

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS
Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

North Pleasant, LLC and Vanguard Development Group, LLC..... Appellants

vs.

South Carolina Coastal Conservation League and Edward Dana Beach, defendants,

Of whom South Carolina Coastal Conservation League is the Respondent,

**RECORD ON APPEAL
VOLUME III OF III**

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1 MR. REYNOLDS: There is testimony that that
2 is not true. They were not trying to stop development in
3 its entirety, which is what this says.

4 THE COURT: There is evidence abundant in the
5 record that the governor was trying to stop development
6 in the entire state along with other large homeowners.
7 That seemed to be true, and, in fact, that's what he
8 found out later on was one of his reasons he gave was
9 that there was significant opposition from large
10 landowners and the state that they were -- there was
11 opposition to a densely developed piece of property.
12 That's what he said was his reason for backing out, one
13 of them.

14 MR. REYNOLDS: I understand that, Your Honor.

15 THE COURT: So it's true.

16 MR. REYNOLDS: I'm making the distinction
17 between limiting development, which -- and this is the
18 distinction that Mr. Davis made on the stand when I asked
19 him about is it true there was a conservation easement
20 effort ongoing? And he said no, that was not true.

21 He was talking, he, Mr. Davis, was talking
22 about a conservation approach of trying to get rezoning
23 to R-15.

24 THE COURT: This whole conservation easement
25 issue seems to be some matter of confusion between what

1 people were saying and what people were hearing, because
2 I think as Mr. Hamilton Davis pointed out, the government
3 can't put a conservation easement on a piece of property.
4 The owner of the property can put a conservation easement
5 on his property. The government can zone the property
6 differently, which may be more conservation friendly and
7 be, I think, probably the characterization that was being
8 used as conservation, preservation, that sort of thing,
9 but there is no government action of putting a
10 conservation easement on somebody else's piece of
11 property without their -- that by nature that's what the
12 owner of the property does, and for the government to put
13 an easement on some people's property, which would
14 deprive them of their value and their use of the
15 property, well, Mr. Smith is the expert on this case.
16 He represented Mr. Lucas and that would be a regulatory
17 take, and that's not -- so that's a misunderstanding on
18 Pittinger's -- Mr. Burns, if he thought that he, in fact,
19 seemed to indicate by saying sending an e-mail to
20 Mr. Pittinger, saying could the government put any
21 conservation easement on a piece of property?

22 Mr. Hamilton Davis said, We can't do that.
23 The government can't do that. Everybody knows that. So
24 they got -- it's not like they told him the government
25 was going to put a conservation easement on that. That

1 seems to be Mr. Burns's mishearing, or misunderstanding
2 of what he was hearing.

3 MR. REYNOLDS: Your Honor, that's one
4 possible fact. That might have been the way it occurred,
5 but Mr. Burns, who was the only one who recalled the
6 conversation, Mr. Burns said, not only that he was told
7 that they were attempting to stop development, but as you
8 pointed out, he later -- he makes it clear what his
9 understanding of the conversation was, which was that
10 Hamilton Davis said there was an effort to stop
11 development entirely by putting a conservation easement
12 on all this property. That's what he heard.

13 Mr. Davis doesn't remember what he said, but
14 that's what Mr. Burns --

15 THE COURT: Actually, what I read is
16 Mr. Burns in his deposition said, I don't remember what
17 got said, and the only thing you're relying on is that
18 e-mail that was written three or four days later, which
19 characterizes a subsequent conversation that Mr. Burns
20 had with Mr. Hamilton Davis because is not Mr. Burns's
21 deposition -- I don't remember any conversation -- I may
22 have had one, a conversation with Mr. Hamilton Davis, but
23 if I did, I don't remember it.

24 MR. BARNETT: He didn't even know if he had
25 called him back at first.

1 THE COURT: Correct. So when you say
2 Mr. Burns remembers it, the only thing that he remembers
3 is what he's saying in that affidavit, or that e-mail
4 written four days later, right?

5 MR. REYNOLDS: That's not the only thing I'm
6 relying upon. There is the recorded voice mail as well
7 for some aspects, but this is the primary --

8 THE COURT: Well, the transcript doesn't say
9 anything about a conservation easement.

10 MR. REYNOLDS: That does not, you're correct,
11 Your Honor. So we are relying on that chain of events,
12 the voice mail and the call back, and the only evidence
13 we have of what was said is Mr. Burns's e-mail. And you
14 might think that there was a --

15 THE COURT: It's not the only evidence. You
16 have Mr. Hamilton Davis saying, I didn't say that, and
17 you have had to clearly misunderstand what he said as far
18 the conservation easement goes.

19 MR. REYNOLDS: With all due respect, Your
20 Honor, he did not say that. He said I would not have
21 said that, but that is different. He said several times
22 that he did not remember the conversation. Mr. Burns --

23 THE COURT: Let me just -- let me get past
24 what I see the gist of it is. It's not that these folks
25 are upset so much that they said anything to them in

1 particular that they ended up -- that the buyers ended up
2 relying on, but it seems to me that their big beef is
3 that he said some things to them which caused them to go
4 on full alert and do further due diligence in which they
5 then discovered the reasons which Mr. Pittinger
6 uncontrovertibly says, This is why we backed out of that
7 contract. We found out there was significant opposition.
8 There's density problems, and there is no water and sewer
9 that's going to be available for that property in which
10 we could make any money off this deal.

11 So that's seems to be, as I get this case,
12 their beef is we got a call from the Conservation League,
13 and based on that conversation, whether or not what they
14 say was true or not true or misunderstood, Mr. Pittinger
15 says there is nothing -- that conversation is not the
16 reason why they backed out of this deal. It put them on
17 alert. They did further due diligence. He met with Dan
18 Davis, and it says in his deposition it was -- that
19 conversation that I had at Kiawah with Dan Davis that
20 caused me to back out of the deal.

21 I realized we had insurmountable water sewer
22 problems, and the zoning was not going to be favorable to
23 us. That's what he says. That's the but for.

24 MR. REYNOLDS: Again, Your Honor,
25 respectfully disagree. The but for, from the intentional

1 inflection and tortious interference point of view, is
2 the call. But for that call, the subsequent
3 investigation would not have happened. In fact --

4 THE COURT: Well, they had gotten --

5 MR. REYNOLDS: In fact, Pittinger cancelled
6 the contract two days later before he had ever talked to
7 Mr. Davis. He issued an ultimatum, Either give us an
8 extension, or we cancel. There can be no doubt that that
9 ultimatum was a direct result of Hamilton Davis's call.

10 That can be viewed as the first termination,
11 Your Honor, and there is no doubt that that was -- that
12 the Davis call was the reason for the ultimatum on
13 Sunday. So if it's a causation issue, the cause is clear
14 for the Sunday termination, and that was the Davis call.

15 THE COURT: They got an extension. They
16 didn't terminate right away. They got an extension,
17 correct?

18 MR. REYNOLDS: They issued the ultimatum: We
19 will terminate today unless you give us an extension.

20 THE COURT: So they got one.

21 MR. REYNOLDS: But they wouldn't have issued
22 the ultimatum, Your Honor. And had my client --

23 THE COURT: But they were still willing to go
24 forward, and they did go forward with it, with the
25 extension, which they granted.

1 They ultimately backed out of that, but the
2 contract was not terminated at that point. They just
3 wanted more time to do more -- and figure out what
4 these -- what the opposition is all about.

5 MR. REYNOLDS: Your Honor, the contract was
6 altered, on Sunday, based on the call on Friday.

7 THE COURT: Well, the contract was not
8 terminated on Sunday. It was amended, and they granted
9 them an extension, but it was not cancelled.

10 MR. REYNOLDS: Your Honor, if I may suggest,
11 if the contract had been terminated on Sunday, that would
12 not be a significantly different outcome that an
13 investigation for five days, talking to Dan Davis and
14 then terminated, terminated it. That was -- the five-day
15 inspection period was subsequent to the initial effort on
16 the part of -- or intention on the part of Pittinger to
17 cancel the contract on Sunday.

18 That's the operative day, Your Honor.

19 THE COURT: Okay. You want to discuss
20 absence of justification?

21 MR. REYNOLDS: Your Honor, we were
22 sidetracked by the misinformation question. There's more
23 misinformation that was imparted by Mr. Davis to
24 Mr. Burns.

25 THE COURT: Tell you what: Hit the pause

1 button for a second because I need to run to the rest
2 room. I've been drinking diet Coke. It's a habit I get.
3 It helps me remember to take breaks with the jury, but
4 you guys haven't been sipping water and I have, so give
5 me five minutes, and if y'all need to take a break, we'll
6 be back.

7 (Recess taken.)

8 THE COURT: Go ahead.

9 MR. REYNOLDS: I think we were beginning to
10 talk about the references in the Burns recap e-mail to
11 D.R. Horton. We mentioned that D.R. Horton has a
12 property just south of ours that the Conservation League
13 has fought and now Horton is trying to do a land swap to
14 get out of the Highway 41 contract.

15 That is directly contradicted by Mr. Davis
16 himself who said that he did not find something by
17 Ms. Derosiers who said the league did not fight Horton
18 and by the others and by Mr. Flannel who works for D.R.
19 Horton who said that did not happen.

20 If the jury believes this e-mail and not
21 Mr. Davis's recollection of what he might have said, then
22 certainly that can be taken as an untrue statement, and
23 everyone agrees that if an untrue statement is imparted
24 as part of the interference that that's without
25 justification.

1 That was what got their attention, Your
2 Honor, the rezoning fees and the D.R. Horton fees. The
3 other thing that's significant about the call is that it
4 can be perceived by a reasonable jury as a threat. If
5 the jury perceives the recap of the conversation as a
6 threatening call by Mr. Davis, then by the league's own
7 standard, the one that they create for themselves, that
8 would be an improper thing to do.

9 I submit, Your Honor, that that is not --
10 that is certainly a reasonable inference from this
11 e-mail, and the jury should be given the option to make
12 their own decision about whether this was a threat or
13 not. Another thing that the league is not allowed to do
14 by their own standard, the standard they testified to, is
15 bully.

16 A reasonable jury could take this e-mail as a
17 true representation of the conversation and find that the
18 call was an attempt to bully, and, in either case, that
19 removed -- or that satisfies that without justification
20 elements of tortious interference with a contract.

21 And far the damages go, there was competent
22 testimony that Mr. Reynolds, as the manager of North
23 Pleasant, incurred taxes of over -- \$2 million plus
24 interest and the difference in the value of the property
25 at the time of sale and the contract price is the best

1 measure of damages.

2 The Devotion case that Mr. Walker cited is
3 North Carolina, first of all, and that was a straight
4 breach of contract case. Guy sold a property for 1.7
5 million. During the inspection period, it was cancelled.
6 It later sold for 1.4 million. He was not entitled to
7 the benefit of his bargain because it was cancelled
8 during the inspection period, so it's not applicable even
9 if it were South Carolina law.

10 THE COURT: What about the statute of
11 limitations? You just said the operative bad act was the
12 telephone conversation on May the 17th.

13 MR. REYNOLDS: May the 18th, I believe, Your
14 Honor.

15 THE COURT: Filed a lawsuit three years and
16 two days later on two of the causes of action, and one of
17 them, perhaps has a cause of action, of three years and
18 one of them has a cause of action of two years. So --

19 MR. REYNOLDS: Would it be okay if
20 Mr. Barnett, who was much more involved at that time than
21 I, to respond to that issue, Your Honor?

22 THE COURT: Sure.

23 MR. BARNETT: These people didn't know
24 anything about, nor did their agent know about it,
25 really, until May the 21st.

1 THE COURT: He said May the 17th phone call
2 was the operative bad act. Burns was the agent. He's
3 the one that got everybody excited, saying, I got this
4 phone conversation. I got this voice mail. I had a
5 phone conversation with this guy, and here's the problem.
6 May the 17th is a bad act day.

7 MR. BARNETT: It was May 18th.

8 THE COURT: May 18th.

9 MR. BARNETT: Burns was not these people's
10 agent. He was the buyer. The buyer received it. Our
11 people did not know anything about this at all until May
12 the 20th, which was a Sunday, when their real estate
13 agent, who was Josh Hulen, who you may recall testified
14 yesterday morning, he got a phone call from the buyers'
15 outfit.

16 THE COURT: All right.

17 MR. BARNETT: Mr. Fogarty.

18 THE COURT: What about the two years for a
19 defamation claim?

20 MR. BARNETT: You're shifting over to the
21 injurious falsehood?

22 THE COURT: Yeah.

23 MR. BARNETT: Okay. Just wanted to be sure.

24 THE COURT: You answered my question, so I
25 don't need to beat it.

1 MR. BARNETT: I had anticipated this enough
2 to at least prepare a memo.

3 THE COURT: Just tell me what it says.

4 MR. BARNETT: All right, sir.

5 THE COURT: I'm engaged right now.

6 MR. BARNETT: Injurious falsehood is not
7 slander.

8 THE COURT: What is it?

9 MR. BARNETT: We have a statute of
10 limitations that says for libel and slander, defamation.
11 In other words, we got a two-year statute of limitations.
12 It doesn't say anything about injurious falsehood. We
13 don't have any law in South Carolina on this.

14 Unfortunately, I suppose, I think, Missouri
15 and New York do, but they had similar statute of
16 limitations structures, and this argument was made -- I
17 believe it's to Missouri Supreme Court and one of those
18 New York appellate levels, I never have figured out what
19 they all mean, but appellate division of the Supreme
20 Court, Third Division, in New York, which I think is like
21 our Court of Appeals.

22 Both of those states have reached conclusion
23 that injurious falsehood, which is called by some
24 different name sometimes, just product disparagement or
25 things like that, is not defamation. It is a -- it is

1 more closely related to actually tortious interference
2 with a contract, and, indeed, both of these cases, they
3 were similar actions being pursued by the plaintiffs
4 there for tortious interference and for injurious
5 falsehood.

6 And in those states, they both concluded that
7 their statute of limitations that governs tortious
8 interference, Missouri, like us, has the catchall statute
9 of limitations. That's the one that applies. I think it
10 was not three years. It's a different time period. I
11 think the analysis is the same; therefore, the three-year
12 statute, I think, would apply.

13 THE COURT: Okay.

14 MR. BARNETT: I have copies of those if you
15 would like them. You may not want to read them, I know.
16 I shall give them to you.

17 MR. REYNOLDS: Your Honor, could I continue
18 with the interference argument?

19 THE COURT: Sure.

20 MR. REYNOLDS: The Vanguard tortious
21 interference with contract argument, the argument I
22 heard, was that since they're not a party to the
23 contract, they cannot bring that claim. They are
24 referenced in the contract. They are more than just an
25 incidental beneficiary. They are specifically in the

1 contract.

2 In addition, you heard Mr. Grubbs testify --

3 THE COURT: They might be mentioned in the
4 contract, but all that does is make them, at best, a
5 third party beneficiary. They're not a party to the
6 contract, and under case law, third party beneficiaries
7 do not include real estate brokers.

8 MR. REYNOLDS: I agree with that.

9 THE COURT: Real estate commissions are
10 mentioned in every single contract involving real estate
11 in which there is a real estate broker, and the law seems
12 to be pretty clear that Supreme Court says third -- real
13 estate brokers and agents are not third party
14 beneficiaries to contracts to buy and sell real estate.

15 MR. REYNOLDS: In this case, there are two
16 distinctions I would like to point out. First,
17 Mr. Grubbs testified that he had a contract with the
18 seller. That contract was in place, and that was
19 obviously interfered with by the call.

20 The other is that --

21 THE COURT: Well, is there any evidence at
22 all that the Coastal Conservation League knew of that
23 contract?

24 MR. REYNOLDS: There is no evidence that they
25 were aware of it, but it's still incidental to the breach

1 of the main contract.

2 THE COURT: Which makes them at best a third
3 party beneficiary, but if you were to say, All right. We
4 had a separate -- Vanguard had a separate contract with
5 the sellers and that contract got interfered with, there
6 is no evidence that I heard that the Coastal Conservation
7 League knew of the existence of a contract between the
8 seller and the broker; is that true?

9 MR. REYNOLDS: I've not heard any evidence of
10 that either.

11 THE COURT: So you would fail on that theory.
12 So the only other theory would be as a third party
13 beneficiary to the contract between North Pleasant and
14 Pittinger's Group, correct?

15 MR. REYNOLDS: I would elevate it to a higher
16 status, but I've already made that distinction, and it
17 was not very impressive to Your Honor.

18 THE COURT: Well, I'm just saying I don't
19 think it's a winner argument, all right?

20 MR. REYNOLDS: I'll take that and move on to
21 intentional interference with prospective contractual
22 relations.

23 There was a contract. The contract was
24 terminable, in other words. In order for it to close, in
25 order for North Pleasant to realize the serious damages,

1 there had to be another act, another agreement to close.
2 Pittinger could have walked after the end of the
3 inspection period, and the damages would have been
4 \$500,000.

5 The fact that it was an ongoing contract
6 qualifies for and a prospective relationship with the
7 third parties. In fact, Mr. Davis, in his voice mail,
8 said I'm calling about, I
9 guess, y'all's interest in 2,600 acres, so he was aware
10 something was going on. He was aware that there was
11 either a contract or an interest, a relationship, between
12 the two that involved a potential contract.

13 That, the three elements for that tort, are
14 that the defendant intentionally interfered for an
15 improper purpose or by improper method and that the
16 interference caused injury. The interference is the same
17 under both torts, Your Honor. We have to show that the
18 call was the but for cause, and that's all that's
19 required under the law, that the call was the but for
20 call of the contract's termination, and that is clear,
21 Your Honor.

22 The 450,000 would not have been posted unless
23 the buyer was ready to -- unless the buyer was ready to
24 close, absent the phone call. The phone call is the only
25 act that happened after the 450,000 additional earnest

1 money was posted.

2 THE COURT: But they didn't terminate the
3 contract then. The only thing they did was exercise the
4 right that they had under the contract or got an
5 extension, but they didn't terminate it at that time.

6 MR. REYNOLDS: I understand they did not
7 terminate it at that time, Your Honor, but the call led
8 to the sequence of events that results in termination.
9 Again, all we have to show is a but for causation, and
10 that's clear. But for that call, the termination would
11 not have occurred. There's no evidence to the contrary
12 to that.

13 I mean, there were subsequent reasons for
14 Pittinger's termination. He found out more information
15 certainly, but that's not required under this tort. All
16 that's required is the but for causation, and that, we
17 clearly have, and that the interference caused injury,
18 the injury portion of it is -- I don't think that's being
19 contested by Mr. Walker.

20 Damages, Your Honor, we heard Jamie say that
21 100 percent of the profits went to North Pleasant. They
22 should have -- they should get 100 percent of the
23 proceeds if any are given, and the funds will be
24 distributed that way. Mr. Walker could have inquired on
25 cross-examination about the bifurcation of ownership, but

1 elected not to do so.

2 North Pleasant also has a claim under the
3 intentional interference because Hamilton Davis, knowing
4 that there was a contract, had to know that there was a
5 listing agreement. He probably knew, anyway, and that's
6 all that is required, is knowledge of the relationship,
7 and that was knowledge that was easily attainable, so,
8 Your Honor, unless you have more questions which I would
9 like to answer, I'll turn it over to Mr. Barnett.

10 THE COURT: I don't. Mr. Barnett?

11 MR. BARNETT: Not to step on my colleague's
12 toes or overlap, but just one final thought rather than
13 passing a note to him.

14 In terms of causation, the Burns e-mail, if
15 the Burns e-mail is believed by the jury as opposed to
16 Mr. Hamilton Davis's testimony, which I think they're
17 entitled to do, particularly since it was a
18 contemporaneous notation of what had been told to
19 Mr. Burns, then you listened to Mr. Pittinger's testimony
20 about what his thoughts were, what his reasons for
21 terminating his contract were, well, he was very
22 concerned about the opposition he was going to face, the
23 fight that he was going to be in.

24 He had a tiger by the tail, and right out of
25 the box, Mr. Burns's e-mail, when confronted with

1 Mr. Davis's untrue statement, if this is believed, that
2 they had stopped D.R. Horton, they had fought D.R.
3 Horton, that they had stopped D.R. Horton, he says, If
4 they, in fact, halted D.R. Horton, they have accomplished
5 something.

6 I believe the jury's entitled to, in
7 conjunction -- that, in conjunction with Mr. Pittinger's
8 explanation of the real reason why he got out of this
9 contract, they're entitled to believe that the cause was
10 that they were told something untrue.

11 THE COURT: They have to disregard what your
12 client said, or what Mr. Pittinger said?

13 MR. BARNETT: No, sir. I'm saying if they
14 listen to what he said, what he said was, I was going to
15 be in a fight. I was going to be facing terrible
16 opposition. I had a tiger by the tail. I didn't want to
17 spend the money being in this fight, and it was just a
18 terrible fight.

19 Well, that has to be viewed -- well, the jury
20 can view it, the proper test, I guess, in light of this
21 e-mail, which, if believed, to be the accurate
22 description of what Mr. Davis told him.

23 THE COURT: He did not state in there, in his
24 deposition, that I heard, anything about the D.R. Horton
25 matter, not setting aside the fact that we are probably

1 just talking about semantics, because, you know, y'all
2 want to say they stopped and they fought him, and they
3 want to say, Well, we worked with them to come up with a
4 different solution, I mean, you know, it's not
5 WWF wrestling where you have to accomplish a goal to
6 defeat somebody and stand over them and go, I beat your
7 butt.

8 I mean, if your goal is to diplomatically get
9 somebody to do what you want them to do, you may -- it's
10 not in your best interest to run around saying, We fought
11 and beat somebody if you're working with developers to
12 try to reach a compromise. Fought and worked with could
13 easily be the same thing.

14 What he's talking about, when he talks about
15 the conversation with Dan David and that opposition, is
16 future opposition was what he was worried about, not past
17 opposition. D.R. Horton -- he doesn't say anything about
18 D.R. Horton as his reasoning for backing out of this
19 deal. He's saying, Dan Davis told me there was
20 significant opposition in any kind of development in that
21 area, and I don't want to have to deal with that.

22 He doesn't say anything about D.R. Horton,
23 correct?

24 MR. BARNETT: He talks about this e-mail. He
25 read this e-mail.

1 THE COURT: But he didn't say that was his
2 reason for believing.

3 MR. BARNETT: I believe the jury is entitled
4 to link the two together. I think there is a natural
5 link here, and I agree with, you if you want to -- if
6 you're any organization, like the league or similar, if
7 you do want to work with a developer, it's not a good
8 idea to start off by beating your chest and saying, Hey,
9 we're big boys and we fought these people and we stopped
10 them, but if your motive is to cause a buyer not to buy a
11 piece of property, well, that might be in your interest,
12 to beat your chest and say, We are that powerful. We
13 stopped D.R. Horton.

14 And that is exactly how Mr. Burns took it,
15 and that's how all this starts. That's the first --

16 THE COURT: Starts, is the operative word.

17 MR. BARNETT: Beg your pardon?

18 THE COURT: Starts is the operative word
19 because they didn't cancel the contract on Sunday, so if
20 you believe that they puffed their chest, that Hamilton
21 Davis puffed his chest and said, We took on D.R. Horton
22 and beat them, and you should know that, and you're going
23 to have to deal with us, they didn't cancel the contract
24 that day.

25 All they did was they asked for an extension,

1 and then they sought out more information and they found
2 out, Whoa, you know what? There was a lot going on here
3 that we didn't know about.

4 They found out things that ultimately they
5 say were the reasons why they cancelled the contract.

6 MR. BARNETT: What he says was that the
7 zoning was one lot per 15 acres, which it was not.

8 THE COURT: That what Pittinger says. That
9 what Pittinger says.

10 MR. BARNETT: He said it in his e-mail when
11 he told his staff to cancel the contract, but it wasn't a
12 true statement.

13 THE COURT: There is nobody said that
14 Hamilton Davis said it was one in 15.

15 MR. BARNETT: No, sir, not indeed. All he
16 knew was there was a push by the same people who told
17 him, We stopped D.R. Horton.

18 THE COURT: Can't help it if he had bad
19 information and he got confused. Nobody on South
20 Carolina Coastal Conservation League told him zoning was
21 one house per -- or 15 acre lots.

22 MR. BARNETT: I can't hang that on their
23 neck. I would if I could, but I can't.

24 THE COURT: So he can't hang that on anybody
25 other than himself.

1 MR. BARNETT: What I do hang around their
2 neck, which is the untrue statement, which is extremely
3 potent, to a buyer like Mr. Pittinger, that he had
4 stopped D.R. Horton. They fought them and they stopped
5 them, and that wasn't true.

6 Now, that's improper. That was part of the
7 causation the jury is entitled to decide, I think, how
8 much of a cause that was. There is nothing about what
9 Mr. Pittinger said that contradicts, and even if it did,
10 I think the jury is entitled to conclude that it was the
11 major cause. All his statements are, I knew I was going
12 to be in a fight.

13 Well, he sure knew he was going to be in a
14 fight from people who bragged about stopping D.R. Horton
15 when it wasn't true.

16 I think I'm making a jury argument. I
17 apologize. It's been a long week, couple weeks, a month.

18 With respect to injurious falsehoods, with
19 all due respect, we like to say, but I disagree with
20 Trenholm. The testimony was from Mr. Davis himself
21 that --

22 THE COURT: Which Mr. Davis?

23 MR. BARNETT: Hamilton Davis, I'm sorry, that
24 he told gatherings of residents out in those areas that
25 if this development went in, their property taxes might

1 go up and that they might have to contribute money
2 through -- again, I think he said through taxes on the
3 stand, to help pay to run utilities.

4 THE COURT: When did that meeting take place?

5 MR. BARNETT: The one evidence we have is in
6 April. It was after our clients had the property under
7 contract.

8 THE COURT: Is there any evidence that -- I
9 get confused sometimes, so just bear with me.

10 Is there any evidence that Pittinger knew
11 about those statements or does that have anything at all
12 to do with their receipt?

13 MR. BARNETT: The opposition to the existing
14 zoning, which he liked, on the property, flex one, had a
15 lot to do with this decision to back out, and I
16 suggestion --

17 THE COURT: Yeah, but it's not enough to say,
18 I backed out because it was opposition.

19 To succeed on this theory is you have to
20 point to something in particular that was false and say,
21 They relied on that. They knew of it, and there is no
22 evidence that they knew about Hamilton Davis saying
23 anything at a community meeting prior to this Sunday.

24 MR. BARNETT: Yes. It was in April of 2007,
25 which was --

1 THE COURT: Any evidence that the Pittinger
2 Group knew anything about what was said at that meeting?

3 MR. BARNETT: I don't think I have to prove
4 that. I can prove that there was opposition and they
5 haven't put --

6 THE COURT: But it's America,
7 man. You can have opposition to a party.

8 MR. BARNETT: But you cannot go out into a
9 community and tell lies or falsehoods or misleading
10 statements and generate opposition.

11 THE COURT: But what got said in that meeting
12 had nothing to do with Pittinger backing out.

13 MR. BARNETT: Yes, sir, it did.

14 THE COURT: Pittinger didn't say anything
15 about that.

16 MR. BARNETT: No, sir.

17 THE COURT: This is just -- you're trying to
18 string together some unrelated bits of data.

19 MR. BARNETT: This is related, if you'll just
20 bear with me. They have put into evidence by asking if
21 people were aware that there were these petitions.
22 Petitions themselves have not come in. I think they are
23 problematic from an evidentiary standpoint, but they put
24 in before the jury that there were these petitions by
25 large numbers of residents out there who were opposed to

1 the existing zoning.

2 Well, I believe the jury is entitled to
3 conclude that the reason that those people were
4 opposed -- the residents, not the big plantation owners,
5 but the residents -- was because they had been told these
6 two things that were not true, and that opposition, the
7 large opposition, is one of the reasons that Pittinger
8 backed out.

9 The opposition was created, the jury is
10 entitle to conclude, I believe, by untruths, by
11 falsehoods about this property and the potential use of
12 this property, and that's not a First Amendment issue.
13 That's, like Mr. Hartnett says, yelling fire in a crowded
14 theater. Although it's a little different, it's more
15 like yelling somebody that isn't true.

16 THE COURT: But, you know, I can set here or
17 anyone can set and yell out untrue things, but if nobody
18 relies on them, they're not harming anybody, and
19 Mr. Pittinger, or nobody -- no one with his group heard
20 those things, you're just saying, well --

21 MR. BARNETT: They heard of the opposition.

22 THE COURT: They heard opposition. Mark
23 Sanford was writing letters to the seller in this thing,
24 saying, Hey, full force of the State of South Carolina is
25 going to come to bear on whoever buys this piece of

1 property, and you should know that.

