before the sealing and delivery of these presents by **LYNX JERICHO PEACHTREE PHASE III LLC** ("**Grantee**"), the receipt whereof is hereby acknowledged, has remised, released and forever quit-claimed and by these Presents do remise, release and forever quit-claim unto the said Grantee, in fee simple, with every remainder, the following described property:

SEE **EXHIBIT "A"** ATTACHED HERETO.

*Grantee's address: 901-A Clint Moore Road, Suite 100
Boca Raton, FL 33487*

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the Premises before mentioned unto the said Grantee.

[Signatures appear on the following page]

WITNESS Grantor's Hand and Seal, this 14 day of September the year of our Lord two thousand twenty and in the two hundred and forty fifth year of the Sovereignty and Independence of the United States of America.

**JERICHO STATE CAPITAL CORPORATION
OF FLORIDA**, a Florida corporation

[Signature]
Name: Scott Swirsky

By: [Signature]
Glenn M. Chwatt, its President

[Signature]
Name: Jonathan H. Vogel

**JERICHO ALL-WEATHER OPPORTUNITY
FUND, L.P.**, a Delaware limited partnership

By: SRKD Management, LLC, a Florida limited liability company, its General Partner

[Signature]
Name: Scott Swirsky

By: [Signature]
Glenn M. Chwatt, its Manager

[Signature]
Name: Jonathan H. Vogel

STATE OF FLORIDA)
COUNTY OF Palm Beach)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 14 day of a September, 2020, by Glenn M. Chwatt, as President of **JERICHO STATE CAPITAL CORPORATION OF FLORIDA**, a Florida corporation, as his act and deed and as the act and deed of the corporation.

_____(SEAL)
Notary Public for
Name: Diane L. Harvey
My Commission Expires: 9/7/2024
(AFFIX SEAL)



STATE OF FLORIDA)

COUNTY OF Palm BEACH)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 14 day of September, 2020, by Glenn M. Chwatt, as Manager of SRKD Management, LLC, General Partner of **JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.**, a Delaware limited partnership, as his act and deed and as the act and deed of the limited partnership.

(SEAL)

Notary Public for _____

Name: Diane L. Harvey

My Commission Expires: 9/7/2024

(AFFIX SEAL)



EXHIBIT "A"

Description of Property

ALL those certain lots or parcels of land situate near the City of Myrtle Beach, Horry County, South Carolina, and being more particularly described as follows:

Parcel One:

ALL AND SINGULAR those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersect with the inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pine N; thence South 78 degrees 10 minutes East to Pine N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by Lands of Ruth L. McClam; on the East by lands of Ruth L. McClam; on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

Parcel Two:

ALL AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North other other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the West by other lands of Ruth L. McClam.

Parcel Three:

ALL AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, one hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres in situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43 at Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as sown on the referenced Plat (this road known as the Peachtree Ferry Road); and running thence North approximately $26^{\circ}5'$ East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South $68^{\circ}22'$ East 441 feet to point of intersection, as sown on the above Plat; thence South $62^{\circ}45'$ East 984.3 feet to point of intersection, as shown on the above Plat; thence South $75^{\circ}15'$ East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North $19^{\circ}5'$ East 473.5 feet to Pipe O; thence $53^{\circ}10'$ East 516 feet to Concrete N; thence South $13^{\circ}55'$ West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point of intersection as shown on the Plat; thence South $85^{\circ}11'$ minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South $21^{\circ}45'$ West 1045.5 feet to Pipe O and Concrete N; thence North $78^{\circ}50'$ West 750 feet to Pipe O and Concrete N; thence South $20^{\circ}55'$ West 438.5 feet to Concrete N; thence North $78^{\circ}10'$ West 225 feet to Pipe N; thence South $27^{\circ}10'$ East to Pipe N; thence North $78^{\circ}10'$ West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North $78^{\circ}10'$ West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North $26^{\circ}25'$ West 145 feet along along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North $63^{\circ}10'$ West 100 feet; thence North $54^{\circ}45'$ West 130 feet; thence South $70^{\circ}25'$ West 185 feet; thence North $89^{\circ}20'$ West 200 feet; thence North $61^{\circ}45'$ West 94 feet; thence North $70^{\circ}20'$ West 100 feet; thence South $86^{\circ}50'$ West 80 feet to Gum 3MO; thence North $27^{\circ}40'$ East 383.5 feet to Gum OM; thence North $27^{\circ}20'$ East 261 feet to Gum OM; thence North $26^{\circ}05'$ East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying and being in Socastee Township, County of Horry, State of South Carolina, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site for Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112 at Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

AND FURTHER LESS AND EXCEPT:

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, designated as **PARCEL A, 58.12 AC.**, as shown on that certain plat entitled **"SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA"**, prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 2020 in Plat Book 292 at Page 265 (the "Plat"), reference to said Plat being made for the complete metes and bounds description thereof.

PIN No.: 439-00-00-0037

AND

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, designated as **PARCEL B, 27.57 AC.**, as shown on that certain plat entitled **"SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA"**, prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 2020 in Plat Book 292 at Page 265 (the "Plat"), reference to said Plat being made for the complete metes and bounds description thereof.

PIN No.: 439-00-00-0038

DERIVATION: This being a portion of the property conveyed to Jericho State Capital Corporation of Florida by Deed of J. Stanton Cross, as Master-in-Equity for Horry County, recorded February 26, 2008 in Deed Book 3317 at Page 969, and a portion of the property conveyed to Jericho All-Weather Opportunity Fund, L.P. by Deed of J. Stanton Cross, as Master-in-Equity for Horry County, recorded February 26, 2008 in Deed Book 3317 at Page 979, in the Office of the Register of Deeds for Horry County, South Carolina.

TMS/PIN No.: 178-00-05-032/439-00-00-0013

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

)
) **AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being identified as 35.53 Acre, more or less bearing Horry County TMS/PIN No.: 178-00-05-032/439-00-00-0013, was transferred by **JERICO STATE CAPITAL CORPORATION OF FLORIDA and JERICO ALL-WEATHER OPPORTUNITY FUND, L.P. to LYNX JERICO PEACHTREE PHASE III LLC**, on September ____, 2020.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit): **Exemption #5 (Transferring Realty to Partition)**. (If exempt, please skip items 4-7, and go to item 8 of this affidavit)

If exempt under the exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ____ No ____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
- (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes" the amount of the outstanding balance of this lien or encumbrance is : _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____ \$0.
- (b) Place the amount listed in item 5 above here: _____ \$0.
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: _____ \$0.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$0.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

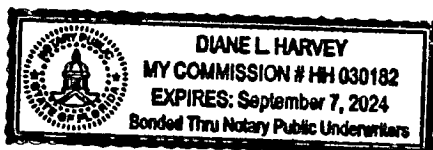
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

JERICO STATE CAPITAL CORPORATION OF FLORIDA

By: Glenn M. Chwatt
Glenn M. Chwatt, its President

SWORN to before me this 14 day of September, 2020

Diane L. Harvey
Notary Public for Florida
My Commission Expires: 9/7/2024



43900000038,

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

QUIT-CLAIM DEED

(No title examination performed by preparing attorney)

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS, THAT JERICHO STATE CAPITAL CORPORATION OF FLORIDA, a Florida corporation and JERICHO ALL-WEATHER OPPORTUNITY FUND, L.P., a Delaware limited partnership (collectively "Grantor") in consideration of the premises and the additional sum of Five and No/100 (\$5.00) Dollars, to the said Grantor in hand paid at and before the sealing and delivery of these presents by LYNX JERICHO PEACHTREE PHASE II LLC ("Grantee"), the receipt whereof is hereby acknowledged, has remised, released and forever quit-claimed and by these Presents do remise, release and forever quit-claim unto the said Grantee, in fee simple, with every remainder, the following described property:

SEE EXHIBIT "A" ATTACHED HERETO.

*Grantee's address: 901-A Clint Moore Road, Suite 100
Boca Raton, FL 33487*

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the Premises before mentioned unto the said Grantee.

[Signatures appear on the following page]

WITNESS Grantor's Hand and Seal, this 14 day of September the year of our Lord two thousand twenty and in the two hundred and forty fifth year of the Sovereignty and Independence of the United States of America.

**JERICHO STATE CAPITAL CORPORATION
OF FLORIDA**, a Florida corporation

[Signature]
Name: Scott Swirsky

By: [Signature]
Glenn M. Chwatt, its President

[Signature]
Name: Jonathan H. Vogel

**JERICHO ALL-WEATHER OPPORTUNITY
FUND, L.P.**, a Delaware limited partnership

By: SRKD Management, LLC, a Florida limited liability company, its General Partner

By: [Signature]
Glenn M. Chwatt, its Manager

[Signature]
Name: Scott Swirsky

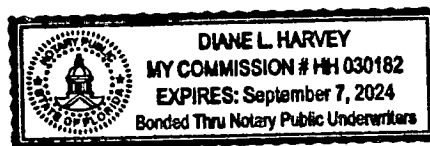
[Signature]
Name: Jonathan H. Vogel

STATE OF FLORIDA)
COUNTY OF Palm Beach)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 14 day of a September, 2020, by Glenn M. Chwatt, as President of **JERICHO STATE CAPITAL CORPORATION OF FLORIDA**, a Florida corporation, as his act and deed and as the act and deed of the corporation.

Notary Public for [Signature] (SEAL)
Name: _____
My Commission Expires: 9/7/2024
(AFFIX SEAL)



STATE OF FLORIDA)
)
COUNTY OF PALM BEACH) ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 14 day of September, 2020, by Glenn M. Chwatt, as Manager of SRKD Management, LLC, General Partner of **JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.**, a Delaware limited partnership, as his act and deed and as the act and deed of the limited partnership.

_____(SEAL)
Notary Public for
Name: Diane L. Harvey
My Commission Expires: 9/7/2024
(AFFIX SEAL)



EXHIBIT "A"

Description of Property

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, designated as **PARCEL B, 27.57 AC.**, as shown on that certain plat entitled "**SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA**", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 2020 in Plat Book 292 at Page 265 (the "**Plat**"), reference to said Plat being made for the complete metes and bounds description thereof.

PIN No.: 439-00-00-0038

DERIVATION: This being a portion of the property conveyed to Jericho State Capital Corporation of Florida by Deed of J. Stanton Cross, as Master-in-Equity for Horry County, recorded February 26, 2008 in Deed Book 3317 at Page 969, and a portion of the property conveyed to Jericho All-Weather Opportunity Fund, L.P. by Deed of J. Stanton Cross, as Master-in-Equity for Horry County, recorded February 26, 2008 in Deed Book 3317 at Page 979, in the Office of the Register of Deeds for Horry County, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being identified as 27.57 Acre, more or less bearing Horry County PIN No.: 439-00-00-0038, was transferred by **JERICO STATE CAPITAL CORPORATION OF FLORIDA and JERICO ALL-WEATHER OPPORTUNITY FUND, L.P.** to **LYNX JERICO PEACHTREE PHASE II LLC**, on September ____, 2020.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit): **Exemption #5 (Transferring Realty to Partition)**. (If exempt, please skip items 4-7, and go to item 8 of this affidavit)

If exempt under the exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ____ No ____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
- (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes" the amount of the outstanding balance of this lien or encumbrance is : _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____ \$0.
- (b) Place the amount listed in item 5 above here: _____ \$0.
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: _____ \$0.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$0.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

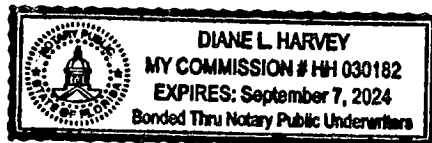
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

JERICO STATE CAPITAL CORPORATION OF FLORIDA

By: Glenn M. Chwatt, its President

SWORN to before me this 14 day of September, 2020

Diane L. Harvey
Notary Public for Florida
My Commission Expires: 9/7/2024



LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **LYNX JERICO PEACHTREE PHASE III LLC**, a Delaware limited liability company (the “**Grantor**”) for and in consideration of the premises and the sum of TWO MILLION ONE HUNDRED TWO THOUSAND FIVE HUNDRED AND No/100 (\$2,102,500.00) DOLLARS to it in hand paid at and before the sealing of these presents by **LENNAR CAROLINAS, LLC**, a Delaware limited liability company, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, unto **LENNAR CAROLINAS, LLC**, a Delaware limited liability company (the “**Grantee**”), its successors and assigns forever, the following described property to wit:

SEE EXHIBIT "A" ATTACHED HERETO.

Grantee's Address: 1941 Savage Road, Suite 100-C
Charleston, South Carolina 29407

THIS CONVEYANCE is made subject only to those matters set forth on EXHIBIT "B" ATTACHED HERETO (the "Exceptions").

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, its successors and assigns forever.

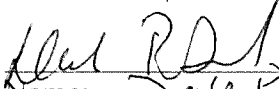
AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against it, but no other, subject only to the Exceptions.

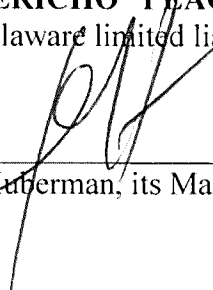
[signatures appearing on next page]

WITNESS the Grantor's Hand and Seal this 11 day of January, 2022.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

**LYNX JERICO PEACHTREE PHASE III
LLC**, a Delaware limited liability company

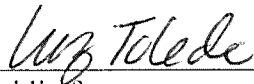

Name: GABRIEL VARELA

Name: DALE P. SWANK

By: 
Seth Huberman, its Manager

STATE OF FLORIDA)
COUNTY OF Palm Beach)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 11 day of January, 2022, by Seth Huberman, as Manager of **LYNX JERICO PEACHTREE PHASE III LLC**, a Delaware limited liability company, as his act and deed and as the act and deed of the limited liability company.


Notary Public for _____ (SEAL)
Name: LUZ TOLEDO
My Commission Expires:
(AFFIX SEAL)

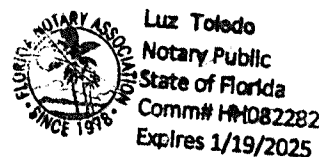


EXHIBIT "A"

Legal Description of Property

BEING that certain lot, parcel or tract of land located in Socastee Township, Horry County, South Carolina containing 35.27 acres and shown on a survey thereof entitled "**BOUNDARY SURVEY OF PEACHTREE PARCEL C TOTALING 35.27 AC.**" dated January 18, 2022, prepared by Matthew J. Svejksky (PLS No. 21233) of Thomas & Hutton Engineering Co. and recorded on January 31, 2022 in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 303, Page 32, reference to said survey made hereby for a more accurate and complete description of the foregoing property.

DERIVATION: This being the same property conveyed to Lynx Jericho Peachtree Phase III LLC by Deed of Jericho State Capital Corporation of Florida and Jericho All-Weather Opportunity Fund, L.P., dated September 14, 2020 and recorded September 18, 2020 in Deed Book 4344 at Page 2303 in the Office of the Register of Deeds for Horry County, South Carolina.

TMS/PIN No.: 178-00-05-032/439-00-00-0013

EXHIBIT "B"

Exceptions

1. Taxes and assessments for the year 2022 and subsequent years.
2. Terms and conditions of SC Department of Transportation case for Eminent Domain# 2009-CP-26-11956, Horry County Registry.
3. Easement in favor of Grand Strand Water and Sewer Authority recorded in Book 1438, Page 163.
4. Sewer line easement in favor of Grand Strand Water and Sewer Authority recorded in Book 3819, Page 342, Horry County Registry.
5. Right of way easement to Horry County Electric Cooperative recorded in Book 3873, Page 193.
6. Right of Way easement to the County of Horry recorded in Book 3917, Page 2718, Horry County Registry.
7. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variation, or other adverse circumstance affecting the Title disclosed by plat(s) recorded in Plat Book 43, Page 183; Plat Book 112, Page 65; Plat Book 215, Page 81; Plat Book 43, Pages 184A and 184B; Plat Book 292, Page 265, Horry County Registry.
8. Recreation Amenities, Use, Easement and Fee Agreement recorded in Deed Book 4327 at Page 1473, Horry County Registry.
9. Easement and Road Maintenance Agreement for Future Public Roadway, Water and Sewer Improvements, Marketing, Signage and Entry Monument Rights recorded in Deed Book 4327 at Page 1560, Horry County Registry.
10. Planning, Permitting and Development Agreement recorded in Deed Book 4327 at Page 1618, Horry County Registry.
11. Terms, provisions, options, right of first refusal, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in instrument(s) filed for record in Deed Book 4358 at Page 213 and amended in Deed Book 4401 at Page 528, and any related maps, plans, bylaws, and other document(s) and amendment(s), but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.
12. Horry County Stormwater Best Management Practices Permanent Maintenance Covenants recorded in Deed Book 4286 at Page 2732, and Deed Book 4360 at Page 2050, Horry County Registry.
13. Right(s)-of-way/Easement(s) to Horry Telephone Cooperative, Inc. recorded in Deed Book 4342 at Page 3262, Horry County Registry.
14. Right(s)-of-way/Easements to Time Warner Entertainment-Advance Newhouse Partnership dba Time Warner Cable recorded in Deed Book 4375 at Page 1894, Horry County Registry.
15. Right(s)-of-way/Easements to Horry Electric Cooperative, Inc., recorded in Deed Book 4410 at page 797, Horry County Registry.
16. Agreement for Underground Electric Service to a Residential Neighborhood to Horry Electric Cooperative, Inc., recorded in Deed Book 4410 at Page 1298; and Deed Book 4410 at Page 1302, Horry County Registry.
17. Rights or easements (recorded or unrecorded) in favor of the United States or Agencies thereof, including the U.S. Army Corps of Engineers, among others.
18. Title to that portion of the Land lying within the bounds of Carolina Bays Parkway, Peachtree Road and Renata Lane rights-of-way.
19. The creation or los of land by natural or artificial changes along water forming part of the boundary of the Land; and rights of others in and to the continuous and uninterrupted flow of the waters bounding or crossing the Land and riparian and/or littoral rights incident to the Land.

STATE OF SOUTH CAROLINA

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

COUNTY OF HORRY

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is identified as A 35.27 +/- Acre Parcel, bearing Horry County PIN No.: 439-00-00-0013 was transferred by **LYNX JERICHO PEACHTREE PHASE III LLC** to **LENNAR CAROLINAS, LLC**, on ~~March~~ **11**, 2022.
3. Check one of the following: *The DEED is*
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ EXEMPT from the deed recording fee because (Exemption # _____)
(Explanation if required _____.)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **\$2,102,500.00**.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
 - (a) \$2,102,500.00 the amount listed in item 4 above
 - (b) \$ 0.00 the amount listed in item 5 above (no amount place zero)
 - (c) \$2,102,500.00 subtract line 6(b) from line 6(a) and place the result.
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: **\$7,779.25**
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: **GRANTOR**.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this
11 day of January, 2022.

Notary Public for Florida
Name: Luz Toledo
My Commission Expires: _____

LYNX JERICHO PEACHTREE PHASE III LLC, a
Delaware limited liability company

By: _____
Seth Huberman, its Manager



Luz Toledo
Notary Public
State of Florida
Comm# 141082282
Expires 1/19/2025

**HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET**

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY ,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Deed

DATE OF INSTRUMENT: .

DOCUMENT SHALL BE RETURNED TO:

NAME: St. Amand & Efird PLLC

ADDRESS:

3315 SPRINGBANK LN STE 308
CHARLOTTE, NC 28226-3198

TELEPHONE: (980) 474-4251

FAX: (980) 474-4251

E-MAIL ADDRESS: ahs@stamand-efird.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: \$ 2102500.00

BRIEF PROPERTY DESCRIPTION: BEING that certain lot, parcel or tract of land located in Socastee Township, Horry County, South Carolina containing 35.27 acres and shown on a survey thereof entitled "BOUNDARY SURVEY OF PEACHTREE PARCEL C TOTALING 35.27 AC." dated January 18, 2022, prepared by Matthew J. Svejksky (PLS No. 21233) of Thomas & Hutton Engineering Co. and recorded on January 31, 2022 in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 303, Page 32, reference to said survey made hereby for a more accurate and complete description of the foregoing property.

TAX MAP NUMBER (TMS #) 1780005032 / PIN NUMBER: .

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. LYNX JERICHO PEACHTREE PHASE III LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. LENNAR CAROLINAS, LLC

43900000038,

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) **LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS that **LYNX JERICHO PEACHTREE PHASE II LLC**, a Delaware limited liability company (hereinafter called "Grantor"), for and in consideration of the covenants and conditions hereinafter contained and the sum of **One Million One Hundred Thousand and No/100 (\$1,100,000.00) Dollars** and other valuable consideration, to Grantor in hand paid by **BEVERLY HOMES, LLC**, each a South Carolina limited liability company (hereinafter called "Grantee"), whose address is 9007 Highway 544, Myrtle Beach, South Carolina 29578, the receipt and legal sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to all easements, covenants, restrictions, reservations, rights-of-way, dedications, encumbrances, declarations and agreements, and other matters set forth as Permitted Exceptions in the attached Exhibit "B" which is incorporated herein by reference (collectively, the "Exceptions") unto **BEVERLY HOMES, LLC**, subject to the Exceptions, their Successors and Assigns, the following described property, to wit:

SEE EXHIBIT A ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE

TOGETHER WITH, subject to the Exceptions, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said Property before mentioned unto Grantee, its Successors and Assigns, forever.

AND Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend, all and singular, the said Property, subject to the Exceptions, unto Grantee, its Successors and Assigns, against it, but no other.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Grantor has executed this Limited Warranty Deed this
24 day of August, 2023.

GRANTOR:

**LYNX JERICHO PEACHTREE PHASE II
LLC**, a Delaware limited liability company

By: [Signature]
Seth Huberman, its Chief Executive Manager

[Signature]
Name: Gabriela Romero

[Signature]
Name: RANDY STEIN

STATE OF Florida)
COUNTY OF Alachua)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 24th day of August, 2023 by Seth Huberman, as Chief Executive Manager of **LYNX JERICHO PEACHTREE PHASE II LLC**, a Delaware limited liability company, on behalf of said company.

