

ORIGINAL

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W Miller, Circuit Court Judge

Case No 2008-CP-23-05739

RECEIVED

APR 04 2011

SC Court of Appeals

Andrew P (Andy) Ballard,

Respondent,

v

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc

Appellants

**RECORD ON APPEAL
VOLUME I OF III**

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INDEX

VOLUME I

Orders

Order of May 20, 2010	1
Order of May 3, 2010	2
Consent Order of January 8, 2010	16
Order of December 10, 2009	18

Pleadings

Complaint dated July 30, 2008	19
Answer and Counterclaim of Defendants Tim Roberson, Rick Thoennes, Rick Thoennes III and Warpath Development, Inc dated August 28, 2008	26
Plaintiff's Reply to Counterclaims of Defendants, Tim Roberson, Rick Thoennes, Rick Thoennes, III and Warpath Development, Inc dated September 17, 2008	33
Motion to Amend Complaint dated August 3, 2009	36
First Amended Complaint dated August 25, 2009	55
Answer and Counterclaims of Defendants Tim Roberson, Rick Thoennes, Rich Thoennes III, and Warpath Development, Inc , to Plaintiff's First Amended Complaint dated September 9, 2009	71
Amended Answer and Counterclaims of Defendants Tim Roberson, Rick Thoennes, Rick Thoennes III, and Warpath Development, Inc , to Plaintiff's First Amended Complaint dated September 17, 2009	87
Plaintiff's Reply to Defendants Counterclaims dated September 18, 2009	103
Plaintiff's Motion for Summary Judgment dated October 27, 2009	109
Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment and in Support of Plaintiff's Motion for Summary Judgment dated November 12, 2009	113

Defendants' Memorandum In Opposition to Plaintiffs Motion for Summary Judgment dated November 13, 2009	285

Defendants' Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment dated November 19, 2009	437

VOLUME II

Plaintiff's Post Trial Memorandum dated April 6, 2010	450

Reply to Plaintiff's Responsive Post-Trial Brief dated April 9, 2010	455

Defendants' Motion for Reconsideration and/or For a New Trial dated May 14 2010	465

Plaintiff's Letter to the Court Replying to Motion for Reconsideration dated May 17, 2010	468

Trial Testimony

Pretrial Motions	470
Opening Statement, Appellant	474
Andrew "Andy" Ballard	
Direct Examination by Mr Holleman	476
Cross Examination by Mr Howard	520
Redirect Examination by Mr Holleman	575
Frederick Thoennes	
Designated Excerpts by Mr Holleman	581
Designated Excerpts by Mr Howard	613
Timothy Roberson	
Designated Excerpts by Mr Holleman	629
Designated Excerpts by Mr Howard	678
Frederick Thoennes, III	
Designated Excerpts by Mr Holleman	695
Designated Excerpts by Mr Howard	724
Additional Designated Excerpts by Mr Holleman	731
Timothy Roberson	
Direct Examination by Mr Howard	732
Cross Examination by Mr Holleman	803
Redirect Examination by Mr Howard	842
Recross Examination by Mr Holleman	845
Frederick Thoennes, III	
Direct Examination by Mr Howard	849

Cross Examination by Mr Holleman	863
Redirect by Mr Howard	874
Frederick Thoennes, Sr	
Direct Examination by Mr Howard	876
Cross Examination by Mr Holleman	893
Redirect by Mr Howard	907
Recross Examination by Mr Holleman	908
Post-trial Motions	911

VOLUME III

Plaintiff's Exhibits

1	915
2	918
3	990
4	996
5	998
6	999
7	1002
8	1004
9	1015
10	1016
11	1018
13	1020
14	1030
15	1032
16	1034
17	1036
18	1037
19	1044
20	1045
21	1046
22	1048
26	1049
27	1054

Defendants' Exhibits

1	1072
2	1073
3	1075
4	1076
5	1112
6	1114
7	1115

Certificate of Counsel	1116

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

JUDGMENT IN A CIVIL CASE
CASE NO 2008CP2305739

Andrew P Andy Ballard vs Tim Roberson

2010 MAY 21 P 3 06

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 or heard and a decision rendered
- ☐ **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 _____

IT IS ORDERED AND ADJUDGED

☐ See attached order

☒ Statement of Judgment by the Court

defendants' Motion for Reconsideration and/or for a New Trial is hereby DENIED

Dated at Greenville, South Carolina, this _____ day of 5/20, 2010

Court Reporter _____

Edward W. Miller

PRESIDING JUDGE EDWARD W MILLER

This judgment was entered on the 21 day of May, 2010 and a copy mailed first class this 21 day of May, 2010 to attorneys of record or to parties (when appearing pro se) as follows

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SCRPC APP 24/FORM 4 (Rev 6/02)

Paul B Wickensimer - Clerk of Court

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE 2010 MAY -4 AM 9 22
FOR THE THIRTEENTH JUDICIAL CIRCUIT

FILED CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO SC Case Number 2008-CP-23-5739

Andrew P (Andy) Ballard,
Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc ,

Defendants

ORDER

This case was tried on March 15, 16, and 17, 2010. This suit involves a corporation, the defendant Warpath Development Inc ("Warpath"). The plaintiff Andrew P Ballard ('Ballard') is a minority shareholder in Warpath, the individual defendants are the controlling shareholders. Ballard's amended complaint alleges breach and anticipatory breach of a Stock Purchase Agreement, breach of the covenant of good faith and fair dealing, breach of Warpath's Articles of Incorporation, breaches of the individual defendants' fiduciary duties, and oppression of the minority shareholder by the defendants. The defendants brought counterclaims against Ballard alleging breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation and violation of S C Code § 35-1-501 in connection with the sale of securities.

The case was tried to a jury. As set out below, after the presentation of the plaintiff's case and the cross examination of the defendants' first witness, the defendant Tim Roberson ("Roberson") the defendants dismissed their counterclaims with prejudice. The Court then

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dismissed the jury, the trial was completed, and the Court took the plaintiff's equitable claims under advisement

FINDINGS OF FACT

1 Ballard is the organizer of the corporate defendant, Warpath

2 Ballard worked several years to obtain a lease from Duke Power for property on Lake Keowee owned by Duke Energy Carolinas, LLC ("Duke") in Pickens County in order to develop a marina and associated facilities In this connection, Ballard worked with Pickens County to approve his proposal for developing a marina on the property

3 On January 3, 2007, Duke signed a lease with Warpath (the "Lease"), leasing the property to Warpath for use as a public park and/or public recreational area as shown on a Conceptual Plan attached to the Lease, which provided for a marina on the property

4 After Warpath entered into the Lease with Duke, Ballard and the individual defendants entered into discussions concerning potential participation in Warpath

5 The plaintiff and all the defendants are parties to a Stock Purchase Agreement dated May 29, 2007 (the Agreement")

6 The Articles of Incorporation of defendant Warpath, dated September 8, 2004, authorize the issuance of 100,000 shares Those articles have never been amended

7 At the time the Agreement was entered into Warpath had issued 40,000 shares, and Ballard owned all the shares

8 Under the Agreement the individual defendants received 80,000 shares of Warpath They received 20,000 shares from Ballard, and they were issued an additional 60 000 shares from the corporation itself

9 In paragraph 1, the Agreement provides that the individual defendants "will pay to Ballard upon closing the sum of \$1,000,000 in exchange for 20,000 shares of Ballard's 40,000

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shares ” Ballard received the \$1,000,000 personally the corporation received no payment in connection with the closing Roberson provided the \$1,000,000

10 The Agreement further provides in paragraph 1 that the individual defendants “will receive from the corporation additional shares so that Ballard will hold 20% of the stock and the other 80% will be held” by the individual defendants “when all shares are finally issued ”

11 The Agreement contains commitments by the individual defendants to provide funding and services to the corporation In paragraph 6, “Roberson agrees to provide the necessary capital to obtain long term financing on the project ” In paragraph 5 the defendant Rick Thoennes (Thoennes”) and Rick Thoenes III (“Thoennes III’) agree to provide ‘development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate ”

12 In paragraph 1, the Agreement also sets out the “final holdings” of the individual shareholders Ballard’s “final holding” is 20% The Agreement further provides in paragraph 7 that Ballard will not be required to sign any personal guarantees The Agreement provides for no obligation for Ballard to provide any additional contribution of capital or any additional funds to Warpath

13 The corporation issued 60 000 additional shares to the individual defendants

14 The individual defendants argue that they paid \$1,000,000 for the entire 80,000 shares However, the Agreement and the method of payment make clear that the individual defendants paid Ballard \$1,000,000 for 20,000 of his shares In addition, they committed to provide funding and services to the corporation and received 60 000 shares from the corporation

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15 Consistent with the plain language of the Agreement, Thoennes testified that the individual defendants earned their shares by performing their obligations to the corporation set out in the Agreement

16 The individual defendants received 60,000 shares from the corporation in exchange for their promises to provide the funding and services to the corporation as set out in the Agreement

17 Upon the closing, the individual defendants controlled Warpath and owned 80% of its stock

18 The individual defendants' attorney drafted the Agreement and handled the closing

19 Warpath did not place in escrow the 60,000 shares received by the individual defendants from the corporation

20 Those 60,000 shares have never been placed in escrow

21 After the individual defendants acquired their shares they became unhappy about the development of Warpath because Duke would approve a plan for the marina that would accommodate 102 wet boat slips, whereas the individual defendants had planned for up to 200 wet boat slips and had made financial projections based on 200 wet slips Further, it took longer to obtain approval for permits from the South Carolina Department of Health and Environmental Control ("SC DHEC") than the individual defendants had hoped for

22 The individual defendants decided that they wanted Ballard out of the corporation The individual defendants admitted at trial that at one point they wanted Ballard out of the corporation In an email dated October 28, 2007, Thoennes III wrote Thoennes and

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Roberson “Don’t we want to get [Ballard] out of the deal?” Roberson replied “I think he will take his 1M and run after a little threatening posturing and whining ”

23 The individual defendants came up with a plan to issue additional stock
Roberson wrote Thoennes on December 28, 2007

When an investor realizes that an expected ROI [return on investment] is not forthcoming, his only viable option is acquire more equity at a reduced rate In order to properly refinance the project, I would suggest that we increase the number of outstanding shares to 500,000 with a mixture of both preferred and common stock As long as the outstanding shares remain in the treasury, there is no dilution of current shareholders However, those outstanding shares could be used as tender (same as cash) to accomplish the needs of the corporation ”

24 At the time this message was written, Roberson was the only investor who had made a cash investment, by providing the \$1,000,000 for the purchase of Ballard’s 20,000 shares

25 Under the Agreement, Roberson personally has the obligation to provide the necessary capital to obtain long term financing for the project ’

26 The individual defendants approached Ballard to ask him to take action to reduce his percentage ownership in Warpath or to repay funds he had received for his 20,000 shares, in order to improve the relative financial and/or ownership positions of the individual defendants Ballard refused to agree to a change in the ownership of the corporation or the terms of the arrangement as set out in the Agreement

27 On May 1, 2008 a meeting was held of the shareholders of Warpath At the meeting, the individual defendants elected themselves directors and did not elect Ballard a director Prior to this meeting, Ballard had been a director and officer of Warpath Ballard asked to be elected a director, but none of the defendants seconded his nomination, and his nomination failed for lack of a second

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28 After they elected themselves directors, the individual defendants passed a Board resolution proposing that Warpath issue an additional 900,000 shares beyond the 100,000 shares outstanding and authorized by the Articles of Incorporation, ‘ in order to raise capital, pay expenses and offer employee incentives ” The Board then presented a resolution to the shareholders authorizing the issuance of the 900,000 shares “for the purpose of raising additional capital, paying expenses and offering employee incentives ” That resolution was passed by the votes of the individual defendants, with Ballard dissenting

29 The minutes of the shareholder meeting contain no authorization for amendment of the Articles of Incorporation

30 At the meeting, Roberson was elected President of Warpath, Thoennes III was elected Vice President, and Thoennes was elected Secretary-Treasurer They remain in those offices today

31 After this meeting, Ballard was excluded from the management and planning for Warpath and was not kept informed concerning any plans for financing the development of the project

32 After this meeting, on July 30, 2008, Ballard filed suit seeking an injunction against the issuance of stock beyond the 100,000 shares already issued In response, the defendants filed an answer and counterclaims, accusing Ballard of breach of contract and breach of contract with a fraudulent act and alleging promissory estoppel based on Ballard’s allegedly purposeful false statements regarding approvals from Duke and Pickens County

33 During discovery, Roberson testified that he planned to employ the husband of his niece, his niece, two of his sisters, and a friend at the marina once it was operating

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34 After discovery on August 25, 2009, Ballard amended his complaint to add claims of breach of fiduciary duty and oppression of the minority shareholder, among other things

35 Thereafter, on August 27, 2009, after Ballard amended his complaint and while the litigation was pending, the defendants issued a notice of shareholder meeting where they proposed to elect a slate of directors that would include Ballard as a director

36 On September 29, 2009, the shareholder meeting was held, and Ballard was elected one of four directors at the motion of the individual defendants, as were the individual defendants

37 Subsequent to that election, there has been no meeting of the board of directors of Warpath. The individual defendants have not shared with Ballard any plans or proposals for the financing of the Warpath development, and Ballard has not received updates on the status of the development or the finances or financial plans of Warpath. The election of Ballard as a director was a litigation tactic and did not provide him any meaningful role in the governance of Warpath.

38 In response to the amended complaint, the defendants filed counterclaims that accused Ballard of breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation, and violation of S.C. Code § 35-1-501 in connection with the sale of securities. The defendants alleged that Ballard made intentionally false representations regarding the marina in connection with the sale of the Warpath stock.

39 At trial, after the cross examination of Roberson by Ballard's counsel, it became clear that the evidence did not support the defendants' counterclaims and that, in particular, there was no evidence that Ballard had defrauded the defendants.

40 At trial, after the cross examination of Roberson by Ballard's counsel, the defendants dismissed their counterclaims with prejudice

41 After dismissal of the counterclaims with prejudice, the Court dismissed the jury, heard the remaining evidence, and took Ballard's equitable claims under advisement

42 Prior to trial, the Court had entered an order enjoining the defendants from issuing any additional stock until the entry of final judgment in this case

CONCLUSIONS OF LAW

1 S C Code § 33-6-210 (e) (emphasis added) provides that "[e]xcept as otherwise provided in subsection (f) [not relevant here], *the corporation must place in escrow* shares issued for a contract for future services or benefits or for a promissory note "

2 By its plain language, this statute is mandatory and requires the corporation to place in escrow shares issued for a contract for future services or benefits

3 In connection with the Agreement, the individual defendants obtained 80,000 shares of Warpath The individual defendants were issued 60,000 shares by Warpath Ballard owned 40,000 shares, and the individual defendants bought 20,000 of his shares Ballard personally received \$1 million from the individual defendants for his 20,000 shares The Agreement provides that Ballard received "\$1,000,000 for 20,000 shares of Ballard's 40,000 shares" and that the defendants 'will receive from the corporation additional shares " The corporation received no payment from the defendants for the additional 60,000 shares

4 Instead, in the Agreement, the individual defendants agreed to perform services for, provide capital to, and arrange for long term financing for the corporation The \$1 million

was paid to Ballard personally. The remaining 60,000 shares obtained by the defendants were issued by the corporation, which received none of the \$1 million.

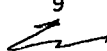
5 These 60,000 shares were issued for a contract or contracts for future services or benefits, as set out in S.C. Code § 33-6-210 (e). Under the plain language of the statute, they must be placed in escrow.

6 In his amended complaint, Ballard did not state a claim under S.C. Code § 33-6-210 (e). However, at trial, both parties argued this issue extensively and the Court received post-trial briefing on the issue. At trial, Ballard moved to amend his amended complaint to add this claim. The Court grants this motion. See SCRPC 15 (a) & (b).

7 The defendants are ordered to place in escrow the 60,000 Warpath shares that were issued to the individual defendants by Warpath.

8 Ballard's Twelfth Cause of Action seeks relief under S.C. Code §§ 33-14-300 and 310. Under those statutes, a Court may "provid[e] for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders" and may "direct[] or prohibit[] any act of the corporation or of shareholders, directors, [or] officers" upon a finding that "the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder." S.C. Code §§ 33-14-300 (2)(ii) and 310 (d)(3) and (d)(4).

9 Under Kiriakides v. Atlas Food Systems & Services, Inc., 343 S.C. 587, 603-06, 541 S.E.2d 257, 266-68 (2001), the Court must evaluate whether the conduct and actions of the defendants toward Ballard are "oppressive" or "unfairly prejudicial"; the Court does not evaluate the "reasonable expectations" of the minority shareholder.

9


10 The Court examines and weighs the ‘totality of the circumstances’ in determining whether a buyout or other relief is appropriate Kiriakides, 343 S C at 606 541 S E 2d at 268

11 In this case, the totality of circumstances demonstrates that the individual defendants acted oppressively towards Ballard as the minority shareholder and acted in a way that was unfairly prejudicial to him

12 The evidence demonstrates that

- (a) After obtaining control of the corporation the individual defendants determined they wanted Ballard out of the corporation
- (b) The individual defendants decided to have the corporation issue additional stock to increase their return on investment,
- (c) The individual defendants removed Ballard as a director by refusing to elect him as one of four directors at the first stockholders meeting after they obtained control of the corporation, even though Ballard was the founder and organizer of the company and one of four shareholders,
- (d) Even though Roberson had the contractual obligation to provide the necessary capital for the corporation to obtain long term financing, the individual defendants passed a corporate resolution to issue additional stock to raise capital,
- (e) Upon the issuance of the additional 900,000 shares, Ballard’s ownership in Warpath would have been reduced to 2%, a tenth of his ‘ final holdings ’ as provided in the Stock Purchase Agreement,
- (f) After Ballard was no longer a director, he was excluded from the management of Warpath and was not provided information concerning the status of any efforts to finance the development or any periodic updates on the status of the development,

(g) While the litigation was pending and after Ballard filed additional claims alleging violations of fiduciary duty and corporate oppression, the individual defendants called a shareholder meeting and elected Ballard a director. Thereafter, they never held a meeting of the board of directors and did not provide Ballard with substantive information regarding the finances, financial plans, and development plans for the marina. The election of Ballard was a litigation tactic and did not provide Ballard any meaningful role in the governance of Warpath,

(h) Roberson, who is the President of Warpath, testified that he plans to employ his niece's husband, his niece, his two sisters, and a friend at Warpath. Ballard is not an employee of Warpath, and there was no testimony of any plans to make him an employee. The corporate resolution passed by the individual defendants also allows for stock to be issued to offer "employee incentives." Thus, Roberson intends to have Warpath employ members of his family and a personal friend, and the corporate resolution passed by the defendants provides that his family and friend may receive stock in the company. Ballard will not receive a salary from the company and will not receive stock as an employee incentive, since he is not an employee of Warpath and there are no plans for him to be an employee of Warpath,

(i) The Articles of Incorporation of Warpath provide for the issuance of 100,000 shares of stock, they have never been amended, and the stockholders of Warpath have never authorized an amendment of the Articles of Incorporation increasing the amount of authorized shares beyond 100,000. Thus, the resolution adopted by the shareholders authorizing the issuance of 900,000 additional shares is contrary to the Articles of Incorporation of Warpath, and any issuance of stock by Warpath beyond the 100,000 shares already issued would be in violation of the Articles of Incorporation,

(j) The defendants filed and pursued counterclaims against Ballard making serious allegations against him of intentional false statements in connection with the sale of securities. At trial, there was no evidence to support these claims of fraud, and the evidence presented at trial did not support the counterclaims asserted by the defendants. After Roberson's cross examination, it was apparent that there was no basis for the counterclaims. Roberson's testimony included admissions that Ballard had told the defendants exactly what Duke had told them regarding wet slips, that Ballard was not responsible for the period of time taken by SC DHEC to issue permits, and that the defendants knew that the issuance of the permits was uncertain. Thus, the individual defendants, who are officers, directors, and majority shareholders of Warpath, made baseless counterclaims against Ballard, the minority shareholder.

13 The defendants have argued that Ballard has preemptory rights to purchase stock when stock is issued pursuant to the resolution adopted by the individual defendants. However, that argument disregards the provisions of the Agreement. The Agreement provides that Roberson has the obligation to provide the necessary capital to obtain long term financing and specifically provides that Ballard will not even be required to sign any personal guarantees. The Agreement likewise provides that Ballard's "final holding" will be 20% of the company. The authorization to issue stock to raise capital was thus contrary to the terms of the Agreement, which places that obligation on Roberson, and Ballard specifically has no obligation under the Agreement to provide additional capital to the corporation in order to maintain his final holding of 20%.

14 Therefore, the Court finds the defendants acted in a manner that is illegal, oppressive, and unfairly prejudicial to Ballard, within the meaning of S.C. Code § 33-14-300 (2)(ii).

15 The Court has observed the parties during pretrial proceedings and during the trial and has reviewed materials regarding their business relationships during pretrial motions and at trial. From the evidence and the Court's observation of the trial proceedings and based on the findings set out above, the Court concludes that the proper equitable remedy is to provide for the purchase of Ballard's shares at their fair value by the defendants, jointly and severally, as set out in S.C. Code § 33-14-310 (d)(4). This remedy is the appropriate one given the conduct of the defendants as found above. It also is apparent that the plaintiff and the individual defendants are no longer compatible as co-owners of Warpath.

16 In order to provide for the purchase of Ballard's shares, the Court must determine the fair value. The Court directs the parties to communicate and attempt to agree on an appraiser or valuation expert for the valuation of Ballard's shares, taking into account the Agreement. If the parties are unable to agree on an appraiser or valuation expert by May 10, 2010, the parties are instructed to separately provide to the Court by May 17, 2010, the names of three proposed appraisers or valuation experts, without either party disclosing its list to the other. The Court will then select an appraiser or valuation expert to value Ballard's shares, taking into account the Agreement. Thereafter, the Court will consult with the parties to set a date for a valuation proceeding.

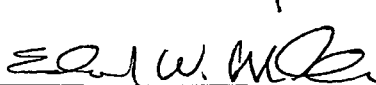
17 The Court has previously entered an injunction against the issuance of further shares of Warpath until the entry of final judgment. That injunction remains in place, according to its terms, and is also reaffirmed in order to preserve the status quo pending the purchase of Ballard's shares.

18 Ballard's remaining causes of action seek an injunction against the issuance of additional shares and the return by the individual defendants to Warpath of the 60,000 shares

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they received from the corporation. Since the Court orders the defendants to buy Ballard's shares and since the existing injunction will stay in place until that purchase is complete, the Court need not and will not address Ballard's other claims at this time.

IT IS SO ORDERED



The Hon. Edward W. Miller
Circuit Judge

Greenville, South Carolina

5-3, 2010

STATE OF SOUTH CAROLINA)
2008 JAN 11 AM 10 39) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)
CLERK OF COURT)
PAUL B. WICKENS/VER)
GREENVILLE CO) SC

Andrew P (Andy) Ballard

C A No 2008 CP 23 5739

Plaintiff,

v

CONSENT ORDER

Tim Roberson, Rick Thoennes Rick
Thoennes III, and Warpath Development
Inc

Defendants

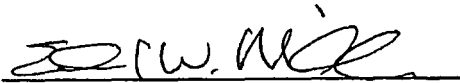
The Complaint in the above captioned matter sets forth allegations that the individual Defendant shareholders have and/or will vote to authorize and issue shares of Warpath Development Inc in excess of the 100 000 set forth in Warpath Development Inc 's Articles of Incorporation on file with the South Carolina Secretary of State Plaintiff further sets forth in his Complaint that the Defendants are contractually prevented from taking such action While Plaintiff's allegations are denied by the Defendants, in order to maintain the *status quo* of the outstanding shares of Warpath Development pending the outcome of trial the parties consent to the following It is hereby

ORDERED that between such time beginning with the date of this Order and the entry of a judgment by the Court the Defendants shall not take any future action to authorize or issue any shares of Warpath Development Inc in excess of the number of those shares owned by Andy Ballard, Tim Roberson, Rick Thoennes and Rick Thoennes III, which total 100,000 It is further

ORDERED that this order shall cease having any legal effect upon an agreed upon application of all parties entry of a stipulation of dismissal in settlement of this matter or entry of a judgment by the court

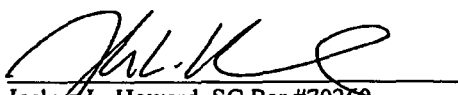
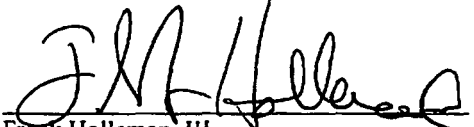
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IT IS SO ORDERED


Judge Edward W. Miller
Thirteenth Judicial Circuit

1/8/10, 2009
Greenville South Carolina

WE CONSENT

 Joshua L. Howard SC Bar #70260 HAYNSWORTH SINKLER BOYD, P A 75 Beattie Place Post Office Box 2048 Greenville, SC 29602 (864) 240 3200 (864) 240 3300 jhoward@hsblawfirm.com Attorneys for the Defendants Dated <u>1/4/10</u> Greenville, South Carolina	 Frank Holleman, III WYCHE BURGESS FREEMAN & PARHAM P O Box 728 Greenville, SC 29602 (864) 242 8200 (864) 235 8900 Fholleman@Wyche.com Attorneys for the Plaintiff Dated <u>12/31/09</u> Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Andrew P (Andy) Ballard,

Plaintiff

v

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc ,

Defendants

FILED CLERK OF COURT

U.S. DEPT. OF JUSTICE

PAID 3 W/IN 10 DAYS

2009 DEC 11 P 2 08

C A No 2008-CP-23-5739

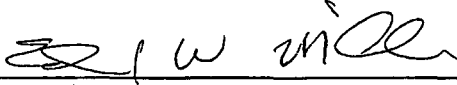
IN THE COURT OF COMMON PLEAS

ORDER

These matters are before the Court on Plaintiff and Defendants cross motions for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. A hearing was had on these motions on November 16, 2009. After considering the memorandums submitted and the arguments of both parties, the Court finds that there is no legal basis to dismiss and/or grant summary judgment on any of either the Plaintiff's or the Defendants' claims or counterclaims. Further, the Court finds that genuine questions of material fact remain for the trier of fact such that neither the Plaintiff nor the Defendants can meet the legal standard required to receive a grant of summary judgment.

It is therefore, **ORDERED** that Defendants motion to dismiss and/or for summary judgment is hereby denied. It is further **ORDERED** that Plaintiff's motion for summary judgment is hereby denied.

IT IS SO ORDERED



Judge Edward W. Miller
Thirteenth Judicial Circuit

12-1-09, 2009
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
2008 JUL 30 P 4 23'

2008-CP-23-5139

Andrew P (Andy) Ballard,

Plaintiff,

CASE NO _____
FILED CLERK OF COURT
GREENVILLE CO S C
PA 11 1 WICK NSIMFR

vs

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc

Defendants

**COMPLAINT
(JURY TRIAL)**

The plaintiff, Andrew P (Andy) Ballard ("Ballard"), complaining of the defendants,
alleges as follows

1 Ballard is a citizen and resident of Greenville County, South Carolina

2 The defendants Tim Roberson, Rick Thoennes, and Rick Thoennes III are
citizens and residents of Greenville County, South Carolina.

3 The defendant Warpath Development, Inc ("Warpath") is a South Carolina
corporation with its records located in Greenville County, South Carolina The principal
asset of Warpath is a lease on property located at Lake Keowee in Oconee County, South
Carolina, and associated assets

4 Warpath has been working toward developing a marina on the property
located on Lake Keowee

5 Ballard and the defendants are parties to a Stock Purchase Agreement, dated
May 29, 2007 attached hereto and incorporated herein (the Agreement)

6 Prior to the Agreement Ballard was the sole shareholder of Warpath

7 Under the Agreement, the individual defendants became shareholders of
Warpath

8 In the Agreement, the defendants expressly agreed that the final holdings” of stock in Warpath consist of Ballard owning 20,000 of the outstanding 100,000 shares of Warpath, or 20% of Warpath

9 Further in the Agreement the defendants agreed that the defendant Tim Roberson would “provide the necessary capital to obtain long term financing on the project” and that Ballard would not be required to sign any personal guarantees to obtain financing by the corporation

10 After entering into the Agreement, the individual defendants elected themselves the directors of Warpath

11 At a directors meeting on May 1, 2008, the individual defendants passed a motion purportedly to authorize the issuance of 900 000 additional shares of Warpath Treasury Stock in order to raise capital, pay expenses and offer employee incentives, and purportedly authorized Warpath to file the necessary paper work purportedly to authorize the issuance of an additional 900,000 shares At a shareholders meeting on the same day, the individual defendants purportedly approved the issuance of the additional 900,000 shares This action is in breach of the Agreement

12 Further, if these shares are issued and sold or otherwise transferred to shareowners, Ballard s percentage ownership in Warpath would be reduced to 2%, thus breaching the Agreement

13 Further, the defendants have breached the Agreement in that the defendant Tim Roberson has not provided the necessary capital to obtain long term financing and instead the defendants have begun the process to sell Warpath stock, contrary to the express terms of the Agreement

14 The actions of the individual defendants and the action of the defendant Warpath, purportedly authorized individually and collectively, are in direct violation of the Agreement

FOR A CAUSE OF ACTION

15 The defendants have breached the Agreement

16 The proposed issuance of stock by the defendant Warpath will cause Ballard irreparable harm and Ballard has no adequate remedy at law

17 A temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants are in the public interest and would not result in an undue burden on the defendants

18 Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of Warpath

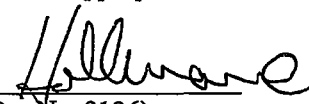
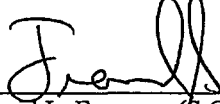
19 Ballard is entitled to the costs of this Action

WHEREFORE Ballard asks that the Court

1 Issue a temporary and a permanent injunction barring the issuance of stock in the defendant Warpath by the defendants that would reduce Ballard s final holdings in Warpath to less than 20% of the stock of the defendant Warpath,

2 Award him costs,

3 Award him whatever further relief the Court considers appropriate



David L. Freeman (S C Bar No 2126)

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Dated 7/30/08
Greenville, South Carolina

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

STOCK PURCHASE
AGREEMENT

This Agreement made and entered into this 29th day of May, 2007 by and between Andy Ballard hereinafter referred to as *Ballard* Tim Roberson hereinafter referred to as *Roberson* Rick Thoennes, hereinafter referred to as *Thoennes* Rick Thoennes III hereinafter referred to as *Thoennes III* and Warpath Development Inc hereinafter referred to as *Warpath*

WITNESSETH

Whereas Warpath is a South Carolina corporation presently solely owned by Ballard and

Whereas Warpath is the holder of a lease on property located at Lake Keowee and is desirous of developing the property and

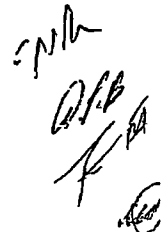
Whereas Roberson Thoennes and Thoennes III are in the business of property development and are desirous of being involved in the development of the project with Ballard and Warpath and

Whereas Ballard wishes to convey to the other parties 80% of the corporation in exchange for the purchase of one half of his stock plus an additional 60 000 shares and

Now Therefore for and in consideration of the monetary sum stated herein and other valuable consideration the parties hereto agree as follows

- 1 The group of Roberson Thoennes and Thoennes III will pay to Ballard upon closing the sum of \$1 000 000 00 in exchange for 20 000 shares of Ballard s 40 0000 shares and will receive from the corporation additional shares so that Ballard will hold 20% of the stock and the other 80% will be held by Roberson, Thoennes and Thoennes III when all shares are finally issued When the new stock is issued the final holdings will be as follows

Roberson	40 000 shares
Thoennes	20 000 shares
Thoennes III	20,000 shares
Ballard	20 000 shares



- 2 In addition to the above the corporation will pay Ballard \$100 000 00 upon the grand opening of the Marina An additional \$50 000 00 will be paid one year after said grand opening Grand Opening being defined as when the Marina opens for business
- 3 Ballard warrants and represents that he holds a lease with Duke Power and the necessary approvals from Duke Power and Pickens County in order to build the development per conceptual plans for Warpath Landing Final permits must be obtained to move forward
- 4 Ballard agrees to execute a separate agreement with Warpath defining his duties in the project development which shall include but not be limited to securing dock permits building permits hotel leases restaurant leases engineering services architectural services and any other service deemed necessary and appropriate to complete the conceptual plan for Warpath Landing If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1 000 000 00 payment will be refunded, \$250 000 00 will be refunded within 90 days and the balance within 6 months after it is determined the permits cannot be obtained
- 5 Thoennes and Thoennes III will execute an agreement with Warpath defining their respective duties including but not limited to development work execution of loan documents assistance with proformas assistance with obtaining permanent financing and other such service as may be appropriate
- 6 Roberson agrees to provide the necessary capital to obtain long term financing on the project Ballard Thoennes and Thoennes III will not receive any dividend or distribution of profit until all capital contributions of Roberson have been repaid
- 7 Ballard will not be required to sign any personal guarantees to obtain financing by the corporation
- 8 The parties agree that it will be necessary at a subsequent date to execute additional documents to give full validity to this Agreement and that they will mutually cooperate with each other in that regard
- 9 Ballard further represents and warrants that Warpath is in good standing and that he has authority to enter into this Agreement and that Warpath has no liabilities outstanding

WJR
A.P.B.
B. B.
17

10 This Agreement shall be binding on the parties hereto their heirs successors
and assigns

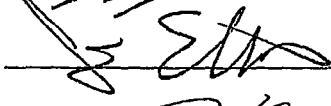
11 No part of this Agreement may be assigned without written consent of all parties

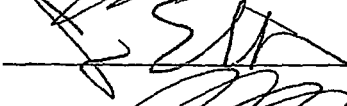
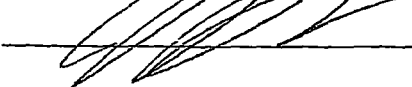
In witness whereof the parties have set their had and seal the day first above written

WITNESSES

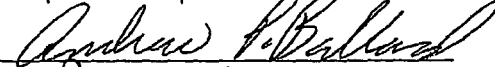






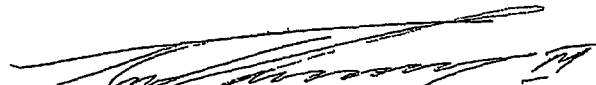




Warpath Development Inc


Its President


Andy Ballard


Rick Thoennes


Rick Thoennes III


Tim Roberson

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Andrew P (Andy) Ballard,	)	C A No 2008-CP-23
	)	
Plaintiff,	)	
	)	
vs	)	ANSWER AND COUNTERCLAIM OF
	)	DEFENDANTS TIM ROBERSON,
Tim Roberson, Rick Thoennes, Rick	)	RICK THOENNES, RICK THOENNES
Thoennes III, And Warpath Development,	)	III AND WARPATH DEVELOPMENT,
Inc	)	INC
	)	(Jury Trial Demanded)
Defendant(s)	)	

The Defendants, Tim Roberson, Rick Thoennes, Rick Thoennes III, and Warpath Development, Inc (collectively ' Defendants), answering the Complaint of the Plaintiff, would respectfully show to the Court

FOR A FIRST DEFENSE

- 1 The Defendants admit the allegations contained in Paragraph 1 of the Complaint
- 2 The Defendants admit the allegations contained in Paragraph 2 of the Complaint
- 3 The Defendants admit the allegations contained in Paragraph 3 of the Complaint
- 4 The Defendants lack information sufficient to admit or deny the allegations of Paragraph 4 of the Complaint, therefore deny the same and demand strict proof
- 5 The Defendants admit the allegation contained in Paragraph 5 of the Complaint
- 6 The Defendants lack information sufficient to admit or deny the allegations of Paragraph 6 of the Complaint, therefore deny the same and demand strict proof Defendants acknowledge the Plaintiff represented to the Defendants inter alia that Plaintiff was the sole shareholder of the Corporation as of the closing of the transactions contemplated by that certain Stock Purchase Agreement dated May 29, 2007 ("Agreement ")

7 The Defendants admit the allegations contained in Paragraph 7 of the Complaint

8 In response to Paragraph 8 of the Complaint, Defendants assert that the terms of the Agreement speak for themselves, therefore demand no response. However, to the extent a response is necessary, the Defendants admit so much of the allegations of said paragraph 8 as alleged that the parties agreed that at the time of the closing of the transaction contemplated by the Agreement that the common stock of Warpath Development, Inc (the Corporation) would be owned 20% by Plaintiff, 40% by Tim Roberson, 20% by Rick Thoennes and 20% by Rick Thoennes III. Defendants deny any and all allegations of said paragraph 8 of the Complaint that vary from what has been admitted in paragraph 8 of this Answer.

9 In response to Paragraph 9 of the Complaint, Defendants assert that the terms of the Agreement speak for themselves, therefore demand no response. However, to the extent a response is necessary, the Defendants admit so much of the allegations contained in Paragraph 9 of the Complaint in so far that the parties agreed that additional equity contributions of capital would be made by Tim Roberson and that Roberson's capital contributions including such additional equity contribution would enjoy a preferred status. Defendants deny any and all allegations of said paragraph 9 of the Complaint that vary from what has been admitted in paragraph 9 of this Answer.

10 The Defendants admit so much of the allegations contained in Paragraph 10 of the Complaint as allege that a duly noticed meeting of the shareholders of the Corporation was held of which the Plaintiff and Plaintiff's counsel attended and participated, and that at such meeting the shareholders of the Corporation elected the Directors of the Corporation in accordance with the Corporation's By Laws. Defendants deny any and all allegations of said

paragraph 10 of the Complaint that vary from what has been admitted in paragraph 10 of this Answer

11 The Defendants admit so much of the allegations in Paragraph 11 that alleges that the Directors of the Corporation took actions expressly reserved to them under the South Carolina Business Corporation Act of 1988 (the Act') including the authorization of additional shares The Defendants further admit that portion of the allegations contained in Paragraph 11 in so far that the aggregate increase in the number of authorized shares was proposed by the Directors and approved by the shareholders of the Corporation in accordance with the Act at duly noticed shareholder s meeting which was attended by Plaintiff and one of his lawyers and in which the Plaintiff participated The Defendants deny the remaining allegations contained in Paragraph 11 of the Complaint

12 The Defendants deny the allegations contained in Paragraph 12 of the Complaint

13 The Defendants deny the allegations contained in Paragraph 13 of the Complaint

14 The Defendants deny the allegations contained in Paragraph 14 of the Complaint

15 The Defendants deny the allegations contained in Paragraph 15 of the Complaint

16 The Defendants deny the allegations contained in Paragraph 16 of the Complaint

17 The Defendants deny the allegations contained in Paragraph 17 of the Complaint

18 The Defendants deny the allegations contained in Paragraph 18 of the Complaint

19 The Defendants deny the allegations contained in Paragraph 19 of the Complaint

FOR A SECOND DEFENSE

20 The Defendants re-allege Paragraphs 1 through 19 of this Answer and Counterclaim, as specifically set forth herein

21 The Defendants assert that the Plaintiff has failed to state a claim for which relief can be granted

FOR A THIRD DEFENSE

22 The Defendants re-allege Paragraphs 1 through 21 of this Answer and Counterclaim, as specifically set forth herein

23 The Defendants assert that the Plaintiff's claims are barred by the doctrines of estoppel and unclean hands as well any other and further equitable defenses that may be available

FOR A FOURTH DEFENSE
AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

24 The Defendants re-allege Paragraphs 1 through 23 of this Answer and Counterclaim, as specifically set forth herein

25 The Plaintiff and Defendants entered into the Stock Purchase Agreement on May 29, 2007 (the Agreement)

26 In the Agreement, the Plaintiff warranted and represented that he held the necessary approvals from Duke Power and Pickens County in order to build the development per conceptual plans for Warpath Landing

27 The Plaintiff did not hold the necessary approvals from Duke Power and Pickens County to build the development per the conceptual plans for Warpath Landing This action is in breach of the Agreement

28 As a result of Plaintiff's breach, the Defendants have suffered damages in lost time and expense

FOR A FIFTH DEFENSE
AND BY WAY OF COUNTERCLAIM
(Reliance and Promissory Estoppel)

29 The Defendants re allege Paragraphs 1 through 28 of this Answer and Counterclaim, as specifically set forth herein

30 The Plaintiff promised that he had all necessary approvals from Duke Power and Pickens County to build the development per the conceptual plans for Warpath Landing

31 The Defendants relied on Plaintiff's promise to their detriment

32 The Plaintiff expected the Defendants to rely on such promise

33 The Defendants have suffered a loss by relying on the Plaintiff's promise

34 Plaintiff is liable for the time and expense incurred in obtaining such approvals

FOR A SIXTH DEFENSE
(Breach of Contract with a Fraudulent Act)

34 The Defendants re-allege Paragraphs 1 through 33 of this Answer and Counterclaim as specifically set forth herein

35 Upon information and belief, Plaintiff, willfully and with fraudulent intent, induced Defendants to enter into the Stock Purchase Agreement ("Agreement") by purposefully and falsely representing that it he obtained all necessary approvals from Duke Power and Pickens County to build the development per the conceptual plans for Warpath Landing

36 Defendants reasonably relied on Plaintiff's misrepresentations and Plaintiff intended Defendants to so rely Defendants suffered damages as a direct and proximate result of Plaintiff's fraudulent inducement, which are separate and distinct from the damages attributed to Plaintiff's accompanying breaches of the Agreement

37 Plaintiff's acts were intentional, grossly negligent, reckless, wanton and willful
Defendants are therefore, entitled to recover both actual and punitive damages

FOR A SEVENTH DEFENSE

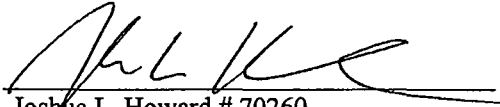
38 The Defendants deny each and every allegation of the Complaint not hereinabove
specifically admitted, modified, or explained

WHEREFORE, this Defendant prays for judgment as follows

- 1 For an order dismissing Plaintiff's complaint
- 2 Declare that the Plaintiff is not entitled to any injunction or other relief from
Defendants
- 3 An order awarding Defendants damages on their counterclaims,
- 4 Costs of this Action and
- 5 Any other relief to the Defendants that the court feels is proper

[Signature Below]

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'JL Howard', with a long horizontal line extending to the right.

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Greenville, SC 29602
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Facsimile 864-240-3300
jhoward@hsblawfirm.com

Attorneys for Defendants

Greenville, South Carolina
August 28, 2008

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P (Andy) Ballard

Plaintiff

vs

Tim Roberson Rick Thoennes Rick
Thoennes III and Warpath Development
Inc

Defendants

2008 SEP 17 3 26

Case Number 2008 CP 23 5739

**PLAINTIFF'S REPLY TO
COUNTERCLAIMS OF DEFENDANTS,
TIM ROBERSON, RICK THOENNES, RICK
THOENNES, III AND WARPAT
DEVELOPMENT, INC**

(Jury Trial Demanded)

The Plaintiff Andrew P (Andy) Ballard (hereinafter Ballard) hereby replies to the Counterclaims of Defendants Tim Roberson Rick Thoennes Rick Thoennes III and Warpath Development Inc (collectively Defendants) All allegations of the Answer and Counterclaims not hereinafter specifically and expressly admitted are denied

FOR A FIRST DEFENSE
(General Denial)

1 Paragraphs 1 24 and 38 consist of Defendants Answer to Ballard s Complaint and do not require a response To the extent a response is required these allegations are denied except to the extent they admit allegations of the Plaintiff's complaint

2 Ballard admits the allegations of paragraph 25

3 Paragraph 26 alleges only a portion of the Agreement between the parties and only a portion of one paragraph of the Agreement without alleging the full content of the paragraph and the Agreement which speaks for itself Therefore Ballard denies the allegations of paragraph 26

4 Ballard denies paragraph 27

5 Ballard denies paragraph 28

6 In response to paragraph 29 Ballard reiterates and realleges each of the paragraphs
above

7 Ballard denies the allegations of paragraphs 30 – 34

8 In response to paragraph 34 Ballard reiterates and realleges each of the paragraphs
above

9 Ballard denies the allegations of paragraph 35 – 37

FOR A SECOND DEFENSE

10 Ballard reiterates and realleges the above allegations

11 Defendants Counterclaims fail to state a claim upon which relief can be granted

FOR A THIRD DEFENSE

12 Ballard reiterates and realleges the above allegations

13 Defendants Counterclaims are barred in whole or in part by their failure to mitigate
damages

FOR A FOURTH DEFENSE

14 Ballard reiterates and realleges the above allegations

15 Defendants Counterclaims are barred in whole or in part by their own breach of the
contract

FOR A FIFTH DEFENSE

16 Ballard reiterates and realleges the above allegations

17 Defendants Counterclaims are barred in whole or in part by of the doctrine of
unclean hands

FOR A SIXTH DEFENSE

18 Ballard reiterates and realleges the above allegations

19 Defendants Counterclaims are barred in whole or in part by of the doctrine of
waiver

FOR A SEVENTH DEFENSE

20 Ballard reiterates and realleges the above allegations

21 Defendants Counterclaims are barred in whole or in part by of the doctrine of
estoppel

FOR AN EIGHTH DEFENSE

22 Ballard reiterates and realleges the above allegations

23 The punitive damages sought by Plaintiffs are unconstitutional under the excessive
fines clause of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment
to the United States Constitution and in violation of the South Carolina Constitution

WHEREFORE Plaintiff prays that Defendants Counterclaims be dismissed with prejudice
that Ballard be awarded costs that Ballard be granted the relief prayed for in the Complaint and that
the Court grant him such other and further relief as the Court may deem just and proper

Respectfully submitted



David L. Freeman (S C Bar No 2126)
Frank S. Holleman (S C Bar No 2564)
Hannah R. Metcalfe (S C Bar No 73046)
Wyche Burgess Freeman & Parham PA
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fholleman@wyche.com
hmetcalfe@wyche.com

Dated September __ 2008
Greenville South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2009 AUG -3 P 4 52

Andrew P (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development Inc ,

Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development Inc ,

Defendants

FILED IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE
SOUTH CAROLINA

CASE NO 2008-CP-23-5739

MOTION TO AMEND COMPLAINT

Pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, Plaintiff Andrew P (Andy) Ballard hereby moves to amend his Complaint

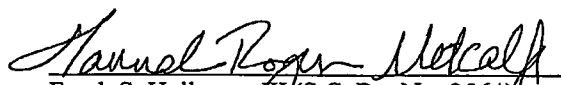
The proposed Amended Complaint is attached hereto as Exhibit A. Despite their best efforts, the parties have been unable to settle this matter and, during the course of discovery additional information has been discovered that necessitates amendment of Plaintiff's Complaint. The substantive difference between it and the original Complaint is that the amended pleading now contains additional causes of action by the Plaintiff in an individual capacity as well as a derivative claim brought by the Plaintiff on behalf of Warpath Development, Inc.

Amendment of Plaintiff's Complaint to include these allegations is in the interest of a full and fair adjudication of the merits of this suit, and will not unfairly prejudice the defendants. Because leave to amend pleadings should be freely granted, we respectfully submit that the Court should grant leave for Plaintiff to file an amended complaint.

Counsel for the Plaintiff has attempted to consult with counsel for Defendants Tim Roberson, Rick Thoennes, Rick Thoennes III, and Warpath Development, Inc , and believes both parties will consent to amendment of each other's pleadings, however, Plaintiff has not yet received a response to this motion from counsel for Defendants

Respectfully submitted,

WYCHE BURGESS FREEMAN & PARHAM, P A



Frank S Holleman III (S C Bar No 2564)

Hannah R Metcalfe (S C Bar No 73046)

Wyche, Burgess, Freeman & Parham PA

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hmetcalfe@wyche.com

Dated August 3, 2009
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard individually, and
derivatively on behalf of Warpath
Development, Inc ,

Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc ,

Defendants

CASE NO 2008-CP-23-5739

**FIRST AMENDED COMPLAINT
(JURY TRIAL)**

The plaintiff, Andrew P (Andy) Ballard ("Ballard"), complaining of the defendants,
alleges as follows

1 Ballard is a citizen and resident of Greenville County, South Carolina

2 The defendants Tim Roberson, Rick Thoennes, and Rick Thoennes III are
citizens and residents of Greenville County, South Carolina

3 The defendant Warpath Development, Inc ("Warpath"), is a South Carolina
corporation with its records located in Greenville County, South Carolina The principal
asset of Warpath is a lease on property located at Lake Keowee in Pickens County South
Carolina, and associated assets Warpath is made a defendant herein solely for the purpose
of ensuring the effectiveness of the injunctive relief sought in the first and tenth causes of
action set out below

4 Warpath has been working toward developing a marina on the property
located on Lake Keowee

5 Ballard and the defendants are parties to a Stock Purchase Agreement, dated
May 29, 2007, attached hereto and incorporated herein (the "Agreement")

6 Prior to the Agreement, Ballard was the sole shareholder of Warpath. Ballard created Warpath and obtained the lease for Warpath for the property on Lake Keowee where the marina is to be located.

7 Under the Agreement, the individual defendants became shareholders of Warpath.

8 Under the Agreement, the individual defendants purchased 20,000 shares of Warpath owned by Ballard for One Million Dollars (\$1,000,000) that was paid to Ballard. The defendants received an additional 60,000 shares of Warpath issued to them in exchange for the other and additional promises and commitments made by them to take certain actions to further the business financing, development, and operations of Warpath.

9 In the Agreement, the defendants expressly agreed that 'the final holdings of stock in Warpath consist of Ballard owning 20,000 of the outstanding 100,000 shares of Warpath, or 20% of Warpath.

10 Further, in the Agreement, the defendants agreed that the defendant Tim Roberson would "provide the necessary capital to obtain long term financing on the project" and that Ballard would not be required to sign any personal guarantees to obtain financing by the corporation.

11 Further in the Agreement, the defendants agreed that the defendants Rick Thoennes and Rick Thoennes III "will execute an agreement with Warpath defining their respective duties, including, but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate."

12 After entering into the Agreement, the individual defendants became owners of 80% of the stock of Warpath. Further, the individual defendants decided to have Warpath issue additional stock to benefit them and improve their return on investment. They also conspired together and put together and executed a plan to force Ballard out of Warpath.

13 At a stockholders meeting on May 1, 2008, the individual defendants elected themselves as the three directors of Warpath and did not re-elect Ballard as a director. They then held a meeting of the Board of directors and passed a motion purportedly to authorize the issuance of 900,000 additional shares of Warpath Treasury Stock in order to raise capital, pay expenses, and offer employee incentives, and purportedly authorized Warpath to file the necessary paper work purportedly to authorize the issuance of an additional 900,000 shares. This motion was then presented to the shareholders, and in the shareholders meeting the individual defendants purportedly approved the issuance of the additional 900,000 shares. This action is in breach of the Agreement.

14 Further, if these shares are issued and sold or otherwise transferred to shareowners, Ballard's percentage ownership in Warpath would be reduced to 2%, thus breaching the Agreement.

15 Further, these actions are in violation of Warpath's Articles of Incorporation. Warpath's Articles of Incorporation authorize the issuance of 100,000 shares.

16 Further, these actions were designed to harm Ballard, to force him out of Warpath, and to benefit the individual defendants.

17 Further, the individual defendants have breached the Agreement in that the defendant Tim Roberson has not provided the necessary capital to obtain long term financing.

and instead the defendants have begun the process to sell additional Warpath stock, contrary to the express terms of the Agreement

18 Further, the individual defendants have made clear that they have not fulfilled their promises and commitments under the Agreement, have made clear that they will not do so, and and/or, upon information and belief, are not able to do so

19 The actions and inactions of the individual defendants, including their planned action of the defendant Warpath with respect to the issuance of the stock, purportedly authorized individually and collectively, are in direct violation of the Agreement

20 The individual defendants have also acted in bad faith

FOR A FIRST CAUSE OF ACTION

21 The individual defendants have breached the Agreement

22 The proposed issuance of stock by the defendant Warpath will cause Ballard irreparable harm and Ballard has no adequate remedy at law

23 A temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants are in the public interest and would not result in an undue burden on the defendants

24 Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of Warpath

25 Ballard is entitled to the costs of this Action

FOR A SECOND CAUSE OF ACTION

26 The actions taken by the individual defendants are in violation of Warpath's Articles of Incorporation

27 Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants beyond the 100,000 shares already authorized and issued, in violation of Warpath's Articles of Incorporation

28 Ballard is entitled to the costs of this Action

FOR A THIRD CAUSE OF ACTION

29 The individual defendants have breached the Agreement

30 The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them

31 The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath

32 The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breaches of the Agreement

FOR A FOURTH CAUSE OF ACTION

33 The individual defendants have committed anticipatory breaches of the Agreement

34 The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them

35 The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath

36 The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their anticipatory breaches of the Agreement

FOR A FIFTH CAUSE OF ACTION

37 The individual defendants have breached the covenant of good faith and fair dealing

38 The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath

39 The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breach of the covenant

FOR A SIXTH CAUSE OF ACTION

40 The individual defendants have breached the covenant of good faith and fair dealing

41 Ballard is entitled to recover his damages, plus costs

FOR A SEVENTH CAUSE OF ACTION

42 The individual defendants have breached the Agreement

43 The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them

44 Ballard is entitled to recover his damages for these breaches, plus interest and costs

FOR AN EIGHTH CAUSE OF ACTION

45 The individual defendants have committed anticipatory breaches of the Agreement

46 The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them

47 Ballard is entitled to recover his damages for these anticipatory breaches, plus interest and costs

FOR A NINTH CAUSE OF ACTION

48 In taking action to force Ballard out of the company and in taking action to authorize the issuance of additional shares of Warpath, as part of that effort, to dilute Ballard's ownership in Warpath, and to benefit themselves and by breaching the Agreement and its covenant of good faith and fair dealing, the individual defendants breached their fiduciary duties owed by them as directors of Warpath to Ballard, a Warpath shareholder, in violation of S C Code Ann § 33-8-300

49 The individual defendants acted intentionally, willfully, wantonly, and grossly negligently in breaching their fiduciary duties owed to Ballard

50 Ballard is entitled to recover actual and punitive damages from the individual defendants, interest, and costs

FOR A TENTH CAUSE OF ACTION

51 Tim Roberson has been and is the President-CEO of Warpath, Rick Thoennes, III, is the Vice President and Rick Thoennes is the Secretary-Treasurer. The individual defendants are all the officers of Warpath.

52 In taking action to force Ballard out of the company and in taking action to authorize the issuance of additional shares of Warpath, as part of that effort to dilute Ballard's ownership in Warpath, and to benefit themselves, and by breaching the Agreement and its covenant of good faith and fair dealing, the individual defendants breached their fiduciary duties owed by them as officers of Warpath to Ballard, a Warpath shareholder, in violation of S.C. Code Ann. § 33-8-420.

53 The individual defendants acted intentionally, willfully, wantonly, and grossly negligently in breaching their fiduciary duties owed to Ballard.

54 Ballard is entitled to recover actual and punitive damages from the individual defendants, interest, and costs.

FOR AN ELEVENTH CAUSE OF ACTION

55 Tim Roberson, Rick Thoennes, and Rick Thoennes, III, own are majority shareholders of Warpath and own 80% of its stock.

56 In taking action to force Ballard out of the company and in taking action to authorize the issuance of additional shares of Warpath, as part of that effort, to dilute Ballard's ownership in Warpath, and to benefit themselves, and by breaching the Agreement and its covenant of good faith and fair dealing, the individual defendants breached their fiduciary duties owed by them as majority shareholders of Warpath to Ballard, a minority Warpath shareholder.

57 The individual defendants acted intentionally, willfully, wantonly, and grossly negligently in breaching their fiduciary duties owed to Ballard

58 Ballard is entitled to recover actual and punitive damages from the individual defendants, interest, and costs

FOR A TWELFTH CAUSE OF ACTION

59 Under S C Code Ann §§ 33-14-300 and 310, the individual defendants have acted and are acting in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial to Ballard

60 Ballard asks that the Court direct the individual defendants, jointly and severally, to purchase his stock at fair value, pursuant to S C Code Ann §§ 33-14-310 (d) (4), and that the defendants not issue any additional Warpath stock pending that purchase, pursuant to S C Code Ann §§ 33-14-310 (d) (3)

61 Alternatively, Ballard asks that the Court direct the defendants, jointly and severally, not to issue any additional Warpath stock, pursuant to S C Code Ann §§ 33-14-310 (d) (3)

FOR A THIRTEENTH CAUSE OF ACTION

62 This is a derivative claim, brought pursuant to Rule 23 (b) (1) of the South Carolina Rules of Civil Procedure, to enforce a right of Warpath

63 Ballard is and has been a shareholder of Warpath since Warpath came into existence Ballard was a shareholder at the time of the transactions of which he complains

64 A pre filing demand upon the Warpath directors or shareholders is futile and useless because

(a) The individual defendants constitute all of the directors of Warpath,

(b) The individual defendants constitute all of the shareholders of Warpath other than Ballard and currently own 80% of the outstanding shares,

(c) The claims asserted herein are claims brought against the individual defendants, and the individual defendants have asserted in this litigation that they are not in violation of the Agreement, as alleged herein,

(d) The breaches of the Agreement alleged herein are breaches alleged against the individual defendants,

(e) In order to pursue this claim, the individual defendants would have to sue themselves,

(f) There is no reason to think that the individual defendants would bring this claim against themselves and in fact the individual defendants have asserted that they have no liability under the Agreement, as set out in their Answer and Counterclaim and the deposition of Tim Roberson

65 The defendants are parties to a Stock Purchase Agreement, dated May 29, 2007, attached hereto and incorporated herein (the "Agreement")

66 Under the Agreement, the individual defendants purchased 20,000 shares of Warpath owned by Ballard for One Million Dollars (\$1,000,000) that was paid to Ballard. The defendants received an additional 60,000 shares of Warpath issued to them in exchange for the other and additional promises and commitments made by them to take certain actions to further the business, financing, development, and operations of Warpath.

67 In the Agreement, the individual defendants agreed that the defendant Tim Roberson would "provide the necessary capital to obtain long term financing on the project

and that Ballard would not be required to sign any personal guarantees to obtain financing by the corporation

68 Further, in the Agreement, the defendants agreed that the defendants Rick Thoennes and Rick Thoennes III “will execute an agreement with Warpath defining their respective duties, including, but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate ”

69 Further, the individual defendants have breached the Agreement in that the defendant Tim Roberson has not provided the necessary capital to obtain long term financing and instead the defendants have begun the process to sell additional Warpath stock contrary to the express terms of the Agreement

70 Further, the individual defendants have not fulfilled their promises and commitments under the Agreement, have made clear that they will not do so, and/or, upon information and belief, are not able to do so

71 The actions and inactions of the individual defendants purportedly authorized individually and collectively, violate the Agreement

72 The individual defendants have also acted in bad faith

73 The individual defendants have breached the Agreement and have committed anticipatory breaches of the Agreement

74 Ballard is a party to the Agreement and alleges that he has a right to bring these claims individually as set out in the Second, Third, and Fourth Causes of Action, set out above

75 Alternatively, Ballard brings these claims derivatively to enforce Warpath's rights under the Agreement

76 The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breaches and anticipatory breaches of the Agreement

WHEREFORE, Ballard asks that the Court

1 Issue a temporary and a permanent injunction barring the issuance of stock in the defendant Warpath by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of the defendant Warpath,

2 Issue a temporary and a permanent injunction barring the issuance of stock in the defendant Warpath by the defendants that would increase the number of shares beyond the 100,000 authorized by Warpath's Articles of Incorporation,

3 Order that the individual defendants return their 60 000 shares in Warpath, as restitution

4 Award Ballard actual and punitive damages,

5 Order that the individual defendants, jointly and severally, purchase his shares for fair value and order that the defendants, pending such purchase, not issue additional shares of Warpath or, alternatively, order that the defendants not issue additional shares of Warpath,

6 Alternatively, as a remedy for the derivative claim, order that the individual defendants return their 60,000 shares in Warpath, as restitution,

7 Award him interest and costs,

8 Award him whatever further relief the Court considers appropriate

Frank S Holleman III (S C Bar No 2564)
Hannah R Metcalfe (S C Bar No 73046)
Wyche, Burgess, Freeman & Parham, PA
44 E Camperdown Way
P O Box 728 (29602-0728)
Greenville, SC 29601
Phone 864 242-8200
Facsimile 864-235-8900
Email fholleman@wyche.com,
hmetcalfe@wyche.com

Dated _____
Greenville, South Carolina

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

STOCK PURCHASE
AGREEMENT

This Agreement made and entered into this 29th day of May 2007 by and between Andy Ballard hereinafter referred to as *Ballard*, Tim Roberson hereinafter referred to as *Roberson* Rick Thoennes hereinafter referred to as *Thoennes* Rick Thoennes III hereinafter referred to as *Thoennes III* and Warpath Development Inc hereinafter referred to as *Warpath*

WITNESSETH

Whereas Warpath is a South Carolina corporation presently solely owned by Ballard and

Whereas, Warpath is the holder of a lease on property located at Lake Keowee and is desirous of developing the property and

Whereas Roberson Thoennes and Thoennes III are in the business of property development and are desirous of being involved in the development of the project with Ballard and Warpath and

Whereas Ballard wishes to convey to the other parties 80% of the corporation in exchange for the purchase of one half of his stock plus an additional 60 000 shares, and

Now Therefore for and in consideration of the monetary sum stated herein and other valuable consideration the parties hereto agree as follows

- 1 The group of Roberson Thoennes and Thoennes III will pay to Ballard upon closing the sum of \$1 000 000 00 in exchange for 20 000 shares of Ballard s 40 0000 shares and will receive from the corporation additional shares so that Ballard will hold 20% of the stock and the other 80% will be held by Roberson Thoennes and Thoennes III when all shares are finally issued When the new stock is issued the final holdings will be as follows

Roberson	40 000 shares
Thoennes	20 000 shares
Thoennes III	20 000 shares
Ballard	20 000 shares

- 2 In addition to the above the corporation will pay Ballard \$100 000 00 upon the grand opening of the Marina. An additional \$50 000 00 will be paid one year after said grand opening. Grand Opening being defined as 'when the Marina opens for business."
- 3 Ballard warrants and represents that he holds a lease with Duke Power and the necessary approvals from Duke Power and Pickens County in order to build the development per conceptual plans for Warpath Landing. Final permits must be obtained to move forward.
- 4 Ballard agrees to execute a separate agreement with Warpath defining his duties in the project development which shall include but not be limited to securing dock permits, building permits, hotel leases, restaurant leases, engineering services, architectural services and any other service deemed necessary and appropriate to complete the conceptual plan for Warpath Landing. If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1 000 000 00 payment will be refunded. \$250 000 00 will be refunded within 90 days and the balance within 6 months after it is determined the permits cannot be obtained.
- 5 Thoennes and Thoennes III will execute an agreement with Warpath defining their respective duties including but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate.
- 6 Roberson agrees to provide the necessary capital to obtain long term financing on the project. Ballard, Thoennes and Thoennes III will not receive any dividend or distribution of profit until all capital contributions of Roberson have been repaid.
- 7 Ballard will not be required to sign any personal guarantees to obtain financing by the corporation.
- 8 The parties agree that it will be necessary at a subsequent date to execute additional documents to give full validity to this Agreement and that they will mutually cooperate with each other in that regard.
- 9 Ballard further represents and warrants that Warpath is in good standing and that he has authority to enter into this Agreement and that Warpath has no liabilities outstanding.

WJR
APB
B 12

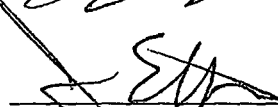
10 This Agreement shall be binding on the parties hereto their heirs successors
and assigns

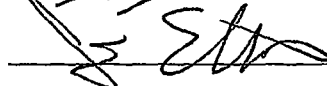
11 No part of this Agreement may be assigned without written consent of all parties

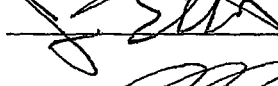
In witness whereof the parties have set their had and seal the day first above written

WITNESSES



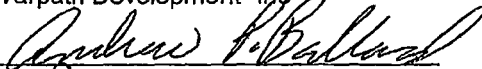


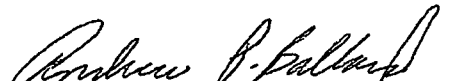







Warpath Development Inc


Its President


Andy Ballard


Rick Thoennes


Rick Thoennes III


Tim Roberson

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2008 JUL 25 P 12 00

Andrew P (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development, Inc ,

Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc ,

Defendants

CASE NO 2008-CP-23-5739
CLERK OF COURT
JILL COOPER
CLERK

**FIRST AMENDED COMPLAINT
(JURY TRIAL)**

The plaintiff, Andrew P (Andy) Ballard ("Ballard "), complaining of the defendants,
alleges as follows

1 Ballard is a citizen and resident of Greenville County, South Carolina

2 The defendants Tim Roberson, Rick Thoennes, and Rick Thoennes III are
citizens and residents of Greenville County, South Carolina

3 The defendant Warpath Development, Inc ("Warpath "), is a South Carolina
corporation with its records located in Greenville County, South Carolina The principal
asset of Warpath is a lease on property located at Lake Keowee in Pickens County, South
Carolina, and associated assets Warpath is made a defendant herein solely for the purpose
of ensuring the effectiveness of the injunctive relief sought in the first and tenth causes of
action set out below

4 Warpath has been working toward developing a marina on the property
located on Lake Keowee

5 Ballard and the defendants are parties to a Stock Purchase Agreement, dated
May 29, 2007, attached hereto and incorporated herein (the "Agreement")

6 Prior to the Agreement, Ballard was the sole shareholder of Warpath. Ballard created Warpath and obtained the lease for Warpath for the property on Lake Keowee where the marina is to be located.