2 And that's a lot more significant than some
3 guy going to a barbecue, don't you think, and saying
4 something that might never even heard of it?

5 MR. BARNETT: I think the jury -- maybe they
6 are so impressed that Governor Sanford was interfering, I
7 would say, to be opinionated, interfering in these kinds
8 of commercial activities, but maybe they will be
9 impressed with that, but they might be more impressed
10 with what I suggest is the real reality, which is the
11 public policy decisions in this county and everywhere
12 else, are made by the mass of people, not the few, the
13 privileged few, but the mass of people, and it's that
14 opposition that Pittinger was aware of, I suggest to you,
15 the jury could conclude is what scared him off, and that
16 opposition was created entirely by false statements and
17 that's wrong.

18 THE COURT: But you have to disregard what
19 Mr. Pittinger said. There are reasons for it, and he
20 said, The reasons that I backed out on this deal was
21 because of what Dan Davis told me at Kiawah Island a week
22 or so later.

23 And that was, Yeah, you got a tiger by the
24 tail. There is a lot of opposition. Dan Davis told him
25 that.

1 MR. BARNETT: A lot of opposition.

2 THE COURT: He didn't tell him anything in
3 particular about meeting at barbecue. Dan Davis seemed
4 to be a little vague on remembering what he told him, and
5 Pittinger doesn't say, but -- so there's nothing but
6 speculation as to what tiger by the tail meant, whether
7 or not it meant, well, you got to worry about people at
8 community barbecues or you got to worry about the
9 governor, and the Department of Natural Resources and
10 former ambassadors coming out against you, I mean -- so
11 we're just speculating as to what he's saying he relied
12 on.

13 If you want to go back to saying, well, you
14 know, D.R. Horton matter and all that was what was
15 causing the problems and things that got said at a
16 barbecue, you got to go with what Pittinger said. He is
17 the guy that got the call to pull the plug, and by his
18 own words, he says I pulled the plug after I talked to
19 Dan Davis.

20 MR. BARNETT: I think his primary thing he
21 embraced was, I have a lot of opposition -- he mentioned
22 the league, of course. One of his last colloquy with me,
23 I think he mentions them, and he said and others.

24 So he was still concerned about the league.
25 He was concerned about this, which goes back not to the

1 injurious falsehood --

2 THE COURT: That's what got him asking more
3 questions. Absolutely no doubt about it. That's what
4 got him asking more questions.

5 MR. BARNETT: But he was still concerned
6 about this. He was told something about their
7 muscularity that wasn't true, and a week later he bails
8 on the contract.

9 He also was told by Mr. Dan Davis that there
10 was huge opposition. We don't know whether Davis went
11 into the details of it, but a lot of that huge opposition
12 by the evidence that they put in was from residents, from
13 signing those petitions.

14 I suggest to you the evidence is easily
15 interpretable by the jury. If they were upset, they were
16 signing those petitions because they had been told things
17 that are not true, that were not true. Mr. Dan Davis
18 testified all Hamilton Davis had to do was to go to the
19 county and ask them, and he didn't. He didn't ask them.
20 They would have found out the truth.

21 Now, that, I think, there is a direct causal
22 change under the Booz Allen Hamilton case that dealt with
23 false statements. I think that's actionable, certainly.

24 THE COURT: What about the First Amendment
25 argument?

1 MR. BARNETT: If what they said was true, no
2 problem. But it's not an opinion to say your property
3 taxes might go up when it's not true, or to say, you
4 might have to pay to run water and sewer out to these
5 people building this neighborhood if that's not true.

6 That's the difference. That's not -- nobody,
7 I don't think, has a First Amendment right -- unless
8 we're saying about politicians, of course. The Courts
9 have always told us that anything is fair game there, but
10 it's not fair game in this.

11 THE COURT: Okay.

12 MR. BARNETT: Thank you, sir.

13 THE COURT: You want to respond?

14 MR. WALKER: Your Honor, quickly, they keep
15 coming back with but for. There is no proof that the
16 contract would have been terminated because of the
17 league's call if there had not been the communication
18 with Dan Davis.

19 All there is a temporal sequence, and what
20 they omit is the requirement that they action the
21 interference, procure the breach. It's not just that
22 there is a temporal sequence, and intentional procurement
23 of the breach, so it has to be the procuring cause, and
24 it's undisputed that it was not. They talk about
25 threatening and bullying. I agree with the Court that

1 has nothing to do with it.

2 Mr. Pittinger said he didn't even mention
3 that as a reason for terminating, and Mr. Burns himself,
4 who is the recipient, never said, I considered that
5 threatening. He never said, I was bullied.

6 He is the one that received it. He never
7 said it's their characterization of what he never
8 experienced. And on the statute of limitations, the
9 wreck happened, so to speak, on May 18th. Come May 21,
10 they knew there was a wreck on May 18th. They may not
11 have discovered that the wreck occurred until May 21, but
12 still, the wreck occurred.

13 The bad act was on May 18 and they had two
14 years and 362 or 3 days to bring a claim. They don't get
15 extra time simply because they didn't learn about it
16 until two days later. The wrongful act was May 15th.
17 That's what they're trying to pin on us.

18 On the slander and libel statute of
19 limitations, the case law seems to be on other states on
20 injurious falsehood that if it's more -- if the claim is
21 that somebody said something falsely, if it's in the
22 nature of defamation, then it should be subject to
23 defamation cause of action -- I mean, statute of
24 limitations.

25 In South Carolina, there are only two cases

1 that talk about injurious falsehood. We mentioned them
2 to the Court, and both of those talk about it in the
3 context of slander of title, so in South Carolina, we
4 would submit it is akin to a defamation action.

5 That's all I have to say, Your Honor.

6 MR. BARNETT: Just about the statute of
7 limitations stuff, our allegations, I think, are clearly
8 not in the nature of defamation, as those other states
9 have addressed them. It's in the nature of an injurious
10 falsehood, product disparagement of the business, which
11 is more akin to, of course, tortious interference like I
12 think Missouri and New York both said.

13 The cases that mention injurious falsehood,
14 mention slander and title, that's correct. Slander and
15 title is deemed to be a subset of injurious falsehood. I
16 looked but could not find any law saying what the statute
17 of limitations for slander of title is. It's not
18 defamation. Certainly, it's not a defamation cause of
19 action. It seems to me it too falls under the general
20 statute of limitations.

21 THE COURT: Where did you come up with that?

22 MR. WALKER: Which one, Your Honor?

23 THE COURT: Slander of title, two years. He
24 said he couldn't find it.

25 MR. BARNETT: Slander of title.

1 THE COURT: It looks like slander of title,
2 it's two years. He said he looked it up and he couldn't
3 find it.

4 MR. WALKER: Well, it's slander and we have a
5 libel and slander cause of action, and we cited the two
6 cases in our brief that we're relying on for that.

7 THE COURT: All right.

8 MR. BARNETT: All I'm saying is I don't think
9 slander of title slander is slander in the sense of
10 defamation. It's not defamation, it's a different
11 animal.

12 THE COURT: All right. Well, that being a
13 novel issue, I say I'll go with it being three years.
14 You know, the problem that you -- at first, it was,
15 really, you got a problem with 5/17 as the date of the
16 phone call, but the sellers, being the plaintiff, did not
17 know about that until the 20th and so they had no reason
18 to know that the cause of action arose two days earlier,
19 so they're okay on the statute of limitations.

20 The problem is with, as I see it, the whole
21 thing boils down to whether or not they knew the
22 contract -- there's evidence in the record that they knew
23 there was a contract and so they've met that element, but
24 the real problem is two-fold, and one is this whole issue
25 of but for and then the other is absence of

1 justification.

2 And, you know, it's clear I've been asking
3 pretty hard questions about this to try to figure out
4 when the operative but for these actions the sellers or
5 the buyers wouldn't have backed out, and I can't help but
6 come back that it's not really a disputed fact that the
7 contract was not rescinded on the 20th when they found
8 out.

9 They simply asked for more time. They got
10 more time, and they went, did more due diligence, and
11 it's uncontroverted by Mr. Pittinger that the reason why
12 they backed out was as a result of the issues that Dan
13 Davis told them on the date they met a week or so later
14 at Kiawah.

15 And so the whole but for issue of what they
16 said on the date of the telephone conversation, Hamilton
17 Davis's conversation, the voice mail doesn't seem to me
18 there is anything actionable about the actual voice mail
19 itself. It's not illegal to contact another party and
20 say, in essence, I heard you guys have an interest in
21 this property, and we're interested in talking to you
22 about it and show our concerns.

23 There is nothing actionable about that, so
24 the whole thing boils down to a conversation that Dan
25 Burns didn't remember, but he memorialized it a day or

1 two or three later on an e-mail in which he says,
2 basically, These guys say they oppose our deal and they
3 stopped D.R. Horton, and, you know, there's conservation
4 easement issues that are outstanding there.

5 If they had pulled the plug on the deal that
6 day, then you got but for, and I say you go to the jury,
7 but the problem is they asked for an extension, and they
8 didn't pull the plug on the deal for another week or so
9 after they got information about significant opposition
10 from Dan Davis.

11 Dan Davis also told them about water and
12 sewer not being available out there, at least affordable
13 water and sewer, and there was significant zoning issues
14 which appear to be true, that there was a move to change
15 the zoning at that time, and so that's what ultimately
16 caused him to cancel the contract.

17 The conversation itself that took place a
18 couple of days earlier with Hamilton Davis simply alerted
19 them that they needed to look into some factors and they
20 did, but they didn't cancel the contract on that day, so
21 that's not a jury issue as to causation, or proximate
22 cause. It was not a but for Hamilton Davis's
23 conversation they cancelled the deal.

24 All that did was caused them to exercise
25 rights that they had. They exercised those rights, got

1 an extension, and later on cancelled the deal, so that is
2 the end of the analysis, as far as I'm concerned, but
3 assuming that the Court of Appeals or the Supreme Court
4 disagrees with me on the appellate appeal of this, which
5 I'm certain there will be, there's the absence of
6 justification issue, and this is where we get into, you
7 know, the nature of the beast, so to speak, of what does
8 South Carolina Coastal Conservation League do? What are
9 they allowed to do?

10 They weren't a party to the contract. They
11 are a public advocacy group. They evoke strong emotions
12 on amongst people. Whether or not you like what they do
13 or not, I mean, there are people that think they walk on
14 water. There are people that think they ought to have a
15 chain wrapped around their neck and thrown into the
16 water.

17 I mean, you know, that's not for me to
18 decide. There's things that I like about people that,
19 you know, it doesn't really matter. It's like I told the
20 jury: I don't have a dog in this fight. It's not for me
21 to decide whether or not I think the Coastal Conservation
22 League is good or bad.

23 They probably do good things, and there are
24 things out there that people would say are bad things.
25 It doesn't matter. They're allowed to do it. It's a

1 great country, and that's what I believe in, is they get
2 the right that everybody else has to petition the
3 government when they think things are not right, or they
4 would like to see them change.

5 And, you know, there are people out there
6 that have all kinds of different views, and if you were
7 listening on Monday when I qualified the jury, I tell
8 people, I'm not really interested in changing your
9 beliefs, if you have beliefs, but you would be surprised
10 at some things that you hear jurors have beliefs on as to
11 why they couldn't be fair and impartial jurors.

12 I don't care what you believe in. It's your
13 right. It's the great thing about this country, but if
14 it affects your ability to be a fair and impartial juror,
15 that's when I get involved, and I don't think you ought
16 to have the right to violently overthrow the government.

17 That's about where I draw the line, as long
18 as you're not trying to hurt defenseless people or other
19 people. That's another area we draw the line.

20 So they're not allowed to hurt other people,
21 but they are allowed to petition the government and
22 change things and protest what other people have
23 contractual rights to do. So the question here is, well,
24 did they do something to hurt somebody or did they do
25 something that's afforded normal rights of people?

1 This whole thing about going out and, you
2 know, saying your taxes are going to go up and you're
3 going to have to tap into water lines that are expensive
4 and things like that, the evidence of any of that is
5 really rather weak.

6 There was no direct evidence of it, and it
7 only seemed to come about sort of by, you know,
8 backhanded questions that Mr. Davis, you know, came up
9 with.

10 I didn't really hear anybody come in and say,
11 yeah, I heard him say we were going to have our taxes
12 raised or any of the things that they're suggesting. The
13 evidence on that is very, very scant, but all of those
14 things took place prior to this phone call, and there's
15 no evidence at all that Pittinger or any of his folks
16 heard it, or relied on it, so that kind of goes out.

17 So the real question is, is does the Coastal
18 Conservation League have the right to oppose projects?
19 Yeah. I mean, opposing D.R. Horton, as I said, is kind
20 of a matter of semantics to say, well, we fought them
21 versus we worked with them. They got D.R. Horton to
22 change their plan from what they originally had to do.
23 Whether or not that is fighting them or working with
24 them, again, that's a matter of semantics. It sounds
25 like it's true, that they got them to change their plan,

1 so yeah.

2 As I remember conversation we had at one of
3 these hearings months ago, Mr. Galler said, That's what
4 the Coastal Conservation does, and so it's true. That's
5 what they do. They're allowed the same rights as
6 everybody else to go out and drum up public opposition or
7 support, depending on what side of the coin you're
8 looking at.

9 In this case, you know, the sellers, their ox
10 got gored. I get that. They're not happy that their
11 deal ran into opposition. It doesn't sound like they
12 were at all volunteering that there was significant
13 opposition, you know. It would be one thing to buy a
14 piece -- and that was a totally on another side.
15 Pittinger's refreshing statement was, like, well, I don't
16 expect somebody to tell me these things.

17 You know, there are a lot of sellers that
18 would have said, man, they had the duty to tell me, or a
19 lot of buyers would have told me they had a duty to tell
20 me that the governor, you know, threatened them if they
21 went ahead with this kind of project. He was kind of
22 like, well, that's on me.

23 And so he wasn't saying that is why he went
24 out and had anything to do with the property, or was
25 complaining. He's like, well, that's fair game, but if I

1 had been this the seller's position on this, I would have
2 said, well, it got real close to the finish line here,
3 and then these folks found out that there was more to the
4 deal and they went out and did their due diligence, and
5 bottom line is you can't get around the fact that it
6 sounds like Pittinger got the bull by the horns, went
7 straight to the county administrator.

8 What Dan Davis told him is what he said were
9 his reasons for doing this, and there was significant
10 opposition in the neighborhood, and there is a real issue
11 with cause prohibitive water and sewer and zoning. There
12 was an active movement to change the zoning on it, and
13 all those things were what Pittinger said they had to do,
14 and to the extent that Coastal Conservation League played
15 a role in making the changes on the zoning and in
16 organizing neighborhood opposition to that sort of thing,
17 I think it's protected by the First Amendment, and I
18 don't find that what they did could, by any jury, be
19 found to be anything other than a valid and reasonable
20 exercise of their First Amendment rights.

21 So I have no choice but on all three of those
22 counts -- because they all boil down to the same thing.
23 If you believed that there was a contract, you had
24 intentional interference. If you didn't believe there
25 was a contract, it's tortious interference with a

1 prospective contract; and injurious falsehood, there is
2 just no statements made that were, in fact, false that
3 anybody relied on.

4 So I grant the motions for a directed verdict
5 on all three of the counts. Y'all did a good job.

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7 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

North Pleasant, LLC and Vanguard)
Development Group, LLC,)

Case No.: 2010-CP-08-1771

Plaintiffs,)

v.)

South Carolina Coastal Conservation)
League and Edward D. Beach,)

Defendants.)

PLAINTIFFS' DEPOSITION DESIGNATIONS

Plaintiffs hereby submit the following deposition designations for use at trial:

Mitchell Flannery Deposition Designations:

FROM:		TO:	
Page	Line	Page	Line
4	1.16	5	1.14
6	1.4	8	1.12
8	1.15	11	1.2

Robert DeMoura Deposition Designations:

Page	Line	Page	Line
6	1.15	7	1.1
7	1.8	8	1.22
9	1.19	10	1.4
15	1.19	16	1.5

16	1.13	16	1.23
17	1.23	18	1.5
19	1.14	22	1.3
24	1.14	25	1.6
28	1.1	28	23
31	1.12	31	13
35	1.13	35	19
36	1.20	37	1.12
40	1.23	42	1.23
43	1.16	45	1.16
49	1.1	49	1.7
50	1.3	52	1.2
57	1.8	57	16
57	1.22	58	1.25
61	1.5	61	1.12
61	1.22	62	1.10
63	1.5	63	1.10

Daniel Young Deposition Designations:

Page	Line	Page	Line
6	1.9	6	22
7	1.3	7	14
7	1.19	7	20
8	1.2	8	8

8	1.25
9	1.23
10	1.13
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11	1.12
11	1.14
11	1.24

9	1.7
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Pittenger Deposition Designations

Page	Line	Page	Line
5	7	5	18
5	24	6	4
6	10	6	16
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76	4	76	16
77	1	78	20
78	16	78	21
94	19	95	8
99	15	99	20
102	21	103	3
102	21	103	9
106	3	106	7
113	19	114	2

Burns Deposition Designations

Page	Line	Page	Line
6	14	6	16
7	4	7	19

9	10	12	1
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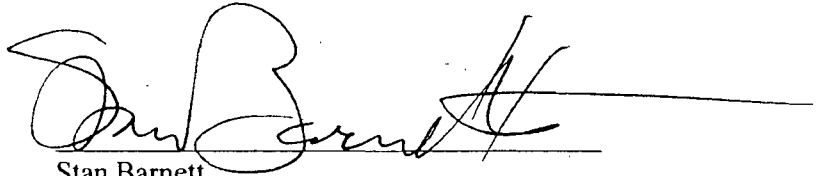
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Respectfully submitted,

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

Stan Barnett
Ellison D. Smith, IV
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ATTORNEYS FOR PLAINTIFFS

December 6, 2013
Mount Pleasant, South Carolina

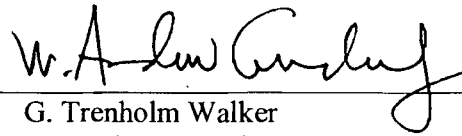
Daniel Young:

- 8:9-8:22
- 11:11-11:12
- 12:15-12:23
- 13:8-13:13
- 14:1-15:4

Megan Desrosiers

- 4:15-5:8
- 8:22-9:10
- 10:10-10:22
- 41:25-42:18

BY:



G. Trenholm Walker
W. Andrew Gowder, Jr.
John P. Linton, Jr.
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ATTORNEYS FOR DEFENDANTS

December 9, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BERKELEY) CASE NO. 2010-CP-08-1771

NORTH PLEASANT LLC and VANGUARD)
DEVELOPMENT GROUP, LLC,)

Plaintiffs,)

VS.)

SOUTH CAROLINA COASTAL)
CONSERVATION LEAGUE and EDWARD)
D. BEACH,)

Defendants.

DEFENDANT'S DEPOSITION DESIGNATIONS

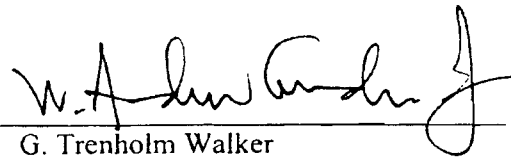
Defendant South Carolina Coastal Conservation League hereby submits the following deposition designations for use at trial:

- Robert M. Pittenger
 - 10: 5-11:21
 - 12:1-12:10
 - 12:19-12:32
 - 13:18-13:25
 - 14:17-15:21
 - 18:2-18:21
 - 22:1-25:25
 - 26:5-26:21
 - 28:13-28:25
 - 39:7-41:17
 - 44:4-44:20
 - 48:14-49:25
 - 51:23-52:13
 - 54:24-56:14
 - 58:4-59:11
 - 63:11-63:18
 - 67:11-68:4
 - 69:17-72:21
 - 73:25-74:24
 - 79:1-79:13

- 81:24-83:4
- 84:5-84:20
- 89:15-90:14
- 94:24-95:8
- 108:16-109:3
- 111:20-112:3
- Daniel Fogarty
 - 5:2-5:15
 - 8:17-9:2
 - 9:19-10:19
 - 21:4-24:9
 - 27:9-28: 14, 18-20
 - 31:12-31:18
 - 35:5-35:12
 - 43:1-44:2
 - 46:3-50:3
- Daniel Burns
 - 7:4-7:19
 - 12:2-13:7
 - 14:20-15:23
 - 17:2-17:19
 - 19:24-20:6
 - 22:5-22:10
 - 22:23-24:8
- Marshall Sanford
 - 8:22-9:13
 - 10:3-10:11
 - 13:17-21:6
 - 26:16-29:25
- Mercer Reynolds
 - 5:5-11:25
 - 13:6-13:13
 - 13:23-17:3
 - 18:10-18:21

December 7, 2012
Charleston, South Carolina

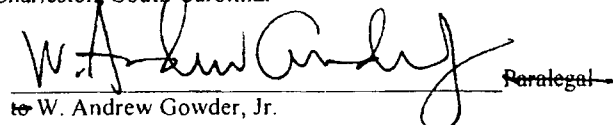
BY:



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CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, ~~or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service,~~ on this 7th day of November, 2012, in Charleston, South Carolina.



~~Paralegal~~
to W. Andrew Gowder, Jr.

Deposition of DANIEL BURNS

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BERKELEY COUNTY

4 DEPOSITION OF DANIEL BURNS

5 NORTH PLEASANT, LLC, and VANGUARD DEVELOPMENT
6 GROUP, LLC,

7 Plaintiffs,

Case No. 2010-CP-08-1771

8 vs.

9 SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and
10 EDWARD D. BEACH,

11 Defendants.

12 _____
13 DEPONENT: DANIEL BURNS

ORIGINAL

14 DATE: April 13, 2012

15 TIME: 11:58 A.M.

16 LOCATION: SMITH MOORE LEATHERWOOD
17 525 North Tryon Street, Suite 1400
18 Charlotte, North Carolina 28202

19
20 REPORTED BY: TERI L. HORIHAN
21 NCRA REGISTERED PROFESSIONAL REPORTER
22 CLARK & ASSOCIATES, INC.
23 P.O. Box 73129
24 Charleston, SC 29415
25 843-762-6294
 WWW.CLARK-ASSOCIATES.COM
 Teri@Clark-Associates.com

Deposition of DANIEL BURNS

1 DANIEL BURNS,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. BARNETT:

6 Q. We've just introduced ourselves. We don't
7 need to do that again for the record. I do need to
8 ask you this, not to be nosy, but we are -- under
9 our Rules -- we are doing this presumably under
10 probably two sets of Rules. We're doing this under
11 North Carolina's Rules and our own.

12 Because we have our case in South
13 Carolina, in Berkeley County, South Carolina, but
14 because you are a resident here, we had to,
15 whatever the phrase is, essentially file the
16 caption of our case in this state and subpoena you
17 here under your Rules. But regardless of what set
18 of Rules, I need to ask you whether you have been
19 deposed before.

20 A. Yes.

21 Q. Okay. You know it'll be very similar, sworn
22 testimony. Can be used for two purposes. One is
23 if you were to come to Moncks Corner in South
24 Carolina where we're going to try this case if we
25 try it, if you say something different today than

Deposition of DANIEL BURNS

1 She'll throw something at us or kick or something
2 if we talk over each other, which is very easy to
3 do. Or if you answer with a nod of the head or a
4 shake of the head -- you have to verbalize your
5 answer.. That's for her purposes so she can keep it
6 all on the record.

7 Okay. With that having been said, let
8 me ask one more question. It sounds nosy. It's
9 not. It's because this case is on the jury docket,
10 so I need to ask you whether you have any family in
11 Berkeley County, South Carolina, by marriage or by
12 blood?

13 A. I do not.

14 Q. All right. How long have you worked for
15 Mr. Pittenger's company?

16 A. About 12 years.

17 Q. Okay. And what did you do before that?

18 A. I was in school.

19 Q. Okay. And summarize, just very briefly,
20 your education since high school, formal education.

21 A. I have a business bachelor degree from King
22 College in Bristol, Tennessee.

23 Q. And you went to work for Mr. Pittenger right
24 out of King College?

25 A. Yes.

Deposition of DANIEL BURNS

1 Q. Are you from the Charlotte area, originally?

2 A. I was born in Louisiana but have been in the
3 Charlotte area for the majority of my life.

4 Q. Okay. Tell me what your responsibilities
5 are with Mr. Pittenger's company. And if they've
6 changed over time, tell me that. In other words,
7 just give me a little summary of what it is you
8 have done for Mr. Pittenger up till now.

9 A. I'm involved with the land investment firm
10 called Robert Pittenger Company is who I work for.
11 And my current title is managing director.
12 Previously, it was vice president.

13 Q. Okay.

14 A. So I was involved as vice president with --
15 on the land acquisition side, signing of contracts,
16 as well as finding capital from investors for
17 properties that we would acquire as a company. And
18 my current role in addition to those duties
19 includes some management of staff as well.

20 Q. Okay. Let me take you straight to page 24,
21 and it's in Exhibit 3. It's going to be in those
22 e-mails. And if you just look up there in the
23 upper right-hand corner and you'll find where it
24 says Vanguard and then a bunch of zeros and then
25 some numbers. It's actually 23. Starts on 23.

Deposition of DANIEL BURNS

1 Q. Okay. If you could tell me about this
2 property specifically, if you can, what would have
3 been the process that led up to you signing this
4 letter on behalf of your company?

5 A. Could you repeat the question?

6 Q. Yeah. What would have been the process that
7 led up to, if you remember, your signing this
8 letter on behalf of Mr. Pittenger's company?

9 A. I just don't remember.

10 Q. Okay. Let me ask you then more generally.
11 What would happen, typically, before your company
12 would execute a letter of intent like this one?

13 A. Typically, we would approach a property
14 owner that we would have interest in pursuing that
15 specific tract. And, number one, find out if
16 there's interest in the seller to sell. From
17 there, if it fits our criteria of what we're
18 looking for as a land investment, then we would
19 present a purchase contract or a letter of intent.
20 Part of that depends on the interest of the seller.

21 Q. Okay. Do you remember about the Keystone
22 tract, which is the property that's at issue here,
23 the tract of property on Highway 41 in Berkeley
24 County, South Carolina, do you remember why your
25 company was interested in that property at that

Deposition of DANIEL BURNS

1 time?

2 A. Yes.

3 Q. Okay. Tell me that.

4 A. Charleston as a market was one of the
5 markets that we wanted to pursue with our land
6 investments. We're primarily based in the
7 Charlotte market, and we had decided to take our
8 same land investment model and branch out into some
9 other good markets in the southeast United States,
10 Charleston being one of them.

11 Within Charleston, we were very much
12 attracted to the I-26 corridor and also the kind of
13 north part of the Charleston market. And so we
14 began looking for properties within those areas to
15 see if we could find some that would be of interest
16 for us to acquire.

17 Q. Okay. Do you remember what there was about
18 this particular tract that appealed to your
19 company, to you, I guess, personally?

20 A. Not specifically. It certainly was a large
21 property, and that's of interest to us to acquire
22 large raw land properties that are positioned well
23 that we feel would be a good investment for our
24 company.

25 Q. Okay. If you would go to page 112, I'm

Deposition of DANIEL BURNS

1 going to ask you -- this is a lengthy document.

2 I'll suggest to you it's entitled, the contract for
3 purchase of property, and this is a signed version,
4 and the signature is over on page 123. That seems
5 to be your signature on the contract.

6 A. Correct.

7 Q. Okay. Let me ask you this. Did you have
8 any role in negotiating the terms of this contract?

9 A. I did not.

10 Q. Okay. Who did that? Do you know?

11 A. Would have been a combination of Daniel
12 Fogarty in our office and Robert Pittenger.

13 Q. All right. What was Mr. -- in addition
14 to -- you say he would have helped negotiate the
15 terms of this contract. What else did Mr. Fogarty
16 do for your company?

17 A. He did a lot of research for us in the
18 Charleston market, so he would gather market data,
19 just general data regarding Charleston's economy,
20 their past growth, their projected growth.

21 He would work with the Chamber of the
22 area to find out information about the market, as
23 well as on specific properties that we had an
24 interest in contracting for purchase, he would also
25 be the point person to communicate between our firm

Deposition of DANIEL BURNS

1 and the property owner.

2 Q. Okay. Did you have any direct contact with
3 representatives of the property owner?

4 A. I did not.

5 Q. Did you have any role yourself personally in
6 conducting the due diligence aspect of your
7 investigation?

8 A. I did not.

9 Q. Okay. Let me ask you this. Once this
10 contract was executed, it says on March the 15th of
11 2007, what would have been your involvement with
12 this potential purchase after that point, if you
13 can recall?