[Signature] (SEAL)
Print Name of Notary Gina M Puccio
Notary Public for Florida
My Commission Expires: 06/11/2025



affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars
or imprisoned not more than one year, or both.

LYNX JERICHO PEACHTREE PHASE II LLC,
a Delaware limited liability company

By: _____ (SEAL)
Seth Huberman, its Chief Executive Manager

SWORN to before me this
24 day of August, 2023

Notary Public for
Print Name: Gina M Puccio
My Commission Expires: 08/11/2025

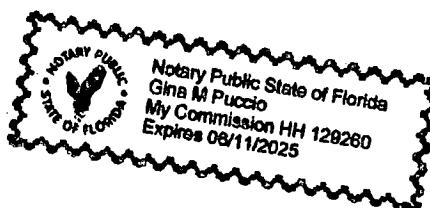


EXHIBIT "A"

Property Description

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, designated as **PARCEL B, 27.57 AC.**, as shown on that certain plat entitled "**SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPERS BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA**", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded May 7, 2020 in Plat Book 292 at Page 265 through 266 in the Office of the Register of Deeds for Horry County, South Carolina (the "**Plat**"), referenced to said Plat being craved for a more complete description thereof.

TOGETHER WITH all of Grantor's right, title and interest in and to that certain Recreation Amenities Use, Easement and Fee Agreement recorded July 17, 2020 in Deed Book 4327 at Page 1473, that certain Easement and Road Maintenance Agreement for Future Public Roadway, Water and Sewer Improvements, Marketing, Signage and Entry Monument Rights recorded July 17, 2020 in Deed Book 4327 at Page 1560, each in the Office of the Register of Deeds for Horry County, South Carolina.

DERIVATION: This being the identical property conveyed to Lynx Jericho Peachtree Phase II LLC by Quitclaim Deed of Jericho State Capital Corporation of Florida and Jericho All-Weather Opportunity Fund, L.P., recorded on September 18, 202 in Deed Book 4344 at Page 2310, in the Office of the Register of Deeds for Horry County, South Carolina.

PIN No.: 439-00-00-0038

EXHIBIT "B"

THE PROPERTY IS BEING CONVEYED SUBJECT TO THE FOLLOWING PERMITTED EXCEPTIONS: (i) any lien, encumbrance or security interest created by Grantee at closing in connection with Grantee's acquisition of the Property, (ii) zoning ordinances and regulations, (iii) mechanic's liens caused by Grantee or its agents, (iv) the lien of real estate taxes not yet due and payable, and (v) the following title exceptions which Grantee has approved:

1. Taxes for the year 2023, and subsequent years, not yet due and payable.
2. This policy does not insure against loss or damages by reason of the following:
 - a. Roadways, easements or claims of easements not shown by the Public Records.
 - b. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law, and not shown by the Public Records.
 - c. Pending assessments by any taxing authority not yet filed in the Public Records.
3. Rights of claims of parties in possession not shown by the public records.
4. Any encroachment, encumbrance, violation or adverse circumstances affecting title to the property that would be disclosed by a current, accurate and complete survey.
5. No insurance is afforded as to the exact amount of acreage contained in the subject property.
6. Rollback Taxes on the property which may be assessed under the rollback provisions of Section 12-43-220 of the code of Laws of South Carolina (1976, as amended).
7. Interest created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulation or by South Carolina Code 48-39-360, as amended or any regulations promulgated pursuant to said state or federal law.
8. This policy does not insure title to that portion of the subject property, if any, lying below the mean high-water mark of abutting tidal Intracoastal Waterway.
9. Riparian rights incident to the premises.
10. Easements, setback lines, notes, and all other matters as shown upon plat prepared for the Estate of John C. Spivey, prepared by J. F. Thomas, Surveyor, dated September 1, 1965, and recorded November 16, 1965, in Plat Book 43 at Page 183, in the public records of Horry County, South Carolina.
11. Plat of Meter Vault Site for Grand Strand Water & Sewer Authority owned by Ruth L. McClam, prepared by Engineering and Technical Services, Inc., dated November 1, 1990 and recorded in Plat Book 112 at Page 65, in the public records of Horry County, South Carolina.

12. Right of Way Easement from Ruth Ludlam McClam, Martin Louis McClam, Patricia Ann McClam and Stephan Boyd McClam to Grand Strand Water and Sewer Authority, recorded November 29, 1990, in Deed Book 1438 at Page 163, in the public records of Horry County, South Carolina.
13. Easements, setback lines, notes, and all other matters as shown upon Plat entitled, "Plat Showing 131.40 Acres Located on the Intracoastal Waterway Prepared for Jeff Shoup, Socastee Township, Horry County, South Carolina," prepared by Trico Engineering Consultants, Inc., dated March 28, 2006, and recorded on July 11, 2006, in Plat Book 215, Page 81, in the public records of Horry County, South Carolina.
14. Rights of the public generally in and to the use of that subject property used as Renata Lane as shown upon Plat entitled, "Plat Showing 131.40 Acres Located on the Intracoastal Waterway Prepared for Jeff Shoup, Socastee Township, Horry County, South Carolina," prepared by Trico Engineering Consultants, Inc., dated March 28, 2006, and recorded on July 11, 2006, in Plat Book 215, Page 81, in the public records of Horry County, South Carolina.
15. Deed of Master in Equity from J. Stanton Cross, Jr., Master in Equity to Jericho State Capital Corporation of Florida, dated February 25, 2008, and recorded on February 26, 2008, in Deed Book 3317, Page 969, in the public records of Horry County, South Carolina.
16. Sewer Line Easement by and between Jericho State Capital Corporation of Florida and Grand Strand Water and Sewer Authority, dated April 1, 2015, and recorded on May 11, 2015, in Deed Book 3819, Page 344, in the public records of Horry County, South Carolina.
17. Right-of-Way Easement Overhead & Underground by and between Jericho State Capital Corp-Florida and Horry Electric Cooperative, Inc., dated July 15, 2015, and recorded on November 20, 2015, in Deed Book 3873, Page 193, in the public records of Horry County, South Carolina.
18. Right of Way Easement between Jericho State Capital Corporation of Florida, a Florida Corporation and Horry County, A Body Politic, dated May 11, 2016, and recorded on May 24, 2016, in Deed Book 3917, Page 2718, in the public records of Horry County, South Carolina.
19. Horry County Stormwater Practices Permanent Maintenance Covenants by and between Jericho All-Weather Opportunity Fund LP and Horry County, South Carolina, dated February 26, 2020, and recorded on March 3, 2020, in Deed Book 4292. Page 1590, in the public records of Horry County, South Carolina.
20. A Plat entitled "SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded on May 7, 2020, in Plat Book 292 at Page 265 (the "Plat"), in the public records of Horry County, South Carolina.
21. Recreation Amenities Use, Easement and Fee Agreement by and between Lennar Carolinas, LLC, a Delaware limited liability company and Jericho State Capital

- Corporation of Florida, a Florida Corporation and Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, dated July 17, 2020, and recorded on July 17, 2020, in Deed Book 4327, Page 1473, in the public records of Horry County, South Carolina.
22. Easement and Road Maintenance Agreement for Future Public Roadway, Water and Sewer Improvements, Marketing, Signage and Entry Monument Rights, by and between Jericho State Capital Corporation of Florida, a Florida Corporation, Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership and Lennar Carolinas, LLC, a Delaware limited liability company, dated July 17, 2020 and recorded on July 17, 2020, in Deed Book 4327, Page 1560, in the public records of Horry County, South Carolina.
 23. Planning, Permitting and Development Agreement, dated July 17, 2020, by and between Lennar Carolinas, LLC, a Delaware limited liability company and Jericho State Capital Corporation of Florida, a Florida Corporation and Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, recorded on July 17, 2020, in Deed Book 4327, Page 1618, in the public records of Horry County, South Carolina.

STATE OF SOUTH CAROLINA)
) PARTIAL RELEASE OF MORTGAGE LIEN
COUNTY OF HORRY) Mortgage Book 4629, Page 255

PURSUANT TO SECTION 29-3-330(B)(3) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED

The undersigned being the mortgagee of record, or the legal representative, agent or officer, or attorney-in-fact of the mortgagee of record, with respect to the Mortgage (hereafter defined), hereby certifies as follows.

(1) The instrument as to which this Partial Release of Mortgage Lien (this "**Partial Release**") applies is entitled Commercial Mortgage of Real Property and Security Agreement from Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company (the "**Mortgagor**") in favor of Lynx Jericho Partners, LLC, a Florida limited liability company, as assignee (the "**Mortgagee**") dated July 5, 2006 and recorded July 25, 2006 in the Office of the Register of Deeds for Horry County, South Carolina (the "**Recording Office**") in Book 4629 at Page 255, as last assigned in Book 5500 Page 2940 and last modified in Book 6000, Page 825 (as amended and assigned, the "**Mortgage**").

(2) The real property described in **Exhibit A** attached hereto, which is incorporated herein by reference (the "**Real Property**"), is hereby released and forever discharged from the lien, operation and effect of the Mortgage and all claims and interests of the Mortgagee in and to the Real Property are forever terminated.

The Recording Official shall enter this Partial Release of record and mark the Mortgage and related indexes to reflect that the Real Property has been released of record from the lien of the Mortgage.

Under penalties of perjury, the undersigned declares that it has, by its duly authorized officers, examined this affidavit this 5th day of August, 2022, and to the best of its knowledge and belief, it is true, correct and complete.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

MORTGAGEE:

Lynx Jericho Partners, LLC

Witness #1 ARLENE LIEBERMAN

By: [Signature]
Printed Name: Michael Altieri
Its: VP

Witness #2 CARIE A. COOPER

STATE OF New Jersey)
)
COUNTY OF Monmouth)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of New Jersey, do hereby certify that Michael Altieri, the V.P. of Lynx Jericho Partners, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Notary Public for State of New Jersey
Print Name of Notary Public: **ARLENE LIEBERMAN**
My Commission Expires: **NOTARY PUBLIC OF NEW JERSEY**
My Commission Expires 10/15/2024

[NOTARY SEAL]

EXHIBIT A

Legal Description of Released Real Property

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, South Carolina, containing 58.12 acres, more or less, designated as **PARCEL A, 58.12 AC.**, as shown on that certain plat entitled "**SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA**", prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 2020 in Plat Book 292 at Page 265 (the "**Plat**"), reference to said Plat being made for the complete metes and bounds description thereof.

PIN No.: 439-00-00-0037 (now or formerly)

AND

ALL AND SINGULAR, that certain lot, parcel or tract of land located in Socastee Township, Horry County, South Carolina containing 35.27 acres and shown on a survey thereof entitled "**BOUNDARY SURVEY OF PEACHTREE PARCEL C TOTALING 35.27 AC.**" dated January 18, 2022, prepared by Matthew J. Svejksky (PLS No. 21233) of Thomas & Hutton Engineering Co. and recorded on January 31, 2022 in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 303, Page 32, reference to said survey made hereby for a more accurate and complete description of the foregoing property.

PIN No.: 439-00-00-0013 (now or formerly)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) **PARTIAL RELEASE OF MORTGAGE LIEN**
 Mortgage Book 4629 at Page 255

PURSUANT TO SECTION 29-3-330(B)(3) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED

The undersigned being the mortgagee of record, or the legal representative, agent or officer, or attorney-in-fact of the mortgagee of record, with respect to the Mortgage (hereafter defined), hereby certifies as follows:

(1) The instrument as to which this Partial Release of Mortgage Lien (this "**Partial Release**") applies is entitled Commercial Mortgage of Real Property and Security Agreement from Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company (the "**Mortgagor**") in favor of Lynx Jericho Partners, LLC, a Florida limited liability company, as assignee (the "**Mortgagee**") dated July 5, 2006 and recorded July 25, 2006 in the Office of the Register of Deeds for Horry County, South Carolina (the "**Recording Office**") in Book 46299 at Page 255, as last assigned in Book 5500 at Page 2940 and last modified in Book 6000 at Page 825 (as amended and assigned, the "**Mortgage**").

(2) The real property described in **Exhibit "A"** attached hereto, which is incorporated herein by reference (the "**Real Property**"), is hereby released and forever discharged from the lien, operation and effect of the Mortgage and all claims and interest of the Mortgagee in and to the Real Property are forever terminated.

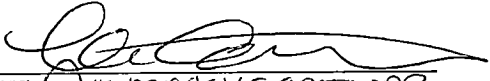
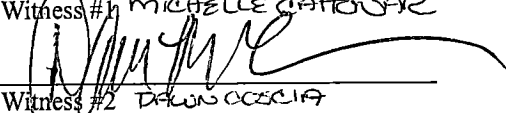
The Recording Office shall enter this Partial Release of record and mark the Mortgage and related indexes to reflect that the Real Property has been released of record from the lien of the Mortgage.

Under penalties of perjury, the undersigned declares that it has, by its duly authorized officers, examined this affidavit this 22nd day of DECEMBER, 2023, and to the best of its knowledge and belief, it is true, correct and complete.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

MORTGAGEE:

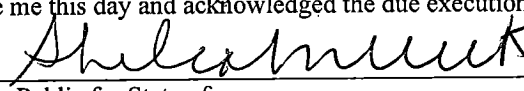
Lynx Jericho Partners, LLC


Witness #1 MICHELLE GATTOUAR

Witness #2 DAWN OCCIA

By: 
Printed Name: MICHAEL MCCARTHY
Its: PRESIDENT

STATE OF NEW JERSEY)
)
COUNTY OF MONMOUTH) **ACKNOWLEDGMENT**

I, the undersigned Notary Public for the State of NEW JERSEY, do hereby certify that MICHAEL MCCARTHY the PRESIDENT of Lynx Jericho Partners, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.


Notary Public for State of _____
Printed Name of Notary Public: SHELIA SMITH
My Commission Expires: NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 10/27/24

[NOTARY SEAL]

EXHIBIT "A"

Legal Description of Released Real Property

ALL AND SINGULAR, that certain piece, parcel of lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, designated as **PARCEL B, 27.57 AC.**, as shown on that certain plat entitled **"SUBDIVISION PLAT OF TWO PARCELS TOTALING 85.69 AC., COOPER'S BLUFF, SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA"**, prepared for Lennar Carolinas, LLC by Thomas & Hutton, recorded in the Horry County Register of Deeds Office on May 7, 202, in Plat Book 292 at Page 265 (the **"Plat"**), reference to said Plat being made for the complete metes and bounds description thereof.

PIN NO.: 439-00-00-0038

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Jericho State Capital Corp. of Florida,

Plaintiff,

vs.

Chicago Title Insurance Company,

Defendant.

Case No. 2013-CP-26-5530

**PLAINTIFF JERICHO STATE CAPITAL
CORP. OF FLORIDA'S RESPONSE TO
DEFENDANT'S FIRST REQUESTS FOR
ADMISSION**

Lynx Jericho Partners, LLC,

Plaintiff,

vs.

Chicago Title Insurance Company,

Defendant.

Case No. 2015-CP-26-1084
(Consolidated with the above case)

TO: Defendant and its Counsel:

Plaintiff hereby responds to the Requests for Admission from Defendant, as follows:

1. Admit that, pursuant to the Order and Decree of Foreclosure entered November 7, 2007, in the Jericho State Foreclosure Action, which is attached as Exhibit A, the Court found \$7,490,031.71 was due under the note secured by the Jericho State Mortgage on or before December 3, 2007.

RESPONSE: Denied in part and admitted in part with qualification: Plaintiff denies the Court found \$7,490,031.71 was the total amount due, as this figure appears to be subject to the Court's footnote adding additional amounts; Plaintiff admits the Court found \$7,490,031.71 was due "Plus advertising charges and Prepayment Premium to be calculated at the time of sale" as referenced in footnote 2, p. 12 of the Order.

2. Admit that, according to the Deed of Master in Equity recorded February 26, 2008, attached as Exhibit B, Jericho State was the successful bidder at the foreclosure sale arising from the

Jericho State Foreclosure Action pursuant to Jericho State's bid of \$9,000,000 made on December 3, 2007.

RESPONSE: Admitted with qualification: Plaintiff admits it successfully bid \$9,000,000 at the sale, however it qualifies this response as to the fact that it took title to the property, as referenced in the 2/26/2008 Deed of Master in Equity, subject to a first mortgage lien of over \$18,000,000.00.

3. Admit that Jericho State's bid at the foreclosure sale of the Property that resulted from the Jericho State Foreclosure Action exceeded the amount due under the note secured by the Jericho State Mortgage.

RESPONSE: Admitted with qualification: Plaintiff admits \$9,000,000 is a numerical figure greater than the numerical figure representing the amount due under the note secured by the Jericho State Mortgage, however Jericho State took title to the subject property subject to a first mortgage lien of over \$18,000,000.00 and therefore the property's equity, valued subject to the title defect, is less than the bid of \$9 million and did not exceed the amount due under the note.

/s/ C. Scott Masel

Fred B. Newby

fnewby@newbylaw.com

C. Scott Masel

smasel@newbylaw.com

NEWBY, SARTIP & MASEL, LLC

4593 Oleander Dr., Myrtle Beach, SC 29577

843-449-9417

Attorneys for Plaintiff

Dated: 5/12/23

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY

CASE NO. 2013-CP-26-5530

Jericho State Capital Corp.
of Florida,

Plaintiff,

- vs. -

Chicago Title Insurance
Company,

Defendant.

_____ /

301 NE 51st Street
Suite 1240
Boca Raton, Florida
10:03 a.m. - 2:05 p.m.
Thursday, April 3, 2014

- - - - -

DEPOSITION

OF

GLENN CHWATT

- - - - -

Job No. CS1832126

APPEARANCES

On Behalf of the Plaintiff:

NEWBY SARTIP MASEL & CASPER, LLC

BY: FRED B. NEWBY, ESQ.

4593 Oleander Drive

Post Office Box 808

Myrtle Beach, South Carolina 29577

(843) 449-9417

On Behalf of the Defendant:

CALLISON TIGHE

BY: DEMETRI "JIM" K. KOUTRAKOS, ESQ.

1812 Lincoln Street

Columbia, South Carolina 29201

(803) 404-6900

ALSO PRESENT:

Charles S. McCall

Scott Svirsky

I N D E X

WITNESS:

PAGE:

GLENN CHWATT
DIRECT EXAMINATION

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Deposition taken before Elizabeth Schiller,
Shorthand Reporter and Notary Public in and for the State
of Florida at Large, in the above cause.

- - -

Thereupon,

GLENN CHWATT

having been first duly sworn or affirmed, was examined as
follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. KOUTRAKOS:

Q. Mr. Chwatt, am I saying it correctly?

A. Yes.

Q. Good morning. My name is Jim Koutrakos. I
represent Chicago Title Insurance Company. Here today
with me is Charles McCall from Chicago Title. Today I'm
going to be taking the corporate deposition of Jericho
State Capital Corporation of Florida.

Can you please state your full name for the
record.

A. Glenn Mark Chwatt.

Q. Have you been deposed before?

A. Yes, I have.

Q. Okay. Well, I'm going to ask you a series
of questions today. If you don't understand anything I

1 ask you -- and you probably will receive a question that
2 you don't know what I'm talking about -- ask me to
3 rephrase it, repeat it, or just tell me you don't
4 understand. I'll be more than happy to try to come up
5 with a better question. Okay?

6 A. Absolutely.

7 Q. Is that fair?

8 A. Absolutely.

9 Q. If you answer a question, when we read the
10 transcript later, I'm going to assume that you understood
11 the question. Is that fair as well?

12 A. Sure.

13 Q. The court reporter is taking everything we
14 say down today, so if you say uh-huh, she is going to
15 type uh-huh. So please, say yes or no so we can
16 understand what you meant later on.

17 In addition, I have a bad habit, because of
18 my heritage, of talking over people, so I'll try not to
19 talk over you if you don't talk over me. Is that fair?

20 A. Yes.

21 Q. Are you on any medications that may affect
22 your memory or ability to tell the truth today?

23 A. No.

24 Q. Are you capable of giving truthful
25 testimony today?

1 A. Yes.

2 Q. If you need any breaks throughout the
3 course of this deposition, please, let me know. I'll be
4 more than happy to take a break. Okay?

5 A. Yes.

6 Q. Under the South Carolina Rules of Civil
7 Procedure, I'm required to instruct you or inform you
8 that if you have any questions, need any definitions or
9 clarifications of anything I ask you that you are to ask
10 me as opposed to your attorney. Do you understand that?

11 A. Yes.

12 Q. Also, I'm required, I believe, to instruct
13 you that to the extent we take a break in the deposition,
14 that you shouldn't discuss the substance or the proposed
15 substance of your testimony or your deposition with
16 anybody else, including your attorney, because I can ask
17 you about that. Do you understand that?

18 A. Yes. You can ask me about what?

19 Q. You cannot -- and your lawyer can explain
20 it to you further, but after the deposition starts, if we
21 take a break, you can't --

22 A. Oh, not talk to him?

23 Q. Right.

24 A. Or you can ask me if I spoke to him. Okay.
25 I understand. I thought you said during a break you were

1 going to talk to me. I couldn't understand that.

2 Q. I'm required to advise you that you should
3 most likely not talk about your deposition with anybody
4 because I'm allowed to ask about that, even if it's with
5 your attorney. Do you understand?

6 A. Absolutely.

7 Q. Can you give me your full name, please.

8 A. Glenn Mark Chwatt.

9 Q. Where do you reside?

10 A. My address?

11 Q. Yes.

12 A. 6508 Landings Court, Boca Raton, Florida
13 33496.

14 Q. And where do you work?

15 A. I work at Jericho State Capital Corp. of
16 Florida and Jericho All-Weather Opportunity Fund.

17 Q. Do both of those companies have the same
18 office?

19 A. Yes.

20 Q. And where is that office located?

21 A. 3835 NW Boca Raton Boulevard, Boca Raton,
22 Florida.

23 Q. How long have you been involved with
24 Jericho State Capital?

25 A. Corp.?

1 Q. Well, let me ask you: Have both entities
2 been in existence for around the same time?

3 A. No.

4 Q. Which company was in existence first?

5 A. There is a company called Jericho State
6 Capital Corp., which was founded in 1972. Jericho
7 Capital of Florida was founded in 1989, I believe; 1990,
8 something around there.