7 Under the Agreement, the individual defendants became shareholders of Warpath.

8 Under the Agreement, the individual defendants purchased 20,000 shares of Warpath owned by Ballard for One Million Dollars (\$1,000,000) that was paid to Ballard. The defendants received an additional 60,000 shares of Warpath issued to them in exchange for the other and additional promises and commitments made by them to take certain actions to further the business, financing, development, and operations of Warpath.

9 In the Agreement, the defendants expressly agreed that the final holdings of stock in Warpath consist of Ballard owning 20,000 of the outstanding 100,000 shares of Warpath, or 20% of Warpath.

10 Further, in the Agreement, the defendants agreed that the defendant Tim Roberson would "provide the necessary capital to obtain long term financing on the project" and that Ballard would not be required to sign any personal guarantees to obtain financing by the corporation.

11 Further, in the Agreement, the defendants agreed that the defendants Rick Thoennes and Rick Thoennes III "will execute an agreement with Warpath defining their respective duties, including, but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate."

12 After entering into the Agreement, the individual defendants became owners of 80% of the stock of Warpath. Further, the individual defendants decided to have Warpath issue additional stock to benefit them and improve their return on investment. They also conspired together and put together and executed a plan to force Ballard out of Warpath.

13 At a stockholders meeting on May 1, 2008, the individual defendants elected themselves as the three directors of Warpath and did not re-elect Ballard as a director. They then held a meeting of the Board of directors and passed a motion purportedly to authorize the issuance of 900,000 additional shares of Warpath Treasury Stock in order to raise capital, pay expenses, and offer employee incentives, and purportedly authorized Warpath to file the necessary paper work purportedly to authorize the issuance of an additional 900,000 shares. This motion was then presented to the shareholders, and in the shareholders meeting the individual defendants purportedly approved the issuance of the additional 900,000 shares. This action is in breach of the Agreement.

14 Further, if these shares are issued and sold or otherwise transferred to shareowners, Ballard's percentage ownership in Warpath would be reduced to 2%, thus breaching the Agreement.

15 Further, these actions are in violation of Warpath's Articles of Incorporation. Warpath's Articles of Incorporation authorize the issuance of 100,000 shares.

16 Further, these actions were designed to harm Ballard, to force him out of Warpath, and to benefit the individual defendants.

17 Further, the individual defendants have breached the Agreement in that the defendant Tim Roberson has not provided the necessary capital to obtain long term financing.

and instead the defendants have begun the process to sell additional Warpath stock, contrary to the express terms of the Agreement

18 Further, the individual defendants have made clear that they have not fulfilled their promises and commitments under the Agreement, have made clear that they will not do so, and/or, upon information and belief, are not able to do so

19 The actions and inactions of the individual defendants, including their planned action of the defendant Warpath with respect to the issuance of the stock, purportedly authorized individually and collectively, are in direct violation of the Agreement

20 The individual defendants have also acted in bad faith

FOR A FIRST CAUSE OF ACTION

21 The individual defendants have breached the Agreement

22 The proposed issuance of stock by the defendant Warpath will cause Ballard irreparable harm and Ballard has no adequate remedy at law

23 A temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants are in the public interest and would not result in an undue burden on the defendants

24 Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of Warpath

25 Ballard is entitled to the costs of this Action

FOR A SECOND CAUSE OF ACTION

26 The actions taken by the individual defendants are in violation of Warpath's Articles of Incorporation

27 Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants beyond the 100,000 shares already authorized and issued, in violation of Warpath's Articles of Incorporation

28 Ballard is entitled to the costs of this Action

FOR A THIRD CAUSE OF ACTION

29 The individual defendants have breached the Agreement

30 The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them

31 The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath

32 The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breaches of the Agreement

FOR A FOURTH CAUSE OF ACTION

33 The individual defendants have committed anticipatory breaches of the Agreement

34 The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief they are not capable of fulfilling them

35 The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath

36 The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their anticipatory breaches of the Agreement

FOR A FIFTH CAUSE OF ACTION

37 The individual defendants have breached the covenant of good faith and fair dealing

38 The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath

39 The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breach of the covenant

FOR A SIXTH CAUSE OF ACTION

40 The individual defendants have breached the covenant of good faith and fair dealing

41 Ballard is entitled to recover his damages, plus costs

FOR A SEVENTH CAUSE OF ACTION

42 The individual defendants have breached the Agreement

43 The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them

44 Ballard is entitled to recover his damages for these breaches, plus interest and costs

FOR AN EIGHTH CAUSE OF ACTION

45 The individual defendants have committed anticipatory breaches of the Agreement

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FOR A NINTH CAUSE OF ACTION

48 In taking action to force Ballard out of the company and in taking action to authorize the issuance of additional shares of Warpath, as part of that effort, to dilute Ballard's ownership in Warpath, and to benefit themselves, and by breaching the Agreement and its covenant of good faith and fair dealing, the individual defendants breached their fiduciary duties owed by them as directors of Warpath to Ballard, a Warpath shareholder, in violation of S C Code Ann § 33 8-300

49 The individual defendants acted intentionally, willfully, wantonly, and grossly negligently in breaching their fiduciary duties owed to Ballard

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60 Ballard asks that the Court direct the individual defendants, jointly and severally, to purchase his stock at fair value, pursuant to S C Code Ann §§ 33-14-310 (d) (4), and that the defendants not issue any additional Warpath stock pending that purchase, pursuant to S C Code Ann §§ 33-14-310 (d) (3)

61 Alternatively, Ballard asks that the Court direct the defendants, jointly and severally, not to issue any additional Warpath stock, pursuant to S C Code Ann §§ 33-14-310 (d) (3)

FOR A THIRTEENTH CAUSE OF ACTION

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2 Issue a temporary and a permanent injunction barring the issuance of stock in the defendant Warpath by the defendants that would increase the number of shares beyond the 100,000 authorized by Warpath's Articles of Incorporation,

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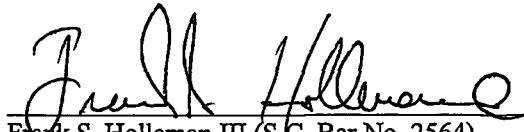
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5 Order that the individual defendants, jointly and severally, purchase his shares for fair value and order that the defendants, pending such purchase, not issue additional shares of Warpath or, alternatively, order that the defendants not issue additional shares of Warpath,

6 Alternatively, as a remedy for the derivative claim, order that the individual defendants return their 60,000 shares in Warpath, as restitution,

7 Award him interest and costs,

8 Award him whatever further relief the Court considers appropriate



Frank S. Holleman III (S.C. Bar No. 2564)

Hannah R. Metcalfe (S.C. Bar No. 73046)

Wyche, Burgess, Freeman & Parham, P.A.

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P.O. Box 728 (29602-0728)

Greenville, SC 29601

Phone 864-242-8200

Facsimile 864-235-8900

Email fhollenman@wyche.com,

hmetcalfe@wyche.com

Dated 8/25/2009
Greenville, South Carolina

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

STOCK PURCHASE
AGREEMENT

This Agreement made and entered into this 29th day of May, 2007 by and between Andy Ballard hereinafter referred to as *Ballard* Tim Roberson hereinafter referred to as *Roberson* Rick Thoennes, hereinafter referred to as *Thoennes* Rick Thoennes III hereinafter referred to as *Thoennes III* and Warpath Development Inc hereinafter referred to as *Warpath*

WITNESSETH

Whereas Warpath is a South Carolina corporation presently solely owned by Ballard and

Whereas Warpath is the holder of a lease on property located at Lake Keowee and is desirous of developing the property and

Whereas Roberson Thoennes and Thoennes III are in the business of property development and are desirous of being involved in the development of the project with Ballard and Warpath, and

Whereas Ballard wishes to convey to the other parties 80% of the corporation in exchange for the purchase of one half of his stock plus an additional 60 000 shares and

Now Therefore for and in consideration of the monetary sum stated herein and other valuable consideration the parties hereto agree as follows

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Roberson	40 000 shares
Thoennes	20 000 shares
Thoennes III	20 000 shares
Ballard	20 000 shares

Handwritten signatures and initials:
- Top: *nm*
- Middle: *ALB*
- Bottom: *RH*
- Far right: *RL*

- 2 In addition to the above the corporation will pay Ballard \$100 000 00 upon the grand opening of the Marina. An additional \$50 000 00 will be paid one year after said grand opening. Grand Opening being defined as "when the Marina opens for business."
- 3 Ballard warrants and represents that he holds a lease with Duke Power and the necessary approvals from Duke Power and Pickens County in order to build the development per conceptual plans for Warpath Landing. Final permits must be obtained to move forward.
- 4 Ballard agrees to execute a separate agreement with Warpath defining his duties in the project development which shall include but not be limited to securing dock permits, building permits, hotel leases, restaurant leases, engineering services, architectural services and any other service deemed necessary and appropriate to complete the conceptual plan for Warpath Landing. If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1 000 000 00 payment will be refunded, \$250 000 00 will be refunded within 90 days and the balance within 6 months after it is determined the permits cannot be obtained.
- 5 Thoennes and Thoennes III will execute an agreement with Warpath defining their respective duties including but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate.
- 6 Roberson agrees to provide the necessary capital to obtain long term financing on the project. Ballard, Thoennes and Thoennes III will not receive any dividend or distribution of profit until all capital contributions of Roberson have been repaid.
- 7 Ballard will not be required to sign any personal guarantees to obtain financing by the corporation.
- 8 The parties agree that it will be necessary at a subsequent date to execute additional documents to give full validity to this Agreement and that they will mutually cooperate with each other in that regard.
- 9 Ballard further represents and warrants that Warpath is in good standing and that he has authority to enter into this Agreement and that Warpath has no liabilities outstanding.

WMP
D.P.B.
B.B.
12

10 This Agreement shall be binding on the parties hereto their heirs successors
and assigns

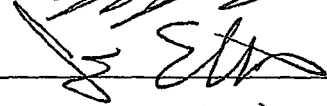
11 No part of this Agreement may be assigned without written consent of all parties

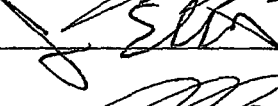
In witness whereof the parties have set their had and seal the day first above written

WITNESSES



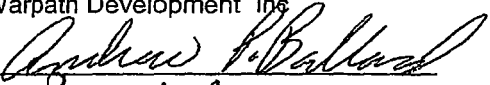


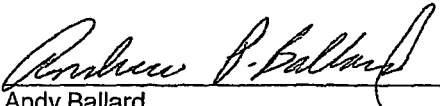


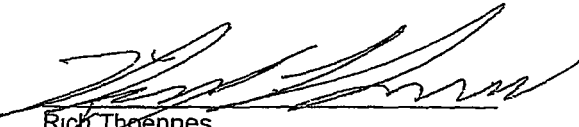


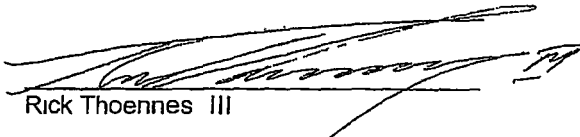


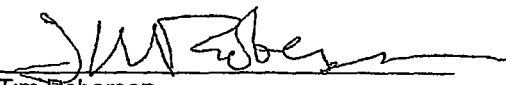

Warpath Development Inc


Its President


Andy Ballard


Rick Thoennes


Rick Thoennes III


Tim Roberson

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard,)

C A No 2008-CP-23-5739

Plaintiff,)

v)

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc ,)

Defendants)

FILED CLERK OF COURT
GREENVILLE CO S C
PAUL B WICKENS JR

**ANSWER AND COUNTERCLAIMS OF
DEFENDANTS TIM ROBERSON, RICK
THOENNES, RICK THOENNES III, AND
WARPATH DEVELOPMENT, INC ,
TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

(Jury Trial Demanded)

The Defendants, Tim Roberson, Rick Thoennes, Rick Thoennes III, and Warpath Development, Inc (collectively "Defendants), answering the First Amended Complaint of the Plaintiff, would respectfully show to the Court

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75 Defendants deny the allegations of paragraph 75 of the First Amended Complaint

76 Defendants deny the allegations of paragraph 76 of the First Amended Complaint

FOR A SECOND DEFENSE

77 The Defendants re-allege Paragraphs 1 through 76 of this Answer as specifically set forth herein

78 The Defendants assert that the Plaintiff has failed to state a claim for which relief can be granted

FOR A THIRD DEFENSE

79 The Defendants re-allege Paragraphs 1 through 78 of this Answer as specifically set forth herein

80 The Defendants assert that the Plaintiff's claims are barred by the doctrines of estoppel and unclean hands as well any other and further equitable defenses that may be available

FOR A FOURTH DEFENSE

81 The Defendants re-allege Paragraphs 1 through 80 of this Answer as specifically set forth herein

82 The Defendants assert that the Plaintiff's claims are not ripe for adjudication

COUNTERCLAIMS

GENERAL ALLEGATIONS

83 In or around late 2006/early 2007, Ballard began searching for investors to pick up and finally develop the Warpath Landing project The Defendants were eventually informed of the project and potential investment by an intermediary

84 Sometime thereafter, the parties met with one another at the intermediary's office wherein Ballard briefly explained the deal provided the Defendants with a conceptual plan and disclosed the financial arrangements of his proposal Ballard gave the impression that the development was "shovel ready"

85 After reviewing the proposal, the Defendants determined at the time that Ballard's proposed deal did not make sense financially and walked away

86 Lines of communication were eventually reopened and Ballard and the Defendants began to seriously discuss the investment After several meetings in which *pro formas* developed in part based upon the representations of Ballard, as well as those contained in

the conceptual plan, were presented to and discussed by Ballard and the group as a whole, a counterproposal was eventually made by the Defendants

87 After consideration, Ballard accepted the counterproposal

88 The parties then moved forward and entered into the Stock Purchase Agreement on May 29, 2007

89 Following the close of the stock purchase transaction, the Defendants set to work immediately on what was believed to be the final touches of the development

90 Over the next several weeks, it became clear to the Defendants that the state of the development, as well as the profitability of the investment, was not as represented

91 In particular, the development was not “shovel ready” as represented by Ballard. In fact, over two and one-half years later, Warpath is still awaiting final permits

92 Additionally, a primary profit center for the development are the wet boat slips. During the course of selling the Defendants on the investment, Ballard provided the Defendants a conceptual plan which indicated that Warpath Landing could support anywhere between 100 to 200 boat slips. Seeing that the wet boat slips provided the greatest profit potential, the Defendants opted to install 200 wet boat slips, the maximum number Ballard represented were possible, in their *pro formas*. In the summer of 2007, it was, unfortunately, determined that only approximately 100 wet boat slips were possible.

93 Given Ballard's presence at the meetings regarding the *pro formas*, Ballard was aware that the Defendants were evaluating the investment based upon 200 boat slips. In fact, however, based upon later representations by Ballard, as well as the existence of a prior, undisclosed conceptual plan which only indicated that 100 wet boat slips were possible, Defendants believe that Ballard was well aware that it was not possible to get any more than

approximately 100 boat slips in place at the Warpath Landing development Ballard, however, chose not to divulge this information prior to Defendants investing with him

94 As a result of these misrepresentations, Defendants have lost monies, experienced mounting delays and now have a significantly devalued investment

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

95 The Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein

96 The Plaintiffs and Defendants entered into the Stock Purchase Agreement on May 29, 2007

97 Implied in every agreement is a covenant of good faith and fair dealing

98 Upon information and belief, Plaintiff has breached the Stock Purchase Agreement

99 As a result of Plaintiff's breach, Defendants have suffered actual and consequential damages that include, but are not limited to, lost time, lost expenses, mounting delays, and a significantly devalued investment

FOR A SECOND COUNTERCLAIM
(Breach of Contract Accompanied By a Fraudulent Act)

100 Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein

101 For the reasons set forth in Defendants First Counterclaim Plaintiff breached the Stock Purchase Agreement with Defendants

102 Upon information and belief, Defendants actions in breach of the Stock Purchase Agreement are made with fraudulent intent and accompanied by a fraudulent act

103 As a result of Plaintiff's actions, Defendants are entitled to actual, consequential
and punitive damages

FOR A THIRD COUNTERCLAIM
(Fraud)

104 The Defendants reallege and incorporate herein all prior paragraphs as
specifically set forth herein

105 In soliciting Defendants investment in Warpath Development, Plaintiff
incorrectly represented and/or improperly allowed the Defendants to believe that the project was
'shovel ready' and that it was possible to have 200 wet boat slips at the development

106 Plaintiff was aware of the falsity of these representations

107 Based upon his meetings with the Defendants, Plaintiff was aware of the
materiality of these representations to the Defendants' decision regarding the investment

108 Plaintiff either knew of the falsity of these representations or recklessly
disregarded the truth or falsity of these representations

109 Plaintiff intended and knew that these representations would be acted upon

110 The Defendants were ignorant as to the falsity of the representations

111 The Defendants relied on the truth of the representations

112 The Defendants had a right to rely therein

113 Defendants were damaged as a result of these fraudulent representations and
Plaintiff's actions Defendants were injured

114 As a result of Plaintiff's actions, Defendants are entitled to actual, consequential
and punitive damages

FOR A FOURTH COUNTERCLAIM
(Negligent Misrepresentation)

115 The Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein

116 As set forth above, in soliciting Defendants' investment in Warpath Development, Plaintiff incorrectly represented and/or improperly allowed the Defendants to believe that the project was 'shovel ready' and that it was possible to have 200 wet boat slips at the development

117 Plaintiff had a monetary interest in making the representation. Plaintiff was eventually paid \$1,000,000 and promised \$150,000 more for the investment.

118 Plaintiff was obligated and duty bound to provide truthful information and dispel misunderstandings.

119 Plaintiff breached this obligation by failing to exercise due care.

120 The Defendants justifiably relied on Plaintiff's representations, actions and inactions and have suffered losses as a result.

121 As a result of Plaintiff's actions, Defendants are entitled to actual, consequential and punitive damages.

FOR A FIFTH COUNTERCLAIM
(Violation of S C Code Ann 35-1-501)

122 The Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein.

123 As set forth above, in soliciting Defendants' investment in Warpath Development, Plaintiff incorrectly represented and/or improperly allowed the Defendants to

believe that the project was "shovel ready" and that it was possible to have 200 wet boat slips at the development

124 The belief the project was "shovel ready" and that it was possible to have 200 wet boat slips at the development was material to the Defendants decision to move forward with the investment

125 Plaintiff's misrepresentations and/or improper silence were actions or inactions in violation of the S C Code Ann § 35-1 501

126 As a result, Defendants are entitled to any and all damages afforded by S C Code Ann § 35-1-509 or otherwise

WHEREFORE, having answered and fully counter-claimed of the Plaintiff, Defendants seek a full dismissal of Plaintiff's claims and demand judgment against the Plaintiff for actual consequential and punitive damages, the costs of suit, including reasonable attorneys' fees and interest and for such other and further relief as the Court deems just and proper

Respectfully Submitted,



Joshua L. Howard # 70260
Haynsworth Sinkler Boyd, P A
P/O Box 2048
Greenville, SC 29602
Telephone 864 240-3202
Facsimile 864-240-3300
jhoward@hsblawfirm.com

Attorneys for the Defendants

Greenville, South Carolina
September 9, 2009

FILED CLERK OF COURT
GR - NJILL - CO SC
PAUL B WICKENS JR

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) 2009 SEP 17 P 4 39

IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard,)
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v)
Tim Roberson, Rick Thoennes Rick)
Thoennes III, and Warpath Development,)
Inc ,)
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C A No 2008-CP-23 5739

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COUNTERCLAIMS OF
DEFENDANTS TIM ROBERSON, RICK
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WARPATH DEVELOPMENT, INC ,
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(Jury Trial Demanded)**

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76 Defendants deny the allegations of paragraph 76 of the First Amended Complaint

FOR A SECOND DEFENSE

77 The Defendants re allege Paragraphs 1 through 76 of this Answer as specifically set forth herein

78 The Defendants assert that the Plaintiff has failed to state a claim for which relief can be granted

FOR A THIRD DEFENSE

79 The Defendants re allege Paragraphs 1 through 78 of this Answer as specifically set forth herein

80 The Defendants assert that the Plaintiff's claims are barred by the doctrines of estoppel and unclean hands as well any other and further equitable defenses that may be available

FOR A FOURTH DEFENSE

81 The Defendants re allege Paragraphs 1 through 80 of this Answer as specifically set forth herein

82 The Defendants assert that the Plaintiff's claims are not ripe for adjudication

FOR A FIFTH DEFENSE

83 The Defendants re allege Paragraphs 1 through 80 of this Answer as specifically set forth herein

84 The Defendants plead the Business Judgment Rule in opposition to Plaintiff's claims

COUNTERCLAIMS

GENERAL ALLEGATIONS

85 In or around late 2006/early 2007 Ballard began searching for investors to pick up and finally develop the Warpath Landing project The Defendants were eventually informed of the project and potential investment by an intermediary

86 Sometime thereafter the parties met with one another at the intermediary s office wherein Ballard briefly explained the deal, provided the Defendants with a conceptual plan, and disclosed the financial arrangements of his proposal Ballard gave the impression that the development was 'shovel ready

87 After reviewing the proposal the Defendants determined at the time that Ballard s proposed deal did not make sense financially and walked away

88 Lines of communication were eventually reopened and Ballard and the Defendants began to seriously discuss the investment. After several meetings in which *pro formas* developed in part based upon the representations of Ballard, as well as those contained in the conceptual plan, were presented to and discussed by Ballard and the group as a whole, a counterproposal was eventually made by the Defendants.

89 After consideration, Ballard accepted the counterproposal.

90 The parties then moved forward and entered into the Stock Purchase Agreement on May 29, 2007.

91 Following the close of the stock purchase transaction, the Defendants set to work immediately on what was believed to be the final touches of the development.

92 Over the next several weeks, it became clear to the Defendants that the state of the development, as well as the profitability of the investment, was not as represented.

93 In particular, the development was not “shovel ready” as represented by Ballard. In fact, over two and one-half years later, Warpath is still awaiting final permits.

94 Additionally, a primary profit center for the development are the wet boat slips. During the course of selling the Defendants on the investment, Ballard provided the Defendants a conceptual plan which indicated that Warpath Landing could support anywhere between 100 to 200 boat slips. Seeing that the wet boat slips provided the greatest profit potential, the Defendants opted to install 200 wet boat slips, the maximum number Ballard represented were possible in their *pro formas*. In the summer of 2007, it was unfortunately determined that only approximately 100 wet boat slips were possible.

95 Given Ballard’s presence at the meetings regarding the *pro formas*, Ballard was aware that the Defendants were evaluating the investment based upon 200 boat slips. In fact,

however, based upon later representations by Ballard, as well as the existence of a prior undisclosed conceptual plan which only indicated that 100 wet boat slips were possible Defendants believe that Ballard was well aware that it was not possible to get any more than approximately 100 boat slips in place at the Warpath Landing development Ballard, however, chose not to divulge this information prior to Defendants investing with him

96 As a result of these misrepresentations, Defendants have lost monies, experienced mounting delays and now have a significantly devalued investment

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

97 The Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein

98 The Plaintiffs and Defendants entered into the Stock Purchase Agreement on May 29, 2007

99 Implied in every agreement is a covenant of good faith and fair dealing

100 Upon information and belief, Plaintiff has breached the Stock Purchase Agreement

101 As a result of Plaintiff's breach, Defendants have suffered actual and consequential damages that include, but are not limited to, lost time, lost expenses mounting delays, and a significantly devalued investment

FOR A SECOND COUNTERCLAIM
(Breach of Contract Accompanied By a Fraudulent Act)

102 Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein

103 For the reasons set forth in Defendants First Counterclaim, Plaintiff breached the Stock Purchase Agreement with Defendants

104 Upon information and belief, Defendants actions in breach of the Stock Purchase Agreement are made with fraudulent intent and accompanied by a fraudulent act

105 As a result of Plaintiff's actions, Defendants are entitled to actual, consequential and punitive damages

FOR A THIRD COUNTERCLAIM
(Fraud)

106 The Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein

107 In soliciting Defendants' investment in Warpath Development, Plaintiff incorrectly represented and/or improperly allowed the Defendants to believe that the project was shovel ready" and that it was possible to have 200 wet boat slips at the development

108 Plaintiff was aware of the falsity of these representations

109 Based upon his meetings with the Defendants, Plaintiff was aware of the materiality of these representations to the Defendants decision regarding the investment

110 Plaintiff either knew of the falsity of these representations or recklessly disregarded the truth or falsity of these representations

111 Plaintiff intended and knew that these representations would be acted upon

112 The Defendants were ignorant as to the falsity of the representations

113 The Defendants relied on the truth of the representations

114 The Defendants had a right to rely therein

115 Defendants were damaged as a result of these fraudulent representations and Plaintiff's actions Defendants were injured

116 As a result of Plaintiff's actions, Defendants are entitled to actual, consequential and punitive damages

FOR A FOURTH COUNTERCLAIM
(Negligent Misrepresentation)

117 The Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein

118 As set forth above, in soliciting Defendants' investment in Warpath Development, Plaintiff incorrectly represented and/or improperly allowed the Defendants to believe that the project was 'shovel ready' and that it was possible to have 200 wet boat slips at the development

119 Plaintiff had a monetary interest in making the representation. Plaintiff was eventually paid \$1,000,000 and promised \$150,000 more for the investment.

120 Plaintiff was obligated and duty bound to provide truthful information and dispel misunderstandings.

121 Plaintiff breached this obligation by failing to exercise due care.

122 The Defendants justifiably relied on Plaintiff's representations, actions and inactions and have suffered losses as a result.

123 As a result of Plaintiff's actions, Defendants are entitled to actual, consequential and punitive damages.

FOR A FIFTH COUNTERCLAIM
(Violation of S.C. Code Ann. 35-1-501)

124 The Defendants reallege and incorporate herein all prior paragraphs as specifically set forth herein.

125 As set forth above, in soliciting Defendants investment in Warpath Development, Plaintiff incorrectly represented and/or improperly allowed the Defendants to believe that the project was "shovel ready" and that it was possible to have 200 wet boat slips at the development

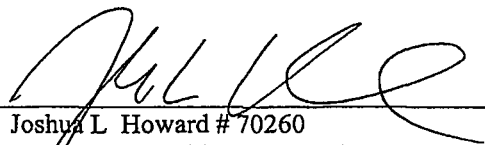
126 The belief the project was "shovel ready" and that it was possible to have 200 wet boat slips at the development was material to the Defendants decision to move forward with the investment

127 Plaintiff's misrepresentations and/or improper silence were actions or inactions in violation of the S C Code Ann § 35 1-501

128 As a result, Defendants are entitled to any and all damages afforded by S C Code Ann § 35 1-509 or otherwise

WHEREFORE having answered and fully counter-claimed of the Plaintiff, Defendants seek a full dismissal of Plaintiff's claims and demand judgment against the Plaintiff for actual, consequential and punitive damages, the costs of suit, including reasonable attorneys' fees and interest and for such other and further relief as the Court deems just and proper

Respectfully Submitted



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Attorneys for the Defendants

Greenville South Carolina
September 17 2009

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS
2009 SEP 18 P 3 16
FILED CLERK OF COURT
GREENVILLE CO SC
PAUL B WICKENSIMER

Andrew P (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development, Inc ,

Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc ,

Defendants

CASE NO 2008-CP-23-5739

**PLAINTIFF'S REPLY TO DEFENDANTS'
COUNTERCLAIMS
(JURY TRIAL DEMANDED)**

The plaintiff submits this reply to the defendants' counterclaims. All allegations not specifically admitted are hereby denied. The plaintiff shows the Court as follows:

FOR A FIRST DEFENSE

1 In response to paragraph 85, the plaintiff alleges that in late 2006 and/or early 2007, he was considering investors in Warpath Development, Inc ("Warpath"), and that the defendants learned of Warpath and the potential investment. Otherwise, the plaintiff denies paragraph 83.

2 In response to paragraph 86, the plaintiff alleges that he met with the individual defendants and discussed Warpath with them. Otherwise, the plaintiff denies paragraph 84.

3 In response to paragraph 87, the plaintiff alleges that the individual defendants initially decided not to invest in Warpath. Otherwise, the plaintiff denies paragraph 87.

4 In response to paragraphs 88, 89, and 90, the plaintiff alleges that the individual defendants expressed interest again in investing in Warpath, that the individual defendants had access to the relevant information including the lease from Duke Power, and that the individual defendants had every opportunity to investigate and examine Warpath. The plaintiff further

alleges that the individual defendants, who are sophisticated investors, after reviewing the materials and information and making whatever inquiries and investigations they chose to make, decided to become shareholders in Warpath, as set out in the Stock Purchase Agreement dated May 29, 2007. Except as alleged herein, the plaintiff denies paragraphs 88-90

5 The plaintiff denies paragraphs 91, 92, 93, 94, 95, and 96

6 In response to paragraph 97, the plaintiff realleges the prior paragraphs of this Reply and the allegations of his First Amended Complaint

7 The plaintiff admits paragraphs 98 and 99

8 The plaintiff denies paragraphs 100 and 101

9 In response to paragraph 102, the plaintiff realleges the prior paragraphs of this Reply and the allegations of his First Amended Complaint

10 The plaintiff denies paragraphs 103, 104, and 105

11 In response to paragraph 106, the plaintiff realleges the prior paragraphs of this Reply and the allegations of his First Amended Complaint

12 The plaintiff denies paragraphs 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116

13 In response to paragraph 117, the plaintiff realleges the prior paragraphs of this Reply and the allegations of his First Amended Complaint

14 The plaintiff denies paragraphs 118, 119, 120, 121, 122, and 123

15 In response to paragraph 124, the plaintiff realleges the prior paragraphs of this Reply and the allegations of his First Amended Complaint

16 The plaintiff denies paragraphs 125, 126, 127, and 128

1

17 The plaintiff denies that the defendants are entitled to the relief they seek in their
prayer

FOR A SECOND DEFENSE

18 The plaintiff reiterates and realleges the above allegations

19 Defendants' counterclaims fail to state a claim upon which relief can be granted

FOR A THIRD DEFENSE

20 The plaintiff reiterates and realleges the above allegations

21 Defendants' counterclaims are barred in whole or in part by their failure to
mitigate damages

FOR A FOURTH DEFENSE

22 The plaintiff reiterates and realleges the above allegations

23 Defendants' counterclaims are barred in whole or in part by their own breaches of
the contract

FOR A FIFTH DEFENSE

24 The plaintiff reiterates and realleges the above allegations

25 Defendants' counterclaims are barred in whole or in part by of the doctrine of
unclean hands

FOR A SIXTH DEFENSE

26 The plaintiff reiterates and realleges the above allegations

27 Defendants' counterclaims are barred in whole or in part by of the doctrine of
waiver

FOR A SEVENTH DEFENSE

28 The plaintiff reiterates and realleges the above allegations

29 Defendants' counterclaims are barred in whole or in part by of the doctrine of
estoppel

FOR AN EIGHTH DEFENSE

30 The plaintiff reiterates and realleges the above allegations

31 The punitive damages sought by Plaintiffs are unconstitutional under the
excessive fines clause of the Eighth Amendment and the Due Process Clause of the Fourteenth
Amendment to the United States Constitution, and in violation of the South Carolina
Constitution

FOR A NINTH DEFENSE

32 The plaintiff reiterates and realleges the above allegations

33 Defendants' claims are barred, in whole or in part under the doctrine of
comparative negligence, on the grounds that alleged negligence or other breach of legal
obligations on the part of defendants or others was the intervening or superseding cause of the
alleged damages at issue and to the extent the plaintiff was negligent, which is denied and stated
solely for purpose of this defense, any such negligence was outweighed or should otherwise be
off-set by defendants' negligence, so that the plaintiff should not be held liable to defendants
and/or any damages incurred by defendants should be reduced by their comparative negligence

FOR A TENTH DEFENSE

34 The plaintiff reiterates and realleges the above allegations

35 Defendants' counterclaims are barred in whole or in part by their contributory
negligence

FOR AN ELEVENTH DEFENSE

36 The plaintiff reiterates and realleges the above allegations

37 Defendants' counterclaims are barred in whole or in part by their assumption of the risk

FOR A TWELFTH DEFENSE

38 The plaintiff reiterates and realleges the above allegations

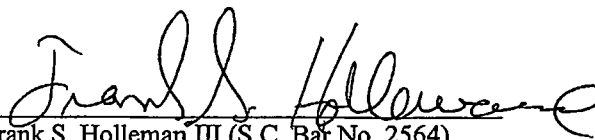
39 In response to the Fifth Counterclaim, the plaintiff specifically denies that he made any untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading

40 Further, the plaintiff alleges that the defendants knew the alleged untruth or omission alleged in their counterclaims

41 Further, the plaintiff alleges that he did not know and, in the exercise of reasonable care, could not have known of the alleged untruth or omission alleged in the defendants' counterclaims

WHEREFORE, the plaintiff asks that the Court dismiss the defendants' counterclaims with prejudice, award the plaintiff costs, and grant the plaintiff whatever other relief the Court considers just and appropriate

THE PLAINTIFF HEREBY DEMANDS A JURY TRIAL



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Dated 9/18/09
Greenville, South Carolina

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development, Inc ,

Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc ,

Defendants

CASE NO 2008-CP-23-5739

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

2009 OCT 27 A 11 06

FILED
CLERK OF COURT
JUL 3 11 30 AM
JUL 3 11 30 AM

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiff
Andrew P (Andy) Ballard (Ballard) hereby moves this Court for an order granting
Ballard summary judgment as to the following

- 1) All of Defendants' amended counterclaims
- 2) Plaintiff's amended Causes of Action

This Motion is made upon the grounds that Defendants can raise no genuine issue of
material fact on any of their relevant claims or defenses and Ballard is entitled to
judgment as a matter of law This Motion is based upon the applicable law, depositions
and discovery materials in the case, and any affidavits or memoranda that may be
submitted by Ballard at or before the hearing on this Motion

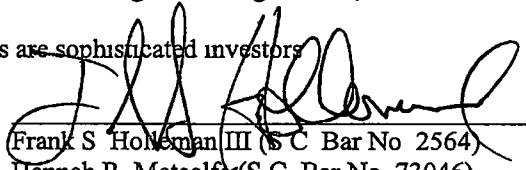
This motion is based on the following grounds

- 1 The corporate action taken by the defendants in 2008 is contrary to the
articles of incorporation of Warpath Development, Inc ,
- 2 The corporate action taken by the defendants in 2008 breached the 2007
agreement between all the parties hereto,

- 3 The defendants have breached the 2007 agreement between all the parties
hereto,
- 4 The defendants have anticipatorily breached the 2007 agreement between
all the parties hereto,
- 5 The defendants have breached the covenant of good faith and fair dealing,
- 6 The defendants have breached their fiduciary duties that they owe the
plaintiff, pursuant to S C Code Ann § 33-8-300,
- 7 The defendants have breached their fiduciary duties that they owe the
plaintiff, pursuant to S C Code Ann § 33-8-420,
- 8 The defendants have breached their fiduciary duties that they, as majority
shareholders, owe the plaintiff,
- 9 Pursuant to S C Code Ann §§ 33-14-300 and 310, the defendants should
be required to purchase the plaintiff's stock or should be prevented from
issuing additional stock that would dilute the plaintiff's interest in the
defendant Warpath,
- 10 Alternatively, pursuant to the derivative claim, the defendants must return
the stock they received from Warpath to Warpath,
- 11 As to the defendants' counterclaims
- (a) The plaintiff committed no breach of the agreement,
 - (b) The defendants have alleged to separate fraudulent act and there
was no fraudulent act by the plaintiff
 - (c) The plaintiff committed no fraud,
 - (d) The plaintiff made no misrepresentations,

- (e) The plaintiff committed no violation of S C Code § 35-1-501,
- (f) The agreement contained no promise that the development was shovel ready” and in fact provided that additional steps and contingencies existed before the development could be completed,
- (g) The agreement contained no promise or guarantee of 200 slips, but in fact referenced the lease with Duke Power which expressly provided no guarantee beyond 100 slips,
- (h) The defendants had access to the lease with Duke Power, the agreement, and officials of Duke Power and Pickens County, and had every opportunity to investigate the investment before making it,
- (i) The defendants were contributorily negligent and comparatively negligent, such that they have no right to recover,
- (j) The plaintiff made no false representations,
- (k) The defendants were not ignorant as to the facts surrounding the investment they made,
- (l) The defendants could not reasonably rely upon the alleged representations they allege in their counterclaims,
- (m) The defendants had no right to rely upon the alleged representations they allege in their counterclaims,
- (n) The defendants failed to exercise reasonable prudence and diligence in making the investment and entering into the agreement,

- (o) The plaintiffs' claims are barred by the plain terms of the agreement they signed,
- (p) The plaintiffs' claims are barred by their assumption of the risk,
- (q) The plaintiff did not know and, in the exercise of reasonable care, could not have known of the alleged untruth or omission alleged in the defendants' counterclaims,
- (q) The plaintiff did not make any untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading,
- (r) The defendants knew the terms of the agreement and the Duke Power lease before entering into the agreement,
- (s) The defendants are sophisticated investors



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Dated October 27, 2009
Greenville, South Carolina

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

FOR THE THIRTEENTH JUDICIAL CIRCUIT

2009 NOV 12 P 5:04

Andrew P (Andy) Ballard,

Case Number 2008-CP-23-5739

Plaintiff,

FILED CLERK OF COURT
GREENVILLE CO SC
PAUL F WICKENS

vs

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc ,

Defendants

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT AND IN
SUPPORT OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

The plaintiff, Andy Ballard ("Ballard"), submits this memorandum in opposition to the defendants' motion for summary judgment and in support of the plaintiff's motion for summary judgment. This memorandum is supported by the pleadings on file in the case and the discovery materials attached and filed with the Court.

The defendants have moved for summary judgment on one ground, on the basis that the plaintiff's claims – which have been pending more than one year – are 'not ripe for adjudication.' However, as set out below, the defendants have taken steps to breach the Articles of Incorporation of the defendant Warpath Development, Inc ("Warpath"), and have clearly breached and made clear that they will not satisfy their obligations under the shareholders' agreement they signed.

Facts The plaintiff, Andy Ballard, organized a corporation, the defendant Warpath. Under its Articles of Incorporation (which have not been amended), it can issue up to 100,000 shares of stock. Articles of Incorporation (Exhibit A). Under Warpath, Ballard began to develop a marina on Lake Keowee in Pickens County on property owned by Duke Energy. March 4,

2008 Deposition of Andy Ballard (“Ballard Depo”) pp 41-45 (Exhibit B) Until the individual defendants became shareholders, Ballard was the only stockholder and owned 40,000 shares, the total amount of shares issued by Warpath Stock Purchase Agreement (“Agreement”) ¶ 1 (Exhibit C)

Ballard succeeded in obtaining a lease (“Lease”) from Duke Energy for the property for the marina The Lease is attached as Exhibit D hereto It expressly incorporates a conceptual plan for the marina Lease, ¶ 4 (Exhibit D) The conceptual plan, which is part of the Lease and attached to it provides for “100-200” boat slips at the marina Exhibit B to Lease, at p APB 00114 (Exhibit D) It does not contain a guarantee of 200 boat slips Ballard also worked with officials of Pickens County to obtain their support for the project Ballard Depo pp 41-45 (Exhibit B)

After obtaining the Lease, Ballard met the individual defendants, and they explored making an investment in Warpath See March 4, 2009 Deposition of Tim Roberson (“Roberson Depo”) p 30 1-25 (Exhibit E) In the end, they entered into the Agreement, dated May 29, 2007 See Agreement (Exhibit C) In the Agreement, they purchased 20,000 of Ballard’s 40,000 shares for \$1 million Id ¶ 1 Ballard, not Warpath, was paid \$1 million for the 20,000 shares Roberson Depo p 58 6 9 (Exhibit E) Ballard was thus left with 20,000 shares Agreement ¶ (Exhibit C) In addition, Warpath, which is also a party to the Agreement, issued the defendants an additional 60 000 shares Id In the Agreement, the individual defendants made various promises to Warpath to take steps to finance and develop the marina Id, ¶¶ 5-7

The Agreement made clear that the permits for the project had not been issued, stating “[f]inal permits must be obtained to move forward” Id, ¶ 3, see also September 18, 2009 Deposition of Rick Thoennes, III (“Thoennes III Depo”) (Exhibit F) at p 63 18-20, Roberson

Depo pp 40 14-20, 64 21-24, 69 5 20 (Exhibit E) In fact, the Agreement even provided for a refund of the money paid Ballard if the permits were not issued “If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1,000,000 00 payment will be refunded ” Agreement ¶ 4 (Exhibit C)

Prior to entering into the Agreement, the individual defendants had every opportunity to conduct whatever due diligence they desired to undertake See Roberson Depo pp 43 19 44 9, 50 16-21, 70 7-17 (Exhibit E), see also March 29, 2007 Email from Rick Thoennes, Sr to Tim Roberson and Rick Thoennes III (Exhibit G) They spoke with both Duke Energy and the Pickens County Administrator, as well as other Pickens County officials, and had an opportunity to ask them whatever questions the individual defendants wanted to ask See Roberson Depo pp 50 16-21, 64 25-65 5, 70 7-17 (Exhibit E), Deposition of Rick Thoennes Sr (to be provided) Both the Duke Energy and the Pickens County officials assured the individual defendants that they supported the project and wanted it to go forward Roberson Depo pp 52 20-53 6, 54 14-21, 65 3-5 (Exhibit E), Thoennes Sr Deposition (to be provided)

After the Agreement was entered into, Duke Energy decided that it would approve 102 boat slips for the marina, within the range of “100-200” as set out in the Lease See Thoennes III Depo pp 70 11-71 5 (Exhibit F) The individual defendants were upset by this decision, because they had planned on having 200 boat slips Id., at 70 7-10, 71 2-11 In fact, Ballard also disagreed with Duke Energy’s decision Id., at 71 10-72 4, Roberson Depo p 107 2-22 (Exhibit E) The individual defendants believe Duke Energy’s decision was contrary to the Lease language, but the defendants have taken no action against Duke Energy for its decision Thoennes III Depo p 78 8 12 (Exhibit F), see also Deposition of Thoennes, Sr (to be provided)

In addition, the defendants have encountered delays in obtaining permits. Ballard has assisted the defendants in obtaining permits, and it is expected that all necessary permits will be issued. See Roberson Depo p 90 17-22 (Exhibit E)

As to the financing of the development of the marina, the Agreement contains very clear language that places that obligation on the individual defendants and also provides that Ballard's investment and ownership in the marina will not be affected by the financing process. Ex B to Agreement, ¶¶ 5-7 (Exhibit C). The Agreement unequivocally provides that Ballard's "final holdings in Warpath will be 20% of the stock." Id. ¶ 1. In addition, it provides that Roberson will provide "the necessary capital to obtain long term financing on the project." Id. ¶ 6. The Agreement contains no limitation on Roberson's obligation to provide whatever capital is necessary to obtain the long term financing. Id. Further, the Agreement specifically provides that Ballard will not be required to provide any personal guarantees for the financing, but that the Thoennes defendants will assist with obtaining permanent financing. Id. ¶¶ 5 & 7.

In May of 2008, the individual defendants called a meeting of the shareholders of Warpath. See Minutes of May 1, 2008 Regular Meeting of Stockholders of Warpath Development, Inc. (' Stockholder Minutes '), (Exhibit H). From discovery, we now know that they had put together a plan to improve their return on investment (ROI) in Warpath, in light of Duke Energy's decision to allow 102 boat slips in the marina. See, Roberson Depo pp 83 7-85 17, 86 5-87, 115 21-117 2 (Exhibit E), see also December 28, 2007 Email from Tim Roberson to Rick Thoennes, Sr., (Exhibit I). At the shareholders meeting, the individual defendants first elected themselves the directors in Warpath and did not elect Ballard, the founder of Warpath and previously a director. See Stockholder Minutes (Exhibit H). They then held a directors meeting and authorized the issuance of 900,000 additional shares of Warpath to

finance the development of Warpath, “to raise capital ” in violation of the Articles of Incorporation which authorizes only 100,000 shares and in violation of the Agreement which sets Ballard’s final holdings at 20% of Warpath and provides that Roberson has the obligation to provide the capital necessary to obtain long term financing See Stockholder Minutes (Exhibit H), see also Minutes of May 1, 2008 Directors Meeting (‘Directors Minutes’), (Exhibit J) The individual defendants then convened a meeting of the shareholders, and, over Ballard’s dissenting votes, authorized the issuance of the 900,000 shares The necessary action has never been taken to amend Warpath’s Articles of Incorporation See, Articles, (Exhibit A) September 29, 2009, Deposition of Jim Fayssoux (“Fayssoux Depo ’) pp 40 2-41 5 (Exhibit K)

This lawsuit was filed thereafter Originally, it sought only an injunction against the issuance of the additional shares The defendants filed counterclaims accusing Ballard of misleading them in that (1) the permits would be issued quickly and (2) there would be 200 boat slips in the marina They make these allegations in the face of clear language in the Agreement which sets out that the permits have not been issued, that recognizes that the permits may never be issued, that expressly provides that the number of boat slips will be from 100 to 200 and that does not guarantee 200 boat slips They also make these allegations although they knew full well that the permitting decisions were up to governmental authorities that Ballard did not control, and that the decision relating to the boat slips was made by Duke Energy, not by Ballard See Roberson Depo p 97 8-14 (Exhibit E), March 29, 2007 Email (Exhibit G)

During discovery, it became clear that the defendants had no intention of complying with the Agreement The individual defendants conceded – contrary to their own counterclaims – that Ballard had not breached the Agreement and that he had not committed any fraud See Roberson Depo pp 73 11 14, 77 23 25 (Exhibit E) Roberson testified clearly that he would not provide

the capital necessary to obtain long term financing. Instead, he testified that he would provide no more than 20% of the capital and that lenders, in the changed economic environment, now require much more. See Roberson Depo p 89 10-25 (' Q Do you intend to do that? A Absolutely not ") (Exhibit E). Consequently, the defendants have not been able to obtain financing for the project.

Discovery also revealed communications between the defendants before the 2008 shareholders meeting demonstrating that they put together a plan to run Ballard out of the company. See October 28, 2007 Email from Tim Roberson to Rick Thoennes, Sr and Rick Thoennes III, (Exhibit L), see also Roberson Depo p 113 11-14 (Exhibit E).

As a result, Ballard amended his complaint to add claims for breach, for violation of fiduciary duties, and for oppression of a minority shareholder.

This Suit is Not Premature The defendants have adopted director and shareholder resolutions providing for issuance of 900,000 additional shares of Warpath stock to finance the building and development of the marina. These resolutions are squarely contrary to Warpath's Articles of Incorporation, which provide for only 100,000 shares, of which Ballard owns 20,000 or 20%. The resolutions are also squarely contrary to the Agreement, which provides that Roberson "will provide the necessary capital to obtain long term financing." The individual defendants are violating the Articles of Incorporation and the Agreement, to get around Roberson's obligation to put up the capital necessary to obtain long term financing. Instead, they hope to substitute equity – at no cost to themselves – for Roberson's obligation under the Agreement, and thereby to dilute Ballard's ownership to as little as 2% of Warpath – instead of the 20% provided in the Agreement.

Apparently, the defendants are contending that Ballard must wait until the stock is actually issued and then sue to have it returned to Warpath. This position makes no sense. It will be much more difficult and complicated to undo a stock transaction than to prevent the announced and intended violation of the Articles and the Agreement in the first place. In addition, there is no way that Ballard can know when the actual issuance of the stock will take place and seek the injunction only right before the stock is actually issued.

The defendants have clearly taken action to issue stock in violation of both the Articles and the Agreement. This dispute is ripe for action. The Court should issue an injunction now.

Likewise, as to the individual defendants' other breaches of the Agreement, they have made clear they do not intend to comply with the Agreement or are not able to. Roberson has made clear in no uncertain terms that he will not provide "the necessary capital to obtain long term financing," but instead will provide no more than 20%.

The Thoenneses have contractual obligations to perform "development work," to undertake "the execution of loan documents," and to provide "assistance with obtaining permanent financing." Agreement ¶ 5 (Exhibit C). However, the Thoenneses are in financial collapse. They have moved money from one project to another, resulting in unpaid subcontractors. Deposition of Thoennes Sr. (to be provided). They have had judgments entered against their construction company, including an unpaid bill for flooring of \$4,000, a judgment for appliances for \$14,000, and a judgment for tile for \$4-5,000. Thoennes III Depo pp. 24-8, 25-17 (Exhibit F). Their property in Oconee County was put on the list for tax sale, although they paid the taxes before the sale. Deposition of Thoennes Sr. (to be provided). They have consulted a bankruptcy attorney. Thoennes III Depo p. 33, 13-14. They have entered into a

confession of judgment of \$2 million, which they hope to work out through the sale of units at another development Deposition of Thoennes Sr (to be provided)

These defendants clearly either will not or cannot comply with the Agreement In no sense is this suit for breach “not ripe for adjudication ”

The Plaintiff is Entitled to An Injunction Against the Issuance of Additional Stock

Warpath’s Articles of Incorporation provide for the issuance of 100,000 shares, which were issued at the time the Agreement was entered into A corporation can issue no more shares than are authorized by its Articles See S C Code § 33 6-103 (a) (“A corporation may issue the number of shares of each class or series authorized by the articles of incorporation) Warpath s Articles have not been amended Consequently on this ground alone, the plaintiff is entitled to the issuance of an injunction against the issuance of additional stock by Warpath

In addition, the Agreement expressly provided that the defendant Roberson would provide the “necessary capital to obtain long term financing” for the project, and the Agreement provided that Ballard’s ‘ final holdings” would be 20% The Agreement did *not* provide for the issuance of additional equity to finance the project For this reason also, Ballard is entitled to an injunction against the issuance of additional stock by Warpath

The Defendants Have Breached the Agreement First of all, as set out above, the defendants have breached the Agreement by providing for the issuance of additional stock to fund the development and to reduce Ballard s holdings below 20% In addition, Roberson has breached the Agreement by making clear that he will not provide “the necessary capital to obtain long term financing ’ as required by the Agreement, but instead has arbitrarily limited his provision of capital to 20% The Thoenneses, due to the collapse of their businesses and their financial collapse, are no longer able to develop this marina or assist with the financing of the

project For all these reasons, the defendants have breached the Agreement, and Ballard is entitled to summary judgment

The Defendants Have Breached Their Fiduciary Duties and Have Oppressed

Ballard The defendants are directors, officers, and majority shareholders of Warpath Ballard is now only a 20% shareholder They have undertaken a course of action to repudiate the Agreement, to reduce Ballard's percentage ownership, and to try to push him out of Warpath – when he is the person who originated the project and obtained the Lease for the property These actions are clear breaches of their fiduciary duties and constitute oppression of the minority shareholder under South Carolina law See S C Code Ann § 33-8-300, S C Code Ann § 33-8-420, S C Code Ann §§ 33-14-300 and 310, *Kiriakides v Atlas Food Systems & Services Inc* , 343 S C 587, 541 S E 2d 257 (2001)

Ballard is entitled to summary judgment on these grounds, as well As a remedy, the Court should enjoin the defendants from issuing additional stock and also order them to buy out Ballard's ownership

After the Court's ruling, the Court and the parties can work together to schedule a hearing for the valuation of Ballard's ownership interest in Warpath

The Defendants' Counterclaims are Baseless As a litigation tactic, the defendants have filed counterclaims against Ballard, based on the fact that Duke Energy approved 102 slips, not 200, and that the permits have taken longer to obtain than they expected

There is no basis for any breach of contract, fraud claim, negligent misrepresentation claim or any other claim against Ballard The defendants entered into an Agreement that clearly referenced the Lease The Lease did not guarantee 200 slips, but instead provided for 100 to 200 The Agreement itself makes no promise whatsoever as to the number of slips The

defendants are very sophisticated investors and had every opportunity to investigate the investment. Roberson, for example, was once the CEO of a \$200 million company and handled an \$18 million acquisition. See Roberson Depo pp 14 13 15 5, 44 10-17 (Exhibit E). Ballard did not make the decision as to the number of slips, Duke Energy did. If the defendants have any complaint, it is with themselves for being overly optimistic and not taking into account the possibility that Duke would not approve the higher amount, or for not undertaking adequate due diligence. If they think Duke Energy has violated the Lease, they should take that complaint up with Duke Energy.

As to the permits, the Agreement expressly states that the permits have not been obtained. It even provides for the return of funds by Ballard if the permits are not obtained. The defendants are developers and sophisticated investors. They knew that Ballard did not make the permitting decisions, government agencies play that role. Ballard could not guarantee, one way or the other, what the agencies would do, and he expressly did not do so in the Agreement.

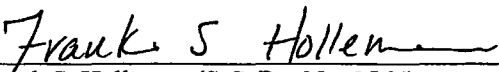
It is well established that 'there can be no liability for matters which plaintiff could ascertain on his own in the exercise of due diligence.' Robertson v. First Union Nat'l Bank, 350 S. C. 339, 348, 565 S. E. 2d 309, 314 (Ct. App. 2002) (quoting West v. Gladney, 341 S. C. 127, 134, 533 S. E. 2d 334, 337 (Ct. App. 2000)). "[We] have consistently followed the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract should read it and avail himself of every reasonable opportunity to understand its content and meaning." O'Connor v. Brotherhood of Railroad Trainmen, 217 S. C. 442, 449, 60 S. E. 2d 884, 886 (1950).

Indeed, Roberson has testified that Ballard did not breach the Agreement, and Thoennes, Sr., has testified that he does not believe that Ballard committed fraud. Roberson Depo p 77 23 25 ("Q But there is no breach of this written agreement? A That's true ") (Exhibit E), Thoennes Sr Deposition (to be provided). Instead, they believe Duke Energy has acted contrary to the Lease. Mr. Thoennes, Sr. admits that Ballard told the defendants exactly what Duke Energy told him when they talked with Duke Energy prior to entering into the Agreement. Thoennes Sr Deposition (to be provided).

Ballard is entitled to summary judgment on the counterclaims.

For these reasons, Ballard asks that the Court deny the defendants' motion for summary judgment, grant his motion for summary judgment, issue an injunction against the issuance of any additional stock by Warpath, find that the defendants have breached the Agreement, violated their fiduciary duties, and oppressed him, and set a schedule for a hearing on the value of Ballard's stock and Ballard's damages.

Respectfully submitted,


Frank S. Holleman (S C Bar No. 2564)
Hannah R. Metcalfe (S C Bar No. 73046)
Wyche, Burgess, Freeman & Parham, PA
44 E. Camperdown Way
P O Box 728 (29602-0728)
Greenville, SC 29601
Phone 864-242-8200
Facsimile 864-235-8900
Email fhollenman@wyche.com,
hmetcalfe@wyche.com

Dated November 12, 2009
Greenville, South Carolina

EXHIBIT A

only 1 copy

JUL 17 2009

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF INCORPORATION

- 1 The name of the proposed corporation is WARPATH DEVELOPMENT, INC
- 2 The initial registered office of the corporation is 109 Bouclion Drive, Greenville, SC 29615 (Greenville County), and the initial registered agent at such address is Andrew P Ballard

I hereby consent to the appointment as registered agent of the corporation

Andrew P Ballard
Agent's Signature

- 3 The corporation is authorized to issue shares of stock as follows Complete "a" or b whichever is applicable

a (X) The corporation is authorized to issue a single class of shares, the total number of shares authorized is 100 000

b () The corporation is authorized to issue more than one class of shares

Class of shares	Authorized No of Each Class
_____	_____
_____	_____
_____	_____

The relative right, preference and limitations of the shares of each class and of each series within a class are as follows

None

- 4 The existence of the corporation shall begin as of the filing date with the Secretary of State unless a delayed date is indicated (see §33-1-230(b) of the 1976 South Carolina Code of Laws as amended) _____
- 5 The optional provisions which the corporation elects to include in the articles of incorporation are as follows (see the applicable provisions of §33-2-102, §35-2-105 and §35-2-221 of the 1976 South Carolina Code of Laws as amended)
 - a Pre-emptive rights of stockholders shall apply without exception to all common stock issued by this corporation for any consideration whatsoever Pre-emptive rights shall not apply to preferred stock or holders thereof
 - b This corporation is authorized to purchase shares of its own stock common or preferred from either earned surplus or capital surplus upon authorization by the Board of Directors

040913-0097 FILED 09/09/2004
WARPATH DEVELOPMENT INC
Filing Fee \$135.00 ORIG

Mark Hammond

South Carolina Secretary of State



WARPATH DEVELOPMENT, INC

Name of Corporation

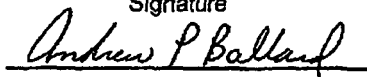
- 6 The name, address and signature of each Incorporator is as follows (only one required)

Name

Address

Signature

Andrew P Ballard 109 Boucillon Drive
Greenville, SC 29615



- 7 I William D Richardson, an attorney licensed to practice in the State of South Carolina certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of Chapter 2, Title 33 of the 1976 South Carolina Code of Laws as amended relating to the articles of incorporation

Date

9/8/0x



William D Richardson
201 Lavinia Avenue
P O Box 26718
Greenville SC 29616
(864) 242-6631

CERTIFIED TO BE A TRUE AND CORRECT COPY
TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

JUL 17 2007

NOTICE OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT OR BOTH
OF A SOUTH CAROLINA
OR FOREIGN CORPORATION

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Sections 33-5-102 and 33-15-108 of the 1976 South Carolina Code of Laws as amended the undersigned corporation submits the following information

- 1 The name of the corporation is WARPATH DEVELOPMENT, INC
- 2 The corporation is (complete either a or b whichever is applicable)
 - a a domestic corporation incorporated in South Carolina on 9/9/2004 or
 - b a foreign corporation incorporated in _____ on _____, and
State Date
authorized to do business in South Carolina on _____
Date
- 3 The street address of the present registered office in South Carolina is 109 BOULCILLON DRIVE
in the city of GREENVILLE South Carolina 29615
Street & Number Zip Code
- 4 If the current registered office is to be changed the street address to which its registered office is
to be changed is 501 BRYXTON CIRCLE in the city of SIMPSONVILLE South
Street Address Zip Code
Carolina 29681
- 5 The name of the present registered agent is ANDREW P BALLARD
- 6 If the current registered agent is to be changed, the name of the successor registered agent is
RICK THOENNES

I hereby consent to the appointment as registered agent of the corporation

[Signature]
Signature of New Registered Agent

- 7 The address of the registered office and the address of the business office of the registered agent as changed will be identical
- 8 Unless a delayed date is specified this will be effective upon acceptance for filing by the Secretary of State (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws as amended _____)

Pursuant to Sections 33-5-102(5) and 33-5-108(5) of the 1976 South Carolina Code of Laws as amended the written consent of the registered agent may be attached to this form

070826-0138 FILED 06/21/2007
WARPATH DEVELOPMENT INC

Filing Fee \$10.00 ORIG



Mark Hammond

South Carolina Secretary of State

WARPATH DEVELOPMENT, INC
Name of Corporation

Date 6/15/07

WARPATH DEVELOPMENT, INC
Name of Corporation

Signature

RICK THOENNES
Type or Print Name and Title

TREASURER

FILING INSTRUCTIONS

- 1 Two copies of this form the original and either a duplicate original or a conformed copy must be filed
- 2 Filing Fee (payable to the Secretary of State at the time of filing this document) - \$10.00
- 3 Pursuant to Section 33-6-102(b) of the 1976 South Carolina Code of Laws as amended the registered agent can file this when the only change is the street address of the registered office. In this situation the following statement should be typed on the form above the registered agent's signature "The corporation has been notified of this change. In this case the filing fee is \$2.00."

Return to Secretary of State
P O Box 11350
Columbia, SC 29211

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

JUL 17 2009

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

NOTICE OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT OR BOTH
OF A SOUTH CAROLINA
OR FOREIGN CORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Sections 33 5 102 and 33 15 108 of the 1976 South Carolina Code of Laws as amended the undersigned corporation submits the following information

- 1 The name of the corporation is Warpath Development, Inc
- 2 The corporation is (complete either a or b whichever is applicable)
 - a a domestic corporation incorporated in South Carolina on 9-9-2004 or
 - b a foreign corporation incorporated in _____ on _____ and
State Date
authorized to do business in South Carolina on _____
Date
- 3 The street address of the present registered office in South Carolina is 501 Brixton Circle
in the city of Simpsonville South Carolina 29681
Street & Number Zip Code
- 4 If the current registered agent's office is to be changed the street address to which its registered office is
to be changed is 68 Pointe Cir, Suite 2101 in the city of Greenville South
Carolina 29615
Street Address Zip Code
- 5 The name of the present registered agent is Rick Thoennes
- 6 If the current registered agent is to be changed the name of the successor registered agent is _____

I hereby consent to the appointment as registered agent of the corporation

Signature of New Registered Agent

- 7 The address of the registered office and the address of the business office of the registered agent as changed will be identical
- 8 Unless a delayed date is specified this will be effective upon acceptance for filing by the Secretary of State (See Section 33 1 230(b) of the 1976 South Carolina Code of Laws as amended _____)

Pursuant to Sections 33 5 102(5) and 33 5 108(5) of the 1976 South Carolina Code of Laws as amended the written consent of the registered agent may be attached to this form

090324-0214 FILED 03/23/2009
WARPATH DEVELOPMENT INC

Filing Fee \$10.00 ORIG

Mark Hammond

South Carolina Secretary of State

Warpath Development, Inc.
Name of Corporation

Date 3-17-09

Warpath Development, Inc.
Name of Corporation

[Signature]
Signature

Rick Thoernes, Treasurer
Type or Print Name and Title

FILING INSTRUCTIONS

- 1 Two copies of this form the original and either a duplicate original or a conformed copy must be filed
- 2 Filing Fee (payable to the Secretary of State at the time of filing this document) \$10.00
- 3 Pursuant to Section 33-5-102(b) of the 1976 South Carolina Code of Laws as amended the registered agent can file this when the only change is the street address of the registered office. In this situation the following statement should be typed on the form above the registered agent's signature: The corporation has been notified of this change. In this case the filing fee is \$2.00.

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO 2008-CP-23-5739

Andrew P (Andy) Ballard,
Plaintiff,

VS

Tim Roberson, Rick Thoennes,
Rick Thoennes, III, and Warpath
Development, Inc ,
Defendants

COPY

DEPOSITION OF ANDREW BALLARD

DATE TAKEN March 4, 2009

TIME BEGAN 10 09 a m

TIME ENDED 12 32 p m

LOCATION Haynsworth, Sinkler, Boyd, P A
75 Beattie Place
Eleventh Floor
Greenville, South Carolina

REPORTED BY TRACI L BARR, RPR
Registered Professional Reporter
Notary Public for South Carolina



1 Object to the form

2 THE DEPONENT

3 Yes

4 EXAMINATION RESUMED BY MR HOWARD

5 Q All right Let's switch gears

6 I've gone through a lot of this and tried to
7 piece together as best I can sort of just the
8 timeline of this I want to know a little bit
9 about from your perspective kind of what had
10 happened with Warpath before these gentlemen
11 got involved Now, from what I can see and
12 what I can piece together, I just don't know
13 when you first became involved

14 What was your first involvement with Warpath?

15 A What was my first involvement with Warpath?

16 Q First involvement with the development I
17 don't even know if you had a name for it yet

18 A I didn't have a name for it I started it I
19 developed it I did everything This is my
20 total project

21 Q Okay When did you first become involved in it
22 is what I'm asking?

23 A Somewhere in -- I don't remember exactly, but I
24 think it was 2003

25 Q 2003?

1 A I don't remember exactly

2 Q I'll go ahead and tell you of the documents
3 that I have been able to find, that have been
4 produced to me and that I have been able to
5 find on the Internet to the best of my ability,
6 the first thing I ever found was May 3rd, '04,
7 and it appears there that Duke Power presented
8 some sort of request to Pickens County I
9 believe the request -- I don't know if you were
10 at this meeting or not

11 Were you at a meeting when Duke Power presented
12 a request in May of '04 to Pickens County?

13 A I'm sure I was

14 Q Okay From what I've read - I don't have it in
15 front of me - it appeared that the request was
16 that Duke Power was looking to lease the
17 warpath access, and I believe they also talked
18 about the Crow Creek access, which I know is in
19 a different area of the county
20 Do you recall that?