14 A. Could you repeat the question? I just want
15 to make sure I hear it correctly.

16 Q. Yeah. After you -- after this contract was
17 executed -- you executed the contract.

18 A. Yes.

19 Q. So after that, what did you personally do
20 with respect to this potential purchase of property
21 that's reflected in the contract?

22 A. Little to nothing.

23 Q. Okay.

24 A. We would have then entered into our
25 inspection period of the property, which was

Deposition of DANIEL BURNS

1 A. Okay. I've read it.

2 Q. Okay. And I -- this -- the introductory
3 paragraph, if you want to call it that, the first
4 paragraph under where it says telephone call, did
5 you write that?

6 A. I'm not sure what this -- what this is.
7 What -- I guess I'm not supposed to ask you a
8 question.

9 Q. No, that's fine.

10 A. I'm just not sure what that first paragraph
11 is. Is that a transcript of a telephone call?

12 Q. You know, I frankly am not sure at this
13 point. But, I mean, are those your words, or can
14 you tell?

15 A. I don't believe they are where it says this
16 is Daniel. That first paragraph does not ring a
17 bell with me. I don't recall that being an e-mail
18 from me or a phone call from me. That does not
19 ring a bell.

20 Q. Okay. But did you get a phone call from a
21 Hamilton Davis?

22 A. I did receive a voice mail from someone with
23 the Coastal Conservation League. I do not recall
24 his name, but it was a man. It was a gentleman.

25 Q. Well, this thing that is in quotes here,

Deposition of DANIEL BURNS

1 does that sound like the voice mail message that
2 you were left?

3 A. It does sound very similar to the voice mail
4 that I did receive.

5 Q. Okay. Is there anything else that you can
6 remember that was on the voice mail message that is
7 not reflected in this transcript at all?

8 A. Not that I recall. That sounds fairly
9 close -- again, this is going back four or five
10 years, but that sounds very close to what I
11 remember the voice mail message being. It was a
12 very general message from a gentleman from the
13 Coastal Conservation League making the introduction
14 that he was aware of our interest in the 2,600-acre
15 tract in Berkeley and requested that I return his
16 phone call regarding some information and some
17 knowledge that he had on the area.

18 Q. Okay.

19 A. That's what I recall. So that does sound
20 fairly accurate.

21 Q. All right. And did you then call him back?
22 Do you remember?

23 A. I did not.

24 Q. Okay. Let me ask you to go to page 304.

25 A. I'm sorry. Which tab?

Deposition of DANIEL BURNS

1 Q. I beg your pardon. Back to the e-mails.

2 It's been a long week.

3 A. No problem. I understand that.

4 Q. Upper right-hand corner again, you'll see
5 the numbers.

6 A. And the number again?

7 Q. 304. There's a bunch of zeros in front of
8 it, but it's 304.

9 A. Okay. I'm there.

10 Q. All right. Now, this -- take a look at
11 that. It has Mr. Smith's name at the top, but I
12 mean, it is supposed to be an e-mail from the --
13 your company's files about this project that
14 Mr. Smith responded to the subpoena that
15 Mr. Gowder's firm sent to your company. So I'm
16 guessing that's why Mr. Smith's name is at the top
17 there. But take a look at that e-mail and see if
18 that refreshes your recollection.

19 A. Okay. Okay. I've read it.

20 Q. And I should have asked you, and then
21 there's a -- as part of the chain, there's only one
22 other link in this e-mail chain. It's an e-mail
23 from Mr. Fogarty to you.

24 A. Yes.

25 Q. Okay. After you've taken a look at that as

Deposition of DANIEL BURNS

1 well -- so I'll ask you the question, I mean, did
2 you then -- did you call Mr. Davis back at the
3 Coastal Conservation League?

4 A. I don't -- from what I remembered, I didn't
5 remember calling him and having a conversation with
6 him. I had remembered that he had left a voice
7 mail message with me. In reading this e-mail, it
8 appears that -- it doesn't seem clear whether we
9 actually had a two-way conversation on the phone or
10 whether he had -- I had returned a call
11 potentially, and then he had called me back leaving
12 this information.

13 Q. Oh, I see.

14 A. It mentions I've forwarded his voice mail.
15 And my guess is I had forwarded that to
16 Mr. Pittenger and Mr. Fogarty. I just don't recall
17 if we had actually spoken or if we'd exchanged
18 voice mails, if he'd just left me a detailed voice
19 mail.

20 Q. Well, let me ask you this -- not to be
21 annoying, but lawyers do this occasionally. Do you
22 just not remember, or do you think that you didn't
23 actually speak to him directly?

24 A. I just don't remember.

25 Q. Okay. But does this -- so far as you can

Deposition of DANIEL BURNS

1 recall, this e-mail, does this reflect -- however
2 Mr. Davis communicated to you, does this reflect
3 what Mr. Davis told you?

4 A. Yes, I would say so.

5 Q. Okay. Do you know -- do you remember -- let
6 me ask you. I'll be more specific, rather than
7 asking you a general question. Do you recall
8 whether Hamilton Davis told you that the minority
9 or the African-American community in that area had
10 any particular concerns? Do you remember that?

11 A. Could you repeat that?

12 Q. Yeah. Do you remember whether -- in this
13 communication you had from Hamilton Davis, whether
14 he told you that the African-American community in
15 that part of Berkeley County had any particular
16 concerns about the development of the Keystone
17 tract?

18 A. I don't remember him mentioning that at all.

19 Q. Okay. If he testifies -- if he said that he
20 did tell you that they had concerns, would you
21 disagree with that, or you just don't remember?

22 MR. GOWDER: I'm going to object to the
23 form of the question.

24 A. I would probably disagree with that.

25 Q. Okay. That would have stuck out in your

Deposition of DANIEL BURNS

1 mind, you think?

2 A. I think that would have stuck out in my
3 mind, yeah. But, again, this is going back four
4 years now, so it's hard to remember one phone call
5 four years ago.

6 Q. All right. You say here in this -- I guess
7 it's the -- well, it's a paragraph beginning, the
8 scariest thing, in your e-mail to Dan Fogarty and
9 to Robert Pittenger. You copied Robert Pittenger.

10 The scariest thing mentioned was that
11 they are working with the County to get rezoning
12 for the Keystone tract for a conservation easement,
13 so it can't be developed -- can't be development.
14 And said they were getting close with joint efforts
15 from the plantation owners. Tell me why, as you
16 can recall, that was the scariest thing, as you
17 characterize it.

18 A. If I could read that one more time, just to
19 make sure I'm looking at the right part. Yeah. To
20 answer the question, I would say after reading this
21 paragraph that if this was true, then it would
22 certainly impact the future development and value
23 of the property.

24 Q. And is it true that ultimately Mr. Pittenger
25 made a decision not to buy the Keystone tract?

Deposition of DANIEL BURNS

1 A. Yes.

2 Q. And did you have any role in that decision
3 at all?

4 A. I did not.

5 Q. Okay. It was purely his own decision?

6 A. Yes.

7 Q. Okay. After having this communication,
8 whether it was a conversation or receipt of a
9 longer voice mail message from Hamilton Davis, did
10 you have any further involvement with your
11 company's interest in the Keystone tract?

12 A. I did not.

13 MR. BARNETT: Okay. That is all the
14 questions I have for you. Andy probably has a few.

15 EXAMINATION

16 BY MR. GOWDER:

17 Q. I do have a few, Mr. Burns. How are you?

18 A. Good. Thank you.

19 Q. As I understand it, you really had no
20 communications with either Josh Hulen or anybody
21 from the Reynolds folks who owned that property
22 during due diligence. That was all Mr. Fogarty.
23 Is that right?

24 A. That's correct.

25 Q. Okay. I want to direct you to -- it's page

1 374 there in front of you.

2 A. Okay.

3 Q. At some point -- and I'll represent to you
4 that I believe it was on this Friday, May 25th,
5 2007 -- Mr. Pittenger visited with the Berkeley
6 County supervisor, Mr. Dan Davis, about the
7 property. Do you remember his going down and
8 having that meeting at all? Did you talk to
9 Mr. Pittenger about it?

10 A. I do remember Mr. Pittenger mentioning that
11 he was going down to the Charleston area to meet
12 with somebody with the County.

13 Q. Okay. And do you remember anything about
14 that meeting or what he said about that meeting
15 thereafter?

16 A. I remember -- and this is reaching back a
17 long ways, but following that meeting that he had
18 some concerns about the property.

19 Q. Okay. What were those concerns? Do you
20 remember?

21 A. I believe they dealt with density of the
22 property, challenge of utilities, some maybe
23 potential conservation easements that would halt or
24 make it challenging to bring utilities to the
25 tract.

Deposition of DANIEL BURNS

1 Q. Okay. I want to show you -- look over, if
2 you will, at number 375, the next page -- no. The
3 one you're looking at, I'm sorry, 375.

4 A. I was on 374.

5 Q. Oh, okay. Good. If you'll go to 375 then.

6 A. Okay.

7 Q. And if you'll look at the e-mail at the top
8 there. It doesn't show that you were copied on
9 that. Have you ever seen that before?

10 A. I have not.

11 Q. The one that starts it's over.

12 A. No.

13 Q. Looking at that, is that consistent with
14 what your understanding was from Mr. Pittenger
15 about his concerns about the property?

16 MR. BARNETT: Object to the form. And
17 do you know what we mean by this when we object to
18 the form? If you can answer the question, just go
19 ahead. It's just something for the record if later
20 we might want to use your testimony. Go ahead.

21 I'm sorry.

22 THE WITNESS: Okay.

23 Q. I'll ask it again.

24 A. Great. Thanks.

25 Q. You just described for me what you

1 understood Mr. Pittenger's concerns were after
2 meeting with Mr. Davis.

3 A. Yes.

4 Q. Is this e-mail consistent with that?

5 A. Yes.

6 Q. Okay. Same thing, if you can go forward to
7 381.

8 A. Okay.

9 Q. Read that e-mail there at the top that's
10 dated Friday, May 25th, 2:28. Starts, tell Neil
11 Robinson.

12 A. Yes.

13 Q. Again, is that consistent with what you just
14 told me?

15 A. Yes.

16 Q. All right. Do you know of any reasons that
17 Mr. Pittenger had for deciding not to go forward
18 with this contract other than what's stated there
19 or what you've just described?

20 A. This e-mail pretty much wraps up several
21 issues on the property regarding challenges of
22 conservation easements, sewer, and density. And
23 those were three big factors. There could have
24 been others, but as far as I remember, these were
25 the main points of why he wanted to terminate the

Deposition of DANIEL BURNS

1 contract.

2 Q. Okay. Do you remember in any of the
3 communications between you and Hamilton Davis,
4 whether it was just exchanging voice messages or
5 whether you talked to him, do you remember Hamilton
6 Davis ever telling you not -- or advising you or
7 the company not to purchase this property?

8 A. No.

9 MR. GOWDER: I think that's all I have
10 for you. Thank you.

11 THE WITNESS: Okay.

12 MR. BARNETT: And I have no follow-up.

13 THE WITNESS: Okay. Great.

14 (The deposition was concluded at 12:28
15 p.m.)

16

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19

20

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24

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Deposition of MITCHELL FLANNERY

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BERKELEY COUNTY
4 CASE NO: 2010-CP-08-1771

5
6 TELEPHONIC DEPOSITION OF MITCHELL FLANNERY

7 NORTH PLEASANT, LLC, and VANGUARD DEVELOPMENT GROUP,
8 LLC,

9 PLAINTIFFS,

10 vs.

11 SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and
12 EDWARD D. BEACH,

13 DEFENDANTS.

COPY

14 -----
15 WITNESS: MITCHELL FLANNERY

16 DATE: MAY 30, 2012

17 TIME: 9:20 A.M.

18 LOCATION: SMITH, BUNDY, BYBEE & BARNETT
19 1037 Chuck Dawley Blvd., Ste. 100, Bldg. F
20 Mt. Pleasant, SC 29465-1542
21 -----

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Deposition of MITCHELL FLANNERY

1 MITCHELL FLANNERY,
2 being first duly sworn or affirmed, testified as
3 follows:

4 EXAMINATION

5 BY MR. BARNETT:

6 Q Mr. Flannery, again, thank you for being
7 available this morning.

8 A Yes.

9 Q Let me ask you very quickly, do you have
10 any relatives that live in Berkeley County, South
11 Carolina?

12 A No.

13 Q Okay. The reason I ask you is this is a
14 jury trial and it's good to know that.

15 A Right.

16 Q All right. Could you summarize very
17 briefly your work experience in real estate and real
18 estate development?

19 A Well, I have been a commercial broker my
20 whole life, since 1998. In 2005, I became the land
21 acquisition manager for D. R. Horton and I oversaw
22 all of the land acquisitions throughout the state.

23 Q The state of South Carolina?

24 A Yes, sir.

25 Q Okay. All right. And do you recall a

Deposition of MITCHELL FLANNERY

1 project that D. R. Horton had that you were involved
2 in on Highway 41 in Berkeley County, South Carolina?

3 A Yes, intimately involved with it.

4 Q Do you remember or were you familiar with
5 a piece of property that was nearby called the
6 Keystone tract?

7 A I do, but I mean, it has been years, so --

8 Q Okay.

9 A I mean, I knew most any development or any
10 available land around, so.

11 Q I am with you. So this project -- go
12 ahead. The project that you were about to describe
13 was near the Keystone tract on Highway 41?

14 A Yes, I believe so.

15 Q Okay. Tell me about that project. What
16 was the project envisioned by D. R. Horton?

17 A Well, actually, it originally was a --
18 (inaudible) about, I don't know, 15- or 20-acre lake
19 on it. It was adjacent to the National Forest. And
20 we put it under contract, Lord, I don't know, in
21 '05, '06, and went through the process of a
22 development agreement with Berkeley County and
23 originally created a large PUD, but subsequently
24 later on kind of reduced the density of the tract.

25 Q I actually lost your voice there for a

Deposition of MITCHELL FLANNERY

1 minute. This seems to be a morning where everything
2 is going to go wrong if it can go wrong.

3 A Yes.

4 Q What was the size of the tract again?

5 A It was about a 300-acre tract, but only I
6 would say only about 80 to 100 acres were actually
7 usable.

8 Q Okay. And what was the density that D. R.
9 Horton originally envisioned, if you recall?

10 A Originally, it was pretty dense, I mean,
11 for the -- I mean, we had it in there for, you know,
12 maybe 200, 250 lots, but then we later, you know,
13 came to an agreement with both -- we worked with the
14 Conservation League and the National Forest to
15 reduce it down to under 100 units. And that is what
16 we -- that is what we went to Berkeley County with
17 to get a development agreement approved.

18 Q Okay. And was that development agreement
19 approved by the County?

20 A To my recollection, yes.

21 Q Okay. At the Coastal Conservation League
22 did you have any interaction with a gentleman named
23 Hamilton Davis?

24 A Absolutely.

25 Q What was your interaction with Mr. Davis?

Deposition of MITCHELL FLANNERY

1 A Well, Coastal Conservation League wanted
2 to make sure if we were going to get approval on
3 this property, that we would have a certain amount
4 of density that was not disadvantageous to the
5 forest and whatnot. That is where we came down to
6 under 100 units.

7 We worked with both them and the National
8 Forest and the County on coming to a conclusion with
9 this development agreement on exactly that. So they
10 actually championed the development agreement in the
11 end.

12 Q Do you know what happened to that project?

13 A Well, I don't know at this point what
14 happened to it, but I do know once we got the
15 development agreement, part of our -- part of our
16 agreement with the National Forest is that we would
17 potentially look at a swap of another property to
18 where we could possibly be advantageous for both
19 parties. The National Forest -- the State Forestry
20 Commission -- sorry, I keep misstating -- they
21 wanted this property because it was adjacent to the
22 Forest and they saw some concerns with, you know,
23 with them doing their controlled burns and whatnot
24 and that it might be a liability issue.

25 So they had property across 41 that they

Deposition of MITCHELL FLANNERY

1 thought might be -- might be a fit for a swap. So
2 we actually went on to -- I worked with the South
3 Carolina Forestry Commission and the Coastal
4 Conservation League and we -- we even put a land
5 plan together and everything to where they, you
6 know, started giving their ideas, okay, this could
7 be, you know, an idea where we swap properties.

8 Q Okay. Did you receive a fax from us this
9 morning, a one-page copy of an e-mail?

10 A I don't recall but I can look right this
11 second while we are talking. Give me one second
12 here. I have to find my fax.

13 MR. GOWDER: Off the record?

14 (Off-the-record.)

15 Q Have you read this yet, Mr. Flannery?

16 A Give me two seconds. I will read it right
17 now.

18 (Exhibit No. 1 was marked for
19 identification.)

20 Q All right. I want to ask you about a
21 couple -- some of these statements, of course, have
22 nothing to do with D. R. Horton. I am not going to
23 belabor you with that.

24 A Sure.

25 Q What I do want to ask you about are what

Deposition of MITCHELL FLANNERY

1 Mr. Burns says in here where Mr. Davis comments
2 about the D. R. Horton property.

3 A Right.

4 Q It starts right at the end of the last
5 paragraph. I will read the sentence above that
6 which relates to Keystone, just as it sort of puts
7 it in context. I will read it.

8 He said: They are particularly targeting
9 the Keystone property since it's such a large tract
10 and adjacent to the forest. He mentioned that D. R.
11 Horton has property just south of ours that the
12 Conservation League has fought and now D. R. Horton
13 is trying to do a land swap to get out of the 41
14 tract.

15 From your recollection, was it a true
16 statement to say that the Coastal Conservation
17 League fought the D. R. Horton project?

18 A No. I am -- they were, you know, they
19 wanted to have a better solution but they never
20 fought it. They actually worked with us to help us
21 with the development agreement and they actually had
22 review of it.

23 Q All right, sir. Was it true so far as you
24 can recall that D. R. Horton was, quote, trying to
25 do a land swap to get out of the 41 tract?

Deposition of MITCHELL FLANNERY

1 A Well, the only reason we would agree to a
2 land swap was that we would get -- have this
3 development agreement in place. That was the -- we
4 would not have -- we would not have jeopardized our
5 entitlement unless -- because that property was
6 already, theoretically, it was already zoned for
7 higher density. So we would not have jeopardized
8 our entitlements unless we had -- unless we had a
9 development agreement in place, if that makes sense.

10 Q Yes. All right, sir. Then in the middle
11 paragraph, the paragraph below that, the one that
12 begins: The scariest thing, the last sentence says:
13 I don't know how much of this is reality or
14 smoke-blowing, but if they, in fact, halted D. R.
15 Horton, they have accomplished something.

16 Was it a true statement to say that the
17 Coastal Conservation League halted D. R. Horton?

18 A No.

19 Q Okay. Tell me why that is so?

20 A The same thing I mentioned to you. We
21 already had entitlements to this property. We,
22 rather than fighting the Coastal Conservation
23 League, we purposely worked with them so that, you
24 know, both them and us would have a positive
25 outcome. We already had our entitlement to that

Deposition of MITCHELL FLANNERY

1 property. They worked with us to get it, a
2 development agreement with the County.

3 And then once we got that agreement, we
4 made it a point to work with them on a swap. A swap
5 would have been a better deal for us for the simple
6 fact we could have gotten more density, might have
7 been in a better location, and whatnot.

8 Q Now, let me ask you this. You have read
9 this e-mail. I will ask you a question about the
10 business that you were in, in general. Do you have
11 an opinion as to how you as a buyer, say a buyer for
12 D. R. Horton, a company like D. R. Horton --

13 A All right.

14 Q -- what your reaction would have been had
15 you received a message like this about a piece of
16 property that your company had contracted to
17 purchase, that had --

18 MR. GOWDER: I object to the form of the
19 question.

20 MR. BARNETT: I figured you would, but I
21 wasn't quite finished with the question.

22 Q -- but for which you had not yet closed.
23 In other words, I am asking you a hypothetical based
24 on your experience. You had contracted to buy a
25 piece of property, you had not closed yet, and you

Deposition of MEGAN DEROSIERS

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BERKELEY COUNTY

DEPOSITION OF MEGAN DEROSIERS

NORTH PLEASANT, LLC, AND VANGUARD DEVELOPMENT
GROUP, LLC,

Plaintiffs,

Case No. 2010-CP-08-1771

vs.

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE AND
EDWARD D. BEACH,

Defendants.

COPY

DEPONENT: MEGAN DEROSIERS

DATE: August 27, 2012

TIME: 10:00 AM

LOCATION: Pratt-Thomas Walker
16 Charlotte Street
Charleston, SC

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Deposition of MEGAN DEROSIERS

1 MEGAN DEROSIERS,
2 having been first duly sworn, was examined and
3 testified as follows:
4

5 EXAMINATION

6 BY MR. REYNOLDS:

7 Q. Good morning, Ms. Derosiers. We just met
8 for the first time, right?

9 A. Right.

10 Q. And you've had your deposition taken before?

11 A. Yes, sir.

12 Q. I won't go through the formalities.

13 Tell me about the League and how you got
14 involved with the League.

15 A. The Coastal Conservation League is a
16 nonprofit environmental organization, and they
17 opened their doors in 1989. And I came to the
18 League in 2003, after having graduated from a
19 graduate program in 2002.

20 Q. What was your role when you first came to
21 the League?

22 A. My title was land use associate. So I was
23 and entry-level person who worked on land use
24 projects.

25 Q. What did you do as a land use associate?

Deposition of MEGAN DEROSIERS

1 A. I met with community members and with
2 potential developers and with local elected
3 officials to talk about proposed infrastructure and
4 development applications and their potential
5 impacts, positive and negative, to communities.

6 Q. You have an environmental background, I
7 believe.

8 A. Yes.

9 Q. That was your Master's?

10 A. Yes.

11 Q. Did you have any development expertise that
12 you brought to the table?

13 A. No.

14 Q. Did you learn something about development
15 while you were meeting with developers?

16 A. I did. I had a little bit of land use law
17 and development in graduate school, but it wasn't a
18 specialty.

19 Q. You said you met with developers. In
20 general, how does the League work with developers?

21 A. Well, when we hear of an application to a
22 county council or planning commission or a planning
23 department, we generally try and meet with the
24 developer to understand what their plans for the
25 property are and determine if we can work with the

Deposition of MEGAN DEROSIERS

1 appeal process adds costs and expenses from the
2 developer side, right?

3 A. I understand.

4 Q. And if the developer has a loan, it takes
5 that much longer before the developer can start
6 paying the loan back, right?

7 MR. GOWDER: Objection to the form of
8 the question.

9 A. I don't know. I mean, I would
10 imagine again, but, you know -- yes. I understand
11 that.

12 Q. Well, I am going to make it clearer,
13 perhaps. While the property is not developable
14 because it's under appeal, the developer is not
15 making any money, is he?

16 MR. GOWDER: Objection to the form of
17 the question.

18 A. Right. On that property he may not be
19 making money. There may be other properties that I
20 don't know about that he may be.

21 Q. In these negotiations does the League ever
22 threaten the developer, in your mind?

23 A. No.

24 Q. When I say threaten, I have an idea of what
25 I mean. What do you mean when you answer that

Deposition of MEGAN DEROSIERS

1 question?

2 A. Well, when you threaten somebody, in the
3 case of the League talking with the developer about
4 a potential outcome of a development, we -- a
5 threat would be saying, you do this or we will
6 oppose you until you do what we want.

7 We don't ever do that. We work with a
8 collaborative -- we try and work in a collaborative
9 way with developers.

10 Q. This is the definition I looked up of
11 threatening. I am going to read it to you, and you
12 tell me if you agree with me.

13 To state one's intention to take hostile
14 action against someone in retribution or for
15 something done or not done.

16 Is that a fair definition?

17 A. Sure.

18 Q. Applying that definition, does your answer
19 as to whether the League threatens developers
20 change?

21 A. No.

22 Q. So the League does not threaten developers,
23 right?

24 A. We do not.

25 Q. Because that would be improper, right?

Deposition of MEGAN DEROSIERS

1 (Exhibit No. 4 was marked for
2 identification.)

3 (Exhibit No. 5 was marked for
4 identification.)

5 (Exhibit No. 6 was marked for
6 identification.)

7 Q. Let's take a look at 1 through 3. There
8 should be an extra copy for your counsel attached.

9 A. 1 through 3, you said?

10 Q. Yes.

11 A. Okay.

12 Q. Have you seen any of those before?

13 A. No, I have not.

14 Q. I would like to play a couple of recordings
15 for you.

16 MR. REYNOLDS: So I don't know if you
17 want to agree that the court reporter can relisten
18 to it if she needs to or --

19 MR. GOWDER: Why don't we -- why don't
20 we allow her to attach an audio file to the
21 deposition.

22 MR. REYNOLDS: That's fine. I'm still
23 going to play them and some of it is difficult to
24 listen -- to understand, but would you follow
25 along, please.

Deposition of MEGAN DEROSIERS

1 THE WITNESS: Is it the same thing that
2 you -- I'm reading.

3 MR. REYNOLDS: I think it's in reverse
4 order of 1 and 2.

5 (Audio recording played.)

6 Q. Were you able to follow along?

7 A. Yes, I was.

8 Q. And does Exhibit 2 accurately reflect what's
9 in the message we just listened to?

10 A. Yes.

11 Q. Let's go back to Exhibit 1 and do the same
12 thing.

13 (Audio recording played.)

14 Q. And is Exhibit 1 an accurate transcript of
15 that message?

16 A. Sure. I mean, there were -- yes, it was.
17 There were some words that were off, but yes.

18 Q. In substance?

19 A. In general, yes.

20 Q. Did that sound like Mr. Davis to you?

21 A. It did.

22 Q. Have you ever heard either one of those
23 before?

24 A. No.

25 Q. At the time in question we're talking about,

Deposition of MEGAN DEROSIERS

1 Q. As best you can hear from the baby crying in
2 the background.

3 A. Yes.

4 Q. So some of that information you referenced
5 is referenced in this voice mail; is that fair?

6 A. Yes.

7 Q. Like what?

8 A. To conservation effort through the Highway
9 41 corridor.

10 Q. Anything else?

11 A. The progress on the DR Horton property.

12 Q. What information was relayed, according to
13 the paragraph, about the DR Horton property?

14 MR. GOWDER: Objection to the form of
15 the question.

16 A. The information about the DR Horton property
17 says, according to this guy, he stalled -- they --
18 the DR Horton property that is just south of our
19 property, and they have been working on for
20 two-and-a-half years, and now DR Horton is trying
21 to do a land swap because they are not getting
22 anywhere with the development of it.

23 Q. Is it true to say that the League stalled
24 the Horton property?

25 A. I don't think it's true to say that, no.

Deposition of MEGAN DEROSIERS

1 particularly targeting the keystone property?

2 MR. GOWDER: Objection to the form of
3 the question.

4 A. We weren't particularly targeting the
5 Keystone property any more or less than we were
6 targeting all of the properties for conservation in
7 the area.

8 Q. Would it be accurate to say that the League
9 fought DR Horton on that project?

10 A. I don't agree with the word fought. There
11 was a time where we opposed what they wanted to do
12 on the property, but I just don't agree with the
13 word fought.

14 Q. So you wouldn't say that the League fought
15 with Horton; is that fair?

16 A. No. I don't think we did.

17 Q. If you look at the next paragraph, the
18 second line, conservation easement, so it can't be
19 development. See that?

20 A. Uh-huh.

21 Q. I assume he meant developed. Would you
22 assume that as well?

23 A. Yeah. I mean, I guess.

24 Q. The word developed would fit in the
25 sentence?

Deposition of MEGAN DEROSIERS

1 A. Yes. It would fit better than the word he
2 chose.

3 Q. But the League wasn't working on a
4 conservation easement?

5 A. We weren't working on a conservation
6 easement.

7 Q. So what was the League doing in May of 2007
8 with regard to the Keystone tract?

9 A. We were working with Berkeley County and
10 landowners in the area to discuss options for
11 conservation of the property. Those options
12 included zoning.

13 Q. Was down-zoning mentioned in that time
14 frame?

15 A. It was.

16 Q. What is down-zoning?

17 A. Down-zoning in that case was they were
18 discussing talking about changing the zoning from
19 what it was, which I can't remember what it was, to
20 something that was less dense.

21 Q. Do you have any idea of what those numbers
22 were as far as density before or after the
23 conservation?

24 A. I don't remember before. After, we were
25 discussing one unit per 15 acres.

Deposition of MEGAN DEROSIERS

1 Q. Take a look at Exhibit 4, please. You are
2 welcome to read all of it. I'm only going to ask
3 you about paragraph four, though.