9 Q. Which one -- how about the All-Weather?

10 A. That was created, I believe, in 2005.
11 2004/2005.

12 Q. Are you the founder of Jericho State
13 Capital Corp. of Florida?

14 A. No.

15 Q. Who is the most senior person at Jericho?

16 A. I am at this point.

17 Q. How long have you been at Jericho, either
18 Jericho or one of the Jericho-related entities?

19 A. Since I graduated college in 1981.

20 Q. Tell me, where did you graduate from
21 college?

22 A. University of Miami.

23 Q. What year did you graduate? You graduated
24 in '81. What did you study?

25 A. Finance and prelaw.

1 Q. Do you have any education subsequent to
2 University of Miami? Did you go to law school, medical
3 school or anything like that?

4 A. I was enrolled in law school. Didn't go to
5 law school.

6 Q. You were enrolled, but you never started
7 classes?

8 A. Correct.

9 Q. Smart man.

10 MR. NEWBY: Really.

11 BY MR. KOUTRAKOS:

12 Q. So basically, after graduating from
13 University of Miami, you have been at Jericho or
14 Jericho-related entities since then?

15 A. Yes.

16 Q. From 1981 to today?

17 A. Yes.

18 Q. That makes life a lot easier. Great.

19 When you first started at Jericho, what did
20 you do?

21 A. Basically, everything I was instructed to
22 do. I did a lot of, as we call it, "the grunt work"
23 behind the scenes; analysis, traveling to different
24 properties. That's basically it.

25 Q. Now I'm going to have some definition

1 problems here because I'm going to ask you about Jericho.

2 To me, you mentioned three entities:

3 Jericho State Capital Corp. of Florida, which is the
4 plaintiff in this case.

5 A. Correct.

6 Q. You mentioned some similar-named entities.

7 A. Jericho State Capital Corp.

8 Q. And then the All-Weather Opportunity Fund.

9 A. Can I make it simple?

10 Q. Yes, please.

11 A. Why don't just call The Fund JAWOF,
12 J-A-W-O-F. That's what we call it. It's Jericho
13 All-Weather Opportunity Fund so we'll make it simple.

14 Q. The Fund, JAWOF.

15 A. Or you can just call it "The Fund."

16 Q. Exactly. The Fund, okay.

17 A. If you want to call Jericho Capital of
18 Florida, you can call it Jericho of Florida. Then it's
19 just Jericho and make it simple that way.

20 Q. Okay. So Jericho Florida, the plaintiff in
21 this case, what is its business model? What does it do?

22 A. It's a real estate lender.

23 Q. And that's been in existence since '89?

24 A. Correct. Around that, yes.

25 Q. And it's a lender to commercial properties?

1 Is it exclusive to commercial properties?

2 A. Pretty much, yes.

3 Q. Or residential development -- anything
4 other than residential loans?

5 A. Correct.

6 Q. And tell me about The Fund. What does The
7 Fund do?

8 A. Same thing.

9 Q. Same thing. Okay. And then the Jericho
10 Corp., does that do the same thing?

11 A. Yes.

12 Q. So all three entities have a similar
13 function; that is, loaning money for commercial purposes,
14 I guess.

15 A. Real estate-related property, real
16 estate-related commercial.

17 Q. Okay. Have you had any specific training
18 in real estate other than on-the-job training? I mean,
19 do you have any education, classes --

20 A. Mortgage broker's license. I have my -- I
21 had securities licenses. I had a Series 22, I believe,
22 also, in addition to my other securities licenses, which
23 was private placements because we did a lot of real
24 estate financing in private placements.

25 Q. Any other licenses besides those?

1 A. I think I used to have -- I had my security
2 licenses, which expired. I, I believe I had an insurance
3 license early on in my career, which I never continued
4 with, and that's it.

5 Q. Okay. Have you ever been disciplined by
6 any licensing board?

7 A. No.

8 Q. Investigated?

9 A. No.

10 Q. What is your position at the plaintiff,
11 Jericho Florida?

12 A. I'm the president.

13 Q. Okay. And Mr. Scott Svirsky --

14 A. Yes.

15 Q. -- what is his role?

16 A. He has none.

17 Q. He is not employed by Jericho State Capital
18 of Florida?

19 A. No.

20 Q. Was he at one time employed by Jericho
21 State Capital of Florida?

22 A. No.

23 Q. Where is he employed?

24 A. He is one of the general partners of The
25 Fund, JAWOF. You don't mind if -- can I call it "The

1 Fund" for simplicity?

2 Q. Whatever you want to call it.

3 A. It makes it simpler.

4 Q. The Fund. Okay. How many employees does
5 Jericho have?

6 A. Jericho?

7 Q. When I refer -- unless I distinguish it
8 somehow, when I refer to Jericho, I'm referring to the
9 plaintiff in this case, so Jericho State Capital Corp.
10 of Florida.

11 A. Three.

12 Q. Who are the employees?

13 A. Richard Chwatt and Jamie Friedman.

14 Q. Okay. And you're the third?

15 A. Yes. I'm sorry. Yes.

16 Q. And is Richard related to you?

17 A. My father.

18 Q. Did he start Jericho?

19 A. We, we started together, yes.

20 Q. In '89. Okay. Who is the founder of the
21 other Jericho entities, the Jericho Corp. entities at
22 this time?

23 A. Richard Chwatt.

24 Q. The three Jericho entities are basically a
25 family business. Is that fair to say?

1 A. Yes.

2 Q. What does Richard do at the company today?

3 A. Nothing.

4 Q. How about what does Jamie Friedman do?

5 A. Really nothing at this point. She is still
6 an employee, but she's not actively involved.

7 Q. Was she administrative?

8 A. Yes.

9 Q. Back at the time of the transaction
10 involved in this case, which was 2006, how many employees
11 did Jericho have?

12 A. Seven.

13 Q. Other than -- if you were to reduce or
14 subtract the administrative help, how many employees
15 after that?

16 A. Three. In addition to what I gave you?

17 Q. No. I'm saying around 2006, subtracting
18 administrative help, how many employees did you have?

19 A. Four.

20 Q. And it was Richard, you, Glenn, and who
21 were the other two?

22 A. Monica Goldstein.

23 Q. And what did she do?

24 A. She was comptroller.

25 Q. Who was the fourth?

1 A. It would be a gentleman named Jerry Kaniak,
2 who was our accountant who also worked with the company
3 who passed away.

4 Q. Does Jericho, the plaintiff in this case,
5 does it keep track of the size of its loan portfolio?

6 A. Yes.

7 Q. Do you know or recall what it would have
8 been in 2006?

9 A. No.

10 Q. Okay. Do you have -- is it 5 million, 100
11 million?

12 A. I believe 20 million, around.

13 Q. Okay. How about today? What is the loan
14 portfolio?

15 A. Twelve.

16 Q. From today's perspective, since Jericho
17 loans money on real estate projects, correct?

18 A. Correct.

19 Q. How many projects would consist of that
20 \$12 million loan portfolio?

21 A. I guess about six.

22 Q. And the property involved in this case is
23 one of them?

24 A. That's correct.

25 Q. Where are the other five located?

1 A. One is in North Carolina. One is in
2 Destin, Florida. One is Miami. One is in Hutchinson
3 Island in Florida. One is in Indiana. I think that's
4 it.

5 Q. Including the one involved in this case,
6 that would be six?

7 A. Six or seven.

8 Q. The one in North Carolina, that's not
9 related to this transaction; is it?

10 A. You have to define "related."

11 Q. The borrowers were related?

12 A. Yes.

13 Q. Is that the Saucepan project?

14 A. Yes.

15 Q. I'll ask you about that later. I need to
16 know what that is about.

17 Of the ones that you listed -- there were
18 six properties. The North Carolina one was a
19 nonperforming loan.

20 It went into default; is that correct?

21 A. Yes.

22 Q. The South Carolina one involving Peachtree
23 Properties of North Myrtle Beach, that was obviously in
24 default and you all owned the property, correct?

25 A. Correct.

1 Q. How about the one in Indiana?

2 A. We own that property.

3 Q. After default?

4 A. After default.

5 Q. How about the one in Hutchinson Island,
6 Florida?

7 A. That's -- okay. I got to back up a moment
8 because the owner of title in the South Carolina
9 property, the one we're talking about today, is Jericho
10 State Capital Corp. of Florida.

11 Q. Correct.

12 A. It has a participant. The Fund is a
13 participant. The other deals that, that you referenced,
14 Jericho State Capital Corp. of Florida is not the lead.
15 It is a participant.

16 Q. Fair enough. Fair enough.

17 A. The titles are in The Fund's name.

18 Q. Okay. Tell me about the Hutchinson Island,
19 Florida property. Is it a performing loan?

20 A. It is not performing.

21 Q. Have you all foreclosed?

22 A. The Fund foreclosed.

23 Q. The Fund foreclosed?

24 A. Yes.

25 Q. How about the Miami property? Is that a

1 performing loan?

2 A. It's no longer a loan. It's a development
3 project. It's a joint venture right now.

4 Q. Did you take over the property from the
5 borrower?

6 A. I apologize. I want to be specific.

7 Q. I want to be specific, too.

8 A. The Fund took the property over. You said
9 me. It's not me. The Fund.

10 Q. How about the Destin property, was that a
11 performing loan?

12 A. No. The Fund took that back.

13 Q. So basically, today, either one of the
14 three entities that you mentioned to me today is managing
15 property as a result of defaulted loans; is that correct?

16 A. That's correct.

17 Q. When was the last time either of these
18 entities made a commercial loan?

19 A. I would guess -- '09?

20 Q. Is it fair to say that today, Jericho,
21 either of the three entities, is out of the business of
22 making loans?

23 A. No.

24 Q. It just has not made a loan since 2009?

25 A. Correct.

1 Q. And most of its time is spent on trying to
2 realize on the assets from defaulted loans?

3 A. Okay. Yes.

4 Q. In general, Jericho, when it was making
5 loans, was it a secondary financier, or did it also
6 provide first mortgage lending?

7 A. It was first and seconds.

8 Q. Tell me the relationship that Jericho would
9 have had with R.E. Loans, LLC, if any?

10 A. It had none.

11 Q. The only relationship would have been in
12 this particular transaction? It held a first, and you
13 all held the second?

14 A. This transaction and Saucepan Bay.

15 Q. Both transactions. All right. Tell me
16 about an entity called Lynx Jericho Partners, LLC.

17 A. Lynx is a lending entity at this time that
18 acquired some first mortgages.

19 Q. Okay. How many first mortgages did it
20 acquire?

21 A. It acquired Saucepan Bay. For this --
22 Saucepan Bay and Peachtree. That's what it went to
23 acquire.

24 Q. So it acquired two separate mortgages?

25 A. It acquired -- well, the way it was -- it

1 was a bankruptcy sale, so it acquired several mortgages,
2 but the ones that were germane to this conversation are
3 Saucepan Bay and Peachtree. That's what was eventually
4 done.

5 Q. How much did Jericho buy the Peachtree
6 mortgage for? Let me back up.

7 The Peachtree mortgage, this would have
8 been the first mortgage that was given by the developer
9 Peachtree to R.E. Loans, LLC; correct?

10 A. Correct.

11 Q. And today, Lynx Jericho Partners, LLC is a
12 holder of that note and mortgage?

13 A. Correct.

14 Q. And it would have purchased it after R.E.
15 Loans filed for bankruptcy; is that correct?

16 A. I don't believe that's the case.

17 Q. It purchased it from an entity who was
18 liquidating the assets of R.E. Loans, LLC; is that right?

19 A. No.

20 Q. Okay. Explain to me what happened.

21 A. It purchased it from a liquidating trustee.

22 Q. How much did Lynx Jericho Partners, LLC
23 purchase the Jericho mortgage for?

24 A. Two and a half million dollars.

25 Q. How much did it purchase the Saucepan

1 mortgage for?

2 A. We can't split them up that way because it
3 was one transaction for two and a half million dollars.

4 Q. It was a package deal?

5 A. Yes.

6 Q. You paid 2.5 for two first mortgages?

7 A. Correct.

8 Q. How much was the first mortgage on the
9 Saucepan property?

10 Let me back up. I don't know much about
11 the Saucepan property. I see it referenced in some of
12 the documents, but perhaps it doesn't concern me or my
13 client that much.

14 The Saucepan, you all had a second mortgage
15 on that as well?

16 A. Yes.

17 Q. What was the amount of the second mortgage
18 on that property?

19 A. Eight million.

20 MR. NEWBY: What was that?

21 THE WITNESS: Eight million.

22 BY MR. KOUTRAKOS:

23 Q. R.E. Loans would have had a first?

24 A. No.

25 Q. Who would have the first mortgage?

1 A. The first mortgage was held by a group
2 called MF08, I believe.

3 Q. How much was that first mortgage?

4 A. Twelve million, eight hundred and
5 some-odd-thousand dollars.

6 Q. Was there a loan originated by the same
7 people, the same folks involved with the R.E. Loans first
8 mortgage on the Peachtree property?

9 A. You have to define "originate." I'm sorry.

10 Q. My understanding is that after R.E. Loans
11 filed for bankruptcy, some of its mortgagees were
12 assigned to an entity called MF08. Is that your
13 understanding?

14 A. I don't recall. I don't know how that
15 worked. I had no affiliations with R.E. Loans or any of
16 that group.

17 Q. Fair enough. On the Saucepan project, MF08
18 had a \$12,800,000 loan, first mortgage lien. You all had
19 a second mortgage lien for \$8 million.

20 A. Correct.

21 Q. You purchased the MF08 first mortgage on
22 Saucepan and the R.E. Loans' first mortgage on Peachtree
23 for a total of \$2.5 million.

24 When I say, "you," I mean Lynx Jericho
25 Partners, LLC.

1 A. That's what they paid for the note,
2 correct, but additional funding was required going
3 forward.

4 Q. Can you explain that to me?

5 A. Sure. There is insurance, there is taxes,
6 there is engineering and all the work that is going to be
7 necessary. There is a forward commitment of, we don't
8 even know how much, to go forward at this point.

9 Q. Understood. Understood. Who are the
10 members of Lynx Jericho Partners, LLC?

11 A. The individual members? There are no
12 individual members.

13 Q. Who are the entities that are members of
14 Lynx Jericho Partners, LLC?

15 A. Lynx Partners and another entity called
16 SRKD Sam Advisors, I believe.

17 Q. S --

18 A. RKD. The next word is S-A-M, Advisors.

19 Q. Who are the members of Lynx Partners?

20 A. Those are the two. Lynx and SRKD.

21 Q. Well, there is Lynx Jericho Partners, LLC
22 is the limited liability company, correct?

23 A. Correct.

24 Q. And you identified two members. One was
25 Lynx Partners.

1 A. Correct.

2 Q. Is that an LLC?

3 A. I don't know.

4 Q. Is it a corporation?

5 A. I don't know.

6 Q. Who are the partners in Lynx Partners?

7 A. Who are the individuals?

8 Q. Yes.

9 A. I don't even know. I could guess. It's a
10 family called Maschler. Maschler, M-A-S-C-H-L-E-R. I'm
11 not sure if -- I don't know if Michael is.

12 Q. How about SRKD Sam Advisors?

13 A. Who are the --

14 Q. Who are the members of that company?

15 A. The entities are SRKD Management -- the
16 individuals?

17 Q. I'm trying to find out everybody who is
18 somehow associated with Lynx Jericho Partners, and I'm
19 trying to do it as easily as possible.

20 A. Sure.

21 Q. You identified the Maschler family members
22 as possibly being associated with --

23 A. I think Mike McCardy might be -- I'm not
24 sure if he is or not. His name is Mike McCardy. He may
25 be involved on the Lynx side.

1 Q. How about SRKD Sam Advisors? Is that a
2 limited liability company?

3 A. Yes.

4 Q. And from your knowledge, can you tell me
5 who the members of that company are?

6 A. Glenn Chwatt, I'm involved, and Scott
7 Svirsky.

8 Q. So there are two members of Links Jericho
9 Partners, LLC; correct?

10 A. Yes.

11 Q. What interest -- what membership interest
12 does SRKD Sam Advisors have in the LLC?

13 A. I don't remember exactly how it is. It's
14 an advisor to Lynx.

15 Q. I understand that, but it's a member. I'm
16 sure there is an operating agreement that references that
17 SRKD Sam Advisors is a member of Lynx Jericho Partners,
18 LLC, correct?

19 A. Correct.

20 Q. What percent ownership interest in the LLC
21 does Lynx Jericho Partners, LLC have?

22 A. I'm not sure. I don't recall exactly what
23 it is.

24 Q. Do you have those documents?

25 A. With me?

1 Q. Yes.

2 A. No.

3 Q. Can you provide those documents to your
4 lawyer to provide to me?

5 A. Sure.

6 Q. Who has signing authority on behalf of Lynx
7 Jericho Partners, LLC?

8 A. I believe Mike McCardy. I believe -- I may
9 have when we went out to, when I went out to San
10 Francisco. I believe for limited transactions I do.

11 Q. When you went out to San Francisco, can you
12 explain to me what you did in San Francisco?

13 A. I reacquired the notes, the Saucepan Bay
14 and Peachtree notes.

15 Q. Who did you meet with? Did you have a
16 negotiation with anybody?

17 A. No, not really, just the bankruptcy
18 attorney, trustee.

19 Q. So you dealt with the bankruptcy trustee
20 and his attorney?

21 A. Her.

22 Q. Her attorney?

23 A. Yes.

24 Q. Okay.

25 (Defendant's Exhibit 1, notice of taking

1 deposition, was marked for identification.)

2 BY MR. KOUTRAKOS:

3 Q. I'm going to show you what has been marked
4 as Exhibit 1 to your deposition. Have you seen this
5 before?

6 A. Yes.

7 Q. Do you understand that it is a notice of
8 taking the deposition of Jericho State Capital Corp. of
9 Florida?

10 A. Yes.

11 Q. And do you see there are about -- there
12 are, in fact, exactly 31 areas of inquiry listed in the
13 notice of deposition. Do you see that?

14 A. Yes.

15 Q. Are you prepared today to testify about
16 each and every one of those areas of inquiry?

17 A. To the best of my knowledge, yes.

18 Q. What have you done -- let me back up.

19 Are you the person most knowledgeable at
20 Jericho State Capital Corp. of Florida to testify about
21 these areas of inquiry?

22 A. Yes.

23 Q. Did you do anything to investigate these
24 areas of inquiry?

25 In other words, did you talk to any

1 employees or anybody else to be prepared for this
2 deposition?

3 A. No.

4 Q. Okay. Did you review any documents?

5 A. The word review is different. I went
6 through all of my documents, had them copied and sent
7 them to my attorney who then, I assume, got them to you.

8 Q. Right. That was about a year and a half or
9 so ago.

10 I'm talking about in preparing for the
11 deposition today, have you reviewed any documents?

12 A. I went through certain of my -- yes. I
13 went through certain of the discovery stuff, yes.

14 Q. Did you talk to anybody else? Like, did
15 you talk to Scott in preparation for this deposition,
16 Scott Svirsky?

17 MR. KOUTRAKOS: Am I saying your name
18 right, Scott?

19 MR. SVIRSKY: Yes.

20 THE WITNESS: I talk to Scott every day
21 about everything so...

22 BY MR. KOUTRAKOS:

23 Q. I'm saying in preparation for this
24 deposition, did you say, hey, do you remember what
25 happened in 2006? Did this happen? Did that happen?

1 Did you do any type of due diligence by
2 talking to other folks involved in that transaction in
3 order to be prepared for today's deposition?

4 A. I would say yes.

5 Q. You talked to Scott?

6 A. Yes.

7 Q. Did you talk about the facts and
8 circumstances surrounding the transaction at issue in
9 2006?

10 A. No, no. We really went through delivery of
11 documents, and he assisted me in culling through our
12 files to get everything that you requested.

13 Q. Okay. Did you talk to anybody else besides
14 Scott in preparation for your deposition?

15 A. My attorney.

16 Q. Other than your attorney.

17 A. No.

18 Q. Do you understand that the testimony you're
19 giving today is the testimony of Jericho and it's binding
20 on Jericho? Do you understand that?

21 A. Yes.

22 Q. You are the representative today giving
23 testimony for Jericho?

24 A. Yes.

25 Q. So sometimes today I will refer to you, but

1 I really mean Jericho.

2 A. I'm only going to answer as Jericho.

3 Q. But if I confuse you -- if I ask you a
4 question that has nothing to do with Jericho, it might be
5 individually, if you get confused about that, feel free
6 to correct me.

7 A. Okay.

8 Q. You said you -- this is a quick example.
9 You, I mean Glenn Chwatt, you have been deposed; correct?

10 A. Yes.

11 Q. How many times have you been deposed
12 before?

13 A. Including my divorce?

14 Q. Excluding your divorce.

15 A. I guess maybe about half a dozen times.

16 Q. And were those cases -- tell me generally,
17 were those cases involving the Jericho-related entities?

18 A. Most -- most of it, yes.

19 Q. Did they involve -- generally, can you tell
20 me what those depositions were about? Can you go case by
21 case?

22 If a group of them happen to be where
23 Jericho was foreclosing and you were just testifying --

24 A. That's basically all that they were.

25 Q. Jericho or a Jericho-related entity was

1 foreclosing and trying to collect on a note, and the
2 borrower's counsel took your deposition as a
3 representative of one of the Jericho entities?