21 A Yeah

22 Q Okay And I believe that's when the County
23 said fine, we approve that
24 Do you recall that?

25 A That's not the way it happened

1 Q Tell me what happened, because that's the first
2 thing I've been able to find in the documents
3 and online and whatever

4 A The first thing that happened was I went to
5 Duke Power to try to find out if there was a
6 possible site somewhere on the lake that we
7 could build a marina and build a project like
8 this, and I was referred to Pickens County,
9 that this property had been set aside back when
10 the lake was built for a commercial
11 development At the time Duke said I had to go
12 through Pickens County because they had
13 basically set aside eight or nine tracts of
14 land that Pickens County could develop into
15 parks and recreation areas on the lake
16 Pickens County had put out an R F P about a
17 year before I went to them and gotten very
18 little response Basically one or two people
19 had responded to it One guy wanted to lease
20 it for himself The other guy wanted to put
21 nothing but campsites on it, and Pickens County
22 didn't feel like that was a good idea
23 So I went to Pickens County and asked them to
24 put out another R F P It took me a few months
25 to get them to agree to do that They put out

1 another R F P I presented my Conceptual Plans
2 to them They accepted it, and their executive
3 committee voted unanimously to follow it Then
4 it was presented to the council, and the
5 council voted unanimously to proceed with the
6 project, and it was sent to Duke
7 when Duke saw the magnitude of the project,
8 Duke felt like they wanted to have more control
9 over the lease, and instead of letting Duke
10 control the lease, that they would lease the
11 property directly to Warpath Development
12 instead of Pickens leasing it to Warpath
13 Development, that the monies that would be paid
14 for the lease, which Pickens County set, would
15 go to Pickens County to help develop other
16 areas on the lake
17 This meeting you're talking about was when Duke
18 Power came in to meet with Pickens County to
19 say that they had at that time received a copy
20 of the Conceptual Plans and to let Pickens
21 County know that they were in favor of this
22 project and would like to go forward with it

23 Q Okay

24 A And there was nobody else involved in this
25 project but me and my architects that had drawn

1 up the Conceptual Plan

2 Q Let me hand you this This is a document y'all
3 gave us yesterday

4 (Exhibit Number 6 marked for identification)

5 EXAMINATION RESUMED BY MR HOWARD

6 Q Is this the Conceptual Plan? Just look at it
7 and tell me if that's, to your knowledge, a
8 true and accurate copy of the Conceptual Plan

9 A Yes This was -- I don't know if this was the
10 -- this is pretty much the Conceptual Plan

11 Q I can represent to you that I think this was
12 the one that was on the back of the lease
13 behind the lease --

14 MR HOLLEMAN

15 It was an exhibit to the lease

16 MR HOWARD

17 It was an exhibit to the lease

18 EXAMINATION RESUMED BY MR HOWARD

19 Q If it was an exhibit to the lease, is that the
20 --

21 A This is not the original Conceptual Plan I
22 mean, it's close
23 when we did the original Conceptual Plan, then
24 we had to go back -- Duke required us to go
25 back and not only do the drawings and the

EXHIBIT C

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STOCK PURCHASE
AGREEMENT

This Agreement made and entered into this 29th day of May 2007 by and between Andy Ballard hereinafter referred to as *Ballard*, Tim Roberson, hereinafter referred to as *Roberson* Rick Thoennes, hereinafter referred to as *Thoennes*, Rick Thoennes III hereinafter referred to as *Thoennes III* and Warpath Development Inc, hereinafter referred to as *Warpath*

WITNESSETH

Whereas Warpath is a South Carolina corporation presently solely owned by Ballard,
and

Whereas, Warpath is the holder of a lease on property located at Lake Keowee and is
desirous of developing the property and

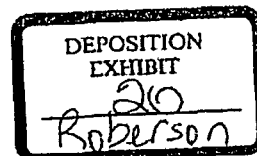
Whereas Roberson Thoennes and Thoennes III are in the business of property
development and are desirous of being involved in the development of the project with Ballard
and Warpath, and

Whereas Ballard wishes to convey to the other parties 80% of the corporation in
exchange for the purchase of one half of his stock plus an additional 60 000 shares, and

Now Therefore for and in consideration of the monetary sum stated herein and other
valuable consideration the parties hereto agree as follows

- 1 The group of Roberson Thoennes and Thoennes III will pay to Ballard upon
closing the sum of \$1 000 000 00 in exchange for 20 000 shares of Ballard s
40 0000 shares and will receive from the corporation additional shares so that
Ballard will hold 20% of the stock and the other 80% will be held by Roberson,
Thoennes and Thoennes III when all shares are finally issued When the new
stock is issued the final holdings will be as follows

Roberson	40 000 shares
Thoennes	20 000 shares
Thoennes III	20,000 shares
Ballard	20 000 shares



SP1A
Q1B
K1

- 2 In addition to the above the corporation will pay Ballard \$100,000 00 upon the grand opening of the Marina An additional \$50 000 00 will be paid one year after said grand opening Grand Opening being defined as "when the Marina opens for business "
- 3 Ballard warrants and represents that he holds a lease with Duke Power and the necessary approvals from Duke Power and Pickens County in order to build the development per conceptual plans for Warpath Landing Final permits must be obtained to move forward
- 4 Ballard agrees to execute a separate agreement with Warpath defining his duties in the project development which shall include but not be limited to securing dock permits, building permits hotel leases, restaurant leases engineering services architectural services and any other service deemed necessary and appropriate to complete the conceptual plan for Warpath Landing If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1,000,000 00 payment will be refunded, \$250 000 00 will be refunded within 90 days and the balance within 6 months after it is determined the permits cannot be obtained
- 5 Thoennes and Thoennes III will execute an agreement with Warpath defining their respective duties, including but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate
- 6 Roberson agrees to provide the necessary capital to obtain long term financing on the project Ballard Thoennes and Thoennes III will not receive any dividend or distribution of profit until all capital contributions of Roberson have been repaid
- 7 Ballard will not be required to sign any personal guarantees to obtain financing by the corporation
- 8 The parties agree that it will be necessary at a subsequent date to execute additional documents to give full validity to this Agreement and that they will mutually cooperate with each other in that regard
- 9 Ballard further represents and warrants that Warpath is in good standing and that he has authority to enter into this Agreement and that Warpath has no liabilities outstanding

WMP
APB
H B

10 This Agreement shall be binding on the parties hereto, their heirs successors
and assigns

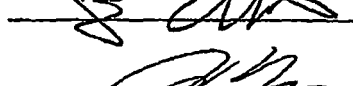
11 No part of this Agreement may be assigned without written consent of all parties

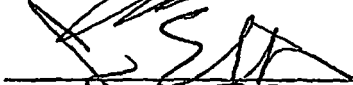
In witness whereof the parties have set their had and seal the day first above written

WITNESSES

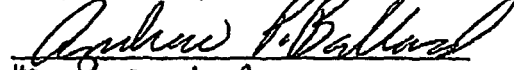


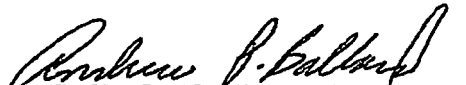


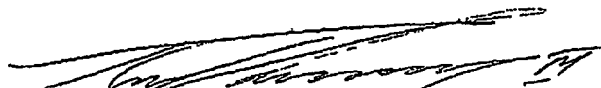




Warpath Development, Inc


Its President


Andy Ballard


Rick Thoennes


Rick Thoennes III


Tim Roberson

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

**PUBLIC ACCESS AREA
LEASE AGREEMENT**

Site 007641
Land Unit 0057616
Project No 007641 203933

THIS LEASE ("Lease") is made this 03 day of Jan, ~~2006~~^{2007 APB} between **DUKE ENERGY CAROLINAS, LLC** ("Duke"), a North Carolina limited liability company ("Lessor"), and **WARPATH DEVELOPMENT, INC** a South Carolina corporation ("Lessee ")

WITNESSETH

WHEREAS, Lessor has been licensed by the Federal Energy Regulatory Commission ("FERC") to operate the Keowee Toxaway Hydroelectric Project (FERC NO 2503) (the "Project"), which impounds the waters of the Keowee and Seneca Rivers including Lake Keowee in South Carolina and which Project is subject to regulatory oversight by the FERC, and,

WHEREAS, Lessee desires to lease a portion of said Project property on Lake Keowee located at the Warpath Landing Public Access Area for the purpose of constructing and maintaining a public park and/or public recreational area, and

WHEREAS all of said Project property to be leased has been designated as 'Public Access Areas' under the terms of Lessor s FERC License and

WHEREAS Lessor desires to accommodate Lessee s construction, operation and maintenance of a public park and/or public recreational area upon the Project property to be leased while at the same time not interfering with Lessor s ability to operate and maintain the Project in accordance with its license other FERC requirements and its business operations and,

WHEREAS Articles 5 18 and 47 of the FERC license for the Project grant Lessor (as licensee of the Project) the authority to grant permission for certain types of use and occupancy of Project lands and waters and to convey certain interests in Project lands and waters for certain types of use and occupancy provided the proposed use and occupancy is consistent with the purpose of protecting and enhancing the scenic, recreation and other environmental values of the Project

NOW THEREFORE, Lessor, for and in consideration of the covenants and leases hereinafter expressed to be kept and performed by Lessee hereby leases to Lessee and Lessee hereby leases from Lessor the sixty three (63) acres of Pickens County / Warpath Development, Inc Access Area

APB_00077

property located in Pickens County South Carolina, shown on the map attached hereto as **Exhibit A** and incorporated herein by reference (the "Leased Premises") pursuant to the following terms and conditions

1 Term This Lease shall begin on the ____ day of _____, 2006 and shall terminate on the 1st day of September 2046 except that if Lessee is in full compliance with all the terms of this lease as determined by Lessor, the Lease shall be automatically extended consistent with the terms of any extension of the current FERC license and upon such additional terms as agreed upon by both parties Lessor may terminate this lease at any time if directed to do so by the FERC or its successor agency Lessor may also terminate this lease pursuant to Paragraph 29 herein

2 Disclaimer of Warranties of Conditions Lessee accepts the Leased Premises AS IS Lessor makes no warranties or representations as to the condition of the Leased Premises or any improvements thereon whether open and obvious or concealed Lessor makes no representation or warranty express or implied and will bear no responsibility as to the existing or future water quality or quantity in Lake Keowee or its tributaries or the sufficiency or suitability of the Leased Premises for use as a public park and or public recreation area

3 Rent and/or Other Consideration In lieu of rental payments to Lessor Lessee shall pay directly to Pickens County South Carolina (Pickens) the sum of Twelve Thousand Dollars (\$12 000) annually in advance for each of the initial five years of the Lease term, to be used by Pickens County exclusively to supplement County funding to support public recreation on Lake Keowee provided however that Lessee is exempt from such payment for the initial two years of the Lease which two year period shall begin with Lessee s marina permit approval and issuance by South Carolina Department of Health and Environmental Control (SCDHEC") Specifically these funds shall be used to supplement County funding in support of operations maintenance and capital improvement activities at Mile Creek Access Area, Crow Creek Access Area, and other public recreation facilities for which Pickens County is responsible that are also within or adjoining the FERC Project Boundary ('Public Access Areas) At the conclusion of each five year period of the Lease Duke Warpath and Pickens County shall renegotiate and recalculate the amount due to Pickens County under this section by taking the existing sum for the period and increasing it by five percent (5%) and/or other consideration terms for an additional five year period based upon changes in the costs for operation and maintenance of the Public Access Areas The Rent and/or other consideration flowing from Lessee to Pickens County may be in the form of an annual lump sum payment in-kind services (provided they are approved in advance by Pickens County) or a combination of the two, which will be allocated by Pickens County exclusively to support public recreation on Lake Keowee

4 Permitted Uses The Leased Premises shall be used by Lessee for development, operation and maintenance of a public park and/or public recreational area as shown on and described in the Conceptual Plan submitted by Lessee which is attached hereto as **Exhibit B** and incorporated herein by reference and for no other purpose unless it is a compatible

Pickens County / Warpath Development, Inc Access Area

APB_00078

use, such as the provision of recreation related goods and services, which may be permitted on site when authorized in advance in writing, by Lessor. Any public park and/or public recreation area may include, but is not limited to, the following types of development:

- a. **Public Park or Recreation Areas** – Areas that have developed recreation facilities such as picnic tables, and pavilions, nature centers or wildlife viewing areas, pedestrian, bike or horse trails, swimming beaches and bath houses, restrooms, boat launching ramps and fishing piers, primitive and developed campgrounds, cabins and hotel lodging, conferencing facilities, park stores and restaurants, marinas with wet slips, dry stack storage, waste pump out facilities and gas sales (land or water), maintenance and related structures or facilities that directly support park operations and maintenance, living quarters for park personnel, and other related outdoor recreation facilities or amenities, or
- b. **Nature Preserve/Research Areas** – areas that provide land and promote the development of cooperative partnerships to enable preservation activities, conservation easements and/or research.

Lessor agrees to assist Lessee in its efforts to secure proper permits and certification to effect its Conceptual Plan and further agrees to provide proper and reasonable documentation upon request by proper parties to assist Lessee in obtaining same. Lessor and Lessee further agree that if Lessee is denied permits or for reasons beyond its control cannot acquire permits or proper certificates to proceed with its Conceptual Plan, Lessee may at its option and by providing written notice to Lessor, cancel this Lease without incurring liability to Lessor.

5. **Public Use of Facilities, User Fees and Hours of Operation** – Use of any and all public park and public recreation area facilities including such public service/convenience facilities as restrooms, water faucets, public communications equipment, trash receptacles, etc., constructed or placed on the Leased Premises by the Lessee shall be available for use by all members of the public during the times specified in “**Exhibit C: Hours of Operation and User Fees**,” a copy of which is attached hereto and incorporated herein by reference. Lessee shall not implement a specific user fee for public boat launching. Lessee agrees that Lessor’s employees, third party contractor employees, local law enforcement officials, local environmental and public health officials, and local emergency response crews operating in his/her official capacity will be exempt from all nominal user fees. Any proposed changes in the schedule of user fees or hours of operation by the Lessee must be submitted in writing to the Lessor for approval at least sixty (60) days prior to proposed implementation. The proposed changes shall not be implemented until Lessee receives written approval of the proposed changes from the Lessor. Contracts or subleases with third parties regarding the sale of goods or services on the Leased Premises must be submitted to Lessor at least sixty (60) days prior to proposed implementation and shall not be executed until Lessee receives written approval of the contracts or subleases from the Lessor.

Lessee agrees to submit an Annual Operational Report in the form of **Exhibit D** attached hereto and incorporated herein by reference to assist Lessor in its FERC reporting requirements

6 Conceptual Plan Lessee has submitted a Conceptual Plan to Lessor for Lessor's approval which includes both a narrative and graphic description of all facilities to be constructed on the Leased Premises the construction schedule including any planned phasing and projected completion dates Lessee shall not revise the Conceptual Plan including the construction phases and/or schedule without the prior written approval of Lessor, which may be granted or denied in Lessor's sole discretion Major additions or modification will typically require review by other government regulatory agencies and may require FERC approval

Should FERC require additional recreation facilities to be located at the Leased Premises during the Lease term Lessor shall arrange a meeting with Lessee to determine what facilities must be added where the facilities can be added, an estimated cost for adding the facilities and the timing for construction of the additional facilities Lessor and Lessee will then evaluate their available resources to determine how and when the required additional recreation facilities will be constructed and if those resources will be in dollars in kind' services or a combination thereof A revised Conceptual Facilities Plan will be developed based on the results of the meeting Once the Lessee and Lessor are in agreement with the revised Conceptual Plan the parties will enter into a revised lease

7 Joint Annual Inspection Lessor and Lessee shall perform a joint annual physical inspection of the Leased Premises each year for the term of this lease to ensure the Leased Premises are being operated and maintained to acceptable standards

8 Entry by Lessor Lessor, its agents and representatives may enter the Leased Premises at all reasonable times to examine the same and any such entry by or on behalf of Lessor shall not be or constitute an eviction partial eviction or deprivation of any right of Lessee and shall not alter the obligations of the Lessee hereunder or create any right in Lessee adverse to the interest of the Lessor

9 Maintenance Lessee shall at its sole expense maintain all existing and new improvements located within the Leased Premises in good repair, including but not limited to maintenance of those facilities listed in the Conceptual Plan (Exhibit B) any required navigation safety devices and erosion control structures within the Leased Premises and along the shoreline In the event Lessee fails to properly maintain such improvements and facilities Lessor may terminate this lease and retake possession of the Leased Premises, as set forth in Paragraph 30

10 Signage Lessor shall prescribe all information required by Lessor's FERC License for entrance and regulation signs and Lessee shall fabricate, erect and maintain all said signs in accordance with such requirements

11 Illegal and Prohibited Uses Lessee shall not make or permit to be made any illegal or prohibited use of the Leased Premises or any use thereof constituting a public nuisance shall keep the Leased Premises in a neat and orderly manner and shall comply with all applicable building codes and health regulations and rules and regulations of any and all applicable government authorities All water and sanitary sewer facilities shall be designed, installed, constructed, maintained and operated only with the approval of the applicable government authority Prohibited uses under the terms of the Lease include but are not limited to the following

- a) Sale of drugs or other illegal controlled substances
- b) Gambling (e g installation of video gaming machines that pay off),
- c) Creation or installation of firearm or shooting ranges
- d) Limiting facility access to predetermined user groups (for example only slip owners may use the restroom facilities)

12 Fire Protection In the event of a fire within or threatening to any facility or adjacent lands within the Leased Premises Lessee agrees to assist Lessor with the protection of the park or recreation area against such fire

13 Approval by FERC This Lease is subject to the review and approval of Federal, State and local agencies and FERC prior to execution

14 Portions of Leased Premises Subject to FERC Oversight As to those portions of the Leased Premises designated as Public Access Areas under the terms of Lessor's license for the Project and being shown and designated FERC Project Area on the FERC Keowee Toxaway Development Plans Lessee agrees that its use of the Leased Premises will comply with FERC Order No 313, a copy of which is attached hereto as **Exhibit E** and incorporated here in by reference and all regulations or directives issued by the FERC Lessee's use of the aforesaid lands will not endanger health or safety create a nuisance or otherwise be incompatible with the overall recreational use of the Keowee Toxaway Hydroelectric Project, FERC Project No 2503 Failure by Lessee to maintain and operate the FERC required facilities and areas of the Leased Premises to the standards reasonably required by the FERC shall constitute a default under the terms of this lease pursuant to Paragraph 29

15 Compliance with State, Federal and Local Laws Lessee agrees that its use of the Leased Premises as herein provided will be consistent with all FERC orders and regulations regarding recreation opportunities and development at licensed projects and all other applicable state, federal and local laws as well as all ordinances rules, regulations and

Pickens County / Warpath Development, Inc Access Area

APB_00081

sanctions of any regulatory body or governmental agency (state, federal or local) having jurisdiction in the Leased Premises. Lessee's use of the Leased Premises will comply with all applicable Duke Shoreline Management Guidelines and will not endanger health or safety, create a nuisance or otherwise be incompatible with the overall recreation use of the Project. Upon request by Lessor, Lessee shall re-enter the Leased Premises at any time after the termination or expiration of this Lease and perform such operations necessary for compliance with then applicable law, ordinances or regulations in force as of the termination date. Lessee shall be relieved of any responsibility for compliance under this Paragraph 15 if during the Lease term Lessor causes noncompliance by changing conditions upon the Leased Premises including but not limited to land use patterns, or causing or allowing any third party to do so.

16 Protection of Environment All necessary precautions shall be taken during construction and subsequent operation and maintenance of all facilities to protect and enhance the scenic, environmental, recreational and cultural values of any affected lands and waters of the Project.

17 Archaeological Resources If any archaeological resources are discovered during construction or maintenance activities, such activities shall be halted and the State Historic Preservation Officer shall be contacted to determine what measures, if any, are needed to protect or salvage the resources and Lessee shall notify the Lessor. Written notice shall be given to Lessor and all other appropriate agencies of any such discovery and the measures being implemented, if any are required.

18 Watercraft Lessee shall require that any watercraft more than twenty (20) feet in length or more than ten (10) feet in width moored within or attached to the Leased Premises must have affixed thereto a certification label indicating that same was manufactured in compliance with the Federal Boat Safety Act of 1971. Excepted from this requirement are watercrafts in safe condition manufactured prior to the effective date of the Federal Boat Safety Act of 1971.

19 Sanitation Lessee must install a commercially manufactured marine sewage pump out system if the Lessee permits any one of the following: 1) the sale of boat fuel within the project boundary; 2) a total number of boat docking locations greater than or equal to sixty five (65); or 3) the mooring of twenty five (25) or more watercraft with Marine Sanitation Devices (MSDs) with a fixed holding tank. The Lessee may be exempted from this requirement if Lessee provides written documentation from a state or local agency having jurisdiction regarding waste disposal that the facility cannot be permitted to dispose of waste collected from watercraft to the satisfaction of applicable regulations. Lessee shall maintain sanitation facilities as a regular and customary service for pump and out or deposits of waste.

20 Utility Easement Lessor for itself, successors and assigns, reserves the right and, privilege to build, construct, maintain and operate electric distribution and/or transmission lines on, over and above the Leased Premises, and to erect,

Pickens County / Warpath Development, Inc. Access Area

APB_00082

construct, reconstruct, replace, maintain and use towers, poles, wires, cross arms and other appliances and fixtures for the purpose of transmitting or distributing electric power for Lessor's communication purposes and for any other purpose that is, in Lessor's sole discretion consistent with its business operations together with the right to keep said lines appliances, and fixtures free of structures trees and other objects that may endanger or interfere with same Lessor will notify and consult with the Lessee as to the plans for the construction of any buildings or structures to be placed within the Leased Premises necessary to conduct Lessor's business

21 Reservation of Use The right to use the Leased Premises for Project purposes (not inconsistent with the activities and purposes of this Lease) is hereby reserved to the Lessor its successors and assigns

22 Reservation of Authority No terms or conditions herein contained shall be construed as limiting or affecting in any way the authority of Lessor in connection with its exercise of proper protection and administration of the Public Access Areas or its FERC license

23 FERC License Conflicts This Lease is subject to the terms and conditions of the license issued by the FERC for the Project In the event of any conflict between the terms and conditions of this Lease and the terms of the license it is agreed that the terms of the license shall prevail

24 Transfer or Assignment The Lessee may not transfer or assign this Lease or sublease the whole or any part of the Leased Premises to any third party or parties without the prior written consent of the Lessor Lessor understands and agrees that Lessee may sublease portions of the Leased Premises for facility development operation and/or maintenance and hire third parties to manage certain facilities in accordance with the Conceptual Plan (**Exhibit B**) as provided in Paragraph 5 herein However Lessee will at all times be considered as owner of the facilities and the entity ultimately responsible for construction operation and maintenance of the facilities described in the Conceptual Facilities Plan, and no sublease or assignment hereunder shall diminish Lessee's responsibility to Lessor hereunder

25 Taxes and Assessments Lessee shall be responsible for all ad valorem property taxes (real or personal) or payments in lieu thereof as may be due during the lease term on the Leased Premises and for any buildings or improvements thereon including the personal property of Lessee

26 Insurance by Lessee Lessee agrees that, at its own cost and expense it shall obtain and maintain in force during the term of this Lease the insurance policies listed in Attachment 1 a copy of which is attached hereto and incorporated by reference as if more fully set forth herein, and shall require any subcontractors doing work on the Leased Premises to obtain and maintain in force the requirements of Attachment 1 Items 5 and 6

Pickens County / Warpath Development, Inc Access Area

APB_00083

27 Hazard Insurance Lessee shall also at all times during the term of this Lease keep all improvements which are now or hereinafter a part of the Leased Premises insured against loss or damage by fire and the extended coverage hazards for one hundred percent (100%) of the full replacement value of such improvements. Any loss adjustment shall require the written consent of both Lessor and Lessee. In the event any improvements upon the Leased Premises shall be damaged or destroyed by fire or other casualty then Lessee shall promptly restore same to the condition existing before such loss or damage.

28 Hazardous Materials Lessee shall comply with the following:

a) Lessee shall not bring to or handle, store, dispense, transport or locate on or about the Leased Premises any chemical substances, asbestos, oil, gasoline, other petroleum products, formaldehyde, PCBs, or any toxic, carcinogenic, radioactive or hazardous wastes, materials, substances or contaminants (known collectively as Hazardous Materials) without Lessor's prior written authorization.

b) While handling, transporting or storing any Hazardous Materials on or about the Leased Premises, Lessee shall act in full compliance with all applicable federal, state and local laws, ordinances and regulations.

c) Lessee shall give Lessor immediate written notice of any problem, spill, discharge or threatened discharge of, or relating to Hazardous Materials on or about the Leased Premises, and of any private or governmental investigation relating to Hazardous Materials on or about the Leased Premises. Lessor shall have the right to participate in and approve any environmental assessment or environmental clean up plan for the Leased Premises.

d) Lessee, its employees, agents and contractors, shall fully cooperate with any and all federal, state and local governmental officials having jurisdiction over the Leased Premises in resolving any environmental problem.

e) Lessee's failure to comply strictly with the provisions and mandates of this Paragraph shall constitute a breach of this lease, entitling Lessor to terminate this lease and to exercise any other rights and remedies available to Lessor hereunder or otherwise.

29 Default The following events ('Events of Default') shall be deemed to be events of default by Lessee under this Lease:

a) If Lessee shall fail to pay any sum of money payable hereunder on the date the same is due and such failure shall continue for a period of sixty (60) days after due written notice thereof to Lessor, or

b) If Lessee fails to comply with any term, provision or covenant of this Lease other than the payment of any sum of money, and shall not cure such failure within sixty (60) days after due written notice thereof to Lessee, provided, however, if Lessor, in its sole discretion, determines that such failure

cannot be cured within sixty (60) days, Lessee shall be in default under this lease if Lessee fails to commence to cure such failure within the same sixty (60) day period or thereafter fails to act to diligently and promptly cure such failure or

c) If Lessee voluntarily discontinues or voluntarily ceases to use the Leased Premises and the Improvements for the permitted use or closes its operations on the Leased Premises for any period greater than ninety (90) days, or

d) If Lessee falls behind schedule on the construction of facilities approved as part of the Conceptual Plan (**Exhibit B**) and fails to notify Lessor and follow the requirements set out in this Lease or

e) Any other event of default specifically addressed in the paragraphs contained herein

Upon the occurrence of an Event of Default hereunder Lessor shall be entitled to pursue any one or more of the following remedies without notice or demand

- a) Terminate this Lease and Lessee's right of possession of the Leased Premises in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so Lessor may without prejudice to or any other remedy which it may have for such Event of Default, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person or entity who may be occupying the Leased Premises or any part thereof by force if necessary without being liable for prosecution or any claim for damages therefore
- b) Without having terminated this Lease terminate Lessee's right of possession of the Leased Premises by force if necessary without being liable for prosecution of any claim for damages therefore and perform Lessee's obligations under this Lease, and Lessee shall reimburse Lessor upon demand for any expenses which Lessor may incur in effecting compliance with the terms of the lease and Lessor shall not be liable for any damages resulting to Lessee from such actions
- c) Bring suit for the collection of any amounts for which Lessee is then in default, or for the performance of any other covenant or lease by which Lessee is bound with or without entering into possession or terminating this Lease
- d) In the event Lessor elects to terminate this Lease by reason of the occurrence of an Event of Default, this Lease shall terminate and come to an end as if that were the date originally fixed herein for the expiration of the Term hereof Notwithstanding such termination Lessee shall be liable for and shall pay to Lessor all indebtedness accrued hereunder to the date of such termination
- e) In case of any Event of Default or breach by Lessee Lessee shall also be liable for the costs of removing and storing Lessee's or any other occupant's personal property, and all expenses incurred by Lessor in enforcing or defending Lessor's rights and/or remedies, including reasonable attorney's fees

It is expressly agreed and understood that violation of any of the covenants conditions terms or provisions of this Lease by Lessee shall terminate this Lease at the option of the Lessor Failure of Lessor to exercise any of said rights of Lessor under this Lease shall not be construed as a waiver or abandonment of the right thereafter to exercise any or all of same In the event that the Lessor terminates this Lease under any of the above written conditions, the Lessor may enter the Leased Premises and expel the Lessee there from or the Lessor may in lieu thereof or in conjunction therewith, pursue any other lawful right or remedy incident to the relationships created by this Lease Lessor must give sixty (60) days' notice in writing to Lessee of its intent to terminate, except that only thirty (30) days written notice shall be required for termination for nonpayment of rent or taxes Lessee shall have the right to cure any violation during said sixty-day (or thirty day, as the case may be) notice period in which event Lessor may not terminate this Lease

In the event that this Lease is terminated by Lessor for any reason other than those listed as Events of Default" above or expires all buildings improvements fixtures and other items of real property shall become the property of the Lessor Lessor however, shall reimburse Lessee for its contribution to this Lease and its actual cost for all capital improvements based on a life expectancy and depreciation schedule agreed to by Lessor and Lessee once the capital improvement total cost has been determined and a depreciation schedule has been developed and before the facilities have been installed on site At the option of Lessor Lessee shall remove all personal property within thirty (30) days of the termination or expiration of the Lease as directed by Lessor Lessor may at its option retain and use any portion of same or remove and dispose of any portion of same without liability to Lessor and shall be reimbursed by Lessee for its cost thereof

30 Surrender of Lease The voluntary or other surrender of this Lease by Lessee or a mutual cancellation thereof shall not work a merger and shall, at the option of Lessor terminate all or any existing subleases or sub tenancies or may at the option of Lessor operate as an assignment to it of any or all such subleases or sub tenancies

31 Condemnation If the whole or any part of the Leased Premises is taken or condemned by any competent authority for any public use or purpose then this Lease shall automatically terminate as to the portion taken as of the date said title shall be taken If a portion of the Leased Premises shall be taken so as to render the remainder thereof unusable for the purpose for which the Premises were leased then this Lease shall terminate as of the date said title shall be taken In the event that any portion of the Leased Premises shall be taken or this Lease shall be terminated as a result of a taking of the whole or a portion of the Leased Premises Lessee shall have no claim against Lessor for the value of any unexpired portion of the lease term Lessor shall be entitled to the entire award given, including any special damages except that, as to any portion of payment received by way of just compensation which is attributable to the value if any, of any capital improvements taken or damaged Lessee shall be entitled to receive a pro-rata share thereof based on the percentage that

its funding contribution therein bears to the total capital costs thereof. In the event that either party should disagree with the valuation given within any award to any improvements taken or damaged, or be unable to agree between themselves as to such value, the parties agree to arbitrate such question of valuation and to apportion their award so as to separately set forth the contributing value, if any, of each improvement taken or damaged.

32 Severability The provisions hereof are independent covenants and should any provision or provisions contained in this lease be declared by a court or other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable and the remaining provisions hereof shall remain at Lessor's option in full force and effect.

33 Indemnity Lessee covenants to indemnify and save harmless Lessor from and against any and all claims, liability, loss or damage, arising from any conduct, work or thing done under the terms of this Lease to include injury or damage to any person or persons, including Lessor, or to the property of any person or persons or corporations occurring on or within the Leased Premises which are the subject of this Lease as the result of any activity of Lessee, its agents, employees, or any other person or entity under the direction of the Lessee, and for any protection, mitigation and enhancement measures or activities required by FERC or its successor agency in connection with the activities conducted by Lessee hereunder.

34 Limitation of Liability Lessor and Lessee agree to warrant that any and all work performed within the Leased Premises will be performed with professional thoroughness and using acceptable standard business practices. Lessor's total cumulative liability to Lessee for claims of any kind whether based on contract, tort (including strict liability and negligence except for gross negligence or willful misconduct on part of Lessor) under any warranty or otherwise for any loss or damage relating to this Lease shall in no case exceed the cost of completing the work in accordance with acceptable business practice, and Lessee releases Lessor from all further liability in excess of this amount for any work performed under this Lease. Lessee further releases Lessor from any and all liability resulting from any injury of any employee of Lessee or anyone performing any service at the direction of the Lessee on the Leased Premises, excluding any acts of willful misconduct of the Lessor.

Neither party shall be liable, whether based on contract, tort (including negligence and strict liability) under any services or work performed relating to this Lease for any consequential, indirect, special or incidental loss or damage or any damage (except to the extent damage resulted from willful misconduct) to or loss of any property or equipment.

This limitation of or protection against liability shall also protect directors, officers, members, employees, agents, consultants, suppliers, subcontractors, parents, subsidiaries, and affiliates of the Lessor and shall apply regardless of the fault (excluding willful misconduct), gross negligence or strict liability of the respective party.

Pickens County / Warpath Development, Inc. Access Area

APB_00087

Lessee waives and will require its insurers to waive all rights to recovery and claims of any kind including rights and claims to which its insurers or another may be subrogated, against Lessor arising out of damage to, loss of or loss of use of any Lessee's property, located on the Leased Premises, whether based on contract, tort (including strict liability and negligence except for gross negligence or willful misconduct on part of Lessor) under any warranty or otherwise. These waivers are effective as to all damages to or losses of use of property arising out of or relating to this Lease or deficiencies in the services provided hereunder and Lessee hereby covenants that no such action or claim shall be brought by or through Lessee on any theory whatsoever. In the event Lessee or its insurers recover damages from a third party for losses or damages to which the foregoing waivers apply, Lessee shall indemnify and hold Lessor harmless against any liability for any such losses or damages which said third party recovers from Lessee and any expenses (including attorney fees and other cost of investigation and defense) related hereto. **The limitation of liability in this provision shall apply notwithstanding any other provision of this Lease**

35 Flooding Lessor reserves the unlimited right to back or flood the waters of Lake Keowee and its tributaries from time to time and at any and all times over and upon the Leased Premises or any portion of the same to such extent the flooding may be necessary in connection with the practical operation of its hydroelectric power plants located or to be located in the future upon the Lake Keowee. Lessor shall give Lessee as much notice as possible if flooding is necessary in order to give Lessee reasonable time to make proper arrangements and minimize loss. Lessee agrees that any damage it may suffer as a result of such flooding shall not be claimed or charged against Lessor. Lessee hereby waives all claims against Lessor for damages resulting from floods that may occur on the Seneca or Keowee Rivers or any tributary thereof.

36 FERC Project Restoration Lessor shall be under no obligation to Lessee to maintain or continue to operate the Project and should said Project be damaged, destroyed or removed, the Lessor shall be under no obligation to restore or rebuild same and Lessee hereby waives all claims against Lessor for damages to or destruction or removal of the Project.

37 Parties Bound The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer and sub leasing, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto, provided, however, that neither this lease nor any provisions therein may be assigned by Lessee except with the prior written consent of the Lessor as provided in Paragraph 24.

38 Survival Lessee's indemnity obligations under Paragraph 33 shall survive the termination or cancellation of this Lease and shall remain in effect.

39 Recovery of Fees and Costs If any action is taken by Lessor to enforce any provision, covenant or agreement contained in this Lease or if Lessor is required to retain an attorney to enforce any provision, covenant or agreement

Pickens County / Warpath Development, Inc. Access Area

APB_00088

contained in this Lease (including without limitation, the payment of rent due hereunder or the removal of any encroachment constructed on the Leased Premises in violation of the Lease), then Lessor shall be entitled to recover from Lessee all Lessor's reasonable attorneys' fees and court costs incurred in such action and/or enforcement

40 Notices Wherever in the Lease it shall be required or permitted that notice be given by either party to this Lease to the other, such notices must be in writing and must be given personally or forwarded by certified mail addressed as follows

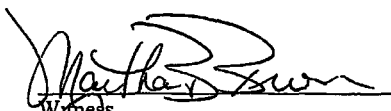
To Lessor Duke Energy Carolinas LLC
Lake Services EC12Q
P O Box 1006
Charlotte, NC 28201 1006

To Lessee Warpath Development, Inc
P O Box 24234
Greenville, SC 29616

Such addresses may be changed from time to time by notice given hereunder

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed this the day and year first above written

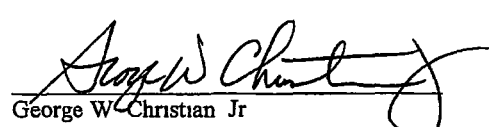
[SIGNATURES BEGIN ON FOLLOWING PAGE]


Witness

Witness

LESSOR

Duke Energy Carolinas, LLC

By 
Name George W. Christian Jr

Pickens County / Warpath Development Inc Access Area

APB_00089

STATE OF South Carolina
COUNTY OF Greenville

ACKNOWLEDGMENT

This instrument was acknowledged before me this 3 day of January, 2007, by
Andrew P. Ballard (name of officer), as President
(title of officer) of Warpath Development, Inc a South Carolina corporation on behalf of the corporation

WITNESS my hand and official seal this 3 day of January, 2007

My Commission Expires _____

~~My Commission Expires March 22, 2012~~

Stephanie Cohens
Printed Name Stephanie Cohens
Notary Public

[NOTARIAL SEAL]

12/18/2006

**Insurance Coverage and Limits for
Warpath Development, Inc.
ATTACHMENT A**

- 1 At its own expense, and without limiting its indemnity obligations under the Agreement, Lessee shall secure and maintain during the term of the Agreement the insurance coverages listed in Item #4, in accordance with this Agreement in forms and with insurance companies qualified to do business in all states where work will be performed. Required insurance (as described herein) shall be provided by companies that have a minimum A.M. Best Rating of A- VII
- 2 All insurance shall have or be subject to the following terms and conditions
 - a. Lessee shall deliver to Lessor certificates of insurance prior to work beginning. Certificates of each renewal of the insurance shall be delivered promptly after renewal. Acceptance of a certificate that does not comply with this Agreement shall not operate as a waiver of any of this Agreement's obligations
 - b. The policies shall each contain a provision that coverages will not be cancelled, not renewed or materially modified unless at least thirty (30) days' prior written notice has been given but, in any event, if Lessee is aware of any such cancellation, reduction in coverage or non-renewal, Lessee shall provide written notice to Lessor of such action within five (5) business days of receipt of notice of any such action from its carrier
 - c. Lessee shall name Lessor as an additional insured, using Insurance Services Office, Inc. (ISO) additional insured (CG 20 10) or equivalent, under all required policies of liability insurance (except Worker's Compensation Insurance). All policies shall include waivers of any right of subrogation of the insurers using standard ISO forms
 - d. All policies of insurance required hereunder shall be endorsed or shall otherwise provide that Lessee's insurance shall be primary with respect to their own acts or omissions and not be in excess of, or contributing with, any insurance maintained by Lessor
 - e. Umbrella Insurance may be used to satisfy the limit requirements for Employer's Liability Insurance, Commercial General Liability Insurance, and Comprehensive Automobile Liability Insurance set out in Item #4 below. Such umbrella policy shall follow the form of those primary coverages, be in excess of those underlying policies without gaps in limits and provide coverage as broad as the underlying
- 3 Lessee will be responsible for their own respective deductibles, self-insured retentions, and self insurance under its insurance program. Should Lessee fail to provide or maintain any insurance required hereunder, Lessor may then obtain general liability insurance against any and all claims for injuries to persons or damage to property occurring on the Leased Premises, during the balance of the term of this Lease, in the amounts hereafter provided, whereupon Lessee shall reimburse Lessor annually within forty-five (45) days following Lessor's presentation to Lessee of copy of the invoice showing Lessor's premium for the current year

APB_00092

Warpath Development, Inc
ATTACHMENT A

4	Coverage Type	Minimum Coverage Limits
a)	Workers' Compensation <i>Any Lessee who does not carry Workers' Compensation coverage must give Lessor a letter stating that they are exempt from the law and will hold Lessor harmless from all injury except those injuries resulting from Lessor's gross negligence.</i> Employers Liability	Must meet statutory requirements of each state in which the Services are to be performed and any other state in which Lessee operates Each accident for bodily injury \$1 000 000 Policy limit for bodily injury by disease \$1 000 000 Each employee by disease \$1 000,000
b)	Commercial General & Excess Liability Insurance having standard coverages offered under an ISO form CG-00 01 (10/01) or equivalent. If ISO CG-00-01 (10/01) or equivalent is not used, the policy must include the following coverages ▪ Premises – Operations ▪ Products Liability/Completed Operations ▪ Broad Form Property Damage ▪ Contractual Liability (Broad Form) Including 3rd party coverage ▪ Explosion, Collapse and Underground ▪ Hazard and Personal Injury with Employee Exclusion and Contractual Exclusion deleted.	\$2,000,000 per occurrence
c)	If vehicles will be used Business Automobile & Excess Liability Insurance on ISO form (CA 00 01) or equivalent. Must include coverage for ☐ Owned motor vehicles ☐ Hired motor vehicles, and ☐ Other non-owned vehicles	Combined single limit of liability of \$1,000,000 per occurrence
d)	If Lessee will serve or sell alcohol at the Project property, Lessee will provide liquor liability coverage	\$1,000 000 per occurrence

APB_00093

**Insurance Coverage and Limits For
Warpath Development, Inc
ATTACHMENT A**

- 5 Upon Lessee contracting with an entity for the purpose of constructing any facilities on the Leased Premises, Lessor shall be named as an additional insured on all insurance policies (except Workers Compensation) covering the scope of such activity prior to the commencement of any activity by Lessee, its agents or contractors and shall include a waiver of any rights of subrogation of the insurers against Lessor. Any contractor or subcontractor performing work on property that is the subject of this Lease shall have in place prior to commencement of any activity and during the performance of any activity, the types of insurance and minimum coverage limits listed in Item #6 below

6	Coverage Type	Minimum Coverage Limits
a)	Workers' Compensation <i>Any Lessee who does not carry Workers Compensation coverage must give Lessor a letter stating that they are exempt from the law and will hold Lessor harmless from all injury except those injuries resulting from Lessor's gross negligence.</i> Employers Liability	Must meet statutory requirements of each state in which the Services are to be performed and any other state in which Lessee operates Each accident for bodily injury \$ 500 000 Policy limit for bodily injury by disease \$ 500 000 Each employee by disease \$ 500 000
b)	Commercial General & Excess Liability Insurance having standard coverages offered under an ISO form CG-00-01 (10/01) or equivalent. If ISO CG-00-01 (10/01) or equivalent is not used the policy must include the following coverages ▪ Premises – Operations ▪ Products Liability/Completed Operations ▪ Broad Form Property Damage ▪ Contractual Liability (Broad Form) Including 3rd party coverage ▪ Explosion, Collapse and Underground ▪ Hazard and Personal Injury with Employee Exclusion and Contractual Exclusion deleted.	\$2,000,000 per occurrence
c)	If vehicles will be used Business Automobile & Excess Liability Insurance on ISO form (CA 00 01) or equivalent. Must include coverage for ☐ Owned motor vehicles ☐ Hired motor vehicles, and ☐ Other non-owned vehicles	Combined single limit of liability of \$1 000,000 per occurrence
d)	Contractor's Pollution Liability Coverage	\$1,000,000 per occurrence

APB_00094

EXHIBIT A

Property Map

APB_00095

Title Manager, Real Estate Acquisitions and Valuations

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, ROBERT J EARLEY, a Notary Public for said State and LINCOLN County, certify that George W Christian, Jr personally came before me this day and acknowledged that he is Manager, Real Estate Acquisitions and Valuations of Duke Energy Carolinas, LLC a North Carolina limited liability company and that he as Manager, Real Estate Acquisitions and Valuations being authorized to do so, executed the foregoing on behalf of the limited liability company

WITNESS my hand and official seal this 21st day of DECEMBER 2006

My Commission Expires FEBRUARY 28,
2007

Robert J Earley
Printed Name ROBERT J EARLEY
Notary Public

[NOTARIAL SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LESSEE

Leann L. Cured
Witness
Trickia Fleming
Witness

WARPATH DEVELOPMENT, INC

By Andrew P Ballard
Name Andrew P Ballard
Title President

Pickens County / Warpath Development Inc Access Area

APB_00090

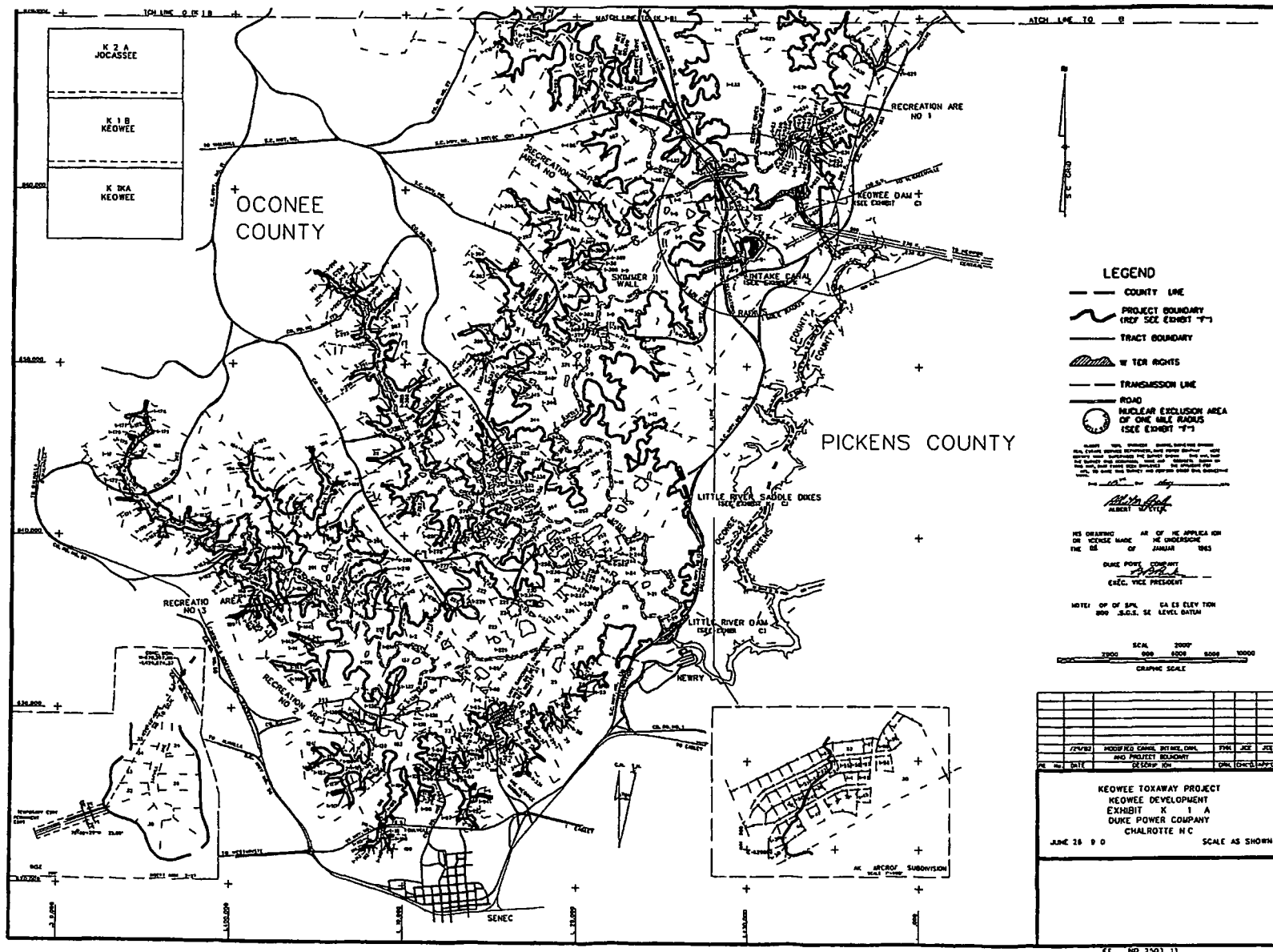




EXHIBIT B

CONCEPTUAL PLAN FOR WARPATH LANDING

APB_00098

Conceptual Plan
for

Warpath Landing

Public Access Area
for

Lake Keowee

Prepared by

The Ellis Group P A
220 N Main St Suite 325
Greenville, SC 29601
864 235 7464

APB_00099



Table of Contents

Introduction	
The Site	Pages 4-9
Historic Context	Pages 10-11
Historic Timeline	Pages 12-13
Elements of Proposal	
Site Plan	Page 14
Water Related Features	Pages 15-17
Outdoor Recreation	Pages 17-19
Lodging/ Dining	Pages 19-21
Miscellaneous	Pages 21-22
Phasing of Project	
Phase I	Pages 23-24
Phase II	Pages 25-26
Phase III	Pages 27-28
Phase IV	Pages 29-30
Character Sketches	Pages 31-33
Conceptual Design of Waste Treatment	Pages 34-39
Representations and Certifications	Page 40
Preliminary Lease Application	Pages 41-52

Introduction

The proposed development is a preliminary plan for a 56 acre tract of property on the eastern shore of Lake Keowee in Pickens County South Carolina.

The main objective of this proposal is to create an environment for many types of outdoor recreation that are related to the natural surroundings of beautiful Lake Keowee. This development would provide recreation opportunities for the general public enhancing the quality of life for Pickens County residents as well as visitors. At present such a facility is not available. This development would therefore create new tourism opportunities and consequently economic good for the area as well.

In reviewing this proposal it is important to understand that this is a preliminary study of the possibilities of the site. All consideration for proper permitting as required by all applicable agencies will be made throughout the process of the entire project. Naturally the structures and amenities proposed would be subject to all local state and Federal regulations.

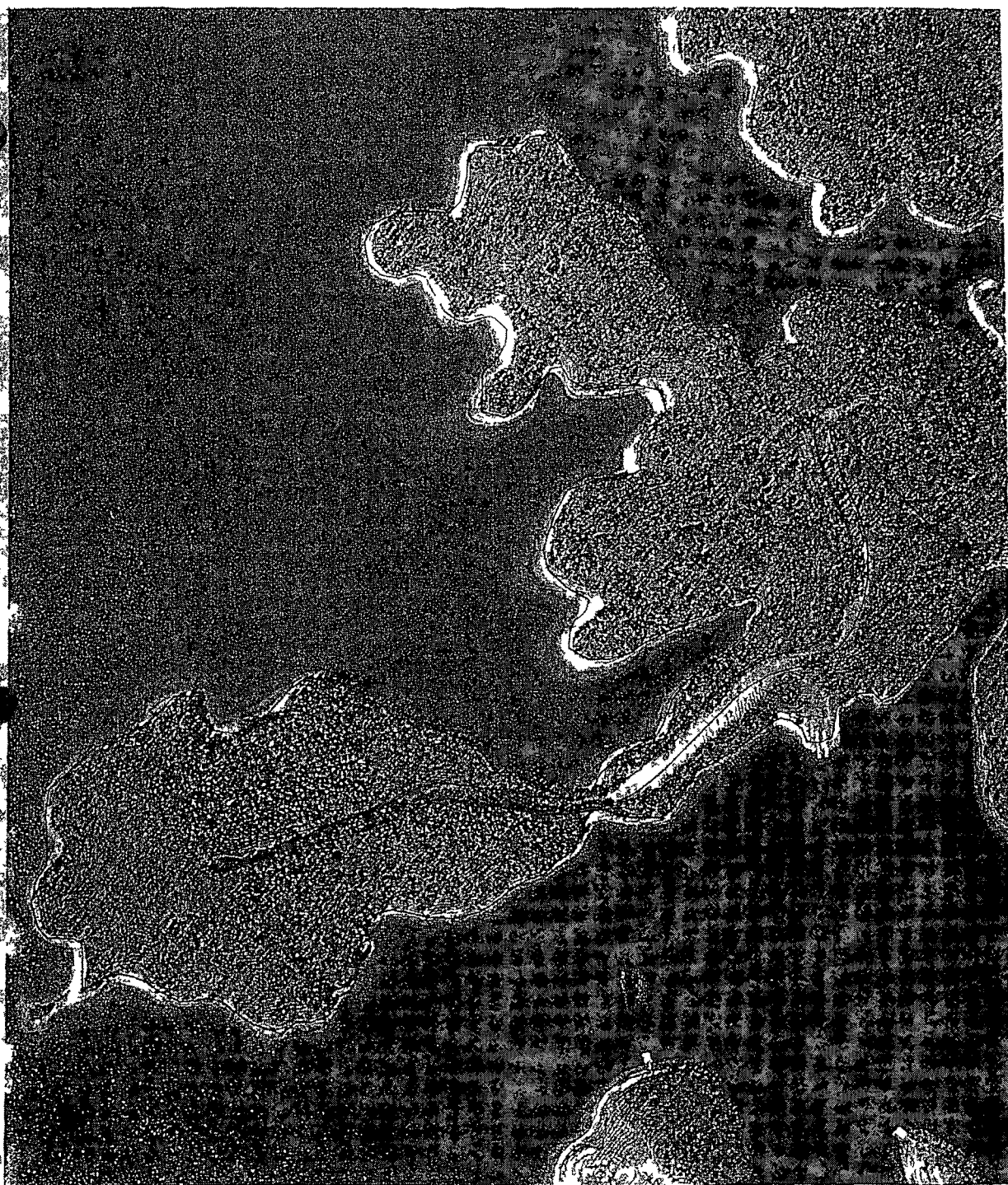
The Site

The pristine site of Warpath Landing features lovely views to the North, West, and South. The northern views are particularly exciting with a spectacular view of the Blue Ridge Mountains. A primary design goal is to capture these views throughout the development. Additionally, it is the plan of the developer to respect the natural ecological environment of Lake Heaven in every way possible and to actually enhance the natural beauty of the site.

The site is heavily wooded containing trees of many varieties. The terrain is fairly steep, varying in places to a more shallow grade. Another design goal is to utilize the contours of the site for recreation purposes to the fullest potential and thus offering several venues for recreation of varying nature.

Another design goal is to respect the history of this particular site. It is a unique history involving the Cherokee Indians, early American settlers, as well as the British. In developing the future direction for the site, this proposal calls for consideration to retain a memory of the past history of this area.

The following program considers these possibilities as well as the many practical considerations to create a place fully reflecting a flavor and character of Pickens County and this particular site. This project has the potential to enhance the quality of life for many people for generations to come.



Aerial Photograph

5

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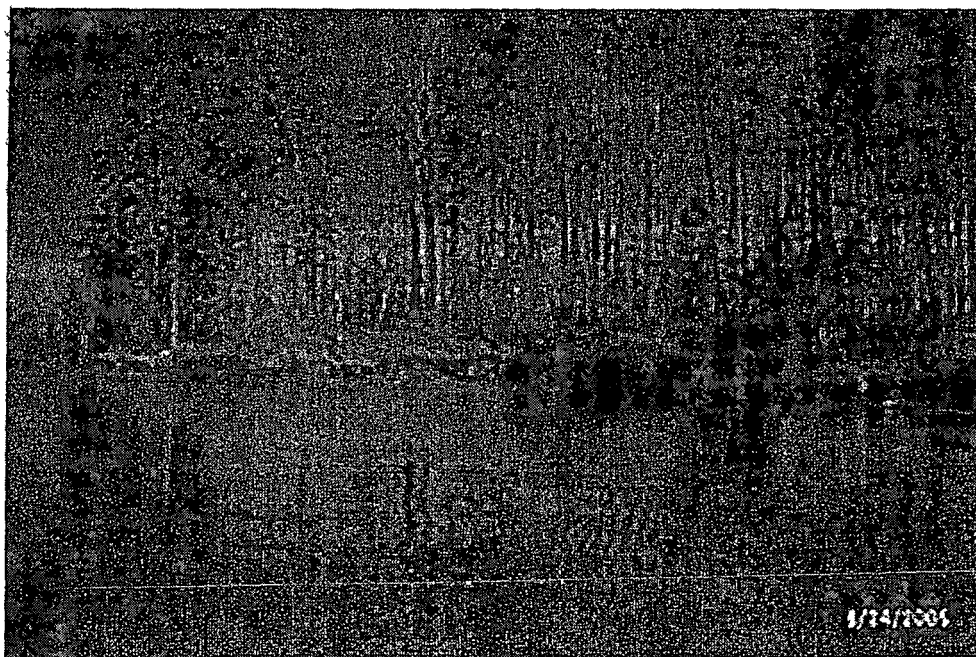
Contour Map



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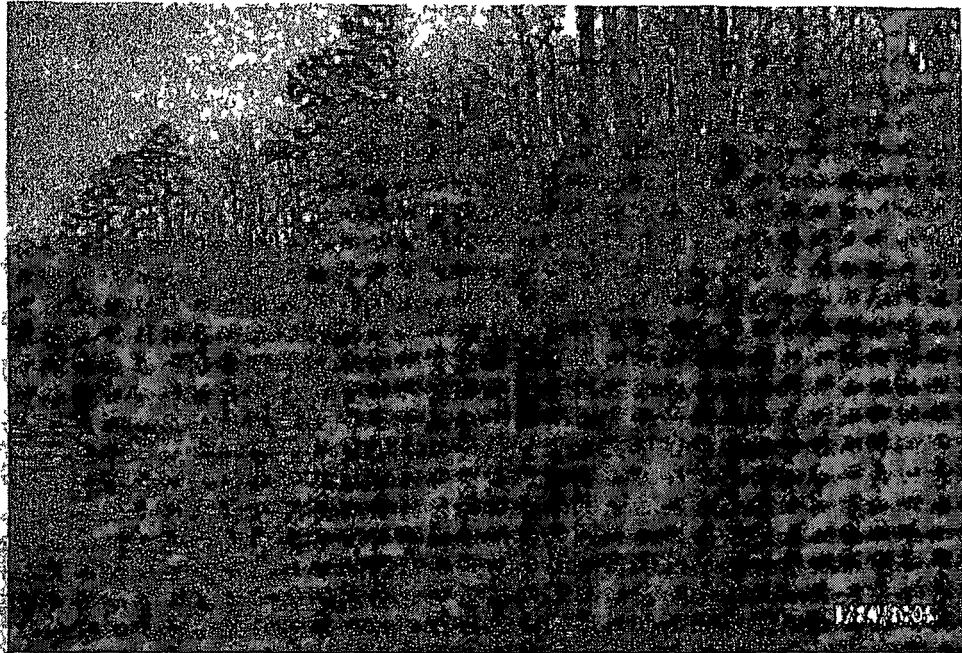


Looking North up Lake Keowee with
mountains in the background

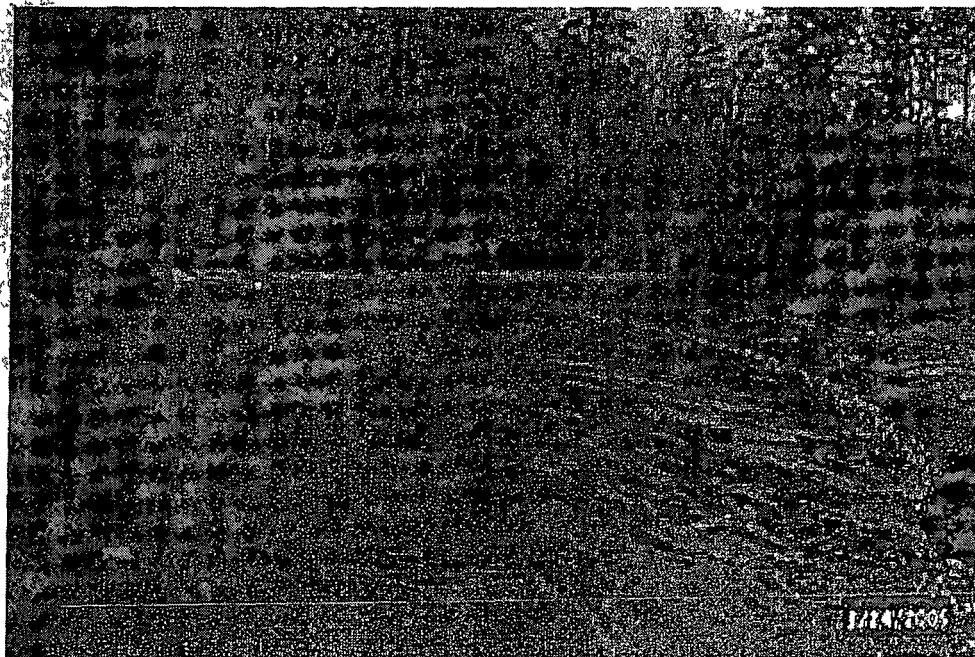


North towards camping peninsula

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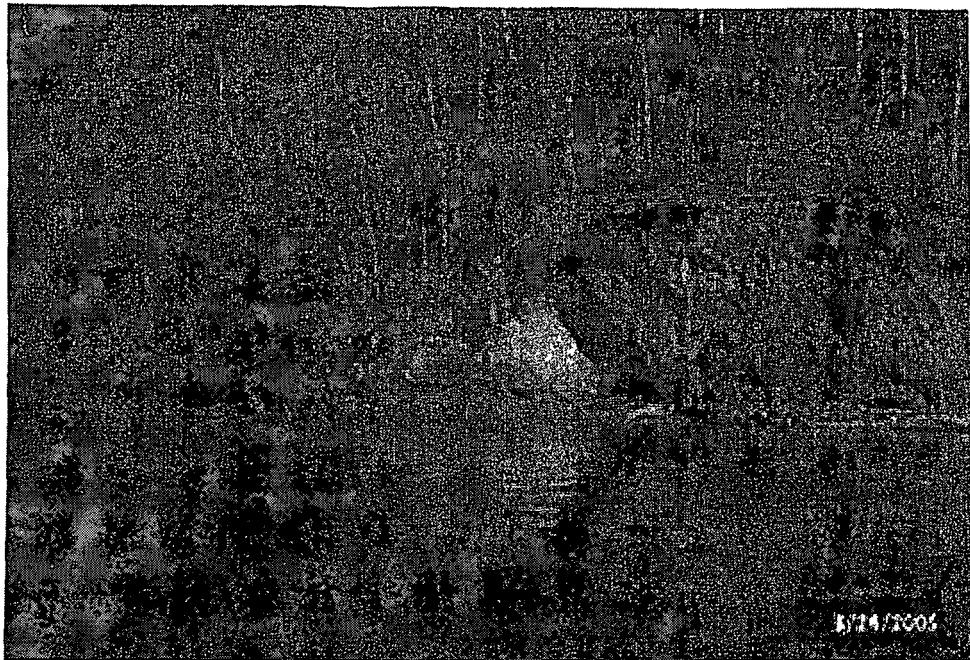


North by Marina Point
towards camping area

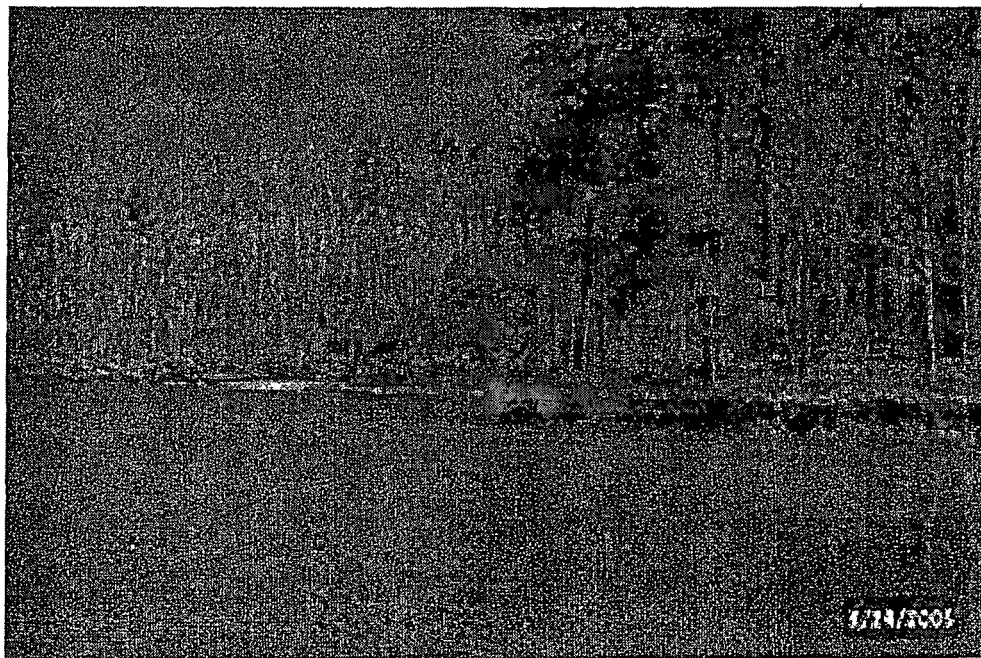


East towards swimming area

APB_00106



North towards Lodge area



North towards camping area

APB_00107

Historic Context

A brief look at some features of this land and its first inhabitants brings some relevant information to the project. The Cherokee Indians lived along the river and bottom land which later became Lake Keowee. They thrived in the bottom lands from Virginia southward. They built their houses in villages much like Early American settlers did. Villages were separated by day-long walks. Houses were made of wood and stone. Fields were planted. Nuts and berries were gathered. Game was cured. Tobacco was smoked and the Cherokee people adhered to high ethical standards. 'Fire' the center of life became the Cherokee word for 'home'.

Rivers between the Cherokee mountains fed by creeks running from all directions, flowed north and west into the Great River, the Cherokees' lifeline to other Indian cultures. A network of roads followed those rivers and streams to connect the Cherokee villages. Steep mountain gaps limited routing choices so Cherokee roads converged at certain gaps just as roads do today in those mountains. Village chieftains lead and represented the people to the tribe as a whole. The people used the roads to trade and compete with other villages.

The installation of Prince George Fort and the arrival of the British had a great impact on the history of the area. Several Colonial British, and Cherokee played a significant part in the history of the area. The following timeline gives a brief account of this history.

Indian Trail Trees, which are also known as bent trees, were once very prevalent in this area. The Indians native to this area, most often the Cherokee, are assumed to have used them to mark directions or trails to areas important to them. They took young saplings, bent them at a right angle perpendicular to the ground and pointing in the desired direction. They then tied them in this position. As the tree grew, the top portion would turn up toward the light but the segment that had been tied down would always point in a specific direction.

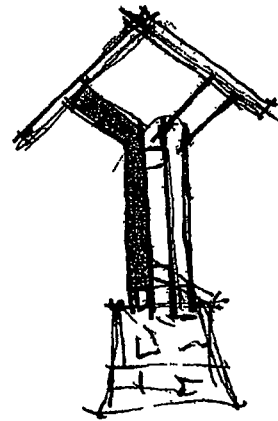
The trees were used to indicate different things. They might show a trail to a river or settlement. Some were used to indicate where natural springs were located. Sometimes they were used as message trees and were either

marked to indicate a message or had a hollowed out section where messages could be hidden

This proposal calls for using the theme of "Indian Trail Trees" to mark areas along the nature/bike trail. Additionally, this idea is used as a recurring theme throughout the architecture of the development, articulating a unique form incorporated into the post and beam construction of the building form. Also, many of the names of places within the development have names influenced by this history.