4 A. Okay. This is Hamilton's deposition, right?

5 Q. Well, if you look at the top, it has a case
6 heading.

7 A. I see.

8 Q. Are you familiar with that case?

9 A. No.

10 Q. And it says that this is a declaration of
11 Hamilton Davis in that case.

12 A. Okay. Yes. That's what it says.

13 Q. My question is, in paragraph four, is what
14 Mr. Davis said a correct statement of the League's
15 mission?

16 A. It is generally correct. I can't tell you
17 if it's word-for-word exactly how we state our
18 mission.

19 Q. Would you agree that that's an accurate
20 statement or not?

21 A. Yes. I would agree.

22 Q. So those are the League's interests, right,
23 in advancing its mission; is that fair?

24 A. Yes.

25 Q. And the League is supposed to advance its

Deposition of MEGAN DEROSIERS

1 mission, right?

2 A. Yes.

3 Q. That's what the League does?

4 A. Yes.

5 Q. And when we talk about the League advancing
6 its mission, we're talking about essentially what
7 Mr. Davis said in paragraph four; is that fair?

8 A. Yes.

9 Q. Let's go ahead and look at the next exhibit,
10 please. Take a look at that and let me know when
11 you have had a chance to --

12 A. Can I just tell you that my name is spelled
13 wrong on all on these? Okay.

14 Q. Have you ever seen this letter before?

15 A. I have not.

16 Q. Do you see the date at the top, May 11,
17 2007?

18 A. Yes.

19 Q. And if Mr. Davis did make the call on
20 May 18th, that would be a week before the call,
21 right?

22 A. Yes. But before you said May 17th, but yes.
23 I don't know the date.

24 Q. I think it's the 18th.

25 A. Okay.

Deposition of MEGAN DEROSIERS

1 Q. Did you find it to be an accurate position
2 of the League's statement?

3 A. I did.

4 Q. The number of statistics are cited in the
5 article; is that a fair statement?

6 A. Yes.

7 Q. Do you know where these statistics came
8 from?

9 A. No.

10 Q. Has anybody verified these statistics that
11 you know of?

12 A. Probably Hamilton.

13 Q. So Hamilton should have had them verified
14 before the article went out, right?

15 A. Yes.

16 Q. Because you would not want to be
17 disseminating incorrect information to the public,
18 right?

19 A. Right.

20 Q. Back to the call. In calling Daniel
21 Burns -- Hamilton Davis, first, obviously was
22 employee of the League at that time, right?

23 A. Yes.

24 Q. And he still is, right?

25 A. Yes.

Deposition of MEGAN DEROSIERS

1 Q. And he would have made that call to advance
2 the interests of the League, right?

3 A. He would have made that call, sure, to
4 advance the interests of the League.

5 Q. In this case, I believe you said that the
6 interests of the League advanced were to open a
7 dialogue with the potential buyer; is that correct?

8 A. Yes, sir.

9 Q. If you will go back to Exhibit 1, 2, and 3.
10 Is there any indication in those three
11 communications that he offered to open up a
12 dialogue?

13 A. He never -- well, nobody ever used those
14 words.

15 Q. Did they use any similar words?

16 A. I wanted to give you some information about
17 what's been going on in the area, Hamilton said.

18 Q. So that's information coming from Davis to
19 Burns, right?

20 A. Uh-huh. Right.

21 Q. My question is, is there any indication that
22 Mr. Davis was opening up a dialogue and not just
23 creating a one-way street of information?

24 MR. GOWDER: Objection to the form of
25 the question.

Deposition of MEGAN DEROSIERS

1 A. Well, I don't know. I don't know. All I
2 have before me is Hamilton's voicemail -- a
3 voicemail and an e-mail. I don't know what was
4 said in the official conversation.

5 Q. Do you have any reason to think that more
6 was said in the conversation than is reflected in
7 Exhibits 1, 2 and 3?

8 MR. GOWDER: Objection to the form of
9 the question.

10 A. I do have information to believe that.

11 Q. Okay. Tell me, what is that information?

12 A. Because Hamilton would not have just called
13 to tell somebody something. Hamilton was to call
14 and get information from the potential buyer or the
15 owner or whoever it was he thought he was calling
16 about what their intent was to do with the
17 property.

18 Q. Have you discussed with Hamilton Davis what
19 was said during that call?

20 A. Not that I recall from that many years ago.
21 I don't remember.

22 Q. So back to the question. Do you have any
23 information other than what you supposed should
24 have happened to indicate that more information was
25 exchanged than is reflected in Exhibits 1, 2 and 3?

Deposition of MEGAN DEROSIERS

1 MR. GOWDER: Objection to the form of
2 the question.

3 A. Not that I can remember, but I know what we
4 talked about having him do when -- I don't know for
5 sure what exactly we said. But I know that when we
6 make calls, it's not just to tell somebody
7 something. It's to learn and give information
8 about what -- what their intent is.

9 Q. Would it be normal to try to schedule a
10 meeting with the person you're calling?

11 A. It would be normal.

12 Q. Would it be normal to ask them their
13 development plans?

14 A. Yes.

15 Q. Would it be normal to have an idea of what
16 they intended to do with the property before you
17 gave them your views on it?

18 MR. GOWDER: Objection to the form of
19 the question.

20 A. It would be. I don't know that that didn't
21 happen.

22 Q. You don't have any reason to think that it
23 did happen, apart from it should have happened; is
24 that fair?

25 A. Apart from what is normal.

Deposition of MEGAN DEROSIERS

1 A. Somebody picking up the phone to call a
2 developer, in my mind, is opening up a dialogue.

3 Q. Well, there's no indication that Mr. Davis
4 asked for information back from Mr. Burns; is that
5 a fair statement?

6 MR. GOWDER: Objection to the form of
7 the question.

8 A. Can you say it again? I'm sorry.

9 Q. There's no indication, is there, in Exhibits
10 1, 2, and 3, that Mr. Davis asked for information
11 back from the buyer?

12 MR. GOWDER: Same objection.

13 A. None of the text in any of these documents
14 say that Hamilton did that.

15 THE WITNESS: Can I have a break?

16 MR. REYNOLDS: Sure.

17 (A recess was taken.)

18 Q. To backtrack, your testimony is that
19 Hamilton Davis would have been advancing the
20 interests of the League in making this call, right?

21 A. Yes, sir.

22 Q. If Exhibits 1 through 3 represent the
23 substance of his communications with Mr. Burns --
24 again, I'm asking you to make that assumption. If
25 that is the case, how were the League's interests

Deposition of MEGAN DEROSIERS

1 being advanced by the communication?

2 MR. GOWDER: Objection to the form of
3 the question.

4 A. First of all, I have trouble accepting the
5 assumption that the entire conversation is
6 reflected accurately in these three documents. But
7 if that's the assumption that you're asking me to
8 make, then I -- my answer is that Hamilton was
9 calling -- placing a call to somebody to have a
10 conversation with them, and that is always the
11 first step in opening a dialogue.

12 Q. Is there anything specific you point to in
13 those exhibits which would lead to the conclusion
14 that the League's interests were being advanced by
15 this call?

16 MR. GOWDER: Objection to the form of
17 the question.

18 A. Hamilton can make a call and try to
19 communicate with somebody, but that doesn't mean
20 that it was actually a successful communication.

21 Q. My question, though, was whether you can
22 point to anything in those three exhibits that
23 would advance the League's interests.

24 MR. GOWDER: Same objection.

25 A. I can't.

Deposition of MEGAN DEROSIERS

1 indirectly reports to you; is that right?

2 A. Yes.

3 Q. How long has that been the case?

4 A. Maybe two -- two years, maybe a little bit
5 more.

6 Q. In advancing the League's interests -- first
7 of all, I assume you agreed with the interests,
8 right?

9 A. Right.

10 Q. And you agree with the idea of advancing
11 those interests, right?

12 A. Yes.

13 Q. Do you feel strongly about advancing those
14 interests?

15 A. Yes.

16 Q. But there is a limit as to what the League
17 can do in advancing its interests; is that fair?

18 A. Yes.

19 Q. Can you give me an example of somebody that
20 is off limits, as far as you're concerned, for the
21 League in advancing its interests?

22 A. Yes. An example would be you're not going
23 to break the law to advance our interests.

24 Q. Is there anything else that the League can't
25 do in advancing its interests?

Deposition of MEGAN DEROSIERS

1 A. Sure. We're not going to treat anybody with
2 disrespect.

3 Q. And you're not going to threaten anybody,
4 right?

5 A. We're not going to threaten anybody, right.

6 Q. You're not going to bully anybody, right?

7 A. Right.

8 Q. Why not? Why don't you do that if that
9 advances the League's interests?

10 A. Well, I don't necessarily think it does
11 advance the League's interests when do you that.

12 Q. In a specific case, if threatening a
13 developer advanced the League's interests, why
14 wouldn't the League threaten?

15 A. I mean, I think you have to look at
16 everything that is involved -- or that is included
17 in the League's interests.

18 Q. So in some cases it would be okay to
19 threaten a developer; is that what you're --

20 A. No. I'm saying it would never be.

21 Q. It would never be okay to threaten a
22 developer, right?

23 A. Right.

24 Q. It would never be okay to bully a developer,
25 right?

Deposition of MEGAN DEROSIERS

1 A. That's right.

2 Q. Is that still your answer?

3 A. Yes.

4 Q. When you discussed calling the potential
5 buyer with Hamilton Davis, did you consider the
6 potential impact that such a call could have?

7 A. As in what?

8 Q. In any way that you think maybe we shouldn't
9 do this for some reason.

10 A. I don't remember thinking that way.

11 Q. But as it happened, the potential buyer
12 walked away from the contract at hand. Is that
13 your understanding?

14 MR. GOWDER: Objection to the form of
15 the question.

16 Q. Is that your understanding?

17 A. That's my understanding.

18 Q. Did you ever give any thought or did
19 Mr. Davis give much thought to the idea that that
20 might be a result of that phone call?

21 A. That wasn't the intent of the phone call.

22 Q. We will get to that in a second. But my
23 question is slightly different. Did you give any
24 thought, you or Mr. Davis, that that might be a
25 potential result of the call?

Deposition of MEGAN DEROSIERS

1 A. No. Not -- I don't know about Mr. Davis. I
2 didn't.

3 MR. GOWDER: Objection to the form of
4 the question.

5 Q. So you didn't, right?

6 A. Right.

7 Q. And to the best of your knowledge, Mr. Davis
8 didn't?

9 MR. GOWDER: Objection to the form of
10 the question.

11 A. I don't know. I don't know if he did.

12 Q. Just to the best of your knowledge, he
13 didn't consider it either, right?

14 MR. GOWDER: Objection to the form of
15 the question.

16 A. I don't have any information that would lead
17 me to believe that he did consider it.

18 Q. In advancing the League's interests, would
19 the interest of the community be taken into
20 account? I believe you said that's one of the
21 interests, right?

22 A. Yes.

23 Q. That's one of the facts that you would
24 consider?

25 A. Yes.

Deposition of MEGAN DEROSIERS

1 Q. And would unemployment in the area be
2 considered one of the factors for the League to
3 look at in deciding how the react to potential
4 development?

5 A. No. Not really.

6 Q. Do you know what the unemployment rate is in
7 South Carolina?

8 A. I don't know. No, I don't.

9 Q. How about Berkeley County?

10 A. No.

11 Q. The League is 501(c)(3) corp?

12 A. Yes.

13 Q. And as such, it has to report certain
14 things -- certain things are public that would not
15 otherwise be public, right?

16 A. Right.

17 Q. Is your list of contributors one of those
18 things that is public?

19 A. I don't believe that it is. I don't know if
20 it's required to be public. We make it publicly
21 accessible, yes.

22 Q. How do you make it publicly accessible?

23 A. It's in our newsletter, which is mailed to
24 people on our website.

25 Q. Is that a complete list of your

Deposition of MEGAN DEROSIERS

1 Q. Is that still a notation in your current
2 financial statement?

3 A. I don't know.

4 Q. Do you know what T-I-F-F is?

5 A. Yes.

6 Q. What is that?

7 A. It's a firm that we use to manage our
8 endowment, I believe.

9 MR. REYNOLDS: Let me take a quick
10 break, but I believe I'm finished.

11 (Off-the-record discussion.)

12 Q. You said earlier that Mr. Davis did not tell
13 Mr. Burns about the conservation easement, if I
14 remember correctly. Did you say that?

15 MR. GOWDER: Objection to the form of
16 the of the question.

17 A. I said that the way that it was worded in
18 the Exhibit 3 would not have been the way that he
19 would have phrased what he said.

20 Q. But just to clarify, that's just based on
21 what you think happened and not on what Mr. Davis
22 told you, right?

23 A. Yeah. And I wasn't part of the
24 conversation, either.

25 Q. You haven't talked to Mr. Burns either,

Deposition of MEGAN DEROSIERS

1 right?

2 A. No.

3 Q. If he did make that statement, if Mr. Davis
4 made that statement, would that have been a proper
5 thing for him to do?

6 MR. GOWDER: Objection to the form of
7 the question.

8 A. The way that it's characterized is
9 incorrect. It's not -- I mean, it's not possible
10 in Berkeley County to zone something to a
11 conservation easement.

12 Q. And if that was said, that would have been
13 incorrect information, correct?

14 A. It's incorrect, yes.

15 MR. GOWDER: Objection to the form of
16 the question.

17 MR. REYNOLDS: That's all I have.
18 Thank you for your patience.

19 MR. GOWDER: I have no questions.

20 (The deposition was concluded at
21 12:44 p.m.)

22

23

24

25

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO.: 2010-CP-08-1771

4 - - - - -X

5 North Pleasant, LLC and :

6 Vanguard Development Group, LLC, :

7 Plaintiffs, :

8 v. :

9 South Carolina Coastal :

10 Conservation League and :

11 Edward D. Beach, :

12 Defendants. :

13 - - - - -X

14 Deposition of ROBERT MILLER PITTENGER

15 (Taken by Defendants)

16 Charlotte, North Carolina

17 September 13, 2011

18

19

20

21 Reported by: Andrea Nobrega

22

23 Court Reporter

24

25 Notary Public

P R O C E E D I N G S

Whereupon, ROBERT MILLER PITTENGER, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. WALKER:

Q. Please tell us your name again?

A. Robert Miller Pittenger.

Q. Mr. Pittenger, I understand you have been designated by Vanguard Properties Of The Carolinas, LLC to testify as a deponent on behalf of certain matters that have been identified in a notice of 30(b)(6) deposition that was issued by our firm.

Have you reviewed the 30(b)(6) notice of deposition to go over the topics we may examine you on?

A. Sure.

MR. WALKER: Could we go ahead and make the 30(b)(6) notice Exhibit No. 1.

(Exhibit No. 1 marked for identification.)

BY MR. WALKER:

Q. Also, before the deposition a subpoena was issued to Vanguard Properties Of The Carolinas

1 to produce certain information. Did you review
2 the subpoena that was issued to Vanguard
3 Properties Of The Carolinas?

4 A. Yes, I did.

5 MR. WALKER: Let's go ahead and mark
6 that as No. 2.

7 (Exhibit No. 2 marked for
8 identification.)

9 BY MR. WALKER:

10 Q. How did you go about obtaining the
11 information that was requested in the subpoena,
12 the documents that were requested?

13 A. Well, much of it was through e-mails.

14 Q. Did you yourself assemble the documents?

15 A. No, I had the help of Paul Smith,
16 corporate attorney.

17 Q. And I think I mislabeled something here.
18 Did I do that? Exhibit No. 1 is a notice of
19 deposition. Exhibit No. 2 is the earlier notice
20 of deposition that includes the subpoena.

21 Going back to my question, did you
22 engage, Mr. Smith, or had him round up the
23 documents that he believed to be responsive to the
24 subpoena?

25 A. Correct.

1 MR. WALKER: The documents that have
2 been provided by Mr. Smith are in the notebook in
3 front of you. Let's go ahead and mark that as
4 Exhibit No. 3. Exhibit No. 3 consists of e-mails
5 that as printed are 389 pages.

6 (Exhibit No. 3 marked for
7 identification.)

8 BY MR. WALKER:

9 Q. In preparation for the deposition, did
10 you review the e-mails that were assembled by Mr.
11 Smith?

12 A. Yes, we went over them in general.

13 Q. Did you review any other materials?

14 A. No, basically just discussed those
15 e-mails.

16 Q. Do you know of any paper files that were
17 maintained by your company that still may be in
18 existence that were not produced?

19 A. I'm not aware of any. The gentleman
20 that handled this no longer works for the company,
21 the one who was involved in seeking to acquire the
22 property.

23 Q. Who would that have been?

24 A. Daniel Fogarty.

25 Q. When did he leave the company?

1 A. About eight months ago, something like
2 that.

3 Q. Where is he now?

4 A. He works for a non-profit.

5 Q. What's the non-profit?

6 A. I don't know.

7 Q. Is he here in Charlotte?

8 A. Yes.

9 Q. What was the reason for his departure
10 from the company?

11 A. He wanted to work for a non-profit, just
12 change of interest in his life.

13 Q. Turning to Exhibit A to the subpoena,
14 which lists the documents that have been
15 requested, we requested all correspondence between
16 Vanguard and North Pleasant and Vintage Land, LLC.

17 Do you have any correspondence other
18 than what's in the notebook consisting of the
19 e-mails marked as Exhibit No. 3?

20 A. We have given you everything we have.

21 Q. Not to be redundant, but I do want to
22 make sure that everything has been produced.

23 Based on what you told me, is it true
24 that you have produced all documents in Vanguard's
25 possession that are responsive to the description

1 of documents on Exhibit A to the subpoena?

2 A. All that we are aware of.

3 Q. All right, that's fine. Mr. Pittenger,
4 are you the head of a company here in Charlotte?

5 A. Robert Pittenger Company.

6 Q. How long have you had Robert Pittenger
7 Company?

8 A. We are in our 22nd year.

9 Q. What's the principal business of Robert
10 Pittenger Company?

11 A. We are a land investment company.

12 Q. Is a land investment company different
13 from a land development company?

14 A. It is.

15 Q. Would you briefly tell me the
16 difference?

17 A. We acquire land for the purpose of
18 solely investment. We do not develop. We sell to
19 future developers.

20 Q. So you may flip it, you may hold it, but
21 you do not do the development?

22 A. We speculate on land.

23 Q. Let's talk about Vanguard Properties Of
24 The Carolinas, LLC, which was the contract
25 purchaser, potential purchaser for this property.

1 That is a separate legal entity obviously from
2 Robert Pittenger Company?

3 A. It's solely owned by Robert Pittenger
4 Company.

5 Q. And when was Vanguard Properties Of The
6 Carolinas formed, approximately?

7 A. I would say probably maybe about ten
8 years ago.

9 Q. Had Vanguard Properties Of The Carolinas
10 been involved in the acquisition of properties
11 before the negotiations related to the Keystone
12 tract?

13 A. Yes.

14 Q. Had it acquired properties?

15 A. Yes.

16 Q. What were the properties that had been
17 acquired by Vanguard, if you can remember?

18 A. Well, we had some down in Charleston.
19 We had some in the Charlotte area. I believe did
20 we acquire some in Nashville -- no.

21 Q. Was Vanguard for a particular type of
22 property? For instance, was it purely for
23 properties here in the Carolinas or property of a
24 particular character?

25 A. Well, we just like to maintain a little

1 profile sometimes, because we do a lot of
2 acquisitions, and that's the way to maintain our
3 profile.

4 Q. Do you have other subsidiary companies
5 that you would acquire land in or was Vanguard
6 your principal?

7 A. Vanguard is it.

8 Q. It would be your acquisition entity
9 basically?

10 A. Yes.

11 Q. The Keystone tract or at least the
12 portion of the Keystone tract that Vanguard had
13 under contract was approximately 2,600 acres. Had
14 Vanguard ever acquired a property of approximately
15 that size or greater before?

16 A. No. We had acquired thousand acre
17 tracts, but not 2,000.

18 Q. Would this property have been more than
19 twice the size of the largest acquisition, single
20 acquisition that you had done before?

21 A. As I stated, yes.

22 Q. Where was that thousand acres?

23 A. Well, we have a 1,200 acre piece in
24 Waxhaw and there are some close to a thousand, but
25 not quite that big.

1 Q. What are the other properties that you
2 have in the Charleston area or that you held
3 invested and either still hold or turned over and
4 sold?

5 A. Interstate 26, we just own some
6 properties out that direction.

7 Q. What is the nature of those? Are those
8 industrial, mixed use, commercial, retail?

9 A. Everything we do is for single family
10 purposes.

11 Q. Do you have particular developers that
12 you have relationships with that you sold to in
13 the past consistently?

14 A. Well, we have some we have sold, but we
15 don't just sell one developer. There has been one
16 company in Charlotte that have bought three
17 different parcels from us, but we sell to various
18 people.

19 Q. Turning to this property, the Keystone
20 tract, when did you first become interested in it?

21 A. I would say four or five years ago. We
22 research properties and this one surfaced. We
23 research certain areas of the country.

24 Q. Who would do the research in your
25 organization?

1 A. Various people. Daniel Fogarty did most
2 of the research on this tract in that region of
3 the country.

4 Q. I noticed in the e-mails in Exhibit No.
5 3, that the earliest e-mails that we have refer to
6 renewed interest in the Keystone tract, and I'm
7 referring to what's marked -- I am going to be
8 referring to page numbers in Vanguard three.

9 It's an e-mail from Josh Hulen to Daniel
10 Fogarty February 20th. Thank you for your renewed
11 interest in the Keystone tract.

12 I read that as that there might have
13 been interest before and there was a hiatus with
14 renewed interest. Can you tell me about that?

15 A. Well, as I recall, it was probably
16 related to price, and the amount that the seller
17 was willing to take.

18 Q. Had there been prior discussions with
19 the seller about a potential acquisition before
20 February of 2007?

21 A. I assume that there was. My best recall
22 is that they had a broker rep, and they presented
23 an amount to us that wasn't of interest to us and
24 then they came back and said, well, the seller
25 will consider this amount.

1 Q. So your best recollection is they came
2 back with a better price and at that price your
3 entity was interested?

4 A. Yeah, we were -- it was at a level that
5 we would at least begin considering. I'm not
6 saying that their price was going to be the price
7 we would settle on, but at least they were getting
8 into a range that we could have discussion.

9 Q. Without going through all the e-mails,
10 it appears that the price they proposed was or
11 that was ultimately agreed on was \$9,200 an acre.
12 Does that sound right?

13 A. Probably was.

14 Q. And that's for gross acres, right?

15 A. I couldn't attest to it. We truly look
16 at hundreds of properties a year.

17 Q. Before you put this property under
18 contract, did you run any numbers on your end to
19 determine whether this would be a profitable
20 venture for your company or Vanguard?

21 A. Well, you look at the general amount
22 what land should be worth under certain
23 conditions, and as I say, conditions meaning how
24 much of it can be developed that doesn't have
25 flood plane or what else. There was a major

1 weather issue down that part of the country.

2 So then there is consideration, of
3 course, for what type of density could be
4 achieved, and you don't know that going in, but
5 you're working under assumptions.

6 Q. When you say you don't know that going
7 in, are those typically some of the forefront
8 issues during your due diligence period?

9 A. Yeah, we work on that during due
10 diligence. We get a property under contract, then
11 we go to work..

12 Q. So what I'm talking about in terms of
13 any analyses of the financial potential of the
14 property would not have occurred before it was put
15 under contract other than determining whether it
16 was a good price?

17 A. Yeah, if it's in the range of a good
18 price, considering what we believe to be
19 reasonable opportunity for development, then we
20 will put it under contract and go from there and
21 see if it ends up making sense.

22 Q. The purchase price was somewhere around
23 23,000,000. What was Vanguard's plan for raising
24 the funds for the purchase price?

25 A. Private investors.

1 Q. Was that what you had typically done for
2 your other deals?

3 A. That's what we always do, all equity.

4 Q. All equity. So you would not be getting
5 a loan?

6 A. Not at all.

7 Q. All equity?

8 A. We have never had any debt instrument on
9 any of our properties.

10 Q. I noticed in the e-mails that there was
11 discussion or reference to putting the book
12 together. Is a book a document that is provided
13 to investors --

14 A. It is --

15 Q. That puts forward the investment. Was a
16 book ever compiled for this particular project?

17 A. It never got that far.

18 Q. Do you have -- do you go back to the
19 same investors or have you gone back to the same
20 investors again and again?

21 A. Sure.

22 Q. And how does that typically work? I see
23 where you put a book together. Is it then given
24 to a select group of investors and they get back
25 to you within a specified period?

1 A. We notify them of the opportunity and we
2 give a general description of the property we are
3 buying, and they can tell us whether they would
4 like to review the summary.

5 Q. And typically do you get those responses
6 before a contract goes hard?

7 A. No.

8 Q. You will do it after the contract goes
9 hard?

10 A. Correct. We don't do anything until we
11 go hard, and then we proceed ahead with collecting
12 all the due diligence that we have found because
13 that goes in the summary.

14 Q. I think I mis-spoke then. Do you
15 typically have your information as to the investor
16 interest before the contract -- before the
17 expiration of the inspection period before the
18 termination of your ability to get out without
19 consequences?

20 A. No, if I put something under contract
21 and then we go hard, then I have to go ahead and
22 raise the capital, and I'm just assuming that my
23 investor base is going to like my property.

24 Q. The assumption is they will look at it
25 the way you look at it?

1 A. That's right.

2 Q. Did you have any direct communications
3 with the seller in this case that you can
4 remember?

5 A. People from Georgia?

6 Q. Right, or Cincinnati, or wherever they
7 were, the Reynolds?

8 A. No, not about the property. I only met
9 him during the George Bush campaign. He chaired
10 his finance committee.

11 Q. And he probably has handouts at some
12 point there?

13 A. I was on the finance committee.

14 Q. So you knew him from that?

15 A. Yeah, but we never had a discussion
16 directly about the property.

17 Q. Had you ever done any transactions with
18 any entities owned or controlled by the Reynolds?

19 A. No.

20 Q. This would have been a first?

21 A. Correct.

22 Q. Who are the main people with Robert
23 Pittenger Company that were in charge of this?

24 A. Daniel Fogarty.

25 Q. And who is Daniel Burns?

1 A. Well, Daniel Burns is a vice president
2 of the company, and he had some contact because he
3 worked on contracts.

4 Fogarty worked under him, but Fogarty
5 did all the due diligence, and then gave all the
6 data to Burns and Burns worked with our attorneys
7 to develop the contracts.

8 Q. Do you know of any due diligence that
9 was performed before the contract was signed with
10 the seller?

11 A. I don't recall, I just don't.

12 Q. If you would go to the notebook in front
13 of you marked as Exhibit No. 3, you will see these
14 page numbers in the upper right-hand corner. Do
15 you see those?

16 A. Uh-huh.

17 Q. Would you go to 112.

18 A. Okay.

19 Q. If we were to follow that through to
20 page 123, which is the signature page, you will
21 see that this appears to be a signed contract.

22 To the best of your knowledge, is this
23 an accurate copy of the executed contract for
24 purchase of property?

25 A. Well, it looks like it. It appears to

1 Q. Before you entered this contract, were
2 you aware of the history of this property in the
3 hands of the Reynolds entities?

4 A. No, not really.

5 Q. Were you aware of discussions that the
6 sellers may have had previous to your involvement
7 with the South Carolina Department of Natural
8 Resources and other entities about a potential
9 sale to preserve the lands for conservation
10 purposes?

11 A. No, sir.

12 Q. Did anybody disclose that to you?

13 A. Not to my recall.

14 Q. To your recollection, did anyone
15 disclose to you that one of the prior development
16 plans had been to do a conservation development
17 with a limited number of large parcels or farms?

18 A. No.

19 Q. To the best of your knowledge, had
20 anybody with the seller disclosed to you, before
21 you entered your contract, the various entities
22 that may have been interested in the preservation
23 of the Cooper River historical corridor?

24 A. No -- I'm sorry, we were not aware.

25 Q. Were you aware that there had been a

1 special historical designation for the land along
2 the Cooper River in the vicinity of this project?

3 A. No, sir.

4 Q. Was that disclosed by the seller?

5 A. No, sir.

6 Q. Would you have been interested in
7 knowing that?

8 A. I'm interested in any information.

9 Q. Would you consider that pertinent?

10 A. I don't know how close proximity it was
11 and how relevant that would have been. I would
12 have to look into that.