4 A. Yes.

5 Q. Any cases where Jericho had a title
6 dispute?

7 A. No.

8 Q. Or one of the Jericho-related entities?

9 A. No.

10 Q. Any cases where Jericho was suing an
11 insurance company?

12 A. No.

13 Q. Okay. To your knowledge, how many title
14 insurance claims has Jericho had?

15 A. Zero.

16 Q. Besides the one that you have all asserted
17 in this case?

18 A. This one, correct. This is the first and
19 only one that Jericho has had ever.

20 Q. How about you, yourself? Have you been
21 associated with any title insurance claims other than the
22 one -- through being a member of being involved in
23 Jericho State Capital, have you been involved in any
24 other title insurance claims?

25 A. Well, I don't know how to answer that

1 because a borrower of ours had a claim against an
2 insurance company, but we were not directly involved.

3 Q. Okay. And where was that property located?

4 A. St. Croix.

5 Q. It was actually litigation. In fact, I
6 think there was a published opinion about that case;
7 right?

8 A. No. It was settled.

9 Q. You were named as a party in that
10 litigation, correct, in the Virgin Islands?

11 A. I don't know if we were. We might have
12 been because The Fund was a lender, but I don't know if
13 it was.

14 Q. But other than an owner making a claim on a
15 piece of property where you had a loan, this is the only
16 other claim, title insurance claim that Jericho has filed
17 that you know of?

18 A. That's correct, yes.

19 Q. Back in 2006, I asked you what Jericho's
20 loan portfolio would have been and you didn't know.

21 A. I think I answered.

22 Q. I don't think you did. I asked you for an
23 amount of what the portfolio would have been.

24 A. I said about \$20 million.

25 Q. You did. Sorry. How many loans did that

1 involve?

2 A. Well, some came in and some came out, some
3 paid off and some were new. It was a revolving number.
4 That 20 million was a revolving number, so it probably
5 had anywhere to do with eight to twelve.

6 Q. If you put your mind-set back in the
7 2006/2007 area, because it was different then than it is
8 now, so I have to try to ask you questions about that
9 particular time.

10 How many closings were you all doing
11 generally on a yearly basis, a closing of a mortgage
12 loan?

13 A. We're talking 2006? Probably eight. Six
14 to eight.

15 Q. Per year?

16 A. Yeah. Until, until the world, the finance
17 world fell apart, yes.

18 Q. In these transactions, did Jericho State
19 Capital Corp. of Florida, did it generally hire its own
20 attorneys to represent it at closing?

21 A. Versus having one attorney to handle the
22 entire transaction?

23 Q. Correct.

24 A. No. To clarify, Jericho State Capital
25 Corp. had used a battery of attorneys from its inception

1 in 1972 through obviously, today. All the documents were
2 basically the same except they were adjusted for specific
3 transactions.

4 We used the same lawyers. We used the same
5 everything except when we would be out of state. We
6 would hire local counsel out of New York state, I should
7 say, or Florida.

8 Q. You confused me there. You said you hired
9 local counsel, and then you said --

10 A. Well, we would have an attorney -- we used
11 a lot of our New York attorneys, or we used Florida
12 attorneys. If the deal was not a New York- or
13 Florida-based deal, we would hire local counsel in that
14 jurisdiction.

15 Q. So hypothetically, in 2006, if you were
16 loaning money on a piece of property in Pennsylvania, the
17 borrower typically would have its lawyer; is that
18 correct?

19 A. Yes.

20 Q. And then you would hire, Jericho would hire
21 a law firm to represent its interest in the transaction;
22 correct?

23 A. Yes.

24 Q. And normally, the fees were paid by the
25 borrower; is that correct?

1 A. Sometimes.

2 Q. If you can make that happen, that's what
3 Jericho would prefer; correct?

4 A. Sometimes.

5 Q. And so what law firms were you using in
6 2006 to represent Jericho in these types of transactions?

7 A. Westerman Ball was one of them. Westerman
8 Ball. There was a litany of them. Cohen Norris. There
9 was Womble Carlisle.

10 There was Greenstein, Starr, Gerstein &
11 Rinaldi. Fischbein, Badillo, Wagner & Harding. A lot of
12 these have changed. I apologize.

13 Q. Sure.

14 A. I was not prepared for that request. I'm
15 trying to think of all the attorneys. In each
16 jurisdiction, we had different attorneys.

17 Q. So Westerman is out of New York, correct?

18 A. Correct.

19 Q. Cohen Norris is out of Florida?

20 A. Correct.

21 Q. Womble Carlisle is based in numerous
22 states.

23 Where would you have used Womble Carlisle?
24 Would you have used Womble Carlisle in South Carolina?

25 A. South Carolina and North Carolina. I have

1 to clarify one thing though. When dealing with the
2 out-of-state attorneys, our attorneys took the lead with
3 either Westerman Ball or Cohen Norris, and they went out
4 and procured the attorneys in the different states who
5 they had relationships with. We had no relationship with
6 Womble Carlisle until this transaction.

7 Q. This transaction in question?

8 A. This transaction, yes.

9 Q. Womble Carlisle was really your foreclosing
10 law firm, correct?

11 A. No. I believe they also did the closing in
12 conjunction with our attorneys.

13 Q. They did? Womble Carlisle would have been
14 involved in the Peachtree closing?

15 A. I believe so. I don't recall exactly how
16 that worked.

17 Q. Where is Greenstein Starr located?

18 A. New York.

19 Q. And how about the Fischbein?

20 A. Fischbein, that's New York also.

21 Q. With respect to this particular closing,
22 you used Westerman Ball. Jericho used Westerman Ball to
23 represent them in this transaction?

24 A. My conversations and my direction and my
25 conversations were directed to Westerman Ball. If they

1 needed clarification locally, they dealt with the local
2 counsel.

3 Q. As far as you know, there are no South
4 Carolina attorneys at Westerman Ball; is that correct?

5 A. I have no idea.

6 Q. You have no knowledge of any attorney at
7 Westerman Ball having a South Carolina law license; do
8 you?

9 A. I have no knowledge.

10 Q. You have no knowledge of anybody at
11 Westerman Ball having any knowledge of South Carolina
12 law, do you?

13 A. I have no idea what their knowledge is
14 there.

15 Q. As far as you know, the only attorney or
16 law firm that represented you with respect to the
17 transaction at issue in this case was the law firm of
18 Westerman Ball, correct?

19 A. I don't know.

20 Q. Can you identify any other law firms that
21 would have had an attorney/client relationship with
22 Jericho with respect to the closing in this case and the
23 mortgage loan transaction at issue in this case?

24 A. No.

25 Q. When you would have prepared for your

1 deposition, you would have looked at transactional
2 documents, I assume, and been prepared to testify about
3 the topics, which included your due diligence with
4 respect to the closing.

5 Is it fair to say there is no other law
6 firm that you could see or that Jericho knows of that was
7 involved in the transaction involved in this case that
8 represented Jericho other than Westerman Ball?

9 A. I think Womble Carlisle represented
10 Jericho.

11 Q. Explain how Womble Carlisle represented
12 Jericho and what Womble Carlisle did.

13 A. I don't know. It would have been between
14 Westerman Ball and Womble Carlisle, but we did have to
15 pay a fee to them so...

16 Q. Okay. Would Womble Carlisle have been
17 involved with the Saucepan project?

18 A. I believe so.

19 Q. Okay. Were they involved -- do you have
20 any particular knowledge of them being involved with the
21 Peachtree project?

22 A. I believe they were.

23 Q. Okay. And the lawyer at the Cohen firm, is
24 it Greg Cohen that you used?

25 A. That's one of them, yes.

1 Q. Do you use any firms for litigation?

2 A. We don't really litigate, but yes.

3 Q. Which firm would that be?

4 A. We use Cohen Norris as one of them. Homer
5 & Bonner is another one.

6 Q. Where is that law firm located?

7 A. Miami.

8 Q. That's fair enough. Do you know if
9 Mr. Cohen is licensed to practice law in the state of
10 South Carolina?

11 A. I have no idea.

12 Q. As far as you know, he is a Florida
13 attorney?

14 A. Yes, I assume.

15 Q. Has Jericho been named, or any of the
16 Jericho-named entities been named a defendant in any
17 condemnation actions that you know of or eminent domain
18 actions?

19 A. Other than this transaction?

20 Q. Yes.

21 A. No.

22 Q. Are you familiar with the provisions in the
23 general Jericho mortgage that -- you mentioned there was
24 a form that you've been using for years.

25 Are you familiar with the provisions that

1 involve condemnation and eminent domain?

2 A. No.

3 Q. I could ask you questions about it, and you
4 would rely on the law firm that represented you in
5 preparing that document; correct?

6 A. Absolutely. Yes.

7 Q. Has anyone at Jericho itself, other than
8 its lawyers, reviewed the law, South Carolina law related
9 to eminent domain and condemnation?

10 A. Anybody in Jericho?

11 Q. Yes, in Jericho. Have you picked up a
12 statute and looked at it or Googled the South Carolina
13 eminent domain law or anything like that?

14 A. No.

15 Q. You would rely on your attorneys to do
16 that, correct?

17 A. Yes.

18 Q. I want to go in a little more detail about
19 the transaction at issue here in this case. I think we
20 all kind of know the general, the general framework of
21 that transaction.

22 I think it was July 25, 2006, Peachtree
23 Properties of North Myrtle Beach, LLC purchased property
24 in Horry County off the Intracoastal Waterway,
25 approximately 131.4 acres, and obtained title around that

1 time, July 25, 2006.

2 Is that your understanding of part of the
3 transaction?

4 A. I actually thought it was July 24th, but
5 okay.

6 Q. In conjunction with that transaction,
7 Peachtree gave a first mortgage to R.E. Loans, LLC, and
8 it was \$8,520,000; is that correct?

9 A. No.

10 Q. What was it?

11 A. \$18,520,000.

12 Q. What was it?

13 A. \$18,520,000.

14 Q. I'm sorry. That's what I meant to say. I
15 apologize. Okay.

16 And then Jericho took a second in the
17 amount of \$4,263,888; correct?

18 A. Sounds correct, yes.

19 Q. Jericho's mortgage was intended to be the
20 second lien. R.E. Loans was intended to be the first
21 lien; correct?

22 A. Correct.

23 Q. You all got a policy. Jericho was issued a
24 loan policy from Chicago Title Insurance Company shortly
25 after closing ensuring that, among other things, that

1 Jericho's mortgage was the second mortgage lien on the
2 property; correct?

3 A. I think it was at closing we received the
4 policy. Jericho would not have closed without a title
5 insurance policy.

6 Q. When was Jericho first contacted about this
7 transaction?

8 A. I would guess a couple months prior to the
9 closing.

10 Q. Okay. Who would have contacted you?

11 A. In preparation, I did come up with a name.
12 It was a gentleman by the name of Andrew Grace out of New
13 York City.

14 Q. And who is Andrew? Is he associated with
15 the company?

16 A. Yes. I don't recall the name of the
17 company.

18 Q. Is he a mortgage broker?

19 A. Yes. We work with -- Jericho and all three
20 of the entities, it's been around for a very long time,
21 so it has relationships with a lot of mortgage broker
22 companies around the United States.

23 Q. And would Andrew Grace have contacted you
24 at Jericho, or would he have contacted somebody else?

25 A. I don't recall how it came about.

1 Q. I'm trying to find out how -- so Andrew
2 Grace called Jericho.

3 Can you explain to me what happened next
4 going forward and how you wound up to closing?

5 A. Sure. Absolutely. Somebody will call us,
6 either someone who knows us, an attorney, an accountant,
7 a brokerage firm, you know, whatever, will contact us and
8 say, we've got a deal we'd like you to take a look at.

9 I take a look at the deal. They send us
10 the particulars of the deal. We would go through it,
11 analyze what we believe to be the selling points and then
12 go visit the property.

13 We interim-ly contact our attorneys, have a
14 conversation with our attorney about this transaction
15 we're looking at, see if they could do some due diligence
16 on our behalf to see what it is.

17 Certain states we won't get involved with
18 because of certain different laws, and then we'll
19 determine at that point if it's a deal we want to do or
20 not.

21 Q. Tell me, in particular with regard to this
22 transaction, the Peachtree transaction, tell me what you
23 all did.

24 Did you all go visit the property? What
25 kind of due diligence did Jericho do in order to commit

1 to making a loan and wind up making the loan to
2 Peachtree?

3 A. Jericho got delivered to it all the
4 documents: Environmental, appraisals, geologicals,
5 engineering.

6 The work product of the borrower was
7 forwarded to Jericho for our analysis. Then
8 conversations with our attorneys would begin, and then
9 several site visits are made to the property.

10 Jericho contacted several real estate
11 professionals in the marketplace to do comparables in the
12 market to see what other projects are out there, get a
13 land value of the property based upon it.

14 It was difficult because this was basically
15 one-acre lots, and we could not find comparable one-acre
16 lots. We found smaller lots to determine the value of
17 the acreage.

18 Q. Who at Jericho visited the property?

19 A. I did several times. Scott did.

20 Q. And this would have been before the closing
21 in 2006?

22 A. Oh, yes.

23 Q. How many times do you think you visited?

24 A. I would say three or four.

25 Q. Did you visit it with anybody else? Was

1 anybody else with you on these visits?

2 A. Prior to closing?

3 Q. Yes.

4 A. Scott Svirsky.

5 Q. Okay. Anybody else?

6 A. No.

7 Q. Did you ever meet Jeff Shoup?

8 A. Yes.

9 Q. When is the first time you met Jeff Shoup?

10 A. At my first site visit.

11 Q. I just asked you who was there.

12 A. I apologize. I thought you meant who went
13 with me. I apologize.

14 Q. Jeff Shoup was with you at the site visit?

15 A. Jeffrey Shoup, yes.

16 Q. Who else was there with you besides Scott
17 Svirsky and Jeff Shoup?

18 A. Sometimes Tommy Hicks was there, who I
19 believe was his partner, and then some other employees of
20 World Development.

21 Q. What do you think of Jeff Shoup?

22 A. Well, what do I think of him now? It's
23 hard to answer that, you know. Back then he had a very
24 impressive resume. He had a very impressive financial
25 statement, and more importantly, the project looked like,

1 you know, a gold mine in that marketplace for that period
2 of time. I'll leave it there.

3 Q. Okay. You said you contacted several real
4 estate appraisers.

5 Who are the real estate appraisers you
6 would have contacted, or consultants?

7 A. I didn't say appraisers. I said
8 professionals.

9 Q. Who are the real estate professionals you
10 would have consulted?

11 A. There is one name that comes -- Rusty Helm.
12 I know there are others. I don't recall their names at
13 this moment.

14 Q. Would they have provided to you a written
15 product?

16 A. No. They would have told me where to
17 basically search things and where they saw comparables.
18 We do our own homework to go on the Internet and see what
19 the comparables were and what the values were and what
20 other projects were around.

21 We visited different projects in our visits
22 down there to see what was going on in that area. We
23 visited the marketplace to see what was around a
24 particular project. One of the things we do is we go
25 into the surrounding towns, cities or whatever and see

1 what is going on in there.

2 One of the things I was taught was you go
3 see car dealers and see how car dealerships are doing.
4 Is their business up? Is their business down? You do
5 topographicals. You kind of see what the layout is and
6 what's around there. That's basically it.

7 Q. Did Jericho hire an appraiser with respect
8 to this transaction?

9 A. Jericho did not hire its own appraiser, no.

10 Q. Was it its general practice to hire
11 appraisers in regard to making commercial loans?

12 A. Sometimes.

13 Q. Is it fair to say from what you're telling
14 me, that you visited the property, you talked to folks,
15 and you, meaning Jericho, came to its own opinion of
16 value?

17 You looked at comps, and you got
18 comfortable with what you felt the value of the property
19 was?

20 A. Yeah, that's fair.

21 Q. Okay. Did you review any appraisals
22 conducted by others in conjunction with your due
23 diligence for this loan?

24 A. Yes.

25 Q. What appraisals did you review?

1 A. There were a couple appraisals given to us.
2 One was given to us by the borrower. It was an MIA
3 appraisal, which is what is required in our office. It
4 was a verifiable appraisal.

5 We received a couple. We got one for
6 \$39.6 million for the property. We had another appraisal
7 that came to us, which was about 42-and-change million
8 dollars.

9 Q. Okay. I recall seeing one appraisal done
10 for the borrower by a guy by the name of Neeves,
11 N-E-E-V-E-S, but you're referencing more than one
12 appraisal.

13 Can you tell me who performed the other
14 appraisal?

15 A. I don't recall who it was.

16 Q. Would you have produced that document?

17 A. I believe I did.

18 Q. Was that appraisal done before or after the
19 closing?

20 A. I think it was simultaneously because it
21 was going to be the take-out of Jericho's loan. Jericho
22 was only supposed to be a short-term bridge loan. The
23 whole property was supposed to be refinanced.

24 Q. Was the guy named Volpe?

25 A. I believe that's it.

1 MR. NEWBY: I think you were provided that.

2 MR. KOUTRAKOS: Yes, I have that. It was a
3 lucky guess. I was thinking prior to the loan,
4 but maybe he did something prior to the loan.

5 BY MR. KOUTRAKOS:

6 Q. Okay. So with respect to doing due
7 diligence for Jericho, it would have been you, Glenn
8 Chwatt, Scott Svirsky; correct?

9 A. Correct.

10 Q. And then you would have, you would have
11 expected the Westerman Ball law firm to do some due
12 diligence with respect to this transaction as well;
13 correct?

14 A. Yes.

15 Q. Legal due diligence?

16 A. Yes.

17 Q. Let me ask you: Generally in a transaction
18 like this where your borrower is buying the property, do
19 you review the contract of sale?

20 A. Do I personally?

21 Q. Yes.

22 A. I read it, but I, I'm not an attorney, so I
23 always forward it to my attorneys.

24 Q. And do you have the contract of sale for
25 this particular transaction?

1 A. I don't know. That's a good question.

2 Q. But certainly, the Westerman Ball law firm
3 would have reviewed the contract on behalf of Jericho;
4 correct?

5 A. Correct.

6 Q. And it would have been its responsibility
7 to advise Jericho whether there was anything wrong with
8 the contract or, quite frankly, whether there was
9 anything wrong with any of the other documents involved
10 in the transaction; correct?

11 A. I believe so, yes.

12 Q. The borrower was paying the Westerman Ball
13 law firm, but Westerman had a duty -- let me back up.
14 It's a bad question.

15 It's Jericho's position that even though
16 the borrower was paying the Westerman law firm, the
17 Westerman law firm owed a duty of care to Jericho; is
18 that correct?

19 MR. NEWBY: I'm going to object to the
20 form.

21 THE WITNESS: I don't know how to answer.
22 I'm going to say yes. I believe they are
23 representing our interests.

24 BY MR. KOUTRAKOS:

25 Q. And you would have expected them to review

1 the documents and advise Jericho whether there were any
2 issues, correct?

3 A. Yes.

4 Q. Do you have any opinion -- does Jericho
5 have any opinion as to the current fair market value of
6 the property?

7 A. Not at this moment, no.

8 Q. When you say, "not at this moment" --

9 A. I don't know what's going to be there with
10 what the property was worth when we made this and now. I
11 believe, it's un-developable.

12 Q. I think I'm entitled to ask you whether
13 Jericho itself has its own opinion of value today.

14 Your answer is no, it does not have an
15 opinion of value?

16 A. I could guesstimate a value, but I don't
17 know what could be built there, so I can't give you a
18 value until I understand what's happening with the
19 property, the zoning issues.

20 Q. Well, in South Carolina, landowners are
21 allowed to testify as to value of property. That's why
22 I'm asking you.

23 I'm asking you today if Jericho, whether it
24 has an opinion of value of the property, and your answer
25 is no; correct?

1 A. As I sit here today, what you're asking me
2 to give you a value on knowing what I can build on that
3 particular property would change everything.

4 Q. How do you not know what you can build on
5 the property?

6 A. Because there's no permits available
7 because there's a conflict right now between the owner of
8 the property and the South Carolina Department of
9 Transportation and Horry County.

10 Q. Okay. My understanding is the South
11 Carolina Department of Transportation has filed a
12 condemnation action; correct?

13 A. I don't know if it's called that, but yes.

14 Q. In fact, that property -- once the
15 condemnation action was filed, the South Carolina
16 Department of Transportation sought to take that
17 property; correct?

18 A. That's what they are trying to do, correct.

19 Q. And you're telling me today that you are
20 waiting on some resolution with respect to that
21 litigation before you can decide what Jericho can do with
22 the rest of the property?

23 A. That's correct.

24 Q. So --

25 A. We don't know what the zoning is going to

1 be. When Jericho made the loan, it was zoned
2 specifically one way, and that's what we determined at
3 that point in time why we would be very comfortable in
4 making that loan.

5 Today we have no idea what the value of
6 that property is because we don't know what you're
7 allowed to build or if you're allowed to build at all.

8 Q. Why would you not be allowed to build on
9 the property?

10 A. Horry County may determine that they don't
11 want us to build. I don't know.

12 Q. I'm just curious. How is that possible?
13 If I owned -- let me ask you a question. If I owned a
14 thousand acres, and a highway is going through six of
15 them, are you telling me I can't use the remainder of the
16 acreage because a portion of my property is being
17 affected?

18 Is that Jericho's position in this case?

19 A. Jericho's position is that it does not know
20 what it can possibly build with a high-speed, massive
21 bridge over it, that's correct.

22 Q. So you're telling me you cannot apply to --
23 Jericho cannot apply today to Horry County to develop the
24 remainder of the acreage?

25 A. That's correct.

1 Q. Do you have anything in writing from Horry
2 County that says you cannot use the remainder of your
3 property, Jericho?

4 A. No.

5 Q. Have you asked them?

6 A. Have I personally asked them?

7 Q. Yes. Has Jericho asked Horry County, what
8 can we do with this property?

9 A. No. The zoning is in limbo right now.

10 Q. Have you hired a zoning attorney in Horry
11 County to talk to the good folks at the Horry County
12 zoning office and say, what can I do with this property?