Indian Trail Tree



Historic Timeline

1540 - Cherokee have contact with De Soto expedition

1670 - The South Carolina Colony established

1670' s - Tribes acquire firearms

1684 - Treaty with South Carolina and Cherokee

1690 - Secretary of Colony James Moore ventures into Cherokee country looking for gold

1693 - Cherokee Chiefs visit Charleston demanding firearms for their wars against neighboring tribes

1705 - North Carolina complains that the South Carolina governor's trade of Native American slaves had so angered the tribes that the Indian War was inevitable

1711 - 1713 - Cherokee aid the colony in driving out mutual enemy the Tuscarora

1715 - Combined tribes in the region threatened to wipe out South Carolina in a war that broke out. Peace was made with a large exchange of guns and ammunition for alliance with the colony

1715 - Cherokee drive Shawnee northward out of the Cumberland River Region

1721 - Cherokee sign treaty with South Carolina to systematize trade. One condition of the treaty established a fixed boundary between the Cherokee and the colony. This was the first land cession made by the Cherokee to the Europeans

1730 - Seven Cherokee make the trip to London to meet with King George II. Atta Kulla Kulla was one of them

1738 - Small pox was introduced to the Cherokee killing nearly half the tribe within a year

1749 - South Carolina Independent Companies is formed replacing the disbanded General Oglethorpe's Regiment

1753 - 1768 - Fort Prince George was named for the Prince of Wales (later King George III) and served as the principal Carolina outpost in the Cherokee lower towns

1754 - Treaty reaffirming the Cherokee alliance to the English is signed

1755 - 1763 - French and Indian War Cherokee would have sided with the French except for the dependence on trade with the English

1757 - South Carolina Provincial Regiment is formed

1759 - Thirty-two Cherokee spokesmen are held hostage at Fort Prince George Chief Attakullakulla negotiates the release of Oconostota and two others The remaining twenty-nine chiefs remained captives

1760 - Cherokee lure Lieutenant Coymore outside the walls of Fort Prince George and mortally wound him. The same day the remaining chiefs who are being held hostage are killed Cherokee start a fight with South Carolina and push frontier line back 100 miles to the Edisto River

1761 - Attakullakulla signs a treaty with South Carolinas colonial government

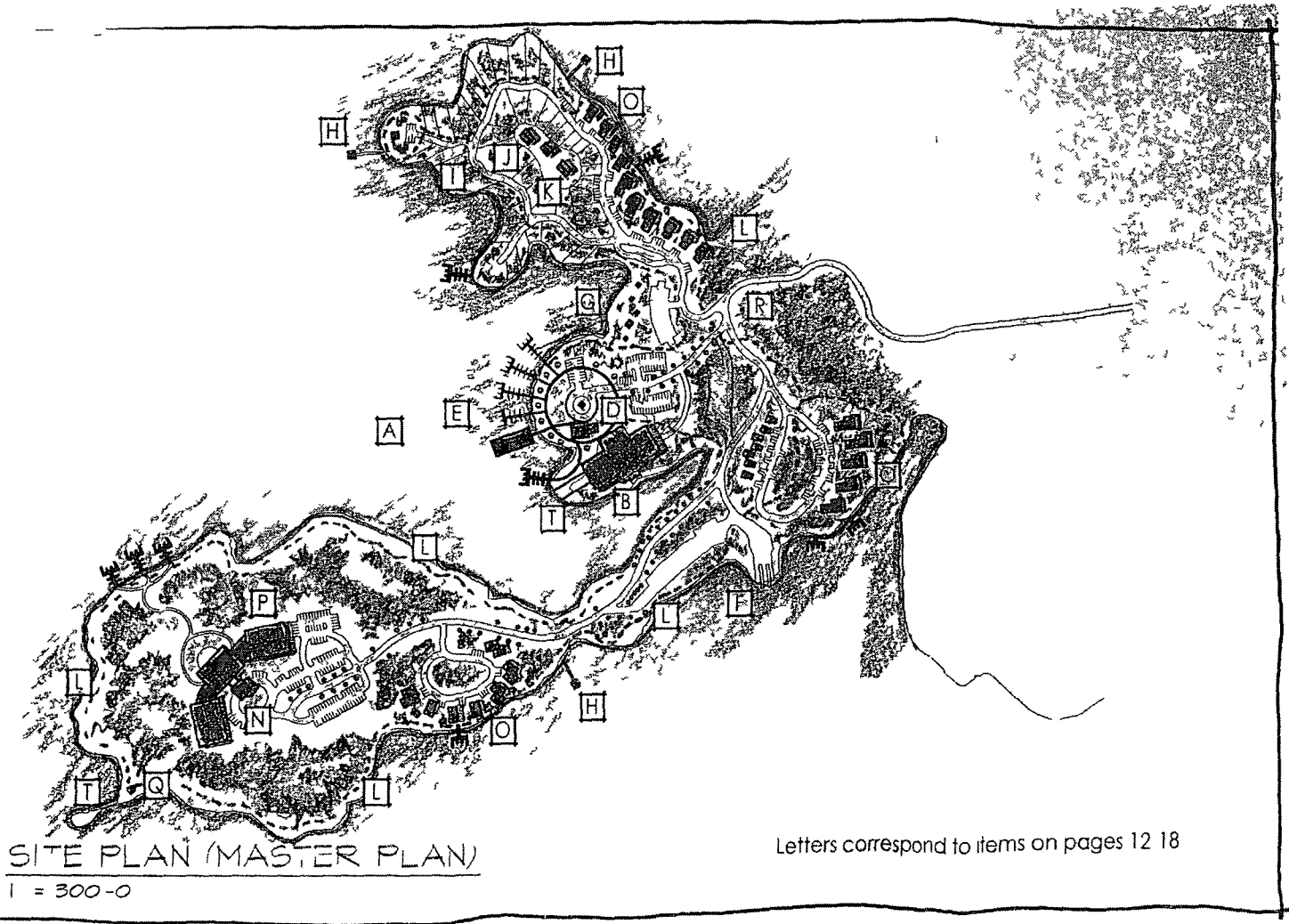
1775 - Cherokee sign the Henderson Purchase which ceded land north of Cumberland River and what is now Kentucky

1776 - British invade Charleston and Cherokee once again attack colony

1777 - Cherokee sign Treaty of DeWitt's Corner which ceded nearly all of South Carolina except the northwestern corner which is now Oconee County

1790 - 16,000 people move into Greenville Pickens Oconee, and Anderson Counties Cherokee and Creek make raids on South Carolina and Georgia South Carolina establishes block houses along its northwest boundary for protection

1816 - Cherokee sell the last of their South Carolina land to the colony



Elements of Proposal

Please note the following features of the proposal are labeled on the site plan accordingly. Please review site plan to determine location of each feature.

Each element of this proposal will be planned with ADA accessibility features as an integral part of the design in all places where it is reasonably achievable.

C. Water related features

A. Marina

The marina will be located conveniently for public use and will provide a courtesy dock for short term parking as well as fueling. Though this proposal is preliminary at the appropriate time a Spill Prevention Control & Countermeasure Plan will be provided.

Another service available to the public at the marina will be a marine sewage pump out service to the public at nominal charge.

Adjacent to the marina will be a shop for maintenance and repair of boats. Design considerations will be made for the possibilities of boats arriving both by water and by land.

B. Dry dock boat storage

The dry dock boat storage facility will store boats under cover year round and will be designed for 100-200 boats. Storage for boat trailers will not be a part of this facility.

Boats will be handled by forklift to be placed on storage racks and also lower into the water as needed. A boat owner could call the facility and upon arrival to Warpath

Landing his boat would be waiting for him Boat storage would be available on a fee basis

C Marina convenience store

The marina convenience store will provide the essentials people may need while boating, camping fishing swimming or sunning The store would be located near the active hub area of the marina to be convenient for both boaters as well as others Ample parking will be provided close by Restroom facilities will also be provided Nearby fueling and courtesy docks (approx 20 slips) will serve as an access to the facility by boat as well as provide a needed fueling station for Lake Keowee

D Deli/Grill

The deli/ grill will be a place to grab a quick sandwich Sandwiches will be available for eat in or for takeout An outdoor eating area and restrooms will be included in this facility The size and type of facility may be something on the order of a Schlotzsky s

E Boat slips

The boat slip area will include covered and uncovered slips The number of slips and the particular arrangement will develop with the phases of the project There will eventually be 2 walkways with slips on each side to be developed as the demand indicates but not to exceed space for 100-200 boats

F Public boat launch and parking

A public boat launching area which will utilize elements of the existing boat ramp, will provide a place for day users campers or anyone to launch their boat The existing facility will be utilized and improved Restroom facilities and picnicking areas with small picnic shelters will be nearby Ample parking for vehicles and boat trailers will be provided

G Public swimming area

A public swimming area will be available for anyone to spend the day and enjoy the lakeshore. This would be similar to the swimming area at Devil's Fork State Park and would feature restroom facilities and picnic areas. There will not be a lifeguard on duty. Parking would be available in the nearby paved parking area which is currently designed with consideration for 70 vehicles. Secondary overflow parking would be developed as needed. This secondary parking area would simply be a grass area to be utilized only for the occasional event or holiday situation. If this proved to be something utilized on a regular basis, this area could be paved as well. It is the intent to keep the development as natural and sustainable as is reasonably achievable.

H Public fishing pier

There would be provisions in the development for 2-3 fishing piers. These would allow the possibility for fishing from a pier in both covered and uncovered spaces. Nearby parking for 4-6 cars per pier would be provided.

To encourage the healthy maintenance of fish populations, various techniques will be employed. Manmade fish habitats will be installed under the fishing piers. Natural vegetation along the shoreline will be preserved, protected, and replenished. Proper erosion control methods will serve to protect the natural habitat of plant and wildlife.

□ Outdoor recreation

I R/V Sites and Campground

To accommodate overnight camping facilities for various types of camping will be provided. Plans call for campsites for 15-25 larger "R V" type-sites as well as 20-40 tent campsites.

The campground area will include a bathhouse as well as dump station. The design of the site allows campers to be part of the entire resort through the use of the swimming area, nature trail, secondary recreation areas, fishing piers as well as a close connection to cabin areas. Adequate parking for each campsite will be developed as the design matures.

One opportunity the site offers is the possibility of group camping on the two south facing peninsulas.

J Picnic areas

Picnic areas of varying types will be planned for at strategic areas throughout the development. Some of these will be uncovered, some will be covered. These shelters will be available for day users as well as vacationers.

K Larger picnic shelter

The large picnic shelter will be adjacent to the RV/Camping area. This structure will be approximately 30 x 40 with a large open hearth stone fireplace on one end. The rustic facility would be suitable for campground functions such as a square dance, sing-a-long or a casual worship service. This facility could be used for many different functions such as a boat club barbecue, family reunion potluck dinner or church picnic. The nearby bathhouse will serve as restroom facilities. Nearby parking for the swimming area could be utilized for occasional events. (See picnicking areas noted throughout project)

L Bike path/ nature trail

A 2.25 mile bike path /nature trail will be woven around most of the perimeter of the development. The concept for the trail is to incorporate the theme of the Indian Trail Tree to designate historical "points of interest" at strategic points. The trail will offer exercise possibilities such as running, jogging, biking for all.

types of users The trail will allow a point of contact between people from different user groups For example a conference attendee may enter into an interesting conversation with a camper on an early morning walk

M Secondary recreation uses

As details of the project develop locations for secondary recreation opportunities will be determined The goals are to offer assorted options to allow for taste and level of activity desired The following recreational opportunities will be available in strategic locations

Croquet
Horseshoe pits
Rock climbing
Playground
Campfire pit

□ Lodging/ Dining

N Lodge

A lodge with 60 to 120 rooms will be designed to capture the views and natural beauty of the lake Groups as well as individuals will use this facility The character of the facility will be similar to a Bed and Breakfast Inn rather than a chain hotel Nearby docking facilities for 30-40 boats will allow lake residents to arrive by boat to dine at the restaurant on site

O Cabins

Cabin facilities will be simple mountain type cabins They will vary in size to accommodate different needs A single person or couple would rent a small size cabin A small family may like a medium sized cabin And, a group may rent the Family/ Group sized cabin This size could be used for many situations - an office retreat, a family gathering or club meeting

Approximate sizes

Small size - 500-750 sq ft (1-2 bedroom) with screen porch

Medium sized - 1 000-1300 sq ft (2-3 bedroom) w/ screen porch

Family/ group - 1600-2000 sq ft (3-4 bedroom) w/ screen porch

The small and medium sized rental cabins will have a minimum of two parking spaces for each cabin. Each cabin will have at least one parking space for boat trailers. Additionally auxiliary parking will be provided near each cabin cluster.

The family/ group cabins will each have 3 to 4 parking spaces as well as 1 boat trailer parking space. There will also be auxiliary parking for each cabin cluster.

All cabins will have at least 1 boat dock to be located nearby. (See locations on site plan)

This preliminary proposal calls for 10 of the small to medium sized cabins adjacent to the RV/ Campground area. The other cabin area will feature 7 small size cabins and 5 of the larger group type cabin. These will be developed as part of the phasing explained in a following segment of this conceptual plan. An additional cabin area would include 7 med sized cabins to be used for conference facilities in conjunction w/ the lodge.

P Restaurant

The restaurant will provide casual individual dining as well as banquet facilities for 100 to 250 people. This will be designed in such a way as to complement the lodge functionally and architecturally. This facility could be used for a multitude of functions, including receptions, banquets and any number of gatherings. Parking for this facility as well as the lodge will be developed in a terraced layout that works with the natural contours of the site and minimizes the visual and ecological impact.

of large asphalt paving areas. Specific square footage and parking requirements will be determined as the design is developed.

Docking for 16 to 24 boats will be provided as the Lodge/Restaurant area is developed. These docks will allow restaurant patrons to arrive by boat from various lake communities in the surrounding area.

Parking for the restaurant and lodge will be designed to minimize visual and ecological impact. The lodge will require 70-130 parking spaces. The restaurant will require 25-62 spaces.

□ Miscellaneous

Q Shaman Point

This rustic structure will be a focal point for the project as an historical element as well as a functional sculpture. The space created could be used for small weddings or casual gatherings. Access to this special point may be a simple footpath. The journey of approaching the point would be part of the experience of arriving at a destination.

R Main Entrance Gate

The main entrance gate will function architecturally as the "greeting" to the development. This will be a security control point and also a place in which guests can be directed to their desired area of the development. If a minimal day use fee were required to offset maintenance costs, this would be the place of collection.

S Sewage treatment facility

Preliminary civil engineering studies have yielded a conceptual plan that carefully considers site constraints, preservation of natural resources including trees, and state of art technology to yield efficient sewage treatment. (See engineering report following.)

T Shoreline Management

Care will be taken throughout the project to preserve and protect the natural vegetative habitat of the site. Along the lakefront, particularly, precautions will be made to stabilize the natural shoreline.

This proposal features the installation of bulkheads as needed for structural support for docking and fueling uses. These bulkheads would be appropriately designed. And, measures to preserve and foster the development of fish habitat will be observed where feasible.

In places where disruption of the natural habitat is inevitable, efforts will be made to relocate plant material to suitable areas. In every area where it is feasible, the intent is to maintain 50% undisturbed natural vegetation along the entire shoreline. And elsewhere on the site, effort will be made to retain as much undisturbed natural vegetation as possible.

U Road Improvements

Road and infrastructure improvements will be provided by phases as needed to facilitate the construction and use of each stage of the project. (See phasing below.)

Note: At this time, it has not been determined whether it will be required to assess a fee for day users of the proposed facilities. Should a fee be required, it will be a nominal fee to offset costs of maintenance of restroom facilities, maintenance of beach area, and trash and waste service.

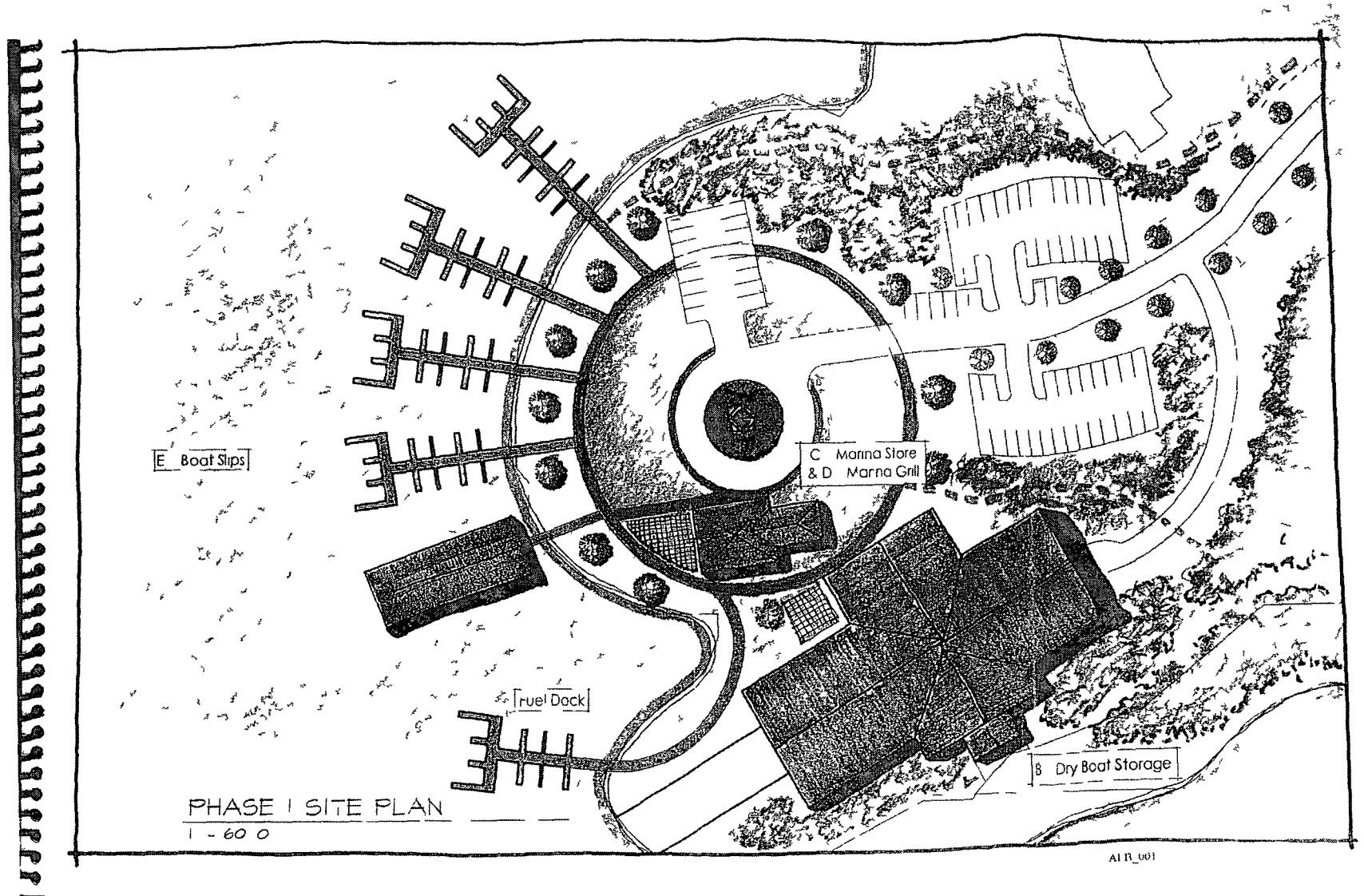
Phases of Project

Note Phases I and II are planned to be developed concurrently

Phase I

- Dry Boat Storage
100-200 boats
- Fuel Dock / Courtesy Dock
20 boats
- Marina Grill and Store
- Boat Slips
100-200 boats
- Shoreline Management / Bulkhead
- Roads and Parking
- Utilities Infrastructure
- Main Entrance Gatehouse
- Perimeter Nature Trail

This initial phase will include developing approximately 5 acres. Preliminary estimate for this initial phase is approximately \$4,000,000 and will take 12-18 months to complete construction.

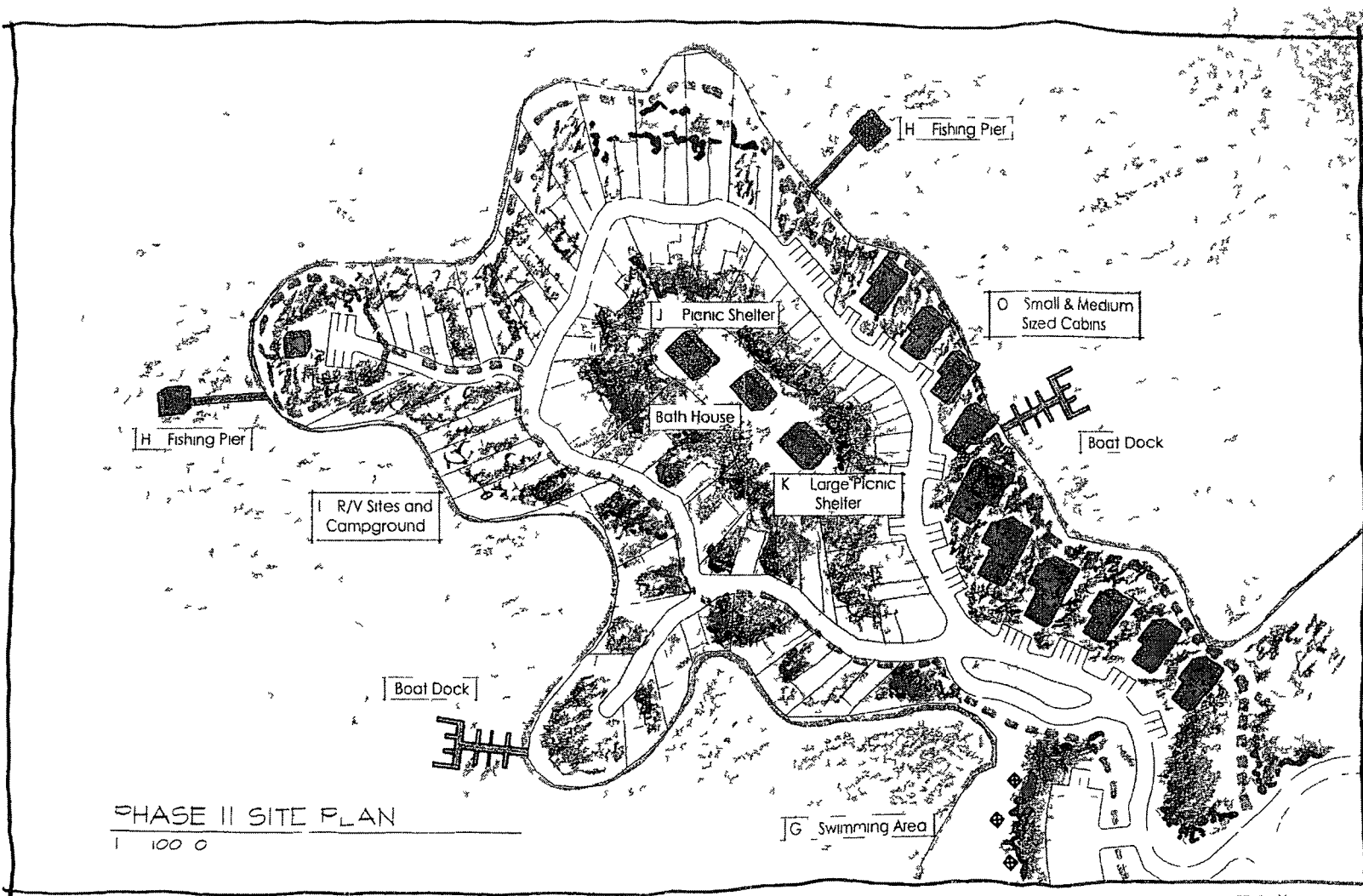


Phase II

Note Phases I and II are planned to be developed concurrently

- Recreational Vehicle sites
15-25 RVs
- Tent sites
20-40 campsites
- Bath House
- Picnic Shelters
- Courtesy Boat Docks
15-20 boats
- Swimming Area
- Overflow Parking
- Cabins
- Fishing Piers
- Infrastructure

This second phase calls for the development of 11 acres. The approximate cost of this phase will be \$1,000,000. This phase will require 6 - 12 months to complete.

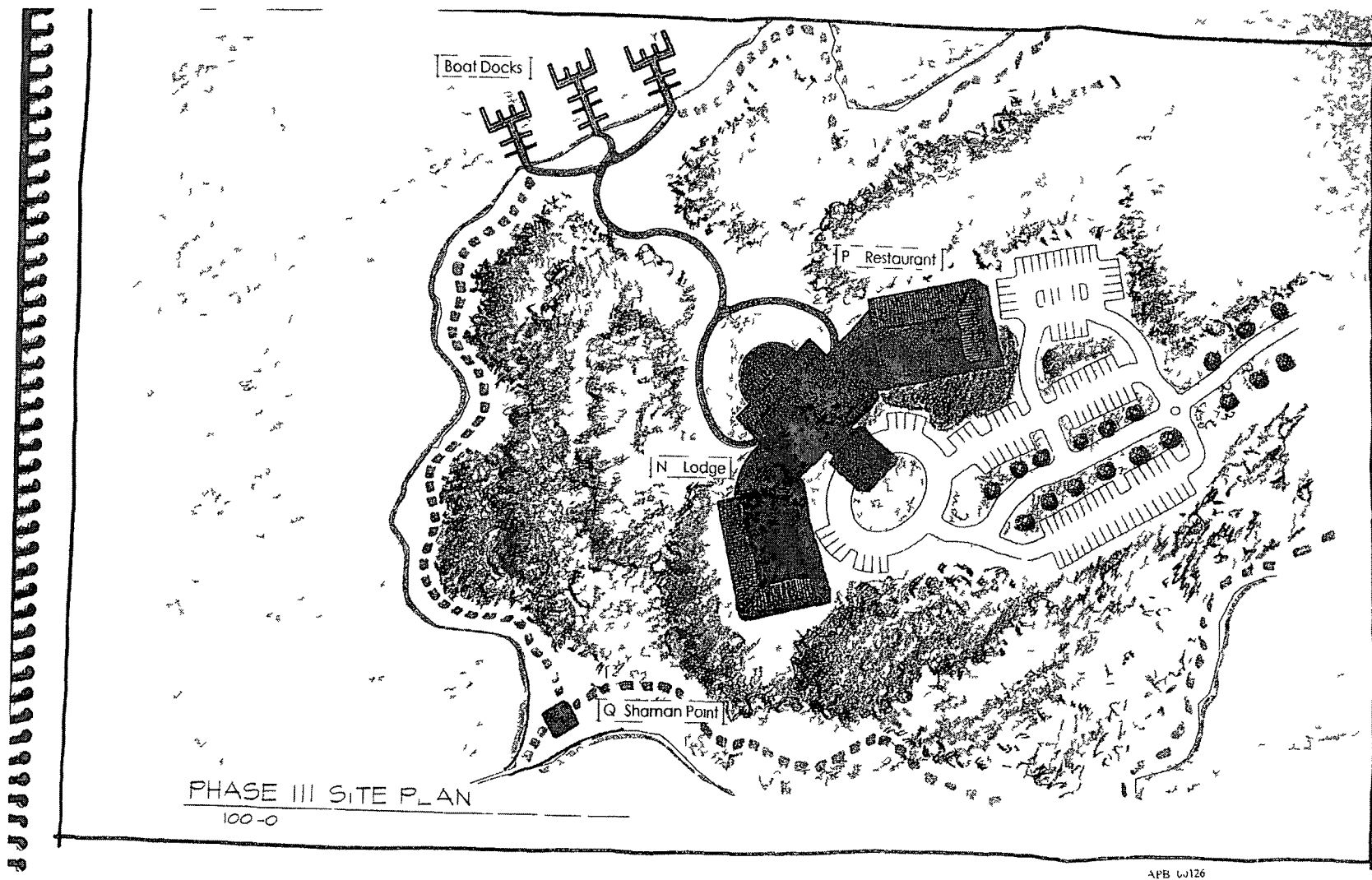


Phase III

- Resort/ Conference Center
- Restaurant
- Group Cabins
- Fishing Pier
- Bulkhead
- Boat Dock
 - 30-40 boats
- Infrastructure
 - Parking
 - Re-defining entry road to provide sense of arrival for Resort/Conference Center
- Utilities Infrastructure
 - Sewage treatment facility

This phase will entail the development of approximately 26 acres. The preliminary estimated cost for this part of the development is \$6 000 000.

This phase will take 18 - 24 months to complete.



Phase IV

- Cabins
- Courtesy Boat Docks
(36) 3 docks with 12 slips each
- Secondary recreational opportunities

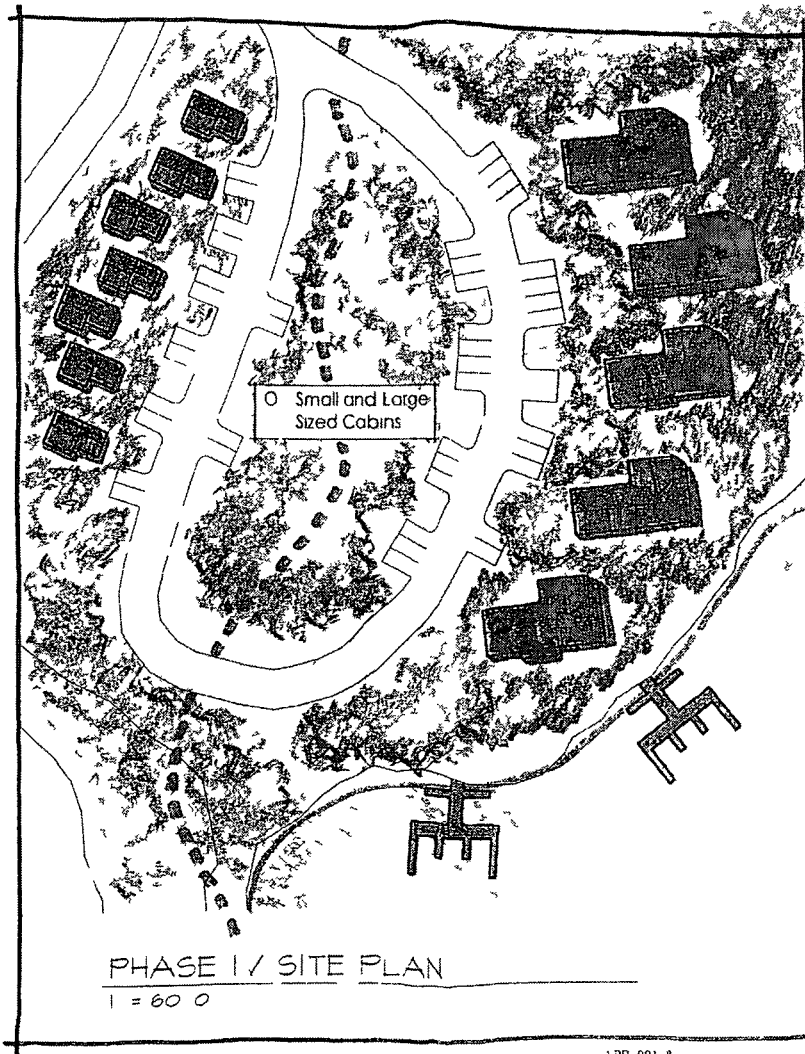
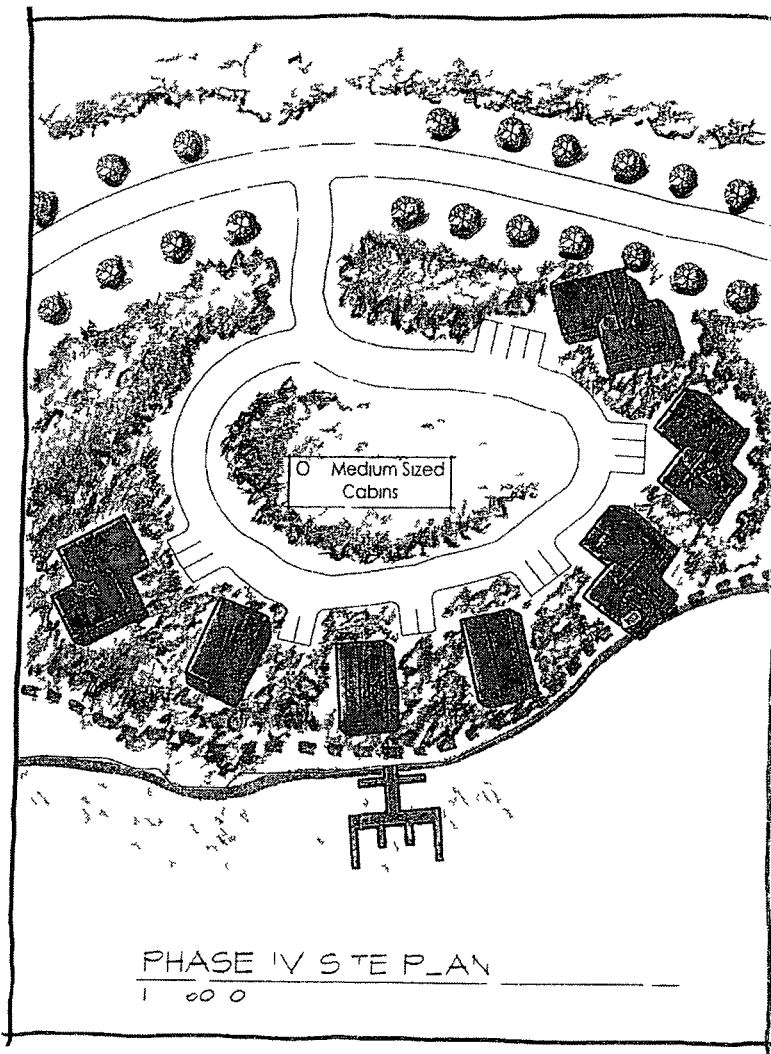
This phase calls for the final development of the remaining 16 acres,

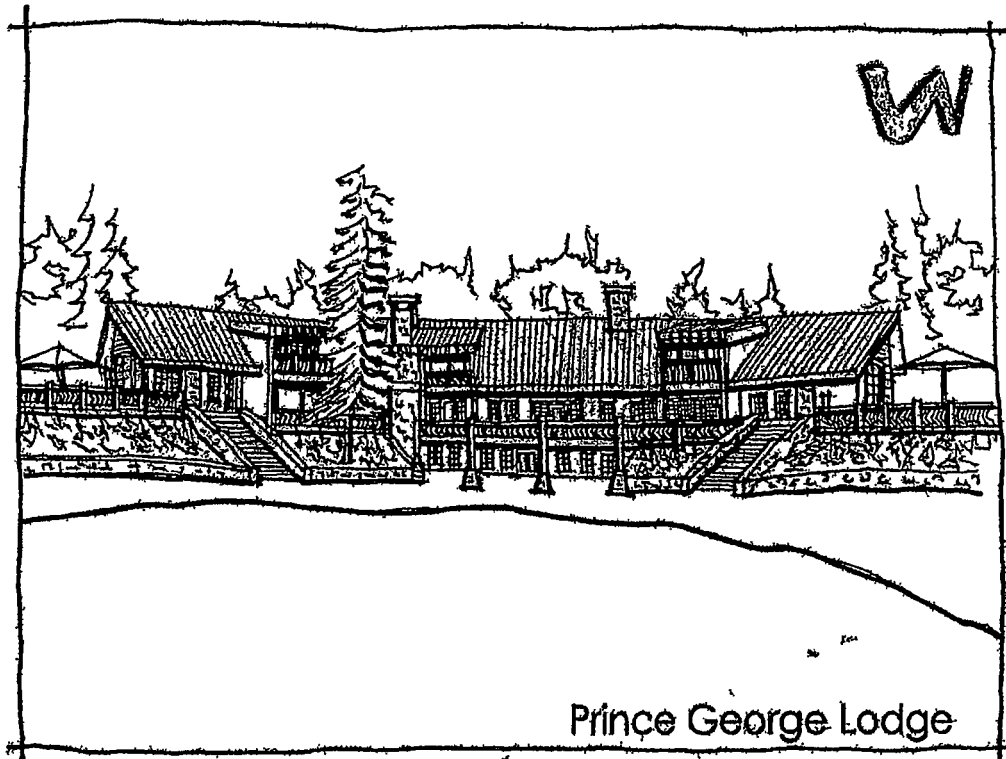
Preliminary cost estimate for this phase is \$1,000 000 - \$1 500,000

Construction time is estimated to be 6-12 months

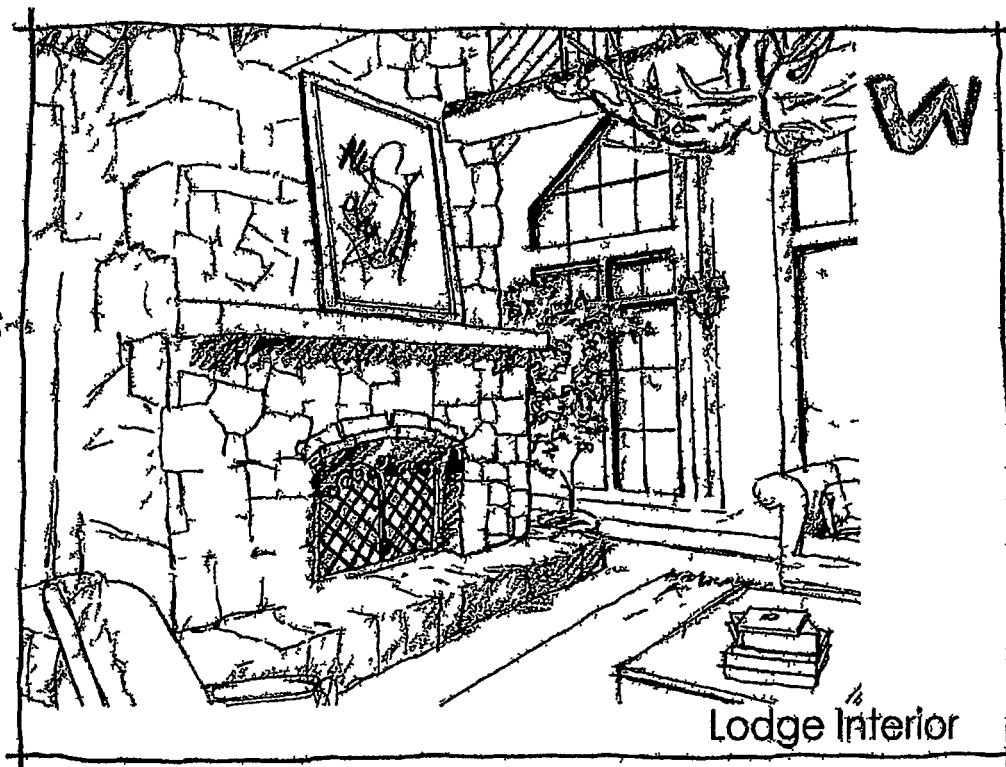
Please note

Phasing will overlap to expedite overall construction time. While one phase is being constructed, design and engineering on the next phase will be in process





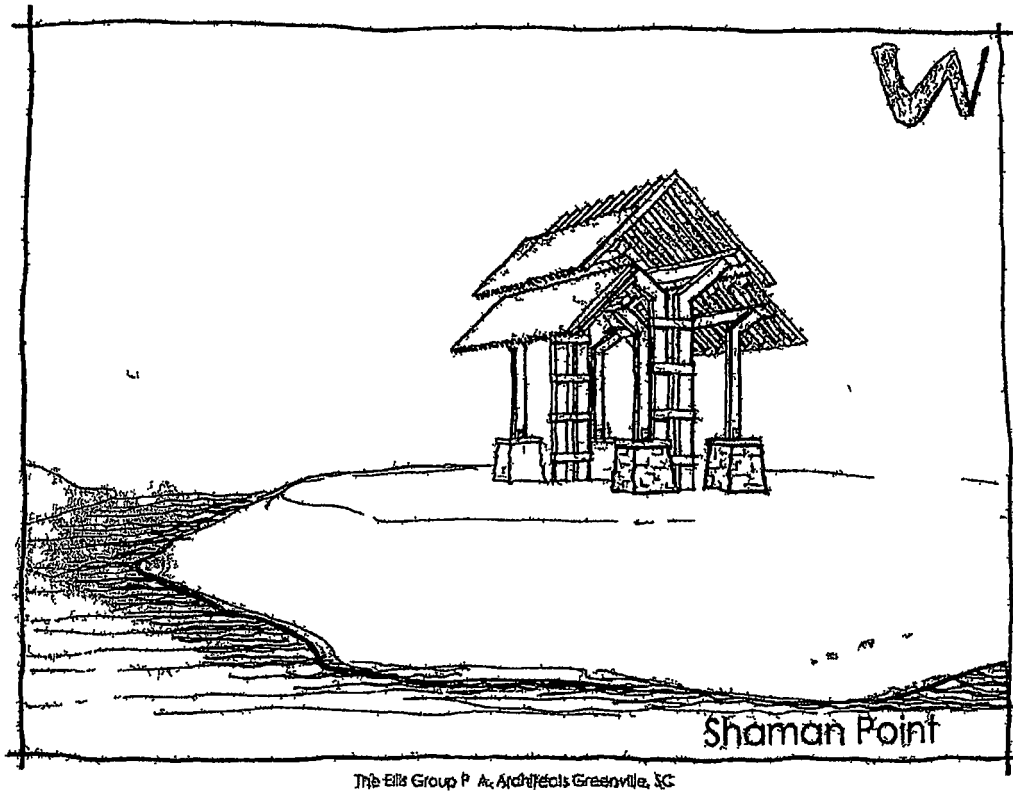
The Ellis Group P. A. Architects Greenville, SC



The Ellis Group P. A. Architects Greenville, SC

APB_00130

32



Native Stone incorporated into a Flowering Landscape.
 Heavy Timber Building Frames Alluding to the Wooded Character of the Site
 Metal Roofs Resonating the Falling Rain.
 Stacked Stone Chimneys around which to Gather
 Nature Imprinting a Lasting Essence of Place.

33

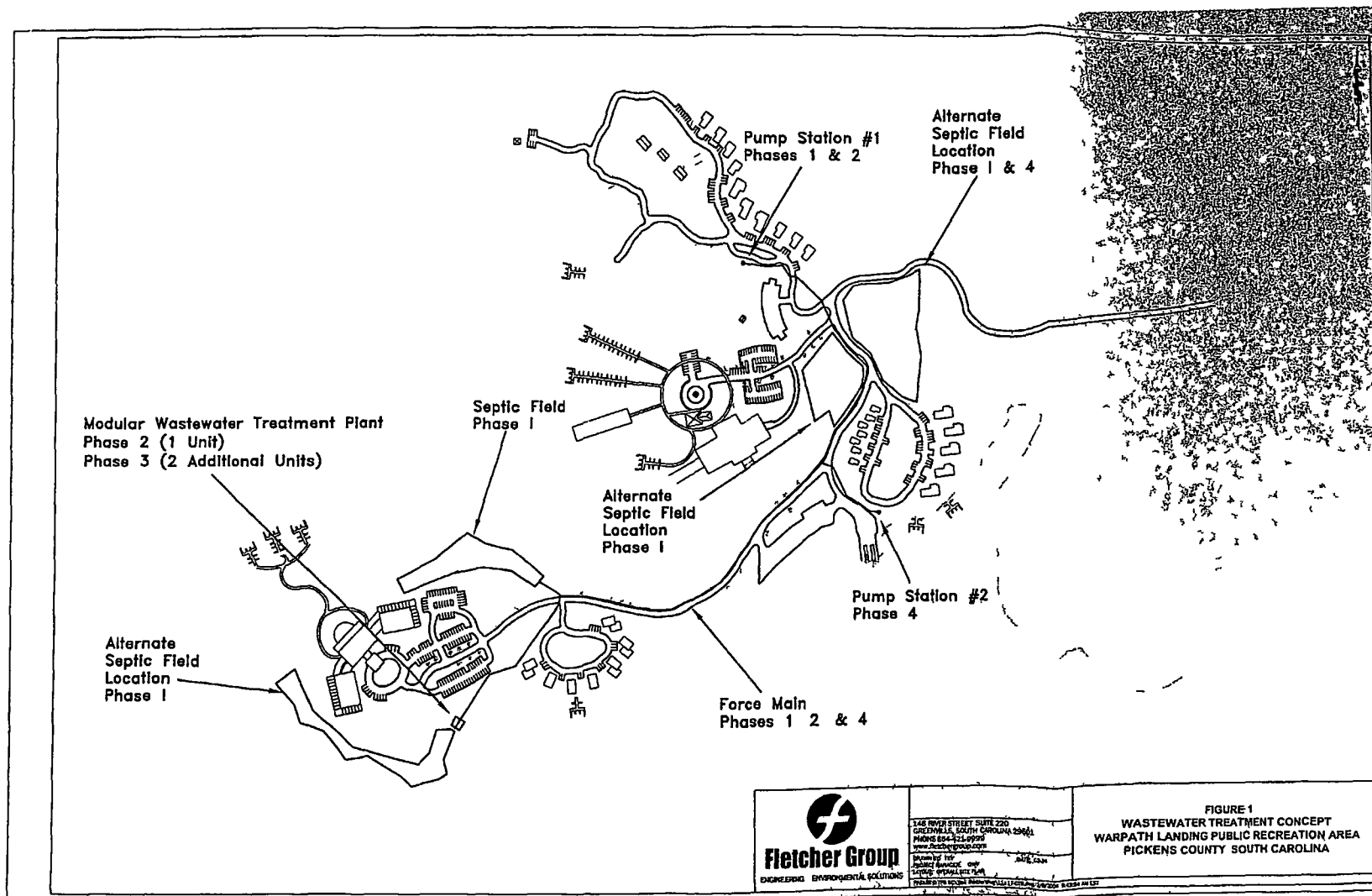
APB_00131

WARPATH LANDING
Conceptual Design of Waste Treatment Facilities
2/28/05

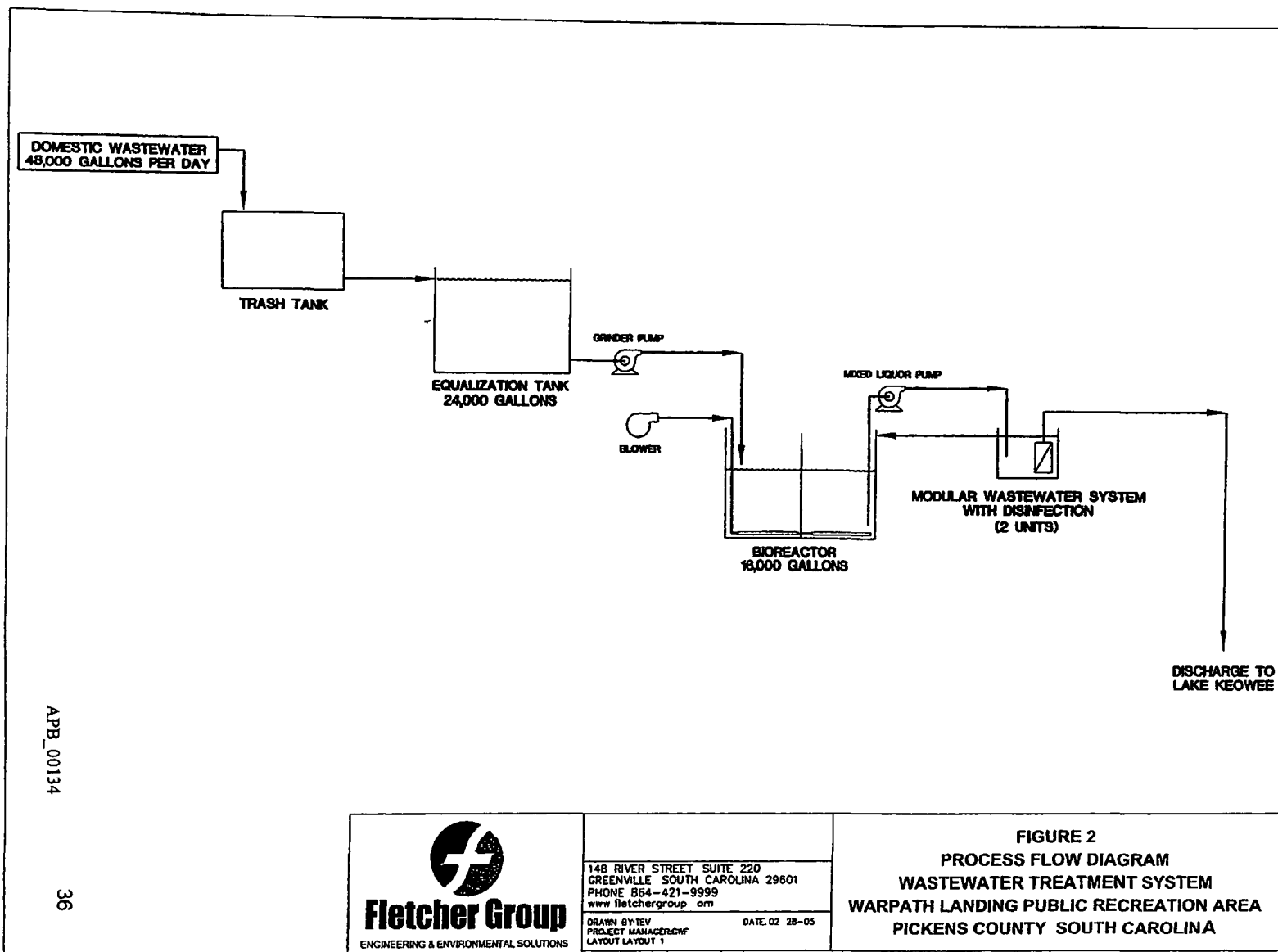
Wastewater Design Basis

The following table summarizes a design basis for wastewater from the proposed facilities based on the Standards for Wastewater Facility Construction R 61 67, SC DHEC June 1998. Flow data is from Appendix A *Unit Contributory Loadings to All Domestic Waste Treatment Plants*. Seasonal flows are denoted with an S

Development	Basis (Per day)	Units	Design Flow
Phase I			
Dry Boat Storage	40 gals/employee	4 employees	160 gpd (S)
Fuel Dock	30 gals/slip	20 spaces	600 gpd (S)
Marina Grill	40 gals/seat/day	8 seats	320 gpd (S)
Boat Slips	30gals/slip	160 slips	4800 gpd (S)
		Total Phase I	5880 gpd
			0
Phase II			
Campground			
34 RV spaces	175 gals/site	34 spaces	5950 gpd (S)
10 campsites	50 gals/ppd	3 people/campsite	1500 gpd (S)
10 Cabins	100 gals/ppd	3 people	3000 gpd (S)
Bath House	Included		
Picnic Shelter	Included		
Fishing Pier	Included		
Boat Dock (16 spaces)	30 gals/space	20 spaces	600 gpd (S)
		Total Phase II	11,050 gpd
Phase III			
Conference Center	100 gals/room	120 rooms	12 000 gpd
Swimming Pool/spa	10 gals/user	20 users	200 gpd
Restaurant	70 gals/seat	250 seats	17 500 gpd
Group Cabins			
Three single	100 gals/ppd	3 person per room	900 gpd
Four with 4 rooms	100 gals/ppd	2 persons per room	3200 gpd
Fishing Pier	Included		
Boat Dock	30 gals/space	12 spaces	360 gpd
		Total Phase III	34,160 gpd
Phase IV			
Cabins	100 gppd	10 cabins x 3 people	3 000 gpd (S)
Picnic Shelters	Included		
Fishing Pier	Included		
Boat Dock	30 gals/space	8 spaces	240 gpd (S)
		Total Phase IV	3,240 gpd



APB_00133



In round numbers, Phase I would be 6 000 gpd, Phase II 11 000 gpd Phase III 34,000 gpd and Phase IV – 4000 gpd for an ultimate total of 55 000 gpd

In order to accommodate the construction phasing and still provide system flexibility Fletcher Group, Inc proposes to construct a septic tank field to accommodate Phase I Standard septic tank design calls for a drain field that will handle 5 gal/day/sq ft Trenches are typically 3 ft wide and can be no closer together than 10 ft. The field should have a backup area that can handle 100% of the flow Using this criterion the 6000 gpd will require approximately 12 000 sq ft, or 4 000 lineal ft of trench Parallel lines should be no longer than 150 ft so a flat area of 150 ft x 267 ft (approximately 9 acre) would be required

The final design will depend on topography soils and the site master plan Multiple septic tanks could be used to accommodate specific site conditions Figure 1 shows four potential locations for drain fields at Warpath Landing All of those drain fields should be integrated into surrounding land uses The following photograph shows a drain field threaded through trees at Devils Fork State Park

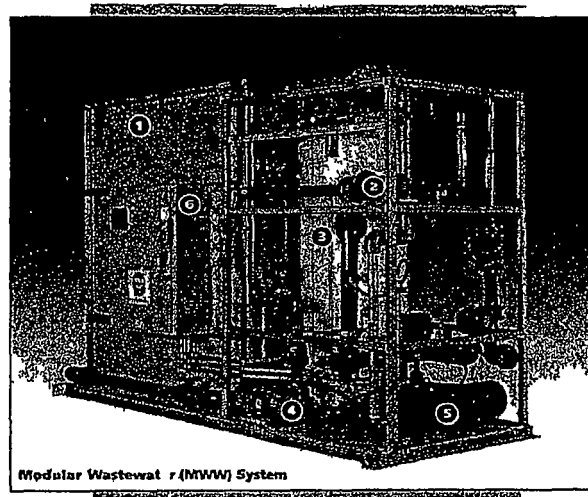


Phase II will generate 11 000 gpd of wastewater This would involve 2 more acres of drain fields in and around the campsites cabins and bath house Although this solution is possible we would recommend that the developers consider constructing the first of two 24000 gpd waste treatment modules to be located near the future conference center Assuming a lake discharge we believe that a biological membrane would work better than a conventional package plant One manufacturer of biological membranes will guarantee the following performance

BOD ₅	< 5 mg/L
TSS	< 3 mg/L
Ammonia Nitrogen	< 1 mg/L
Total Nitrogen	< 5 mg/L

Total Phosphorus	< 1 mg/L
Turbidity	< 1 NTU
Fecal Coliform	< 22 cfu per 100 mL

The following photograph shows a Zenon 24 000 gpd module. Each module is roughly 4 ft by 12 ft long. In addition, there would need to be an 8000 gallon aeration tank and a septic tank for collecting trash in front of the unit. The Septic Tank from Phase I could be used for this purpose. Figure 2 shows a Process Flow Diagram.



The Phase I pump station and pipeline would transfer the waste from both Phase I and Phase II. The treatment plant could be shutdown in the winter and the drain field used for all of the wastes.

Phase III will generate the largest load, 34 000 gpd. A second 24 000 gpd module should be able to handle the total flow. For a total flow of 51 000 gpd, it may be necessary to divert 3000 gpd to a septic tank and the drain field. For winter operation, one of the modules could be shut down.

The last phase has 4000 gpd, and the only new construction would be a small pump station. The drain field would only need to be slightly enlarged to handle the flow. Actual flows may show that SC DHEC estimates are conservative and no expansion is necessary. Alternatively, a drain field could be constructed to handle the bathhouses in Phase II, or the Phase I drain field could be expanded by approximately 2 acres. These plans can be finalized when actual site conditions are factored in.

Alternate Scenario

Pickens County prefers drip irrigation systems to discharges to the lake. An alternate that may prove less expensive is to use more conventional treatment and purchase offsite property that can be used for constructed wetlands, drip irrigation, spray irrigation, or a larger drain field. A drip irrigation system, for example, applies the wastewater to forested areas where it is absorbed by

the trees. At a loading of 10 lbs of BOD₅/day/acre, approximately 12 acres would be required. This area would need to be fenced. The wastewater would require conventional secondary treatment, but could then be pumped to a distribution system on the leased property.

Costs

Fletcher Group Inc. believes the above approaches will solve waste treatment problems for the development. We will submit a budget cost estimate by the end of this week. However, more detailed estimates should be made when specific site issues can be factored in.

Water

The area is served by the Six Mile Water District. We believe that they can supply water to the development.

Solicitation/Contract No. _____

Attachment No _____

REPRESENTATIONS AND CERTIFICATIONS (Supplemental)

By signing this document, the Offeror certifies that the following statements are current and correct. If any of these statements are incorrect or false, the Offeror shall provide an explanation with its offer and further clarification as requested by the Buyer. The Buyer may reject any offer that does not include this completed and signed document.

1. Offeror is authorized to represent the business making this offer. Offeror is not a subsidiary, agent, or employee of the Buyer. Offeror is not a partner, officer, director, or owner of the Buyer. Offeror is not a subsidiary, agent, or employee of the Buyer.

2. Offeror is an independent business concern free to enter a bidding agreement or contract with the Buyer without any restrictions from any other business entity or parent company. If Offeror is owned or controlled by a parent company, Offeror shall identify the parent company or controlling entity in its offer.

3. Offeror has not, within a 3 year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

4. Offeror agrees to comply with the provisions of Federal Service Contract Act (FSCA), P.L. 89-286, 41 U.S.C. 351 as amended, applicable rulings and regulations of the U.S. Secretary of Labor for services which will be performed by categories of workers identified in the SCA. Personnel performing work under the Contract will be paid wages and fringe benefits not less than those determined by the Secretary to be prevailing in its locale, or those established by a bargained wage and benefit agreement, applicable to the Contract as provided in the SCA, throughout the performance of the Contract.

These certification statements concern matters within the jurisdiction of an agency of the United States. Making a false, fictitious or fraudulent certification may render Offeror subject to prosecution Section 1001 Title 18, United States Code. The Buyer may withhold an award based on any negative responses to the certifications above and/or Offeror's failure to adequately describe the conditions of the response.

Offeror agrees that the certifications and conditions provided herein are a material and binding part of and are hereby incorporated by reference into any resulting contract unless specifically excluded in the contract.

_____ Offeror	_____ Tax ID or Social Security No
_____ Authorized Representative:	_____ Title:
_____ Signature	_____ Date:
_____ Internet Homepage/Email Address:	

EXHIBIT C

HOURS OF OPERATION AND USER FEES

APB_00139

Warpath Development Corporation
Post Office Box 24234
Greenville South Carolina 29616
864-346-6888

David S Jolley
Duke Energy
Duke Energy Lake Service
EC12Q / P O Box 1006
Charlotte NC 28201-1006

Reference Warpath Development Corporation
Hours of Operations and User Fees

Dear David

Basic operating hours will be three hundred sixty-five (365) days per year for Lodge/Hotel,
Marina, Campsites, RV Parking and Cabins

Seasonal Hours for Ship's Store, Marina Grill and Dry Boat Slip will be confirmed closer to
opening of Public Access Areas

Operational hours for Lodge/Hotel inner services are set closer to time of opening,
Restaurant
Banquet Facilities
Lounge
Room Service

Most of these facilities will operate on a daily schedule of 6 00 a.m until 9 00 p m

Sincerely,



Andrew P Ballard

APB bnb

Attachment

APB_00140

Wet Boat Slips -	\$1 800 per year to \$4,000 per year, should average about \$2 500 per year based on boat size	
Dry Boat Slips -	\$10 00 per foot with average boat being about \$2,500 per year, maximum boat 34 feet	
Ship Store -	will be like a small convenience store with gasoline grocery products and marina supplies	
Marina Grill -	Breakfast, Lunch and Dinner	
RV Parking Spaces -	Summer Rates	\$60 00 per night
	June 1 st to Aug 31 st	\$300 00 per week
	Fall Rates	\$60 00 per night
	Sept 1 st to Nov 31 st	\$300 00 per week
	Winter Rates	\$45 00 per night
	Dec 1 st to Feb 28 th	\$225 00 per week
	Spring Rates	\$60 00 per night
	March 1 st to May 30 th	\$300 00 per week
Campsites -	Summer Rates	\$35 00 per night
		\$150 00 per week
	Fall Rates	\$35 00 per night
		\$150 00 per week
	Winter Rates	\$20 00 per night
		\$100 00 per week
	Spring Rates	\$35 00 per night
		\$150 00 per week

Lodge/Hotel -	Maximum 120 rooms	
	Summer Rates	\$149 00 per night
		\$750 00 per week
	Corporate Rate	\$ 99 00 per night
	Fall Rates	\$149 00 per night
		\$750 00 per week
	Corporate Rate	\$ 99 00 per night
	Winter Rates	\$109 00 per night
		\$550 00 per week
	Corporate Rate	\$ 99 00 per night
	Spring Rates	\$149 00 per night
		\$750 00 per week
	Corporate Rate	\$ 99 00 per night

Special Rates or Promotional Rates may be extended to certain groups and organizations

Restaurant at Lodge/Hotel - Breakfast
Lunch
Dinner
Room Service
Banquet Facilities
Lounge
Fine Dining Restaurant

Cabins - Small Size (2 Bedrooms)
Medium Size (2 & 3 Bedrooms)
Family/Group (4 Bedrooms)
Rates \$100 00 per night per Bedroom

Larger Picnic Shelter Daily Rates

EXHIBIT D

ANNUAL OPERATIONAL REPORT

APB_00143

Annual Operational Report

I Basic Information

- A Facility Name
- B Lessee Name
- C Name, Address, E-Mail, Phone Number of primary contact person
- D Reporting Period

II Facility Summary

- A Structural Modifications – identify any facilities or amenities that were retired or added during the report period For additions, also provide a copy of the Lessor's approval letter
- B Facility Inventory –inventory of all structures and amenities on the leased premises at the end of the reporting period

III Third Party Agreement Summary

- A Identify any contracts or agreements with third parties for the sale of goods or services on the Leased Premised during the reporting period, and provide a copy of the Lessor's approval letter for each

IV User Summary

- A Provide a summary of the numbers of public recreational users of the Leased Premises during the reporting period

V Financial Summary

- A Total Debits
 - 1 O&M – Lessee's total Operating and Maintenance expenses for the Leased Premises during the reporting period
 - 2 Capital – Lessee's total payments toward obligations incurred for capital improvements on Leased Premises during the reporting period
 - 3 Total – Lessee's total debits for the Leased Premises during the reporting period

B Total Credits

- 1 User Fees – Total income obtained by Lessee from users of the Leased Premises during the reporting period
- 2 Payments from Vendors or Third Party Contractors – Total income obtained by Lessee from vendors and contractors selling goods and/or services from the Leased Premises during the reporting period
- 3 Other Lessee Credits – Total contributions received from other sources (e g donations) by Lessee for use of the Leased Premises during the reporting period
- 4 Grants – Total of funds provided by grant sources for O&M or Capital Improvements during the reporting period
- 5 Total Credits – Lessee's total credits for the Leased Premises during the reporting period

C Net Cost of Operation – Total Debits minus Total Credits

- 1 Note If total Debits are less than Total Credits, provide an explanation of how excess credits were used, to demonstrate compliance with the lease terms, Paragraph 7 User Fees and Hours of Operation

D Cumulative Total Capital Investment

- 1 Cumulative total investment Lessee has made, by itself, through third party contractors, from grants, or from donations during the life of the lease

VI Insurance Identification

- A Provide a brief description of the current means of compliance with the lease terms, Paragraph 30 Insurance by Lessee

VII Annual Inspection Results

- A Identify the names of participants and date of annual inspection required by the lease terms, Paragraph 8 Joint Annual Inspection
Identify any major action items required and the status of completing each

EXHIBIT E

FERC ORDER NUMBER 313

COMMISSION RECREATION POLICY

APB_00146

COMMISSION RECREATION POLICY

ORDER NO 313 - DOCKET NO R-294

As Amended By
ORDER NO 375-B - DOCKET NO R-294
And
ORDER NO 508 - DOCKET NO RM74-21

Federal Power Commission Order No 313, issued and effective December 27, 1965, amended Part 2, General Policy and Interpretation, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, by adding a new Section 2 7 entitled "Recreational development at licensed projects " Order No 375-B, issued and effective April 14, 1970, amended subparagraph (f) thereof Section 2 7, as amended, reads as follows

§2 7 Recreational development at licensed projects

The Commission will evaluate the recreational resources of all projects under federal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost The Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities

The Commission expects the licensee to assume the following responsibilities

- (a) To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources afforded by the project To the extent consistent with the other objectives of the license, such lands to be acquired in fee for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir plus all other project lands specified in any approved recreational use plan for the project

- (b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters and to include therein consideration of the needs of physically handicapped individuals in the design and construction of such project facilities and access
- (c) To encourage and cooperate with appropriate local, state, and federal agencies and other interested entities in the determination of public recreation needs and to cooperate in the preparation of plans to meet these needs, including those for sport fishing and hunting
- (d) To encourage governmental agencies and private interests, such as operators of user-fee facilities; to assist in carrying out plans for recreation, including operation and adequate maintenance of recreational areas and facilities
- (e) To cooperate with local, state, and federal government agencies in planning, providing, operating, and maintaining facilities for recreational use of public lands administered by those agencies adjacent to the project area
- (f)
 - (1) To comply with federal, state and local regulations for health, sanitation, and public safety, and to cooperate with law enforcement authorities in the development of additional necessary regulations for such purposes
 - (2) To provide either by itself or through arrangement with others for facilities to process adequately sewage, litter, and other wastes from recreation facilities including wastes from watercraft, at recreation facilities maintained and operated by the licensee or its concessionaires
- (g) To ensure public access and recreational use of project lands and waters without regard to race, color, sex, religious creed or national origin
- (h) To inform the public of the opportunities for recreation at licensed projects, as well as of rules governing the accessibility and use of recreational facilities

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO 2008-CP-23-5739

Andrew P (Andy) Ballard,
Plaintiff,

VS

Tim Roberson, Rick Thoennes,
Rick Thoennes, III, and Warpath
Development, Inc ,
Defendants

COPY

DEPOSITION TIM ROBERSON

DATE TAKEN March 4, 2009

TIME BEGAN 1 18 p m

TIME ENDED 5 11 p m

LOCATION Haynsworth, Sinkler, Boyd, P A
75 Beattie Place
Eleventh Floor
Greenville, South Carolina

REPORTED BY TRACI L BARR, RPR
Registered Professional Reporter
Notary Public for South Carolina



1 registers It was all the systems that have to
2 do with store -- retail store systems

3 Q And did you remain president --

4 A I did, yes

5 Q -- and C E O ?

6 A I don't know that we actually had a C E O
7 designation

8 Q You were the chief manager of the company, is
9 that right?

10 A Yes, that's correct

11 Q How did the company change before it was sold
12 in '03?

13 A It changed again when we outgrew the Mid-South
14 name, and in 1997 we called it Kyrus,
15 K-Y-R-U-S, Inc , and then in -- excuse me
16 Yeah, in '97 we changed it to Kyrus, Inc , and
17 I bought out the original partners, most of
18 them, and became the chairman and C E O ,
19 president

20 Q Okay In '03 you sold the company, is that
21 correct?

22 A That's correct

23 Q And to whom did you sell it?

24 A The company goes by the name of Agilysys I
25 believe at the time their legal name was

1 Pioneer Electronics

2 Q Before you sold the company, what was its gross
3 revenues?

4 A At one -- we peaked out at just a little over
5 200 million

6 Q How many employees did you have?

7 A Just over 600

8 Q Now, after you sold the company to the new
9 buyer, what did you do?

10 A I had two heart valves put in I really took a
11 little bit of time to take care of that and a
12 cross-country motorcycle trip

13 Once I got all that behind me, I joined with an
14 individual and became a partner in Integrus
15 Holdings, L L C

16 Q Approximately when?

17 A That would have probably been spring of '04

18 Q All right And what was your role in Integrus?

19 A I was a partner looking for solutions to invest
20 money either to buy businesses, grow
21 businesses, do development

22 Q Okay

23 A Just various

24 Q How long did you stay with Integrus?

25 A I believe it was the spring of last year, '08

1 Q And what happened at the meeting?

2 A Well, the meeting was attended by Jim --

3 MR BALLARD

4 REVIS

5 THE DEPONENT

6 TIM REVIS and JIM - I said his name awhile ago
7 and you couldn't remember it -- JIM SWINK and
8 hosted by Jack Jamison I believe he had
9 another RealtyLink partner or associate in the
10 room, who I really didn't remember or haven't
11 since engaged with, and Andy So introductions
12 were made Andy presented the proposal or the
13 presentation or gave us a description of his
14 years worth of work Not year, years worth of
15 work We understood that he had really plowed
16 into that for a long time
17 We went away, I think, saying, yes, we're
18 interested I don't think we talked about
19 numbers at that meeting It was really whether
20 or not we would be interested I stand to be
21 corrected if I'm wrong on that
22 The essence of the meeting was this is the
23 project, this is what I've done, here is where
24 we are, and again, as I recall, this thing's
25 ready to go It was -- you know, it was time

1 dated March 24, 2007, is that correct?