13 Q. Were you aware that the governor of the
14 State of South Carolina had written a letter to
15 Mercer Reynolds two and a half years before
16 encouraging a conservation approach to this
17 property?

18 A. No, sir.

19 (Exhibit No. 4 marked for
20 identification.)

21 BY MR. WALKER:

22 Q. I have handed you what's been marked
23 Exhibit No. 4. It's a copy of a letter dated
24 September 27, 2004 from Governor Mark Sanford to
25 Mercer Reynolds.

1 Is today the first time you have seen
2 this letter?

3 A. Yes, sir.

4 Q. Did anyone with the seller at any time
5 disclose to you that the Governor of South
6 Carolina had indicated his opposition to intense
7 development of the Keystone tract?

8 A. No, sir.

9 Q. Did anybody with the seller communicate
10 to you or the folks in your organization, that the
11 governor had communicated with the Reynolds about
12 a partnership among state, local citizenry and
13 local landowners to try to conserve the Keystone
14 tract?

15 A. No, sir.

16 Q. Did anybody with the seller inform you
17 that the governor had communicated to Mercer
18 Reynolds that this group has the capacity to mount
19 sustained opposition to this project with a
20 political union unlike any I have ever seen in
21 South Carolina?

22 A. No, sir.

23 Q. Did anybody with the seller communicate
24 to you that the governor had communicated to
25 Mercer Reynolds on the one hand, long time

1 Republican and ambassador Bob Royall, who I saw
2 earlier this week, mentioned he had put in a call
3 to you and was going to fight the project in any
4 way possible?

5 A. No, sir.

6 Q. Did anybody with the seller communicate
7 to you that the governor had also informed Mercer
8 Reynolds with the seller that equally forceful
9 from the opposition party as Fred Lincoln, who
10 would be adroit at dragging the development
11 process out in remarkable ways, and as we both
12 note, time is money in the development business?

13 A. No, sir.

14 Q. You would have considered all that as
15 helpful information, would you not, if it had been
16 communicated to you?

17 A. Sure.

18 Q. Before entering this contract, did
19 anybody on behalf of the seller communicate with
20 you that -- or let you or anybody with your
21 organization know about the conservation easements
22 that were on properties to the west of your
23 development along the Cooper River on several
24 large tracts that were in private hands?

25 A. Nobody told us. We found out.

1 Q. You found out after you signed the
2 contract or did your due diligence, correct?

3 A. Yeah. I don't know the timing of when
4 Fogarty became aware of that.

5 Q. What due diligence did Mr. Fogarty do
6 with respect to the zoning?

7 A. Well, we -- I was in touch with the
8 county and I think was inquiring what potential
9 zone could be on the tract.

10 Q. Do you know who Mr. Fogarty may have
11 talked to with Berkeley County?

12 A. I think ultimately -- we hired an
13 attorney, and I don't remember his name to
14 determine how realistic it was to get the property
15 rezoned, and I don't know that the county -- maybe
16 his name was Davis.

17 Q. He would have been the county
18 administrator?

19 A. Maybe.

20 Q. Dan Davis?

21 A. Could have been.

22 Q. Do you know if Mr. Fogarty ever had any
23 communications with Jeff Tyndal who is the head of
24 planning and zoning for Berkeley County?

25 A. I do not know that. I don't know that

1 he talked to Davis. I talked to Davis.

2 Q. Did anybody with the seller let you know
3 that Jeff Tyndal who was the head of planning and
4 zoning with Berkeley County was endorsing a
5 conservation rezoning of the Keystone tract and
6 other properties?

7 A. Yeah, when we found out that there was
8 interest on their part in our own discussions with
9 him.

10 Q. My question specifically was, did
11 anybody with the seller tell you that, and your
12 answer is no?

13 A. No.

14 Q. You would have considered it very
15 important, would you not, to have known that Jeff
16 Tyndal, the planning and zoning director for
17 Berkeley County was in the spring and summer or I
18 guess spring of 2007, a proponent of rezoning the
19 Keystone tract and other lands to a new category
20 called R-15 that would allow one unit per 15
21 acres?

22 A. Well, sure. I have to say that this is
23 incumbent upon us, let the buyer beware. It's our
24 job. We don't listen to brokers. We don't listen
25 to sellers. We don't listen to anybody. We don't

1 expect them to tell us everything and sometimes we
2 hear exaggerations.

3 So it's a combination of information,
4 none of which is relevant to us, and what they
5 tell us, they don't tell us. We have to do our
6 own homework.

7 Q. I understand. They may give you
8 information but you are still going to find out
9 for yourselves?

10 A. That's right. I'm not surprised when I
11 don't receive information that I found out later
12 on my own. It's just the nature of the animal.

13 Q. In looking at your contract to purchase,
14 and I'm on page marked Vanguard 117, which is
15 section 11 representations and warranties of
16 seller, that subpart B of that, states in part to
17 the best of seller's knowledge, seller does not
18 have knowledge of any proposed change except as
19 provided herein, and any such code, law or
20 regulation, which would interfere with the
21 intended use of the property.

22 Would a rezoning of this land from Flex
23 1 to R-15 as I just mentioned to you, have
24 interfered with your intended use of the property?

25 A. Oh, sure. And let me say that we

1 You can lose in planning and you can win
2 with the commissioners, a developer can. So it's
3 important. I don't discount it at all, but it's
4 not getting to home plate.

5 Q. Right. Staff doesn't make the
6 decisions?

7 A. No.

8 Q. All planning staff can do is make a
9 recommendation to the --

10 A. Yeah, so I can't tell you whether he was
11 legally required to convey that to me or not.

12 Q. Regardless of whether he was legally
13 obligated, the seller was legally obligated to
14 convey the information, if the seller had known
15 that, you would have expected it to be disclosed
16 to you, would you not?

17 A. I would like for it to have been, but
18 I'm not surprised that they don't. I mean, they
19 are trying to sell a piece of dirt. They don't
20 tell me all the parts of the dog that smell.

21 Q. How about other due diligence items, and
22 I would like to turn to wetlands. What did you
23 assume to be the extent of wetlands on this
24 property? I think you mentioned it earlier.

25 A. We don't, but you can have down in the

1 Q. In this case, though, you have no
2 personal knowledge that any such consultation
3 occurred, correct?

4 A. No, I do not.

5 Q. Are you aware that Mr. Smith on your
6 behalf sent a letter to the seller that outlined
7 certain objections to the title?

8 A. That very well could have happened.

9 Q. Do you know whether or not those were
10 resolved before you terminated the contract on May
11 25, 2007?

12 A. I'm not aware of that.

13 Q. Before you entered this agreement, did
14 the seller speak to you about concerns that the
15 United States Department of Agriculture had as to
16 the potential effect of development of the
17 Keystone tract on the Francis Marion National
18 Forest?

19 A. No.

20 (Exhibit No. 6 marked for
21 identification.)

22 BY MR. WALKER:

23 Q. I marked as Exhibit No. 6 a photocopy of
24 a letter from the United States Department of
25 Agriculture, Orlando Sutton, district ranger to

1 Dan Davis, Berkeley County supervisor.

2 Did the seller produce to you this
3 letter from the Forest Service?

4 A. I have never seen it; to my knowledge.

5 Q. To be fair, it doesn't show it was
6 copied to the seller, so I'm going to rephrase my
7 question, and that is, did the seller ever notify
8 you that the Forest Service had issues with
9 respect to the residential development of the
10 Keystone tract?

11 A. No.

12 Q. Did anybody with the seller inform you
13 before you entered the contract that the Forest
14 Service was interested in a conservation -- in
15 conserving the Keystone tract?

16 A. No.

17 Q. Another aspect of the due diligence
18 would have been, I think you mentioned, the
19 threatened, endangered species analysis?

20 A. Sure.

21 Q. In this instance, from your e-mails it
22 appears that you engage S&ME to do that for you?

23 A. Uh-huh.

24 Q. They prepared a report, did they not?

25 A. I'm sure they did.

1 logging roads?

2 A. I understand. I don't recall that.

3 Q. We were talking earlier about the end of
4 the inspection period. That's a very important
5 time, is it not?

6 A. Sure.

7 Q. Did your entity obtain an extension of
8 the inspection period?

9 A. I don't remember whether we did that or
10 not.

11 Q. We can go look at that in a minute. I
12 will represent to you that you did, and we'll come
13 back to that.

14 A. That will be fine.

15 Q. At some point did someone with your
16 company receive a call from Hamilton Davis with
17 the South Carolina Coastal Conservation League?

18 A. I believe we did get a call.

19 Q. The first reference that I see in your
20 file is at page 299. If you would turn to that.

21 This is an e-mail from Daniel Fogarty to
22 Daniel Burns, apparently an internal e-mail. Any
23 word on the conservation nut? I'm hoping he is
24 just blowing smoke to scare us off. The only
25 thing that made me nervous was his comment about

1 Stalling the D.R. Horton tract and close to
2 getting the county to change the zoning so the
3 Keystone tract could never be developed.

4 Do you know of any earlier documentation
5 of communications with anybody from the Coastal
6 Conservation League?

7 A. No, sir.

8 Q. Had the seller disclosed anything to you
9 or the folks who work for you, to the best of your
10 knowledge, about the Coastal Conservation League
11 before this telephone call came in?

12 A. No.

13 Q. So as I understand it, the seller did
14 not mention anything about the Conservation League
15 before the contract was signed?

16 A. No.

17 Q. Seller didn't mention anything about the
18 Conservation League before someone with the
19 organization was contacted directly, correct?

20 A. Not to my knowledge.

21 Q. Did you have any conversations with Mr.
22 Burns about this phone call that he received?

23 A. We probably did. I assume we may have
24 chatted about it. I'm certain it would be logical
25 we talked.

1 I wanted to speak with you about ya'll's
2 recent I guess not purchase, but interest in the
3 2,600 acre parcel in Berkeley County.

4 I wanted to give you some information
5 about what's going on in that area right now that
6 you would probably be interested in. Call me back
7 when you get a chance please, 843-725-2061, and
8 again, my name is Hamilton Davis, and I work for
9 the Coastal Conservation League. Thank you.

10 Mr. Pittenger, do you have any
11 information that the message was any different
12 from as transcribed right there?

13 A. I wasn't familiar with the message to
14 begin with.

15 Q. Okay, got it. Did Mr. Burns, to your
16 knowledge, get back in touch with Mr. Davis?

17 A. I do not recall. I don't know.

18 Q. Why don't we go to Vanguard 304. That's
19 an e-mail from Daniel Burns to Daniel Fogarty,
20 copied to you, is it not?

21 A. It is.

22 Q. Monday, May 21st at 9:17. The e-mail
23 says -- it's to you -- to recap my conversation on
24 Friday afternoon, received a voicemail from
25 Hamilton Davis from the Coastal Carolina League in

1 Charleston, SC, and called him back around 4:00
2 p.m., then forwarded his voicemail for you to be
3 aware of the issue.

4 Hamilton stated that he was aware that
5 we had the Keystone tract under contract to
6 purchase, and that we probably would like to know
7 that his group, coupled with the efforts of large
8 plantation owners, is trying to stop development
9 in the Highway 41 corridor because of its
10 proximity to the national forest. He said they
11 are particularly targeting the Keystone property
12 since it's such a large tract and adjacent to the
13 forest.

14 He mentioned that D.R. Horton has a
15 property just south of ours that the Conservation
16 League has fought and that now D.R. Horton is
17 trying to do a land swap to get out of the Highway
18 41 tract.

19 The scariest thing mentioned was that
20 they are working with the county to get rezoning
21 for the Keystone tract to a conservation easement
22 so it can't be a development, and said they were
23 getting close with joint efforts with the
24 plantation owners.

25 I don't know how much of this is reality

1 or smoke blowing, but if they have, in fact,
2 halted D.R. Horton, they have accomplished
3 something.

4 Senator, do you know if the Coastal
5 Conservation League can get the county to rezone a
6 property to a conservation easement without the
7 owner's consent?

8 Having gone over that, do you recall
9 getting this e-mail?

10 A. I certainly recall the conversations.

11 Q. Did the substance of this e-mail cause
12 you concern?

13 A. Absolutely.

14 Q. Was this the first notice that you had
15 that there were elements, Conservation League,
16 large plantation owners and potentially others,
17 who were trying to curb development on the Highway
18 41 corridor?

19 A. Yes.

20 Q. That had not been imparted to the by the
21 seller, had it?

22 A. No, sir.

23 Q. What was your response to this? Did you
24 want to find out more information about the League
25 and get some opinions on its efficacy?

1 A. Well, I think what we did, we called and
2 talked to the folks at the county and called a
3 lawyer and hired an attorney -- got opinions of a
4 couple attorneys, and then they got us together
5 with the folks at the county, and I ended up
6 having lunch, I think it was with Mr. Davis.

7 There were three people. It was during
8 a golf tournament, and we were out at Kiawah, and
9 they met me out there and we had lunch, and I got
10 the message real clear.

11 Q. What was that message?

12 A. That there was enormous resistance to
13 the development of this property, and that we
14 would have great difficulty in getting greater
15 density, a tighter density and maintaining the
16 present density even, and the utilities would as a
17 result be very difficult to bring to the tract,
18 and be cost prohibitive, and end of discussion. I
19 called the office and said cancel it.

20 Q. Did the county representatives describe
21 the nature of the opposition?

22 A. Broad -- it was broad opposition and
23 they mentioned the conservation people, I'm sure,
24 but it was just going to be impossible to develop
25 and cost effectively bring utilities to the tract.

1 Q. When you say broad conservation, the
2 Conservation League was just one of many who would
3 be opposing intense development?

4 MR. BARNETT: Object to the form.

5 BY MR. WALKER:

6 Q. Was it your impression from what the
7 county officials said to you where you understood
8 the opposition was broad, that there was going to
9 be many others in the --

10 A. It wasn't a matter of the number of
11 people or groups. It was a matter they didn't --
12 they said there was a lot of support with the
13 objections that were raised by the Coastal
14 Conservation, that they had brought support in the
15 region.

16 Q. If you would go to page 308, please,
17 before we get to your termination letter. These
18 are e-mails that talk about opinions and if you
19 look at the second one from the top, Daniel
20 Fogarty to Josh Hulen, May 21st at 12:01 p.m.

21 He says "We would like to know their
22 opinion on the whole situation. The legitimacy of
23 the CCL. Their ability legally to have the
24 property rezoned. Any precedent they see that
25 would stand in favor of the property owner. How

1 the CCL could legally adversely affect the value
2 of the property.

3 What is the ability for the county to
4 have blanket rezoning to change the Flex 1 on the
5 Keystone tract."

6 Were all of those generally matters that
7 you had discussed with Mr. Fogarty that needed to
8 be researched that you wanted answers to?

9 A. Yeah, I'm sure at the end of the day
10 when we almost got brought to a head.

11 Q. Did you request that Mr. Fogarty obtain
12 the opinions of three lawyers and a land planner
13 with respect to whether the Conservation League
14 might be able to successfully --

15 A. I don't remember having lawyers, but,
16 yes, we saw counsel.

17 Q. What was your reason for seeking
18 counsel?

19 A. We wanted a studied opinion, good
20 analysis of what was the determinants out there,
21 and could they keep the property from being
22 developed.

23 Q. Would it be fair to say that your
24 principal concern was to make sure that you were
25 going to have the favorable zoning moving ahead?

1 A. Well, I'm sure. You can't develop a
2 tract at the price for buying it with one lot per
3 15 acres. We wanted to see is that going to be
4 the resulting zoning on this tract, and was there
5 any way to succeed in something that was more
6 favorable.

7 Q. Was there a threshold in your mind as to
8 the minimum number of units that you would want to
9 be entitled on this tract?

10 A. I think we were still looking for one
11 acre lots. We liked higher density than that, but
12 I don't think we were wanting to see anything
13 approved that was less dense than that.

14 Q. If you go to page 314, please. These
15 are e-mails on Monday, May 21st. If you go down
16 to the one on the bottom of the page, it's one
17 from Daniel Fogarty to you, Monday, May 21st at
18 5:47. Do you see that?

19 A. Yes.

20 Q. He says senator, the phone calls today
21 with Mr. Barnett, Whit's friend, were 50/50. He
22 feels that the CCL has lost a lot of steam in the
23 last few years and has left a bad taste in the
24 mouths of most local government.

25 However, he knows that they are well

1 summary of what Mr. Barnett might have said that's
2 not included in this e-mail.

3 I would instruct him not to answer any
4 question except what's directly related to this
5 e-mail with regard to what Mr. Barnett may have
6 instructed Mr. Pittenger or Mr. Fogarty.

7 MR. WALKER: So that I understand, you
8 are allowing him to answer about the information
9 in this e-mail?

10 MR. SMITH: Correct.

11 BY MR. WALKER:

12 Q. Mr. Pittenger, Mr. Fogarty indicated to
13 you that Mr. Barnett stated that the Conservation
14 League has lost a lot of steam in the last few
15 years, correct?

16 A. Yes.

17 Q. And that would suggest that maybe they
18 were not such a force to be reckoned with,
19 correct?

20 A. That is one man's opinion.

21 Q. And those are the opinions you were
22 looking for, the opinions of attorneys who dealt
23 with them on a frequent basis, correct?

24 A. Well, I looked for a lot of opinions,
25 but what nailed the lid was I had the lunch with

1 the three individuals from the county, and they
2 made it real clear to me what I was facing, and I
3 thought I have better fish to fry than to go fight
4 these battles.

5 There are other properties I can buy,
6 and I don't have to get engaged in this type of
7 war because this is going to be a war, and I don't
8 have time or money or interest. I will buy
9 something else.

10 Q. Let me ask you about that, too, because
11 you said the other thing that jumped out at you
12 was that sewer was going to be cost prohibitive,
13 correct?

14 A. Yes.

15 Q. Did your acquisition of the property
16 assume that there would be public wastewater
17 treatment, a public sewer?

18 A. Well, growth can bring sewer and water
19 in a cost effective way, and counties have
20 development arrangements, but with all the
21 conservation easements that are out there, it was
22 just going to be improbable that the sewer could
23 be brought in a cost effective way.

24 Q. If the sewer could not be brought in a
25 cost effective way because of the conservation

1 easements, then it was not a viable deal for you,
2 correct?

3 A. Correct, particularly with the density
4 that was being proposed -- I mean certainly not
5 one unit in 15 acres.

6 Q. At a density of one unit per acre, a
7 public sewer is a necessity, correct?

8 A. Well, sure, absolutely. You certainly
9 can't afford to bring it if you have very low
10 density as was being advocated by the conservation
11 group and others, and if that -- if the success of
12 the development hinged on winning that battle to
13 cost effectively bring sewer to the tract, then
14 there were too many issues.

15 Q. Just to make sure I'm clear, if we put
16 aside the zoning issues, which would be the
17 density and we looked purely to the availability
18 of public water and sewer, even if the zoning
19 stayed the same, Flex 1, which you liked, the
20 conservation easements and the remoteness of the
21 connection of the public sewer made it cost
22 prohibitive to proceed with the development you
23 envisioned, correct?

24 A. No, I think it was potential to succeed
25 if you had high enough density, then it could end

1 up paying for itself.

2 If you didn't, you couldn't achieve that
3 kind of density, then there was no way in the
4 world that you could afford to bring sewer out
5 there.

6 Q. Regardless of whether sewer was out
7 there or not, your plan hinged on one unit an
8 acre, correct?

9 A. At a minimum of that.

10 Q. If you would go to page 319, please.
11 These are e-mails on Tuesday of that week, May
12 22nd. The second one down is one from you to
13 Bobby Pittenger, Daniel Fogarty and Daniel Burns.

14 You say it would be good to talk to DPZ,
15 and DPZ from the other e-mails is a land planner,
16 Duwaney's land planning outfit in Florida.

17 They would likely be fully aware of the
18 issue and could offer opinions and maybe a letter
19 with possible consideration of using them for a
20 plan, but first, we need to get a political
21 assessment before we buy the land.

22 Do you recall that e-mail, having
23 reviewed it?

24 A. I'm sure I did.

25 Q. It was important to you if we go by this

1 e-mail to get a political assessment before
2 closing, correct?

3 A. Sure.

4 Q. It was important to get a political
5 assessment before the inspection period ended,
6 correct?

7 A. Correct.

8 Q. The political assessment that we are
9 talking about is directly from the county
10 officials, correct?

11 A. Sure.

12 Q. The political assessment in this
13 instance would have been your lunch with Mr. Davis
14 and the other county persons, would it not?

15 A. And supporting conversations I had with
16 other people. That was the final blow.

17 Q. The most significant of the events of
18 the political assessment was, though, that lunch
19 that you had at Kiawah that Friday?

20 A. That ended the chapter.

21 Q. Tell me, again, who is in attendance at
22 that lunch?

23 A. I don't know. I think it was Mr. Davis,
24 but I don't know the other people there.

25 Q. Were they all from the county?

1 MR. BARNETT: Could I ask you to say
2 which Mr. Davis, because we talked about two.

3 BY MR. WALKER:

4 Q. Was it Dan Davis, the county supervisor?

5 A. I think it was the guy. There was
6 somebody there from the county. I'm trying to
7 recall. I think it was him.

8 Q. Was there anybody other than folks from
9 the county at that lunch?

10 A. I don't recall. I think they were all
11 officials from the county of some sort.

12 Q. Would you go to page 329, please. The
13 e-mails that are on page 329 and 330 deal with the
14 letters that you were seeking, and it appears from
15 the e-mail string that there was some question
16 about or wanting clarity on what the letters were
17 to cover, and your e-mail at the top of the page,
18 Tuesday, May 22nd of 2:25 to Mr. Fogarty says
19 referring to the letters, they are all stand-alone
20 letters from separate entities saying that Coastal
21 Conservation is a bag of wind, and that we can
22 effectively plan and zone around them to effect
23 the desired site plan for a single family
24 community.

25 I take it from that you were looking for

1 Q. And it appears from these e-mails that
2 you were getting, starting to get a level of
3 comfort that needed to be confirmed by a number of
4 letters. Is that a fair conclusion?

5 A. Yeah, at the end of the day, those
6 letters weren't the determination. I was trying
7 my best to see if we could buy this thing and
8 looking for every reasonable opinion that would
9 direct us properly, and those were part of the
10 puzzle.

11 But as I said, when I had the lunch
12 meeting, that just pretty well closed the door on
13 everything. They brought reality home, no matter
14 what other people said. This is the facts.

15 Q. As relayed to you by the county?

16 A. Yes, whoever the people were. I
17 respected their authority and their knowledge and
18 their awareness of the issues.

19 Q. By the way, do you know if Mr. Fogarty
20 ever spoke to D.R. Horton?

21 A. I don't have any knowledge of that.

22 Q. And the three letters -- the letters
23 that we referred to, you again are referring to in
24 your e-mail to Mr. Fogarty later on the 22nd and
25 that's at page 333, where you tell him still want

1 course, did you not, with the other items that you
2 wanted to pull together to make a final
3 assessment?

4 A. We were getting pretty close to the end,
5 May 24th.

6 Q. But you were still taking the steps that
7 you thought necessary to make a final decision,
8 correct?

9 A. Of course. I was seeking all the advice
10 I could.

11 Q. If we would go to page 359, please. At
12 the bottom of the page is an e-mail from Neil
13 Robinson, Thursday, May 24, 2007 at 4:07 to Daniel
14 Fogarty, subject, Keystone tract, Berkeley County,
15 SC, potential for development, preliminary
16 assessment.

17 The e-mail starts, Daniel, in response
18 to your request, I am sending this letter to give
19 my initial thoughts. It appears that the e-mail
20 went on for a page and a half after that, does it
21 not?

22 A. I would assume.

23 Q. Concluding with Mr. Robinson's
24 statement, let me know how you would like to
25 proceed and I will bring our resources to bear on

1 achieving the objectives of your company?

2 A. Yeah.

3 Q. What did Mr. Robinson say in that
4 communication?

5 MR. SMITH: Objection, attorney/client
6 privilege. Don't answer.

7 BY MR. WALKER:

8 Q. Did Mr. Robinson's communication,
9 whatever the content, alleviate some of your
10 concerns?

11 A. I don't recall what the gentleman said.

12 Q. Did your company engage Neil Robinson?
13 Was he hired by your company?

14 A. I'm trying to decide whether we paid the
15 man or not. I would have to go back and look.

16 Q. I didn't see anything --

17 A. I don't remember paying him. I think we
18 were -- had we pursued the property, I think they
19 would have been hired, but I think we were just
20 welcoming anybody who would give us their thoughts
21 about the tract.

22 Q. Would that be the same for Mr.
23 Pagliarini?

24 A. I assume so.

25 Q. The same for Mr. Barnett at that time?

1 A. If there is a Mr. Barnett involved, yes.

2 Q. Mr. Robinson's e-mail that we were just
3 talking about was a little after 4:00 on Thursday,
4 May 24th. The next day, Friday, was the day you
5 had your lunch at Kiawah with the county
6 officials, correct?

7 A. Yes, sir.

8 Q. And nothing that Mr. Robinson had
9 indicated in his communication suggested to you
10 that you should call the deal off without meeting
11 with the county folks?

12 A. I think he probably advised me to. I
13 think he was leading me in that direction. He may
14 have helped to arrange the meeting, I don't know,
15 but I think he wanted me to hear from the horse's
16 mouth.

17 Q. Do you have any recollection of what was
18 specifically said to you at that lunch?

19 A. I can't tell you specifics. I can tell
20 you the general tone.

21 Q. Were the county people cordial?

22 A. Of course.

23 Q. What was the gist of what they said?

24 A. That you have got a tiger by the tail.
25 You have a major issue, major problem here, a lot

1 of resistance toward getting the kind of density
2 that you are going to want, and as a result of
3 this, it's going to be cost prohibitive to bring
4 utilities to it.

5 Q. Did they mention to you also that the
6 county staff was looking at rezoning to one unit
7 for 15 acres?

8 A. Well, they said that was the proposal
9 that was out there. I don't recall them citing
10 the county staff. They might have, but they said
11 that was the general interest by a large group of
12 people who wanted that. It was more outside than
13 internal.

14 Q. What was more outside than internal?

15 A. The interest to change the zoning to one
16 lot for 15 acres. They were saying there are
17 external forces that are going to be major
18 resistance and grave difficulty in achieving your
19 objective.

20 Q. Immediately after that lunch, did you
21 send an e-mail to Daniel Fogarty?

22 A. Either Fogarty or Burns, one, e-mail or
23 phone call. I said it's done. It's over.

24 Q. Please turn to 374.

25 A. There you go.

1 Q. On page 374 is a printout an e-mail from
2 you to Daniel Fogarty at 1:38 p.m., Friday, May
3 25th. What did you tell Mr. Fogarty?

4 A. Per the e-mail, said we can only get one
5 lot per 15 acres, get our money back and cancel
6 the contract.

7 Q. Then on the next page two minutes later
8 you sent another e-mail, a follow-up to Mr.
9 Fogarty, did you not, at 1:40? Do you see that?

10 A. Yes.

11 Q. In that follow-up e-mail you said it's
12 over?

13 A. Yeah.

14 Q. Too many conservation easements between
15 us and the river, cost prohibitive to run sewer,
16 look for land out 176, correct?

17 A. Uh-huh.

18 Q. Is that an accurate statement of your
19 views at the time?

20 A. Yes. I mean there was a combination of
21 those two e-mails, very low density and the fact
22 of not having other properties that could be
23 developed that would make sewer cost effective as
24 well.

25 Q. Then if we go to page 381. There is

1 another e-mail within the hour, and this one is
2 from you to Daniel Fogarty at 2:38 p.m. on Friday
3 May 25th, and in this you say tell Neil Robinson
4 we will terminate the contract following the
5 discussion with Dan Davis, who said that there is
6 a significant number of conservation easements
7 between the river and our property that would
8 preclude cost effective sewer lines and also that
9 the maximum density that he saw from the tract was
10 one lot/15 acres. Is that what you instructed Mr.
11 Fogarty to do?

12 A. Yes.

13 Q. And in your estimation, was that the
14 primary reason why you terminated?

15 A. Those two reasons.

16 Q. Are the primary reasons you terminated,
17 correct?

18 A. Correct.

19 Q. And the only two reasons that you stated
20 in your e-mail, correct?

21 A. Well, that was enough.

22 Q. I would like to go back and ask you
23 about a couple other e-mails where apparently text
24 was deleted. If you go back to page 371, sir.

25 There is an e-mail that starts on the

1 bottom of page 370 from Neil Robinson to Daniel
2 Fogarty, Thursday, May 24, 6:36 referring to the
3 survey.