13 A. I have hired a law firm in Myrtle Beach,
14 South Carolina to represent our interests.

15 Q. Is that Mr. Newby?

16 A. No.

17 Q. You hired another law firm with respect to
18 zoning interests?

19 A. Zoning, condemnation and all that.

20 Q. The Bellamy law firm?

21 A. The Bellamy law firm.

22 Q. Okay. So has Jericho been informed that it
23 cannot use the property because Horry County won't let
24 Jericho use or develop the property?

25 A. I don't know.

1 Q. So the fact that you're telling me today
2 that Jericho, that you previously said about three and a
3 half minutes ago, you said you don't know what to do with
4 the property. You don't know what the zoning is.

5 In fact, you have nothing in writing from
6 Horry County, and Horry County has never made a
7 representation to Jericho that it cannot use the
8 remainder of its property; correct?

9 A. It has not made that representation, but it
10 has threatened Jericho years ago -- I believe it was in
11 February of 2009 -- that if Jericho didn't turn this
12 property's right-of-way over to them, they were going to
13 revert back to an R-1, which is one acre per lot versus
14 what was anticipated by this other group of changing the
15 zoning.

16 That's what we wanted so we said, "Fine.
17 We're not giving you the property. We have a mortgage on
18 the property, and we're not turning over the property to
19 you. We don't know anything about this action you're
20 taking." We hired a law firm to represent us, and that's
21 where we sit today.

22 Q. Jericho would agree that today, the
23 property, the property involved in this case, that it
24 does have, that it is worth something; correct?

25 A. It's worth something, yes.

1 Q. It's not worth what it once was, but there
2 is value to that particular property; correct?

3 A. There is always value to a piece of land,
4 yes.

5 Q. Not just nominal value. It's more than
6 nominal value, correct?

7 A. No.

8 Q. You think it's nominal value?

9 A. Yes.

10 Q. Does Jericho believe it's worth a half a
11 million dollars?

12 A. No.

13 Q. It's worth less than a half a million
14 dollars?

15 A. No. It's worth more than a half a million
16 dollars.

17 Q. Okay. So I guess your definition of
18 nominal is a little different than mine.

19 MR. NEWBY: Because we're lawyers.

20 THE WITNESS: Well, we had to get a
21 \$40 million appraisal, and there was \$24 million
22 financed on the property, and it's not worth
23 anything close to that.

24 BY MR. KOUTRAKOS:

25 Q. So there is some value to the property,

1 correct?

2 A. Yes.

3 Q. And the reason why Jericho believes it has
4 value is because you have been, Jericho has been paying
5 property taxes on the property for the last few years;
6 correct?

7 A. Correct.

8 Q. In fact, do you know how much was paid in
9 property taxes in the last tax year?

10 A. No.

11 Q. In 2013, there was about \$26,000. Does
12 that sound correct?

13 A. You're reading it, so I believe you.

14 Q. I printed it out. You tell me if you
15 believe there is --

16 A. Okay. If that's what it says, yes.

17 Q. Do you have any reason to question the
18 numbers on what is now going to be Exhibit 2?

19 MR. NEWBY: Which numbers, Jim?

20 MR. KOUTRAKOS: This is Exhibit 2.

21 MR. NEWBY: No. The numbers.

22 MR. KOUTRAKOS: Let me get the extra copy.

23 Here's one for you, and here's one for you and one
24 for me. We'll mark this one and make it Exhibit

25 No. 2.

1 (Defendant's Exhibit 2, land records, was
2 marked for identification.)

3 BY MR. KOUTRAKOS:

4 Q. There you go. Exhibit No. 2 is --

5 MR. KOUTRAKOS: I could represent to
6 everybody I went online yesterday, I believe it
7 was, and printed out this information from
8 horrycounty.org.

9 BY MR. KOUTRAKOS:

10 Q. Mr. Chwatt, if you look at the tax map
11 number, the legal description, the owner, does that
12 information appear to be accurate on the first page?

13 A. Yes.

14 Q. On the second page, the tax assessor has
15 given a fair market value of the property of \$2,648,900.
16 Do you see that?

17 A. I see that.

18 Q. And then it listed the taxes paid, it looks
19 like, going back to 2004. Do you see that?

20 A. Yes.

21 Q. Does Jericho have any reason to question
22 the validity of the total taxes paid; I mean, the
23 accuracy of those figures?

24 A. Of the taxes paid?

25 Q. Yes.

1 A. No.

2 Q. Does it sound right that you all paid about
3 \$27,000 in taxes?

4 A. Yes. The assessed value is \$129,282, and
5 the taxes are \$26,478.16.

6 Q. Right. So you don't have any reason to
7 question any of the information on Exhibit 2?

8 A. Other than the fair market value.

9 Q. You think the fair market value is too
10 high?

11 A. Yes. I don't know how they determined that
12 number.

13 Q. Okay.

14 MR. NEWBY: Jim, I don't want to interrupt
15 your train of thought, but can we take a break?

16 MR. KOUTRAKOS: Absolutely.

17 (A brief recess was taken from 11:07 a.m.
18 to 11:18 a.m.)

19 BY MR. KOUTRAKOS:

20 Q. Lynx Jericho Partners, do they have any
21 remaining obligation to the entity from which it
22 purchased the Jericho mortgage?

23 A. Do they have any -- ask me again, please.

24 Q. When I asked you the question, you said you
25 paid 2.5 million for the first mortgage on the Saucepan

1 and the first mortgage on the Peachtree property;
2 correct?

3 A. They paid, yes.

4 Q. Lynx paid the liquidating trustee, or
5 whatever it's called; right?

6 A. Yes.

7 Q. Is there any remaining obligation? In
8 other words, is it, hey, if you make X amount of money,
9 you owe the liquidating trustee a certain amount? Is
10 there any remaining obligation?

11 A. No, not that I know of.

12 Q. When you're talking about costs that you
13 have to incur, those are carrying costs that Lynx Jericho
14 Partners would have to incur, or I guess Jericho would
15 have to incur; is that right?

16 A. Incurred the carrying costs, yes, and the
17 ultimate development cost of whatever you're going to
18 have to develop it.

19 Q. But there's no remaining obligation to the
20 liquidating trustee right?

21 A. No, not that I'm aware of.

22 Q. Has Jericho ever questioned the value
23 associated with the property that was given to the
24 property by Horry County?

25 A. At this point, no. We have not done any

1 certiorari proceedings at this time.

2 Q. In other words, you haven't said, hey,
3 Horry County, these taxes are way too high because the
4 property is not worth that much.

5 Jericho has not done that at this stage?

6 A. No. Not at this moment, no.

7 Q. What is the property currently zoned?

8 A. I don't know. I truly don't know. It's --
9 they have changed the zoning numbers and letters to -- I
10 know when we made the loan, it was R-1. That's
11 residential one-acre lots. That's when we made the loan.

12 It has subsequently gone through -- and I
13 have read different things about different namings of
14 that same zoning. I don't know if it's still that. I
15 don't know if it's multi-family. I truly don't know what
16 it's zoned at this moment.

17 Q. Does Horry County know what it's zoned?

18 A. I assume that they do, but I'm not sure
19 they know what it is at this point.

20 Q. You mentioned something about having a
21 topographical map and stuff like that. Have you produced
22 those in discovery?

23 A. No. When I said that, you go online, and
24 you go to Google Earth and you can see all of that stuff,
25 see what the proximity is to what things, and things are

1 pointed out to you and expressed to you.

2 Look at this house next to the property.
3 It's worth -- and you go onto the appraiser thing and you
4 look at his site. You can see the property of that
5 single house is worth at that time \$3 million next door
6 to it on the Intracoastal Waterway.

7 There is a bunch of houses along the
8 property that we looked at the values and said, wow,
9 that's a beautiful home.

10 Q. Can you, on behalf of Jericho, explain to
11 me the basis on which Jericho has sued Chicago Title in
12 this case?

13 A. Yes. There is a bridge going through the
14 property, and we had no knowledge that there would be a
15 bridge going through it. We would never ever, ever have
16 made any loan much less a second, first. I wouldn't have
17 lent the guy a dollar if there was a bridge going through
18 the middle of the property.

19 We've done hundreds and hundreds and
20 hundreds of deals. We have done a couple billion and a
21 half dollars in financing. I have never seen anything
22 like this. We used Chicago Title. In our whole lives,
23 we've never seen anything like this. Someone should have
24 said something. We never would have made this loan.

25 Q. When was the first time -- when you say --

1 let me back up.

2 When you say, "bridge," are you talking
3 about the extension of a highway that would run through
4 the property that ultimately would result in a bridge
5 going over the property and over the Intracoastal
6 Waterway?

7 A. Yes. Correct.

8 Q. When was the first time that Jericho
9 learned there was going to be a public highway going
10 through, or there was a planned public highway that would
11 go through the subject property?

12 A. Around 2008 after -- about a year after the
13 foreclosure -- within a year after the foreclosure, we
14 sent a group -- we hired a group, a consulting firm who
15 has done a lot of the developments up and down the
16 Eastern Seaboard. We sent them down to Myrtle Beach,
17 South Carolina to see how we should start tackling this
18 property.

19 They have done a lot of single-family
20 homes. They went down there, and from their review --
21 and they're the ones who met the Bellamy law firm to
22 start with to use them to do the development work. They
23 went to work with the engineers we hired.

24 They said, "Whoa. We can't" -- "you can't
25 build anything. There's a bridge coming through here."

1 I said, "No, there isn't. What kind of bridge?" That
2 was the first knowledge that we had of anything going on
3 there; that there was a bridge coming through the middle
4 of the property.

5 Q. It was in 2008?

6 A. Around 2008, correct.

7 Q. Who was the consulting firm?

8 A. Skymark.

9 Q. What was it called?

10 A. Skymark.

11 Q. Who was the professional associated with
12 Skymark that you had talked to?

13 A. Stanley Markovsky.

14 Q. Has Skymark provided any written product
15 for you? Have they done any studies or analyses?

16 A. Not at that point, no. They had worked
17 with Sinclair & Associates, who were our engineers, and
18 that was the product. They worked and kind of gave
19 guidance to Sinclair & Associates.

20 Q. Can you narrow it more? You said 2008.
21 What part of 2008?

22 A. I'm going to say middle of 2008; middle to
23 end.

24 Q. And that knowledge would have come from
25 Skymark?

1 A. Well, Skymark had told us this. I then
2 subsequently got on an airplane and flew down there to
3 meet with the Bellamy law firm, who told me straight up,
4 "There is a bridge going through your property. And not
5 a little bridge; a high-speed, four-lane bridge
6 connector."

7 Q. Is that the first time you heard the word
8 "bridge" being associated with this property?

9 A. Going through this property? Yes.

10 Q. Or going near this property?

11 A. Going near it?

12 Q. Yes.

13 A. What was discussed with me -- what was told
14 was that about a mile and something down the road was
15 going to be a new bridge. That was in one of the
16 appraisals I read; that there was a new bridge coming
17 down about a mile and something down the road past the
18 property. And that's a good thing. Not through your
19 property.

20 Q. Who told you about that?

21 A. It was in the appraisal.

22 Q. Whose appraisal?

23 A. I know there was one in Neeves' appraisal.
24 There was -- actually, in one of the due diligence
25 packages that we did, we read through, in the package it

1 even stated there was a new bridge coming down the road.

2 Q. Okay.

3 A. I'm happy to show you in my papers.

4 Q. Sure.

5 A. This was part of the -- where it's blue.

6 It's part of the due diligence package.

7 Q. Is this part of a larger document?

8 A. Yes. You have this. I'm sorry. We'll

9 make it simpler.

10 Q. Okay. I've seen that before.

11 A. Right.

12 MR. NEWBY: Jim, can you identify for the
13 record what you were looking at?

14 MR. KOUTRAKOS: Sure. Mr. Chwatt pointed
15 out a project loan package required for Waterford
16 Estate Plantation. Developers: T&J Development.
17 I'm not sure if it's dated or not.

18 THE WITNESS: In the original appraisal, it
19 references a bridge going down -- it says the
20 subject is only a few miles from the new
21 Highway 31.

22 BY MR. KOUTRAKOS:

23 Q. Can I see that? I'm looking at what you
24 showed me from the Waterford Estate Plantation document,
25 Developers: T&J Development.

1 It says, quote, "Being that the site area
2 is less than one mile from the new Highway 31 connector,
3 the location is optimized for development sales requiring
4 minimal marketing requirements."

5 Is that what it says?

6 A. Yes.

7 Q. Okay. I don't see any reference to a
8 bridge. Do you?

9 A. The 31 Highway connector is the bridge.
10 That's what the connector is.

11 Q. Okay. The bridge over the Intracoastal
12 Waterway?

13 A. Yes.

14 Q. When you're referring to "bridge," you're
15 referring to --

16 A. The connector.

17 Q. -- the connector. All right.

18 A. That's part of the appraisal that we
19 reviewed.

20 Q. This is the Neeves' appraisal?

21 A. That's correct.

22 Q. "The subject is only a few miles from the
23 new Highway 31. You can drive to the north or south end
24 of the strand in less than 20 minutes. The Westward
25 communities will continue to develop and prosper."

1 We're just going to make this an exhibit.

2 Do you mind? Do you have extra copies of that?

3 A. No, I don't mind, but I don't have extra
4 copies. I believe I sent you that.

5 MR. NEWBY: We can get a copy here I'm
6 sure.

7 MR. KOUTRAKOS: Let's make this -- put that
8 page back. Let's go ahead and make this -- if you
9 don't mind, we'll make copies for you before we
10 leave. Is that fine?

11 THE WITNESS: Yes.

12 BY MR. KOUTRAKOS:

13 Q. It's not an original document; is it?

14 A. No, it's a copy.

15 Q. Let's make this Exhibit 3.

16 (Defendant's Exhibit 3, Waterford Estate
17 Plantation document, was marked for identification.)

18 BY MR. KOUTRAKOS:

19 Q. Okay. This is the project loan package.
20 Exhibit -- is that the Neeves' appraisal?

21 A. Yes.

22 Q. It's fairly large. I don't think we can
23 make that an exhibit.

24 MR. NEWBY: Do you want just the one page
25 and identify where it came from?

1 MR. KOUTRAKOS: I don't care. We can do it
2 without it. That's fine.

3 BY MR. KOUTRAKOS:

4 Q. Once you found out about -- I guess when
5 you were consulted or informed in 2008, did you contact,
6 did you contact Shoup, you or anybody on your behalf?

7 A. I must have spoken to him.

8 Q. What did you say? Did you say, what is
9 going on with this bridge?

10 A. What's going on with this bridge. He never
11 said anything. We really -- at that point, he was having
12 his own legal issues, so I really kind of stayed away
13 from him.

14 I had the property. I had to deal with it.
15 There was no recourse against him at that point anyhow,
16 so we dealt -- we went to find attorneys who could help
17 us. Bottom line is we wanted to stop this from happening
18 because it would destroy the property.

19 And I would paraphrase what was said but
20 not for the record. It was told me when I met with my
21 attorneys, there is a bridge coming, and it's coming in
22 this attorney's lifetime, and this attorney is a lot
23 older than I am. So he was telling me --

24 MR. NEWBY: For the record, that's not me.

25 THE WITNESS: It wasn't him. It was said

1 with a southern drawl. "Glenn, there is a bridge
2 coming through your property in my lifetime. Not
3 in your lifetime, my lifetime."

4 I was like, "What? How is that possible?"

5 BY MR. KOUTRAKOS:

6 Q. Prior to the closing, did Jericho believe
7 there was a possibility of a road or bridge being
8 conducted across the property?

9 A. Absolutely not.

10 Q. Do you recall ever hearing the word --
11 well, you answered that question.

12 Do you have any knowledge whether the
13 sellers of that property knew there was a bridge coming?

14 A. I have no idea.

15 Q. Do you have any knowledge whether Shoup,
16 who was associated with the borrower, whether he had any
17 knowledge of the bridge coming, or the highway?

18 A. His documents that he provided to us said
19 it was going be down the street, all the way down the
20 street. As far as I'm concerned, as far as my reading of
21 this, it was happening well down past the property, not
22 through the property.

23 Q. So you don't believe Shoup knew about it at
24 the time of the closing?

25 A. No. Why would you buy a piece of property

1 with a bridge going through it?

2 Q. How much profit did Jeff Shoup think he was
3 going to make off this property?

4 A. A considerable amount of money.

5 Q. Do you think -- my guess is -- and you tell
6 me if this is your guess as well -- that Jeff Shoup would
7 have still made 60, 70 million, because that's the number
8 he was throwing around back then, even if the bridge was
9 going through the property.

10 A. No.

11 Q. Not Jeff Shoup?

12 A. No. Not even Jeff Shoup.

13 Q. Are you sure? I mean, 40-, \$50 million was
14 being thrown around in this transaction like it was
15 change for lunch, and you don't think Jeff Shoup the
16 mastermind, the guy with an impressive resume, wouldn't
17 have found a way to make if not 50 million, he would have
18 made 25 million off of this project with the bridge going
19 through it?

20 A. Not even close. Absolutely not. I'm not
21 even going to allow that to go forward because there's no
22 possibility he's going to be able to build multimillion
23 dollar houses underneath a high-speed, four-lane bridge
24 with tractor trailers honking, noise, pollution, tractor
25 treads flying over. Absolutely not.

1 Q. If your New York lawyers had knowledge of a
2 bridge going over the property, you would have expected
3 them to tell you; correct?

4 A. They would have absolutely told me, and I
5 never would have made this loan.

6 Q. Would you have been upset if they did?

7 A. Would I be upset?

8 Q. Yes.

9 A. Oh, yeah.

10 Q. Okay. What has Jericho done to obtain the
11 documents that the New York law firm would have acquired
12 in due diligence?

13 A. We requested them to be forwarded to you.

14 Q. Do you understand that the original
15 document, apparently some of it has been destroyed and
16 shredded?

17 A. Okay.

18 Q. Do you understand that? Have you heard
19 that? I've been trying to get documents from the New
20 York law firm, and I've been given some computer
21 electronic documents, but the New York law firm has
22 indicated that a good part, that they believe the
23 document, the file has been destroyed.

24 A. I called them to ask them to provide you
25 with the entire set of the documents. We're completely,

1 100 percent transparent. They said they were going to
2 get you everything that we've got, and we put a lot of
3 stuff into our computer and that's what I got.

4 I don't know if anything -- if you destroy
5 hard copies that you keep in the computer, I don't know
6 if that's bad.

7 Q. I have been informed by the New York law
8 firm that the original file has been destroyed, and they
9 provided to us what they have electronically.

10 Do you have any reason to doubt that?

11 A. No, not at all.

12 Q. Okay.

13 MR. NEWBY: Did you mark the page out of
14 the Neeves?

15 MR. KOUTRAKOS: I did not. If you want to
16 mark it later, we can do so.

17 BY MR. KOUTRAKOS:

18 Q. Do you know who Robert Gwin is?

19 A. Do I know who he is? Yes.

20 Q. Do you know how he was involved in this
21 transaction?

22 A. I believe he was T&J and World
23 Development's attorney.

24 (Defendant's Exhibit 4, Gwin e-mail with
25 attachment, was marked for identification.)

1 BY MR. KOUTRAKOS:

2 Q. Okay. I'm showing you what has been marked
3 as Exhibit No. 4. Can you take a look at that.

4 A. Okay.

5 Q. Just give me a second. You see that e-mail
6 dated July 17, 2006? It's from Robert Gwin. Do you see
7 that?

8 A. Yes.

9 Q. And Exhibit No. 4, this e-mail is addressed
10 to Ed Bullard. He's one of your New York lawyers,
11 correct?

12 A. Yes.

13 Q. It's addressed to Jeff Shoup, who is
14 associated with the borrower; correct? Shoup at World --

15 A. Yes, yes.

16 Q. And then G. Chwatt, which is you, at
17 aol.com; right?

18 A. Yes.

19 Q. And Scott Svirsky, who is sitting with us
20 in the room today; correct?

21 A. Yes.

22 Q. And two other New York lawyers, right?

23 A. Yes.

24 Q. And you see Robert Gwin is talking about
25 the checklist, and he wanted to delete from the check,

1 the preliminary checklist the satisfactory resolution of
2 the determination by the municipality not to build a
3 bridge. Do you see that?

4 A. No. Where does it say that?

5 Q. Right there. Let's make sure we're -- did
6 I give you the correct exhibit? Yes.

7 Do you see where it says, "Attached"?
8 Quote, "Attached please find red line comments to the
9 commitment letter. Also, please consider this my request
10 to delete the following requirements from the preliminary
11 checklist. Page 3, satisfactory resolution of the
12 determination by municipality not to build a bridge,"
13 close quote.

14 Do you see that?

15 A. No, I don't. That's on this? Attached
16 clean black list?

17 MR. NEWBY: Up here.

18 THE WITNESS: I'm sorry. Up here? Page 3.

19 Okay. I see that, yes.

20 BY MR. KOUTRAKOS:

21 Q. Okay. Tell me, in July of 2006, Robert
22 Gwin is requesting to remove from a requirement in the
23 checklist, getting a resolution that the county, the
24 municipality is not going to build a bridge. Do you see
25 that?

1 A. I see what that says.

2 Q. So there was a concern at closing, prior to
3 closing about a bridge. Would you agree with me?

4 A. No.

5 Q. Weren't you contacted on July 17th of 2006,
6 and there was a discussion about a bridge?

7 A. Did I contact?

8 Q. No. You received a communication on
9 July 17, 2006. It's talking about a bridge, correct?

10 A. This says, "Satisfactory resolution of
11 determination by municipality not to build a bridge."

12 Q. Right. It's talking about a bridge. This
13 is an e-mail dated July 17, 2006 to you and your New York
14 lawyers and the borrower on the future transaction
15 talking about a bridge; correct?

16 A. I was copied on it. It was not directed to
17 me.

18 Q. Yes. There is a communication directed to
19 you and others, copied to you --

20 A. Copied to me.

21 Q. -- that mentions a bridge with respect to
22 this property; correct?

23 A. Correct.

24 Q. And there is a lawyer for the borrower
25 saying, hey, I don't want to get you a resolution by the

1 municipality not to build a bridge. He's asking your New
2 York lawyers to say, I'm not going to get this document
3 from the county. Do you see that?