2 A March 24th, 2007 is correct

3 Q So would this have been sometime after your
4 first meeting with Andy Ballard?

5 A Yes I mean, we would have had no reason to
6 look at anything --

7 Q If you look in his e-mail to you, that top
8 e-mail, you'll see the next to the last
9 paragraph he says to you, I don't believe we
10 can give Andy much until all permits and
11 approvals prove to be real
12 Do you see that?

13 A Yes

14 Q So by that time isn't it true that you knew
15 permits would be required for this development?

16 A Yes I mean, that was never in question

17 Q And isn't it true too you knew that you-all
18 weren't sure whether all necessary permits and
19 approvals had been obtained?

20 A Yeah

21 Q Okay

22 A Yes

23 Q And attached to that were some pro formas, is
24 that right?

25 A Yes

- 1 another e-mail from Rick, Sr to you and Rick,
2 the son, is that correct?
- 3 A Yes
- 4 Q And this is yet another pro forma that you-all
5 were considering, is that correct?
- 6 A Yes
- 7 Q And in the middle of that he says, we need a
8 minimum of 30 days to satisfy, and he lists
9 sewer, water, Duke docks, FERC docks, Pickens
10 County, bank interest and lease problems, is
11 that correct?
- 12 A I'm not sure where you were reading
- 13 Q Do you see that paragraph that begins, we need,
14 and then it has a list of things?
- 15 A Oh, yeah
- 16 Q It says, we need a minimum of 30 days to
17 satisfy, is that right?
- 18 A Right
- 19 Q So that indicated you knew you-all needed to do
20 due diligence into the sewer issue, is that
21 correct?
- 22 A Yes
- 23 Q And the water issue?
- 24 A Yes
- 25 Q And into the Duke dock issue?

1 A Yes

2 Q And the FERC dock issue?

3 A Yes

4 Q And the Pickens County issue?

5 A Yes

6 Q And in the bank interest and lease problems

7 issue, is that correct?

8 A Yes In other words, that was our due

9 diligence list prior to agreeing to close

10 Q Right And of course I believe you said in

11 your role as corporate C E O you had

12 participated in, I guess, a number of

13 acquisitions, is that correct?

14 A Yes

15 Q What was the largest acquisition you had

16 participated in?

17 A 18 million

18 Q Okay And I guess you know of the concept of

19 due diligence when you're going to acquire

20 something, correct?

21 A Uh-huh

22 Q And what that means is, in the corporate

23 context, you often hire engineers, lawyers,

24 financial people and others to check out

25 various aspects of a deal before you enter into

1 to the lease and the Conceptual Plans, is that
2 correct, in the second paragraph?

3 A Yes

4 Q And the first point is, prior to writing any
5 check we meet with Duke Power and Seneca and
6 Pickens Counties to reassure you that my
7 assessments are correct, is that right?

8 A That's what it says

9 Q And the second point is that one million
10 dollars would be paid for 20,000 shares of
11 stock, is that correct?

12 A That's correct

13 Q And the third point is that Mr Ballard retains
14 20 percent ownership of Warpath, is that right?

15 A That's correct

16 Q So is it correct to say that during these
17 negotiations you knew you had full opportunity
18 to meet with Duke Power, Seneca or Pickens
19 County to do your due diligence? Is that
20 correct?

21 A That's correct

22 Q Now, did you in fact meet with Seneca?

23 A We didn't have to meet with Seneca There was
24 no reason to

25 Q And why not?

1 meeting I was at when we met with a county
2 administrator

3 Q And what --

4 A But I'm not sure that was the only meeting or
5 phone call

6 Q Where was that meeting?

7 A The one I was at was in the administrative
8 offices of Pickens County

9 Q What was the meeting about?

10 A This project, whether it was news to them,
11 whether they were in favor of it, and anything
12 they could tell us that would impact our
13 decision

14 Q Who was at the meeting?

15 A The meeting I was at included Rick and myself,
16 the county administrator and another individual
17 who has a quasi legal role

18 Q When you say Rick, you mean Rick, the father?

19 A Rick, the father

20 Q Was Mr Ballard at this meeting?

21 A I don't recall

22 Q Okay Now, what was discussed at the meeting
23 or what did the county administrator tell you?

24 A I can only -- I can't tell you the
25 conversation Only that I came away feeling

- 1 like these folks -- this is not news to them
2 This is not a scam This is something they
3 would like to see happen
- 4 Q So the county administrator was positive on the
5 project?
- 6 A Yes
- 7 Q Was he positive on Andy Ballard's work?
- 8 A I don't know that he commented on it
- 9 Q But up to that point, the project was entirely
10 Andy Ballard's work, is that correct?
- 11 A That's correct
- 12 Q And did you learn during this time that Pickens
13 County Council had voted in favor of the
14 project?
- 15 A No
- 16 Q Did you ever learn that?
- 17 A No
- 18 Q Did you ever learn that the Executive Committee
19 of Pickens County Council voted in favor of the
20 project?
- 21 A I read it in these papers
- 22 Q Did you learn it -- but you had not learned it
23 before this lawsuit was filed?
- 24 A Let's just say I wasn't cognizant of it
- 25 Q Did the county administrator, when you met with

1 him, did he express any reservations about the
2 project?

3 A Not that I recall

4 Q Okay Did you have an opportunity to ask him
5 whatever question you wanted?

6 A I did, but I didn't ask -- I don't remember
7 even asking any questions I was letting Rick
8 carry on that conversation That was more of
9 his expertise

10 Q Did Rick have opportunity to ask the
11 administrator any questions he wanted to ask
12 him?

13 A I would think he did, yes

14 Q So after your meeting with the Pickens County
15 administrator, you came away with no
16 reservations about the project as far as
17 Pickens County was concerned?

18 A I came away with no reservations regarding was
19 this factual, was this something that was --
20 that they were aware of and is this something
21 that they would support I came away with that
22 understanding, which later turned out not to be
23 quite the facts because there were folks on the
24 council that were trying to kill it, but I
25 didn't know that then and didn't actually know

- 1 Mr Ballard was paid a million dollars for some
2 of his stock in Warpath, correct?
- 3 A Uh-huh
- 4 Q For 20,000 shares, is that right?
- 5 A Uh-huh
- 6 Q So is it correct that Mr Ballard was paid a
7 million dollars for 20,000 of his shares of
8 Warpath?
- 9 A Yes
- 10 Q Okay Now, where did the million dollars come
11 from?
- 12 A It came from me
- 13 Q All right So before you paid -- you provided
14 a million dollars for that, you didn't consult
15 with any experts of any kind concerning this
16 development?
- 17 A I considered my partners experts
- 18 Q Okay Other than your two partners, you
19 consulted with no others?
- 20 A I had conversations with others, including my
21 banker and friends that I respect, but no, I
22 didn't hire anybody to --
- 23 Q Did you consider Rick and Rick to be experts in
24 permitting?
- 25 A Yes

1 May 29, 2007, is that right?

2 A That's correct

3 (Exhibit Number 18 marked for identification)

4 EXAMINATION RESUMED BY MR HOLLEMAN

5 Q Let me show you what's been marked Exhibit 18

6 Does that begin with an e-mail from Rick, Sr
7 to you and Andy Ballard?

8 A Uh-huh

9 Q And then if you look at the bottom of that,
10 there is an e-mail from Rick to Amanda Turner,
11 is that right?

12 A Uh-huh, yes

13 Q Okay And then if you keep going on to the
14 page three, do you see that paragraph three?

15 A Yes

16 Q It says, I don't think Andy holds the necessary
17 permits, but conversations from regulatory
18 authorities indicate that permits will be
19 issued, is that right?

20 A That's right

21 Q So when you entered into the agreement, you
22 knew Andy did not hold the necessary permits,
23 is that correct?

24 A Absolutely

25 Q But you-all had had conversations with

1 regulatory authorities, is that right?

2 A Yes

3 Q And those conversations had indicated to you
4 that permits will be issued, is that right?

5 A As far as I know Again, not my particular
6 area of expertise

7 (Exhibit Number 19 marked for identification)

8 EXAMINATION RESUMED BY MR HOLLEMAN

9 Q Let me show you what's been marked Exhibit 19
10 Could I see Exhibit 18 back, please, underneath
11 that?

12 A Yes

13 Q I'll give it right back

14 Now, you may have never seen Exhibit 19 The
15 difference is at the top there is an e-mail
16 from Rick, Sr to Amanda

17 A Uh-huh

18 Q That is -- you're not copied on that
19 Do you know if you saw that before the lawsuit?
20 You may never -- I'm not suggesting to you that
21 you did I'm asking you

22 A I don't recall

23 Q Okay Now, that day, the 29th, you signed the
24 Stock Purchase Agreement, is that right?

25 A This is the same day of the closing?

- 1 Q Did they execute an agreement with Warpath?
- 2 A Define execute agreement
- 3 Q Sign an agreement
- 4 A No
- 5 Q Okay Now, if you look at paragraph three, it
- 6 says, Ballard warrants and represents that he
- 7 holds a lease with Duke Power and the necessary
- 8 approvals from Duke Power and Pickens County in
- 9 order to build the development per the
- 10 Conceptual Plans for Warpath Landing, correct?
- 11 A Yes
- 12 Q And it says final permits must be obtained to
- 13 move forward, correct?
- 14 A Yes
- 15 Q So Mr Ballard did not warrant and represent
- 16 that he held any permits, is that right?
- 17 A He didn't represent that he held all permits
- 18 Q Well, no permit is mentioned there, is it?
- 19 A Well, final permits must be obtained to move
- 20 forward
- 21 I wouldn't have known technically again whether
- 22 he already had permits in his pocket or not,
- 23 but I did understand that final permits must be
- 24 obtained because that was on the schedule as
- 25 part of his role

- 1 Q Now, he warranted and represented that he held
2 a lease with Duke Power, and you had a copy of
3 that lease, is that correct?
- 4 A That's correct
- 5 Q So that was true, is that right?
- 6 A Yes
- 7 Q And this paragraph refers to the necessary
8 approvals from Duke Power, and you and your two
9 partners had a chance to check that with Duke
10 Power, did you not?
- 11 A Yes
- 12 Q Okay And the necessary approvals from Pickens
13 County in order to build the development per
14 the Conceptual Plans, and you had a chance to
15 meet and talk to Pickens County about that, is
16 that correct?
- 17 A Yes
- 18 Q Did you ask for any other meetings with Pickens
19 County and Duke Power other than the phone call
20 with Duke Power and the meeting with Pickens
21 County that you went to?
- 22 A Yes
- 23 Q Before you signed this agreement, did you ask
24 for any other meetings?
- 25 A I can't say I don't know

- 1 Q From your experience in business, you knew
2 then, didn't you, that expectations are only
3 that, expectations, and sometimes events occur
4 and delays happen?
- 5 A You don't have to be a businessman to agree to
6 that
- 7 Q And particularly when you're dealing with
8 governmental agencies to obtain permits, that
9 could happen, correct?
- 10 A Certainly
- 11 Q Now, would you agree that paragraph three of
12 this agreement has not been breached by Mr
13 Ballard?
- 14 A I would agree to that
- 15 Q Okay And that this agreement does not contain
16 any timetable by when permits have to be
17 issued, is that correct?
- 18 A That's correct
- 19 Q Okay Now, earlier I heard your lawyer -- you
20 sat through the deposition of Mr Ballard, is
21 that right?
- 22 A Correct
- 23 Q And during the deposition your lawyer asked Mr
24 Ballard questions about 200 slips, is that
25 right?

1 Q Now, in this agreement, the May 29 agreement
2 that's before you now, anywhere in here does
3 Mr Ballard guarantee that you will be able to
4 get 200 slips from Duke Power?

5 A No

6 Q In fact, all he warrants is approval per the
7 Conceptual Plan, is that correct?

8 A That's correct

9 Q And the Conceptual Plan only assured a hundred
10 slips, is that right?

11 A That's correct

12 Q So would you agree that Mr Ballard has not
13 breached this agreement due to the fact that
14 Duke Power has not approved 200 slips?

15 MR HOWARD

16 Object to the form

17 THE DEPONENT

18 I believe that he's breached the
19 representation, which includes the agreement,
20 but it also includes his representation, his
21 verbal representation

22 EXAMINATION RESUMED BY MR HOLLEMAN

23 Q But there is no breach of this written
24 agreement?

25 A That's true

1 THE DEPONENT

2 It's not inconsistent with the business problem
3 that we had, the meetings that were convened
4 and recorded in various e-mails It's not
5 inconsistent at all

6 EXAMINATION RESUMED BY MR HOLLEMAN

7 Q So it's your testimony that the issuance --
8 authorizing the issuance of the new stock is
9 consistent with the business solution to the
10 problem you faced, is that correct?

11 A That's correct

12 Q But I'm asking now in terms of this agreement,
13 not in terms of your proposed business
14 solution, but the agreement says, Roberson
15 agrees to provide the necessary capital to
16 obtain long-term financing, but at the Board
17 meeting and the shareholder meeting you-all
18 voted to have the corporation issue 900,000
19 shares for the purpose of raising capital
20 Isn't the action of the board and the
21 shareholders inconsistent with this provision
22 in the shareholder agreement?

23 MR HOWARD

24 Object to the form

25 THE DEPONENT

1 I think it was irrelevant I think it's a
2 different time, a different problem In the
3 company I -- the largest company I have owned I
4 have owned from 10 percent to 60 percent to 40
5 percent to 30 percent based on acquisitions,
6 share dilution, reinvestment, and it's always
7 with the best intentions of the shareholders in
8 mind The theory being that a valuable piece
9 -- a smaller piece of a valuable pie is worth
10 more than a large piece of a pie that's not
11 worth anything

12 EXAMINATION RESUMED BY MR HOLLEMAN

13 Q So is it your testimony that the provision in
14 the shareholder agreement is irrelevant to the
15 action of the stockholders in approving the
16 issuance of the stock?

17 A Yes

18 Q Now, would you agree that when the corporation
19 voted to issue the 900,000 shares for the
20 purpose of raising additional capital, the
21 corporation would be providing the necessary
22 capital and you personally would not be?

23 A No, my intentions to provide the capital for
24 the project as presented to us would not
25 change The capital requirements of that

1 project changed based on what we've reported
2 that we did not get delivered what was
3 presented to us, and those meetings were asking
4 our partners to address a way to make up for
5 the shortfall, the shortfall of 50 percent of
6 the floating docks that we had asked for or
7 expected to have and what was then now a year
8 and now two years delay in starting the
9 project Again, all representative of either
10 not understanding or for some reason not
11 revealing the true nature of this project
12 so we asked all the shareholders to come up
13 with solutions At that time Andy refused I
14 asked for another two weeks for everybody to
15 come up with another solution, and Andy had
16 none, and so I asked for permission to be
17 elected chairman and C E O in order to provide
18 an alternative plan to solve our problem

19 Q And one solution would have been for you to
20 provide the funding, correct?

21 MR HOWARD

22 Object to the form

23 THE DEPONENT

24 Well, you know, as I stated in one of these
25 documents, when the pro formas fell off from as

1 they were originally presented, the bank said
2 we weren't viable

3 EXAMINATION RESUMED BY MR HOLLEMAN

4 Q So --

5 A Our business model didn't work anymore

6 Q But you could have provided the cash You
7 wouldn't have to borrow the money You could
8 have done that, correct?

9 A Why would I?

10 Q Because you agreed to in writing

11 A Again, we were buying a business that we
12 expected to be profitable based on
13 representation If there is a reason to put
14 more money in, you do it If it doesn't look
15 like it makes sense, you sometimes decide you
16 don't or you get help

17 Q And the reason you decided not to is you
18 thought it was no longer a good deal to do it
19 that way, correct?

20 A The pro formas fell off drastically

21 Q And what that means in layman's terms is either
22 lose money or wouldn't make as much as you
23 wanted to?

24 A The return on investment was not suitable

25 Q Which meant it was a money loser instead of a

- 1 pro formas changed
- 2 Q When they became uninterested, did you offer to
- 3 sign personal guarantees for --
- 4 A That was not a discussion I had assumed
- 5 personal guarantees would be required anyway
- 6 Q When they became uninterested, did you offer to
- 7 increase the amount of capital you would put
- 8 in?
- 9 A We -- no We didn't discuss that
- 10 Q In your initial discussions with Palmetto Bank,
- 11 how much capital were you going to provide?
- 12 A 20 percent of whatever was borrowed
- 13 Q And how much capital would they require to do
- 14 the financing of the project as it now stands?
- 15 A I don't know I left them and hit every bank
- 16 in town, and we were -- we got no takers
- 17 Q Did you offer to increase the capital you
- 18 provided beyond 20 percent?
- 19 A No I know just from reading the newspaper you
- 20 can walk in and put down 50 percent and most
- 21 banks would be glad to do business with you
- 22 Q Have you offered to do that?
- 23 A No
- 24 Q Do you intend to do that?
- 25 A Absolutely not

- 1 Q Now, have you ever provided an agreement --
2 look at paragraph four if you would of the
3 agreement, please, sir
4 Do you see where it says Mr Ballard agrees to
5 execute a separate agreement with Warpath
6 defining his duties in the project development?
7 Do you see that?
- 8 A Yes
- 9 Q Have you-all ever provided an agreement for him
10 to execute?
- 11 A No
- 12 Q Have you-all ever asked him to do anything to
13 help with the project?
- 14 A Yes
- 15 Q Has he ever refused to do anything?
- 16 A No
- 17 Q What have you asked him to do?
- 18 A We asked him to -- again, back to the document
19 that shows the responsibilities, his name is on
20 there for permits, so if that is construed as
21 asking him, I would think it would be, we asked
22 him to pursue those permits
23 what was the question?
- 24 Q I was asking you what have you asked him to do?
- 25 A You can refer to that document that shows --

- 1 Do you agree with that statement?
- 2 A I'll just say what I believe He either was
3 naive or he didn't tell us everything he knew
- 4 Q All right Let's start with the 200 slips
5 You had his Conceptual Plan, correct?
- 6 A Uh-huh
- 7 Q You need to say yes
- 8 A Yes
- 9 Q And you knew what Duke Power was saying was 100
10 to 200 slips, correct?
- 11 A Yes
- 12 Q And you knew that Duke Power, not Mr Ballard,
13 had the ability to make that decision, correct?
- 14 A That's correct
- 15 Q And you and your partners had every opportunity
16 to talk with Duke Power and question them,
17 correct?
- 18 A That's correct
- 19 Q So is it true to say that you had every
20 opportunity to determine for yourself how many
21 slips Duke Power was likely to approve?
- 22 A I don't think we did
- 23 Q Well, you had the opportunity to talk to Duke
24 Power
- 25 A But I don't think we -- I could only read the

- 1 A Yes
- 2 Q And it says, Andy is fussing about the letter
- 3 He wants to talk to Scott before we send it
- 4 Is this a reference to Scott at Duke Power?
- 5 A Correct
- 6 Q And that's a letter to Duke Power you had
- 7 prepared?
- 8 A Yes
- 9 Q And did you ask Andy to review it?
- 10 A Andy was going to write it, and I can't
- 11 remember if he sent me one and I rewrote it or
- 12 whether I started from scratch
- 13 Q So in July of '07, Andy was helping you prepare
- 14 a letter to send to Duke Power?
- 15 A I was helping him
- 16 Q And what was the letter about?
- 17 A It was expressing our concern that the 200
- 18 slips had been rejected
- 19 Q So Andy was trying to, on behalf of Warpath,
- 20 help Warpath argue that you should get the 200
- 21 slips, is that right?
- 22 A He was He would have no reason not to
- 23 Q And did the letter go out?
- 24 A To my knowledge, it did I didn't mail it
- 25 (Exhibit Number 24 marked for identification)

1 council meeting, and had gotten quite blustery
2 at the architectural meetings that we weren't
3 doing this right or that right, and was just
4 really disengaging slowly as he got more
5 involved on his restaurant venture. He was
6 even, you know, a little fussy that we were
7 talking to a fellow by the name of Andy Chyka,
8 as opposed to him and his partner, for food
9 services, and we recognized that the
10 relationship was not healthy.

11 Q So is the answer to my question yes, you did
12 want him out of the -- you wanted him out of
13 the deal?

14 A Yes

15 Q Okay. Now, when you say he was fussy at some
16 of the meetings with the architects, is that
17 when he told you Duke Power is not going to
18 approve dock slips for the peninsula?

19 A I don't know that that's when it was

20 Q Do you remember him telling you that?

21 A I think he told us that as soon as he saw the
22 drawings that showed the slips on the far
23 banks

24 Q And was he right?

25 A Yeah

1 III and Tim That's you
2 This is an e-mail where at the bottom, if you
3 look at the second page, you-all present two
4 options to Andy, one, to return a portion of
5 the million dollars and continue or return all
6 the million dollars and you can sell it to
7 somebody else, right?
8 A Uh-huh
9 Q Now, what was Andy's response to this?
10 A I don't believe we got any response There may
11 be -- oh, yes, we did There was an e-mail
12 that said this was not moral or legal
13 Q Okay So he declined the offers?
14 A Yes
15 (Exhibit Number 28 marked for identification)
16 EXAMINATION RESUMED BY MR HOLLEMAN
17 Q Let me show you an e-mail marked Exhibit 28
18 dated December 28, 2007 from you to Rick, Sr ,
19 and here you have some more thoughts about
20 Andy
21 At the bottom paragraph you say, when an
22 investor realizes that an expected R O I is
23 not forthcoming his only viable option is to
24 acquire more equity at a reduced rate, is that
25 right?

- 1 A That's right
- 2 Q And then you suggested to refinance the project
- 3 that we increase the number of outstanding
- 4 shares to 500,000 shares, correct?
- 5 A Uh-huh, yes
- 6 Q And then you say as long as these shares remain
- 7 in the treasury there is no dilution of the
- 8 current shareholders, correct?
- 9 A That's correct
- 10 Q But then you say, however those outstanding
- 11 shares could be used as tender, same as cash,
- 12 to accomplish the needs of the corporation,
- 13 correct?
- 14 A That's correct
- 15 Q And then in that instance it would be possible
- 16 to acquire more equity at a reduced rate, is
- 17 that correct?
- 18 A Yes
- 19 Q And then with the issuance of more shares, you
- 20 believe that would produce an appropriate rate
- 21 of investment?
- 22 Is that what that means, R O I ?
- 23 A Return on investment
- 24 Q Return on investment?
- 25 A I believe that would have made up for the

- 1 shortfall that was related to the dock shortage
2 and the time lapse that was unexpected
- 3 Q So you thought by issuing these shares that
4 would improve your return on investment, is
5 that correct?
- 6 A All of our return on investment, for every
7 shareholder equally
- 8 Q And who was going to acquire more equity at a
9 reduced rate? You say when an investor
10 realizes that an expected return on investment
11 is not forthcoming his only viable option is to
12 acquire more equity at a reduced rate
13 who were you referring to?
- 14 A Any investor who would come in
- 15 Q Well, so far, who had provided cash into this
16 deal?
- 17 A Me
- 18 Q So were you referring to yourself in this
19 instance?
- 20 A Not particularly, no I expected to be diluted
21 myself if we took that action
- 22 Q Well, you had expected that your return on
23 investment was not forthcoming, correct?
- 24 A Because of the reasons stated
- 25 Q Were you expecting to acquire more equity at a

EXHIBIT F

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard,)

Plaintiff,)

vs-) C A No 2008-CP 23 5739

Tim Roberson, Rick Thoennes,)

Rick Thoennes III, and Warpath
Development, Inc)

Defendants)

DEPOSITION OF RICK THOENNES III

PURSUANT to Notice, the deposition of Rick Thoennes III called by the Defendants was taken commencing at the hour of 9 30 a m on Friday September 18 2009, in the offices of Haynsworth Sinkler Boyd PA Attorneys at Law 75 Beattie Place, Eleventh Floor Greenville, South Carolina

IRVETA J SHOUSE, Reporter

G. W. Coleman Associates
Post Office Box 9177 Greenville South Carolina 29604
864/233-2341

1 Q Have any of these businesses been involved in
2 litigation?
3 A No
4 Q Is Marick currently involved in any litigation?
5 A No
6 Q Has Marick ever been involved in any litigation?
7 A No
8 Q Has Marick ever entered into a consent judgment?
9 A Yes
10 Q And what was that?
11 A A judgment for some carpet that was put in a home
12 Q How much was that judgment for?
13 A I don't recall exactly Probably around four
14 thousand dollars Maybe four or five thousand dollars
15 Q And when did that happen?
16 A Probably four months ago Five months ago
17 Q Is that judgment still outstanding?
18 A Yes
19 Q Where is it on file?
20 A Greenville
21 Q And who is the party that holds the judgment?
22 A Carpet One
23 Q Are there any other judgments that Marick is subject
24 to?
25 A Yes

1 Q What's that?
2 A Jeff Lynch
3 Q Is that the appliance company?
4 A Uh huh
5 Q And how much is that judgment?
6 A Fourteen thousand
7 Q And was that a consent judgment?
8 A Yes
9 Q And what was that for?
10 A Appliances In the same house
11 Q So these are unpaid bills?
12 A Uh huh
13 Q Any other judgments against Marick?
14 A One other Clayton Tile
15 Q How much is that for?
16 A I m not sure Probably - this is just a guess
17 somewhere around four or five thousand
18 Q Have you ever entered into a consent judgment that
19 has not been filed?
20 A No
21 Q Has Marick entered into any other judgments or have
22 any other judgments entered against it, that have been
23 satisfied?
24 A No
25 Q Do you have any litigation pending involving Marick?

1 Q Have you discussed with anyone electing Mr Ballard
2 a director?

3 A No

4 Q So this is the first time you have seen that, now
5 that I've pointed it out to you

6 A Yes

7 Q Do you plan to attend the meeting?

8 A Yeah

9 Q What is Primus Executive Suites 5 Artillery Road?

10 A I believe it's Tim Roberson's office

11 Q Have you considered filing bankruptcy for Marick?

12 A No

13 Q Have you consulted with a bankruptcy attorney

14 A Yes

15 Q for Marick? You have?

16 A Uh-huh

17 Q And why did you consult with a bankruptcy attorney
18 for Marick?

19 A Just to see what bankruptcy was all about Didn't
20 really help

21 Q Have you taken any steps toward bankruptcy

22 A No

23 Q other than the meeting with an attorney?

24 A No And that was a while back

25 Q How many times have you met with a bankruptcy

1 A No

2 Q That has been your father entirely?

3 A Yes

4 Q When you signed the agreement, Exhibit 20 were you
5 aware that permits had not been obtained?

6 A No

7 Q You just didn't know one way or the other?

8 A Yeah, I just I thought that -- I thought the
9 permits were in place

10 Q Well, if you look at paragraph 3 of the agreement
11 - you see that?

12 A Yes

13 Q You see the last sentence that says "Final permits
14 must be obtained to move forward "

15 A Yes

16 Q You see that?

17 A Uh-huh

18 Q So the agreement indicated that final permits had
19 not yet been obtained is that correct?

20 A Correct

21 Q But you didn't know that of your own knowledge
22 beforehand

23 A I guess I thought they were ready to be obtained
24 Maybe I should have said, instead of thinking they were
25 obtained I thought we were ready to go I thought the project

1 earlier?

2 A Uh-huh

3 Q And so the Conceptual Plan did not guarantee 200
4 boats is that correct?

5 A I take it as it says we could have 200 boats

6 Q It says 100 200, does it not?

7 A It does But we determined that the demand would be
8 there for 200 boats

9 Q Did Duke Power agree with you?

10 A Nope

11 Q And this lease is between Warpath and Duke Power,
12 correct?

13 A Yes But this is a Conceptual Plan This isn't a
14 lease

15 Q Well the Conceptual Plan is attached to the lease,
16 is it not?

17 A Well, it could be

18 Q And in fact, it's incorporated in the lease, isn't
19 it?

20 A Yes

21 Q Okay And then if you look at Page 23 of that same
22 document ?

23 A Okay

24 Q And does that indicate under Boat Slips, 100-200
25 boats?

1 A Yes

2 Q Duke Power has taken the position, since the
3 agreement was signed that they will approve only 102 slips, is
4 that correct?

5 A Correct

6 Q Have you disputed that with Duke Power?

7 A We've tried yes

8 Q And what did you do to try to dispute it with Duke
9 Power?

10 A Well we took our design up to and met with them and
11 tried to get them to approve it

12 Q And who met with Duke Power?

13 A The meeting I went to?

14 Q Yes

15 A There were a bunch of Duke Power people there

16 Q Who from Warpath?

17 A Andy, myself, and Tim Roberson

18 Q And was your father there?

19 A I don't think so

20 Q And was this meeting in Charlotte?

21 A Yes

22 Q Who from Duke Power was there, that you remember?

23 A I can't remember

24 Q You remember any one person?

25 A I don't remember the names

1 Q And who spoke at that meeting from Warpath?

2 A I think all of us spoke

3 Q Did Andy speak?

4 A I believe so

5 Q And what did he say?

6 A I don't remember

7 Q Do you remember what any of you said?

8 A No

9 Q Do you remember the substance of what you said?

10 A I know we weren't happy about the fact that they
11 wouldn't approve the - they basically shot down the design we
12 brought up there with us pretty immediately when we presented
13 it

14 Q Have you considered filing suit against Duke Power,
15 alleging they have breached this lease?

16 A I don't think so

17 Q The lease is between Warpath and Duke Power
18 correct?

19 A Yes

20 Q So if you believe this lease guarantees you 200 boat
21 slips, have you considered suing them because they won't allow
22 you to build 200 boat slips?

23 A I didn't say - I don't know if the lease
24 guarantees us 200 slips or not I was referencing the
25 Conceptual Plan not the lease

1 A Okay

2 Q And do you see it's the same document you were
3 looking at before?

4 A Yes

5 Q And it has the same reference, " not to exceed
6 space for 110-200 boats "

7 A Correct

8 Q So I guess my question is Is it your position that
9 the position Duke Power is taking is inconsistent with the
10 lease and the Conceptual Plan attached to the lease?

11 A I say it's inconsistent with the Conceptual Plan
12 attached to the lease

13 Q Look at Exhibit 8 Did you see this e-mail?

14 A It s addressed to me, so I'm sure I did

15 Q And do you remember it?

16 A No

17 Q If you look at the third paragraph which begins,
18 "I m at a loss as to what we need to offer Andy," do you see
19 that?

20 A Uh huh

21 Q "I don't think he can control this All indications
22 are he is in over his head " Do you see that phrase?

23 A Uh huh

24 Q Did you think Andy was over his head in this
25 project?

EXHIBIT G

Rick Thoennes, Sr

From Rick Thoennes [r thoennes@att net]
Sent Thursday March 29, 2007 6:32 PM
To 'Tim Roberson' Rick Thoennes'
Subject: Warpath
Attachments Warpath Manna proforma with hotel rest. rv xls

Attached is yet another proforma. I have lowered the slip rents, added hotel, restaurant, rv park. Uped the income from ship store.

Andy thinks we can get \$3 mil from hotel up front. If we can get \$2 mil for the hotel and \$1 mil for restaurant we would have no investment once we secure their funds. We will need 2mil until that time. Plus 1 mil left over to lower borrowed amount or pocket a mil. Sounds dishonest (that's a joke).

I am at a loss as to what we need to offer Andy. How to structure deal. Tim & Rick III: this sounds like part of your expertise. I don't think he can control this. All indications are he is in over his head and is holding on to the lease which will keep him from going under. I know someone is going to do it soon if it is not us.

I think the attached proformas are conservative. We should be able to command higher slip rentals. 1mil is in there for Andy. That is negotiable. I am sure.

We need minimum of 30 days to satisfy

Sewer
Water
Duke docks
FERC docks
Pickens County for 6 story hotel
Who controls choice of engineer & architect
Bank interest & lease problems

We need to let him know by Monday or Tuesday. He has given us permission to talk to Stuart Anderson who did the lease. He can tell us if the bank can secure their position for loan. If Rick III & Tim need to talk please feel free.

The older Rick

--
No virus found in this outgoing message
Checked by AVG Free Edition
Version 7.5.446 / Virus Database 268.18.20/737 Release Date 3/28/2007 4:23 PM



RTTW_000552

9/22/2008

Warpath Marina and Resort Center

Input Information					
Keowee Marina and Yacht Club	#		\$		
25' wet	60	Rent	300		
30' wet	60	Rent	350		
40' wet	40	Rent	400		
100' wet	40	Rent	700		
25'-dry	115	Rent	275		
30'-dry	65	Rent	325		
35'-dry	20	Rent	375		
	0	Rent	0		
	0	Rent	0 00		
Amt Financed	6 700 000				
Cap Rate	9 0%	Debt Pmt		\$53,910	
Expenses/year/unit		Int Rate		9 0%	
Rental	200	Term (mos)		360	
Payroll	600				
Management Fee	1%	Vac Rate		5%	
Utilities	100				
Maintenance & Repair	100	Updated		9/22/2008	
Property Taxes	300				
Insurance	150				
Total Land Cost	0				
No Acres	5 00				
Slips per Acre	80 0				
Construction Time	12 (in Months)				
Construction Hard Costs	6 652 400	Per Slip			
Architectural & Engineering	200 000	500 Per Slip			
Legal (stamps recording etc)	50,000				
Financing Costs (points & closing)	67 000	Loan to Value		51 3%	
Construction Interest	301 500				
Corporate Liability Insurance	10 000	Loan to Cost		77 2%	
ships store	0				
Project Management	1 075 000	80% Loan to Show			
Contingency	0	Cost of		10,846,750	
Overhead & Carrying Costs	20 000	Total Dev Cost		8 677 400	
Advance Rents (Negative)	0	Difference			
Reserve for Fill Up	0				
		80% of cost=		6 941,920	
Original date of proforma	3/15/07				

RTTW_000553

9/22/2008

2 12 PM

Warpath Marina proforma with hotel rest rv xls

Keowee Marina and Yacht Club

Total Construction Budget	6,652 400
Marketing etc	0
Insurance	10 000
Overhead	20 000
Advance Rents	0
Reserve	0
Land	0
Legal	50 000
Project Admin	1 075 000
Total	7 807 400
Total Development Budget	#####
Difference	-870000

RTTW_000554

9/22/2008 2 12 PM

Warpath Manna proforma with hotel rest rv xls

Warpath Marina Resort Center

Item	Proposed Budget	Per Slip
Equipment		
Rental	10 000	25 00
Fee		0 00
Labor		
General	10 000	25 00
Punch		0 00
Vehicle Expense	10 000	25 00
Sub Total	20 000	50 00
Materials		
a		0 00
b		0 00
c		0 00
d		0 00
Sub Total	0	0 00
Overhead		
Blueprints	1 000	2 50
Contingency	50,000	125 00
Dumpster (Construction)	20 000	50 00
Insurance (Builder's Risk)	15 000	37 50
Interest & Financing Costs		0 00
Office (Temporary)	6 000	15 00
Permits & Fees	10 000	25 00
Power (Temporary)	5 000	12 50
Telephone (Construction)	5 000	12 50
Toilets (Portable)	1 400	3 50
Tools	10,000	25 00
Travel	10 000	25 00
Water (Temporary)	2,000	5 00
Sub Total	135 400	338 50
Subcontracts		
Preliminary site plans	2 000	5 00
Architectural & Engineering	0	0 00
Grading & clearing	150 000	375 00
Sewer	750,000	1 875 00
Water	300 000	750 00
Electric	10 000	25 00
Shoreline stabilization (2 000 Ft)	150 000	375 00
Site drainage	100 000	250 00
Docks wet	2 450 000	6 125 00
Docks-dry	1 000 000	2,500 00
Marina	200 000	500 00
Pool	100 000	250 00
Tennis	50 000	125 00

RTTW_000555

Warpath Marina Resort Center

Item	Proposed Budget	Per Slip
Amenities-other	75 000	187 50
Roads	750 000	1 875 00
Entrance	100 000	250 00
RV park	300 000	750 00
Building I		0 00
Building J		0 00
Sub Total	6 487 000	16 217 50
Total	6 652,400	16 631 00
Per Slip	16,631	

RTTW_000556

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Warpath Marina proforma with hotel rest rv.xls

Warpath Marina and Resort Center

Sale of Project		
Item	Total Project	Per Ship
Net Operating Income (NOI)	\$1,174,726	\$2 937
Capitalization Rate	9 0%	-----
Sales Value	\$13 052 506	\$32 631
Costs		
Land	0	0
Hard Costs	6 652,400	16 631
Soft Costs	2 025 000	5 063
Total Costs	<u>8 677 400</u>	<u>21 694</u>
Gross Profit	\$4 375 106	\$10 938
Closing Costs @ 3%	391 575	979
Net Profit From Sale	<u><u>\$3,983,530</u></u>	<u><u>\$9,959</u></u>
Updated On 9/22/2008		

RTTW_000557

9/22/2008

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Warpath Marina and Resort Center

Development Budget			
Item	Project Costs	Cost Per Ship	Cost Per Foot
Total Land Cost	\$0	\$0	#REF!
Construction Hard Costs	6 652 400	16,631	#REF!
Architectural & Engineering	200 000	500	#REF!
Legal (stamps, recording etc)	50 000	125	#REF!
Financing Costs (points & closing)	368 500	921	#REF!
Construction Interest	301 500	754	#REF!
Corporate Liability Insurance	10 000	25	#REF!
Ships store	0	0	#REF!
Project Administration (1)	1 075 000	2 688	#REF!
Contingency (Construction & Dev)	0	0	#REF!
Overhead and Carrying Costs (2)	20,000	50	#REF!
Advance Rents (During Construction)	0	0	#REF!
Reserve for Operation (3)	0	0	#REF!
Total Development Budget	\$8,677,400	\$21,694	#REF!
Updated On 9/22/2008			
(1) Taxes, signage working capital and appraisals			
(2) Development overhead office exp market studies and misc overhead			
(3) Negative cash flow during rent up			

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9/22/2008

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Warpath Marina proforms with hotel rest rv xls

Warpath Marina and Resort Center

Summary						
Item	@ 95% Occupancy	@ 90% Occupancy	@ 85% Occupancy	@ 80% Occupancy	@ 75% Occupancy	@ 70% Occupancy
Number of Acres	5 00	5 00	5 00	5 00	5 00	5 00
Slips Per Acre	80	80	80	80	80	80
Total Cost	\$8 677,400	\$8,677 400	\$8 677,400	\$8,677 400	\$8,677 400	\$8 677 400
Net Operating Income	\$1 174 726	\$1 090 142	\$1 027 918	\$947 762	\$903 470	\$823,315
Debt Payment	646 917	646 917	646 917	646 917	646 917	646 917
Excess Cash Flow	\$527 809	\$443,225	\$381,001	\$300,846	\$256,554	\$176,398

Sale of Project	
Net Sale Price	\$12 660 930
Cost	8 677 400
Profit From Sale	\$3 983 530

Equity Requirements	
Cost	\$8 677 400
Mortgage	6 700 000
Equity Required	\$1 977 400

This scenario assumes a capital investment of \$1 977 400

Investors would sign personally for financing

Mortgage payments are for \$6 700 000 (Principal) 9 0% (Int Rate) 30 (Term Years)

Project completion in 12 months

Updated On 9/22/2008

RTTW_000559

9/22/2008

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Warpath Marina proforma with hotel rest rv xls

Warpath Marina and Resort Center

Proforma Income and Expense (Stabilized)			
Item	Annually	%	Per Slip
<u>Income</u>			
Gross Rental Income	\$1 395 000		\$3 488
Less 5% Vacancy	69,750		174
Effective Gross Income	\$1 325 250		\$3,313
Miscellaneous Income	447 200		1,118
Total Revenue	\$1 772 450	100%	\$4 431
<u>Expenses</u>			
Rental	\$80 000	5%	\$200
Payroll	240 000	14%	600
Management Fees	17 725	1%	44
Utilities	40 000	2%	100
Maintenance and Replacement	40 000	2%	100
Property Taxes	120 000	7%	300
Insurance	60 000	3%	150
Total Expenses	\$597 725	34%	\$1 494
Net Operating Income (NOI)	\$1,174 726	66%	\$2 937
Updated On 9/22/2008			

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9/22/2008

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Warpath Marina Resort Center

Slip Profile				
Type of Slip	Number of Ships	Monthly Rent Per Slip	Total Monthly Rent	Total Annual Rent
25' wet	60	250	15 000	180 000
30' wet	60	300	18 000	216 000
40' wet	40	350	14 000	168 000
100' wet	40	350	14 000	168 000
25' dry	115	250	28 750	345 000
30' dry	65	300	19 500	234 000
35' dry	20	350	7 000	84 000
	0	0	0	0
	0	0	0	0
Totals	400	\$291	\$116,250	\$1,395,000
	(Total)	(Average)	(Total)	(Total)
Updated On 9/22/08				

Miscellaneous Income

Income Source	Monthly Rent	Annual Rent	Per Slip
Boat rental	3 333	40 000	100
Deposits		0	0
Dump fees	267	3 200	8
Fuel services profit	6 667	80 000	200
Launch fees		0	0
Marine repair		0	0
Hotel-60% vac	7 500	90 000	225
Ship store profit	2 000	24 000	60
Storage fees	0	0	0
RV park-60% vac	10 000	120 000	300
Restaurant	7 500	90 000	225
Cottages	???	0	0
Other		0	0
Other		0	0
Totals		447 200	1 118

RTTW_000561

9/22/2008

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Warpath Marina proforma with hotel rest rv.xls

EXHIBIT H

MINUTES OF THE ANNUAL MEETING OF STOCKHOLDERS
OF
WARPATH DEVELOPMENT INC

The annual meeting of the stockholders of the corporation was held at 217 E Park Avenue Greenville SC 29601 on May 1 2008 at 10 00 a m

The meeting was called to order by Jim Fayssoux the attorney of the corporation

The secretary then reported that the meeting had been called pursuant to a notice of meeting and/or waiver of notice thereof in accordance with the by-laws It was ordered that a copy of the notice be appended to the minutes of the meeting

The secretary then read the roll of stockholders from the stock transfer ledger The following stockholders were present in person or by proxy

<u>Stockholder</u>	<u>Shares</u>	<u>In Person</u>	<u>By Proxy</u>
Tim Roberson	40 000	Yes	
Rick Thoennes	20 000	Yes	
Rick Thoennes III	20 000	Yes	
Andy Ballard	20 000	Yes	

The chairman stated that majority of the total number of shares issued and outstanding was presented and the the meeting was complete and ready to transact any business before it

The President then gave a general report of the business and finances of the corporation

The chairmen then stated that the election of directors of the corporation was now in order The following were nominated as directors Tim Roberson and Rick Thoennes and Rick Thoennes III

<u>Nominee</u>	<u>Number of Votes</u>
Tim Roberson	100 000
Rick Thoennes	100,000
Rick Thoennes III	100 000

The chairman declared the following nominees duly elected directors of the corporation to serve until the next annual meeting of stockholders or until their successors are elected and shall qualify

Tim Roberson, Rick Thoennes and Rick Thoennes, III



The following action was taken at the stockholder meeting

After the Board went into session the Board proposed that the corporation issue an additional 900,000 shares for the purpose of raising additional capital, paying expenses and offering employee incentives. Tim Roberson pointed out that in addition to the cost of the land to serve as a septic field the corporation had incurred another \$120,000.00 in expenses. This motion was approved unanimously presented to the stockholders where the only dissenting vote was from Andy Ballard.

There being no further business, the meeting was, on motion, adjourned.

Dated May 1, 2008

Secretary

EXHIBIT I

Rick Thoennes, Sr

From Tim Roberson [Tim Roberson@integrys.net]
Sent Friday, December 28 2007 5 24 PM
To ricksr@marick.net
Subject Warpath business problem

Hey Rick,

I just wanted to share my thoughts with you concerning the issue we have now that it's clear Andy did not deliver what we thought we were buying. As we've discussed, we are in a real dilemma regarding both ROI from lack of expected revenues and whether we should push to make up time or hold back another year for opening.

In our meeting with Andy, we talked about three options:

You suggested that Andy give back a substantial part of the money we paid for the project lease and opportunity.

Ricky suggested that he give back some stock.

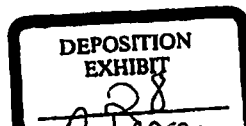
I suggested that we all will have to put in more value, e.g. money, sweat equity, or something.

Of course, the only one who was not in agreement was Andy. He did say that he would propose a solution the first week of January. In the meantime, I've been thinking about an option if none other presents itself. If Andy is not willing to return cash or stock, I suggest that I take the following stance at our next meeting:

For every business problem, there is a business solution. I would call for a shareholder's meeting with the majority of the shareholders voting to waive their right to a 30-day notice. I would ask that we then elect a new board of directors. I would ask that I be named Chairman with the authority to craft a refinance plan. (We also would name new officers.)

When an investor realizes that an expected ROI is not forthcoming, his only viable option is to acquire more equity at a reduced rate. In order to properly refinance the project, I would suggest that we increase the number of outstanding shares to 500,000 with a mixture of both preferred and common stock. As long as the outstanding shares remain in the treasury, there is no dilution of current shareholders. However, those outstanding shares could be used as tender (same as cash) to accomplish the needs of the corporation. With board approval, shares (and/or options) could be used as investment incentive, management fees, employee incentives, etc.

9/22/2008



RTTW_000812

I believe with legal review and proper planning we should be able to accomplish the needs of a viable business and appropriate ROI

Let me know your thoughts

Tim

✂✂✂

Tim W Roberson / Integrys Holdings, LLC / 864 679 3490 Voice / 864 458 3313 Fax / 864 270 6368
Cell / www.integrys.net

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9/22/2008

RTTW_000813

EXHIBIT J

MINUTES OF THE REGULAR MEETING OF STOCKHOLDERS
OF
WARPATH DEVELOPMENT, INC

The regular meeting of directors of the corporation was held at 217 E Park Avenue, Greenville, SC 29601 on May 1, 2008 at 10 30 a m

The following were present: Tim Roberson, Rick Thoennes and Rick Thoennes III being a quorum and all of the directors of the corporation

Tim Roberson was elected chairman of the meeting and Rick Thoennes was appointed secretary thereof

The secretary then presented and read to the meeting a waiver of notice of meeting, subscribed by all the directors of the corporation and it was ordered that it be appended to the minutes of the meeting

The president then rendered a general report of the business of the corporation, the secretary presented his report and the treasurer rendered a report of the finances of the corporation. The officers' reports were received and ordered on file

The following were duly nominated and a vote having been taken were unanimously elected officers of the corporation to serve for one year until their successors are elected and shall qualify

President-CEO	Tim Roberson
Vice President	Rick Thoennes, III
Secretary-Treasurer	Rick Thoennes

Upon motion duly made and seconded Tim Roberson moved to authorize the corporation to issue 900 000 additional shares of Treasury Stock in order to raise capital pay expenses and offer employee incentives. Said motion carried unanimously

It was thereby authorized that the corporation file the necessary paper work to authorize issuance of an additional 900 000 shares

There being no further business before the meeting, on motion duly made seconded and carried, the meeting adjourned

Dated May 1, 2008

Secretary

Chairman

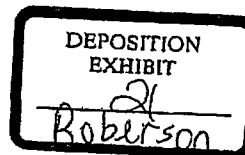


EXHIBIT K

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard,)

Plaintiff,)

vs) C A No 2008 CP 23 5739

Tim Roberson Rick Thoennes,)

Rick Thoennes III, and Warpath
Development, Inc)

Defendants)

DEPOSITION OF JAMES W FAYSSOUX, ESQUIRE

PURSUANT to Notice, the deposition of James W Fayssoux Esquire, called by the Plaintiff, was taken commencing at the hour of 9 35 a m on Monday, September 28, 2009, in the offices of Haynsworth Sinkler Boyd PA Attorneys at Law 75 Beattie Place Eleventh Floor Greenville, South Carolina

IRVETA J SHOUSE Reporter

G. W. Coleman Associates

*Post Office Box 9177 Greenville South Carolina 29604
864/233 2341*

1 A Yes sir

2 Q It's really the minutes of the directors meeting, is
3 that correct?

4 A That's what this is it's the minutes of the
5 directors meeting And you can see, the secretary and chairman
6 signed as far as the board's concerned

7 Q And those minutes do not expressly refer to amending
8 the Articles of Incorporation, correct?

9 A Well I mean, implicitly they do Maybe not
10 directly, but it was authorized that they file the necessary
11 paperwork to authorize it So, in my mind, that says that
12 they're directing that it be done And I don't know why it
13 hasn't been done

14 Q Okay But there was no resolution adopted that
15 expressly said amend the Articles of Incorporation by the
16 directors, is that correct?

17 A There must not be Even though I thought there was,
18 there must not be

19 Q Okay Now is it correct that the Articles of
20 Incorporation have to be amended by the shareholders, not by
21 the directors?

22 A That's correct

23 Q And if you'll look at the minutes of the
24 shareholders meeting and the resolution they adopted, the
25 shareholders did not adopt a resolution authorizing the

1 necessary paperwork to be filed, correct?

2 A Nope It's a bad job There should have been a
3 resolution directing that the Articles be amended It is not
4 there, I think it was understood It was understood by me but
5 it was not there

6 Q Okay Now, is it correct to say that Mr. Roberson
7 is a very experienced businessman?

8 MR. HOWARD Object to the form

9 A I would probably characterize him as an experienced
10 businessman

11 Q Would you say that Mr. Thoennes Senior is an
12 experienced businessman?

13 MR. HOWARD Object to the form

14 A Yes

15 Q And would you say that Mr. Thoennes the Third, the
16 younger Mr. Thoennes is an experienced businessman?

17 MR. HOWARD Object to the form

18 A I would say that he was and they all were

19 Q Okay In looking at the shareholder agreement is
20 it correct to say that there is no guarantee of any specific
21 number of docks in that agreement?

22 A There is no specific number referenced, I agree

23 MR. HOLLEMAN That's all I have Thank you

24

25 (Deposition concluded at 10:38 a.m.)

EXHIBIT L

,

>
 >
 > The delay also moves the 2nd phase (lodge, restaurant & cottages) out
 > another year Tim, Rick III and I have discussed all of this and we
 > all agree that we would have struck a different deal if we had known
 > we could not get 200 slips and get approvals in a timely manner We
 > would have had
 to
 > do 1 of 2 things Pay less and not have 4 partners or not do the deal
 > at all The amount of return on investment is just not there at 100 slips
 >
 >
 >
 > We did all of our due diligence based upon the fact that we would get
 > 200 slips and be able to open in spring of 2008
 >
 >
 > I believe the only options are
 >
 >
 > 1 Return a sizeable portion of the \$1 mil and continue on or
 > 2 Return all of the \$1 mil and you can sell it to someone else
 >
 > Please give this consideration and let us know the option you prefer
 >
 > Rick Thoennes
 >
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Andrew P (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development, Inc ,

Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc ,

Defendants

CASE NO 2008-CP-23-5739

CERTIFICATE OF SERVICE

I, Victoria A Wood, an employee of the law firm of Wyche, Burgess, Freeman & Parham, P A , attorneys for Plaintiff, certify that I have this 12th day of November 2009 caused a copy of the foregoing **Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment and in Support of Plaintiff's Motion for Summary Judgment** to be served on counsel for the Defendants in this action by hand delivery, addressed as follows

Joshua L Howard, Esq
Haynsworth Sinkler & Boyd, P A
75 Beattie Place, Eleventh Floor
Greenville, SC 29601


Victoria A Wood

November 12, 2009

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Andrew P (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development, Inc ,

Plaintiff,

vs

Tim Roberson Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc ,

Defendants

IN THE COURT OF COMMON PLEAS
2009 NOV 12 P 3 41

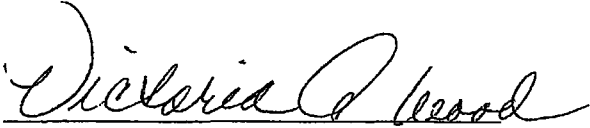
FILED CLERK OF COURT
GREENVILLE CO S.C
PAUL B WICK-WILSON

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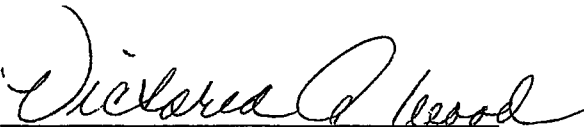
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Greenville SC 29601


Victoria A Wood

November 12, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Andrew P (Andy) Ballard,)
Plaintiff,)
v)
Tim Roberson, Rick Thoennes, Rick)
Thoennes III, and Warpath Development,)
Inc ,)
Defendants)

IN THE COURT OF COMMON PLEAS

C A No 2008-CP-23-5739

**DEFENDANTS' MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

This matter is before the Court on Plaintiff's Motion for Summary Judgment pursuant Rule 56 of the South Carolina Rules of Civil Procedure For the reasons more fully set forth below, Defendants submit the following in opposition and assert that the Court should deny Plaintiff's motion in total

Background

In or around 2003 Plaintiff Andrew Ballard (Ballard") began laying the groundwork for the development of the land around the Warpath Landing public access site to Lake Keowee located in Pickens County, South Carolina In 2006, after several years of negotiations with Duke Power and proceedings before the Federal Energy Regulatory Commission ("FERC) Ballard finally secured the lease to the property The lease provided the approval to develop the land as a multi-use marina and retail venture At that point, sometime in late 2006/early 2007, Ballard began seeking additional investors for Warpath Development, Inc (Warpath) the holder of a lease from Duke Power for lakefront property on Lake Keowee

At some point, Defendants Tim Roberson (Roberson'), Rick Thoennes (Thoennes"), and Rick Thoennes III ("Thoennes III) were introduced to Ballard At the initial meeting,

Roberson, Thoennes, and Thoennes III heard Ballard's pitch and received a copy of conceptual plan (See Ex A, Dep of Roberson at 34) The conceptual plan details the layout and overall concept of the development (See Ex B) Of particular importance to Defendants' counterclaims, the conceptual plan called for the development and installation of a marina with space for wet boat slips 'to be developed as demand indicates but not to exceed space for 100-200 boats '' In evaluating this investment Roberson, Thoennes and Thoennes III put together *pro formas* These *pro formas* were all based on a belief that the "demand" for wet boat slips would allow for the installation of 200 slips (See Ex C, Dep of Thoennes III at 74) Over the course of several meetings, Roberson, Thoennes, and Thoennes III were also provided representations as to the state of the development and were led to believe that the development was at a point that breaking ground was imminent (See Ex A, Dep of Roberson at 37-38 Ex D, Dep of Thoennes at 63-65, Ex C, Dep of Thoennes III at 68) After some discussions, meetings regarding the *pro formas*, investigation and completion of what Roberson, Thoennes, and Thoennes III believed to be the requisite amount of due diligence an agreement was reached with Ballard for the purchase of 80% of the corporation in exchange for the payment of \$1,000,000 plus future payments totaling \$150 000 after the 'grand opening (See Ex A Dep of Roberson at 30, 34-38 Ex D, Dep of Thoennes at 68-69) This agreement was memorialized in a written Stock Purchase Agreement entered into on May 29, 2007 (See Ex E)

After a couple of months of work, which included paying for architectural renderings and meeting with Duke Power, it became clear to Roberson, Thoennes and Thoennes III that all was not as they were led to believe with the development In particular, it became clear that the 200 wet slips in the marina they were led to believe were possible if market demand called for that many were actually impossible to install under any circumstances due to the geographical

restraints placed on the development (See Ex A, Dep of Roberson at 74-75, Ex D, Dep of Thoennes at 77-80, Ex C, Dep of Thoennes III at 69-70) Specifically, geographically, the layout provides for an area that Roberson, Thoennes and Thoennes III referred to as the marina cove (See Ex D, Dep of Thoennes at 76) Working within the known constraints placed on the marina development by Duke Power and other regulatory agencies, the architect was able to squeeze in all 200 paying boats slips within the marina cove When this architectural rendering was presented to Ballard, he reacted badly and stated that there was no way that Duke Power would approved the layout (See Ex A Roberson Dep at 75, 113, Ex D, Thoennes Dep at 76-77) Ballard then indicated that Duke Power would not approve the marina development extending beyond certain points on the shoreline (See Ex F, Dep of Ballard at 67-69, Ex D, Dep of Thoennes at 76-77) In spite of Ballard s complaints the rendering was presented to Duke Power and they did exactly what Ballard stated they would do (See Ex A Dep of Roberson at 113) After returning to the architect with the constraints imposed by Duke Power the architect was able to only squeeze in 102 wet boat slips Additionally, as stated above, Roberson Thoennes and Thoennes III were led by Ballard to believe that the development was in its last stages of permitting and that construction could begin in the fall of 2007 This proved inaccurate given that despite many man hours including paid engineering hours, the development is still awaiting final permits over two years later

On account of these and other concerns, Roberson, Thoennes and Thoennes III were concerned that they had been deceived and the venture was potentially financially unviable After discussing the matters initially among themselves, they reached out to their now long absent partner Ballard for his thoughts and presented him with some options Specifically, Ballard was presented with a proposal from Roberson, Thoennes and Thoennes III, which called

for either (1) return of the \$1,000,000 in exchange for their stock and could move forward with some different partners or (2) return of some portion of the \$1 000,000 and they all continue on together (See Ex G) Ballard rejected their proposals outright In return they were also met with silence and a complete unwillingness to participate or cooperate (See Ex H, Ex I) Ballard was then approached by Roberson regarding the leadership of the corporation, as well as the possibility for the need to issue additional shares to allow for necessary business flexibility going forward (See Ex I) At that time, all parties had already discussed the possibility of approving a small equity stake for someone they were considering approaching about running the hospitality side of the company (See Ex A, Dep of Roberson at 154-57)

Ballard ultimately consented to Roberson assuming the presidency, but remained silent on the authorization of additional shares (See Ex I, Ex F, Ballard Dep at 79-80) A meeting of the shareholders was called wherein Roberson, Thoennes and Thoennes III were elected directors and the authorization of 900,000 additional shares was approved which upon amending the articles of incorporation would result in an increase in shares from 100 000 to 1 million (See Ex J, Ex K) No additional actions including amending or authorizing the amend of the articles of incorporation have been taken Shortly after this shareholders meeting, Ballard filed the instant lawsuit seeking an injunction to prevent his dilution Ballard recently amended his complaint to assert various causes of action for breach of contract, anticipatory breach of contract, breach of fiduciary duty, a shareholder derivative claim, etc that all effectively assert that Roberson, Thoennes and Thoennes III are eventually going to violate his alleged rights under the Stock Purchase Agreement not to be diluted and allegedly fail to eventually put up the necessary capital in order to build the development In response, Defendants have denied

Plaintiff's assertions and asserted counterclaims for breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation and securities fraud

Analysis

I Summary Judgment Standard

Plaintiff moves for summary judgment on Plaintiff's claims and Defendants' counterclaims pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Summary judgment is not appropriate if there is a genuine issue of material fact. Citizens and S. Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 443 S.E.2d 549 (1994). In ruling on motions for summary judgment, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Johnston v. Bowen, 313 S.C. 61, 437 S.E.2d 45 (1993). The moving party on the motion bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. McCall v. State Farm Auto. Ins. Co., 359 S.C. 372, 376, 597 S.E.2d 181, 183 (Ct. App. 2004) (citing Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001) (quoting Rule 56(c), SCRCP)). [T]he non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

II In addition to the reasons set forth in Defendants' Memorandum in Support of their Motion to Dismiss/Summary Judgment, Ballard's Motion for Summary Judgment should be denied because even he is allowed to go forward with his claims, there are clear questions of fact to be decided by the trier of fact.

Regardless of the cause of action or relief asserted and sought by Ballard, his causes of action rest on two claims: (1) That the Defendants are legally and contractually unable to take any action that would result in the dilution of Ballard's percentage ownership in Warpath and to take such action is a violation of the Stock Purchase Agreement and the fiduciary duties Ballard

claims he is owed (2) That the Defendants at some point in the future, are going to fail to meet their obligation in the manner interpreted by Ballard to provide the necessary to capital to obtain long term financing

As to Ballard's claims arising from the alleged non dilution, legally, the South Carolina Business Corporations Act of 1988, S C Code Ann § 33-1-101 et seq , does not prohibit a corporation or the shareholders from diluting individual percentage ownership in the corporation In fact, the Act specifically provides that a corporation can authorize and issue shares See S C Code Ann §§ 33-6-101, 6-210 The Act further protects an individual shareholders right to maintain his percentage ownership by allowing for preemptive rights, i e the right to acquire additional shares to maintain his percentage ownership See id § 33-6-300

Contractually, there is undeniably no specific clause or provision in the Stock Purchase Agreement providing for Ballard s claimed non-dilution Ballard had an opportunity to review the Stock Purchase Agreement with his lawyer and provide comments If Ballard wanted a non-dilution provision he could have requested a non-dilution provision In support of his assertion Ballard merely points to the use of the term "when all shares are finally issued" and "final holdings" in paragraph 1 of the Stock Purchase Agreement (See Ex E, Ex F Ballard Dep at 25) Defendants and the attorney who drafted the agreement dispute this interpretation asserting that the "finally issued" or "final holdings" merely referred to the close of the transaction (See Ex L, Dep of Fayssoux at 33, 39) Even if the Court believes this matter is ripe for adjudication and should go forward at best, the Stock Purchase Agreement is ambiguous on the issue of whether additional shares can be issued that may result in the dilution of the percentage ownership of the shareholders is permissible under the Stock Purchase Agreement Given that, it is a question of fact for the trier of fact as to the true meaning of the Agreement See Garrett v

Pilot Life Ins. Co., 241 S C 299, 305, 128 S E 2d 171, 174 (1962) (“The construction of a written contract presents a question of law for the Court only when the contract is clear, unambiguous and free from doubt. Where there is ambiguity, uncertainty or doubt as to proper construction of the contract, intention of the parties becomes a question of fact for the jury to determine and for their aid resort will be had to extrinsic evidence to show the conditions surrounding the parties, the circumstances under which the contract was executed, as well as the negotiations between the parties leading up to the execution thereof”) Therefore, whether the causes of action sound in tort or in contract, given the questions of fact remaining for consideration, summary judgment should be denied on any and all causes of action arising out of whether Ballard’s percentage ownership can or cannot be diluted.