4 Mr. Robinson says, and the content is on
5 the top of page 371, thanks, Daniel. This is very
6 helpful. I had a nice talk with Robert. Then one
7 can see whether the tops of letters had been taken
8 out.

9 Do you know what the substance of that
10 e-mail was?

11 MR. SMITH: Objection, attorney/client
12 privilege. Don't answer.

13 BY MR. WALKER:

14 Q. Was the substance of this e-mail from
15 Mr. Robinson one that talked about the zoning or
16 the Conservation League, to your knowledge?

17 MR. SMITH: Objection, attorney/client
18 privilege. Don't answer.

19 BY MR. WALKER:

20 Q. Your man, Mr. Fogarty, did end up
21 talking to several of the big landowners in the
22 area before you made the decision to terminate the
23 contract, correct?

24 A. I assume he did.

25 Q. If you would turn to page 368, please.

1 There is an e-mail from him to you Thursday, May
2 24th at 17:39, which would be 5:39. I have left
3 messages for all of the big landowners in the
4 area. I talked at length with Jamie Reynolds, and
5 went name by name and got their comments to Jamie
6 so I will be confirming when I get a hold of each
7 of them.

8 None of the owners said that they had
9 been contacted be -- apparently a typo -- by the
10 CCL, and only one of the five said he would fight
11 the development, and he is 81 years old.

12 That was fairly encouraging at the time,
13 at least with respect to these other large
14 landowners, correct?

15 A. Only one piece of the puzzle.

16 Q. But that piece was looking okay at that
17 moment?

18 A. Sure.

19 Q. And if Mr. Reynolds correctly recounted
20 his communications to Mr. Fogarty, the
21 Conservation League had not contacted any of the
22 large property owners that Mr. Reynolds had talked
23 to, correct?

24 A. I assume so.

25 Q. Let's talk about the communications

1 between the Conservation League and your entity.
2 From looking at these materials, the only two
3 communications that I'm aware of would be the
4 voicemail message of Mr. Davis around the 18th to
5 the 20th of May, and a return call made by Mr.
6 Burns.

7 Do you know of any other communications?

8 A. I just don't recall any others. I mean,
9 there may have been, but to my knowledge, that's
10 all I can remember.

11 Q. Did Mr. Burns ever talk to you about Mr.
12 Hamilton Davis' tone of voice when he had the
13 conversation with him?

14 A. No, I don't recall that.

15 Q. If, in fact, the county was seriously
16 considering rezoning to one unit per 15 acres,
17 would you have wanted -- you would have wanted to
18 know that before your inspection period was up,
19 would you not?

20 A. Sure, that would have been very helpful.
21 It wouldn't have been the total decision, but it
22 would have been a piece of the puzzle I would like
23 to have known.

24 Q. It would have been an important piece,
25 correct?

1 A. I think it's important, but you have to
2 put it in context, you know, county planning
3 people have their own ideas.

4 Q. Looking at your file that's been
5 produced, I did not see any concern about the
6 zoning or the ability to accomplish the density
7 you wanted before Mr. Davis' voicemail message in
8 late May. Do you know of any?

9 A. I think that raised the issue to a level
10 of real concern to us.

11 Q. It was, in fact, Mr. Davis' voicemail
12 that alerted you to a very significant problem,
13 correct?

14 A. I would assume that we sensed from him,
15 from that call, that there was some opposing group
16 out there that was going to get real engaged.

17 There are always people who can oppose
18 future developments. There are always landowners
19 or whoever. One cricket can't sound like a
20 thousand, all right, so you weigh your crickets.

21 You don't count them, and we wanted to
22 find out how relevant what kind of factor this
23 was, and ensuing that contact by the Conservation
24 League, we found out that there was a lot of
25 support, and that got our attention.

1 Q. As a result of the Conservation League's
2 call, your people went on alert and learned that
3 there was opposition to the intense development of
4 the Keystone tract, correct?

5 A. There was intense opposition to the
6 development of the property.

7 Q. And from that you learned that
8 potentially there were large landowners who were
9 opposed to it, correct?

10 A. Well, there could have been.

11 Q. You also learned that potentially there
12 were many people in the community and surrounding
13 area who may oppose it, correct?

14 A. Yes. As I said, this all came clear
15 through discussions with attorneys and culminated
16 in the meeting at lunch with the county officials.

17 Q. It's also fair to say that had Mr. Davis
18 not left that voicemail message and had Mr. Burns
19 not returned it, that you would have not known
20 about the significant opposition and potential
21 challenges, would you?

22 A. I think it would definitely have had an
23 effect on us.

24 Q. What I'm getting at is Mr. Davis'
25 voicemail message and call back from Mr. Burns was

1 actually a head's up that alerted you to a
2 significant issue, correct?

3 A. Yes, I agree with that.

4 Q. And had he not left that voicemail
5 message, and had Mr. Burns not called him back, it
6 very well may have been that the end of the
7 inspection period came and went without your
8 knowing about it, correct?

9 A. Could very well have.

10 Q. So in a way, it gave you a head's up
11 about an extremely important issue, didn't it?

12 A. Well, it gave me a head's up, but there
13 was major opposition we needed to look into,
14 potentially major opposition we needed to find out
15 how intense it was.

16 Q. Your seller up until that point had not
17 breathed the first word about any intense
18 opposition to this project, had it?

19 A. Well, we didn't have any knowledge from
20 them, and the nature of the animal is they are not
21 going to tell us about all that.

22 MR. WALKER: I think I'm about done.
23 Let's take a break so I can look at my notes.

24 (Off-the-record, brief recess.)

25 BY MR. WALKER:

1 Q. Mr. Pittenger, at the time your company
2 exercised its right to terminate the contract of
3 sale on May 25, 2007, your company was in no way
4 in breach of that contract, was it?

5 A. No.

6 Q. Based on your understanding of that
7 contract of sale, your company had the right to
8 terminate and receive the return of the escrowed
9 money, did it not?

10 A. Correct.

11 Q. In fact, that's what happened, all money
12 that you had put down was returned to you?

13 A. It was.

14 Q. At the time that you terminated
15 exercising your contractual right to do so on May
16 25, 2007, you had not yet lined up the investors
17 who were going to put up the money to purchase the
18 property?

19 A. Not formally. We had some commitments
20 in principle out there. Folks, if we got there,
21 they would like the idea and the region and were
22 open to it.

23 Q. You had good prospects, but didn't have
24 commitments for the entire amount of the purchase
25 price at that time, did you?

1 eight years to something more -- to something more
2 far out?

3 A. No, sir, quite the opposite. We are
4 buying properties that are closer in.

5 Q. After the termination of this contract
6 and the legwork necessary to obtain a return of
7 the earnest money, were you approached by any of
8 the persons with North Pleasant or the broker
9 about a potential claim against the Conservation
10 League?

11 A. No.

12 Q. Were you aware that the seller had
13 brought a claim against the Conservation League in
14 May of 2010 before receiving the subpoena and
15 deposition notice?

16 A. We had no knowledge of it.

17 Q. Did the seller or its attorneys talk to
18 you before they filed the lawsuit against the
19 Conservation League?

20 A. Not at all.

21 Q. Have you provided any statement to the
22 sellers or their attorneys about this case?

23 A. Not at all.

24 Q. In October of 2007, the sellers entered
25 a development agreement with Berkeley County.

1 Were you aware of that?

2 A. No.

3 Q. The development agreement specified that
4 there could be one unit for five acres and a total
5 of 866. Would that have been within your model?

6 A. At a lower basis. They came back to us.

7 Q. Tell me about that.

8 A. But I think we were willing to pay maybe
9 three or four thousand an acre or something like
10 that.

11 Q. When did they come back to you?

12 A. I don't recall. Maybe a couple years
13 ago, a year ago, two years ago.

14 Q. It would have been well after October
15 2007?

16 A. Sure.

17 Q. At that time did they mention a price to
18 you?

19 A. I don't remember. I just remember I
20 wasn't going to pay much for it.

21 Q. As you just said --

22 A. 3,000 an acre or something like that.

23 Q. Did you get that information back to
24 them?

25 A. I think we conveyed that to their

1 broker. I think Fogarty was still with us then.

2 Q. Did they show any interest in a sale at
3 the price you were interested in?

4 A. Apparently not. We didn't do anything.

5 Q. Who is Dana Beach?

6 A. I have no idea.

7 Q. Did Dana Beach have anything to do with
8 your decision not to proceed with this contract?

9 A. I don't recall Dana Beach, so I don't
10 know.

11 Q. Is it fair to say up until -- even up
12 until today, you don't even know who Dana Beach is
13 and never heard of him, correct?

14 A. I may have -- I wouldn't say that. I
15 may have known the person in the past, but it's
16 been four years ago and we bought probably 30
17 properties since then and looked at a hundred
18 more. So I don't recall Dana Beach.

19 Q. If I understand your testimony
20 correctly, you had not planned any development for
21 this property? You were planning to resell it to
22 those who would develop the property, correct?

23 A. That's correct.

24 Q. So a statement that there was opposition
25 to the development plan by you would be

1 inaccurate, correct? You planned no development?

2 A. I planned no development. I think they
3 may be thinking the density that I was seeking or
4 wanting to have on the property.

5 Q. Your period of interest in this property
6 for purposes of this contract was roughly February
7 through May of 2007, correct?

8 A. Sounds reasonable.

9 Q. Do you know of any actions that were
10 taken by the Conservation League aside from the
11 phone call that Mr. Burns had with respect to this
12 project during that period?

13 A. I don't recall any. Again, I'm just not
14 aware.

15 Q. Based on what you were told by your
16 people and any information you obtained from other
17 sources, do you know of any inaccurate statement,
18 incorrect statement that was made by any employee
19 of the Conservation League?

20 A. I'm not familiar with anything.

21 Q. Does your company have any relationship
22 at all with Vanguard Development Group, LLC?

23 A. No, we are Vanguard Properties Of The
24 Carolinas.

25 Q. So that's just a coincidence you both

1 happen to have -- I'm not suggesting.

2 A. No, it's not us.

3 Q. To your knowledge, did anybody from the
4 Conservation League ever attempt to solicit a
5 contribution from your company to the Conservation
6 League?

7 A. I don't recall that. I have given money
8 to conservation groups before.

9 Q. You mentioned when you were talking
10 about the crickets, that you have been or at least
11 you intimated that you have been involved in
12 property transactions where there has been
13 opposition in the past, correct?

14 A. Sure. You need to see what the level is
15 and the intensity. There is always people who
16 want the status quo anywhere.

17 Q. And those could be often the neighbors?

18 A. Sure.

19 Q. Correct, adjoining landowners?

20 A. Uh-huh.

21 MR. WALKER: That's all I have at this
22 time. Thank you.

23 (Exhibit No.'s 8 and 9 marked for
24 identification.)

25 EXAMINATION BY COUNSEL FOR PLAINTIFFS

1 Q. What did the conservation easement have
2 to do with making it more expensive to get sewer
3 service?

4 A. There is not as many tap-ins.

5 Q. So you would have to pay a greater
6 impact fee or more service fee?

7 MR. WALKER: Objection to the form of
8 the question.

9 MR. BARNETT: You can answer if you can.
10 If you don't understand my question, then tell me
11 and I will ask you a better one.

12 THE WITNESS: Ask your question.

13 BY MR. BARNETT:

14 Q. Explain your answer. Maybe that's the
15 way to do it. You say there are fewer tap-ins if
16 there are conservation easements. How would that
17 impact the cost to the Keystone property with
18 sewer service?

19 A. Clearly you can't develop between 17
20 going up to our property coming up 41. It's not
21 cost effective for the county to run sewer lines.
22 it's cost prohibitive for a developer to run that
23 line and pay for it.

24 Q. Because if the county is not willing to
25 run it, the developer has to pay that cost?

1 A. Yeah. It's a heavier burden on that
2 development, and if he has real low density on the
3 properties developing, that certainly makes it
4 cost prohibitive.

5 Depending on the size of the property,
6 the number of lots, you factor that into the cost
7 for the development, how far you run your line and
8 the cost to run that line.

9 If you have a high enough density, it
10 will pay for itself. It will be all right. But
11 the county was not going to do it, and you can't
12 get any potential reimbursements back from the
13 county if you pay for it yourself, if there is not
14 any tap-ins coming up that direction.

15 Q. You mentioned as a result of
16 conversation with Mr. Davis, you said you didn't
17 want to get into a war, but I believe I heard you
18 say and tell me if I'm right to Mr. Walker's
19 questions, that it wasn't the county that was of
20 its own personnel wanting to change the zoning to
21 something that you would find acceptable, that
22 they were under external pressure to change the
23 zoning, is that correct?

24 A. It was a broad consensus of people who
25 were going to advocate low density zoning on this

1 property and it's a political land mine, and we
2 just don't care to engage that. We go to other
3 parts of the country and buy land.

4 Q. At the time that you were still under
5 contract with my client, Mr. Reynolds and his
6 organizations, the zoning was acceptable to you,
7 it would not have caused a problem?

8 A. Well, that would have been fine, and we,
9 of course, learned a lot in the process of all
10 these conservation easements, and that we had
11 determined the cost of utilities as it relates to
12 that as well.

13 Q. Let me ask you about the zoning though.
14 The zoning would have been acceptable to you?
15 Take it one piece at a time.

16 A. Sure.

17 Q. That was still okay?

18 A. Yeah, if we could have had one unit per
19 acre. We were buying it -- the figure we were
20 willing to pay was related to that zoning.

21 We would have sought tighter density
22 potentially if we could, but we were under the
23 assumption if that was all the density we got,
24 that would be acceptable.

25 Q. You said there would be a political --

1 resistance to the development of this tract and
2 that's culminated in a lot of other discussions I
3 had.

4 Q. What did you anticipate that strong
5 resistance to mean? How did you think it would
6 manifest itself?

7 A. Well, it would be very low density
8 zoning and unacceptable in developing the tract
9 with utilities.

10 Q. These people would want to go and try to
11 get the zoning changed?

12 MR. WALKER: Object to the form of the
13 question.

14 MR. BARNETT: Is that what you mean by
15 that?

16 MR. WALKER: Objection to the form of
17 the question.

18 BY MR. BARNETT:

19 Q. Tell me what you mean by that? You said
20 there was opposition to the zoning that existed
21 and then you jumped and you said, well, you
22 thought that ultimately there would be a different
23 zoning.

24 Did you think that the people who were
25 in opposition to the putting houses out there on

1 that land would go to Berkeley County and lobby
2 them politically? Is that what you were concerned
3 about?

4 A. Sure, absolutely. You have zoning
5 hearings and that's what they are all about.

6 Q. And is that the war that you were in
7 opposition to?

8 A. Sure.

9 Q. I think there was an e-mail in here from
10 Mr. Fogarty when he recounts having talked to
11 these landowners. I just don't remember, was it
12 your testimony that you didn't have any knowledge
13 of that?

14 A. That Fogarty talked to them?

15 Q. Yes.

16 A. I would assume he would because that's
17 the logical direction we pursue on all properties.
18 We talk to every property owner in the entire
19 region.

20 Q. The contract for sale between your
21 company, Vanguard and my client, who drafted that,
22 do you remember?

23 A. We have a standard contract that we use.

24 Q. So it was your contract, not my client's
25 contract?

1 developing the piece of property and selling home
2 lots?

3 A. No.

4 Q. You were going to divide the property up
5 and sell it, I assume?

6 A. No, sir, we don't divide up the
7 property. We buy the property and resell the
8 property to a developer.

9 Q. And you thought by this letter Mr.
10 Bennett might have been interested in being that
11 developer?

12 MR. WALKER: Object to the form of the
13 question.

14 BY MR. BARNETT:

15 Q. Why did you send Mr. Bennett the letter?

16 A. Well, it's clear in the letter that we
17 are seeking investors. So he is a potential
18 investor.

19 Q. To help you buy the property?

20 A. Correct.

21 Q. At what point would you have been
22 starting to look for people that you think might
23 have been interested in buying the property as a
24 developer?

25 A. You mean to resell the tract?

1 Q. Tell me about your personal relationship
2 with Mr. Reynolds again?

3 A. Nominal. I think I met him one time in
4 a Bush event. He was the kingpin. I was a flunky
5 out there raising money.

6 Q. Okay. Did that nominal personal
7 relationship have anything to do with this
8 subsequent business relationship?

9 A. Not really.

10 Q. How did you come to look at this piece
11 of property?

12 A. We called every property owner in
13 certain regions we were interested in.

14 Q. Why were you interested in this
15 particular region, Highway 41 in Berkeley County?

16 A. At the time it was a strong growing
17 region. The coastal areas aren't as appealing now
18 as they were four or five years ago.

19 Q. Why?

20 A. The market dropped.

21 Q. Let me ask you this. If there had not
22 been opposition that was communicated to you by
23 Mr. Davis from the county and Mr. Davis from the
24 Coastal Conservation League, and everything else
25 were the same, would this have been a desirable

1 project for you at the time, if you know?

2 A. Well, with the information we had, yes.
3 It was fortunate we kept digging.

4 Q. Right.

5 A. And found out, and we may have found out
6 some things -- I think the Coastal contact really
7 elevated the concern. There were some concerns
8 out there. We kept probing, but it certainly
9 elevated the issues.

10 Q. Mr. Pittenger, you mentioned that you
11 have been involved in projects where there was
12 opposition. Have you ever been involved in a
13 project where there was opposition from a
14 conservation group?

15 A. No, sir.

16 Q. Who were the opposing groups that were
17 opposed to a project you were involved in?

18 A. Typically landowners, you know, not in
19 my backyard. They want their one lot or one unit
20 to three acres and they want to keep it the way it
21 was.

22 Q. Have you been involved in projects where
23 your opposition, opposing landowners were engaged
24 in appealing permits that you might be seeking?

25 A. No, I have never had that occasion. We

1 Q. Yes, sir.

2 A. Yeah, they may have given us maps.

3 Q. To your knowledge, did they withhold
4 anything about its physical characteristics that
5 you all had asked for, to your knowledge?

6 A. I don't know of anything that they
7 withheld. I don't know what they had that they
8 could have given me.

9 Q. To your knowledge, do you have any
10 reason to believe that my clients were aware that
11 the Coastal Conservation League was prepared to
12 mount some political challenge?

13 A. I never heard that from your client.

14 Q. Do you know whether they knew? As you
15 sit here today, do you have any idea whether they
16 knew that?

17 A. I didn't know that.

18 Q. Do you have any knowledge whether my
19 clients knew that the United States Forest Service
20 was opposed to the development of this piece of
21 private property or not?

22 A. I wasn't aware of that.

23 Q. Let me ask you, have you ever run into
24 that before in any project you have been involved
25 in where an arm of the United States government

1 the Coastal Conservation League might choose to
2 oppose a particular project?

3 A. If we became aware of it, I think we
4 have an obligation to disclose it.

5 Q. As a seller?

6 A. Yes.

7 Q. Have you ever had the occasion to do
8 that, put that in one of your books?

9 A. That the Coastal Conservation League --

10 Q. Any group?

11 A. Never had that. Not to my knowledge.
12 We have had issues that had to be addressed in
13 terms of wetlands or that type of factor. In all
14 of our environmental studies we give them all that
15 data, all reports.

16 Q. Did your company have an estimate
17 prepared of what the cost to run the sewer would
18 be to the Keystone tract?

19 A. No. It was out of control. By the time
20 we understood all the conservation easements
21 between us and 17, we didn't proceed on that, and
22 then the low density on the tract, to us it wasn't
23 even worth pursuing.

24 Q. So you didn't actually do an estimate?

25 A. No, sir. You could pretty -- there are

1 general numbers from running sewer lines, and we
2 are aware of that, but it wasn't going to pay
3 itself back to the county or to the developer.

4 Q. Was the county the source of that
5 information about these conservation easements or
6 did you discover these through a title search or
7 something?

8 A. Combination.

9 Q. Who did the title search for you?

10 A. Well, attorneys do work, but we identify
11 properties. We probably have properties 50 acres
12 or more in a region. We do most of that in-house.

13 Q. I did not see anything in this cache of
14 information that you provided that discussed that,
15 so was there a report of some kind, a summary?
16 Was there anything that you recall that was in
17 hard copy form that said here are the conservation
18 easements?

19 A. We looked at boards that we have and it
20 shows -- I remember Daniel showing here are
21 different properties.

22 Q. That's something that Mr. Fogarty put
23 together for you?

24 A. Sure. I think what the county also
25 related to us at that luncheon emphasized a number

1 rezoning, June 11, 2007, obtained from Berkeley
2 County in response to a Freedom of Information Act
3 request.

4 I understand you would not have had a
5 chance to look at this and wouldn't have any
6 information on it, but certain questions that were
7 asked to you about external opposition have made
8 this relevant.

9 If, in fact, it was the opinion of
10 planning and zoning, and I'm reading from page
11 five of this memorandum, that the only option
12 available to Berkeley County at this moment is to
13 consider rezoning these parcels to R-15 in order
14 to accomplish these goals, and that would be the
15 goals of the comprehensive plan, then there would
16 have been consideration within the county itself
17 of rezoning, correct?

18 MR. BARNETT: Object to the form.

19 MR. WALKER: I will rephrase it.

20 If the planning staff had prepared a
21 memo two weeks after your meeting that went over
22 the goals of the comprehensive plan for Berkeley
23 County and came to the conclusion that the parcels
24 should be rezoned as R-15, which is one unit per
25 15 acres, that would have been a significant

1 consideration, would it not?

2 THE WITNESS: Sure, planning is -- I
3 already said that.

4 BY MR. WALKER:

5 Q. There was some suggestion that
6 opposition was external if, in fact, the planning
7 department harbored these opinions at the time you
8 had your lunch with Mr. Davis, then, in fact,
9 there was opposition to the continuation of the
10 Flex 1 zoning at that time by county planning
11 staff, correct?

12 A. I'm sure, as far as I remember, it was
13 conveyed to me there was broad opposition. They
14 didn't discount the county's role in it, but it
15 wasn't limited to the county.

16 Q. And if, in fact, one of the counsel
17 members, Steve Davis, was sponsoring the bill to
18 rezone to R-15, that would indicate again internal
19 county support for the --

20 MR. BARNETT: Object to the form.

21 THE WITNESS: I am sorry, you all work
22 that out.

23 BY MR. WALKER:

24 Q. Back to my question. If, in fact, the
25 ordinance to rezone to R-15 was sponsored by Steve

1 C. Davis, a counsel member, that would reflect
2 internal movement -- internal being people
3 associated with the county to rezone, correct?

4 MR. BARNETT: Same objection.

5 THE WITNESS: If there was one counsel
6 member who would like to see that change made.

7 BY MR. WALKER:

8 Q. Back to earlier questions that I asked
9 about the written views of two or three lawyers
10 that you received.

11 In fact, based on the documents, your
12 company did receive the views of two or three
13 local attorneys, namely, Mr. Robinson, Mr.
14 Pagliarini and potentially Mr. Bennett, did they
15 not -- excuse me, Barnett, did they not?

16 MR. BARNETT: Object to the form.

17 THE WITNESS: I assume so.

18 BY MR. WALKER:

19 Q. And it was not those opinions that made
20 you pull the kill switch, it was your lunch with
21 Mr. Davis?

22 A. The lunch was the final straw.

23 Q. The knockout punch?

24 A. Yeah. There was growing concern
25 evidenced by the fact that we had this lunch

1 meeting. We wouldn't have had the lunch meeting
2 unless there was already concern.

3 MR. WALKER: This is not a question for
4 you, but for Mr. Smith. Is it your position that
5 you're going to insist on the privilege and not
6 disclose the contents of those written
7 communications based on attorney/client privilege?
8 Is that where you are on this?

9 MR. SMITH: That's generally our policy,
10 to preserve our privilege in all cases.

11 MR. WALKER: I disagree with the
12 assertion of privilege here, and I'm not asking
13 you to agree, but I don't want to suggest by not
14 pursuing it further that I agree that there is an
15 applicable privilege. I just don't want to beat a
16 dead horse in the deposition if that's your
17 position.

18 MR. SMITH: I understand. Our
19 preference is to not have to come back and answer
20 further questions, but we do always seek to
21 preserve privilege when it applies.

22 ///

23 ///

24 ///

25 ///

EXCLUSIVE RIGHT TO SELL AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 9th day of February, 2007, by and between NORTH PLEASANT, LLC and VINTAGE LAND, LLC (collectively, "Owner") and VANGUARD DEVELOPMENT GROUP, LLC ("Broker").

WITNESSETH

WHEREAS, Owner is the owner in fee simple of that certain tract of land known as the Keystone Tract ("Property") comprised of approximately 4.478 acres and located on State Highway 41 in the County of Berkeley, State of South Carolina and identified in the Berkeley County Tax Records as Parcel Identification Numbers: 240-00-00-001, 216-00-02-114, 216-00-02-115, 216-00-02-116, 229-00-00-054, 229-00-00-055 and 229-00-00-056.

WHEREAS, Owner desires to sell the Property, in whole or in separate tracts, to a third party buyer or buyers (individually, "Buyer" and collectively, "Buyers");

WHEREAS, Owner and Broker mutually desire to enter into a real estate agency relationship for the sale of the Property;

NOW, THEREFORE, in consideration of the terms and conditions set forth herein and other good and valuable consideration, including the potential economic benefit to the parties hereto, the receipt and sufficiency of which is hereby acknowledged, Owner and Broker hereby agree as follows:

1. **AGENCY.** For the term of this Agreement, as hereinafter defined, Owner hereby grants to Broker the exclusive right to market and sell the Property, whether in whole or in separate tracts, whichever the case may be.

2. **TERM.** The term of this Agreement ("Term") shall commence on the Effective Date of this Agreement, as hereinafter defined, and shall last for a period of six (6) months.

3. **COMPENSATION.** Upon the successful consummation of a sale or sales of the Property (individually, "Sale" and collectively, "Sales") through the efforts of Broker, Owner hereby agrees to compensate Broker in the following manner:

(a) **Sale in Whole.** In the event the Property is sold in one transaction or a series of transactions to affiliated companies or persons comprising one overall transaction, Owner shall pay to Broker a real estate commission ("Commission") equal to two and one-half (2.5%) percent of the gross sales price at the closing of the transaction or each part thereof.

(b) **Tract Sales.** In the event the Property is sold in tracts to separate unaffiliated buyers, Owner shall pay to Broker a Commission equal to six (6.0%) percent of the gross sales price of each transaction at the closing of each transaction.

4. **OUTSIDE BROKERS.** In the event any purchaser of the Property is represented by a real estate agent or agents (individually, "Outside Broker" and collectively, "Outside Brokers") in the successful consummation of a sale, then Broker shall split the Commission due Broker from Owner with such Outside Broker according to the terms of a separate agreement between Broker and Outside Broker and Owner shall have no obligation for the payment of any commission beyond that specified herein.



5. **OWNER'S RIGHT TO SELL.** During the term of this Agreement, Owner reserves the right to sell the Property to any third person not associated with Owner. In the event such sale is brought about through the efforts of Owner and not in association with or through the efforts of Broker, then a flat fee of two hundred thousand (\$200,000) dollars shall be due the Broker. If a sale is consummated according to the terms of this Paragraph 5, then the fee shall be due solely to Broker and shall not be split or shared in any manner with any representative of the purchaser.

6. **TRANSFER TO AFFILIATED ENTITY.** Owner and Broker acknowledge that, prior to the sale of the Property to a third party buyer, the Property may be transferred or sold in whole or part to an affiliated entity ("Affiliate") organized by Owner and/or by related parties of Owner. For the purposes of this Agreement, Broker shall not be compensated in any manner whatsoever in relation to the transfer or sale of the Property to such Affiliate. However, upon such transfer or sale to Affiliate, the Affiliate and the parties hereto shall execute an assignment of this Agreement from Owner to Affiliate and this Agreement and its terms, covenants, conditions and agreements shall become binding to Affiliate with the same force and effect as if ownership of the Property had remained with Owner.

7. **BROKER DUTIES.** Broker agrees to employ the best efforts of Broker and those under Broker's employ to effectuate the successful sale of the Property. Broker's duties shall include: (a) marketing the Property to its best efforts utilizing methods as directed by Owner; (b) furnishing such information as is necessary to prospective buyers and assisting such prospective buyers in effecting a sale of the Property; (c) conducting tours of the Property with prospective buyers; (d) keeping Owner informed as to the progress of Broker's to effectuate the sale of the Property; and (e) monitoring all activities of prospective buyers in relation to the Property prior to and up to the successful consummation of the sale of the Property. Owner understands that Broker makes no representation or guarantee as to the sale of the Property as contemplated herein. During the pendency of this Agreement, Broker shall take all due care to keep confidential all information received during the course of this Agreement except as may be necessary to accomplish the terms hereof. Upon the termination or completion of this Agreement, Broker shall return all documentation and other information associated with the Property in any and all forms of media and hereby covenants to keep confidential all information received during the course of this Agreement, which was made confidential by Owner, except as provided for under South Carolina law.