4 A. That's what you're saying it says. I don't
5 know what they were discussing. I was not privy to that.

6 Q. But you were copied on this communication.

7 A. I was cc'd on this communication.

8 Q. And they were talking about a bridge.

9 A. I don't know what bridge they were talking
10 about.

11 Q. Did you ask your New York lawyers, why am I
12 getting this e-mail about a bridge? What is the deal
13 with the bridge?

14 A. I have no idea what bridge they were
15 talking about. It could have been the one a mile down
16 the road. I have no idea.

17 Q. But would you agree with me that there was
18 some concern in July of 2006 prior to the closing, prior
19 to Jericho making the commitment to loan over \$4 million,
20 that there was an issue discussed about a bridge;
21 correct?

22 A. No. I don't know what they were relating
23 to.

24 Q. Well, there was an e-mail that mentions the
25 word bridge.

1 A. Yes.

2 Q. Would you agree with me there was a
3 communication prior to the closing that discussed a
4 bridge in relation with this property, correct?

5 A. No.

6 MR. NEWBY: I'm going to object to the form
7 of that question.

8 THE WITNESS: It just says a bridge. It
9 doesn't say anything about this property.

10 BY MR. KOUTRAKOS:

11 Q. Okay. So you believe that Glenn -- excuse
12 me -- that the New York lawyers were concerned about
13 issues with respect to another property?

14 A. I don't know.

15 (Defendant's Exhibit 5, preliminary closing
16 checklist, was marked for identification.)

17 BY MR. KOUTRAKOS:

18 Q. I'm showing you what has been marked as
19 Exhibit 5.

20 A. For the record, this was an unsigned
21 document. This is just a draft.

22 Q. And you're referring to?

23 A. Four.

24 Q. Four was a draft?

25 A. Draft.

1 Q. A draft e-mail?

2 A. No, no, the attachment. That was
3 unexecuted and just a draft form.

4 Q. Right. That was commitment letter
5 attached, right?

6 A. It was a draft of a commitment letter which
7 was not accurate.

8 Q. Understood. I wasn't asking about that. I
9 think that would have just made the e-mail complete
10 because I think that was an attachment to the e-mail
11 about which I was asking you questions.

12 A. I just wanted to clarify.

13 Q. Now this is Exhibit 5. Do you see where it
14 says, "Lender: Jericho All-Weather Opportunity Fund,
15 LLP," and then it says, "Property: 131 acres off Peach
16 Tree Road, Myrtle Beach, Horry County, South Carolina."

17 Do you see that?

18 A. Yes.

19 Q. Have you seen these type of checklists
20 before?

21 A. Yes.

22 Q. The Westerman law firm creates one for each
23 of the transactions it handles for Jericho?

24 A. Yes.

25 Q. And do you see on page 2 of this checklist,

1 it says, "B. Title and Survey." Do you see that?

2 A. Yes.

3 Q. Do you see where it says about one, six
4 lines down that as a requirement it says, "Satisfactory
5 resolution of the determination by the municipality not
6 to build a bridge." Do you see that?

7 A. Yes.

8 Q. And do you see where it says, "Responsible
9 Party: BC"? Do you understand BC to mean borrower's
10 counsel?

11 A. Yes.

12 Q. Tell me, why is the Westerman law firm
13 sending a preliminary closing checklist requiring a
14 satisfactory resolution of the determination by the
15 municipality not to build a bridge?

16 A. I don't know.

17 Q. Do you think the Westerman law firm had
18 some information about a bridge possibly being built
19 across the property?

20 A. I don't know what information they had.

21 Q. Do you think they would have added that to
22 the checklist for no reason at all?

23 A. I don't know. You have to ask them. I
24 have no idea. I had all the confidence in the world in
25 the professionals.

1 Q. Do you think there would be information
2 about the bridge in those shredded files somewhere?

3 A. No. I have no knowledge of that
4 whatsoever.

5 Q. Is it fair to say that somebody at the
6 Westerman law firm had some issue about a bridge because
7 we now have two documents that predate closing talking
8 about a bridge, correct?

9 A. I don't know if it's the same document. It
10 may be referencing the same thing.

11 Q. We have an e-mail, Exhibit No. 4. It talks
12 about -- an e-mail communication, which you were copied
13 on, talking about a checklist; correct? Excuse me.
14 Talking about a checklist and a bridge requirement on the
15 checklist.

16 A. This is a checklist, and this is the same
17 related documents.

18 Q. Fine.

19 A. Well, you're categorizing them as two
20 separate documents.

21 Q. No. We have Exhibit No. --

22 A. He is discussing that in here. The e-mail
23 is saying it here. I don't know anything about this
24 bridge.

25 (Defendant's Exhibit 6, preliminary closing

1 checklist, was marked for identification.)

2 BY MR. KOUTRAKOS:

3 Q. I'm showing you what is being marked as
4 Exhibit No. 6. I apologize for the delay. My stack is
5 different from your stack because of -- let me find my
6 copy of the exhibit.

7 MR. NEWBY: Are there dates on those two
8 preliminary closing checklists? I see, "Last
9 revised." Maybe I have --

10 MR. KOUTRAKOS: Exhibit 6 says, "Last
11 revised 7/21/2006." The other one, there is no
12 date.

13 MR. NEWBY: So we don't know which one was
14 first.

15 MR. KOUTRAKOS: I know which one, but you
16 have to reach your own conclusion.

17 BY MR. KOUTRAKOS:

18 Q. In looking at Exhibit No. 6, do you see it
19 says, "Last revised 7/21/2006"?

20 A. Yes.

21 Q. Do you see the requirement about the bridge
22 resolution? Do you see that in the checklist? Remember
23 last time it was in the Title and Survey section, section
24 B?

25 A. Yes.

1 Q. Okay. You no longer see the bridge
2 requirement there, do you?

3 A. I do not, no.

4 Q. Is it fair to say then, after borrower's
5 counsel sent Mr. Bullard an e-mail on July 17, 2006
6 requesting that it be removed, in fact, the Westerman law
7 firm agreed to remove that as a requirement from the
8 checklist?

9 A. No. What I would read from this is that
10 they did their preliminary title search, and there was no
11 problem with the bridge so there was no reason to have
12 it.

13 There was no bridge going through this
14 property. There was no bridge being built over this
15 property. The bridge was going down the street, and
16 there was no reason to have it in the documents about it.

17 Q. Are you speculating as to what happened?

18 A. You asked me a question. I'm answering
19 what I understand, how I read this and how I understand
20 it.

21 Q. Okay. The checklist, the original
22 checklist required a resolution. Borrower's counsel
23 wanted it to be removed.

24 Apparently, it appears that it was
25 subsequently removed from a later checklist; correct?

1 A. I don't know.

2 Q. Do you have to approve as the client, what
3 remains on the checklist and what gets removed on the
4 checklist, or you would defer to your lawyers to do that?

5 A. Both, depending on what it is.

6 Q. You were copied on these e-mails forwarding
7 the checklist, correct?

8 A. I don't know. I'm probably not copied on
9 all of them, no, because again, the attorneys know what
10 they're doing.

11 Q. Do you have a copy of the real estate
12 contract in your file, the contract where Shoup purchased
13 the property from the prior owners?

14 A. I may have. I don't remember.

15 Q. All right.

16 (Defendant's Exhibit 7, real estate sales
17 agreement, was marked for identification.)

18 BY MR. KOUTRAKOS:

19 Q. I'm showing you what has been marked as
20 Exhibit No. 7.

21 MR. KOUTRAKOS: Here, Fred.

22 MR. NEWBY: Thank you.

23 BY MR. KOUTRAKOS:

24 Q. Okay. I'll represent to you that Exhibit
25 No. 7 is an unsigned contract. The contract involves the

1 purchase of the property by Jeff Shoup from the prior
2 owners. I obtained a copy of this just the other day
3 from the attorney who represented the sellers, and he
4 said this is the final version of the contract.

5 MR. NEWBY: Who was that, Jim?

6 MR. KOUTRAKOS: It's Brian Kernaghan at
7 Nexsen, N-E-X-S-E-N, Pruet, P-R-U-E-T.

8 BY MR. KOUTRAKOS:

9 Q. If you could go to paragraph 3.5.

10 A. Yes.

11 Q. It's on page 3. See where it says, "Except
12 as set forth in schedule" -- are you already at that
13 page?

14 A. Yes, page 3.

15 Q. "As except as set forth" -- have you seen
16 this document before?

17 A. Yes.

18 Q. I just wanted to know how you knew I was
19 going to page 3.

20 A. I just opened to the page.

21 Q. "Condemnation Proceedings and Roadways," it
22 says, "Except as set forth in Schedule 3.5 attached
23 hereto, to the knowledge of the seller, there are no
24 condemnation or eminent domain proceedings pending or
25 contemplated against the property or any part thereof and

1 Seller has received no notice, oral or written, of the
2 desire of any public authority or other entity to take or
3 use the property or any part thereof."

4 And then it says, "Except as set forth in
5 Schedule 3.5 attached hereto, Seller has received no
6 written notice of any change or proposed change in the
7 route, grade, width or other specification of any street
8 or road located within or adjacent to the property."

9 Did I read that correctly?

10 A. Sure.

11 Q. Do you recall seeing this language in the
12 purchase contract signed by your borrower?

13 A. No. It just stated there is nothing
14 contemplated.

15 Q. As except as in Schedule 3.5, right? If
16 you go to Schedule 3.5, lo and behold, 3.5 says,
17 "Attached May 15, 2002 notice regarding the Carolina Bays
18 Parkway." Do you see that?

19 A. Yes.

20 Q. If you flip over to the next page --

21 A. Hold on a second. I never saw this.

22 Q. Sure. Okay. If you look at the attached
23 notice --

24 A. There is nothing.

25 Q. I think you need to flip the page. There

1 is a map.

2 A. Go forward you mean?

3 Q. Hold on a second.

4 A. I saw that he read that. I saw that. This
5 you're talking about?

6 Q. Yes.

7 A. You said flip it.

8 Q. There is something -- I can tell you that I
9 don't know why there is no image on that blank page
10 because I got it in Word, and I don't know why it didn't
11 print. There is an image with a map there. I apologize.
12 I didn't realize that.

13 Regardless, I'll forward you the same
14 electronic copy I have, and there is an image that has a
15 map. I can't tell you exactly what the map says, but I
16 think that's what page 3 of Schedule 3.5 says.

17 In any event, you have not seen this
18 Schedule 3.5 before; have you?

19 A. Before when?

20 Q. Before today.

21 A. Yes, I have seen this before today.

22 Q. When did you see it?

23 A. When I met with my attorneys about this
24 whole thing. And they're saying that when we discussed
25 the title issue, this was noticed in 2002, and the title

1 policy should have picked this up and stated this as an
2 exception or possibility that it's going to happen.

3 Q. Let me be more specific with my question.
4 Schedule 3.5 to this agreement, have you seen this --

5 A. No. I have never seen this agreement
6 before.

7 Q. Do you have any knowledge whether your New
8 York lawyers have seen this agreement?

9 A. I have no idea.

10 Q. Do you believe it's possible they were
11 talking about a bridge because of Schedule 3.5 to the
12 agreement?

13 A. I have no idea what they're talking about.
14 I don't know this to be the final thing because it's not
15 signed.

16 Q. I understand.

17 (Defendant's Exhibit 8, real estate sales
18 agreement, was marked for identification.)

19 BY MR. KOUTRAKOS:

20 Q. I'm showing you what has been marked as
21 Exhibit No. 8. Exhibit No. 8, I can attest, is a copy of
22 the, of the contract that was in Bob Gwin's file. If you
23 look at it, this is actually signed by your borrower,
24 Jeff Shoup, on page 19.

25 Do you see that?

1 A. Uh-huh.

2 Q. And do you also see whether on page 3 it
3 has the same -- it appears to be identical, Schedule 3.5
4 -- excuse me -- Section 3.5 on page 3 that I read to you
5 previously with respect to Exhibit No. 7.

6 A. This looks like they're almost the same
7 document you gave me, except this one is signed by Shoup
8 and not signed by --

9 Q. Anybody else.

10 A. -- the seller.

11 Q. Correct. Do you see it has a Schedule 3.5?
12 It would be the last page of the exhibit. That's all it
13 has. That is all that was in the lawyer's file.

14 A. It says nothing. It says, "Attached
15 May 15th notice." It could be anything.

16 Q. I understand that. I understand that, but
17 it says, "Notice re Carolina Bays Highway."

18 MR. NEWBY: Jim, the highlight you mean?

19 MR. KOUTRAKOS: The highlighting is mine.

20 Sorry. That's the way the copy came. Sorry. The
21 copy from his file is not highlighted. I'll
22 represent that.

23 BY MR. KOUTRAKOS:

24 Q. Again, look at Exhibit No. 7 -- excuse me.
25 This would be Exhibit No. 8. There is indication here

1 that the seller is saying there is no condemnation
2 threatened, but there is something, and it's about the
3 Carolina Bays Parkway.

4 A. I don't know that that could be the case at
5 all. It could be the thing they talked about a mile down
6 the street.

7 Q. Okay. Then why would the borrower -- okay.
8 The seller was concerned about -- okay. Let's go to
9 paragraph 3.5. It says, "Except as in Schedule 3.5" --
10 and I'm skipping some words -- "there is no condemnation
11 or eminent domain proceedings against or contemplated
12 against the property."

13 There is the contract of sale. We can go
14 through the definition of the property, but presumably,
15 it was affecting the property that is being sold, not the
16 property down the street; correct?

17 A. It's saying there is no condemnation
18 against this property, and there may be something going
19 on down the street at the Carolina Bays, whatever he is
20 saying.

21 Q. If that's what you want the testimony of
22 Jericho to be, I can't stop you. I don't think that's
23 what it says but --

24 A. I believe that's what it says.

25 Q. Okay.

1 A. I don't know anything about a bridge. I
2 would have never made a loan if I had known about the
3 bridge.

4 MR. NEWBY: I'm going to object to the form
5 only because we don't have the map to look at.
6 The letter talks about adjacent. It doesn't say
7 on, and without the exhibit --

8 MR. KOUTRAKOS: What letter are you
9 referring to?

10 MR. NEWBY: The one from Horry County on
11 Exhibit 6 or 7, whatever it was.

12 MR. KOUTRAKOS: Let me look at it.

13 MR. NEWBY: I do not want to inject too
14 much in here, but it says something about your
15 property is either directly affected or is
16 adjacent to the property affected.

17 MR. KOUTRAKOS: I understand.

18 MR. NEWBY: And we don't have the map. The
19 map might clarify all of that.

20 MR. KOUTRAKOS: I have the map that was
21 attached to -- well, that was part of the
22 contract. I could probably show it to you on my
23 phone. I don't know why it didn't print out for
24 some reason.

25 We're done with the contract. This is

1 Exhibit No. 9.

2 MR. NEWBY: Another one?

3 MR. KOUTRAKOS: Another one. They just
4 keep on coming.

5 (Defendant's Exhibit 9, real estate sales
6 agreement, was marked for identification.)

7 BY MR. KOUTRAKOS:

8 Q. This is Exhibit No. 9. I can attest to you
9 -- I can represent to you this is a copy of the agreement
10 that was, that was sent to me by your attorney,
11 Mr. Newby, that he received from the Westerman Ball law
12 firm. You can take a look at that for a second.

13 A. Okay.

14 Q. Do you see where this agreement appears to
15 be fully signed?

16 Let me back up. There appears to be an
17 agreement to purchase this property, correct, by
18 Mr. Shoup?

19 A. Yes.

20 Q. Okay. And is Exhibit No. 9 fully executed?

21 A. Yes.

22 Q. In section No. 5, does it reference a
23 Schedule 3.5 or any limitation on the representation made
24 about condemnation or eminent domain proceedings in
25 Section 3.5 on page 3 of the contract, in Section 3.5 of

1 the contract?

2 A. I'm sorry? Ask me that again.

3 Q. I'm sorry. I told you I was going to ask
4 you some bad questions.

5 This version of the contract does not have
6 any reference to a Schedule 3.5 in Section 3.5 on page 3,
7 correct?

8 A. It says, no condemnation or eminent domain
9 proceedings, and there's no Schedule 3.5 so...

10 Q. Okay. Do you know why your law firm would
11 have a different version of a contract than what has been
12 represented to me as being the final version?

13 A. I assume because it wasn't happening. I
14 have no idea why. I have no idea.

15 Q. Do you know if the New York law firm had
16 previous drafts of the contract or had different versions
17 of the contract?

18 A. I have no idea what they have or what they
19 had.

20 Q. Do you understand there were certain
21 amendments made to the contract of sale?

22 A. Am I personally aware?

23 Q. Does Jericho have any knowledge of there
24 having been amendments to the contract extending the
25 closing date and things of that nature?

1 A. I don't know. I don't remember the closing
2 dates.

3 Q. Jericho has no knowledge whether there were
4 amendments to the real estate contract between your
5 borrower and the sellers?

6 A. Do I know --

7 MR. NEWBY: Hold on.

8 THE WITNESS: I don't want her to write
9 this down. I'm just thinking out loud.

10 Do I have any knowledge of amendments
11 between the seller and the buyer?

12 BY MR. KOUTRAKOS:

13 Q. Right.

14 A. I don't know, but there generally are
15 amendments always to contracts.

16 Q. But you have no knowledge of any today?
17 You have no knowledge of any amendments?

18 A. No.

19 Q. Do you have any copies of any amendments,
20 because you didn't produce any to me.

21 A. No.

22 Q. Do you have any knowledge if the New York
23 law firm has copies of those amendments?

24 A. I have no idea what they would have.

25 Q. You can put that right there. I'm going to

1 show you what will be marked as Exhibit No. 10.

2 (Defendant's Exhibit 10, July 20, 2006
3 e-mail, was marked for identification.)

4 THE WITNESS: Can we go back to this?

5 BY MR. KOUTRAKOS:

6 Q. Sure. Take your time.

7 A. I just want to ask a question. You had me
8 thinking. I just kind of -- this does -- you said that
9 -- you -- I don't want to put words in your mouth, but
10 you said that missing behind this was Schedule 3.5, but
11 there is no reference here to any Schedule 3.5.

12 Q. That's what I was asking. I was
13 confirming. There is no Schedule 3.5. There is not even
14 a reference to 3.5.

15 A. That's what it says. There is no reference
16 to 3.5, and there is no 3.5, other than this being --
17 this is 3.5, but in the other one, it said there is a
18 reference to 3.5.

19 Q. Exactly.

20 A. But here there is no reference to it, so I
21 assume that it was a moot point and there was nothing to
22 worry about.

23 Q. You can say what you want. I'm
24 establishing that in the contract provided by your New
25 York law firm, there is no mention of an exclusion to the

1 representation that there are no threatened condemnation
2 actions, whereas other folks have other documents that
3 actually say there is a threat of something that possibly
4 might happen in the future.

5 A. This is the executed version. We
6 acknowledge this is the executed version. This makes no
7 reference to anything --

8 Q. You can make any acknowledgment you want as
9 to whether that's the executed version or not.

10 A. You're the one who represented to me it was
11 the executed version.

12 Q. Well, that one appears to be because there
13 is a signature page. If you look at the bottom of each
14 signature page, is that Mr. Shoup's signature page?

15 A. Yes.

16 Q. If you look at the bottom, you will see a
17 stamp of the law firm that prepared the document. Do you
18 see where it says B4? It says one -- excuse me.

19 A. No.

20 Q. I'll show you. You see where it says,
21 "15035.4-CS," and in parentheses it says, "BFK."

22 Can you see the .4 on the bottom? Yours
23 will probably say .1. Which one are you looking at?

24 A. The one you just gave me.

25 Q. This Exhibit 9, do you see where it says

1 .1?

2 A. Yes.

3 Q. And if you look at the signature pages --

4 A. This says .1.

5 Q. Which one are you looking at?

6 A. Mr. Shoup's signature.

7 Q. Which exhibit are you on? I'm sorry.

8 A. Exhibit 9. They all say .1.

9 Q. No, they don't. Exhibit 9 --

10 MR. NEWBY: Mine says .1. The first one
11 does.

12 MR. KOUTRAKOS: Keep on looking. If you
13 look at the rest, it's .4.

14 THE WITNESS: This one says .1. You're
15 going after that number?

16 BY MR. KOUTRAKOS:

17 Q. Yes. The signature pages, go to the
18 signature pages.

19 A. That happens often in a lot of our
20 closings. They are signed opposite and then put
21 together.

22 Q. What appears happened to me is that there
23 are -- the .4 version, which is the same that
24 Mr. Kernaghan represented to me is the final version,
25 which is Exhibit No. 7, is the .4 version.

1 We have most of the signature pages on
2 Exhibit No. 9 are the .4 version, including Mr. Shoup's
3 version, but the body of the contract is the .1 version.

4 Do you see that?

5 A. I'm not sure what you're, what you're
6 saying here because I'm -- are you saying that --

7 MR. NEWBY: Why don't we stipulate to some
8 things and save ourselves some time on the issue?

9 MR. KOUTRAKOS: What do you want to
10 stipulate to?

11 THE WITNESS: I don't know what you're
12 saying, other than the final signed version that
13 you just gave me does not have any reference to a
14 bridge or anything.

15 BY MR. KOUTRAKOS:

16 Q. Honestly, I'm not saying it's the final
17 signed version. It's what your law firm is representing
18 to us, apparently, as the final signed version.

19 A. You have a copy of our closing. I guess we
20 would not have that in the closing, right?

21 Q. I'm just telling you that is what was
22 produced to me, and I don't know if it was the final
23 signed version or not. It was an executed version of the
24 contract, but it was a contract that was provided to me
25 through your lawyer that came from the New York law firm.