As to Ballard’s claims arising from the allegation that at some point in the future the Defendants are going to default on their obligation to provide the necessary capital to obtain long term financing, besides the fact that they should not be able to base a claim on pure speculation of a hypothetical future, and even assuming Ballard’s interpretation of the relevant clause in the Stock Purchase Agreement is correct, there is absolutely no evidence of a present or future default or repudiation of the deal. Defendants anticipate that Ballard will try to say that Roberson’s heated assertion in deposition that he would not contribute more than 20% is conclusive of liability. So what if Roberson said he would not contribute more than 20%? The project cannot be financed at this point anyway because the permits are not in place. The fact is no one knows what the Defendants will do when the time actually comes to finance the project and it is pure speculation to say otherwise. When the Defendants explored financing at the outset in 2007, they were told by Palmetto Bank and Greenville First that they could attain 80% financing on the project. (See Ex. A, Dep. of Roberson at 88-89, 132, Ex. D, Dep. of Thoennes

at 83-84) Why would the Defendants not wait for the best deal they can find? In 2009, at this point, the economic and financial realities are that there is virtually no financing available. However, there is nothing in the Stock Purchase Agreement that calls for the Defendants to provide 100% of the costs since the Agreement clearly contemplates long-term financing, there are no time limits for when they have to actually obtain financing and break ground, and there is nothing in the law or Agreement that says they have to take a bad deal because Ballard wants them to. Whether they choose to do it or they are contractually entitled to wait for better days, whatever those may look like. For these reasons, there are clearly questions of fact as to whether there has been an actual or future breach of contract and/or repudiation of the Stock Purchase Agreement's provision indicating that "Roberson agrees to provide the necessary capital to obtain long-term financing on the project and Thoennes and Thoennes III will assist[] with obtaining long-term financing." As such, Plaintiff's motion for summary judgment should be denied.

III Plaintiff's Motion for Summary Judgment as to Defendant's Counterclaims should be denied because there are clear questions of fact as to whether Ballard intentionally or negligently deceived the Defendants

Plaintiff moves for summary judgment on Defendants' counterclaims claiming that under no set of facts can the Defendants prove any cause of action asserted, whether it be breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation or securities fraud. This is without merit. There are clearly questions of fact for the trier of fact that remain.

At its core, Defendants' counterclaims are premised on two misrepresentations. First, Ballard had prior, undisclosed knowledge or intentionally or, at the very least, negligently, ignored the fact that it was impossible to install more than approximately 100 wet boat slips in

the marina. This misrepresentation was made directly to the Plaintiff's by way of the conceptual plan presented at the inception of the relationship, it was carried through the entire due diligence process by Ballard's silence, and was not discovered until two months after the close of the Stock Purchase Agreement when Ballard received his \$1,000,000 from the Defendants. The evidence to support Defendants' counterclaims, whether they rest in contract, fraud, negligent misrepresentation or securities fraud are (1) the conceptual plan specifically provides for the development and installation of a marina with space for wet boat slips "to be developed as demand indicates but not to exceed space for 100 200 boats" (See Ex. B). This provision indicates positively that Ballard is representing that 200 boats slips is possible if market and demand dictate the need. (2) Ballard was aware of the *pro formas* and the fact that the Defendants believed that the market would allow for 200 wet slips and that they were relying on that belief in evaluating the investment. (3) Ballard remained silent throughout and never indicated that only approximately 100 wet slips were possible. (4) Ballard was in possession of an earlier draft of the conceptual plan which indicated that the wet slips would be 100 total" (See Ex. M). This prior plan nor the information contained in it was ever shared with the Defendants until after this litigation had progressed. (5) By way of Ballard's reaction to the architectural rendering whereby the 200 slips were placed into the marina, Ballard was aware of the geographical restraints of Duke Power that were not shared with the Defendants prior to investing. (6) Ballard's representations as to the geographical restraints were confirmed when Duke Power did exactly what Ballard said Duke Power would do when they saw the architectural rendering. (7) After working with the restraints on the project first revealed to the Defendants in the meeting with Duke Power, the architect was not able to squeeze more than 102 wet slips into the marina. Quite a coincidence.

Second, while Ballard disclosed that the project was not finally permitted and a period of time was allowed for the Defendants to speak with Duke Power and Pickens County, Ballard led the Defendants to believe that he was well into the permitting process and that they would be ready to break ground on the project within a short amount of time, *i.e.* the fall of 2007. Clearly, this was false because two years later the Defendants are still awaiting final permits.

Based on the above, there are facts upon which a jury could determine that Ballard is liable whether it be by way of fraud, negligent misrepresentation, securities fraud pursuant to S.C. Code Ann. § 35-1-501, or a breach of the contractual covenant of good faith and fair dealing. Specifically, as to fraud, there is evidence sufficient that a jury could find that (1) Ballard incorrectly represented and/or improperly allowed the Defendants to believe that the construction on the project was imminent and that it was possible to have 200 wet boat slips at the development, (2) Ballard was aware of the falsity of these representations, (3) based upon his meetings with the Defendants, Ballard was aware of the materiality of these representations to the Defendants' decision regarding the investment, (4) Ballard either knew of the falsity of these representations or recklessly disregarded the truth or falsity of these representations, (5) Ballard intended and knew that these representations would be acted upon, (6) the Defendants were ignorant as to the falsity of the representations, (7) the Defendants rightfully relied on the truth of the representations, and (8) Defendants were damaged as a result of these fraudulent representations and Plaintiff's actions. See Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007).

As to negligent misrepresentation, there is evidence that a jury could find that (1) Ballard incorrectly represented and/or improperly allowed the Defendants to believe that the project's construction was imminent and that it was possible to have 200 wet boat slips at the

development, (2) Ballard had a monetary interest in making the representation Ballard was eventually paid \$1,000,000 and promised \$150,000 more for the investment, (3) Ballard was obligated and duty bound to provide truthful information and dispel misunderstandings, (4) Ballard breached this obligation by failing to exercise due care, and (5) the Defendants justifiably relied on Ballard's representations, actions and inactions and have suffered losses as a result See deBondt v Carlton Motorcars, Inc., 342 S C 254, 267, 536 S E 2d 399, 405 (Ct App 2000)

Finally as to securities fraud pursuant to S C Code Ann § 35-1-501 the Act provides in pertinent part

It is unlawful for a person, in connection with the offer, sale, of a security directly or indirectly

- (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or
- (3) to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person

A private right of action pursuant to § 35-1-501 is conferred by § 35-1-509 There are questions of fact as to whether Ballard's misrepresentations and/or improper silence were actions or inactions in violation of S C Code Ann § 35-1 501 For these reasons, Ballard's motion for summary judgment is without merit and should be denied

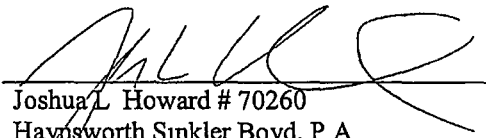
Defendants anticipate that in defense Ballard will assert that the Defendants true complaint is against Duke Power This is nothing more than a baseless assertion and an irrelevant distraction While it may be true that the Warpath corporation may have a complaint against Duke Power since Warpath is the holder of the lease, Roberson, Thoennes and Thoennes III made their deal with Ballard At the time of investment, Ballard held all of the outstanding stock in Warpath and control of the corporation The Defendants did not purchase the lease, the

Defendants purchased 80% of the corporation Warpath, that held the lease (See Ex D, Dep of Thoennes at 71) The misrepresentations and actions complained of in the counterclaims were those of Ballard The complaint is rightfully directed towards Ballard

Conclusion

For the reasons set forth herein Ballard s motion for summary judgment should be denied

Respectfully Submitted



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Attorneys for the Defendants

Greenville South Carolina
November 13, 2009

EXHIBIT A

1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO 2008-CP-23-5739

Andrew P (Andy) Ballard,
Plaintiff,

vs

Tim Roberson, Rick Thoennes,
Rick Thoennes, III, and Warpath
Development, Inc ,
Defendants

COPY

DEPOSITION TIM ROBERSON

DATE TAKEN March 4, 2009

TIME BEGAN 1 18 p m

TIME ENDED 5 11 p m

LOCATION Haynsworth, Sinkler, Boyd, P A
75 Beattie Place
Eleventh Floor
Greenville, South Carolina

REPORTED BY TRACI L BARR RPR
Registered Professional Reporter
Notary Public for South Carolina

1 Q And what happened at the meeting?

2 A Well, the meeting was attended by Jim --

3 MR BALLARD

4 REVIS

5 THE DEPONENT

6 Tim Revis and Jim - I said his name awhile ago
7 and you couldn't remember it -- Jim Swink and
8 hosted by Jack Jamison I believe he had
9 another RealtyLink partner or associate in the
10 room, who I really didn't remember or haven't
11 since engaged with, and Andy So introductions
12 were made Andy presented the proposal or the
13 presentation or gave us a description of his
14 years worth of work Not year, years worth of
15 work We understood that he had really plowed
16 into that for a long time
17 We went away, I think, saying, yes, we're
18 interested I don't think we talked about
19 numbers at that meeting It was really whether
20 or not we would be interested I stand to be
21 corrected if I'm wrong on that
22 The essence of the meeting was this is the
23 project, this is what I've done, here is where
24 we are, and again, as I recall, this thing's
25 ready to go It was -- you know, it was time

1 A That's correct, I would assume

2 Q Was any paper distributed at this first
3 meeting?

4 A I can't recall Well, we came back with a
5 book

6 Q Did you get the Conceptual Plan?

7 A Yes

8 Q And the Conceptual Plan you got is the document
9 your attorney has made Deposition Exhibit 6?

10 A It appears to be that

11 Q And did you review it?

12 A Oh, yes

13 Q Okay At that point when you met with Mr
14 Ballard the first instance perhaps in March of
15 '07, was there a lease with Duke Power at that
16 time? Had Mr Ballard obtained the lease?

17 A Yes

18 Q Did you ever review the lease from Duke Power?

19 A Yes

20 Q Was it at that meeting or did you come away
21 with a copy of it?

22 A You know, I can't say for sure, but I would
23 assume we did I would have thought he brought
24 the lease I would have thought it was part of
25 that package, and I would expect that we would

1 have reviewed that, but because it was such a
2 preliminary meeting, it's possible that the
3 lease was not part of it until he gauged our
4 interest I really can't answer that

5 (Exhibit Number 9 marked for identification)

6 EXAMINATION RESUMED BY MR HOLLEMAN

7 Q Let me show you what's been marked as Exhibit
8 9, and ask you if that is the Duke Power lease
9 for the Warpath marina site with the
10 attachments?

11 A It appears to be

12 Q All right Thank you

13 Now, could you tell me what was the role of Mr
14 Revis and Mr Swink at the first meeting?

15 A Actually I didn't know until later when I asked
16 them As has been stated earlier, they owned
17 property and had developed property adjacent to
18 Warpath and could have some vested interest in
19 how that was developed I thought that they
20 were there as potential investors as well, and
21 the specific reason I remember that was I later
22 asked them if we were to do something was that
23 stepping on their toes or getting out in front
24 of them or anything, and he made it clear at
25 that time, no, they were just wanting to stay

1 involved because it was their neighbor and they
2 had again a vested interest

3 Q Okay Just so we can put them aside if it's
4 correct, did they have any subsequent
5 involvement in the activities surrounding
6 Warpath apart from that first meeting?

7 A They would ask for regular updates Well, I
8 say regular Occasional, sporadic, but
9 multiple updates to when do we think we can
10 open because their vested interest was they
11 have more homes on the lake than they have
12 docks, and they were very interested in having
13 the opportunity for us to lease back some docks
14 to them They actually told some of their
15 potential dock users, buyers that there would
16 be possibly docks late '07 and for sure early
17 '08

18 Q Now, what about Mr Jamison, did he have any
19 subsequent involvement in Warpath?

20 A No Again, I went to him with the same
21 question about if he had an agenda other than
22 just making the acquaintance or the connection
23 between us and did he have an interest in being
24 a part of it, and he said no

25 Q At that first meeting, did Mr Ballard make a

1 PowerPoint presentation or any kind of overhead
2 or visual presentation?

3 A I don't recall

4 Q Could you tell me everything you remember him
5 saying at that first meeting?

6 A Well, it was basically a history of what he had
7 done up to that point. It was a description of
8 the -- of how that unfolded, you know, working
9 with Duke and FERC and what I thought was
10 permitting processes and so forth. It was a
11 description of the site plan, the layout, what
12 would be where and whatever. It was --

13 Q When you say the site plan, you mean the
14 Conceptual Plan?

15 A Conceptual Plan. Excuse me.

16 The thing that I remember most - and again I
17 can't put quotes around this. I can only give
18 you the way I received it, the memory of the
19 statement, because it was both then and later
20 on, more than just that one occasion. This
21 thing is ready to go. It's got the approvals,
22 and, you know, Pickens and FERC and Duke are
23 ready just to, you know, get this thing like
24 rubber stamped and let's go, ready to go.
25 It's a ready-to-go project. I think today's

1 terminology might be shovel ready, and we
2 didn't use that term, but in my mind it was
3 ready to go, and that came out in that meeting
4 and it came out in subsequent meetings

5 Q Now, do you remember him saying anything else
6 at that meeting, first meeting, beyond what you
7 have just said?

8 A No, I don't recall

9 Q And what did you do when you left the meeting
10 with respect to Warpath?

11 A I believe Rick and Rick and I consulted,
12 discussed Rick ran some pro formas, and we
13 came to a conclusion that it was not a viable
14 investment, and I informed Andy, thanks but --
15 and appreciate the consideration, but it just
16 wasn't strong enough for us
17 I may have given him an alternative I think
18 in fact I did give him an alternative that had
19 some different numbers in it

20 Q After you left the meeting and you talked with
21 Rick and Rick, did you learn at that time that
22 there would be permits required for this
23 development?

24 A At some point we went to a meeting with a
25 county attorney or -- well, it was not an

1 A Correct

2 Q Did you-all think you would get 200 slips
3 approved by Duke Power?

4 A Absolutely

5 Q And why did you think that?

6 A Andy told us, number one, to go for the max,
7 which he stated He had a considerable amount
8 of involvement in the pro formas and the
9 discussions that revolved around the number of
10 slips and the timetable, and he was and is a
11 shareholder and obviously would have been very
12 interested in that He clearly left with me
13 the impression that we could be putting in that
14 number of slips and be doing it on a relatively
15 quick timetable and I -- to tell you the truth,
16 again, you know, we were actually discussing
17 having docks floating the summer of '07

18 Q Now, when --

19 A And he was involved in those discussions

20 Q When your partners talked with Duke Power, did
21 they ask them how many slips Duke Power would
22 approve?

23 A I don't know

24 Q Did you ask them -- did you ask your partners,
25 Rick and Rick, what Duke Power told them about

- 1 slips?
- 2 A I don't recall Quite frankly the first time
3 that I recall anything -- any question or
4 anything negative or suspect on the 200 slips
5 was when Andy looked at -- at an architectural
6 meeting in Greenville when Andy looked at the
7 drawings and immediately said, that ain't going
8 to fly, they'll never allow that many docks
- 9 Q And this was after the contract was signed?
- 10 A That's correct
- 11 Q Now, before the contract was signed, did you do
12 anything to check with Duke Power to see if
13 they would approve 200 slips?
- 14 A I had a lease I expected it meant what it
15 said
- 16 Q All right Let's see what it says Exhibit 6
17 is a Conceptual Plan --
- 18 A 100 to 200
- 19 Q -- and it says 100 to 200?
- 20 A That's correct
- 21 Q You're an experienced business person
22 what amount is guaranteed by a clause that says
23 you can have 100 to 200?
- 24 MR HOWARD
- 25 Object to the form

1 the project, such as a hotel or restaurant,
2 that may take an equity position A
3 combination of debt and equity is a normal
4 course of business to create and grow a
5 business, and the percentage of debt versus
6 equity, those ratios are always a judgment
7 call, but it's pretty common practice

8 Q Do you have --

9 A I couldn't imagine being in any kind of
10 business where I ruled out the possibility of
11 thinking through expansion, funding with debt
12 and equity alternatives

13 Q Would you agree, though, you could agree in
14 writing by contract that you won't do that,
15 that you won't issue new equity?

16 A Oh, yeah

17 Q Now, let me ask you this Do you have any
18 purchasers lined up for the additional 900,000
19 shares?

20 A No

21 Q I believe one of the documents indicated you
22 had talked to Palmetto Bank and they were not
23 interested is that correct?

24 A They initially were interested on the initial
25 pro formas They became uninterested when the

1 pro formas changed

2 Q when they became uninterested, did you offer to
3 sign personal guarantees for --

4 A That was not a discussion I had assumed
5 personal guarantees would be required anyway

6 Q when they became uninterested, did you offer to
7 increase the amount of capital you would put
8 in?

9 A We -- no We didn't discuss that

10 Q In your initial discussions with Palmetto Bank,
11 how much capital were you going to provide?

12 A 20 percent of whatever was borrowed

13 Q And how much capital would they require to do
14 the financing of the project as it now stands?

15 A I don't know I left them and hit every bank
16 in town, and we were -- we got no takers

17 Q Did you offer to increase the capital you
18 provided beyond 20 percent?

19 A No I know just from reading the newspaper you
20 can walk in and put down 50 percent and most
21 banks would be glad to do business with you

22 Q Have you offered to do that?

23 A No

24 Q Do you intend to do that?

25 A Absolutely not

1 council meeting, and had gotten quite blustery
2 at the architectural meetings that we weren't
3 doing this right or that right, and was just
4 really disengaging slowly as he got more
5 involved on his restaurant venture. He was
6 even, you know, a little fussy that we were
7 talking to a fellow by the name of Andy Chyka,
8 as opposed to him and his partner, for food
9 services, and we recognized that the
10 relationship was not healthy.

11 Q So is the answer to my question yes, you did
12 want him out of the -- you wanted him out of
13 the deal?

14 A Yes

15 Q Okay. Now, when you say he was fussy at some
16 of the meetings with the architects, is that
17 when he told you Duke Power is not going to
18 approve dock slips for the peninsula?

19 A I don't know that that's when it was

20 Q Do you remember him telling you that?

21 A I think he told us that as soon as he saw the
22 drawings that showed the slips on the far
23 banks.

24 Q And was he right?

25 A Yeah

1 Q It says, Tim Roberson would coordinate capital
2 requirements including banking and funding from
3 private investors?

4 A That's what it says

5 Q Did Mr Ballard ever object to additional
6 private investors?

7 A No I mean -- no, he didn't object to it, and
8 I would have assumed that any businessman knew
9 there would have to be construction loans and
10 permanent loans put in place

11 Q I believe you testified before also to a
12 possibility of partnerships with hotels,
13 restaurants

14 Are those people -- I mean, in your experience
15 -- let me ask you this way Did you testify
16 before about partnerships with hotels and
17 restaurants possibly?

18 A I believe that came up earlier today

19 Q Do you recall that testimony, I guess is maybe
20 the better question? Do you recall that
21 testimony coming up?

22 A Yeah

23 Q Is that something that Mr Ballard was part of
24 the discussions on?

25 A Some of it would have been In fact, he told

1 us - I think again it's referred to in one of
2 these documents - that a hotel might give us
3 three million dollars for just the right to
4 operate on that property, so that was a
5 discussion from early on as to whether parts of
6 the property would be subleased to hotels or
7 restaurants or whether we would engage them --
8 how we would engage them was a topic of
9 discussion, that's correct

10 Q In your business experience, if a hotel or
11 somebody is going to come in and manage a
12 restaurant and manage your hotel, in your
13 experience do those people take an equity
14 piece?

15 MR HOLLEMAN

16 Object to the form

17 THE DEPONENT

18 In my experience sometimes they do, sometimes
19 they don't Again, a mixture of debt and
20 equity or outright land lease, sublease are all
21 subjects of negotiation when you bring in a
22 third party like that

23 EXAMINATION RESUMED BY MR HOWARD

24 Q Given the contemplation of a third party and
25 how that might play into the deal, is it fair

1 to say kind of if anything was on the table --

2 MR HOLLEMAN

3 Object to the form

4 EXAMINATION RESUMED BY MR HOWARD

5 Q -- capital and --

6 A There was a discussion and a proposal from Andy
7 Chyka to run the -- who owns Southern
8 Hospitality, I think, who -- to run the
9 hospitality portion of it, which would have
10 been the hotel and restaurants, and in that
11 proposal, which I couldn't lay my hands on, he
12 outlined an equity position In fact, without
13 our input, he outlined an equity position that
14 showed a reduction -- an uneven reduction, more
15 out of Andy and less out of us I looked at
16 that immediately, and I think I expressed this
17 -- I'm pretty sure I expressed this to Rick,
18 why would he do that I mean, if somebody is
19 going to come in, it would be even dilution
20 You just can't go targeting one individual I
21 think that was -- I wrote that off to his
22 naivety, Andy Chyka's It certainly would not
23 have been considered that there would be an
24 uneven distribution, but it was considered that
25 there would be -- if there were a new equity

1 player that there would be even dilution
2 Q Let me ask you one other thing I'm putting in
3 front of you Exhibit 10, the second page
4 Do you remember being asked about this e-mail
5 down here?
6 A Yes
7 Q Do you recall Mr Ballard talking about -- let
8 me strike that
9 I believe Mr Ballard testified earlier about
10 the possibility of tapping in to Duke's sewer
11 system and also --
12 MR HOLLEMAN
13 Go ahead I thought you were through
14 MR HOWARD
15 No
16 EXAMINATION RESUMED BY MR HOWARD
17 Q Let me ask you this way Do you recall Mr
18 Ballard testifying about tapping into Duke's
19 sewer system?
20 MR HOLLEMAN
21 Object to the form
22 THE DEPONENT
23 Yes
24 EXAMINATION RESUMED BY MR HOWARD
25 Q Do you recall whether that was mentioned at

EXHIBIT B

Conceptual Plan
for

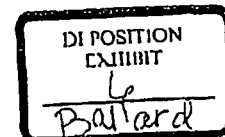
Warpath Landing

Public Access Area
for

Lake Keowee

Prepared by

The Ellis Group P A
220 N Main St Suite 325
Greenville, SC 29601
864 235 7464



VI B 000 79

Table of Contents

Introduction	
The Site	Pages 4-9
Historic Context	Pages 10-11
Historic Timeline	Pages 12-13
Elements of Proposal	
Site Plan	Page 14
Water Related Features	Pages 15-17
Outdoor Recreation	Pages 17-19
Lodging/ Dining	Pages 19-21
Miscellaneous	Pages 21-22
Phasing of Project	
Phase I	Pages 23-24
Phase II	Pages 25-26
Phase III	Pages 27-28
Phase IV	Pages 29-30
Character Sketches	Pages 31-33
Conceptual Design of Waste Treatment	Pages 34-39
Representations and Certifications	Page 40
Preliminary Lease Application	Pages 41-52

Introduction

The proposed development is a preliminary plan for a 56 acre tract of property on the eastern shore of Lake Keowee in Pickens County South Carolina.

The main objective of this proposal is to create an environment for many types of outdoor recreation that are related to the natural surroundings of beautiful Lake Keowee. This development would provide recreation opportunities for the general public enhancing the quality of life for Pickens County residents as well as visitors. At present such a facility is not available. This development would therefore create new tourism opportunities and consequently economic good for the area as well.

In reviewing this proposal it is important to understand that this is a preliminary study of the possibilities of the site. All consideration for proper permitting as required by all applicable agencies will be made throughout the process of the entire project. Naturally the structures and amenities proposed would be subject to all local state and Federal regulations.

The Site

The pristine site of Warpath Landing features lovely views to the North and South. The northern views are particularly exciting with a view of the Blue Ridge Mountains. A primary design goal is to maintain these views throughout the development. Additionally it is the goal of the developer to respect the natural ecological environment of Lake Lanier in every way possible and to actually enhance the natural beauty of the site.

The site is heavily wooded containing trees of many varieties. The terrain is fairly steep varying in places to a more shallow grade. Another design goal is to utilize the contours of the site for recreation purposes to the fullest potential and thus offering several venues for recreation of varying nature.

Another design goal is to respect the history of this particular site. It has a unique history involving the Cherokee Indians, early American settlers as well as the British. In developing the future direction for the site, this proposal calls for consideration to retain a memory of the past history of this area.

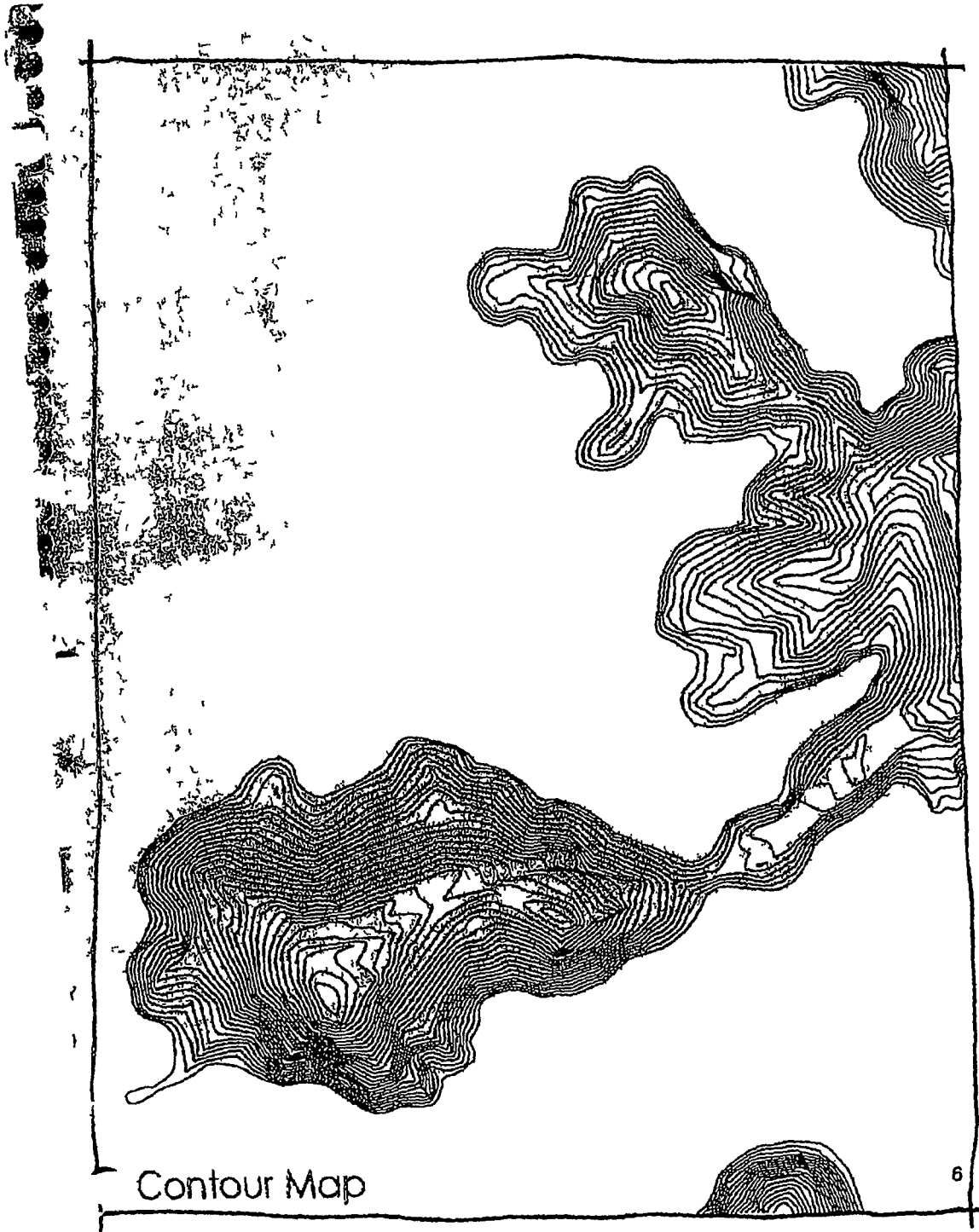
The following program considers these possibilities as well as the many practical considerations to create a place fully reflecting a flavor and character of Pickens County and this particular site. This project has the potential to enhance the quality of life for many people for generations to come.



Aerial Photograph

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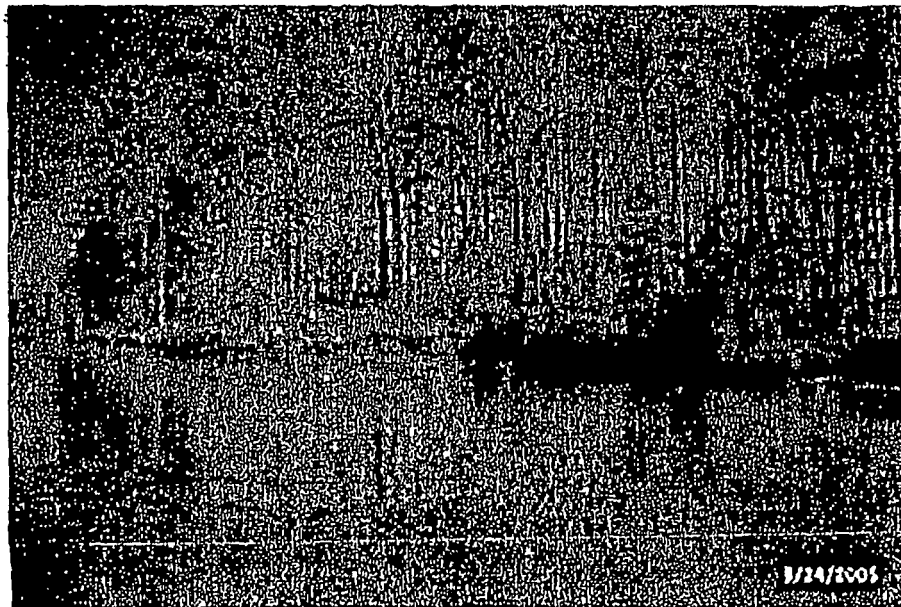
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Looking North up Lake Keowee with
mountains in the background

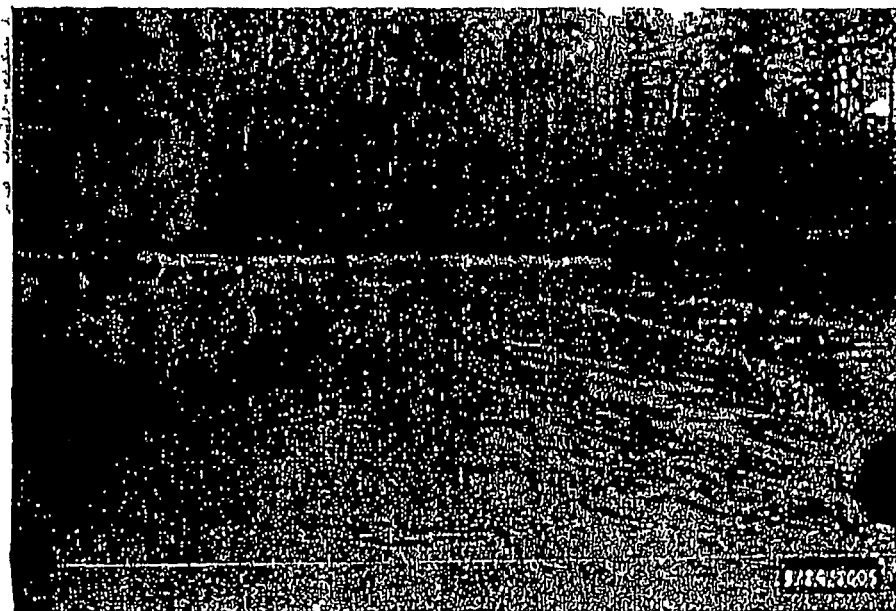


North towards camping peninsula

APB_00105



North by Marina Point
towards camping area



East towards swimming area

APB_00106

Historic Context

A brief look at some features of this land and its first inhabitants brings some relevant information to the project. The Cherokee Indians lived along the river and bottom land which later became Lake Keowee. They thrived in the bottom lands from Virginia southward. They built their houses in villages much like Early American settlers did. Villages were separated by day-long walks. Houses were made of wood and stone, fields were planted, nuts and berries were gathered, game was cured, tobacco was smoked and the Cherokee people adhered to high ethical standards. 'Fire' the center of life became the Cherokee word for home.

Rivers between the Cherokee mountains fed by creeks running from all directions, flowed north and west into the Great River, the Cherokees lifeline to other Indian cultures. A network of roads followed those rivers and streams to connect the Cherokee villages. Steep mountain gaps limited routing choices so Cherokee roads converged at certain gaps just as roads do today in those mountains. Village chieftains lead and represented the people to the tribe as a whole. The people used the roads to trade and compete with other villages.

The installation of Prince George Fort and the arrival of the British had a great impact on the history of the area. Several Colonial British and Cherokee played a significant part in the history of the area. The following timeline gives a brief account of this history.

Indian Trail Trees which are also known as bent trees, were once very prevalent in this area. The Indians native to this area most often the Cherokee are assumed to have used them to mark directions or trails to areas important to them. They took young saplings bent them at a right angle perpendicular to the ground and pointing in the desired direction. They then tied them in this position. As the tree grew, the top portion would turn up toward the light but the segment that had been tied down would always point in a specific direction.

The trees were used to indicate different things. They might show a trail to a river or settlement. Some were used to indicate where natural springs were located. Sometimes they were used as message trees and were either

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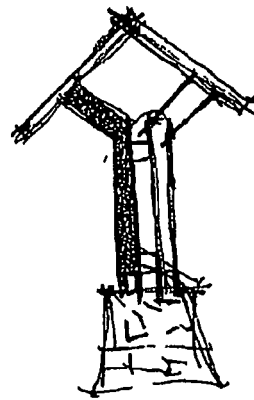
APB 00109

marked to indicate a message or had a hollowed out section where messages could be hidden

This proposal calls for using the theme of Indian Trail Trees to mark areas along the nature/bike trail. Additionally, this idea is used as a recurring theme throughout the architecture of the development, articulating a unique form incorporated into the post and beam construction of the building form. Also, many of the names of places within the development have names influenced by this history.



Indian Trail Tree



APB_00109

11

Historic Timeline

- 1540 - Cherokee have contact with De Soto expedition
- 1670 - The South Carolina Colony established
- 1670' s - Tribes acquire firearms
- 1684 - Treaty with South Carolina and Cherokee
- 1690 - Secretary of Colony James Moore ventures into Cherokee country looking for gold
- 1693 - Cherokee Chiefs visit Charleston demanding firearms for their wars against neighboring tribes
- 1705 - North Carolina complains that the South Carolina governor' s trade of Native American slaves had so angered the tribes that the Indian War was inevitable
- 1711 - 1713 - Cherokee aid the colony in driving out mutual enemy the Tuscarora
- 1715 - Combined tribes in the region threatened to wipe out South Carolina in a war that broke out Peace was made with a large exchange of guns and ammunition for alliance with the colony
- 1715 - Cherokee drive Shawnee northward out of the Cumberland River Region
- 1721 - Cherokee sign treaty with South Carolina to systematize trade One condition of the treaty established a fixed boundary between the Cherokee and the colony This was the first land cession made by the Cherokee to the Europeans
- 1730 - Seven Cherokee make the trip to London to meet with King George II Atta Kulla Kulla was one of them.
- 1738 - Small pox was introduced to the Cherokee killing nearly half the tribe within a year

1749 - South Carolina Independent Companies is formed replacing the disbanded General Oglethorpe's Regiment

1753 - 1768 - Fort Prince George was named for the Prince of Wales (later King George III) and served as the principal Carolina outpost in the Cherokee lower towns

1754 - Treaty reaffirming the Cherokee alliance to the English is signed

1755 - 1763 - French and Indian War Cherokee would have sided with the French except for the dependence on trade with the English

1757 - South Carolina Provincial Regiment is formed

1759 - Thirty-two Cherokee spokesmen are held hostage at Fort Prince George Chief Attakullakulla negotiates the release of Oconostota and two others The remaining twenty-nine chiefs remained captives

1760 - Cherokee lure Lieutenant Coytmore outside the walls of Fort Prince George and mortally wound him The same day the remaining chiefs who are being held hostage are killed Cherokee start a fight with South Carolina and push frontier line back 100 miles to the Edisto River

1761 - Attakullakulla signs a treaty with South Carolina's colonial government

1775 - Cherokee sign the Henderson Purchase which ceded land north of Cumberland River and what is now Kentucky

1776 - British invade Charleston and Cherokee once again attack colony

1777 - Cherokee sign Treaty of DeWitt's Corner which ceded nearly all of South Carolina except the northwestern corner which is now Oconee County

1790 - 16 000 people move into Greenville, Pickens Oconee and Anderson Counties Cherokee and Creek make raids on South Carolina and Georgia South Carolina establishes block houses along its northwest boundary for protection

1816 - Cherokee sell the last of their South Carolina land to the colony

Elements of Proposal

- Please note the following features of the proposal are labeled on the site plan accordingly. Please review site plan to determine location of each feature.

Each element of this proposal will be planned with ADA accessibility features as an integral part of the design in all places where it is reasonably achievable.

o Water related features

A Marina

The marina will be located conveniently for public use and will provide a courtesy dock for short term 'parking' as well as fueling. Though this proposal is preliminary at the appropriate time a Spill Prevention Control & Countermeasure Plan will be provided.

Another service available to the public at the marina will be a marine sewage pump out service to the public at nominal charge.

Adjacent to the marina will be a shop for maintenance and repair of boats. Design considerations will be made for the possibilities of boats arriving both by water and by land.

B Dry dock boat storage

The dry dock boat storage facility will store boats under cover year round and will be designed for 100-200 boats. Storage for boat trailers will not be a part of this facility.

Boats will be handled by forklift to be placed on storage racks and also lower into the water as needed. A boat owner could call the facility and upon arrival to Warpath

Landing his boat would be waiting for him Boat storage would be available on a fee basis

C Marina convenience store

The marina convenience store will provide the essentials people may need while boating camping fishing swimming or sunning The store would be located near the active hub area of the marina to be convenient for both boaters as well as others Ample parking will be provided close by Restroom facilities will also be provided Nearby fueling and courtesy docks (approx 20 slips) will serve as an access to the facility by boat as well as provide a needed fueling station for Lake Keowee

D Deli/Grill

The deli/ grill will be a place to grab a quick sandwich Sandwiches will be available for eat in or for takeout An outdoor eating area and restrooms will be included in this facility The size and type of facility may be something on the order of a "Schlotzsky s

E. Boat slips

The boat slip area will include covered and uncovered slips The number of slips and the particular arrangement will develop with the phases of the project There will eventually be 2 walkways with slips on each side to be developed as the demand indicates but not to exceed space for 100-200 boats

F Public boat launch and parking

A public boat launching area which will utilize elements of the existing boat ramp, will provide a place for day users campers or anyone to launch their boat The existing facility will be utilized and improved Restroom facilities and picnicking areas with small picnic shelters will be nearby Ample parking for vehicles and boat trailers will be provided

G Public swimming area

A public swimming area will be available for anyone to spend the day and enjoy the lakeshore. This would be similar to the swimming area at Devil's Fork State Park and would feature restroom facilities and picnic areas. There will not be a lifeguard on duty. Parking would be available in the nearby paved parking area which is currently designed with consideration for 70 vehicles. Secondary overflow parking would be developed as needed. This secondary parking area would simply be a grass area to be utilized only for the occasional event or holiday situation. If this proved to be something utilized on a regular basis, this area could be paved as well. It is the intent to keep the development as natural and sustainable as is reasonably achievable.

H Public fishing pier

There would be provisions in the development for 2-3 fishing piers. These would allow the possibility for fishing from a pier in both covered and uncovered spaces. Nearby parking for 4-6 cars per pier would be provided.

To encourage the healthy maintenance of fish populations, various techniques will be employed. Manmade fish habitats will be installed under the fishing piers. Natural vegetation along the shoreline will be preserved, protected, and replenished. Proper erosion control methods will serve to protect the natural habitat of plant and wildlife.

o Outdoor recreation

I R/V Sites and Campground

To accommodate overnight camping, facilities for various types of camping will be provided. Plans call for campsites for 15-25 larger 'R V' type-sites as well as 20-40 tent campsites.

The campground area will include a bathhouse as well as dump station. The design of the site allows campers to be part of the entire resort through the use of the swimming area, nature trail, secondary recreation areas, fishing piers as well as a close connection to cabin areas. Adequate parking for each campsite will be developed as the design matures.

One opportunity the site offers is the possibility of group camping on the two south facing peninsulas.

J Picnic areas

Picnic areas of varying types will be planned for at strategic areas throughout the development. Some of these will be uncovered, some will be covered. These shelters will be available for day users as well as vacationers.

K Larger picnic shelter

The large picnic shelter will be adjacent to the RV/Camping area. This structure will be approximately 30 x 40 with a large open hearth stone fireplace on one end. The rustic facility would be suitable for campground functions such as a square dance, sing-a-long or a casual worship service. This facility could be used for many different functions such as a boat club barbeque, family reunion, potluck dinner or church picnic. The nearby bathhouse will serve as restroom facilities. Nearby parking for the swimming area could be utilized for occasional events. (See picnicking areas noted throughout project).

L Bike path/nature trail

A 2.25 mile bike path/nature trail will be woven around most of the perimeter of the development. The concept for the trail is to incorporate the theme of the Indian Trail Tree to designate historical "points of interest" at strategic points. The trail will offer exercise possibilities such as running, jogging, biking for all.

types of users The trail will allow a point of contact between people from different user groups For example a conference attendee may enter into an interesting conversation with a camper on an early morning walk

M Secondary recreation uses

As details of the project develop locations for secondary recreation opportunities will be determined The goals are to offer assorted options to allow for taste and level of activity desired The following recreational opportunities will be available in strategic locations

Croquet
Horseshoe pits
Rock climbing
Playground
Campfire pit

o Lodging/ Dining

N Lodge

A lodge with 60 to 120 rooms will be designed to capture the views and natural beauty of the lake Groups as well as individuals will use this facility The character of the facility will be similar to a Bed and Breakfast Inn rather than a chain hotel Nearby docking facilities for 30-40 boats will allow lake residents to arrive by boat to dine at the restaurant on site

O Cabins

Cabin facilities will be simple mountain type cabins They will vary in size to accommodate different needs A single person or couple would rent a small size cabin A small family may like a medium sized cabin And a group may rent the Family/ Group sized cabin This size could be used for many situations - an office retreat a family gathering or club meeting

APB_00117

Approximate sizes

Small size - 500-750 sq ft (1-2 bedroom) with screen porch

Medium sized - 1 000-1300 sq ft (2-3 bedroom) w/ screen porch

Family/ group - 1600-2000 sq ft (3-4 bedroom) w/ screen porch

The small and medium sized rental cabins will have a minimum of two parking spaces for each cabin. Each cabin will have at least one parking space for boat trailers. Additionally, auxiliary parking will be provided near each cabin cluster.

The family/ group cabins will each have 3 to 4 parking spaces as well as 1 boat trailer parking space. There will also be auxiliary parking for each cabin cluster.

All cabins will have at least 1 boat dock to be located nearby. (See locations on site plan)

This preliminary proposal calls for 10 of the small to medium sized cabins adjacent to the RV/ Campground area. The other cabin area will feature 7 small size cabins and 5 of the larger group type cabin. These will be developed as part of the phasing explained in a following segment of this conceptual plan. An additional cabin area would include 7 med sized cabins to be used for conference facilities in conjunction w/ the lodge.

P Restaurant

The restaurant will provide casual individual dining as well as banquet facilities for 100 to 250 people. This will be designed in such a way as to complement the lodge functionally and architecturally. This facility could be used for a multitude of functions, including receptions, banquets and any number of gatherings. Parking for this facility as well as the lodge will be developed in a terraced layout that works with the natural contours of the site and minimizes the visual and ecological impact.

of large asphalt paving areas Specific square footage and parking requirements will be determined as the design is developed

Docking for 16 to 24 boats will be provided as the Lodge/ Restaurant area is developed These docks will allow restaurant patrons to arrive by boat from various lake communities in the surrounding area

Parking for the restaurant and lodge will be designed to minimize visual and ecological impact The lodge will require 70-130 parking spaces The restaurant will require 25-62 spaces

□ Miscellaneous

Q Shaman Point

This rustic structure will be a focal point for the project as an historical element as well as a functional sculpture The space created could be used for small weddings or casual gatherings Access to this special point may be a simple footpath The journey of approaching the point would be part of the experience of arriving at a destination

R Main Entrance Gate

The main entrance gate will function architecturally as the 'greeting' to the development This will be a security control point and also a place in which guests can be directed to their desired area of the development If a minimal day use fee were required to offset maintenance costs this would be the place of collection

S Sewage treatment facility

Preliminary civil engineering studies have yielded a conceptual plan that carefully considers site constraints preservation of natural resources including trees and state of art technology to yield efficient sewage treatment (See engineering report following)

T Shoreline Management

Care will be taken throughout the project to preserve and protect the natural vegetative habitat of the site. Along the lakefront particularly precautions will be made to stabilize the natural shoreline.

This proposal features the installation of bulkheads as needed for structural support for docking and fueling uses. These bulkheads would be appropriately designed. And measures to preserve and foster the development of fish habitat will be observed where feasible.

In places where disruption of the natural habitat is inevitable, efforts will be made to relocate plant material to suitable areas. In every area where it is feasible, the intent is to maintain 50% undisturbed natural vegetation along the entire shoreline. And elsewhere on the site, effort will be made to retain as much undisturbed natural vegetation as possible.

U Road Improvements

Road and infrastructure improvements will be provided by phases as needed to facilitate the construction and use of each stage of the project. (See phasing below.)

Note: At this time, it has not been determined whether it will be required to assess a fee for day users of the proposed facilities. Should a fee be required, it will be a nominal fee to offset costs of maintenance of restroom facilities, maintenance of beach area, and trash and waste service.

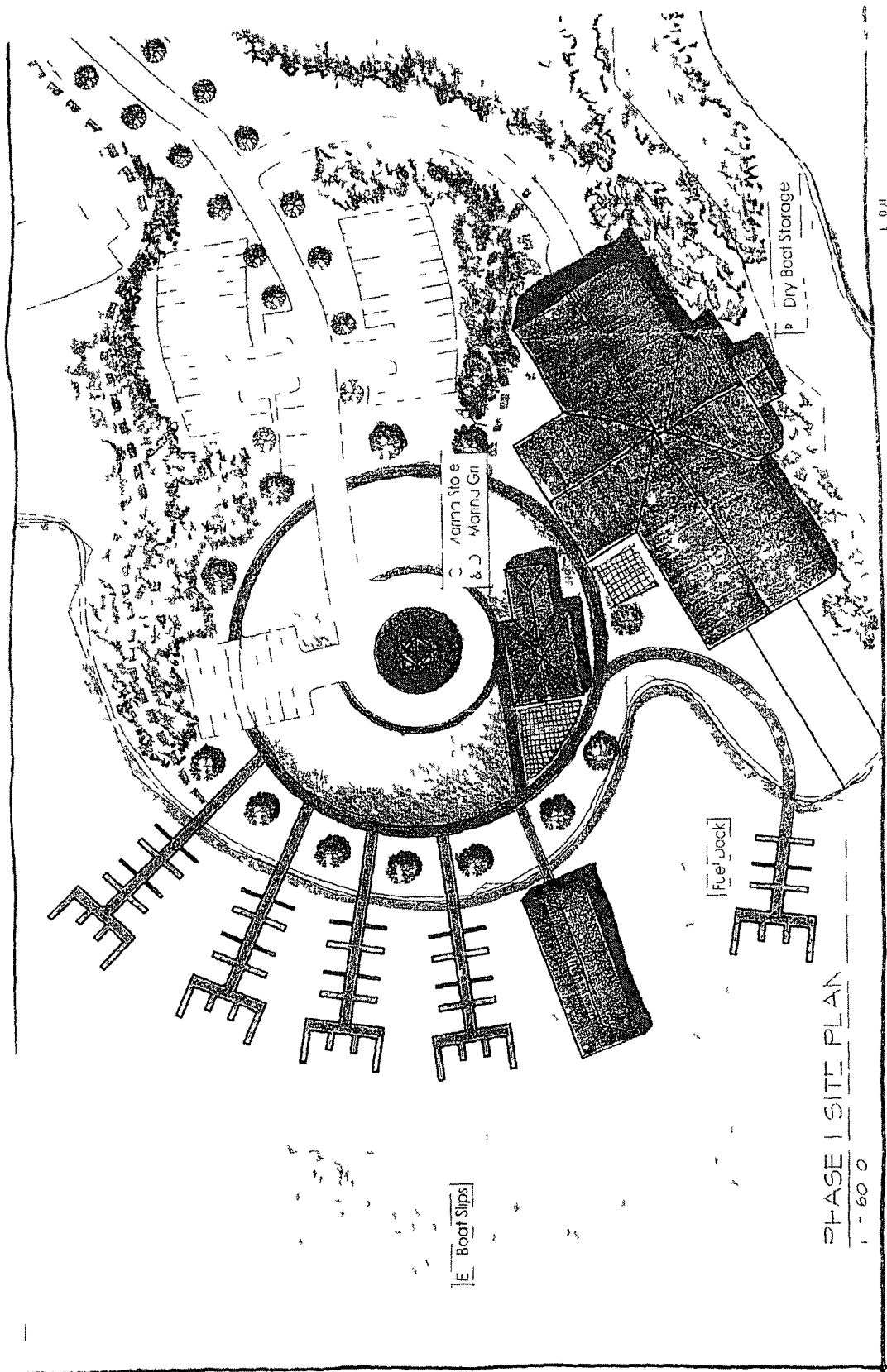
Phases of Project

Note Phases I and II are planned to be developed concurrently

Phase I

- Dry Boat Storage
100-200 boats
- Fuel Dock / Courtesy Dock
20 boats
- Marina Grille and Store
- Boat Slips
100-200 boats
- Shoreline Management / Bulkhead
- Roads and Parking
- Utilities Infrastructure
- Main Entrance Gatehouse
- Perimeter Nature Trail

This initial phase will include developing approximately 5 acres Preliminary estimate for this initial phase is approximately \$4 000 000 and will take 12- 18 months to complete construction

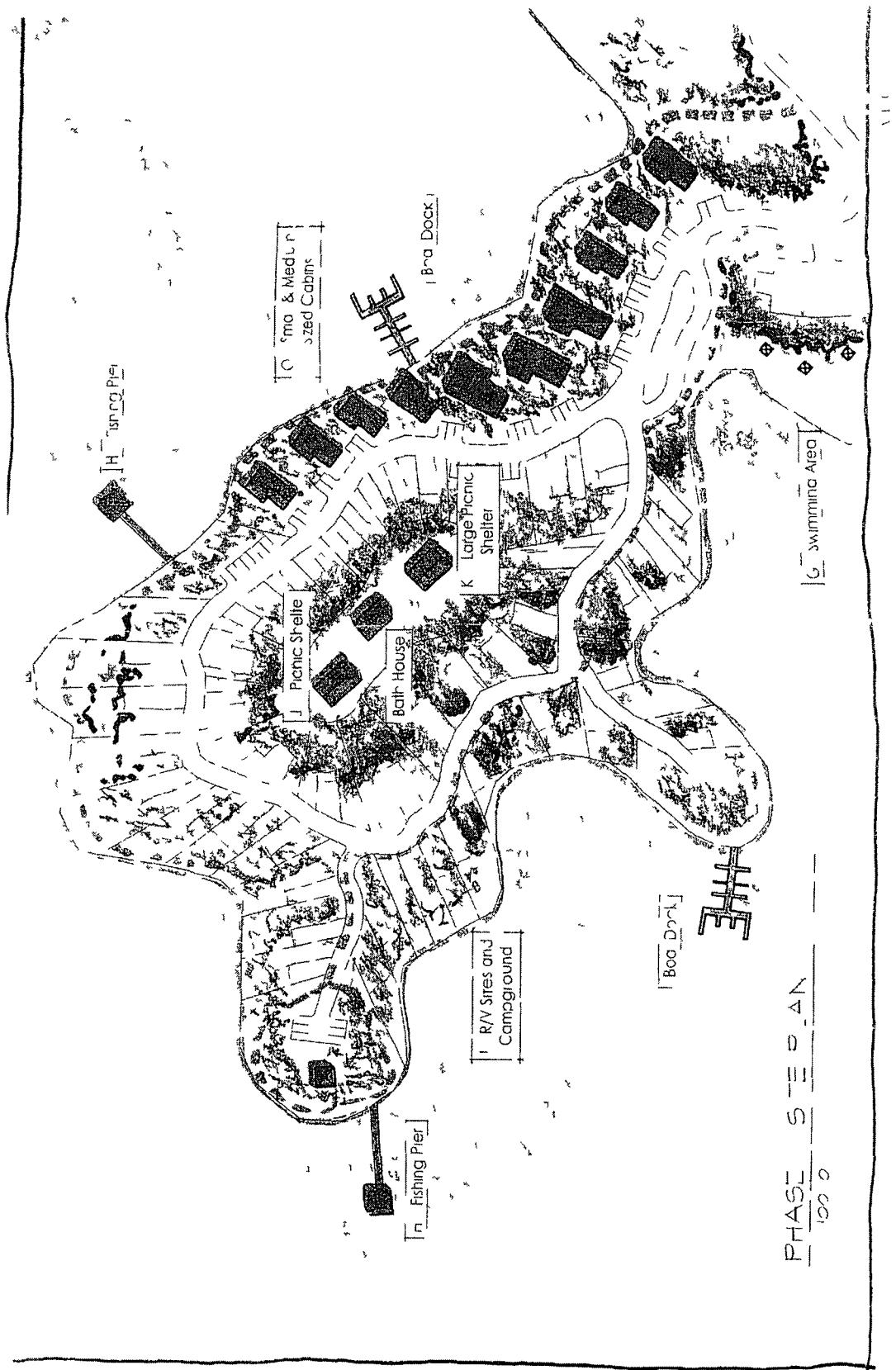


Phase II

Note Phases I and II are planned to be developed concurrently

- Recreational Vehicle sites
15-25 RVs
- Tent sites
20-40 campsites
- Bath House
- Picnic Shelters
- Courtesy Boat Docks
15-20 boats
- Swimming Area
- Overflow Parking
- Cabins
- Fishing Piers
- Infrastructure

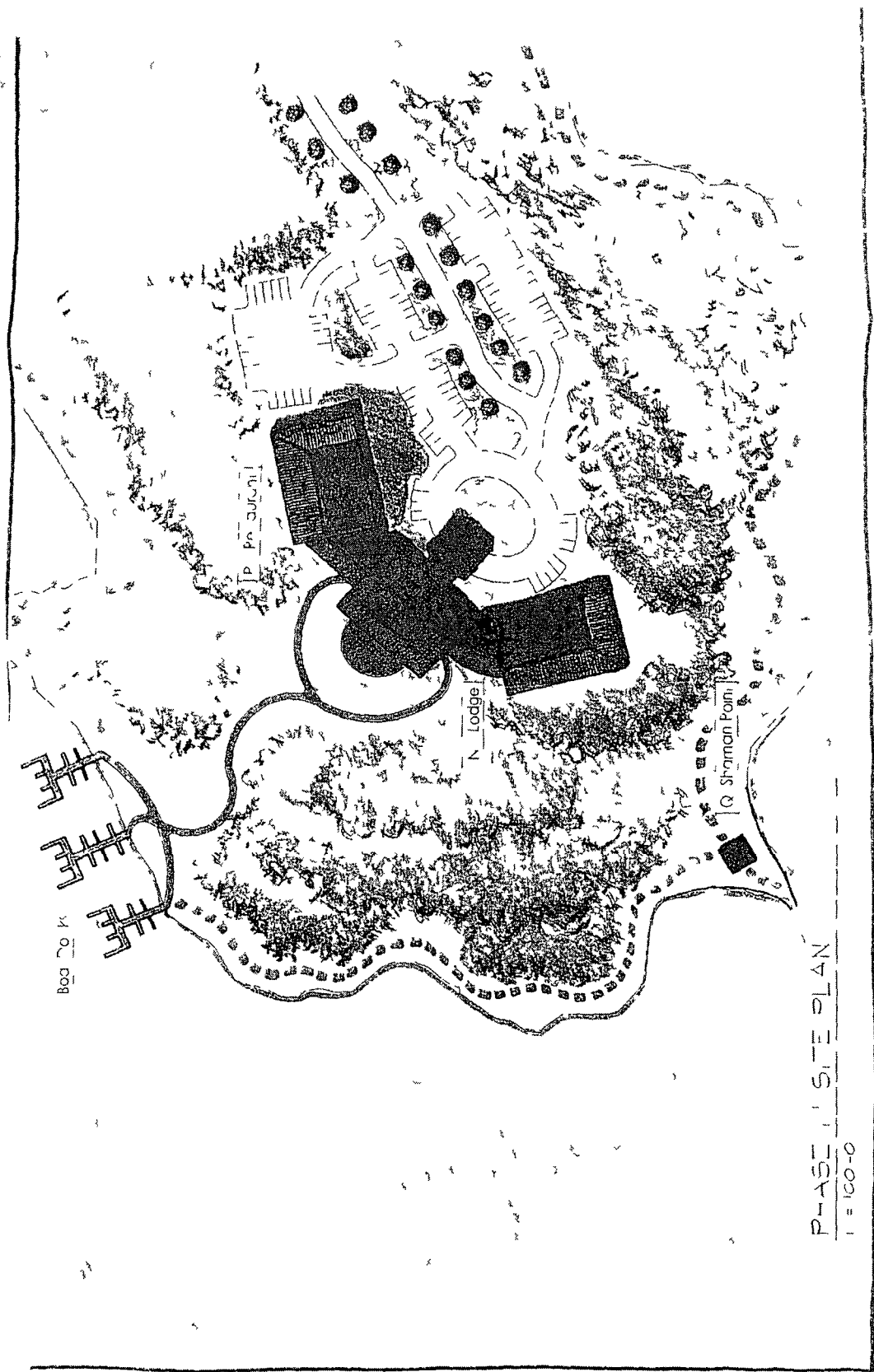
This second phase calls for the development of 11 acres. The approximate cost of this phase will be \$1 000 000. This phase will require 6 - 12 months to complete.



Phase III

- Resort/ Conference Center
- Restaurant
- Group Cabins
- Fishing Pier
- Bulkhead
- Boat Dock
 - 30-40 boats
- Infrastructure
 - Parking
 - Re-defining entry road to provide sense of arrival for Resort/Conference Center
- Utilities Infrastructure
 - Sewage treatment facility

This phase will entail the development of approximately 26 acres. The preliminary estimated cost for this part of the development is \$6,000,000. This phase will take 18 - 24 months to complete.



Phase IV

- Cabins
- Courtesy Boat Docks
(36) 3 docks with 12 slips each
- Secondary recreational opportunities

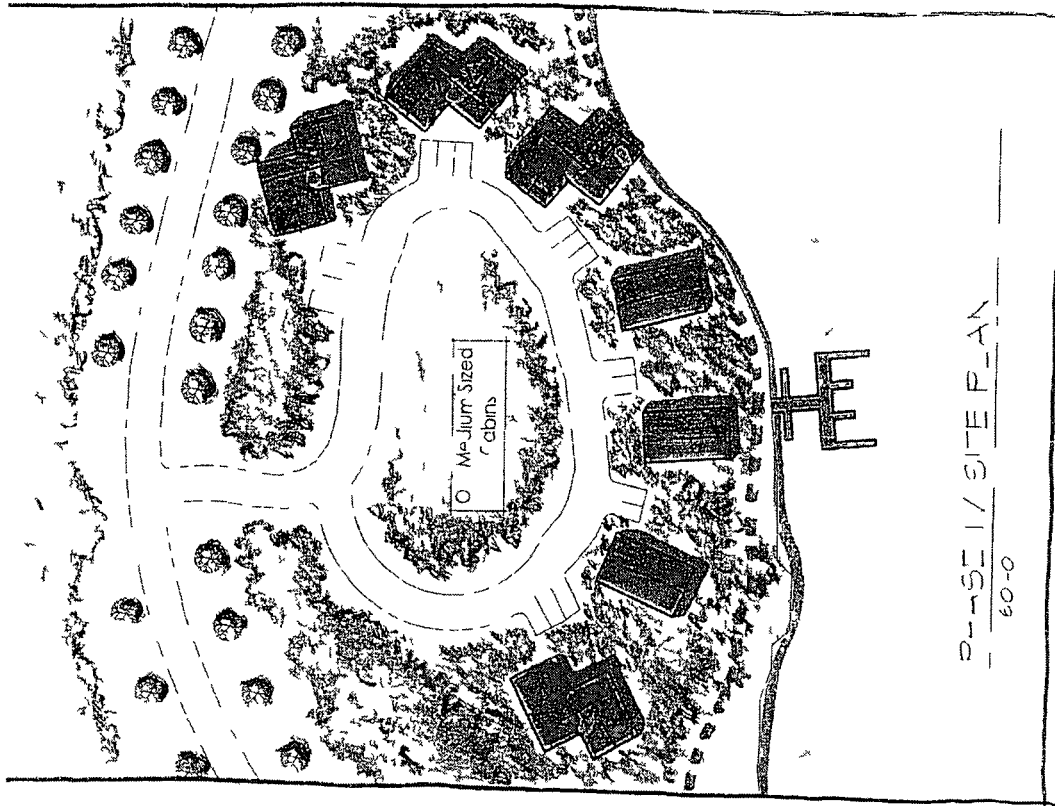
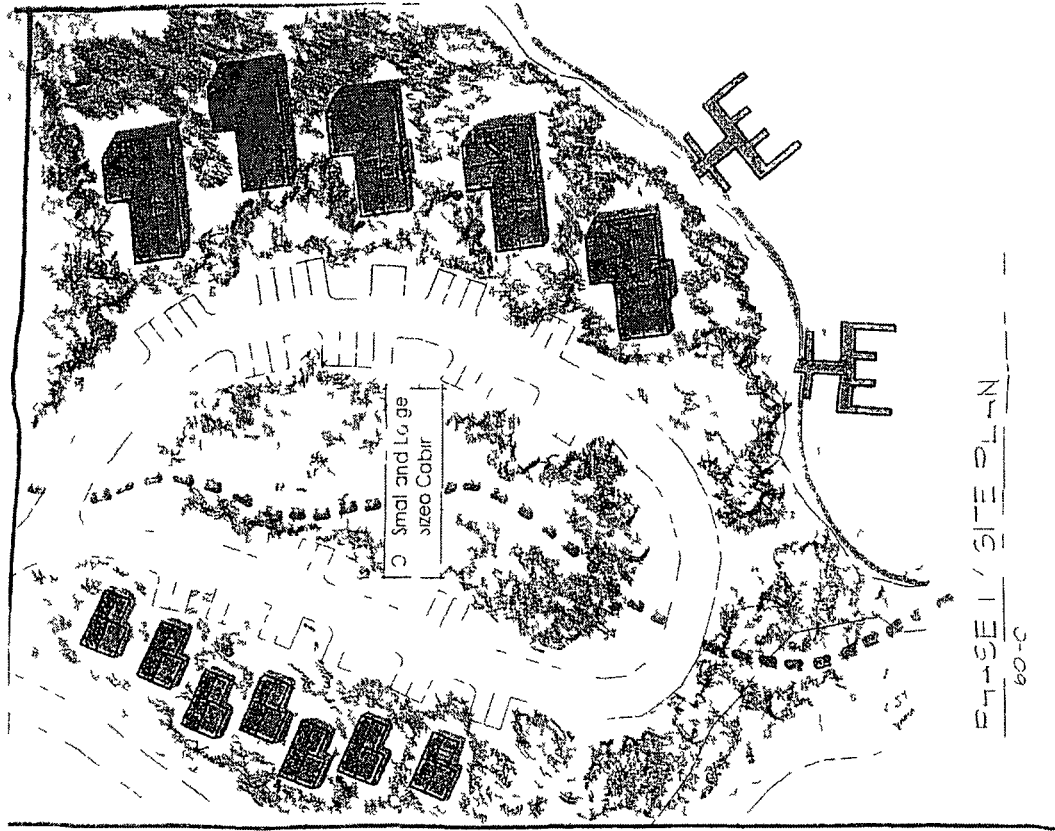
This phase calls for the final development of the remaining 16 acres

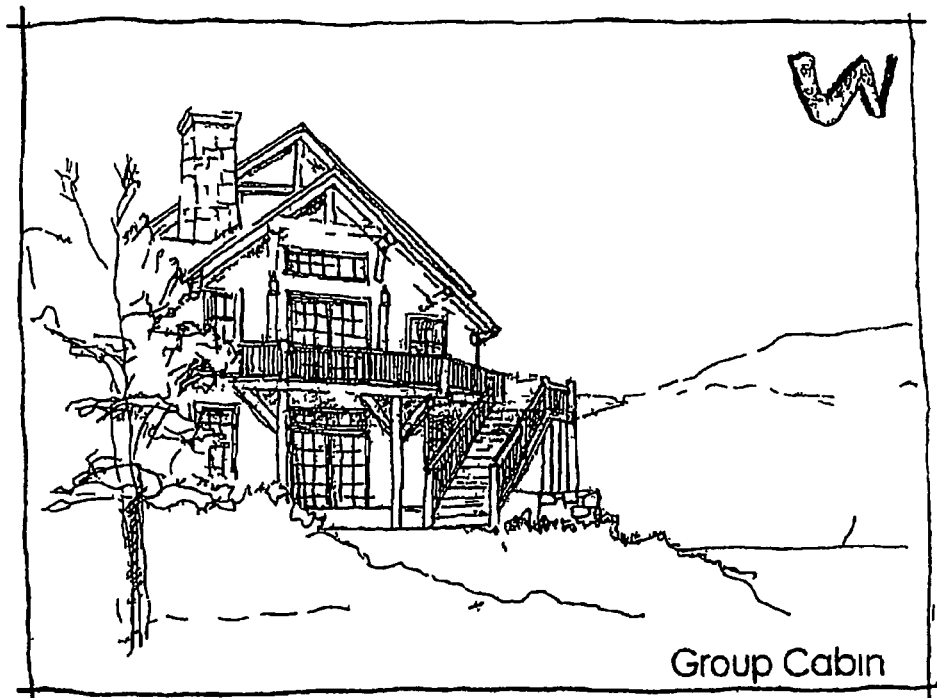
Preliminary cost estimate for this phase is \$1 000 000 -
\$1 500,000

Construction time is estimated to be 6-12 months

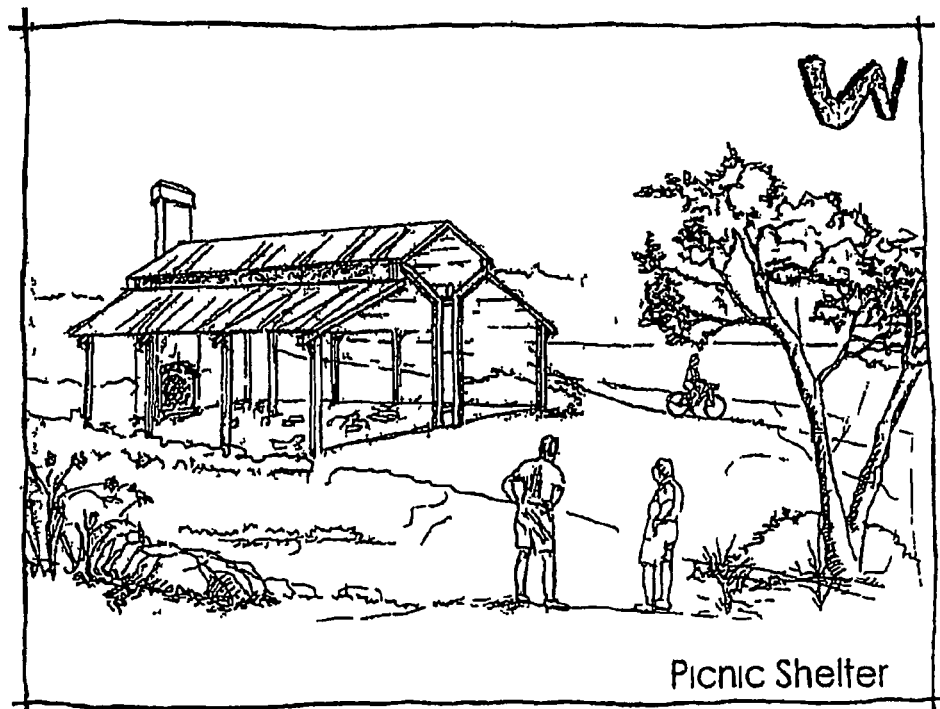
Please note

Phasing will overlap to expedite overall construction time. While one phase is being constructed, design and engineering on the next phase will be in process.