8. **OWNER DUTIES.** During the term of this Agreement and for the purposes of assisting Broker in effectuating a sale of the Property, Owner agrees as follows: (a) to furnish Broker with complete and reliable information concerning ownership and operation of the Property and any encumbrances or liens affecting the Property; (b) to supply Broker with such information and marketing materials, in the possession of Owner which will assist Broker in the efficient and complete marketing and sale of the Property; (c) to permit Broker to advertise and market the Property in a manner consistent with the desires of Owner; (d) to permit the inspection and showing of the Property by Broker to prospective buyers; (e) to provide Broker with any other information and materials in the possession of Owner as are reasonably necessary to assist Broker in effectuating the sale of the Property; and (f) to inform Broker of any inquiries from prospective purchasers not registered with Broker concerning the sale of the Property.

9. **NOTICES.**

If to Owner:

North Pleasant, LLC
Vintage Land, LLC
Attn: Jamie Reynolds
Address: 3414 Peachtree Road NE, Suite 117
Atlanta, GA 30326

Telephone: 404-995-4371
Fax: 404-995-4416

If to Broker:

Vanguard Development Group, LLC
Attn: Josh Hulen
180 Meeting Street, Suite 310
Charleston, SC 29401
Telephone: (843) 720-2890
Fax: (843) 720-2895

10. MISCELLANEOUS.

(a) Termination. Owner, upon thirty (30) days written notice to Broker, may, in its sole discretion, terminate this Agreement with or without cause. Notwithstanding anything else herein to the contrary, the terms of Paragraphs 6 and 10(d) and the confidentiality provisions under Paragraph 7 shall survive the termination hereof.

(b) Completeness; Modification. This Agreement constitutes the entire agreement between Owner and Broker and it supersedes all prior discussions, undertakings or agreements between the parties hereto. This Agreement shall not be modified except by a written agreement executed by both parties.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns.

(d) Sale after Expiration. If, within six (6) months from the expiration of this Agreement, the Property is sold in whole or a part to a buyer registered with Owner by Broker during the term of this Agreement, Owner shall compensate Broker according to the terms described in Paragraph 3 hereof.

(e) Governing Law. This Agreement shall be governed and construed under the laws of the State of South Carolina. In the event it becomes necessary for either party hereto to file a suit to enforce this Agreement or any provisions contained herein, the party prevailing in such suit shall be entitled to recover reasonable attorneys' fees and court costs, including appellant costs, incurred in such suit.

(f) Effective Date. The term "Effective Date of this Agreement" as used in this Agreement shall mean the day on which Owner and Broker have received a copy of this Agreement fully executed by both parties.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS THEREOF, the parties hereto executed this Agreement as of the day and year first written above.

IN THE PRESENCE OF:

OWNER:

VINTAGE LAND, LLC

By: _____
Name: _____
Title: _____
Date: _____

IN THE PRESENCE OF:

Kerth Seabold
Kerth Seabold

OWNER:

NORTH PLEASANT, LLC

By: James B. Reynolds
Name: James B. Reynolds
Title: Property Manager
Date: 2/14/07

IN THE PRESENCE OF:

Shannon M. Brubaker
Shannon M. Brubaker

BROKER:

VANGUARD DEVELOPMENT GROUP, LLC

By: E. David Grubbs
Name: E. David Grubbs
Title: Broker - In-charge
Date: 2/9/07

Closing Date, the parties shall prorate at Closing on the basis of the last known values and rates and adjust the prorations once such become known for the year of Closing. The Seller shall be responsible for all rollback, deferred and other similar ad valorem or real estate taxes with respect to the Property, which Seller agrees to pay in full at the Closing from the portion of the Purchase Price paid to Seller in cash at Closing.

b. Any income from the Property collected by the Seller and accruing or relating to the period through the day before the Closing Date shall be paid to the Seller. All other income of the Property accruing or relating to the period commencing on the Closing Date and thereafter, and accruing or relating to the period through the day before the Closing Date but uncollected by the Seller as of Closing, shall be paid or belong to the Buyer.

c. All other expenses relating to the Property which have been accrued but not paid by Closing shall be prorated between Buyer and Seller as of 11:59 p.m. on the day before Closing, except that deposits held by utility companies and fees for governmental permits and licenses shall not be apportioned.

d. To the extent that the amount of any of the items above shall not be available for exact proration as of the Closing Date, Seller or its representative and Buyer or its representative shall meet as soon after the Closing as possible and compute and settle and adjust or readjust the closing prorations between the parties as of the Closing Date and this provision shall survive the Closing.

8. Covenants of the Seller. Between the date hereof and the Closing Date, Seller shall continue to maintain the Property in good condition and repair, ordinary wear and tear alone, excepted, and shall not cause or permit any waste respecting the Property. Seller shall not take any action which would adversely affect the value or title to the Property. Notwithstanding anything to the contrary in this Contract, Seller shall continue roadway work on the Property until completion, provided, however, that said roadway work shall not materially deplete the marketable timber on the Property.

9. Brokerage Commission. Seller and Buyer mutually acknowledge and represent that they have dealt with no brokers in connection with this transaction, except Robert Pittenger Company, Inc., for which Seller shall be exclusively responsible to pay a commission at Closing equal to three percent (3%) of the Purchase Price, and Vanguard Development Group, LLC ("Vanguard"), for which Seller shall be exclusively responsible to pay a commission under the terms and conditions of a separate agreement between Vanguard and Seller. Each party agrees to indemnify and hold the other harmless from and against any and all other claims, demands or the cost and expense thereof, including reasonable attorneys' fees arising out of any other brokerage commission, fee or other compensation due or alleged to be due in connection with the transaction contemplated by this Contract based upon an agreement alleged to have been made or other action alleged to have been taken by the indemnifying party.

10. Eminent Domain. If, prior to the Closing Date, all or any part of the Property is taken by eminent domain or if condemnation proceedings are commenced, Buyer shall have the option, by giving written notice to Seller, to terminate this Contract and receive an immediate refund of the full amount of the Bidder plus interest earned thereon. If Buyer does not so elect to terminate this Contract, the Contract shall remain in full force and effect, and Seller shall assign, transfer and set over to Buyer at the Closing all of Seller's right, title and interest in and to any awards that may be made for such taking.

ROBERT PITTENGER COMPANY

4821 SHARON ROAD, SUITE 370, CHARLOTTE, NORTH CAROLINA 28211
TELEPHONE 704/365-0055 • FAX 704/365-0910 • www.pittengercompany.com • E-MAIL rp@pittengercompany.com

May 11, 2007

Mr. Michael Bennett
143 Tradd St
Charleston, SC 29401

Dear Michael:

The Robert Pittenger Company is a real estate investment firm which has acquired over \$150 million of undeveloped land in the regions of Charlotte NC, Nashville TN, and the coastal Carolinas in the last fifteen years. These high growth regions enjoy balanced economies and steady growth.

Enclosed for your review, are reference letters from several of our investors (many more can be provided upon request)...we have approximately 1,000 investors. Our annual compounded returns to all of our investors have ranged from 10% to 32%, with an average of 20%. We have never had a failed investment.

We do not develop these properties and are solely land investors. We re-sell to developers. We purchase with all equity and have no debt on our properties and each investment is acquired through a Limited Liability Company. We often have our properties rezoned to enhance their value and we purchase these tracts in close proximity to major transportation arteries.

We are presently acquiring a very attractive 2,600-acre parcel in the Charleston region (see enclosed locator map) and would be pleased to present our strategy to you regarding this property and future acquisitions. Please return the enclosed card if you would like more information about our company and specific acquisitions.

Sincerely,



Daniel J. Burns
Vice President

Enclosures



SCCCL 0109160

Hamilton Davis Voice Mail

"Hey Mr. Burns this is Hamilton Davis and I work for the Coastal Conservation League in Charleston South Carolina.

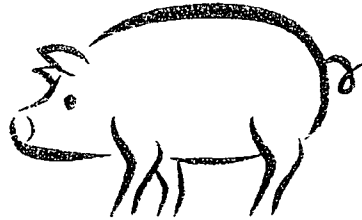
I wanted to speak with you about ya'll's recent I guess not purchase but interest in the 2,600 acre parcel in Berkley County. I wanted to give you some information about what's going on in that area right now that you would probably be interested in. Call me back when you get a chance please 843-725-2061, and again, my name is Hamilton Davis and I work for the Coastal Conservation League. Thank you."

PLAINTIFF'S
EXHIBIT

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Community Cook Out and Bar-B-Q



Join Hosts Fred Lincoln, Frank Wright, Tommy Strock and Jerry Ebeling for a community cook out and get together from 1:00 pm – 3:00 pm on April 14th, 2007 at the Berkeley County Park, 3785 Highway 402, Cordesville, SC.

We will be cooking a pig, hot dogs and providing beverages. Please coordinate with your neighbors and bring a side dish.

There are a number of issues now threatening the local communities of Cainhoy, Huger and Green Bay.

There will be a brief presentation detailing these threats. You can help by simply showing up and signing a petition.



March 1, 2007

Mr. Daniel Burns
Robert Pittenger Company
4521 Sharon Road, Suite 120
Charlotte, NC 28211

RE: Letter of Intent to purchase approximately 2,600 acres on Hwy 41 in Berkeley County, SC

Dear Mr. Burns:

We would like to thank you for your interest in purchasing a portion of the Keystone Tract. We have considered your proposal and believe that we can come to an agreement regarding your potential acquisition. As such, please review the following terms, which are based on recent conversations between Josh Hulen and Daniel Fogarty.

PURCHASER:	Vanguard Properties of the Carolinas.
SELLER:	North Pleasant, LLC.
PROPERTY:	Approximately 2,600 acres of the Keystone Tract, located on Highway 41 in Berkeley County, South Carolina, which is identified as a portion of TMS# 240-00-00-001 and further identified on the attached <u>Exhibit A</u> .
PURCHASE PRICE:	\$9,200.00 per gross acre, with exact acreage to be verified by survey.
PURCHASE AGREEMENT:	Purchaser will draft the Purchase Agreement for Seller's review. Both parties shall negotiate in good faith and execute the Purchase Agreement within fourteen (14) days of Purchaser's execution of this letter.
EARNEST MONEY:	Purchaser shall deposit \$50,000.00 with Seller's escrow agent within five (5) days of the Effective Date of the Purchase Agreement. The Earnest Money shall be fully refundable through the expiration of the Inspection Period. If Purchaser does not terminate the Purchase Agreement on or before the expiration of the Inspection Period, then Purchaser shall deposit an additional \$450,000.00 with Seller's escrow agent, bringing the total Earnest Money deposit to \$500,000.00, with all Earnest Money becoming non-refundable.
INSPECTION PERIOD:	Purchaser shall have sixty (60) days from the Effective Date of the Purchase Agreement to inspect the Property and conduct due diligence.
CLOSING:	Closing shall occur within sixty (60) days of the expiration of the Inspection Period.
EXTENSIONS:	Purchaser shall have the option to extend Closing for two (2) periods of thirty (30) days. If Purchaser elects to exercise one or both of the extension options, the Purchaser shall deposit an additional \$50,000.00 with Seller's escrow agent for each extension option. The option money shall be non-refundable.
DUE DILIGENCE ITEMS:	Within five (5) days of the Effective Date of the Purchase Agreement, Seller shall provide to Purchaser all information in its possession regarding the Property. These materials shall include, but will not be limited to: all surveys, reports, studies and other documents regarding the Property. Seller shall provide, at its own expense, to Purchaser a boundary survey of the Property to include the acreage and portions of the Keystone Tract as



Handwritten signature/initials

contemplated for purchase. Such survey shall be delivered to Purchaser within thirty (30) days from the Effective Date of the Purchase Agreement.

COMMISSIONS:

Seller shall be responsible for paying a real estate commission equal to 3% of the gross purchase price to Robert Pittenger Company.

If the above terms reflect where you believe we are regarding an agreement, please indicate by signing below. Again, be reminded that these terms are preliminary in nature and are non-binding on both parties until the Purchase Agreement is fully executed by both parties.

We look forward to working with you on this deal. If you have any questions, please do not hesitate to contact us;

Regards,

**NORTH PLEASANT, LLC
AN OHIO LIMITED LIABILITY COMPANY**

By: _____

Its: _____

Date: _____

AGREED AND ACCEPTED BY:

VANGUARD PROPERTIES OF THE CAROLINAS

By: _____

Its: _____

Date: _____

Paul Smith

From: Josh Hulen [jhulen@vdgllc.com]
Sent: Friday, March 16, 2007 8:55 AM
To: Daniel Fogarty
Subject: .executed contract
Attachments: Fully Executed Contract 3.15.07.pdf

Daniel-

Attached is the executed contract. We have the surveyors working on the survey now and you should start getting due diligence items tomorrow.

JNH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

CONTRACT FOR PURCHASE OF PROPERTY

THIS CONTRACT FOR PURCHASE OF PROPERTY (this "Contract") is made and entered into this 15th day of March 2007, by and between NORTH PLEASANT LLC, an Ohio limited liability company (the "Seller"), and VANGUARD PROPERTIES OF THE CAROLINAS LLC, a North Carolina limited liability company (together with its assigns, the "Buyer").

RECITALS:

A. The Seller is the owner of certain tracts of land located in Berkeley County, South Carolina on Highway 41 containing approximately 2,600 acres and as more particularly described on Exhibit A attached hereto (the "Land").

B. The Seller desires to sell and the Buyer desires to purchase the Property (hereinafter defined) on the terms and conditions set forth in this Contract.

NOW, THEREFORE, for and in consideration of the sum of ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Buyer hereby agree as follows:

1. Description of Property. The property now owned by Seller which is the subject of this Contract is as follows:

a. The Land, containing approximately 2,600 acres, including any timber and crops thereon.

b. All rights, privileges, and easements appurtenant to the Land, including all rights of view, light and air, mineral and subsurface rights, development rights, zoning rights, water rights, sewer and drainage rights, rights of way, rights of ingress and egress, roadways, parking areas, roadbeds, alleyways and reversions or other appurtenances used in connection with the beneficial use and ownership of the Land (collectively, the "Appurtenances").

c. All improvements and fixtures located on the Land and all buildings, structures and amenities currently located on the Land, if any, together with all apparatus and equipment used in connection with the operation and occupancy thereof, if any (collectively, the "Improvements"). The Land, the Appurtenances and the Improvements are hereinafter sometimes collectively called the "Property."

2. Purchase Price. The purchase price (the "Purchase Price") to be paid by the Buyer for the Property shall be Nine Thousand Two Hundred and No/100 Dollars (\$9,200.00) per gross acre, such acreage to be determined by Survey (hereinafter defined) in accordance with this Contract. The Purchase Price shall be payable as follows:

a. Initial Earnest Money Deposit. A good faith binder and partial down payment of Fifty Thousand and No/100 Dollars (\$50,000.00) (the "Deposit") to be applied to the Purchase Price at Closing, shall be paid by the Buyer to Escrow Agent within five (5) days of the effective date of this Contract. The Deposit shall be fully refundable through the end of the expiration of the Inspection Period (as defined below).

b. Additional Earnest Money Deposit. If Buyer does not terminate the Contract prior to the end of the Inspection Period, an additional earnest money deposit of Four Hundred and Fifty Thousand and No/100 Dollars (\$450,000.00) (the "Additional Deposit") to be applied to the Purchase Price at Closing, shall be paid by the Buyer to Escrow Agent no later than 5:00 p.m. on the expiration date of the Inspection Period (as defined herein). All references in this Contract to the "Binder" shall mean and refer to the Deposit and the Additional Deposit together with any and all interest that accrues on the Deposit and the Additional Deposit pursuant to the terms hereof

c. Payment at Closing. The remaining balance of the Purchase Price shall be paid in cash or other immediately available funds at Closing, as the Purchase Price may be adjusted pursuant to the Survey. For example, if the total number of acres within the Land as determined in accordance with Section 2(d) below is actually 2600 acres, then the Purchase Price for the Property will total \$23,920,000.00 (2600 acres times \$9,200.00 per acre). The Binder will be applied to the cash payment required at Closing.

d. Survey. A physical and boundary survey of the Land (the "Survey"), shall be obtained by the Seller and shall accurately show the location and dimensions of all improvements, encroachments, and uses (including the rights of way and utilities upon or immediately adjacent to the Land and encumbrances which are visible on the ground or listed on the title policy to be issued to the Buyer). The cost of the Survey shall be borne by the Seller. The Survey shall contain appropriate surveyor's certifications specifically addressed to Buyer and Buyer's title company verifying: (i) that the Survey is a field survey of the Land; (ii) that the Survey is correct within the stated margin of error; (iii) that there are no improvements encroachments or visible uses except as shown on the Survey; and (iv) the total number of acres in the Property and within any major rights of way, roads and easements. The surveyor and the final Survey must be reasonably acceptable to Buyer. The total acreage within the Property determined by the Survey will be used to determine the Purchase Price of the Property based upon a purchase price of \$9,200.00 per acre or fraction thereof, rounded up to the nearest hundredth of an acre. The Seller shall provide the Survey to the Buyer within thirty (30) days of the effective date of this Contract.

e. Title. Within fifteen (15) days after Buyer's receipt of the Survey, Buyer shall obtain a commitment for an Owner's Policy of Title Insurance (the "Commitment") issued by a title agency selected by Buyer (the "Title Company") and dated as of a current date, pursuant to which the Title Company shall commit to issue to Buyer an ALTA Owner's Policy of title insurance, in the amount of the Purchase Price, insuring in Buyer marketable fee simple title to the Property, subject only to the following "Permitted Exceptions":

- (i) all legal highways;
- (ii) zoning, building and other laws, ordinances, codes and regulation;
- (iii) matters disclosed by the Survey pursuant to 2(d);
- (iv) easements, rights-of-way, conditions, covenants and restrictions of record, to the extent that those easements, rights-of-way, conditions, covenants and restrictions do not interfere with, obstruct, otherwise impair the future development of the Property;
- (v) real estate taxes that are a lien upon the Property, but not yet due and payable; and
- (vi) those Title Exceptions (hereinafter defined) which the Buyer accepts in writing.

3. Closing Date. The closing of the sale and purchase of the Property (the "Closing") shall take place on or before the date that is Sixty (60) days after the expiration of the

Inspection Period. If Buyer elects, and upon 5 days written notice to Seller, Buyer may elect to close prior to such date. Buyer may also elect to extend the Closing for two (2) periods of thirty (30) days each. If Buyer elects to extend the Closing, Buyer shall make an additional nonrefundable payment directly to Seller in the amount of Fifty Thousand and No/100s Dollars (\$50,000.00) for each such extension. Said additional payment(s) shall not be added to or become a portion of the Binder; provided, however, that in the event the Closing actually occurs, the additional payment(s) shall be credited to the Purchase Price at Closing. The date on which the Closing actually occurs as determined and provided pursuant to the terms of this Section 3 is herein referred to as the "Closing Date". The Closing shall take place at 10:00 a.m. on the Closing Date at the offices of Culp Elliott & Carpenter in Charlotte, North Carolina, or at such other location as may be selected by Buyer.

4. Subdivision: Title to the Property.

a. If the conveyance of the Property by Seller requires subdivision approval or the recordation of a subdivision plat or both, Seller shall, at Seller's cost and expense, comply with all such requirements on or prior to the Closing Date to enable Seller to convey the Property in compliance with all such governmental or regulatory requirements.

b. At the Closing, the Seller shall deliver, or cause to be delivered to the Buyer a limited warranty deed in form and content reasonably satisfactory to the Buyer's counsel with documentary or other required stamps to be affixed thereto at the Seller's expense, conveying to the Buyer good, indefeasible, fee simple, marketable and insurable title to the Property, such title to be insurable both as to fee and marketability at regular rates by the Title Company, subject only to the Permitted Exceptions (hereinafter defined).

c. The Property shall be conveyed by the Seller to the Buyer free and clear of all liens, encumbrances, claims, rights-of-way, easements, leases, restrictions and restrictive covenants, except for the Permitted Exceptions. During the Inspection Period, the Buyer will have the right to study and investigate the title to the Property (including review of the Survey and Commitment) to the extent it deems necessary. Buyer shall have the right to object to any Title Exception (hereinafter defined) (collectively, the "Objections") on or before fifteen (15) days after Buyer's receipt of both the Commitment and the Survey and copies of the documents referred to in the Commitment as exceptions or exclusions from coverage (the "Objection Period"). In the event Buyer notifies the Seller of any Objections that it has concerning the title to, or a survey of, the Property, then the Seller shall have thirty (30) days from the receipt of such notice within which to notify the Buyer as to whether the Seller will cure all or any of the Objections raised by the Buyer. In the event the Seller elects to cure any of the Buyer's Objections, then Seller shall do so on or before the Closing Date as a covenant of the Seller hereunder. In the event the Seller elects not to cure any of the Buyer's Objections, then the Seller will notify the Buyer of the same in writing and the Buyer shall have the right to either (i) terminate this Contract and receive a refund of the entire Binder (if termination occurs after the deposit of the Binder), (ii) waive the uncured Objections and close under the terms of this Contract or (iii) waive the uncured Objections and extend the time for Closing for a reasonable period of time to enable the Seller to cure any Objections if the Seller is attempting to cure the same. In the event the Buyer elects its option in clause (ii) or (iii) above and any Objection can be cured by a monetary payment, the Buyer has the right of making such payment and reducing by a like amount the cash due to the Seller at Closing. Buyer will notify Seller in writing of those Title Exceptions (hereinafter defined) acceptable to Buyer prior to the expiration of the Objection Period. For purposes of this Contract, the term "Title Exceptions" shall not include any Permitted Exception other than those matters covered by Section 2(e)(vi), but shall include any claims against, defects in, interests in, exceptions to, or conditions, covenants or inchoate

liens, encumbrances, lis pendens affecting or purporting to affect title to the Property, or other matters relating to title to the Property, whether evidenced by written instrument, disclosed on a survey or otherwise evidenced; any encroachments upon or by the Property; any boundary disputes regarding the boundaries of the Property, including claims of adverse possession; and the terms, provisions and conditions contained in any instruments evidencing or referring to any such defects, exceptions, conditions, liens, encumbrances, overlaps, encroachments or boundary disputes or other matters.

5. Special Conditions to Closing.

a. For purposes hereof, the "Inspection Period" shall be the period commencing on the date each party has executed this Agreement and delivered the same via facsimile or email to the other party (the "Delivery Date") and ending at 11:59 p.m. E.S.T. on the date Sixty (60) days from the Delivery Date.

b. Buyer, with Seller's reasonable cooperation, shall have the right to make all such inspections as it deems desirable within the Inspection Period. Buyer agrees to indemnify and hold Seller harmless from all liabilities, claims, damages, liens, costs and expenses (including reasonable attorneys' fees) in connection with its inspection of the Property. Buyer is authorized to conduct customary environmental inspections.

c. On or before the Delivery Date, and thereafter immediately upon Buyer's request, Seller shall provide Buyer copies of all title and other information regarding the Property in Seller's knowledge or possession, including, but not limited to, title insurance policies, attorneys' opinions on title, copies of all documents relating to all title exceptions, surveys, site plans, deeds, deeds of trust, promissory notes, loan agreements relating to the Property, environmental reports, engineering and soil tests and studies, inspection reports, plans, specifications, drawings, studies, zoning letters, certificates or other information.

d. If during the Inspection Period, the Buyer is not satisfied with any of the matters inspected or reviewed by it with respect to the Property, the Buyer may elect, in its sole and absolute discretion, to terminate the Contract by giving written notice of such decision to the Seller.

6. Closing Costs. The Seller shall pay for the preparation of the limited warranty deed to the Property, the transfer tax stamps to be affixed thereto, the cost of discharging any mortgage, lien or title encumbrance and the cost of curing any Objections other than Permitted Exceptions. The Buyer shall be responsible for the cost of the Commitment, title insurance premium, and recording of the deed and any other instruments to be recorded under the terms of this Contract with respect to the Property. The Seller shall pay for the cost of the Survey. The Buyer shall pay for the costs of the Phase I Environmental Report of the Property satisfying the requirements of the Buyer, as determined by the Buyer in the Buyer's sole discretion. Except as otherwise provided herein, each party shall bear its own costs and expenses, including its own attorneys' fees.

7. Settlement Adjustments. Unless otherwise specified in this Contract, all income, expenses and costs related to the Property shall be prorated as of the Closing Date, as follows:

a. The Seller shall pay all ad valorem property taxes respecting the Property for that portion of the calendar year through the day before the Closing Date, and Buyer shall pay the remaining portion of the ad valorem property taxes; in the event either the tax assessment or tax rate for the year in which the Closing occurs is not known as of the

Closing Date, the parties shall prorate at Closing on the basis of the last known values and rates and adjust the prorations once such become known for the year of Closing. The Seller shall be responsible for all rollback, deferred and other similar ad valorem or real estate taxes with respect to the Property, which Seller agrees to pay in full at the Closing from the portion of the Purchase Price paid to Seller in cash at Closing.

b. Any income from the Property collected by the Seller and accruing or relating to the period through the day before the Closing Date shall be paid to the Seller. All other income of the Property accruing or relating to the period commencing on the Closing Date and thereafter, and accruing or relating to the period through the day before the Closing Date but uncollected by the Seller as of Closing, shall be paid or belong to the Buyer.

c. All other expenses relating to the Property which have been accrued but not paid by Closing shall be prorated between Buyer and Seller as of 11:59 p.m. on the day before Closing, except that deposits held by utility companies and fees for governmental permits and licenses shall not be apportioned.

d. To the extent that the amount of any of the items above shall not be available for exact proration as of the Closing Date, Seller or its representative and Buyer or its representative shall meet as soon after the Closing as possible and compute and settle and adjust or readjust the closing prorations between the parties as of the Closing Date and this provision shall survive the Closing.

8. Covenants of the Seller. Between the date hereof and the Closing Date, Seller shall continue to maintain the Property in good condition and repair, ordinary wear and tear alone, excepted, and shall not cause or permit any waste respecting the Property. Seller shall not take any action which would adversely affect the value or title to the Property. Notwithstanding anything to the contrary in this Contract, Seller shall continue roadway work on the Property until completion, provided, however, that said roadway work shall not materially deplete the marketable timber on the Property.

9. Brokerage Commission. Seller and Buyer mutually acknowledge and represent that they have dealt with no brokers in connection with this transaction, except Robert Pittenger Company, Inc., for which Seller shall be exclusively responsible to pay a commission at Closing equal to three percent (3%) of the Purchase Price, and Vanguard Development Group, LLC ("Vanguard"), for which Seller shall be exclusively responsible to pay a commission under the terms and conditions of a separate agreement between Vanguard and Seller. Each party agrees to indemnify and hold the other harmless from and against any and all other claims, demands or the cost and expense thereof, including reasonable attorneys' fees arising out of any other brokerage commission, fee or other compensation due or alleged to be due in connection with the transaction contemplated by this Contract based upon an agreement alleged to have been made or other action alleged to have been taken by the indemnifying party.

10. Eminent Domain. If, prior to the Closing Date, all or any part of the Property is taken by eminent domain or if condemnation proceedings are commenced, Buyer shall have the option, by giving written notice to Seller, to terminate this Contract and receive an immediate refund of the full amount of the Bidder plus interest earned thereon. If Buyer does not so elect to terminate this Contract, the Contract shall remain in full force and effect, and Seller shall assign, transfer and set over to Buyer at the Closing all of Seller's right, title and interest in and to any awards that may be made for such taking.