1 I'm just pointing out that other folks have different
2 versions of the contract.

3 A. They have draft versions, but this is the
4 signed one.

5 MR. NEWBY: Page 16 has a .3, so there are
6 three different --

7 MR. KOUTRAKOS: Right.

8 MR. NEWBY: There are three different
9 things in the same document rather than just two.

10 MR. KOUTRAKOS: Right, but some at the end
11 have a .4. I understand. Hey, I didn't create
12 it. I'm just asking questions about it. I don't
13 know. I wasn't there.

14 BY MR. KOUTRAKOS:

15 Q. You have Exhibit No. --

16 MR. NEWBY: Ten.

17 BY MR. KOUTRAKOS:

18 Q. This is an e-mail, July 20, 2006, from
19 Zinelle October.

20 A. That's one of my attorneys.

21 Q. Do you see where it says in the last
22 sentence of that e-mail right before her signature --

23 A. She's a stripper. Kidding. Don't put that
24 in.

25 Q. It says, "Bob, We also need signed" -- and

1 I can't tell if "signed" is underlined or not. Maybe
2 it's the way the copy was made. "Signed copies of the
3 purchase contract and all amendments."

4 Do you see that?

5 A. Yes.

6 Q. It says, "Please forward them to us." Do
7 you believe that the New York law firm had numerous
8 copies of signed or unsigned contracts in its possession?

9 A. I have no idea.

10 Q. Does it suggest they already have unsigned
11 copies of a purchase contract but were looking for actual
12 signed copies?

13 MR. NEWBY: Object to the form.

14 THE WITNESS: I have no idea. I have no
15 idea what they're referencing here. Was I even
16 copied on this?

17 BY MR. KOUTRAKOS:

18 Q. Yes.

19 A. No, I was not. No, I was not. Yes, I was.
20 The last one. I got you. Sorry.

21 Q. If you look at the next page, page 2 of 4,
22 there is another e-mail from Zinelle to Jay Levinton, Bob
23 Gwin, Scott Svirsky, and it says, "Attached please find a
24 revised checklist for the above-referenced closing.

25 Thank you."

1 So you were provided copies of the
2 checklist, correct? I don't know what version was
3 attached to that e-mail, but you were generally copied on
4 the e-mail.

5 A. I'm copied on a lot of e-mails. I'm not
6 sure I would represent that every one.

7 Q. Sure. But generally, it looks like your
8 New York law firm was sending stuff to both you and Shoup
9 and Bob Gwin, and she was just copying everybody.

10 A. Okay.

11 Q. Let me ask you: You received a closing
12 notebook after closing from the Westerman law firm; is
13 that right?

14 A. Yes.

15 Q. Is that generally, your firm does those
16 kind of transactions, and you just send a closing
17 notebook to your client, and it has all the documents
18 that are generally important; correct?

19 A. Closing binder.

20 Q. Have you reviewed the closing binder to see
21 if the contract of sale is in the closing binder?

22 A. No.

23 Q. It's not there; is it?

24 A. I don't know.

25 Q. Do you know why they would not have

1 included the contract of sale in the closing binder, the
2 New York law firm? I can tell you it's not there.

3 A. I have no idea.

4 Q. Would they generally be included in the
5 closing binder?

6 A. I don't know.

7 Q. Did anybody give Jericho an opinion of
8 title with respect to this transaction?

9 A. I don't know what the opinion -- we got an
10 opinion at the end of every deal.

11 Q. An opinion letter?

12 A. Yeah.

13 Q. And that would come from borrower's
14 counsel?

15 A. Could come from borrower's counsel, and I
16 believe we got one also.

17 Q. And it was signed by borrower's counsel?

18 A. I think we also got one from our counsel.

19 Q. From the New York law firm?

20 A. I don't recall. I don't remember, but
21 generally, we try and get opinions on both sides if it's
22 possible. I don't even know if we did.

23 Q. Okay. All right. Let me ask you. Maybe
24 because I'm not familiar with the whole construction
25 project and how much water it actually goes over, but

1 when you're buying -- if you're doing a closing either as
2 a seller or buyer or a lender for the buyer and there is
3 property on a waterway, it means generally, the risk of a
4 bridge running across your property and going over the
5 waterway is not usually a concern. Would you agree with
6 me?

7 I mean, if you look at this transaction,
8 and this property on the Intracoastal Waterway, the
9 concern of a highway coming across the property is
10 probably less of a concern as opposed to property
11 elsewhere by virtue of being right on the water.

12 A. I have no idea what you're getting at. I
13 don't understand the question.

14 Q. It seems to me if you have property on a
15 waterway, the odds -- first of all, it's probably very
16 expensive to build a bridge. The odds of a highway being
17 constructed over your property and a bridge being built
18 over your property are so slim that it's typically
19 something you would never think about.

20 I mean, I wouldn't. That would never cross
21 my mind.

22 A. Well, only by virtue of a definition of a
23 bridge, it's got to go over water.

24 Q. I understand that. I'm just trying to
25 figure out why that bridge showed up on the checklist.

1 A. I don't know. From what I'm reading in the
2 final one, it was not in there. It was supposed to be
3 down the road, and that's all I understand it to be.

4 Q. What was supposed to be down the road? Oh,
5 down the road not in the future, but down the physical
6 road?

7 A. Exactly. Yes.

8 MR. NEWBY: I'm going to ask for another
9 break, too.

10 (A brief recess was taken from 12:14 p.m.
11 to 12:55 p.m.)

12 MR. KOUTRAKOS: Exhibit No. 11.

13 (Defendant's Exhibit 11, September 10, 2007
14 Volpe Real Estate Advisors document, was marked for
15 identification.)

16 BY MR. KOUTRAKOS:

17 Q. This is something from Volpe Real Estate
18 Advisors dated September 10, 2007.

19 Did Mr. Volpe do work for you?

20 A. No.

21 Q. What did you -- this document was produced
22 by your attorney in this case.

23 Can you tell me how this document got in
24 your file?

25 A. Mr. Shoup sent it to us.

1 Q. When would he have sent it to you?

2 A. I assume around this time, considering that
3 the loan was already come due and matured.

4 Q. He was already in default of this loan?

5 A. I believe so.

6 Q. And this is one of the appraisals you
7 mentioned early on in the deposition when you said about
8 42 million; is that right?

9 A. I'm not sure if this was the one or there
10 was another one that I had seen. I don't recall which
11 one it was.

12 Q. There is a Neeves appraisal that you have
13 in front of have.

14 A. I think there was a third appraisal, and I
15 seem to recall one that was -- I can't seem to find it.
16 I don't know where it is. We've been looking for it
17 because it's something I really wanted to show you.

18 There was a group out of New York called
19 Kennedy Funding.

20 Q. Do you see where it says, "E-mailed to
21 Kevin Wolfer? My understanding is he is with Kennedy
22 Funding.

23 A. There was one that was completely addressed
24 to Kennedy Funding.

25 Q. What is Kentucky Funding's involvement in

1 this transaction?

2 A. Apparently, Mr. Shoup was going to him to
3 refinance us all out.

4 Q. So Kennedy Funding would not have been
5 involved in this transaction until after the loan closed
6 around the time of default?

7 A. I don't know. I don't know what the
8 conversation was. He was going to them to have us
9 refinanced. What their conversation was I was not privy
10 to.

11 Q. But you have a specific recollection of
12 receiving this document from Mr. Shoup on September 10,
13 2007?

14 MR. NEWBY: This is Exhibit 11?

15 MR. KOUTRAKOS: Yes, sir.

16 THE WITNESS: I don't recall when I got it.
17 BY MR. KOUTRAKOS:

18 Q. Well, you would have received this document
19 in his attempts to try to either refinance or to try to
20 buy you out, I guess; is that correct?

21 A. He sent me this document. I don't recall
22 why he sent it to me, other than to show me he was
23 working on trying to get this done.

24 Q. So presumably, it would have been at or
25 around September 2007?

1 A. You keep saying that. I don't remember
2 when it was.

3 Q. You would have received it in 2010. It got
4 in your file somehow, and the purpose of why it's in your
5 file, I'm just trying to find out why.

6 A. Mr. Shoup sent it to me. I don't recall
7 when he sent it to me.

8 Q. If you look at the second page, it does
9 talk about a right-of-way for future highway under the
10 development status and potential section.

11 MR. NEWBY: Where are you looking?

12 MR. KOUTRAKOS: Second page. It's right
13 under development status and potential.

14 THE WITNESS: Okay.

15 BY MR. KOUTRAKOS:

16 Q. Do you see that?

17 A. I see what it says, yes, but --

18 Q. At that point in time, this is
19 September 10, 2007, it appears that without question,
20 Jeff Shoup knew about the highway.

21 If you received this document, you would
22 have some, Jericho would have been informed to some
23 extent, there was a right-of-way going through the
24 highway; correct?

25 A. I have no idea. Our foreclosure took

1 almost a year and a half to finalize this, so he might
2 have sent this to me later on. I have no idea when he
3 sent this to me whatsoever. This was well after we
4 closed on this loan.

5 Q. All right. Do you recall Jericho filing an
6 action against the South Carolina Department of
7 Transportation in Horry County?

8 A. I assume it did. I assume Bellamy's firm
9 did.

10 Q. For what reason?

11 A. To block this thing; to stop it.

12 Q. Can you be more specific than that?

13 A. To stop the bridge from going through the
14 property.

15 Q. Do you think Jericho had any power to stop
16 the bridge from going through the property?

17 A. Obviously not.

18 Q. How would your lawyers go about doing that?
19 Did you hire them to specifically block Horry County --

20 A. I wanted to stop it, yeah. I had no idea
21 it had been in the works forever. And everybody missed
22 it. I rely on professionals, and I truly rely on the
23 ultimate, the title policy, the title insurance. Of the
24 hundreds and hundreds of deals I've ever done, I have
25 never had an issue before.

1 Q. Have you read the title insurance policy
2 that's involved in this particular case?

3 A. Yes, I read it.

4 Q. You have?

5 A. Yeah. I'm not a lawyer, so I can't give
6 you an opinion about it.

7 Q. I'm showing you what will be marked as
8 Exhibit 15. Oh, sorry. Exhibit 12.

9 (Defendant's Exhibit 12, DOT lawsuit, was
10 marked for identification.)

11 THE WITNESS: That's why I didn't read it.
12 BY MR. KOUTRAKOS:

13 Q. Looking at Exhibit 12, this is a lawsuit
14 filed by Jericho. The Jericho Fund and Jericho State
15 Capital against Horry County and the South Carolina
16 Department of Transportation; is that correct?

17 A. Yes.

18 Q. Do you recall reading this complaint?

19 A. I don't recall reading this complaint.

20 Q. Do you have any memory of this complaint?

21 A. No, not really.

22 Q. Do you see where it was filed in 2009?
23 Look at the first page. You'll see a stamp of October
24 12, 2009. Do you see that?

25 A. Yes.

1 Q. If you look at the last page of the exhibit

2 --

3 A. The last page? Okay. Yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Okay. Do you see where you, you verified
7 all the information in the complaint as true? Do you see
8 that?

9 A. It says I appeared before -- what am I
10 verifying? What does it say I'm verifying? It just
11 says, "Verification." It says that he is -- "He has read
12 the foregoing Summons and Complaint and that the
13 information contained herein is true." Okay.

14 Q. Do you recall signing that verification?

15 A. No, but it's my signature.

16 Q. You said you recall reviewing this
17 complaint.

18 A. I don't recall reviewing it, but I said I
19 did so I must have. This is a while ago.

20 Q. So if you had signed something back in 2009
21 saying everything in the complaint is true and accurate,
22 I assume in 2009, you would have looked at the complaint
23 and determined that everything stated in there was true
24 and accurate; correct?

25 A. Okay.

1 Q. Is that yes or no?

2 A. I don't recall what it is.

3 Q. Would you have lied in 2009?

4 A. No, I never lied.

5 Q. So you would have actually reviewed the
6 complaint and said, hey, this looks true, so I'm going to
7 verify the complaint; correct?

8 A. Pretty much, yeah. I don't know if I read
9 it line by line.

10 Q. Understood.

11 A. It was conversations I had with the
12 attorneys.

13 Q. Why don't you read it real quick. It's
14 four pages long, and it will take you a couple minutes to
15 read. I want to ask you some questions about it, why
16 this lawsuit was filed and so forth.

17 A. Okay.

18 Q. Okay. Was the purpose of this lawsuit to
19 -- if you look at paragraph 3, it talks about the
20 plaintiff's former mortgagor.

21 Do you understand that to be Jeff Shoup?

22 A. T&J World Development, yes.

23 Q. Where they sought to rezone the property,
24 and that's the property involved in this case; correct?

25 A. That's correct.

1 Q. Okay. And it says, "Consistent with the
2 conceptual plan with Horry County." Do you see that?

3 A. Okay.

4 Q. In paragraph 4, it talks about some
5 rezoning documentation that required that the property
6 for the right-of-way to be donated to Horry County. Do
7 you see that?

8 A. Yes.

9 Q. Tell me what happened with that process.

10 A. I have no idea.

11 Q. You have no idea?

12 A. None whatsoever. He was not allowed to
13 give a piece of our property, my collateral away.

14 Q. So you, Jericho sought this litigation to
15 say, hey, Jericho owns this property. We never agreed to
16 give any property away to anybody; is that correct?

17 A. Correct.

18 Q. And in the complaint, you sought an order
19 that -- if you look at page 4, paragraph 11, you
20 requested that you, the plaintiffs, are the owners of the
21 property, including that portion which Horry County
22 sought to require plaintiff's former mortgagor and
23 predecessor in title to surrender. Do you see that?

24 A. Yes.

25 Q. Basically, you wanted the court to say, we

1 own the property. We haven't surrendered or agreed to
2 give up any portion of the property, correct?

3 A. That's what it says.

4 Q. Tell me what you said. You verified it.
5 What did you say?

6 A. Listen, I'm not an attorney. I appreciate
7 what you're saying. I don't know what the word -- the
8 plaintiff's former mortgagor and predecessor in title to
9 surrender. It says what it says. I don't know what it
10 means to that point.

11 Q. Fair enough. Fair enough. Do you recall
12 reviewing the exhibits to this contract when you verified
13 the complaint?

14 A. I don't recall that.

15 Q. I can ask you questions about Exhibit C.
16 You're not going to recall any specifics of reviewing it;
17 is that correct?

18 A. Let me see what Exhibit C is.

19 Q. Or for that matter, any of the exhibits.
20 Do you have any independent knowledge of reviewing the
21 exhibits or have any knowledge of the purpose of the
22 exhibits?

23 A. Do I -- I don't recall these at all.

24 Q. Okay. Do you recall reviewing them when
25 you verified the complaint?

1 A. Do I -- I don't recall. I truly don't
2 remember.

3 Q. You can't tell me what the goal of this
4 lawsuit was?

5 A. My goal was to stop -- my goal was to stop
6 this bridge.

7 Q. Were you successful?

8 A. Obviously not.

9 Q. Isn't it true that your goal by filing this
10 lawsuit, was to have the South Carolina Department of
11 Transportation file a condemnation action?

12 A. What?

13 Q. Was it your goal, was is Jericho's goal to
14 file this lawsuit to say, okay Department of
15 Transportation. You need to file a condemnation action.
16 You've waited too long. Was that your goal?

17 MR. NEWBY: I'm going to object to the
18 form.

19 THE WITNESS: And I'm going to say no.
20 Absolutely not.

21 BY MR. KOUTRAKOS:

22 Q. What was the result of the lawsuit
23 represented by Exhibit No. 12?

24 A. It's still ongoing.

25 Q. All right. I'm going to show what you what

1 is going to be marked as Exhibit No. 13. If you can
2 review that for a second.

3 (Defendant's Exhibit 13, stipulation of
4 dismissal, was marked for identification.)

5 THE WITNESS: No idea what this is.

6 BY MR. KOUTRAKOS:

7 Q. Do you see that it's signed by Mr. Shelton
8 or Mr. Bellamy of the Bellamy law firm -- it's on the
9 second page -- which is counsel for plaintiff?

10 A. Uh-huh.

11 Q. They're your lawyers dealing with the South
12 Carolina Department of Transportation, correct?

13 A. Yes.

14 Q. That's the law firm that Jericho hired to
15 deal with zoning on DOT issues?

16 A. Okay. Yes.

17 Q. And they would have had authority to file
18 this lawsuit against Horry County, correct, the one that
19 you just talked about, the complaint that you verified,
20 Exhibit No. 12?

21 A. Yes.

22 Q. So Exhibit No. 13, they were acting, the
23 Bellamy law firm was acting on behalf of Jericho in
24 signing the stipulation of dismissal; correct?

25 A. Correct.

1 Q. Is it your understanding that they
2 dismissed Exhibit No. 12 just because the South Carolina
3 Department of Transportation filed a condemnation as
4 stated in the stipulation of dismissal?

5 A. I have absolutely truly no idea what you're
6 getting at. I don't know what you're talking about.

7 Q. So you don't know the purpose of Exhibit
8 No. 12?

9 A. I know why it was filed. We wanted to stop
10 the bridge. That was my direction to them. We have to
11 stop the bridge. It's going to destroy the property.
12 The property is going to be worth nothing.

13 Q. It was stop the bridge or get money for the
14 bridge?

15 A. No, no, no. That was not contemplated. I
16 didn't want the bridge. There is no value to the
17 property anymore with a big bridge going through it. I
18 have to keep saying that.

19 I don't know what you're trying to do, but
20 I promise you, I really mean it. I just wanted to stop
21 it so I can go and develop it. It's beautiful property
22 on the Intracoastal Waterway. It's got a massive bridge
23 on it.

24 Q. Did the South Carolina -- you agree with me
25 that the South Carolina Department of Transportation

1 eventually did file a condemnation action.

2 Do you know what a condemnation action is?

3 A. Yes. They are taking 10.18 acres of my
4 property.

5 Q. Do you understand that that action is
6 currently pending today?

7 A. Yes, it is.

8 Q. And do you understand that by virtue of
9 that action which the South Carolina Department of
10 Transportation filed against Jericho State Capital, that
11 it was exercising its rights of eminent domain to take
12 Jericho's property away?

13 A. They are trying to take our property away,
14 yes.

15 Q. And the first time that the Department of
16 Transportation, to your knowledge, filed any legal action
17 to enforce its right of eminent domain against your
18 property was when it filed its condemnation action
19 against Jericho State Capital?

20 A. I don't know. I don't know when the timing
21 starts. I don't know when the actions began. I don't
22 know.

23 Q. Okay. Who owns that 10.1 acres today?

24 A. I believe Jericho State Capital Corp. of
25 Florida and The Fund.

1 Q. The legal proceeding represented by Exhibit
2 No. 12, the complaint --

3 A. You know what? This brought up something,
4 if we can go back to something. You asked me before --
5 just so we're clear about this, you gave me a value that
6 they said they put on the property for the -- you went on
7 to the taxes.

8 Q. Yes.

9 A. You came up the number. We said the
10 assessed value was \$127,000, and there was \$27,000 worth
11 of taxes paid. You had me look at a value, and you
12 wanted, for the record, the value of \$2.8 million.

13 That was \$2.8 million prior to any
14 contemplated bridge or anything else or the loss of the
15 10.18 acres and the diminished asset value of the rest
16 the property. We stipulated to 2.4 or 2.8 million.

17 I'm not stipulating to that. I just
18 realized that. It just triggered something in my mind.
19 If I don't have that, and you have a value back then,
20 they are saying the value was only \$2.8 million back
21 then. Now with the bridge going through it and it's
22 separated into two development lots that you don't really
23 know what you can do, I think it's a lot less than that
24 number.

25 Q. I was not stipulating to anything. I was

1 asking you questions.

2 A. All right. Fine. I just wanted to be
3 clear.

4 Q. Did Jericho receive communications from the
5 Department of Transportation prior to the Department of
6 Transportation exercising its right to enforce eminent
7 domain by filing its condemnation action?

8 A. I don't know the timelines, so to answer it
9 as candidly as I can, I did receive it. Was it before or
10 after? I don't recall. I did get a call from a Holly
11 Moody who wanted to go look at the property, and I told
12 her she could not go onto my property.

13 I got contact from a gentleman named Clyde
14 Rafford who wanted to go on the property. I told him he
15 could not go on the property. Any further communications
16 they should have, I directed them to Mr. Bellamy.

17 Q. Was there a point in time where Jericho was
18 trying to convince the DOT to build the bridge elsewhere?

19 A. That was my attempt through my attorneys.

20 Q. So basically, there was a point in time
21 when you were involved with the property where the plans
22 by the Department of Transportation were tentative. The
23 bridge could go across your property and the bridge may
24 not go across your property.

25 A. No. As I said earlier, there was no ifs,

1 ands or butts about it. The bride was going through the
2 property. In addition, as I learned later on, there was
3 apparently a sales tax that was added to this.

4 Q. When did you learn that?

5 A. Throughout this whole nightmare that I'm
6 having with this. Apparently, it was common knowledge.

7 Q. Has Jericho commissioned an appraisal of
8 the property to determine the value of the property being
9 sought to be taken by the Department of Transportation?

10 A. Yes.

11 Q. Do you know who that appraiser is?

12 A. Has Jericho?

13 Q. Jericho, yes.

14 A. No, Jericho has not.

15 Q. Jericho has not hired an appraiser?

16 A. No.

17 Q. Has the Bellamy law firm hired an appraiser
18 on your behalf?

19 A. Appraisers, yes.

20 Q. More than one appraiser?

21 A. I don't know. I think so.

22 Q. Do you know who the appraiser is?

23 A. They're not -- I know the appraisals are
24 not complete yet.

25 Q. Do you know who the appraiser is?

1 A. I'm trying to --

2 Q. I'm sorry.

3 A. Relax. Seriously. I understand. I'm
4 trying to remember the names. We had spoken to a couple.
5 One was a guy -- Denafrio is one name that sounds
6 familiar. Another name sounds like McCall and with a J.

7 Q. Jayro? (phonetic)

8 A. Yeah.

9 Q. Have you gotten -- has Jericho received any
10 preliminary conclusions as to what the appraiser is going
11 to opine?