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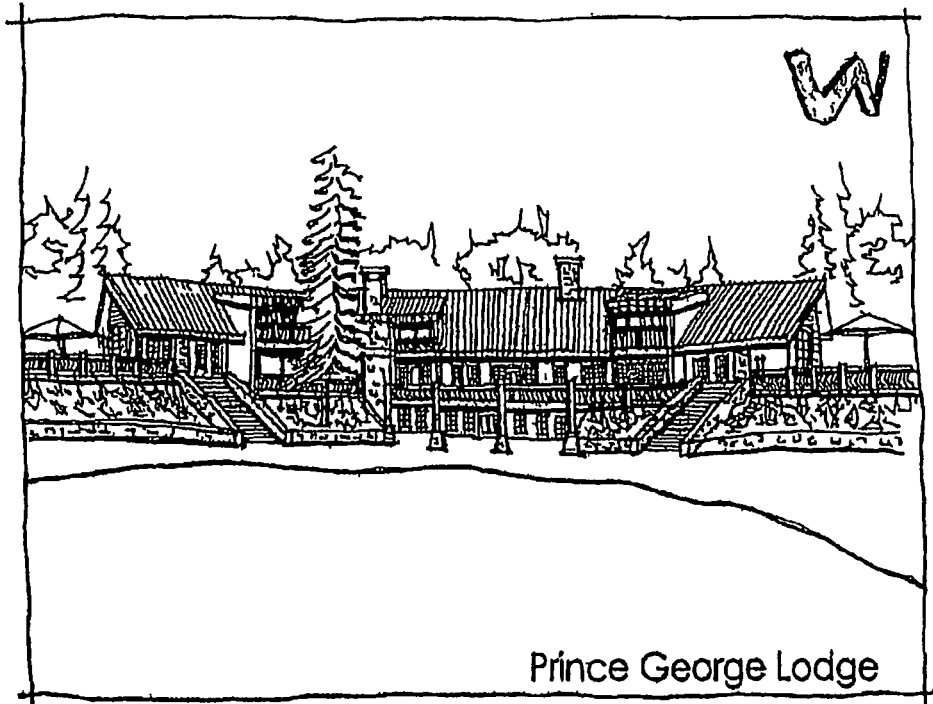


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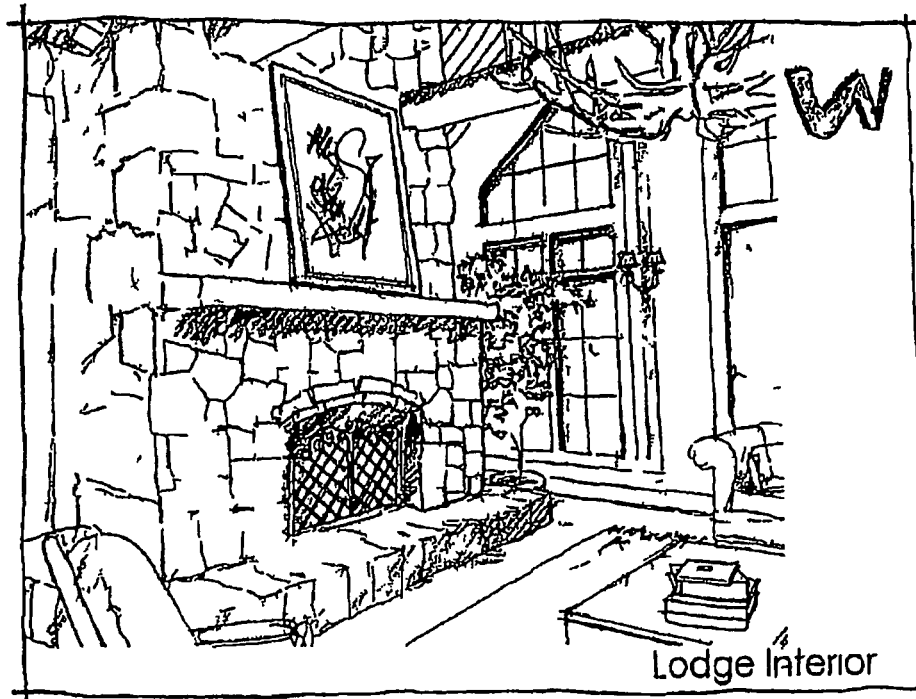
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PRINCE GEORGE LODGE



Prince George Lodge

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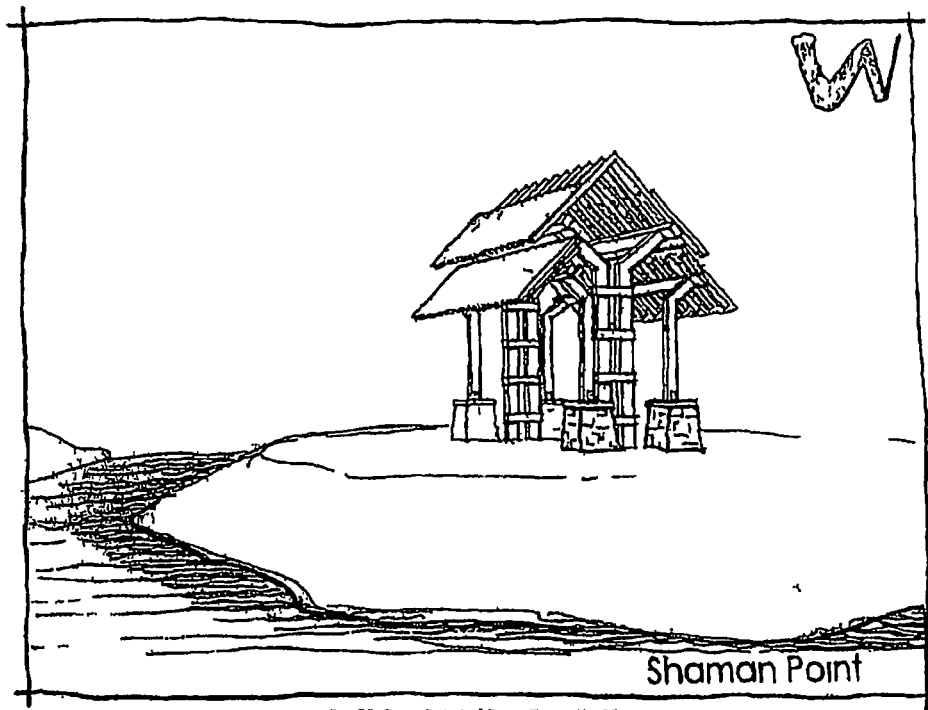


Lodge Interior

The Ellis Group P. A. Architects Greenville SC

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Native Stone incorporated into a Flowering Landscape
Heavy Timber Building Frames Alluding to the Wooded Character of the Site
Metal Roofs Resonating the Falling Rain
Stacked Stone Chimneys around which to Gather
Nature Imprinting a Lasting Essence of Place

33

APB_00131

WARPATH LANDING
Conceptual Design of Waste Treatment Facilities
2/28/05

Wastewater Design Basis

The following table summarizes a design basis for wastewater from the proposed facilities based on the Standards for Wastewater Facility Construction R 61.67, SC DHEC June 1998. Flow data is from Appendix A. *Unit Contributory Loadings to All Domestic Waste Treatment Plants*. Seasonal flows are denoted with an 'S'.

Development	Basis (Per day)	Units	Design Flow
Phase I			
Dry Boat Storage	40 gals/employee	4 employees	160 gpd (S)
Fuel Dock	30 gals/slip	20 spaces	600 gpd (S)
Marina Grill	40 gals/seat/day	8 seats	320 gpd (S)
Boat Slips	30 gals/slip	160 slips	4800 gpd (S)
		Total Phase I	5880 gpd
			0
Phase II			
Campground			
34 RV spaces	175 gals/site	34 spaces	5950 gpd (S)
10 campsites	50 gals/ppd	3 people/campsite	1500 gpd (S)
10 Cabins	100 gals/ppd	3 people	3000 gpd (S)
Bath House	Included		
Picnic Shelter	Included		
Fishing Pier	Included		
Boat Dock (16 spaces)	30 gals/space	20 spaces	600 gpd (S)
		Total Phase II	11,050 gpd
Phase III			
Conference Center	100 gals/room	120 rooms	12,000 gpd
Swimming Pool/spa	10 gals/user	20 users	200 gpd
Restaurant	70 gals/seat	250 seats	17,500 gpd
Group Cabins			
Three single	100 gals/ppd	3 person per room	900 gpd
Four with 4 rooms	100 gals/ppd	2 persons per room	3200 gpd
Fishing Pier	Included		
Boat Dock	30 gals/space	12 spaces	360 gpd
		Total Phase III	34,160 gpd
Phase IV			
Cabins	100 gppd	10 cabins x 3 people	3,000 gpd (S)
Picnic Shelters	Included		
Fishing Pier	Included		
Boat Dock	30 gals/space	8 spaces	240 gpd (S)
		Total Phase IV	3,240 gpd

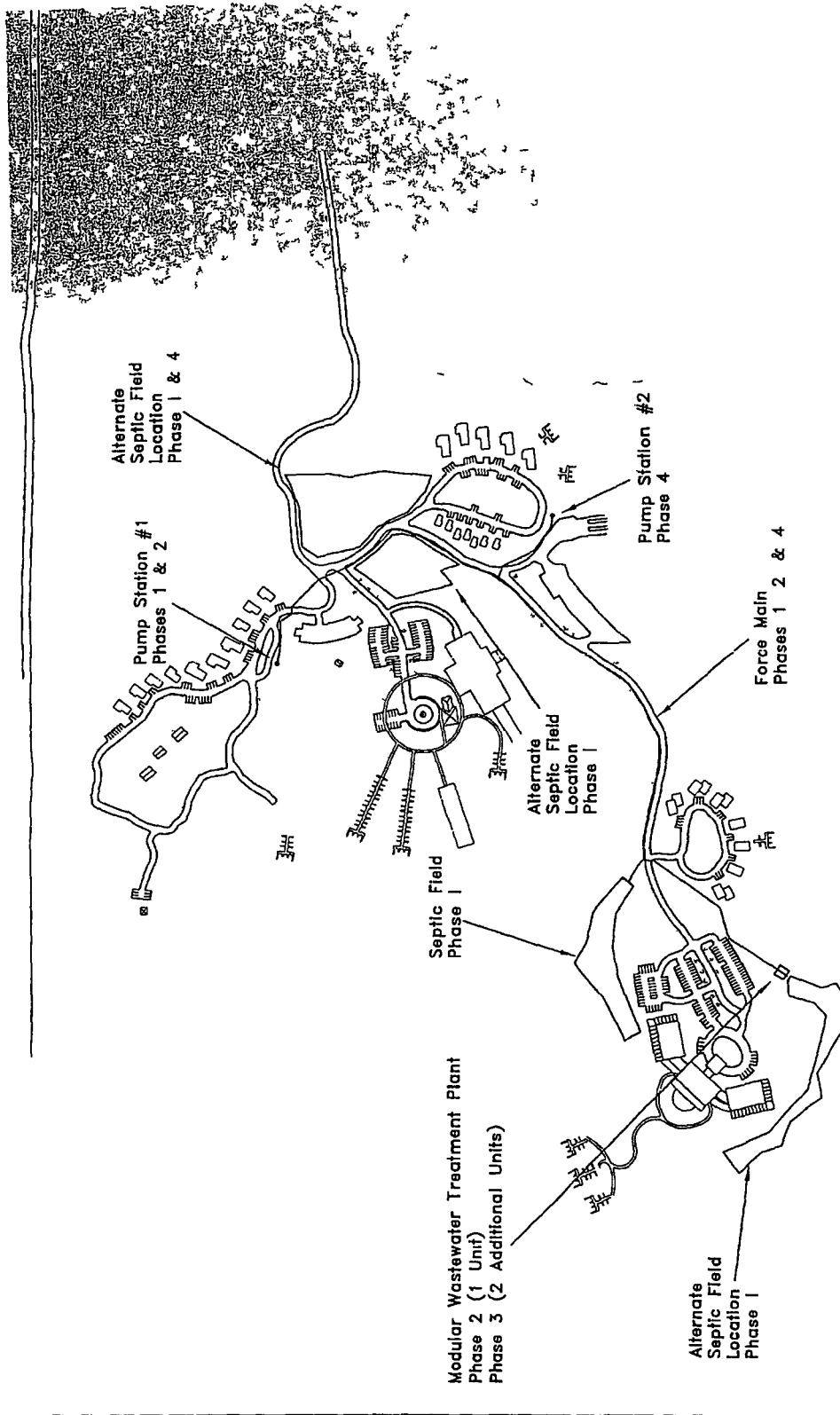
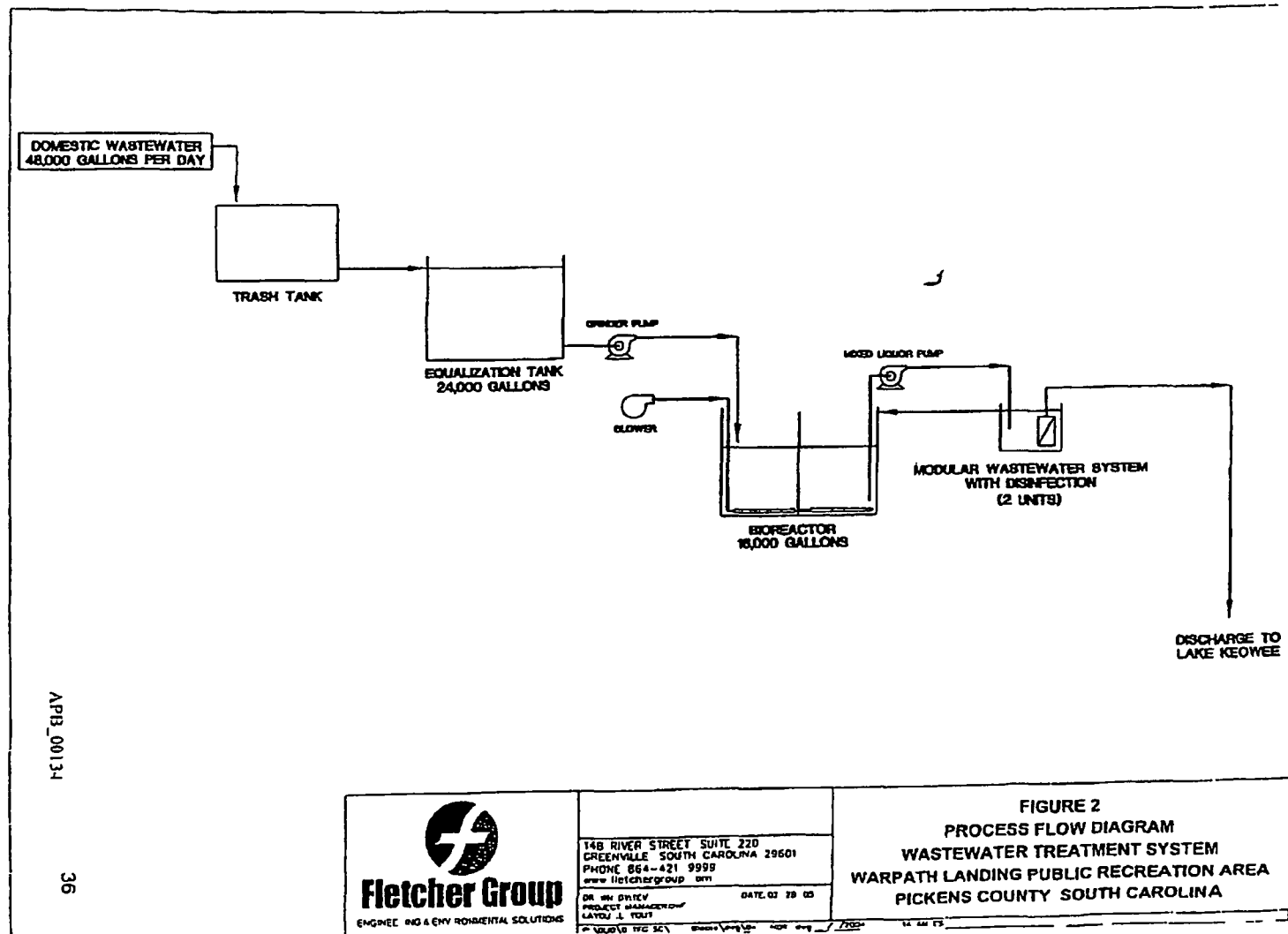


FIGURE 1
WASTEWATER TREATMENT CONCEPT
WARPATH LANDING PUBLIC RECREATION ARE
PICKENS COUNTY SOUTH CAROLINA

 Fletcher Group ENGINEERING & ENVIRONMENTAL SOLUTIONS		4510 E STREET SUITE 200 FARMERSVILLE, TEXAS 76840 PHONE 817-434-1999 FAX 817-434-1998 WWW.FLETCHERGROUP.COM PROJECT NO. 10-000000-001 DATE 10/10/10

APB_001



In round numbers Phase I would be 6 000 gpd Phase II 11 000 gpd Phase III 34 000 gpd and Phase IV - 4000 gpd for an ultimate total of 55 000 gpd

In order to accommodate the construction phasing and still provide system flexibility Fletcher Group Inc proposes to construct a septic tank field to accommodate Phase I Standard septic tank design calls for a drain field that will handle 5 gal/day/sq ft Trenches are typically 3 ft wide and can be no closer together than 10 ft The field should have a backup area that can handle 100% of the flow Using this criterion the 6000 gpd will require approximately 12 000 sq ft or 4 000 lineal ft of trench Parallel lines should be no longer than 150 ft so a flat area of 150 ft x 267 ft (approximately 9 acre) would be required

The final design will depend on topography soils and the site master plan Multiple septic tanks could be used to accommodate specific site conditions Figure 1 shows four potential locations for drain fields at Warpath Landing All of those drain fields should be integrated into surrounding land uses The following photograph shows a drain field threaded through trees at Devils Fork State Park

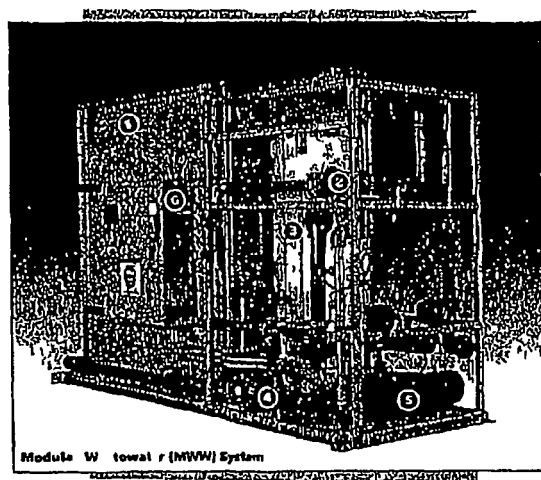


Phase II will generate 11 000 gpd of wastewater This would involve 2 more acres of drain fields in and around the campsites cabins and bath house Although this solution is possible we would recommend that the developers consider constructing the first of two 24000 gpd waste treatment modules to be located near the future conference center Assuming a lake discharge we believe that a biological membrane would work better than a conventional package plant One manufacturer of biological membranes will guarantee the following performance

BOD ₅	< 5 mg/L
TSS	< 3 mg/L
Ammonia Nitrogen	< 1 mg/L
Total Nitrogen	< 5 mg/L

Total Phosphorus	< 1 mg/L
Turbidity	< 1 NTU
Fecal Coliform	< 22 cfu per 100 mL

The following photograph shows a Zenon 24 000 gpd module. Each module is roughly 4 ft by 12 ft long. In addition, there would need to be an 8000 gallon aeration tank and a septic tank for collecting trash in front of the unit. The Septic Tank from Phase I could be used for this purpose. Figure 2 shows a Process Flow Diagram.



The Phase I pump station and pipeline would transfer the waste from both Phase I and Phase II. The treatment plant could be shutdown in the winter and the drain field used for all of the wastes.

Phase III will generate the largest load, 34 000 gpd. A second 24 000 gpd module should be able to handle the total flow. For a total flow of 51 000 gpd, it may be necessary to divert 3000 gpd to a septic tank and the drain field. For winter operation, one of the modules could be shut down.

The last phase has 4000 gpd, and the only new construction would be a small pump station. The drain field would only need to be slightly enlarged to handle the flow. Actual flows may show that SC DHEC estimates are conservative and no expansion is necessary. Alternatively, a drain field could be constructed to handle the bathhouses in Phase II, or the Phase I drain field could be expanded by approximately 2 acres. These plans can be finalized when actual site conditions are factored in.

Alternate Scenario

Pickens County prefers drip irrigation systems to discharges to the lake. An alternate that may prove less expensive is to use more conventional treatment and purchase offsite property that can be used for constructed wetlands, drip irrigation, spray irrigation, or a larger drain field. A drip irrigation system, for example, applies the wastewater to forested areas where it is absorbed by

the trees. At a loading of 10 lbs of BOD₅/day/acre, approximately 12 acres would be required. This area would need to be fenced. The wastewater would require conventional secondary treatment, but could then be pumped to a distribution system on the leased property.

Costs

Fletcher Group Inc. believes the above approaches will solve waste treatment problems for the development. We will submit a budget cost estimate by the end of this week. However, more detailed estimates should be made when specific site issues can be factored in.

Water

The area is served by the Six Mile Water District. We believe that they can supply water to the development.

Solicitation/Contract No. _____

Attachment No. _____

REPRESENTATIONS AND CERTIFICATIONS (Supplemental)

The person signing this document certifies that the following statements are current and correct. If any of these statements are incorrect or incomplete, Offeror shall provide an explanation with its offer and further clarification as requested by the Buyer. The Buyer may reject any offer which does not include this completed and signed document.

1. Signer is authorized to represent the business making this offer (Offeror) in all matters related to pricing, terms and conditions, conduct of business, and buyer-seller relationships between Offeror and the Buyer.

2. Offeror is an independent business concern free to enter binding Agreement or contract with the Buyer without any restrictions from another business entity or person company. If Offeror is owned or controlled by a parent company, Offeror shall identify the parent company or controlling entity in its offer.

3. If any efforts have been received at independently without communication, communication, agreement, or condition that relates to the proposal by any other Offeror or competitor. The Offeror has not, and will not, disclose offered prices to any other Offeror or competitor prior to award of resulting contract, or cancellation of this solicitation. The Offeror has not attempted to induce any other person or firm to submit, or not submit, an offer in response to this solicitation. Offeror warrants that the prices offered do not exceed those currently offered to any other customer for the same or similar quantities of the same or similar goods or services.

4. No person or company other than Offeror (employee) or affiliate firm, has/have been paid to solicit or obtain this Contract nor has any agreement been made to pay person or company a commission, fee, or any form of compensation contingent upon award of this solicitation.

5. Offeror has not, within a 3-year period preceding this offer had one or more contracts terminated for default by any Federal agency.

6. Offeror agrees to comply with the provisions of Federal Service Contract Act (FSCA), P.L. 89-286, 41 U.S. Code 351 as amended, or applicable rulings and regulations of the U.S. Secretary of Labor, for services which will be performed by categories of workers identified on the FSCA. For award of performing work under the Contract will be paid wages and fringe benefit not less than those determined by the Secretary to be prevailing in its locality, or those established by a bargained wage and benefit agreement, applicable to the Contract as provided in the FSCA, throughout the performance of the Contract.

These certification statements concern matters within the jurisdiction of an agency of the United States. Making a false, fictitious, or fraudulent certification may render Offeror subject to prosecution Section 1001 Title 18, United States Code. The Buyer may withhold an award based on any negative responses to the certifications above and/or Offeror's failure to adequately describe the conditions of the response.

Offeror agrees that the certifications and conditions provided herein are a material and binding part of and are hereby incorporated by reference into, any resulting contract unless specifically excluded in the contract.

Offeror	Tax ID or Social Security No.
Authorized Representative:	Title:
Signature	Date:
Internet (Homepage/Email) Address:	

EXHIBIT C
HOURS OF OPERATION AND USER FEES

APB_001,9

Warpath Development Corporation
Post Office Box 24234
Greenville, South Carolina 29616
864-346-6888

David S. Jolley
Duke Energy
Duke Energy Lake Service
EC12Q / P O Box 1006
Charlotte NC 28201 1006

Reference Warpath Development Corporation
Hours of Operations and User Fees

Dear David

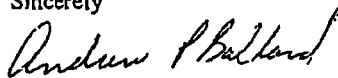
Basic operating hours will be three hundred sixty five (365) days per year for Lodge/Hotel,
Marina, Campsites RV Parking and Cabins

Seasonal Hours for Ship s Store, Marina Grill and Dry Boat Slip will be confirmed closer to
opening of Public Access Areas

Operational hours for Lodge/Hotel inner services are set closer to time of opening
Restaurant
Banquet Facilities
Lounge
Room Service

Most of these facilities will operate on a daily schedule of 6 00 a m until 9 00 p m

Sincerely



Andrew P. Ballard

APB bnb

Attachment

APB 00140

Wet Boat Slips	\$1,800 per year to \$4,000 per year- should average about \$2 500 per year based on boat size	
Dry Boat Slips	\$10 00 per foot with average boat being about \$2,500 per year maximum boat 34 feet	
Ship Store	will be like a small convenience store with gasoline grocery products and marina supplies	
Marina Grill	Breakfast Lunch and Dinner	
RV Parking Spaces	Summer Rates	\$60 00 per night
	June 1 st to Aug 31 st	\$300 00 per week
	Fall Rates	\$60 00 per night
	Sept 1 st to Nov 31 st	\$300 00 per week
Campsites	Winter Rates	\$45 00 per night
	Dec 1 st to Feb 28 th	\$225 00 per week
	Spring Rates	\$60 00 per night
	March 1 st to May 30 th	\$300 00 per week
	Summer Rates	\$35 00 per night
		\$150 00 per week
	Fall Rates	\$35 00 per night
		\$150 00 per week
	Winter Rates	\$20 00 per night
		\$100 00 per week
	Spring Rates	\$35 00 per night
		\$150 00 per week

Lodge/Hotel	Maximum 120 rooms	
	Summer Rates	\$149 00 per night \$750 00 per week
	Corporate Rate	\$ 99 00 per night
	Fall Rates	\$149 00 per night \$750 00 per week
	Corporate Rate	\$ 99 00 per night
	Winter Rates	\$109 00 per night \$550 00 per week
	Corporate Rate	\$ 99 00 per night
	Spring Rates	\$149 00 per night \$750 00 per week
	Corporate Rate	\$ 99 00 per night

Special Rates or Promotional Rates may be extended to certain groups and organizations

Restaurant at Lodge/Hotel	Breakfast
	Lunch
	Dinner
	Room Service
	Banquet Facilities
	Lounge Fine Dining Restaurant

Cabins	Small Size	(2 Bedrooms)
	Medium Size	(2 & 3 Bedrooms)
	Family/Group	(4 Bedrooms)
	Rates	\$100 00 per night per Bedroom

Larger Picnic Shelter	Daily Rates

EXHIBIT D

ANNUAL OPERATIONAL REPORT

APB_00143

Annual Operational Report

- I Basic Information**
 - A Facility Name**
 - B Lessee Name**
 - C Name, Address, E-Mail, Phone Number of primary contact person**
 - D Reporting Period**
- II Facility Summary**
 - A Structural Modifications – identify any facilities or amenities that were retired or added during the report period. For additions, also provide a copy of the Lessor's approval letter**
 - B Facility Inventory –inventory of all structures and amenities on the leased premises at the end of the reporting period**
- III Third Party Agreement Summary**
 - A Identify any contracts or agreements with third parties for the sale of goods or services on the Leased Premised during the reporting period, and provide a copy of the Lessor's approval letter for each**
- IV User Summary**
 - A Provide a summary of the numbers of public recreational users of the Leased Premises during the reporting period**
- V Financial Summary**
 - A Total Debits**
 - 1 O&M – Lessee's total Operating and Maintenance expenses for the Leased Premises during the reporting period**
 - 2 Capital – Lessee's total payments toward obligations incurred for capital improvements on Leased Premises during the reporting period**
 - 3 Total – Lessee's total debits for the Leased Premises during the reporting period**

B Total Credits

- 1 User Fees – Total income obtained by Lessee from users of the Leased Premises during the reporting period
- 2 Payments from Vendors or Third Party Contractors – Total income obtained by Lessee from vendors and contractors selling goods and/or services from the Leased Premises during the reporting period
- 3 Other Lessee Credits – Total contributions received from other sources (e g donations) by Lessee for use of the Leased Premises during the reporting period
- 4 Grants – Total of funds provided by grant sources for O&M or Capital Improvements during the reporting period
- 5 Total Credits – Lessee's total credits for the Leased Premises during the reporting period

C Net Cost of Operation – Total Debits minus Total Credits

- 1 Note If total Debits are less than Total Credits provide an explanation of how excess credits were used, to demonstrate compliance with the lease terms, Paragraph 7 User Fees and Hours of Operation

D Cumulative Total Capital Investment

- 1 Cumulative total investment Lessee has made, by itself, through third party contractors, from grants, or from donations during the life of the lease

VI Insurance Identification

- A Provide a brief description of the current means of compliance with the lease terms, Paragraph 30 Insurance by Lessee

VII Annual Inspection Results

- A Identify the names of participants and date of annual inspection required by the lease terms, Paragraph 8 Joint Annual Inspection
Identify any major action items required and the status of completing each

EXHIBIT E

FERC ORDER NUMBER 313

COMMISSION RECREATION POLICY

APB_00146

EXHIBIT E

COMMISSION RECREATION POLICY

ORDER NO 313 - DOCKET NO R-294

As Amended By
ORDER NO 375-B - DOCKET NO R-294
And
ORDER NO 508 - DOCKET NO RM74-21

Federal Power Commission Order No 313, issued and effective December 27, 1965, amended Part 2, General Policy and Interpretation, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, by adding a new Section 2.7 entitled "Recreational development at licensed projects." Order No 375-B, issued and effective April 14, 1970, amended subparagraph (f) thereof. Section 2.7 as amended reads as follows:

§2.7 Recreational development at licensed projects

The Commission will evaluate the recreational resources of all projects under federal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost. The Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities.

The Commission expects the licensee to assume the following responsibilities:

- (a) To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources afforded by the project. To the extent consistent with the other objectives of the license, such lands to be acquired in fee for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir plus all other project lands specified in any approved recreational use plan for the project.

- - - - -
- (b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters and to include therein consideration of the needs of physically handicapped individuals in the design and construction of such project facilities and access
 - (c) To encourage and cooperate with appropriate local, state, and federal agencies and other interested entities in the determination of public recreation needs and to cooperate in the preparation of plans to meet these needs, including those for sport fishing and hunting
 - (d) To encourage governmental agencies and private interests, such as operators of user-fee facilities, to assist in carrying out plans for recreation, including operation and adequate maintenance of recreational areas and facilities
 - (e) To cooperate with local, state, and federal government agencies in planning, providing, operating, and maintaining facilities for recreational use of public lands administered by those agencies adjacent to the project area
 - (f)
 - (1) To comply with federal, state and local regulations for health, sanitation, and public safety, and to cooperate with law enforcement authorities in the development of additional necessary regulations for such purposes
 - (2) To provide either by itself or through arrangement with others for facilities to process adequately sewage, litter, and other wastes from recreation facilities including wastes from watercraft, at recreation facilities maintained and operated by the licensee or its concessionaires
 - (g) To ensure public access and recreational use of project lands and waters without regard to race, color, sex, religious creed or national origin
 - (h) To inform the public of the opportunities for recreation at licensed projects, as well as of rules governing the accessibility and use of recreational facilities

EXHIBIT C

Transcript of the Testimony of:

RICK THOENNES, III

September 18, 2009

In the Matter of:

BALLARD v ROBERSON, et al

Irveta J. Shouse/GWC

Post Office Box 9177
Greenville South Carolina 29604
Phone 864 233 2341
Fax 864 233 5534
E mail IrvetaJ@aol.com

1 exhibit?

2 (DEPOSITION EXHIBIT NO 49 MARKED AND ENTERED)

3 Q I show you what's been marked as Exhibit 49 This
4 is the Answer and Counterclaims of the Defendants Did you
5 review this document before it was filed?

6 A Before it was filed?

7 Q Yes

8 A Yeah, I'm sure I did

9 Q Did you provide information for this Answer and
10 Counterclaims?

11 A I don't recall

12 Q If you look at Paragraph 84, which is on Page 11,
13 there is an allegation in the last sentence that says, "Ballard
14 gave the impression that the development was 'shovel ready '"
15 And shovel ready is in quotes Do you see that?

16 A Yes

17 Q Did you ever hear Mr Ballard use the phrase "shovel
18 ready" before the agreement was signed?

19 A I don't know if he used those exact words or not

20 Q Well, do you remember him using that phrase?

21 A I don't recall if he used the words "shovel ready"
22 or not He indicated to us, in our opinion, it was shovel
23 ready

24 Q But he didn't use that phrase

25 A He may not have used that phrase

1 Q Right And, as we've seen, the agreement sets forth
2 that final permits have to be obtained, correct?

3 A Yes

4 Q Let me show you what's previously been marked as
5 Exhibit 4 And you see that's dated after the agreement Have
6 you ever seen this e-mail before?

7 A I'm sure I probably have It was sent to me

8 Q Your e-mail address is rick@Marick net, is that
9 right?

10 A Yes

11 Q Let me show you what's marked Exhibit 6 before Is
12 that the Conceptual Plan you were referring to earlier?

13 A Appears to be

14 Q Look at Page 15 of the Conceptual Plan

15 A Okay

16 Q And does that indicate that there would be dry-dock
17 boat storage for 100-200 boats, in Paragraph B?

18 A Yes

19 Q And if you look at Paragraph 16

20 MR HOWARD Page 16?

21 Q I'm sorry Page 16, Paragraph E And does it say
22 that there will be "slips on each side to be developed as the
23 demand indicates but not to exceed space for 100-200 boats "?

24 A Yes

25 Q And is that the phrase you were referring to

1 earlier?

2 A Uh-huh

3 Q And so the Conceptual Plan did not guarantee 200
4 boats is that correct?

5 A I take it as it says we could have 200 boats

6 Q It says 100-200, does it not?

7 A It does But we determined that the demand would be
8 there for 200 boats

9 Q Did Duke Power agree with you?

10 A Nope

11 Q And this lease is between Warpath and Duke Power,
12 correct?

13 A Yes But this is a Conceptual Plan This isn't a
14 lease

15 Q Well, the Conceptual Plan is attached to the lease,
16 is it not?

17 A Well, it could be

18 Q And in fact, it's incorporated in the lease, isn't
19 it?

20 A Yes

21 Q Okay And then if you look at Page 23 of that same
22 document ?

23 A Okay

24 Q And does that indicate, under Boat Slips, 100-200
25 boats?

1 Q What misrepresentation do you think he made?

2 A I thought he represented to us that we could get 200
3 slips

4 Q Why do you say that?

5 A Because in all the discussions and meetings we had,
6 and proformas and architectural designs, everything always was
7 200 slips

8 Q Well, who set up the proformas?

9 A We did

10 Q Do you remember if Andy ever told you, or told
11 anyone in your group, prior to entering into the shareholder
12 agreement, that Duke Power had told him or told Warpath to go
13 for the maximum and put 200 in the Conceptual Plan?

14 A You talking about prior to us purchasing the
15 property?

16 Q Yes Prior to your entering into the shareholder
17 agreement

18 A Can you state the question again?

19 Q All right Do you remember Andy telling you, or
20 telling your father or Mr Roberson, that Duke Power had told
21 him and Warpath to put the maximum number in the Conceptual
22 Plan and to go for the maximum in the Conceptual Plan?

23 A I don't recall

24 Q Okay You had a chance to read the Conceptual Plan
25 and the lease before you signed the agreement correct?

EXHIBIT D

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Andrew P (Andy) Ballard)

Plaintiff)

vs) C A No 2008 CP 23 5739

Tim Roberson Rick Thoennes)

Rick Thoennes III and Warpath
Development Inc)

Defendants)

DEPOSITION OF RICK THOENNES

PURSUANT to Notice the deposition of Rick Thoennes
called by the Plaintiff was taken commencing at the hour of
2 04 p m on Monday November 9 2009 in the offices of
Haynsworth Sinkler Boyd PA Attorneys at Law 75 Beattie Place
Eleventh Floor Greenville South Carolina

IRVETA J SHOUSE Reporter

G W Coleman Associates

Post Office Box 9177 Greenville South Carolina 29604
864/233 2341

1 A I don t know

2 Q Do you remember Andy Ballard telling you that
3 Warpath Development was shovel-ready?

4 A I don t know about shovel ready but it was ready to
5 start construction within months

6 Q But do you remember him using the phrase 'shovel
7 ready'?

8 A I don't remember one way or the other Seems to me
9 that shovel ready came up with the stimulus bill

10 Q Which was after the Warpath shareholder agreement

11 A Yes But the meaning I would say yes

12 Q Well something really isn t shovel ready until you
13 have all the final permits in place is that correct?

14 A Oh that s true

15 Q Do you believe that Andy Ballard was entitled to
16 rely on what Duke Power was telling him and you?

17 MR HOWARD Object to the form

18 A You d have to ask Andy that

19 Q Well what's your belief?

20 A I don t know

21 Q Well did you believe you were entitled to rely on
22 what Duke Power was telling you?

23 MR HOWARD Object to the form

24 A I was really relying more on Andy because he d
25 spent three or four years in bed with them or excuse me

1 he'd spent three or four years negotiating with them so he
2 knew them better than anybody probably anybody on the lake

3 Q Well, Duke Power was the judge of its own decisions,
4 though correct not Andy?

5 A I don't know you'd have to ask Duke Power

6 Q But I mean Duke Power made its own decisions it
7 just didn't do what Andy Ballard said correct?

8 A I don't know what Duke Power did Duke Power is its
9 own entity I can't answer for them

10 Q And it's a much bigger company than just Andy
11 Ballard

12 A It's what?

13 Q It's a much bigger entity than just Andy Ballard

14 A I don't know how big Andy is But I would assume
15 so I don't wanna underestimate Andy's abilities over there

16 Q Did you have any professionals working with you in
17 connection with the due diligence before you invested in
18 Warpath or signed the shareholders agreement Stock Purchase
19 Agreement?

20 A To tell you the truth I don't know when I talked to
21 Goldie & Associates I just honestly don't remember when we
22 got them involved whether it was before or after

23 Q But you had the opportunity to if you had wanted to

24 A Yeah We had to be very careful not only for
25 Andy's sake but for our sake I mean we couldn't just shop

1 this thing around

2 Q Right

3 A Because it was pretty sensitive So you know
4 there was a limit as to how much we could or couldn't do And
5 I agreed with him on that that you know we had to be very
6 careful who we talked to and when we talked to them and if we
7 talked to them without Andy

8 Q Right

9 A That's why he was there when we made the call to
10 Duke Power and that's why he went with us to the county

11 MR HOLLEMAN Let's take a quick break

12 (BREAK)

13 Mr Holleman Resuming

14 Q I just have a few jury questions if they sound odd
15 And everybody's been asked this question so don't take
16 offense Do you have a criminal record of any kind?

17 A (Shaking head in the negative)

18 Q Have you ever been charged with or convicted of any
19 crime?

20 A Speeding

21 Q Apart from traffic violations?

22 A No

23 Q Do you have any relatives in Greenville County?

24 A Yes

25 Q And who are they?

EXAMINATION

1

2

By Mr Howard

3

Q Mr Thoennes, I m Josh Howard Just for the record

4

I'm your attorney

5

A Yes

6

Q Asking you a few questions here in follow up to Mr

7

Holleman s

8

A Okay

9

Q You were asked about Exhibit You were asked a

10

question about purchasing 20 000 shares Do you recall that?

11

A Yes

12

Q When y all paid a million dollars were you

13

purchasing 20,000 or 80 percent of the company?

14

A 80 percent of the company

15

Q Okay

16

A We were supposed to end up with 80 percent Andy was

17

supposed to end up with 20 percent

18

Q And is it fair to say it didn t matter how that was

19

divided up? What I mean by that it s just the total number

20

MR HOLLEMAN Object to the form

21

A The percentage was supposed to be 80/20 regardless

22

of the number of shares

23

Q So do you recall how many shares Mr Ballard had at

24

that time?

25

A I honestly don t

1 Q Let s say it was 40 000 shares
2 A Uh huh
3 Q Let s assume that If it was 40 000 shares could
4 y'all have divided it up 8 8 8 and 16 to give you 40?
5 MR HOLLEMAN Object to the form
6 A I guess we could have
7 Q Yeah
8 A Yeah
9 Q And would that have given the 20 percent for you
10 and
11 A Yes
12 Q the 20 percent for Rick III and 40 percent for
13 Tim?
14 A Yes
15 Q And then left Andy with 20 percent
16 A That s right
17 Q Okay
18 A It was easier to do 100 000 shares 20 20 20 40
19 Q You were also asked about Exhibit 28 which is the
20 e mail Mr Roberson sent to you Do you recall this?
21 A Yes
22 Q You were asked about do you recall being asked a
23 question about the term 'investor' ?
24 A Yes
25 Q Let me ask you At this time did you hold stock in

1 Q Okay Some people were just putting up money and
2 some people were putting up time

3 A That s right

4 MR HOLLEMAN Object to the form

5 Q Is that correct?

6 A Yes Time and effort

7 Q Let me ask you this When you got asked several
8 questions about Duke Power and their relationship in this do
9 you recall those questions?

10 A Yes

11 Q Okay Now when you Tim and Rick the Third went to
12 meet with Mr Ballard were you buying a lease or were you
13 buying a stake in a company that held a lease?

14 A We bought a stake in a company that held a lease
15 Warpath held the lease

16 Q Okay

17 A We couldn't buy the in fact we couldn t buy the
18 lease it had to stay in Warpath We couldn t change the name
19 or anything

20 Q Okay Now as part of the presentation Well
21 let me ask you this When you went to meet with Mr Ballard
22 was a presentation made?

23 A Yeah

24 Q Okay Now as part of the presentation were you
25 shown a conceptual plan?

1 Q Just approximately where did the how far did the
2 architect this is the main right here in the middle
3 where you see G,E,T and B, is this kind of the main primary
4 section of the Warpath Marina?

5 A Yes

6 Q Now how far if you ll just draw on the map just
7 approximately how far up this far and how far down the
8 architect put the

9 A The 200?

10 Q Yeah put the 200

11 A Somewhere in there (Marking Exhibit 51)

12 Q Okay And you just placed a red line it looks
13 like that would almost extend from where block H is on the
14 map, down to almost where block L is?

15 A Correct

16 Q Is that about right?

17 A That s about right

18 Q It sort of cuts off and almost makes into a little
19 harbor here is that right?

20 A That s right

21 Q Okay

22 A I think we called it the marina cove or something
23 like that

24 Q Okay Now was this plan this rendering shown to
25 Mr Ballard that the architect made of the 200?

1 A Yes
2 Q And I believe you said something about him reacting
3 before How did Mr Ballard react when he saw it?
4 A He was surprised Extremely surprised
5 Q After he had stopped being surprised what did he
6 tell you at that point?
7 A He didn t think Duke Power would go for that
8 Q Did he tell you how far they d probably allow you to
9 go?
10 A I don t remember that one way or the other to tell
11 you the truth I don t know
12 Q Okay
13 A I don t know
14 Q Okay Ultimately did you go have a meeting with
15 Duke Power?
16 A Rick Tim and Andy did Rick III
17 Q Rick III?
18 A (Affirmative nod)
19 Q So you weren t present at that meeting?
20 A No They went to Charlotte
21 Q Okay Do you know ultimately what Duke Power did as
22 a result of that meeting?
23 A They told us we couldn t do it and we had to
24 re design it
25 Q And by re design what did they tell you you

1 couldn't do?
2 A They basically told us we had to stay
3 Q If you wanna draw it in blue
4 A We couldn't put anything on this side (Indicating)
5 Q And this is the side I guess it's toward the
6 bottom of the map
7 A Be the south side? Is that the south side?
8 Q Uh huh
9 A We couldn't put anything on the south side of this
10 cove And we couldn't get beyond I think this area right
11 here (Marking Exhibit 51)
12 Q And you've marked those areas in blue
13 A That's right
14 Q And it appears that the cove area to the south side
15 I believe you indicated possibly it looks like it's along the
16 coast with a block letter L on it?
17 A Correct Well there's another L
18 Q Okay
19 A There's another L
20 Q Okay Well L's probably bad But it's
21 A The blue L
22 Q Okay You circled the L that we're talking about
23 A Right
24 Q Okay Now did your architect work it within those
25 confinements at that point?

1 A Yes

2 Q And what was he able to come up with at that point?

3 A 102

4 Q Okay

5 A Paid slips Now again I need to differentiate
6 between paid and unpaid The courtesy slips were in here to
7 service the dry stack building Those were not included in the
8 102 paid slips

9 Q So is it fair to say that Duke Power didn't tell you
10 you could only have 102 slips? Is that right?

11 A That's true We came up with the 102 after they
12 told us where we could put them

13 Q Okay

14 A They didn't come up with the 102

15 Q Okay They just told you the area you would be
16 confined to

17 A That's right And we had to meet their criteria of
18 you can only go one third out in a cove and you can only go
19 200 feet out in the open

20 Q Okay

21 A And you have to have so much room between them I
22 don't remember what that dimension is So that's how we came
23 up with the 102

24 Q Okay

25 A In fact they told us we'd have to go back to FERC

1 if I recall correctly we d have to go back to FERC in order to
2 do anything different than that And that would be another
3 start over of three or four years

4 Q Okay When you were evaluating this investment how
5 important were the wet slips to your overall value of the
6 investment?

7 A The wet slips and the dry stack are the major
8 revenue producers primarily And then secondarily they spin
9 off for gas and restaurant and marina store and all that

10 Q Okay How did the loss of almost 100 wet slips
11 affect the investment?

12 MR HOLLEMAN Object to the form

13 A It cut our revenue for paid in water slips in half
14 basically Almost half

15 Q Was the loss of half of those paid in water slips
16 was that significant to the value of the investment?

17 MR HOLLEMAN Object to the form

18 A Yes

19 Q If you had known from the beginning that only 102
20 wet slips would have been the maximum how would that have
21 affected the invested?

22 MR HOLLEMAN Object to the form

23 A Well it would have lowered our proforma so I would
24 assume it would have lowered the one million dollar payment and
25 the 20 percent stock

1 I know he talked to Palmetto

2 Q Okay

3 A And I talked to Collin Mackie at Greenville First
4 And another bank but I can't remember who the other bank was

5 Q Did you discuss financing with them?

6 A I did

7 Q Tell me about your discussions

8 A There had always been a concern about the lease and
9 how they could how we could put a mortgage on it which we
10 can't and whether that would affect the financing So when I
11 talked to Collin who was our banker for Marick and whatever
12 else we were doing, he told us that as long as we could secure
13 Warpath so that if they had to foreclose they could get the
14 lease then they could finance it

15 Q What ended up or turned out from that?

16 A Well he told us that it would I asked him if it
17 would be something less than the typical 80 percent loan which
18 was in place then And that was before all this recession
19 And he said that an 80 percent loan would probably be feasible
20 again as long as they could secure the lease if they had to
21 foreclose

22 Q Okay Did you ever find out if they could secure
23 the lease?

24 A Yes

25 Q What was the answer to that?

1 A In fact Andy gave me permission to talk to the
2 attorney that drew up the lease I think Andy could tell you
3 his name but I don't remember his name Chasteen, maybe? I
4 don't remember But anyway I talked to the attorney that
5 drew up the lease for Andy with his permission and then I
6 talked back to the bank again and they agreed that they could
7 probably write the paperwork in order to secure the loan

8 Q And was the attorney does Stuart Anderson ring a
9 bell?

10 A Yes Anderson, Fayssoux & Chasteen It was
11 Anderson

12 Q Okay And when you spoke with the bank this was
13 sometime in early 2007?

14 A This was before the signed the Stock Purchase
15 Agreement

16 Q And is it fair to say it was your understanding that
17 an 80/20 loan was possible?

18 A Yes

19 MR HOWARD That's all the questions I have

20 MR HOLLEMAN I've got several others

21

22 REEXAMINATION

23 By Mr Holleman

24 Q Now Exhibit 51 is a Site Master Plan that was
25 prepared by architects that you all selected after you

EXHIBIT E

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**STOCK PURCHASE
AGREEMENT**

This Agreement made and entered into this 29th day of May 2007 by and between Andy Ballard hereinafter referred to as *Ballard* Tim Roberson hereinafter referred to as *Roberson* Rick Thoennes hereinafter referred to as *Thoennes* Rick Thoennes III hereinafter referred to as *Thoennes III* and Warpath Development Inc hereinafter referred to as *Warpath*

WITNESSETH

Whereas Warpath is a South Carolina corporation presently solely owned by Ballard and

Whereas Warpath is the holder of a lease on property located at Lake Keowee and is desirous of developing the property and

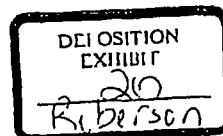
Whereas Roberson Thoennes and Thoennes III are in the business of property development and are desirous of being involved in the development of the project with Ballard and Warpath and

Whereas Ballard wishes to convey to the other parties 80% of the corporation in exchange for the purchase of one half of his stock plus an additional 60 000 shares and

Now Therefore for and in consideration of the monetary sum stated herein and other valuable consideration the parties hereto agree as follows

- 1 The group of Roberson Thoennes and Thoennes III will pay to Ballard upon closing the sum of \$1 000 000 00 in exchange for 20 000 shares of Ballard s 40 0000 shares and will receive from the corporation additional shares so that Ballard will hold 20% of the stock and the other 80% will be held by Roberson Thoennes and Thoennes III when all shares are finally issued When the new stock is issued the final holdings will be as follows

Roberson	40 000 shares
Thoennes	20 000 shares
Thoennes III	20 000 shares
Ballard	20 000 shares



Handwritten initials and signature:
M
GYP
K

- 2 In addition to the above the corporation will pay Ballard \$100 000 00 upon the grand opening of the Manna An additional \$50 000 00 will be paid one year after said grand opening Grand Opening being defined as when the Manna opens for business
- 3 Ballard warrants and represents that he holds a lease with Duke Power and the necessary approvals from Duke Power and Pickens County In order to build the development per conceptual plans for Warpath Landing Final permits must be obtained to move forward
- 4 Ballard agrees to execute a separate agreement with Warpath defining his duties in the project development which shall include but not be limited to securing dock permits building permits hotel leases, restaurant leases engineering services architectural services and any other service deemed necessary and appropriate to complete the conceptual plan for Warpath Landing If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1 000 000 00 payment will be refunded \$250 000 00 will be refunded within 90 days and the balance within 6 months after it is determined the permits cannot be obtained
- 5 Thoennes and Thoennes III will execute an agreement with Warpath defining their respective duties including but not limited to development work execution of loan documents assistance with proformas assistance with obtaining permanent financing and other such service as may be appropriate
- 6 Roberson agrees to provide the necessary capital to obtain long term financing on the project Ballard Thoennes and Thoennes III will not receive any dividend or distribution of profit until all capital contributions of Roberson have been repaid
- 7 Ballard will not be required to sign any personal guarantees to obtain financing by the corporation
- 8 The parties agree that it will be necessary at a subsequent date to execute additional documents to give full validity to this Agreement and that they will mutually cooperate with each other in that regard
- 9 Ballard further represents and warrants that Warpath is in good standing and that he has authority to enter into this Agreement and that Warpath has no liabilities outstanding

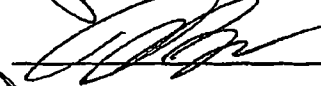
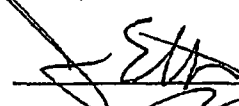
WMP
DPS
H B

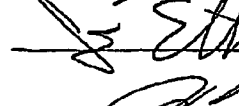
10 This Agreement shall be binding on the parties hereto their heirs successors and assigns

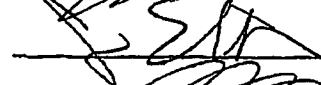
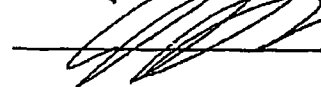
11 No part of this Agreement may be assigned without written consent of all parties

In witness whereof the parties have set their had and seal the day first above written

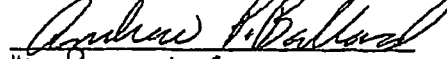
WITNESSES

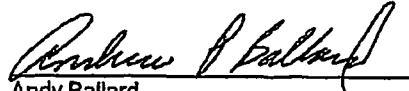






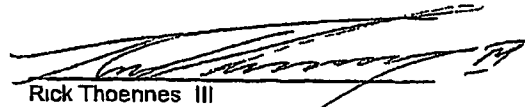




Warpath Development Inc


Its President


Andy Ballard


Rick Thoennes


Rick Thoennes III


Tim Roberson

EXHIBIT F

1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO 2008-CP-23-5739

Andrew P (Andy) Ballard,
Plaintiff,

VS

Tim Roberson, Rick Thoennes,
Rick Thoennes, III, and Warpath
Development, Inc ,
Defendants

COPY

DEPOSITION OF ANDREW BALLARD

DATE TAKEN March 4, 2009

TIME BEGAN 10 09 a m

TIME ENDED 12 32 p m

LOCATION Haynsworth, Sinkler, Boyd, P A
75 Beattie Place
Eleventh Floor
Greenville, South Carolina

REPORTED BY TRACI L BARR, RPR
Registered Professional Reporter
Notary Public for South Carolina

GCR

864 234 5744

GALLAGHER COURT REPORTING

gcr@charter.net

1 diluted?

2 MR HOLLEMAN

3 Object to the form

4 EXAMINATION RESUMED BY MR HOWARD

5 Q I was asking where in the agreement does it say
6 that you and any of the shareholders have a
7 right not to be diluted?

8 MR HOLLEMAN

9 Same objection

10 THE DEPONENT

11 Well, it says Ballard will hold 20 percent of
12 the stock when all the final shares are issued,
13 and when new stock is issued, the final
14 holdings will be as follows It says final
15 twice

16 EXAMINATION RESUMED BY MR HOWARD

17 Q Okay So your testimony is the use of the word
18 final?

19 A My testimony is that Ballard will hold 20
20 percent of the stock

21 Q Is there anywhere in this agreement where it
22 states that Warpath is not permitted to issue
23 additional stock?

24 MR HOLLEMAN

25 Object to the form

1 told us how many we could get in there, and we
2 knew since we were getting -- and the reason it
3 was changed was because Duke told us to ask for
4 the maximum of everything when we did this
5 Conceptual Plan, and the maximum any marina can
6 have is 200 slips

7 EXAMINATION RESUMED BY MR HOWARD

8 Q Did you tell these guys that?

9 A I don't know

10 Q Okay

11 A I guaranteed them the Conceptual Plans, which
12 was 100 to 200 slips

13 Q And you knew that they were -- were you aware
14 that they were working their pro formas off 200
15 slips?

16 A Yes

17 Q Okay Did you ever say to them, guys, that may
18 be a little aggressive?

19 A I don't know I don't know I don't remember

20 Q Did you ever have any conversations with Duke
21 prior to that where they said, you know, 200
22 slips is probably aggressive for this area?

23 A No

24 Q Okay

25 A Duke told us to ask for the 200 slips because

1 that's the maximum any marina can be over there
2 on the lake

3 Q Ultimately Duke has never approved 200 slips,
4 have they?

5 A Ultimately Duke would not approve the 200
6 slips

7 Q And when you saw the plan they were going to
8 take over to Duke, did you not say there is no
9 way they're going to approve that?

10 A When I saw -- once they changed architects and
11 started doing their own Conceptual Plans, when
12 they showed me houseboat slips on the other
13 side, I told them that Duke would never approve
14 it

15 Q How did you know that?

16 A Just from the two or three years dealing with
17 Duke that I had that I just knew Duke wasn't
18 going to approve anything on the other side of
19 that island It was my opinion

20 Q What do you mean, on the other side of the
21 island? Maybe it would be better if we look at
22 a map here

23 A Not the island, the peninsula One of the
24 first --

25 Q That may be --

- 1 A One of the first renderings they did was --
- 2 they put houseboats over here on this side
- 3 Q On this side?
- 4 A On this side The marina is here in the
- 5 middle One of the first renderings they had
- 6 done they put houseboats down through here
- 7 Q Okay
- 8 A Then in another rendering they came back with
- 9 houseboats on this side
- 10 Q well, now, we've looked at some of these
- 11 e-mails and such before
- 12 ultimately there were some concerns over the
- 13 number of slips, were there not?
- 14 A Absolutely
- 15 Q Okay And these three gentlemen expressed
- 16 those concerns to you?
- 17 A And we expressed them -- I went with them to
- 18 express them to Duke and met with them
- 19 discussing it with Duke
- 20 Q Okay Did these three men ever have a
- 21 conversation with you whereby they thought that
- 22 maybe they didn't get what they asked for or
- 23 what they thought they were getting?
- 24 A They did
- 25 Q Okay what was your response to them?

1 it was -- and I also sent them an e-mail
2 stating that I didn't think legally or morally
3 that I had any obligation to do that

4 Q Okay Look at Exhibit I believe you
5 confirmed before that you recall having a
6 discussion with Mr Roberson
7 Have you had a chance to read it?

8 A Yeah What about it?

9 Q I think you told me before that you agreed it
10 was fine that Tim was going to be chairman,
11 C E O or president
12 Were you fine with that --

13 MR HOLLEMAN

14 Object to the form

15 THE DEPONENT

16 Yeah

17 EXAMINATION RESUMED BY MR HOWARD

18 Q -- or ambivalent to it?

19 A I didn't feel like I really had much choice I
20 mean, he wanted to be C E O and president, so
21 if that's what he wanted to be, I didn't have a
22 problem with that

23 Q Okay Do you remember having a conversation
24 about putting together a new finance plan to
25 bring in additional capital or services to

1 improve the return on investment of the
2 project?

3 A Nothing more than whatever was discussed at
4 that one meeting when they were trying to see
5 what I would do

6 Q Okay The next sentence says, he said that he
7 had no problem with that
8 Do you disagree with that?

9 MR HOLLEMAN

10 Object to the form

11 EXAMINATION RESUMED BY MR HOWARD

12 Q Do you recall saying that you had no problem
13 with them putting together a new finance plan?

14 A I don't remember that part of it I do
15 remember him asking me if he could be C E O ,
16 and I didn't have a problem with that The
17 financial plan part of it, I don't remember him
18 saying anything like that to me

19 Q Do you recall Tim then mentioning to you that
20 there might be some dilution if that happened?

21 A No

22 Q So you deny that recall?

23 A I don't recall that

24 Q If you could go to Exhibit 3 I believe it's
25 this e-mail right here Just tell me when

EXHIBIT G

Page 1 of 1

Rick Thoennes, Sr

From Rick Thoennes Sr (ricksr@marick.net)
Sent Saturday, December 15, 2007 2:59 PM
To apballard@msn.com
Cc Rick Thoennes; Tim Roberson
Subject Warpath
Attachments Andy letter of 12-15-07.doc

Andy, please open the attachment and let me know.

No virus found in this outgoing message.

Checked by AVG Free Edition

Version 7.5.503 / Virus Database 269172/1184 Release Date 12/14/2007 11:39 AM



RTTW_000521

9/22/2008

Andy we need you to decide on a couple of things

The approvals from Duke did not come as fast or in the way that we had talked about. As you know all of our proformas were based on the 200 paying slips. By cutting those in 1/2 and by delaying us past next spring (effectively 1 more year) the numbers have changed drastically.

The county also let us know that bringing in Larry Dyck would assure us of approval of the site plan. That is a costly consultant. We will also have to add turn lanes at 183 when we do the lodge.

The delay also moves the 2nd phase (lodge, restaurant & cottages) out to 2011. Tim, Rick III and I have discussed all of this and we all agree that we would have struck a different deal if we had known we could not get 200 slips and get approvals in a timely manner. We would have had to do 1 of 2 things: Pay less and not have 4 partners or not do the deal at all. The amount of return on investment is just not there at 100 slips.

We did all of our due diligence based upon the fact that we would get 200 slips, be able to get approval from the county on your conceptual site plan and be able to open in spring of 2008.

I believe the only options are:

1. Return a sizeable portion of the \$1 mil and continue on or
2. Return all of the \$1 mil and you can sell it to someone else.

Please give this consideration and let us know the option you prefer.

Rick Thoennes

RTTW_000522

EXHIBIT H

Rick Thoennes Sr

From: Tim Roberson [Tim Roberson@integrity.net]
Sent: Wednesday, March 12, 2008 3:03 AM
To: ricksr@marick.net; rick@marick.net; apballard@msn.com
Subject: Warpath

Mr. Lemmen

This has not been a good week to us. On Monday night the planning commission tabled our request for the waste water treatment permit. We learned that a number of the council are still not in favor of this project going forward. We are scheduled to close on the 15th for the treatment facility this Friday. I cannot justify the expenditure of nearly 500K to purchase a piece of land that we have no guarantee will be of use to us. The owner has indicated that he will not give us an extension but we are still requesting such. The closing of the case came this morning when Palmetto Bank informed me that their committee has concluded our business plan is not viable and have declined to participate in the financing of the project.

I had planned to call for a shareholders meeting in about a month or so but we are right now at a point where we will need to make some tough decisions. Andy, in our last meeting we were most clear that we did not think you delivered the opportunity as you advertised. The loten "all" revenue is off considerably from the projections you provided with us. You gave us the clear indication that the 200 wet acres is a cash value. You represented that the permitting process was all but done and the project was ready to go. First came the lengthy process and delay for Duke to sign off on the layout. Then came the still continuing nightmare with the permitting process in Pickens County. That delay has now caused a real dilemma regarding the acreage needed for our treatment plant. If we lose this opportunity there is no clear alternative for the facility. On many occasions I heard you say how much the county was in favor of his project. When in fact I know that the acreage are not in favor of it.