12 A. We have had conversations. Everything is
13 in draft, and it's not been signed off on and not been
14 agreed upon.

15 There is a lot of things that were not
16 taking into consideration in regard to the appraisal; the
17 additional costs of developing a property like this when
18 you have to do two separate of everything.

19 Q. When you say, a lot of things were not
20 taken into consideration, who is doing the consideration?

21 A. The conversations were with me and my
22 attorneys and for them to direct the appraisers to
23 understand what they're looking at here.

24 Q. So your appraisers have reached a
25 conclusion --

1 A. No.

2 MR. NEWBY: Object to the form.

3 BY MR. KOUTRAKOS:

4 Q. I'm trying to --

5 A. I already said no to you.

6 Q. I understand that. But you said -- it
7 sounded to me like you said certain appraisers didn't
8 take things into consideration. I was trying to find out
9 who you were talking about.

10 Are you talking about the DOT's appraisers,
11 or are you talking about your own appraisers? I don't
12 know.

13 A. I got a copy of the DOT appraiser's thing
14 that said with the bridge going through it, it's going to
15 be worth more money, which is genius. The conversations
16 were laying out what we're looking for in the appraisal;
17 for example, what are the damages that this bridge is
18 going to cause, which are immense.

19 I mean, you take a property that was going
20 to be spectacular, one-acre waterfront lots to a tract --
21 I don't know what it's going to be. I have people
22 calling us. They want to make a horse track out of it.
23 What was going to be a beautiful development is now, to
24 me, worth zero.

25 Q. Has the appraiser given any preliminary

1 figure to what he believes the diminution of the property
2 will be because of the --

3 A. He has given certain numbers, yes.

4 Q. What are they?

5 A. I don't know. I don't recall exactly what
6 they were, but they're not complete so...

7 Q. All right. Has he asked you to review the
8 numbers before he completes, before he reaches his final
9 conclusion?

10 A. No. We are doing what his assumptions are.

11 Q. What are his assumptions?

12 A. Well, what factors you have to take into
13 consideration. You have to take consideration the height
14 of this bridge, the sound, the vibration, the pollution,
15 the noise, the liability of a thing coming off the
16 bridge, people throwing stuff off the bridge, tractor
17 trailers in the middle of the night at 3:00 in the
18 morning honking their horns.

19 There are so many things you have to take
20 into consideration by the loss, by this bridge coming
21 through this property.

22 Q. Well, I assume the appraiser is qualified
23 and licensed to do what he was hired to do, and you're
24 telling me all of this stuff. I understand that. I'm
25 not arguing with you.

1 But are those things that you felt a need
2 to communicate to the appraiser that you hired, or are
3 you just telling me because you want to tell me?

4 A. No. I told my lawyers this to make sure
5 that this is all put into consideration. This is not
6 like a little road coming through the property and you
7 can still do stuff.

8 Q. Did the appraiser that Jericho hired come
9 back with a preliminary figure, and did Jericho say, go
10 back to the drawing board because we don't like that
11 figure?

12 A. We've seen some numbers. Okay.

13 Q. Did you like those numbers?

14 A. I was not comfortable with those numbers,
15 no.

16 Q. Can you give me a general idea of what
17 those numbers were?

18 A. It's not completed yet, so I don't want to
19 do that.

20 Q. I mean, I know you don't want to give it to
21 me, but I'm asking: Do you have a recollection of --

22 A. I don't recall what those numbers are.

23 Q. Was it over a million dollars?

24 A. Was which over a million dollars?

25 Q. The effect on value of the property due to

1 the condemnation.

2 A. You have to be more specific.

3 Q. Well, how about you be more specific?

4 A. You're asking the questions. I'm trying to
5 answer you, but you're not asking me the question.

6 Q. Did the appraiser give you a number?

7 A. For what?

8 Q. That's what I'm asking. Did he give you a
9 number at all?

10 A. For what?

11 Q. Any number; value of the property, value of
12 the property before, the value of the property after.

13 A. He is going to be giving us numbers before
14 and after.

15 Q. Has he given you any preliminary numbers?

16 A. I have numbers across the board, anywhere
17 from 2 million to 10 million. When it goes in front of a
18 jury, we'll figure it out. The damages, we can't figure
19 out what damages are at this point.

20 (Defendant's Exhibit 14, condemnation
21 notice, was marked for identification.)

22 BY MR. KOUTRAKOS:

23 Q. I'm showing you what has been marked as
24 Exhibit No. 14. This is the condemnation notice, and I
25 also attached the amended condemnation notice.

1 Would you -- you would agree with me that
2 this is a legal action filed by the South Carolina
3 Department of Transportation against Jericho State
4 Capital Corporation?

5 A. That's what it says, yes. I'm not an
6 attorney. I don't know.

7 Q. You're being sued in a lawsuit where it
8 says South Carolina Department of Transportation v.
9 Jericho State Capital Corporation of Florida, landowner.
10 Do you see that?

11 A. Yes.

12 Q. Do you see where it says lis -- it says,
13 "Lis Pendens"?

14 A. I'm sorry. What page?

15 Q. This is the fourth page of the exhibit.

16 A. Okay.

17 Q. It says, "Notice is hereby given that the
18 Condemnor above named," and it cites a statute, "has
19 brought an action against the Condemnee(s) above named to
20 acquire the real property described herein for public
21 purposes." Do you see that?

22 A. Who's the condemnee?

23 Q. You are, Jericho State Capital.

24 A. My caption says, "Landowner."

25 Q. It should be condemnee.

1 A. Okay.

2 Q. When Jericho received this, are you telling
3 me Jericho did not think it was a legal action?

4 A. I don't know if Jericho ever received it.
5 It went to the attorneys I assume.

6 Q. As far as you know, being the person most
7 knowledgeable at Jericho to testify about these matters,
8 was this the first time that a legal action was filed
9 against Jericho related to the proposed construction of a
10 highway across Jericho's property?

11 A. I have no idea.

12 Q. Is there anything you can tell me about the
13 condemnation action, or do I have to take your lawyer's
14 deposition so he can tell me about the condemnation?

15 A. I don't know. Maybe you have to take their
16 deposition. This is my first foray into condemnation.

17 (A discussion was held off the record.)

18 (Defendant's Exhibit 15, February 20, 2009
19 letter, was marked for identification.)

20 BY MR. KOUTRAKOS:

21 Q. I'm showing you what has been marked as
22 Exhibit No. 15. Take a look at that letter. Now this is
23 addressed to Richard -- is that your dad?

24 A. Yes.

25 Q. Would you have received this letter and

1 reviewed it?

2 A. Yes.

3 Q. At the time, do you recall receiving this
4 letter?

5 A. Yes.

6 Q. Tell me what you knew of this zoning and
7 rezoning process at the time you received the letter, or
8 was this the first time you heard about it?

9 A. The first time I heard about the rezoning?

10 Q. Yes.

11 A. No. I had heard about the rezoning prior
12 to this. I testified to this earlier before. That's
13 fine. I was actually in New York when I got this, and it
14 was read to me, and I was thrilled because what they're
15 saying is if I don't give them the property -- if I don't
16 give the property, as I understand it, to Horry County,
17 then all bets are off; that they're not going to increase
18 the density and everything could go back to my one-acre
19 property. I was thrilled. That's what I wanted.

20 Q. Basically, it was going to revert back to
21 the prior zoning, which is R-1, one-acre lots.

22 A. Yes, and no bridge or anything.

23 Q. Is that what you understand the current
24 zoning to be?

25 A. I have no idea what the current zoning is.

1 Q. At what point in time did you understand
2 the property to be one-acre zoned, whatever designation
3 it was, to allow you to build residential lots one-acre
4 in size?

5 A. When I first made the loan in 2006, it was
6 zoned R-1. R-1, as I understand it today, does not
7 exist.

8 Q. The designation doesn't exist, but are you
9 still allowed to have one-acre lots?

10 A. I have no idea what I'm allowed to do.

11 (Defendant's Exhibit 16, August 31, 2009
12 letter, was marked for identification.)

13 BY MR. KOUTRAKOS:

14 Q. I'm showing you what has been marked as
15 Exhibit 16. Do you recall receiving this letter?

16 A. I do.

17 Q. Do you see in the first sentence -- first
18 of all, it's addressed again, to your father, but you
19 would have received this letter; correct?

20 A. Correct.

21 Q. If you look at it, it says, "South Carolina
22 Department of Transportation is in the process of
23 acquiring rights of way for South Carolina Route 131."
24 Do you see that?

25 A. Yes.

1 Q. And it says, "The records of Horry County
2 indicate that you own property involved on this project."
3 Do you see that?

4 A. Yes.

5 Q. At this point in time when you received,
6 Jericho received this letter, was it your position that
7 Jericho still owned the property and that the Department
8 of Transportation was threatening to do something but at
9 that point in time had not done it yet?

10 A. I have no idea.

11 Q. At that point in time, it was Jericho's
12 position that it owned the property; correct?

13 A. I don't know. I was told that I'm not
14 going to own the property. I don't remember exactly what
15 I was thinking on August 31, 2009, if I still own it or
16 not.

17 Q. Okay. At that point in time, would you
18 agree with me that the Department of Transportation had
19 not initiated its condemnation action?

20 A. I don't know about that.

21 Q. If you look at the condemnation action,
22 Exhibit No. 14, we see it was filed on December 15, 2009.
23 Do you see that?

24 A. I think -- I don't know if that's correct
25 or not. That may be re-filed. I'm pretty sure that's

1 what happened.

2 Q. That it was re-filed?

3 A. Yes.

4 Q. I can represent to you that is the date it
5 was filed. The re-filing occurred a couple years later.

6 A. I don't know when it was re-filed. I know
7 something was done improperly so it was re-filed.

8 Q. Give me a couple seconds. Do you recall
9 after Jericho foreclosed on the second mortgage, how much
10 it bid for the property?

11 MR. NEWBY: How much what?

12 MR. KOUTRAKOS: It bid at the foreclosure
13 sale.

14 THE WITNESS: No idea.

15 BY MR. KOUTRAKOS:

16 Q. You have no idea?

17 A. I don't recall at all.

18 Q. If I ask you questions about the
19 foreclosure, what value Jericho would have placed on the
20 property when it made a bid, you don't have any memory or
21 cannot testify about that today?

22 A. On the foreclosure -- at the date of
23 foreclosure, I think the property was worth -- at the
24 foreclosure, it was prior to the bridge, so it had to
25 have been close to \$40 million.

1 Q. I can tell you the foreclosure was 2007.
2 The foreclosure sale and the deed was -- the foreclosure
3 sale was December 3, 2007.

4 You would have known about the bridge by
5 December 3, 2007, correct?

6 A. No, I didn't.

7 Q. You didn't know about the bridge? You
8 didn't receive the --

9 A. December 2007?

10 Q. Yes. You didn't receive Exhibit No. 11
11 dated September 10, 2007 before the foreclosure sale?

12 A. At the foreclosure, I knew nothing about
13 the bridge.

14 Q. So you would have known nothing about the
15 bridge?

16 A. That's what I testified to, yes.

17 Q. You mentioned in the complaint that you
18 filed against Chicago Title that you didn't think the
19 property is marketable at all.

20 A. Correct.

21 Q. And the damages you seek against Chicago
22 Title is basically the amount that you loaned; is that
23 correct?

24 A. Are you talking about -- not only the money
25 I loaned, but the monies I paid for the cure payments to

1 keep the first mortgage in place for a long period of
2 time without the knowledge of this.

3 Because if I knew there was a bridge, I
4 never would have made cure payments. Every day that goes
5 by, I have outstanding loans on the monies I put up, and
6 they are accruing at 14 percent a year. I don't know if
7 there's a final number yet.

8 Q. Had you known about the bridge, you never
9 would have made cure payments?

10 A. I would never have made the loan.

11 Q. If you knew about the bridge before you
12 made the cure payments, would you have made the cure
13 payments?

14 A. No.

15 Q. So you think the property is worth nothing?

16 A. I think the property has lost almost all
17 its value now. I don't know what you can build there.

18 Q. Let me ask you: Why did you buy the first
19 mortgage for 2.5 million if you thought the property was
20 worth nothing?

21 A. To protect -- I'm a general partner in The
22 Fund, and The Fund had to protect it so hopefully, one
23 day -- I don't know what's going to happen -- to see if
24 you can use the property. I have no idea, but it was to
25 protect the assets.

1 Q. Is your appraiser -- you don't know what
2 your appraiser is going to opine, do you, because he has
3 not finished his analysis; correct?

4 A. Correct.

5 Q. When do you expect him to finish his
6 analysis?

7 A. I don't know.

8 Q. Is that something the Bellamy law firm is
9 coordinating?

10 A. Yes.

11 Q. In the complaint you filed against Chicago
12 Title, you are complaining about the fact -- you're
13 saying or alleging that Chicago Title missed something.

14 What did they miss?

15 A. I'm sorry. There was a possibility -- not
16 even a possibility of a bridge, but a real bridge is
17 being built. There is a bridge being built. Apparently,
18 everybody knew it except nobody said anything.

19 Q. I've heard you making that -- well, I've
20 heard from others that you've made that statement before,
21 "Everybody knew about it." Tell me -- go down the list
22 of everybody who knew about it.

23 A. Everybody who lives in Horry County because
24 they were paying an additional sales tax as I learned.

25 Q. So Jeff Shoup knew about it?

1 A. I don't know if Jeff Shoup knew about it.

2 Q. The surveyors that were hired on the
3 project knew about it?

4 A. I don't know.

5 Q. You said everybody in Horry County.

6 A. I found this out later on. I don't know
7 when it started, the sales tax. You showed me something,
8 and I saw that in 2002, they were talking about it. I
9 relied on my title insurance to make sure that everything
10 is clean and aboveboard.

11 Q. What on the title did you expect Chicago
12 Title to find that you're saying it did not find on the
13 title?

14 A. That somebody else is going to own a piece
15 of your property, and they were building a bridge right
16 through the middle of it.

17 Q. What is the document you say that Jericho
18 believes that Chicago Title did not find that they should
19 have found in the public records?

20 A. I don't understand the question. Please,
21 do it again.

22 Q. Do you believe Chicago Title -- does
23 Jericho take the position that Chicago Title has an
24 obligation to review zoning on a particular piece of
25 property?

1 A. I don't know if it's zoning, but any
2 encumbrance they should have noted. Any possible
3 encumbrances are supposed to be noted. Any exclusions
4 and possibilities should be told and brought to your
5 attention so you know what you're doing.

6 Q. Have you read the ordinance enacted by
7 Horry County in this particular case?

8 A. No.

9 Q. Have you ever seen it before?

10 A. No.

11 Q. Do you know what Jericho is alleging that
12 Chicago Title failed to find in the ordinance that was
13 recorded in the register?

14 A. I don't know.

15 Q. I can show the ordinance and ask you
16 questions about it, and you're not going to know anything
17 one way or the other?

18 A. I relied on the title policy to make this
19 loan, and the title policy missed it.

20 Q. I guess -- I was going to ask you what the
21 amount due on the Jericho mortgage is, but it's been
22 liquidated and there is no amount. It's gone.

23 What would have been the balance of the
24 Jericho mortgage at the time you foreclosed?

25 A. Well -- the balance?

1 Q. Just generally. I know I'm asking you a
2 specific question but --

3 A. I gave you numbers. I can refer back to
4 them as to a certain time. The cure payments, all the
5 engineering we did, all the work we did, probably close
6 to -- right now with accrued interest on the Jericho
7 side, over \$10 million.

8 Q. Does the amount due on -- I guess the first
9 mortgage and second mortgage exceeds the value of the
10 property, correct?

11 A. Yes.

12 Q. And that's Jericho's position, that it
13 exceeds the value of the property?

14 A. Yes.

15 Q. Was there a point in time when the balance
16 did not exceed the value of the property?

17 A. When the balance --

18 Q. I'm sure there was. The value of the
19 property was greater than the balance due on the first
20 and second mortgage.

21 A. Sure.

22 Q. Can you attribute -- and eventually, the
23 balance exceeded the market value, correct?

24 Over the course of time, would you agree
25 with me that the balance on the first and second

1 mortgagee eventually exceeded the market value?

2 A. Because of the bridge coming through, yes.

3 Q. Did it have anything to do with the
4 worldwide financial crash where builders in Horry County
5 went bankrupt, developers went bankrupt, there was an
6 overflow of inventory on the property and you couldn't
7 sell anything, foreclosures were at an all-time record
8 high, and they actually had to hire another judge to hear
9 foreclosures?

10 Do you think any of those reasons had
11 anything to do with perhaps, the decrease in the market
12 value?

13 A. Of course it did, and I've been involved --
14 I'm being candid. I have been involved in real estate
15 throughout the United States, and that's absolutely --
16 you know, that was a risk that we were willing, that we
17 were willing to take, a financial risk we were willing to
18 take, but not one that is not told to us and not a bridge
19 coming through it.

20 That's a business risk. The market can go
21 up and down and do all different things, but you can't
22 build a bridge through my property, and you can't ask me
23 to change the value.

24 Q. Do you agree with me that the title
25 insurance company does not insure that business risk that

1 you were talking about, the decrease in valuation?

2 Would you agree with me the title insurance
3 policy -- and you would never expect the title insurance
4 policy to insure that.

5 A. I'm not looking for you to do anything
6 about the business risk. I'm talking about the bridge
7 coming through the property. I would have never made
8 this loan. It's not -- I would never have made the loan
9 if there was bridge, even if there was a thought of a
10 bridge.

11 Q. You have alleged, Jericho has alleged that
12 Chicago Title acted in bad faith.

13 Do you believe that Chicago Title acted in
14 bad faith?

15 A. I don't know what the term bad faith means.
16 I think they missed it, and I think that's why you're
17 here to depose me, because you realize, oh, no. We
18 screwed up here and we got to now find a way to get out
19 of this. Listen, I understand.

20 Q. There are reasons why I'm here, and the
21 reasons why I'm here are because the judge -- we filed a
22 motion to dismiss. He was this close to filing it
23 because there was merit to the case and so we had to
24 actually do some discovery.

25 A. There is no merit?

1 Q. Yes. Have you looked at the exclusions in
2 the policy? Has anybody shown you the exclusions in the
3 policy related to eminent domain?

4 A. Yes. I believe that's absolutely -- I've
5 read it. I've seen it, and I believe that follows --
6 following the delivery of the policy, not prior to it;
7 not when it was out there already.

8 The reason why we get title insurance is to
9 protect that we own it. I don't want to know -- like if
10 you're doing a house and that -- I'm buying a house, and
11 I go buy a title policy. Then I find out a quarter of my
12 house is owned by somebody else. Well, then, you know
13 what? I wouldn't buy that house.

14 I wouldn't have lent the money on this
15 property ever if I knew there was a possibility. I go to
16 my professionals. They go to other professionals. All
17 the professionals do is -- I have spent millions and
18 millions of dollars with Chicago Title on title policies.
19 I have done hundreds and hundreds of deals. I've never
20 had an issue. Somebody dropped the ball here and it
21 wasn't us.

22 Q. Are you saying somebody dropped the ball in
23 closing the transaction?

24 A. No. I'm not saying that at all. I'm
25 saying that Chicago Title missed it.

1 Q. Missed it?

2 A. Missed giving the exclusion, noting that
3 there was a possibility -- just saying there was a
4 possibility, this transaction would never ever have
5 happened.

6 Q. My question -- I'm probably not going to
7 ask a good question. When you say, "they missed
8 something," are you saying at the time of the
9 transaction, at the time the policy was issued, they
10 missed something; in other words, they missed this
11 ordinance that is referenced in the complaint?

12 A. I'm saying Chicago Title should have
13 noticed. When I paid all of this hundreds of thousands
14 of dollars for the policies, they should have told me,
15 listen, you know what? There is a problem. There is a
16 potential problem. There may be a bridge. I would have
17 stopped.

18 Q. The question I'm asking you is -- Chicago
19 Title disagrees, respectfully, with your reason as to
20 what it should have picked up at the time they issued the
21 policy or not.

22 The question I'm asking you is, in the way
23 it happened, the claim -- when a claim was filed by
24 Jericho, do you believe that Chicago Title in handling
25 the claim, acted dishonestly?

1 A. Oh, yes. As their first response was by
2 denying it outright, yes, I do. I think it was
3 inappropriate, yes. I don't know why you bother buying
4 title insurance if you can't insure the title and not the
5 loss of the property.

6 Q. Let's take a break.

7 A. I have to get back to my office. Come on.

8 Q. We have to take a five- to ten-minute
9 break.

10 (A brief recess was taken from 1:51 p.m. to
11 1:58 p.m.)

12 BY MR. KOUTRAKOS:

13 Q. Can you explain to me what Jericho has done
14 to try to find documents related to this transaction,
15 like e-mails and such?

16 A. I've gone through everything that we had.
17 I made copies of my files.

18 Q. How does your e-mail system work?

19 A. How does it work?

20 Q. Yes. Do you have a system, or do you use
21 third-party providers to provide e-mail for you? What is
22 your e-mail address? It's aol.com; isn't it?

23 A. And gmail.com.

24 Q. Does that come up on a Microsoft Outlook
25 type system, or do you just log into AOL?

1 A. I log in.

2 Q. Does your company have a network? Does
3 your company have any backup tapes of prior documents
4 that may have been saved to any computer system or hard
5 drive?

6 A. No.

7 Q. If I wanted to -- let me ask you this. Let
8 me back up. I told you I was going to ask you bad
9 questions.

10 If somebody sends you an e-mail with a
11 contract scanned like a PDF, is there a place where you
12 would save it?

13 If you wanted to save that document to the
14 computer, would you save it to your individual computer's
15 hard drive, or is there a network or some kind of joint
16 system where Scott can access something that you may --

17 A. No. He cannot access anything of mine.

18 Q. You have your own personal computer?

19 A. Yes. Now since, I am going to guess a year
20 and a half ago, I can -- everything is now on Carbonite,
21 or whatever that is, but that's because my computer
22 completely crashed.

23 Q. Are you able to go into your AOL account
24 and pull up old e-mails?

25 A. I did.