The result of all this misinformation has led to at least one bank saying we are not viable. Considerable loss of expected recurring revenues. Delays that will if we can salvage anything of this project cost us a season at a minimum and the real possibility that we are without a waste water treatment plant. Meanwhile the interest clock is ticking.

In our last meeting everyone contributed a suggestion on how to lighten the load and I served to protect you. Your reversed comments offered to pay out. They only served to protect you. I would like for you to consider contributing your 20% share back to the treasury in exchange for a royal letter from us that will leave you harmless. I would like for you to provide for me the names of the people who approached you about purchasing this project. I do not want you to call on them on our behalf but I want to keep that option open for me. I would like a response as soon as possible.

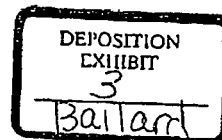
I am sorry for the poor spelling as I am using a home and cannot know how to find the check. I am sorry for the haste but it is about 3:00 AM and I cannot get this off my mind so I just decided to cut to the chase.

Tim

to various individuals in this incoming message

Checked by A/G Friedman

Version 7.5.51b / Virco Database 09/21/2006 Release Date 3/6/2008 6:58 PM



RTTW_000667

EXHIBIT I

Page 1 of 1

Rick Thoennes, Sr

From Tim Roberson [Tim Roberson@integrys.net]
Sent Tuesday, January 08, 2008 1:42 PM
To rick@marick.net; Dad
Subject Discussion with Andy Ballard

I talked with Andy this morning and he offered no new ideas or solutions. He said that he had talked to a 'some people about the situation'. He went on to say that by the contract he only guaranteed the site plan and that by the contract we were to complete the project. I explained that I didn't see this as a legal issue, but a business issue, and that I was hoping he could be more helpful. He suggested that we build it in phases and that we build it cheaper.

The conversation was civil, but I explained that for every business problem, there is a business solution. I told him that I was going to ask that we elect me Chairman, CEO, and/or President with the task of putting together a new finance plan to bring in additional capital or services to improve the ROI of the project. He said that he had no problem with that. I then told him that there would more than likely be some dilution if that happened.

I let him know that I would get back with him after talking with y'all.

Tim
HAW

Tim W. Roberson / Integrys Holdings LLC / 864 679 3490 Voice / 864 456 3313 Fax / 864 270 6368
Cell / www.integrys.net

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Checked by AVG Free Edition
Version 7.5.516 / Virus Database 2691713/1213 Release Date 1/7/2008 9:11 AM



RTTW_000804

9/27/2008

EXHIBIT J

MINUTES OF THE REGULAR MEETING OF STOCKHOLDERS
OF
WARPATH DEVELOPMENT INC

The regular meeting of directors of the corporation was held at 217 E Park Avenue Greenville SC 29601 on May 1 2008 at 10 30 a m

The following were present Tim Roberson Rick Thoennes and Rick Thoennes III being a quorum and all of the directors of the corporation

Tim Roberson was elected chairman of the meeting and Rick Thoennes was appointed secretary thereof

The secretary then presented and read to the meeting a waiver of notice of meeting subscribed by all the directors of the corporation and it was ordered that it be appended to the minutes of the meeting

The president then rendered a general report of the business of the corporation the secretary presented his report and the treasurer rendered a report of the finances of the corporation The officers reports were received and ordered on file

The following were duly nominated and a vote having been taken were unanimously elected officers of the corporation to serve for one year until their successors are elected and shall qualify

President CEO	Tim Roberson
Vice President	Rick Thoennes III
Secretary Treasurer	Rick Thoennes

Upon motion duly made and seconded Tim Roberson moved to authorize the corporation to issue 900 000 additional shares of Treasury Stock in order to raise capital pay expenses and offer employee incentives Said motion carried unanimously

It was thereby authorized that the corporation file the necessary paper work to authorize issuance of an additional 900 000 shares

There being no further business before the meeting on motion duly made seconded and carried the meeting adjourned

Dated May 1 2008

Secretary

Chairman

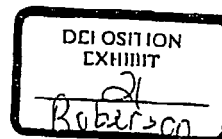


EXHIBIT K

MINUTES OF THE ANNUAL MEETING OF STOCKHOLDERS
OF
WARPATH DEVELOPMENT INC

The annual meeting of the stockholders of the corporation was held at 217 E Park Avenue Greenville SC 29601 on May 1 2008 at 10 00 a m

The meeting was called to order by Jim Fayssoux the attorney of the corporation

The secretary then reported that the meeting had been called pursuant to a notice of meeting and/or waiver of notice thereof in accordance with the by laws It was ordered that a copy of the notice be appended to the minutes of the meeting

The secretary then read the roll of stockholders from the stock transfer ledger The following stockholders were present in person or by proxy

<u>Stockholder</u>	<u>Shares</u>	<u>In Person</u>	<u>By Proxy</u>
Tim Roberson	40 000	Yes	
Rick Thoennes	20 000	Yes	
Rick Thoennes III	20 000	Yes	
Andy Ballard	20 000	Yes	

The chairman stated that majority of the total number of shares issued and outstanding was presented and the the meeting was complete and ready to transact any business before it

The President then gave a general report of the business and finances of the corporation

The chairmen then stated that the election of directors of the corporation was now in order The following were nominated as directors Tim Roberson and Rick Thoennes and Rick Thoennes III

<u>Nominee</u>	<u>Number of Votes</u>
Tim Roberson	100 000
Rick Thoennes	100 000
Rick Thoennes III	100 000

The chairman declared the following nominees duly elected directors of the corporation to serve until the next annual meeting of stockholders or until their successors are elected and shall qualify

Tim Roberson Rick Thoennes and Rick Thoennes III



The following action was taken at the stockholder meeting

After the Board went into session the Board proposed that the corporation issue an additional 900 000 shares for the purpose of raising additional capital paying expenses and offering employee incentives Tim Roberson pointed out that in addition to the cost of the land to serve as a septic field the corporation had incurred another \$120 000 00 in expenses This motion was approved unanimously presented to the stockholders where the only dissenting vote was from Andy Ballard

There being no further business the meeting was, on motion adjourned

Dated May 1 2008

Secretary

EXHIBIT L

Transcript of the Testimony of:

JAMES W FAYSSOUX, ESQUIRE

September 28, 2009

In the Matter of:

BALLARD v ROBERSON, et al

Irveta J Shouse/GWC

Post Office Box 9177
Greenville South Carolina 29604
Phone 864-233 2341
Fax 864 233 5534
E mail IrvetaJ@aol.com

1 A Yeah I think that we probably did have some
2 discussion about that, or at least that was my understanding
3 Perhaps it was with discussions with Tim But I understood
4 that that was Andy's position that he still wanted 20 percent
5 of the company

6 Q All right And when there was a proposal to issue
7 additional shares, that's what upset Andy, correct?

8 A Yes, sir

9 Q That the effect could be to reduce his percentage
10 ownership

11 A Correct

12 Q Did you ever look back to see whether the proposal
13 to issue additional shares would violate the Stock Purchase
14 Agreement?

15 A Well, I did

16 Q After the fact?

17 A I did After the fact, I looked back to determine
18 And I did not think, you know, after the fact, that that was
19 --- because, in my mind, the Stock Purchase Agreement
20 anticipated that they would have to raise capital I mean, it
21 anticipated that And how they did it, through loans, or
22 whether they did it through stock issue, was not clear enough,
23 obviously It should have been clearer, but it wasn't But I
24 think that in my mind that everyone thought it would probably
25 be necessary to get more money And that's all I can remember

1 of you, Exhibit 20, is there any non-dilution provision
2 included in the agreement?

3 A No, sir

4 Q Was there ever ---

5 MR HOLLEMAN Object to the form

6 Q --- any discussion about a non-dilution provision?

7 A No, sir

8 Q Was there any request to include a non-dilution
9 provision?

10 A No, sir

11 Q Was there any discussion about what the "final
12 holdings" would be final into perpetuity?

13 MR HOLLEMAN Object to the form

14 A No, sir

15 Q Taking a look at the fourth "Whereas" in the
16 agreement Is it your understanding that the million dollars
17 was paid for 80 percent of the corporation?

18 A Yes

19 MR HOWARD That's all I've got

20 -----

21 REEXAMINATION

22 By Mr Holleman

23 Q Let me just ask you a few follow-up questions

24 If you look at, I believe as you said, Exhibit 21,
25 which refers to necessary paperwork ?

EXHIBIT M

Warpath
Landing



\PB_001-9

Proposal for Development of

Warpath Landing
Public Recreation Area

Lake Keowee Reservoir

Pickens County South Carolina

Warpath Development

THE ELLIS GROUP PA
220 N. MAIN STREET SUITE 325
GREENVILLE SC 29601



Table of Contents

Contents

Objective

Program

Aerial Photograph

Proposed Site Plan

Historic Context

Historic Timeline

Materials

Concept Sketches

Architect

Developer

Objective

The main objective of this proposal is to create an environment for many types of outdoor recreation that is uniquely related to the history of the immediate surroundings. The atmosphere created by connecting the new development with the people and places of the past will bring forth a design which is unique to Pickens County. This proposal will enhance the quality of life for Pickens County residents as well as visitors and establish a place for making memories.

The site of Warpath Landing is a 74 acre tract of land on the eastern shore of Lake Keowee in Pickens County. The site features lovely views to the North West and South. The northern views are particularly exciting with a spectacular view of the Blue Ridge Mountains. A primary design goal is to capture these views throughout the development in a way that preserves and enhances the natural beauty of the site.

The site is heavily wooded, containing trees of many varieties. The terrain is fairly steep, varying in places to a more shallow grade. Another design goal is to utilize the contours of the site for recreation purposes to the full potential. The following program considers these possibilities as well as the many practical considerations to create a place fully reflecting a flavor and character of Pickens County and this particular site.

In considering the potentialities of the site, it became apparent that exploring a historic component is an appropriate approach. To that end, a bit of research yielded some interesting historical background.

Program

To obtain this objective the following program is proposed to provide public access areas as well as other amenities to fully utilize the 46 acre property. The breadth of the program allows for features that would appeal to a wide range of interests and would attract people for a variety of events and purposes.

I Water related features

A Marina

Located to provide fueling facility accessible to public
Shop for maintenance and repair of boats

B Dry dock storage for 200 boats

C Marina convenience store

D Deli/Cafe

E Boat slips

(covered and uncovered slips - 100 total

F Public boat launch and parking



V L 00 4

G Public swimming area

H Public fishing pier

II Outdoor recreation

A R/V Sites and Campground

B Picnic areas

C Larger picnic shelter

D Bike path/nature trail

Incorporating theme of Indian Trail Tree

E Secondary recreation options

Croquet
Horseshoe pits
Rock climbing
Playground

III Lodging/Dining

A Lodge with 60 rooms

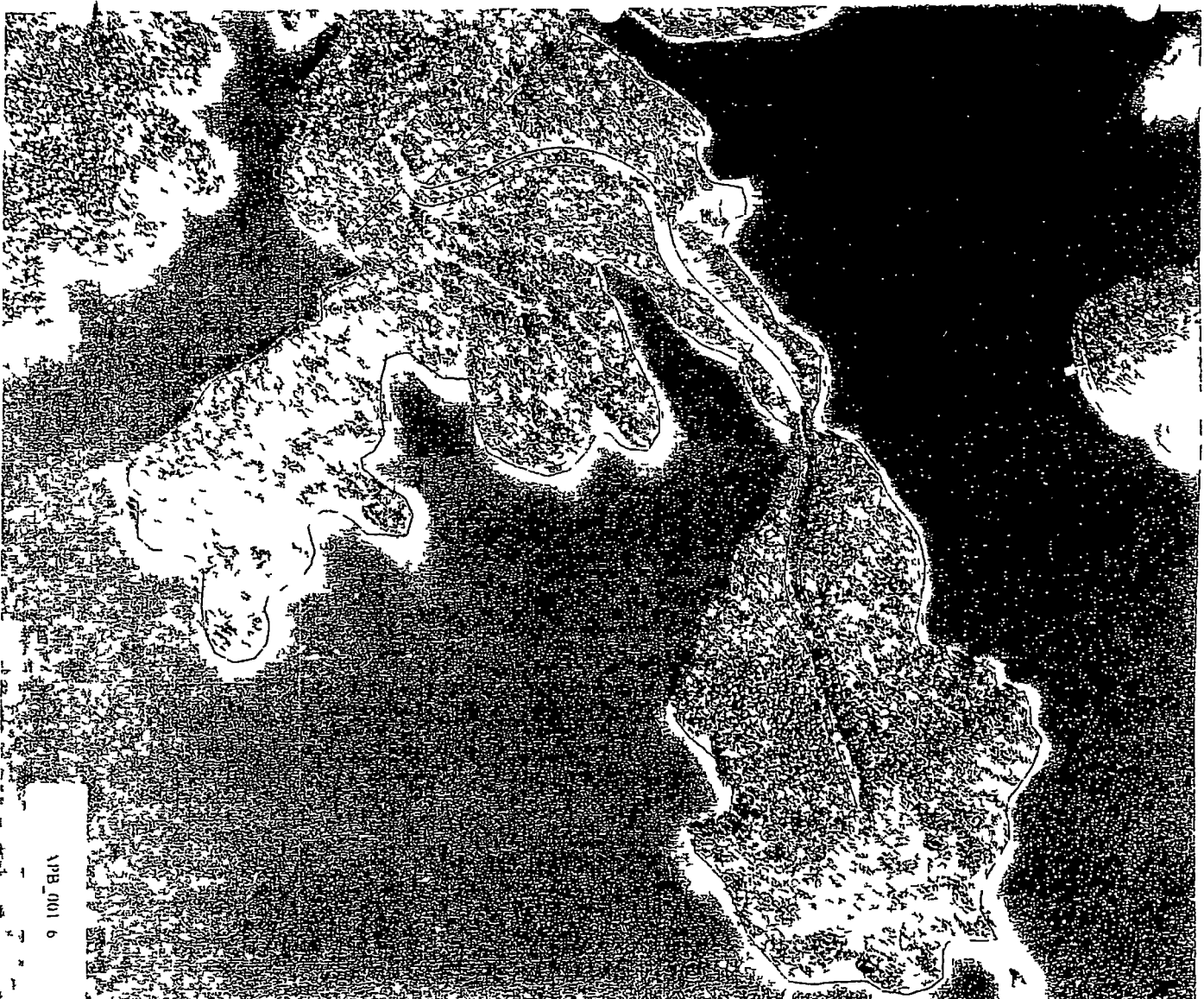
B Cabins

Small size (2-4 people)
Family/group (10 people)

C Restaurant

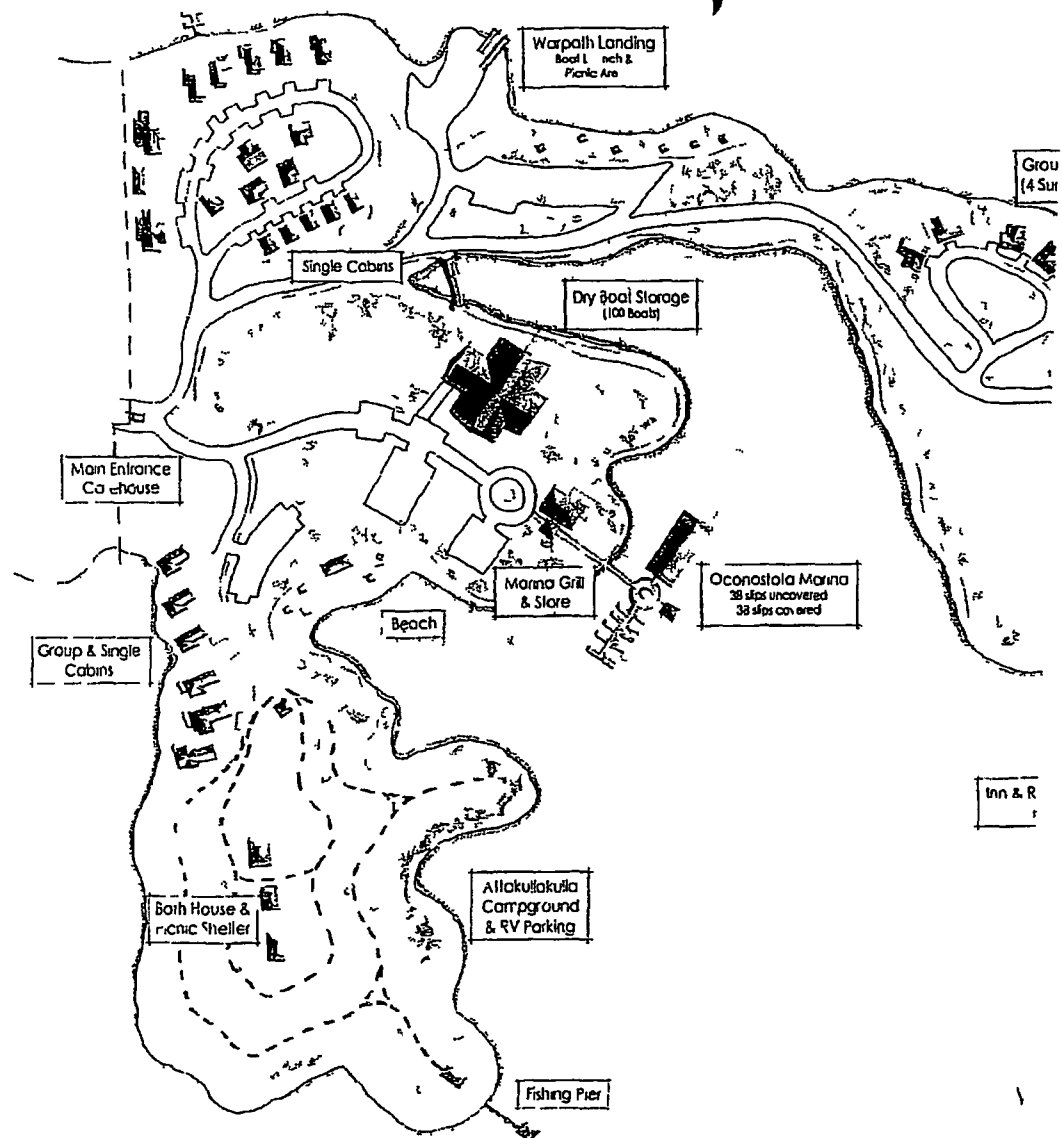
With banquet facilities (250 people) -

1111 1111
1111111111111111



APB_001_6

APB_001 7



HISTORIC CONTEXT

A brief look at some features of this land and its first inhabitants brings some relevant information to the project. The Cherokee Indian lived along the river and bottom land which later became Lake Keowee. They thrived in the bottom land from Virginia southward. They built their houses in villages much like Early American settlers did. Villages were separated by day long walks. Houses were made of wood and stone, fields were planted out and berries were gathered, game was cured, tobacco was smoked and the Cherokee people adhered to high ethical standards. Fire, the center of life, became the Cherokee word for home.

Rivers between the Cherokee mountains fed by creeks running from all directions, flowed north and west into the Great River, the Cherokee's lifeline to other Indian cultures. A network of roads followed those rivers and streams to connect the Cherokee villages. Steep mountain gaps limited routing choices as Cherokee roads converged at certain gaps just as roads do today in those mountains. Village chieftains lead and represented the people to the tribe as a whole. The people used the roads to trade and compete with other villages.

The installation of Prince George Fort and the arrival of the British had a great impact on the history of the area. Several Colonial British and Cherokee played a significant part in the history of the area. The following timeline gives a brief account of this history.

Indian Trail Trees which are also known as bent trees were once very prevalent in this area. The Indians native to this area, most often the Cherokee, are assumed to have used them to mark directions or trails to areas important to them. They took young saplings, bent them at a right angle perpendicular to the ground and planting,

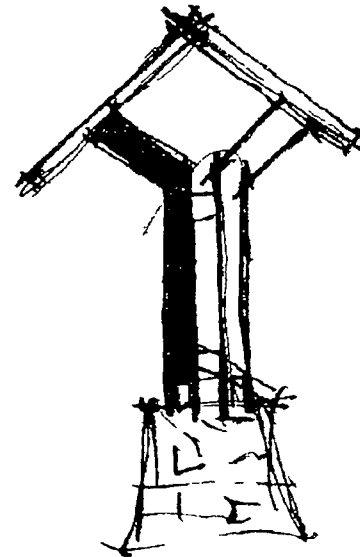
in the desired direction. They then tied them in this position. As the tree grew, the top portion would turn up toward the light but the area that had been tied down would always point in a specific direction.

These trees were used to indicate different things. They might show the trail to a river or a settlement. Some were used to indicate where natural springs were located. Sometimes they were used as message trees and were either marked to indicate a message or had a hollowed out section where messages could be hidden.

This proposal calls for using the theme of Indian Trail Trees to mark areas along the future bike trail. Additionally, this idea is used as a recurring theme throughout the architecture of the development, articulating a unique form incorporated into the post-and-beam construction of the building form.



Indian Trail Tree



HISTORIC TIMELINE

- 1540 - Cherokee have contact with De Soto expedition
- 1670 - The South Carolina Colony established
- 1670s - Tribes acquire firearms
- 1684 - Treaty with South Carolina and Cherokee
- 1690 - Secretary of Colony James Moore ventures into Cherokee country looking for gold
- 1693 - Cherokee Chiefs visit Charleston demanding firearms for their wars against neighboring tribes
- 1705 - North Carolina complains that the South Carolina governor's trade of Native American slaves had so angered the tribes that the Indian War was inevitable
- 1711 - 1713 - Cherokee aid the colony in driving out mutual enemy the Tuscarora
- 1715 - Combined tribes in the region threatened to wipe out South Carolina in a war that broke out. Peace was made with a large exchange of guns and ammunition for alliance with the colony
- 1715 - Cherokee drive Shawnee northward out of the Cumberland River Region

1721 - Cherokee sign treaty with South Carolina to systematize trade. One condition of the treaty established a fixed boundary between the Cherokee and the colony. This was the first land cession made by the Cherokee to the Europeans.

1730 - Seven Cherokee make the trip to London to meet with King George II. Atta Kulla Kulla was one of them.

1738 - Smallpox was introduced to the Cherokee killing nearly half the tribe within a year.

1741 - South Carolina Independent Companies is formed replacing the disbanded General Oglethorpe's Regiment.

1733 - 1768 - Fort Prince George was named for the Prince of Wales (later King George III) and served as the principal Carolina outpost in the Cherokee lower towns.

1751 - Treaty reaffirming the Cherokee alliance to the English is signed.

1755 - 1763 - French and Indian War. Cherokee would have sided with the French except for the dependence on trade with the English.

1757 - South Carolina Provincial Regiment is formed.

1758 - Thirty-two Cherokee spokesmen are held hostage at Fort Prince George. Chief Attakullakulla negotiates the release of Oonastota and two others. The remaining twenty-nine chiefs remained captives.

1760 - Cherokee lure Lieutenant Coytmore outside the walls of Fort Prince George and mortally wound him. The same day the remaining chiefs who are being held hostage are killed. Cherokee start a fight with South Carolina and push frontier line back 100 miles to the Edisto River.

1761 - Attakullakulla signs a treaty with South Carolina's colonial government.

1775 - Cherokee sign the Henderson Purchase which ceded land north of Cumberland River and what is now Kentucky.

1776 - British invade Charleston and Cherokee once again attack colony.

1777 - Cherokee sign Treaty of DeWitt's Corner which ceded nearly all of South Carolina except the northwestern corner which is now Oconee County.

1780 - 10,000 people move into Greenville, Pickens, Oconee, and Anderson Counties. Cherokee and Creek make raids on South Carolina and Georgia. South Carolina establishes block houses along its northwest boundary for protection.

1816 - Cherokee sell the last of their South Carolina land to the colony.

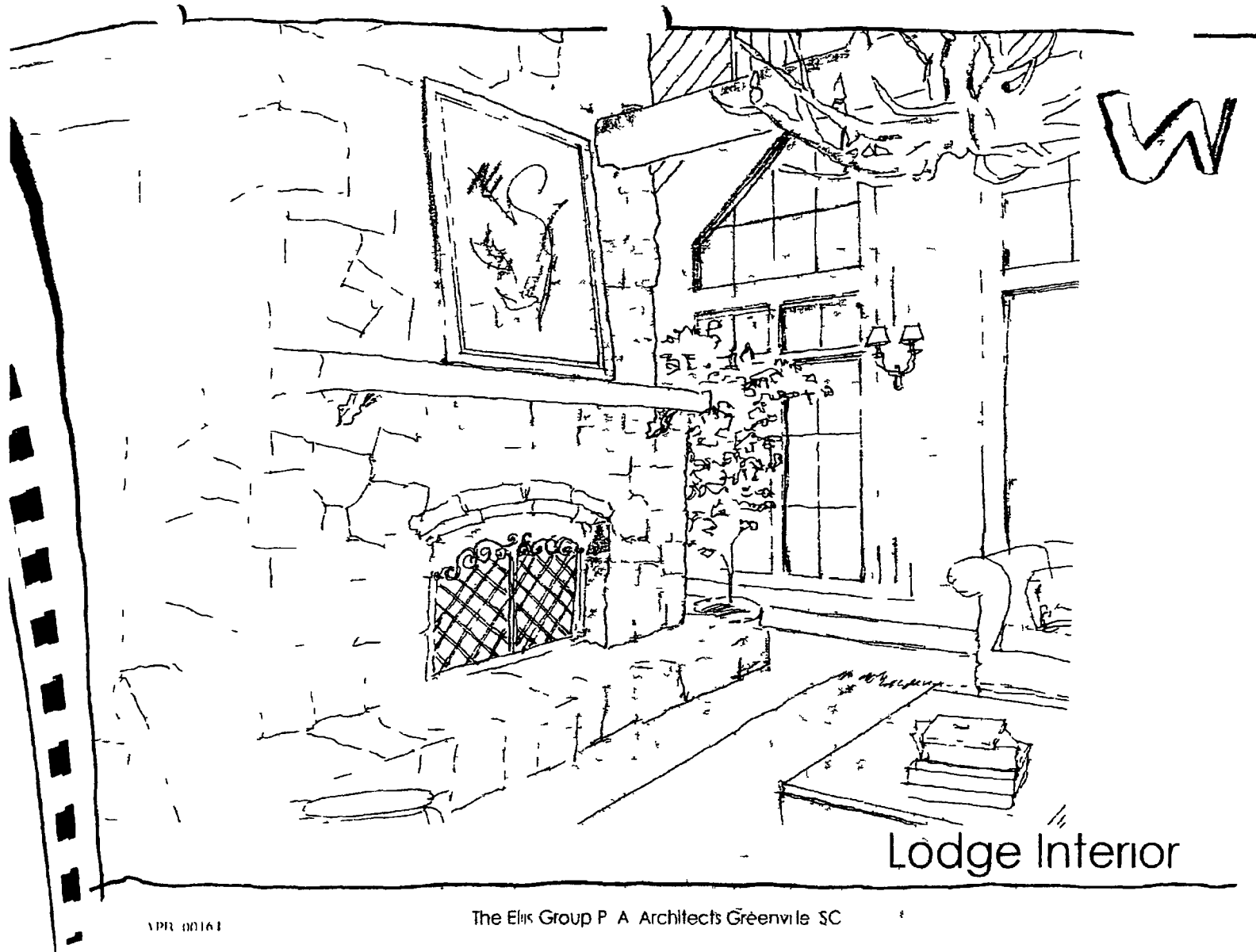
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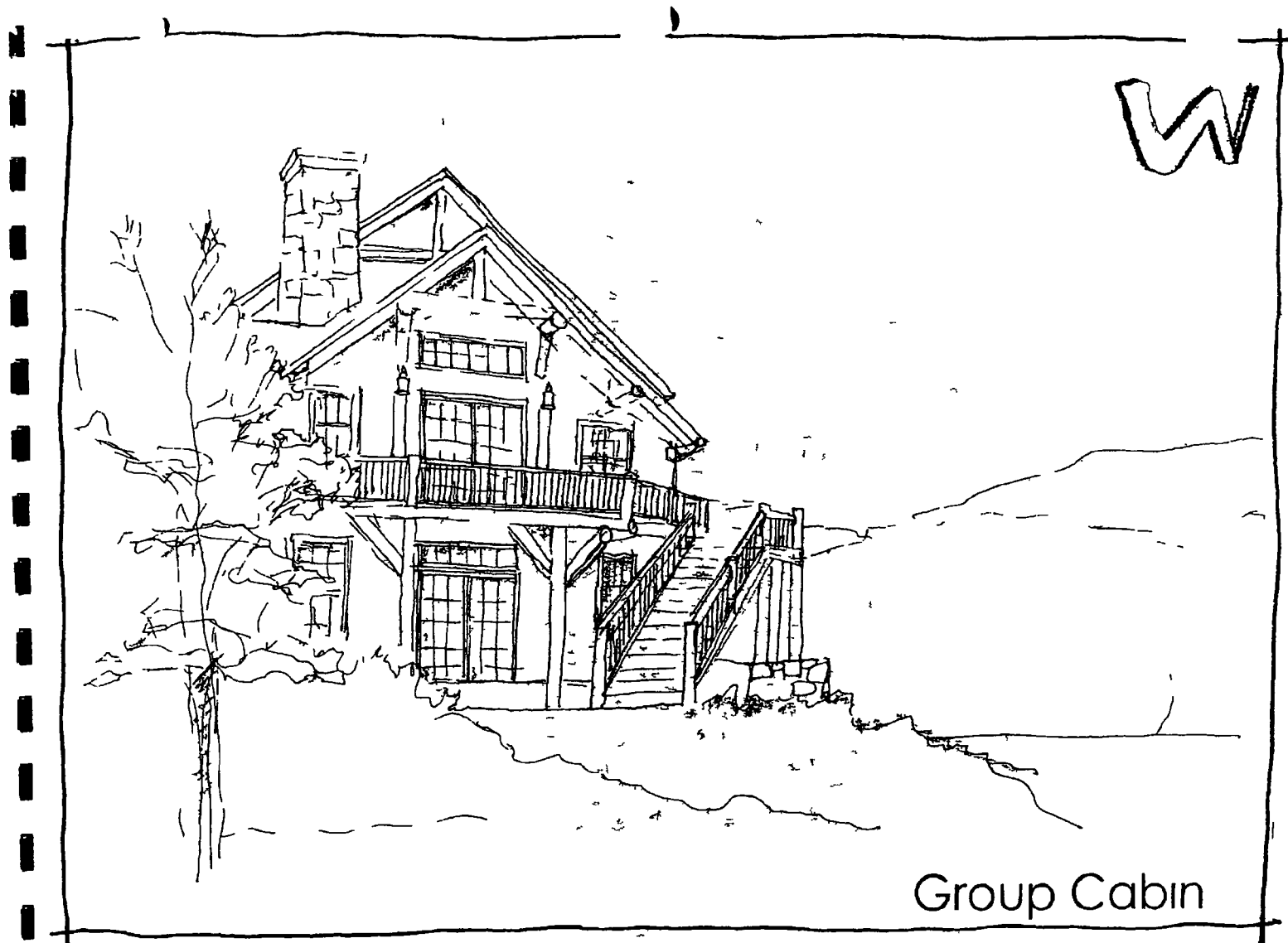


VP13_0016

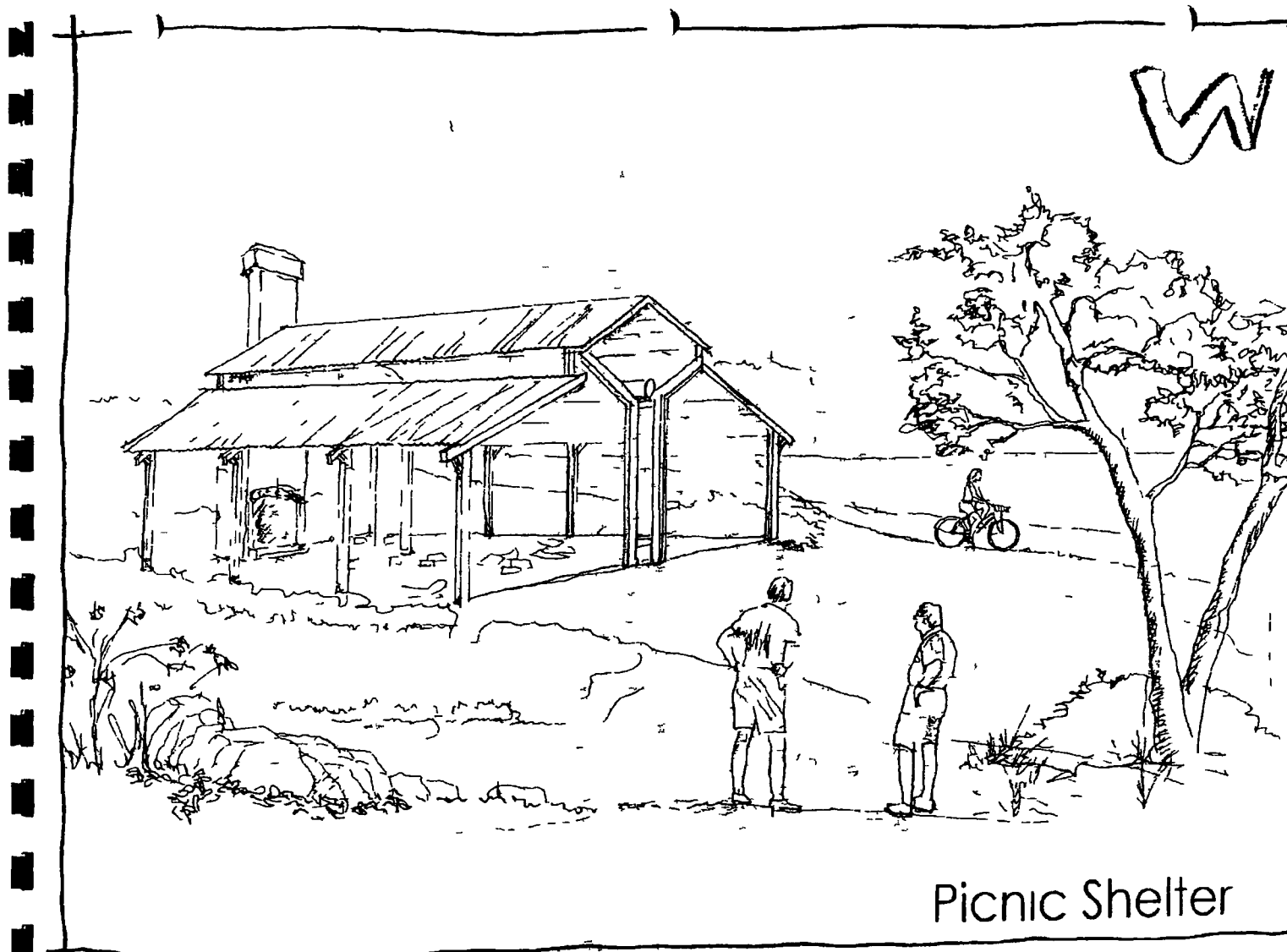
Prince George Lodge

The Ellis Group P.A. Architects Greenville SC

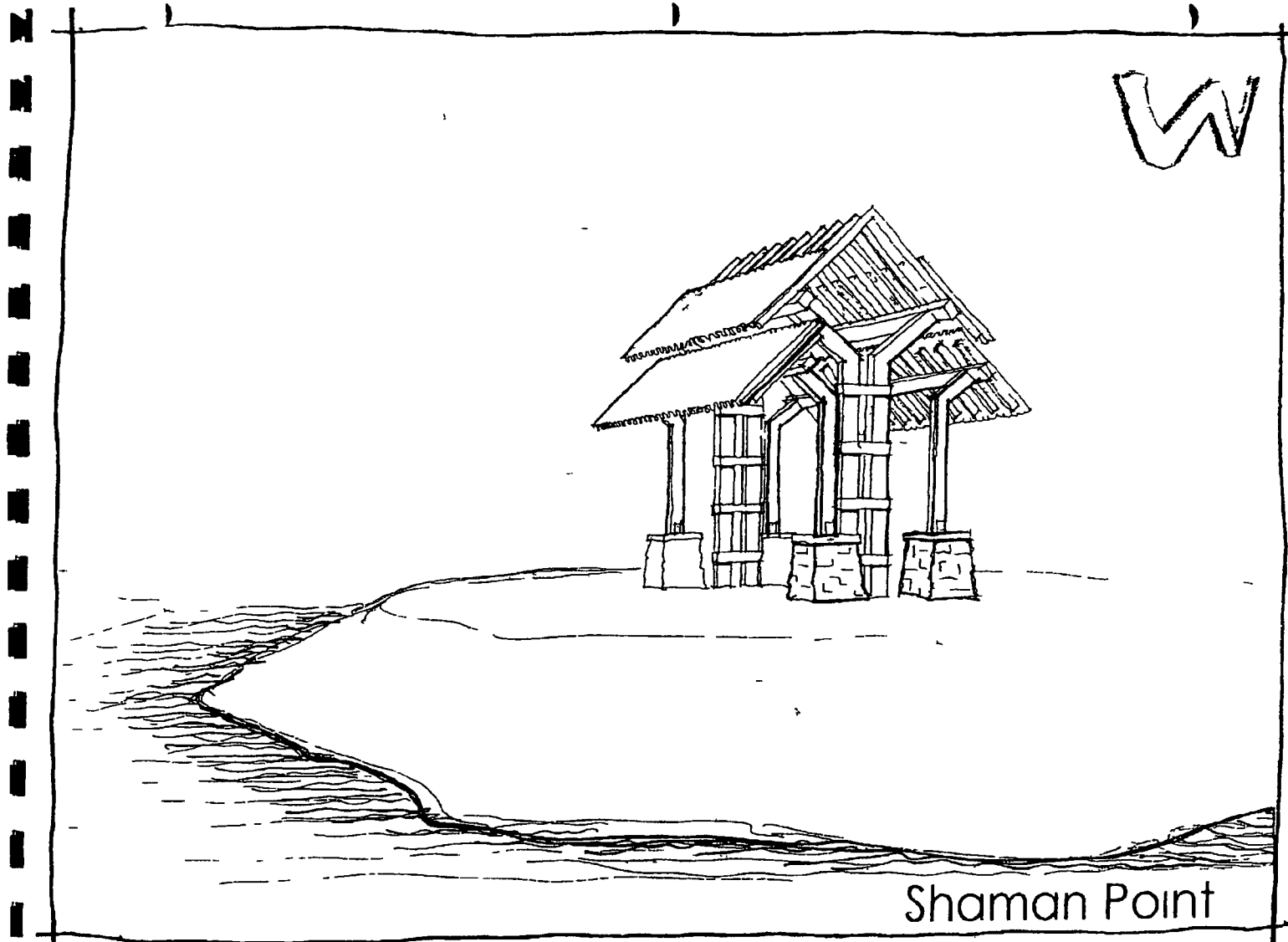




Group Cabin

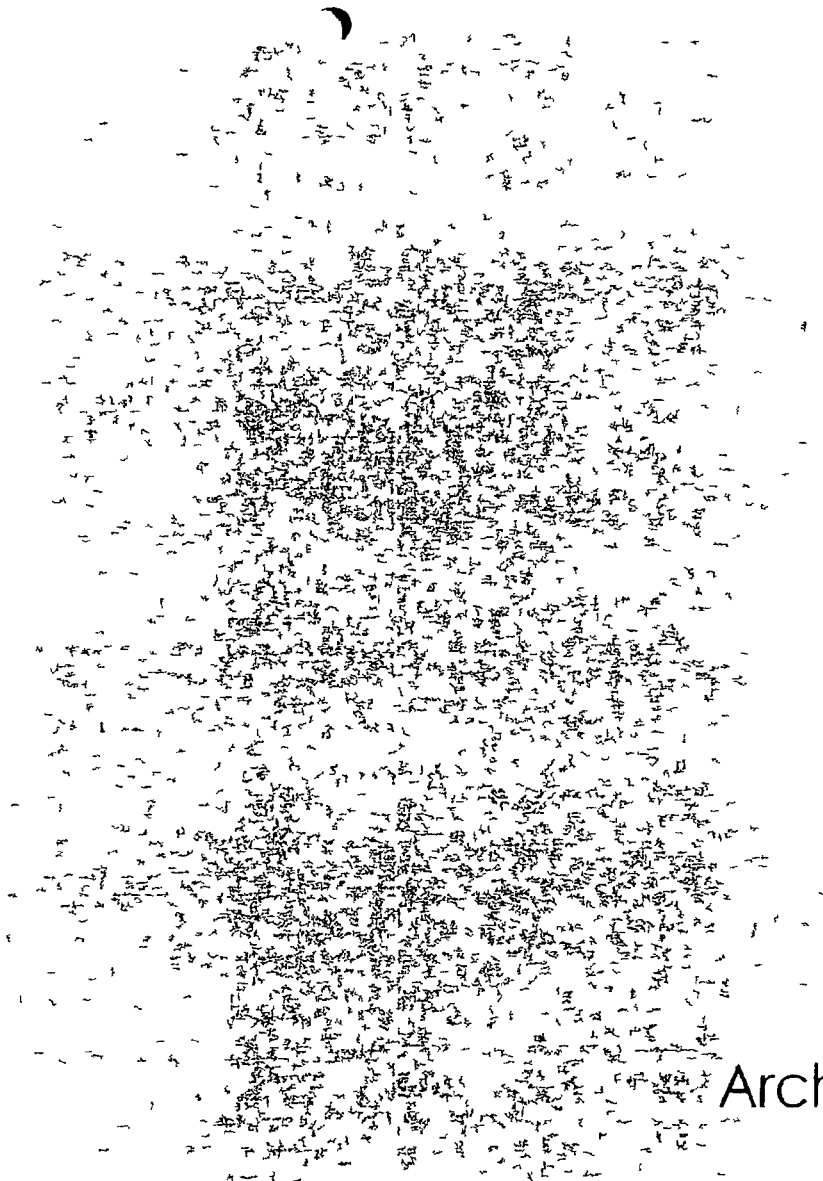


Picnic Shelter



W

Architect



APb_00168

ABOUT THE ARCHITECT

The Ellis Group P A is a full service architectural firm with experience ranging from governmental to commercial industrial to hospitality residential to renovation and master planning

The Ellis Group serves a wide range of clients by intent. We often say we specialize in diversity. Over 800 assignments have been successfully performed in sixteen states, from New York to Arizona to Florida to Illinois. Our clients include individuals corporations national hospitality chains and Federal State and Local Governments. We have consistently brought unique solutions to clients resulting from our exposure to a wide range of issues and building types. We can apply up-to-date knowledge and technology from a broad range of materials furnishings suppliers equipment and finishes to the needs of the proposed projects.

The Ellis Group is particularly well suited for this project for several reasons. We have an understanding of the cultural and geographical context. We are in close contact with area development enabling a network for well informed decision making. And above all we maintain a commitment to excellence in all stages of the design process for each project.

The Ellis Group is known particularly to have extensive experience with hospitality projects. Since The Ellis Group was established over 20 years ago Bob Ellis has led the firm in the successful completion of over 100 hospitality related projects.

Following is a brief listing of some of these projects.

HOSPITALITY EXPERIENCE

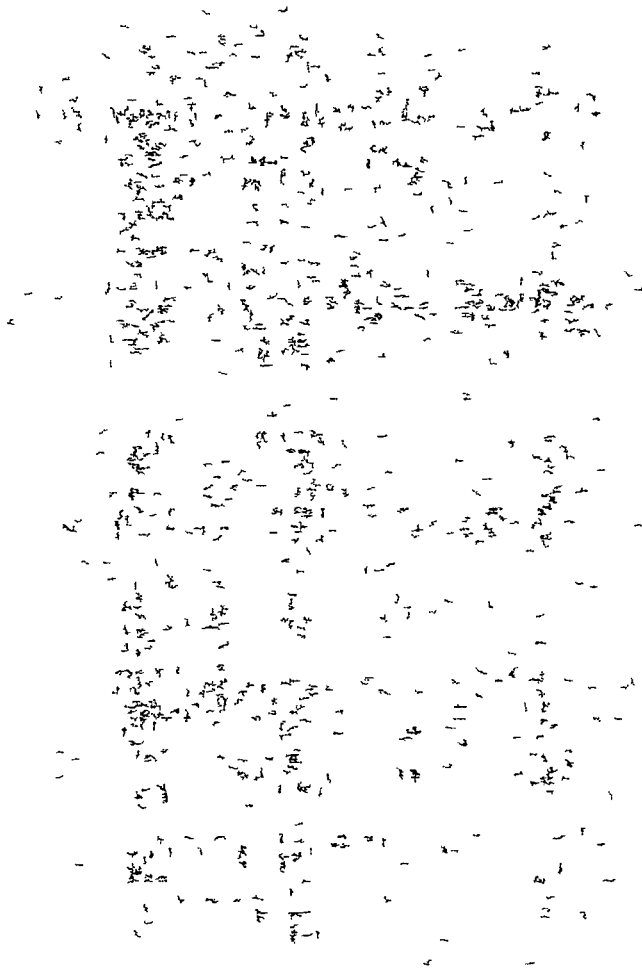
ADDISON INN	FAW NC
ANITAS	SIMPSONVILLE SC
APILEBEE'S	60+ RESTAURANTS/12 STATES
BERTOLOS	GREENVILLE SC
BOTANY BAY INN	CHARLESTON SC
CAPRI'S	BOILING SPRINGS SC
CAPRI'S	SENECA SC
CAROLINA GRILLE	WOODRUFF SC
CHINA GOURMET	GREENVILLE SC
CLOCK	BOILING SPRINGS SC
CLOCK	DUNCAN SC
CLOCK	GREER SC
CLOCK	MOONVILLE SC
COMFORT INN	UNION SC
COMFORT INN & SUITES	BOILING SPRINGS SC
COMFORT INN (Formerly Super 8)	DOUGLASVILLE GA
COUNTRY INN & SUITES	ANDERSON SC
DINO'S CLOCK	MAULDIN SC
DRAGON DEN	FAIRVIEW STATION/SIMPSONVILLE
DRAGON DEN	GREENVILLE SC
DUKE SANDWICH SHOPPE	CONGAREE RD/GREENVILLE SC

DUKES SANDWICH
FARMHOUSE GRILLE
FATZ CAFE
FUDDRUCKERS
FUDDRUCKER S
HAMPTON INN
HOLIDAY INN EXPRESS
HOLIDAY INN EXPRESS
HOLIDAY INN EXPRESS
HOLIDAY INN EXPRESS
J L TOPPERS
MAIN STREET DINER
MICROTEL INN
MICROTEL INN (Hwy 290)
MICROTEL INN (Woodruff Rd)
QUALITY INN & SUITES
SASKATOON
SENECA CLOCK
SLEEP INN
SLEEP INN
SUPER 8
THE COFFEE BEANERY
THE ITALIAN MARKET & GRILLE
TWIN DRAGONS RESTAURANT

DUNCAN SC
GREENVILLE SC (FORMERLY WOODS)
GAFFNEY SC
CHARLESTON SC
NORTH AUGUSTA SC
CLEMSON SC
ANDERSON SC
BREVARD NC
GREER SC
LANDRUM SC
GREENVILLE SC
MAULDIN SC
GASTONIA NC
DUNCAN SC
GREENVILLE SC
CHARLESTON SC
GREENVILLE SC
SENECA SC
GAFFNEY SC
TRAVELERS REST SC
GAFFNEY SC
GREENVILLE SC
WOODS LAKE RD / GREENVILLE
BREVARD NC

WOOSA HONGKONG CAFE

GREENVILLE SC



MB_00177

MASTER PLANNING

BOTANY BAY MARINA	CHARLESTON
CHRIST CHURCH	GREENVILLE SC
CLIFFS AT GLASSY COMMUNITY	LANDRUM SC
GOVERNOR S RESERVE	GREENVILLE SC
MT ZION CHRISTIAN FELLOWSHIP	GREENVILLE SC
PLANTATION AT PELHAM	GREENVILLE SC
RI EDY FORK BAPTIST CHURCH	GREENVILLE SC
SHANNON FOREST CHRISTIAN SCHOOL	GREENVILLE SC
TRAVELERS REST YMCA	TRAVELERS REST SC
VILLAGIO VERDE	GREENVILLE SC
WOODRUFF MEDICAL CENTER	WOODRUFF SC

W

Developer

MB 00174

PROPOSAL FORM 1

APPLICABLE BUSINESS EXPERIENCE

Include a detailed explanation of experience relating to operation of campground and associated facilities

Name of business Pavilion Real Estate LLC / Andrew P Ballard Mgr Partner

Dates 7/28/2004

Location Greenville SC

Description Development and Real Estate

Services provided Operating Management Group will be hired and controlled by LLC to be formed by partners

Public served

Number of employees

Volume of business

PROPOSAL FORM 1

APPLICABLE BUSINESS EXPERIENCE (continued)

Indicate other business or work experience for at least the past 5 years

Employer _____

(SEE FOLLOWING SHEET)
Dates _____

Location _____

Potential Investor's Business Experience

Restaurants
Hotels
Marinas
Office Buildings
Assorted Developments of all types

(See list of investors next page)

Note

Financial information available in detail upon tentative approval of this proposal

POTENTIAL INVESTORS

George Stathakis 864-288-9320
Business Owner Stax's
Greenville SC

Jim Hollingsworth
Columbia SC

Bard Parks 864-421 0505
Former President BB&T
Greenville SC

Douglas Mahon 864-205-3520
Business Owner Eton of America
Spartanburg SC

Lynn Hodges 864 879-4976
CEO (Ret) United Finance
Greenville SC

Albert McAlister 864-984-0581
Laurens SC

Bob Taylor 864-414 0522
Former Vice President US Shelter
Greenville SC

APB_00177

* See pg. 11

PROPOSAL FORM 2

FINANCIAL STATEMENT

Financial Statement of _____ submitted in
connection with an application for a lease to develop operate and maintain
_____ Public Access Area Social Security # _____

ASSETS

LIABILITIES

1 Cash (including savings)	\$ _____	1 Accounts Payable	\$ _____
2 Accounts Receivable	\$ _____	2 Notes Payable	\$ _____
3 Notes Receivable	\$ _____	3 Mortgage	\$ _____
4 Equipment Owned		4 Other	\$ _____
Vehicles	\$ _____		\$ _____
Other	\$ _____		\$ _____
5 Real Property	\$ _____		\$ _____
6 Marketable Investments	\$ _____		\$ _____
7 Other Major Assets	\$ _____		\$ _____
_____	\$ _____		\$ _____
_____	\$ _____		\$ _____
TOTAL ASSETS	\$ _____	TOTAL LIABILITIES	\$ _____

NET WORTH \$ _____

The applicant should have in cash or readily convertible assets at least 25 percent of estimated operating costs. FINANCIAL STATEMENTS AND PLANS FOR FINANCING ARE SECURED IN CONFIDENCE AND ARE NOT PUBLIC INFORMATION

APB_00178

12

PROPOSAL FORM 3

BUSINESS REFERENCES

The following references can confirm the information provided on Proposal Form 1

1 Name _____ Lynn Hodge _____
 Address _____ Greenville SC _____

 Telephone _____ 864 879 4976 _____

2 Name _____ Bard Parks _____
 Address _____ Greenville SC _____

 Telephone _____ 864-421 0505 _____

3 Name _____ Brenda Ballard _____
 Address _____ Senator Hollings Staff _____
 _____ Washington DC _____
 Telephone _____ 202 224 6664 _____

PROPOSAL FORM 4

OPERATING PROPOSAL

Describe how the recreation area will be operated, the type of equipment to be used and how public services will be provided

a Number of employees duties and supervision

30 - 50 wintertime

70 100 summertime

b Fee collections (how is this to be handled?)

Nominal vehicular fee to be collected for day users This fee is to be collected at entry gate to handle general clean up and garbage (litter collection)

c Security

Gated security

d Cleaning mowing and maintenance of facilities and premises

By Operating Management Corporation

* Operating Management Group will be hired and controlled by LLC formed by partners

PROPOSAL FORM 4

OPERATING PROPOSAL (continued)

e Storage and maintenance of material and equipment

By Operating Management Corporation

f Reservation system for Boat storage (and Campsite if provided)

By Operating Management Corporation

g Type and location of temporary residence

h Other revenue producing operations

Only during construction phases

i Seasonal campsite rentals (if provided)

Yes Not to exceed 14 consecutive days for campsites

j Source and estimated annual cost of liability insurance

By Operating Management Corporation as required

15

APB_00191

PROPOSAL FORM 4

OPERATING PROPOSAL (continued)

k Source and type of performance bond

As required

l Operation of swimming beach area

By Operating Management Corporation

m Operation of boat ramp

By Operating Management Corporation

n Operation of Marina

By Operating Management Corporation

AUTHORIZATION TO INVESTIGATE

I hereby authorize PICKENS COUNTY to investigate, if necessary, my ability to finance develop, and operate the facilities at WAR PATH Public Access Area

Andrew P Ballard

Signature of Applicant

Date 08-28-04

AGREEMENT TO SUBMIT A LEASE APPLICATION

Applicant agrees that upon selection as the successful bidder and written notification of such by PICKENS COUNTY a Public Access Area Lease Application described in this prospectus and an advance payment of FOURTY Five Hundred Dollars (\$4 500 00) will be submitted to PICKENS COUNTY The application and payment must be received by PICKENS COUNTY within fourteen (14) days from the date of written notification that the applicant is the successful bidder

Signature of Applicant

Date_____

Lease will need ample time for engineering architectural permitting and licensing applications before beginning construction Projected time period for this will be a minimum of twelve (12) months before construction could begin

FILED CLERK OF COURT
6-24-09
PAUL E. WICK-LOIMER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard,

C A No 2008 CP 23-5739

Plaintiff,

v

Tim Roberson, Rick Thoennes Rick
Thoennes III and Warpath Development,
Inc ,

Defendants

DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTION TO DISMISS
OR FOR SUMMARY JUDGMENT
AND IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

This matter is before the Court on cross motions to dismiss and/or for summary judgment pursuant Rules 12 and/or 56 of the South Carolina Rules of Civil Procedure. For the reasons more fully set forth below, Defendants submit the following supplemental memorandum in support of their motion and in opposition to Plaintiff's motion. While Defendants certainly believe that their motion should be granted in full and oppose Plaintiff's motion in total due to time constraints at the hearing Defendants were unable to offer a full oral response to the entirety of Plaintiff's assertions. Defendants respond in supplement as follows:

1 The financial condition of Marick Home Builders is irrelevant to Rick Thoennes and Rick Thoennes III's ability to serve as shareholders and developers of Warpath

Apparently in an effort to disparage Rick Thoennes and Rick Thoennes III, Plaintiff set forth testimony regarding Marick Home Builders financial and legal problems that developed in the wake of the current recession. Whatever the motives of the Plaintiff may be in reciting this testimony, under no circumstances does it have any bearing on whether Plaintiff's claims or Defendant's claims are meritorious. First, Marick's financial condition is irrelevant to this

lawsuit Marick is not a party to this lawsuit and is not a shareholder of Warpath Rick Thoennes and Rick Thoennes III hold the shares of Warpath individually Second, Plaintiff apparently suggests that Marick's financial condition means that the Thoennes will be unable to meet their obligations under the Stock Purchase Agreement However, even forgetting the gross speculation that Plaintiff must employ to reach this conclusion there is no evidence of a correlation between the two Marick is a separate entity This goes back to Defendants' assertion of ripeness There has been no actual breach or repudiation of the agreement The development cannot be developed at this time because it is not permitted Therefore there is no claim In any event, even if the Court disagrees with the Defendants, there are clearly questions of fact for the trier of fact regarding whether Marick's financial condition is evidence of a breach or repudiation of the Stock Purchase of Agreement For this reason, Plaintiff's motion must be denied

2 Plaintiff lacks any evidence to support that Defendants aim to issue stock to themselves

At the hearing, Plaintiff's attorney asserted that the Defendants aimed to issue stock to themselves and dilute the Plaintiff to 2% ownership This is without merit as there is no evidence to support this assertion Specifically, in deposition, when the question was specifically posed regarding this issue, Tim Roberson stated as follows

Q So you thought by issuing these shares that would improve your return on investment, is that correct?

A All of our return on investment for every shareholder equally

Q And who was going to acquire more equity at a reduced rate? You say when an investor realizes that an expected return on investment is not forthcoming his only viable option is to acquire more equity at a reduced rate Who were you referring to?

A Any investor who would come in

Q Well, so far, who had provided cash into this deal?

A Me

Q So were you referring to yourself in this instance?

A Not particularly no I expected to be diluted myself if we took that action

Q Were you expecting to acquire more equity at a reduced rate?

A Personally?

Q Yes

A No

Q Were you expecting to get any of these authorized shares as payment for obtaining capital or lending money to the corporation or obtaining a loan for the corporation?

A No

(Ex A, Dep of Roberson at 117 18) Rick Thoennes testimony was similar (Ex B, Dep of Thoennes at 59 61) Despite Plaintiff's attempt to suggest to the contrary there were no aims to dilute Andy Ballard out of the business If the shareholders were able to find an investor to build and manage the hotel or any part of the hospitality side of the development who likewise wanted an equity stake any dilution that occurred would affect all equally For these reasons and the

reasons set forth in Defendants' prior briefs, Plaintiff's motion for summary judgment should be denied as questions of fact remain.

3 There is no evidence of actual or anticipatory breach of the Stock Purchase Agreement with regards to financing the project

Even assuming Plaintiff's interpretation of the financing provision of the Stock Purchase Agreement in this matter, there is no evidence of actual or anticipatory breach of the financing provisions. First, there has been no actual breach. The project cannot be financed at this time because there is no project without the permits. Next, the only evidence Plaintiff can recite is a heated retort by Tim Roberson that he would not contribute more than 20% of the total. Plaintiff presents this response by Roberson as if it is a complete and total repudiation of an obligation that has not even come to pass. Plaintiff's assertion is without merit.

First, the fact that the obligation is not currently due is enough to dismiss the claim because any claim the Plaintiff has is pure speculation. However, as set forth in Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, when financing was explored and the *pro formas* were developed, the banks were lending 80% of the project cost; therefore, all projections contained a 20% equity projection. Conceivably, the Defendants could wait for banks to lend 80% of the cost again. The Stock Purchase Agreement contains no time limits for the project to be funded and/or financing to be obtained. The Defendants could wait for a better economic climate to fund the project and seek financing. This is a further reason to grant Defendants' motion.

Moreover, even taking Ballard's interpretation of the agreement and hypothetically assuming that Roberson's statement is an accurate statement of the limits what he would provide, the Court should grant Defendants' motion because Roberson's statement would not even

constitute a breach or repudiation. Taking Roberson's statement at face value, he is not repudiating the Stock Purchase Agreement, he is stating that he would contribute at least 20% of the amount needed to build the project. At the time the project was being considered, that amounted to almost \$2,000,000. (See Ex. G, Pl.'s Mem. Supp. M. Summ. J. (Bates # RTTW_000559)). Factually, \$2,000,000 may be all that is needed. At this point, there are no architectural plans. There is no construction estimate. There is no materials cost estimate. From the beginning, Ballard had presented this project as phased. There is nothing in the Stock Purchase Agreement preventing Roberson from providing the capital to finance a phase 1, which could be equal to or less than \$2,000,000, and then the company using the profits from phase 1 to pay for phase 2 and so on. That is a business decision. The point is, the Plaintiff is engaging us all in a great exercise of speculating a future that may or may not come to pass. Therefore, for these reasons and the reasons set forth in Defendants' Memorandums in Support of its Motion to Dismiss or for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, Plaintiff's claims arising from the alleged breach of the obligation to provide the capital necessary to obtain long term financing should be dismissed and, at worst, Plaintiff's motion for summary judgment should be denied because there are clearly questions of fact as to whether Plaintiff's claims are meritorious.

Conclusion

For the reasons set forth herein, Defendants' motion to dismiss or for summary judgment should be granted and Ballard's motion for summary judgment should be denied.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'JL Howard', is written over a horizontal line.

Joshua L. Howard # 70260
Haynsworth Sinkler Boyd P A
P O Box 2048
Greenville, SC 29602
Telephone 864 240 3202
Facsimile 864 240 3300
jhoward@hsblawfirm.com

Attorneys for the Defendants

Greenville South Carolina
November 19 2009

EXHIBIT A

1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO 2008-CP-23-5739

Andrew P (Andy) Ballard,
Plaintiff,

vs

Tim Roberson, Rick Thoennes,
Rick Thoennes, III, and Warpath
Development, Inc ,
Defendants

COPY

DEPOSITION TIM ROBERSON

DATE TAKEN March 4, 2009

TIME BEGAN 1 18 p m

TIME ENDED 5 11 p m

LOCATION Haynsworth, Sinkler, Boyd, P A
75 Beattie Place
Eleventh Floor
Greenville, South Carolina

REPORTED BY TRACI L BARR, RPR
Registered Professional Reporter
Notary Public for South Carolina



864-234 5744

GALLAGHER COURT REPORTING

gcr@charter.net

1 shortfall that was related to the dock shortage
2 and the time lapse that was unexpected

3 Q So you thought by issuing these shares that
4 would improve your return on investment, is
5 that correct?

6 A All of our return on investment, for every
7 shareholder equally

8 Q And who was going to acquire more equity at a
9 reduced rate? You say when an investor
10 realizes that an expected return on investment
11 is not forthcoming his only viable option is to
12 acquire more equity at a reduced rate

13 who were you referring to?

14 A Any investor who would come in

15 Q Well, so far, who had provided cash into this
16 deal?

17 A Me

18 Q So were you referring to yourself in this
19 instance?

20 A Not particularly, no I expected to be diluted
21 myself if we took that action

22 Q Well, you had expected that your return on
23 investment was not forthcoming, correct?

24 A Because of the reasons stated

25 Q Were you expecting to acquire more equity at a

1 reduced rate?

2 A Personally?

3 Q Yes

4 A No

5 Q Were you expecting to get any of these
6 authorized shares as payment for obtaining
7 capital or lending money to the corporation or
8 obtaining a loan for the corporation?

9 A No

10 (Exhibit Number 29 marked for identification)

11 EXAMINATION RESUMED BY MR HOLLEMAN

12 Q Let me show you Exhibit 29, please This is an
13 e-mail from you to Rick, Sr and others in
14 which you say, the cat is out of the bag
15 What cat was getting out of the bag here?

16 A Up until that time we were trying to keep a
17 very low profile at Andy's suggestion about
18 this whole process of getting permits, and I
19 would assume that that was because of the
20 public's opportunity to be involved It showed
21 up in the paper, and so I said the cat's out of
22 the bag In other words, no need to walk
23 around tippy toed anymore

24 Q Now, the e-mail here, Andy is not one of the
25 recipients of this e-mail, is he?

EXHIBIT B

Transcript of the Testimony of:

RICK THOENNES

November 9, 2009

In the Matter of:

BALLARD v ROBERSON, et al

Irveta J Shouse/GWC
Post Office Box 9177
Greenville South Carolina 29604
Phone 864 233 2341
Fax 864 233 5534
E mail IrvetaJ@aol.com

1 Q So when he said, "When an investor realizes that an
2 expected (return on investment) is not forthcoming, his only
3 viable option is (to) acquire more equity at a reduced rate,"
4 was it your understanding from that sentence that Tim was
5 proposing that he would acquire more equity in the company at a
6 reduced rate?

7 A No

8 Q Well, who was he referring to when he said 'an
9 investor'?

10 A I would assume it would be a future investor

11 Q Yeah, but he says "his only viable option is (to)
12 acquire more equity at a reduced rate "

13 A Uh-huh

14 Q Well, future investors at that time didn't own any
15 equity

16 A You'd have to ask Tim that

17 Q Well, what was your understanding when you received
18 it?

19 A Just what I told you

20 Q You didn't think he was referring to himself?

21 A No, not at all

22 Q All right Look at the last paragraph The last
23 paragraph says, "I believe with legal review and proper
24 planning we should be able to accomplish the needs of a viable
25 business and appropriate (return on investment) ' Do you see

1 that sentence?

2 A Yes

3 Q And did you understand that he was referring to his
4 return on investment in this sentence?

5 A No, I would have thought it would be any investor
6 Including us

7 Q Okay But at that point in time he was the only
8 investor is that right?

9 A He was the only equity investor

10 Q Okay

11 A We were sweat equity

12 Q Okay So you two and he were the only investors in
13 the company at that time

14 MR HOWARD Object to the form

15 A I don't know if you'd include Andy in that

16 Q Other than Andy

17 A Yes

18 Q Now, did you all talk with Andy about this proposal
19 to increase the number of shares to be issued before you
20 passed ---

21 A You'd have to ask Tim

22 Q Did you talk with him about it?

23 A No

24 Q At the shareholders meeting was Andy opposed to that
25 idea?

1 A As I recall he was

2 Q And do you remember what he said?

3 A I don't

4 Q Do you remember indicating that Andy wouldn't stand
5 still for this change?

6 A He wouldn't stand still for the ?

7 Q Or sit still

8 A Which change?

9 Q Increasing the number of shares and diluting him

10 A I don't remember that

11 Q Do you believe it's consistent with the Stock
12 Purchase Agreement to reduce Andy's holdings below twenty
13 percent?

14 MR HOWARD Object to the form

15 A Yes, but not just Andy I don't think we could just
16 dilute Andy

17 Q Do you think it's consistent with the shareholders
18 agreement to dilute him and ---

19 A If we all are diluted, yes

20 Q Even though the shareholders agreement says his
21 final holding would be twenty percent?

22 A At the time of the closing, that's correct

23 Q Was it your understanding that the long-term
24 financing would be obtained by Tim Roberson?

25 A Yes