11. Representations and Warranties of Seller. In addition to the other warranties and representations set forth herein, Seller hereby makes the following representations and warranties to the Buyer, which shall survive Closing for the period set forth in Section 20(a), and each of which shall be deemed material:

a. The execution, delivery and performance of this Contract and the closing documents by Seller and the execution, delivery and performance by each individual and/or entity signing this Contract on behalf of Seller has been duly authorized and approved by all requisite action on the part of Seller.

b. To the best of Seller's knowledge, the Property now is, and at Closing will be, in full compliance with applicable zoning and land use laws, and other local, state or federal laws and regulations; and Seller does not have knowledge of any proposed change (except as provided herein) in any such code, law or regulation which would interfere with the intended use of the Property. To the best of Seller's knowledge, all licenses and permits required by any governmental authority having jurisdiction over the Property have been validly issued and are in full force and effect.

c. Seller currently own and will own at the Closing Date a marketable and insurable fee simple title to the Property, subject only to the Permitted Exceptions, free and clear from all liens and encumbrances.

d. Seller has entered into no agreement or lease, oral or written, not referred to herein, that will be binding upon Buyer or the Property; and neither Seller nor the Property is subject to any claim, demand, suit, unfilled lien, proceeding or litigation of any kind, pending or outstanding, or threatened or likely to be made or instituted which would in any way be binding upon Buyer or its successors or assigns in the full use and enjoyment of the Property or which would limit or restrict in any way Seller's right or ability to enter into this Contract and consummate the sale and purchase contemplated hereby other than the Permitted Exceptions.

e. To the best of Seller's knowledge, there are no taxes, charges or assessments of any nature or description arising out of the conduct of Seller's business or the operation of the Property which would constitute a lien against the Property and that will be unpaid at the Closing Date or not paid from the Seller's closing proceeds, except for the lien of ad valorem property taxes for the year in which the Closing occurs.

f. No person, firm or entity has any rights to acquire or to lease all or any portion of the Property or otherwise to obtain any interest therein and there are no outstanding options, rights of first refusal or negotiation, rights of reverter or rights of first offer relating to the Property or any interest therein.

g. To the best of Seller's knowledge, the Property has direct and contiguous access to a publicly dedicated and paved road for ingress and egress to the Property. To the best of Seller's knowledge, there is no action or proceeding pending or threatened that would impair or curtail such access.

h. Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

i. Seller shall refrain from undertaking any cutting of trees or material or significant changes to the topography of the Land or the Property, without the express written consent of Buyer, including the disposal of waste or debris upon the Property.

j. All representations and warranties of Seller contained in this Contract are true

and correct as of the date hereof and will be true and correct as of the Closing Date.

12. Conditions to Buyer's Obligations. In addition to the other conditions set forth herein, the obligations and liabilities of Buyer hereunder shall in all respects be conditioned upon the satisfaction of each of the following conditions precedent prior to or simultaneously with the Closing, any of which may be waived by written notice from Buyer to Seller:

a. Seller has complied with and otherwise performed each of the covenants and obligations of Seller set forth in this Contract and Seller is not in default of its obligations and covenants under this Contract.

b. There has been no change to the title to the Property which has not been cured since the effective date of the Commitment obtained by Buyer and the Title Company has issued a Commitment on the Property and is prepared to issue to Buyer upon the Closing a fee simple owner's policy covering the Property at standard rates, in form and substance acceptable to Buyer.

c. There has been no material, adverse change to the existing topography and landscaping (including without limitation, trees) located upon the Property and no material waste has occurred thereon.

d. All representations and warranties of Seller as set forth in this Contract shall be in all respects true and correct as of the Closing Date.

e. In the event of a failure of any of the conditions precedent set forth above, or any other conditions or requirements of Seller set forth herein, the Buyer shall be entitled to a full refund of the Binder.

13. Environmental Matters.

a. Seller represents and warrants that to the knowledge of Seller, no portion of the Property consists of filled land and that the Property does not contain any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, and in any amendments thereto, or in any regulations promulgated pursuant thereto, or in any applicable state or local law, regulation or ordinance.

14. Indemnification. Seller hereby agrees to indemnify and hold harmless Buyer from all losses, damages, costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Buyer as a result of matters caused by Seller, its agents or contractors. Buyer hereby agrees to indemnify and hold harmless Seller from all losses, damages, costs and expenses, including without limitation, reasonable attorneys' fees, incurred by Seller as a result of matters caused by Buyer, its agents or contractors.

15. Closing Documents.

a. At Closing, the Seller shall deliver, or cause to be delivered, to Buyer the following:

- i. a duly executed and acknowledged limited warranty deed in recordable form conveying good, fee simple and marketable title to the Land and Improvements subject only to the Permitted Exceptions and using a metes and bounds description based upon the Survey;
- ii. a duly executed lien affidavit warranting and holding Buyer and the Title Company harmless against unpaid laborers' and materialmen's liens;
- iii. such other documents as Buyer's counsel or the Title Company may reasonably request to evidence Seller's authority to execute and perform under this Contract and to execute and deliver all documents conveying the Property to Buyer;
- iv. If requested by Buyer, an assignment agreement in a form reasonably acceptable to Buyer conveying title to the Appurtenances;
- v. a certificate given under penalty of perjury and on a form approved under temporary regulations promulgated under Section 1445 of the Internal Revenue Code of 1986, as amended, that neither Seller is a foreign person;
- vi. possession of the Property free of the rights and claims of others;
- vii. all other documents required by this Contract to be delivered by Seller hereunder; and
- viii. such other documents and papers which may be necessary to the consummation of the transaction described in this Contract or may be reasonably requested by Buyer or Buyer's counsel.

b. At Closing, Buyer shall deliver to Seller:

- i. the outstanding balance of the Purchase Price due at Closing; and
- ii. such other documents and papers which may be necessary to the consummation of the transaction described in this Contract or as may be reasonably requested by Seller or Seller's counsel.

16. Escrow of Binder.

- a. The Binder shall be held in escrow (the "Escrow") by Chicago Title Insurance Company (the "Escrow Agent") subject to the terms and provisions of this Contract. The Escrow Agent shall hold and disburse the Binder in accordance with the terms and provisions hereof and invest the Binder in an interest-bearing account as mutually agreed by Seller and Buyer until payment or disbursement.
- b. The Binder shall be held by the Escrow Agent in accordance with the terms set forth in this Contract and either: (i) credited to the Purchase Price at Closing; (ii) paid to Seller, with interest, if this Contract is terminated by Seller due to Buyer's default pursuant to Section 18(b), or (iii) returned to Buyer, with interest, if this Contract is terminated by Buyer pursuant to Section 4(c), Section 5(d) or Section 18(a) of this Contract.

- c. If the Escrow shall be terminated by the mutual agreement of the Seller and Buyer or if the Escrow Agent shall be unable to determine at any time to whom the Binder should be paid or if a dispute should develop between Seller and Buyer concerning to whom the Binder should be paid, then in any such event, the Escrow Agent shall pay the same in accordance with the joint written instructions of the Seller and Buyer. In the event that such written instructions shall not be received by the Escrow Agent within ten (10) days after the Escrow Agent shall have served written requests for instructions upon Seller and Buyer, the Escrow Agent shall have the right to pay all or any portion of the Binder into any state or federal court located in South Carolina and interplead Seller and Buyer in respect thereof, and thereafter the Escrow Agent shall be discharged of any obligations in connection with the Binder. If costs and expenses (including attorneys' fees) are incurred by the Escrow Agent because of litigation or dispute between Seller and Buyer arising out of the holding of the Binder, the non-prevailing party (i.e., either Seller or Buyer) shall pay the Escrow Agent such reasonable costs and expenses incurred. Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding or investment of the Binder held in Escrow pursuant hereto except for negligence or willful misconduct; and that in the event of any dispute under this Escrow, the Escrow Agent may seek advice from its own counsel and shall be fully protected in any action taken in good faith in accordance with the opinion of counsel. The Escrow Agent's address for purposes of mailing or delivery of documents and notices is as follows:

Chicago Title Insurance Company
200 South Tryon Street, Suite 800
Charlotte, NC 28202
Attention: Scott Mansfield, Esq

Provisions with respect to notices as otherwise set forth in this Contract shall apply with respect to matters pertaining to this Escrow. References in this Contract to the Binder include interest, yield or other income earned pursuant to the deposit or investment thereof unless specifically stated to the contrary. This Section 16 shall survive termination of this Agreement.

17. Assignment. This Contract shall not be assigned by Seller. This Contract shall be assignable by Buyer without the consent of Seller provided that the assignee shall be liable for performance of Buyer's obligations hereunder.

18. Default and Remedies.

a. In the event Seller defaults or fails to perform any of the conditions or obligations of Seller under this Contract or in the event any of the representations and warranties contained herein are not true and correct as of the date hereof and as of the Closing Date, Buyer shall have the right to enforce an action in equity for specific performance, sue for damages available at law or terminate this Contract by giving written notice to Seller and receive an immediate refund of the Binder.

b. In the event of a default or breach by Buyer of any of the covenants or conditions or obligations of Buyer under this Contract, Seller's sole and exclusive remedy shall be to give written notice thereof to Buyer, terminate the Contract, and to retain the Binder as full liquidated damages, actual damages being difficult if not impossible to ascertain and the parties having made a bona fide effort to estimate Seller's damages.

19. Entry. Buyer shall have the right to enter upon the Property at any time after the date of this Contract for any purpose including but not limited to site planning, surveying and environmental inspections. Such entry right shall be exercised so as not to unreasonably interrupt any business activities of Seller.

20. Miscellaneous.

a. Survival of Provisions. All the warranties, representations and indemnities contained herein shall, as applicable, survive the Closing and the delivery of the deed and other documents for a period of six (6) months.

b. Notices. Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been given when deposited in Federal Express (or any other national "next day" delivery service) or in the United States mail via registered or certified mail, postage prepaid, return receipt requested, or sent by telecopier and addressed as follows:

SELLER: North Pleasant LLC
Monarch Plaza, Suite 117
3414 Peachtree Road NE
Atlanta, Georgia 30326
Attn: James D. Reynolds
Telephone: 404-995-4371
Telecopy: 404-995-4416

with a copy to Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202
Attn: Charles E. Reynolds, Esq.
Telephone: 513-721-4450
Telecopy: 513-852-5969

BUYER: Vanguard Properties of the Carolinas LLC
4521 Sharon Road, Suite 370
Charlotte, North Carolina 28211
Attention: Mr. Daniel J. Burns

with a copy to: Culp Elliott & Carpenter, P.L.L.C.
4401 Barclay Downs Drive, Suite 200
Charlotte, North Carolina 28209
Attn: Christopher E. Hannum and Paul J. Smith
Telephone for Airbill: 704-973-5325
Telecopy: 704-551-5700

Either party may, from time to time, by notice as herein provided, designate a different address to which notice to it shall be sent.

c. Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the State of South Carolina.

d. Entire Agreement. This Contract and the Exhibit(s) hereto contain the entire understanding and agreement by and between the parties and all prior or contemporaneous oral or written agreements or instruments are merged herein, and no amendment to this Contract shall be effective unless the same is in writing and signed by

the parties hereto.

e. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

f. Captions and Headings. The captions and headings throughout this Contract are for convenience and reference only, and the words contained therein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Contract.

g. Counterpart Originals. This Contract may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute but one original. This Contract may be executed by facsimile transmission or other form of electronic transmission. Notices and documents, including this Agreement, delivered by facsimile or other form of electronic transmission shall be sufficient for purposes of binding the sending party.

h. Memorandum of Agreement. Upon the request of either party hereto, the other shall execute and acknowledge a memorandum of this Contract in recordable form sufficient to identify the parties hereto, the Property and the Closing Date. If a party fails to execute and acknowledge such memorandum upon request, the other is authorized to execute, acknowledge and record same on its behalf as attorney-in-fact for such limited purpose.

21. Section 1031 Exchange. Each of Buyer and Seller agree to cooperate with the other party upon request in effecting an exchange of property pursuant to Section 1031 of the Internal Revenue Code. Any and all costs and expenses incurred in connection with such cooperation shall be paid by the exchanging party. In no event shall Buyer be required to take legal title to any property other than the Property in connection with any such exchange by Seller.

22. Automatic Termination of Offer. This Agreement is executed and delivered to the Seller for signature on the date set forth beside the Buyer's signature and this Agreement and the offer to purchase represented by this Agreement shall automatically terminate if this Agreement is not fully executed by the Seller and returned to Buyer by 5:00 PM on the tenth (10th) business day after such date.

[Signatures follow on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed and sealed as of the date set forth below each signature.

"SELLER"

North Pleasant LLC

By: [Signature] (SEAL)

Name: John P. Rogers

Title: Its Authorized Agent

Date: 3-15-02

"BUYER"

VANGUARD PROPERTIES OF THE
CAROLINAS LLC

By: [Signature] (SEAL)

Name: Daniel J. Burns

Title: Manager

Date: 3-15-07

Vanguard 000124

Exhibit A

Description of Land

Approximately 2,600+/- acres located on Hwy 41 in Berkeley County to be more specifically defined by Survey as set forth in Section 2(d) of the Contract and being a portion of S.C. tax parcel# 240-00-00-001

312877-4

Paul Smith

From: Daniel Fogarty
Sent: Wednesday, May 16, 2007 3:00 PM
To: Josh Hulen
Subject: RE: update

We are on track for Monday.

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0065 | F 704.365.0910 C 704.763.3911
df@pittengercompany.com | www.pittengercompany.com

From: Josh Hulen [<mailto:jhulen@vdbgllc.com>]
Sent: Wednesday, May 16, 2007 10:44 AM
To: Daniel Fogarty
Subject: update

Daniel- We are taking the master plat of Keystone to the county pretty soon to get recorded and then we will begin putting together your title company survey per their requirements. I got the response letter this morning and our attorney should have it today if Paul fedexed it to him. It looks like everything should get worked out on that side.

How is everything going with you guys?

I believe dd expires on Monday?

Give me an update when you can.

Thanks,

JNH

Paul Smith

From: Josh Hulen [jhulen@vdbgllc.com]
Sent: Friday, May 18, 2007 4:50 PM
To: Daniel Fogarty; pjs@ceclaw.com
Cc: Boone, Sid; bobrogers1@bellsouth.net; jreynolds@selandco.com; petebailey2000@comcast.net; Carol Jones
Subject: FW: Scan from McNair Law Firm, P.A.
Attachments: Scan001.PDF

Daniel,

Attached is the signed letter from the seller regarding the earnest money and outstanding title issues. Please have it executed and sent back.

Thanks,

Josh

Vanguard 000298

From: AMERICAN REAL ESTATE

700 453 4143

05/18/2007 10:22 AM P.002/002

May 18, 2007

Mr. Daniel J. Burns, Manager
Vanguard Properties
4521 Sharon Road
Suite 370
Charlotte, NC 29211

RE: Contract for Purchase of Property dated March 7, 2007 with
Vanguard Properties of the Carolinas LLC, as Modified by
Addendum dated March 21, 2007

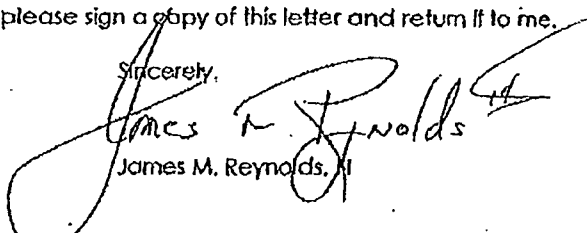
Dear Mr. Burns:

It is anticipated that you will put up the Additional Earnest Money Deposit, either today or Monday, May 21, 2007 by 5:00 p.m. We want to clarify that all title objection issues have been resolved, other than the requested statements and affidavit concerning the logging roads as set forth in paragraph 7 of your attorney's letter dated May 15, 2007. Seller hereby agrees that it will deliver on or by June 1, 2007, the requested statements and affidavit. If the statements and affidavit are not delivered, Buyer may request a return of the deposit or waive the delivery of those documents and proceed to closing.

Seller shall remain obligated to deliver good and marketable title and keep the property free from any title objection arising subsequent to the date of this letter.

If this is acceptable, please sign a copy of this letter and return it to me.

Sincerely,


James M. Reynolds, II

ACCEPTED:

VANGUARD PROPERTIES OF THE CAROLINAS LLC

By: _____
Its: _____

cc: Paul J. Smith, Esq.

CHARLESTON 28116-1

1181

NO 9752 P. 2

WINNETT MARKET

MAY 18, 2007 4:01 PM

Paul Smith

From: Daniel Burns
Sent: Sunday, May 20, 2007 4:25 PM
To: Daniel Fogarty

Any word on the Conservation Nut? I'm hoping he's just blowing smoke to scare us off. The only thing that made me nervous was his comment about stalling the DR Horton tract, and close to getting the county to change the zoning so the Keystone tract could never be developed.

Paul Smith

From: Josh Hulen [jhulen@vdgllc.com]
Sent: Sunday, May 20, 2007 6:58 PM
To: Daniel Fogarty; Robert Pittenger; pjs@ceclaw.com
Cc: bobrogers1@bellsouth.net; jreynolds@selandco.com; petebailey2000@comcast.net; Carol Jones; Boone, Sid; cer@santen-hughes.com; tboulware@vdgllc.com
Subject: FW: Vanguard extension letter
Attachments: Keystone zoning verification letter.pdf; Vanguard Keystone letter.pdf

Daniel-

Attached are two files. The first is your extension letter as discussed. The second is a zoning verification letter we got several years ago confirming the zoning of the property as Flex-1. They since modified the zoning ordinance, but where it stands now is that Flex-1 allows 30,000 square foot lots by right, no matter what type of utilities are or are not available to the property.

We are requesting that you make available to us a copy of the voicemail left by the Conservation League, as well as any future oral or written correspondence with them.

As we work on our side to figure out what is going on here, we request that you keep us apprised of any updates on your side regarding this issue.

Thank you,

Josh



Berkeley County
Office of the Planning and Zoning Department

223 North Live Oak Drive
Moncks Corner, SC 29461-3707

December 21, 2004

Mr. Trenholm Walker
Orat - Thomas, Epting, Walker, PA
PO Drawer 22247
Charleston, SC 29413-2247

Re: Zoning confirmation for TMS#240-00-00-001, Huger, SC

Dear Mr. Walker:

Pursuant to your request for zoning confirmation for the above referenced property, the property is zoned F1, Agricultural District.

While County Council was reviewing proposed amendments to the County's Zoning and Development Standards Ordinance and Land Development and Subdivision Regulations Ordinance, a moratorium was imposed on the subdivision of property that would require review from the County's Planning Commission. That moratorium ended on November 23, 2004 when County Council passed amendments to the two ordinances stated above.

Please do not hesitate to call the Planning and Zoning Department at 723-3800 x4095 with any questions or concerns you may have regarding the zoning information for this property.

Sincerely,

Madelyn H. Robinson, AICP
Zoning Administrator

Paul Smith

From: Robert Pittenger
Sent: Sunday, May 20, 2007 8:08 PM
To: Josh Hulen; Daniel Fogarty; pjs@ceclaw.com
Cc: bobrogers1@bellsouth.net; jreynolds@selandco.com; petebailey2000@comcast.net; Carol Jones; Boone, Sid; cer@santen-hughes.com; tboulware@vdgllc.com
Subject: RE: Vanguard extension letter

Josh...thank your for the response...you will be fully informed as we proceed ahead. Robert Pittenger

From: Josh Hulen [mailto:jhulen@vdgllc.com]
Sent: Sun 5/20/2007 6:58 PM
To: Daniel Fogarty; Robert Pittenger; pjs@ceclaw.com
Cc: bobrogers1@bellsouth.net; jreynolds@selandco.com; petebailey2000@comcast.net; Carol Jones; Boone, Sid; cer@santen-hughes.com; tboulware@vdgllc.com
Subject: FW: Vanguard extension letter

Daniel-

Attached are two files. The first is your extension letter as discussed. The second is a zoning verification letter we got several years ago confirming the zoning of the property as Flex-1. They since modified the zoning ordinance, but where it stands now is that Flex-1 allows 30,000 square foot lots by right, no matter what type of utilities are or are not available to the property.

We are requesting that you make available to us a copy of the voicemail left by the Conservation League, as well as any future oral or written correspondence with them.

As we work on our side to figure out what is going on here, we request that you keep us apprised of any updates on your side regarding this issue.

Thank you,

Josh

Paul Smith

From: Daniel Burns
Sent: Monday, May 21, 2007 9:17 AM
To: Daniel Fogarty
Cc: Robert Pittenger
Subject: RE:

Phoag/Robert-

To recap my conversation on Friday afternoon:

Received a voicemail from Hamilton Davis with the Coastal conservation League in Charleston, SC and called him back around 4pm, and then forwarded his voicemail for you to be aware of the issue. Hamilton stated that he was aware that we had the Keystone Tract under contract to purchase and that we'd probably like to know that his group, coupled with the efforts of large plantation owners, is trying to stop development in the Hwy 41 corridor because of it's proximity to the national forest. He said they are particularly targeting the Keystone property since it's such a large tract and adjacent to the forest. He mentioned that DR Horton has a property just south of ours that the Conservation League has fought, and that now DR Horton is trying to do a land swap to get out of the Hwy 41 tract.

The scariest thing mentioned, was that they are working with the county to get rezoning for the Keystone tract to a conservation easement so it can't be development, and said they were getting close with joint efforts from the plantation owners. I don't know how much of this is reality or smoke blowing, but if they've in fact halted DR Horton, they've accomplished something.

Senator- do you know if the Coastal Conservation League can get the county to rezone a property to a conservation easement without the owner's consent?

Daniel J. Burns | Vice President
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0065 | F 704.365.0910
db@pittengercompany.com | www.pittengercompany.com

From: Daniel Fogarty
Sent: Monday, May 21, 2007 8:56 AM
To: Daniel Burns
Subject:

Hey can you type up a recap of your conversation with the guy from the Costal Conservation League.

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0065 | F 704.365.0910 C 704.763.3911
df@pittengercompany.com | www.pittengercompany.com

Paul Smith

From: Josh Hulen [jhulen@vdgllc.com]
Sent: Monday, May 21, 2007 2:24 PM
To: Paul J. Smith; Daniel Fogarty
Cc: Robert Pittenger
Subject: RE: Vanguard extension letter

This is misinformation. Nobody has ever planned to do only 35 homes on Keystone. A year ago, the sellers came up with a preliminary plan to subdivide the tract into 35 divisions under a conservation easement plan where the owners would take the easement. This never was put into place.

You will find that the conservation league deals in misinformation.

From: Paul J. Smith [mailto:pjs@ceclaw.com]
Sent: Monday, May 21, 2007 2:16 PM
To: Josh Hulen; df@pittengercompany.com
Cc: Robert Pittenger
Subject: RE: Vanguard extension letter

Daniel and Josh,

The website for Coastal Conservation League advertises that a conservation development is planned for the 4500 acre Keystone Tract that will consist of as few as 35 homes. What does this mean? Who is planning this limited impact development?

Paul

-----Original Message-----

From: Robert Pittenger [mailto:rp@pittengercompany.com]
Sent: Sunday, May 20, 2007 8:08 PM
To: Josh Hulen; Daniel Fogarty; Paul J. Smith
Cc: bobrogers1@bellsouth.net; jreynolds@selandco.com; petebailey2000@comcast.net; Carol Jones; Boone, Sid; cer@santen-hughes.com; tboulware@vdgllc.com
Subject: RE: Vanguard extension letter

Josh...thank your for the response...you will be fully informed as we proceed ahead. Robert Pittenger

From: Josh Hulen [mailto:jhulen@vdgllc.com]
Sent: Sun 5/20/2007 6:58 PM
To: Daniel Fogarty; Robert Pittenger; pjs@ceclaw.com
Cc: bobrogers1@bellsouth.net; jreynolds@selandco.com; petebailey2000@comcast.net; Carol Jones; Boone, Sid; cer@santen-hughes.com; tboulware@vdgllc.com
Subject: FW: Vanguard extension letter

Daniel-

Attached are two files. The first is your extension letter as discussed. The second is a zoning verification letter we got several years ago confirming the zoning of the property as Flex-1. They since modified the zoning ordinance, but where it stands now is that Flex-1 allows 30,000 square foot lots by right, no matter what type of utilities are or are not available to the property.

We are requesting that you make available to us a copy of the voicemail left by the Conservation League, as well as any future oral or written correspondence with them.

As we work on our side to figure out what is going on here, we request that you keep us apprised of any updates on your side regarding this issue.

Thank you,

Josh

May 20, 2007

Mr. Daniel J. Burns, Manager
Vanguard Properties of the Carolinas
4521 Sharon Road
Suite 370
Charlotte, NC 29211

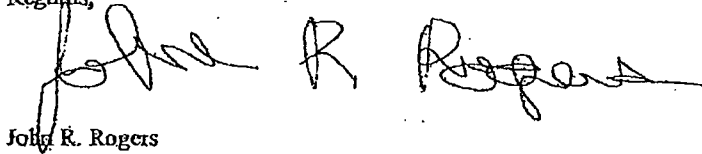
RE: Contract for Purchase of Property dated March 7, 2007 with Vanguard Properties of the Carolinas, LLC as modified by Addenda dated March 21, 2007 and May 18, 2007.

Dear Mr. Burns:

Pursuant to our conversation with Daniel Fogarty regarding the issue of the Coastal Conservation League and their interest in our pending sale of the Keystone Tract, we are hereby granting you an extension of the due diligence period to 5:00 p.m. Monday, June 4, 2007. The \$500,000 earnest money shall remain refundable until that time.

We trust this will be an adequate amount of time for you to deal with this issue to your satisfaction. Please let us know of anything we may do to assist you in this matter.

Regards,



John R. Rogers

North Pleasant, LLC
Vintage Land, LLC

cc: Paul Smith, Esq.
Robert Pittenger
Daniel Fogarty
James M. Reynolds, III
James D. Reynolds
Pete Bailey
Sid Boone, Esq.
Chuck Reynolds, Esq.
Josh Hulett

McNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

J. SIDNEY BOONE, JR.
sboone@mcnair.net

www.mcnair.net

100 CALHOUN STREET, SUITE 400
CHARLESTON, SOUTH CAROLINA 29401

POST OFFICE BOX 1431
CHARLESTON, SOUTH CAROLINA 29402
TELEPHONE (843) 723-7831
FACSIMILE (843) 722-3227

May 11, 2007

VIA FEDERAL EXPRESS

Paul J. Smith, Esq.
Culp Elliott & Carpenter, P.L.L.C.
4401 Barclay Downs Drive
Suite 200
Charlotte, NC 28209

RE: Vanguard Properties of the Carolinas LLC ("Buyer")/North Pleasant, LLC and Vantage Land, LLC (together, "Seller" Purchase of Approximately 2,582.95 Acres on S.C. Highway 41, Berkeley County, South Carolina, Tract A 2,408.93 Acres, New Plat, and Tract 6, 174.01 Acres, Plat Book R-165-A (the "Property"))

Dear Mr. Smith:

The Seller in the above referenced Contract has asked that I respond to your Title Objection Letter of May 1, 2007. Our response is in the same sequence as your letter is:

1. 1. (a) (b). We will execute the appropriate affidavits for items 4 & 10. The items in Item 5 will be satisfied at closing.

2. 1. (c) Items 6 & 7. We are enclosing copies of the Articles of Organization and the Operating Agreement of North Pleasant, LLC and Vintage Land, LLC. We will prepare the required Resolution for the sale.

3. 1. (d) Item 9. The transfer of the real estate will not trigger the requirement to pay the rollback taxes. The Contract calls for the payment; however, I would suggest that we escrow the estimated rollback taxes at closing and only pay those taxes whenever you develop a phase or a section. Rollback taxes are assessed for the year of change and rolled back for five additional years. Berkeley County assesses the rollback taxes when you record the final subdivision plat of one of your phases of development. For each year that you do not develop, the rollback taxes for all or a portion of the property not developed will abate. At closing, Seller would escrow rollback taxes for the year 2007 up to the date of closing and five years, 2006-2002. If you do no work in

MCNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

Paul J. Smith, Esq.
May 11, 2007
Page 2

2007, then the rollback taxes for 2002 would abate and would be paid to Seller. Also, if you develop in phases, the rollback taxes only apply to the phase you develop and the rollback taxes each year as to the remaining acreage not developed would abate.

4. 1. (e) Item 12. Attached is a proposed boundary survey that is in the process of being approved by Berkeley County. You will be acquiring Tract A, which has 2,408.93 acres. It would be my suggestion that we go ahead and process this plat and that we have the surveyor provide additional information on another plat using the same metes and bounds and add the information that you have requested in paragraph 2 of your letter. Enclosed is a copy of the Plat at R165A. You will be acquiring Tract 6, 174.02 acres, by that plat.

5. 1. (f) and (g). We will execute the Affidavit of Possession at closing. You can have the surveyor prepare a new legal description if you want a metes and bounds description; otherwise, we can convey by reference to the recorded plats.

6. 2. (a), (b) and (c). Please furnish us with the certification you want on the plat in regard to your paragraph 2 (a). It may be better to have that language on the separate plat that I have suggested and not slow down the process of recording the boundary survey. In response to paragraph 2 (b), I think that a certification that it is a Class A survey is all that you need to answer that question. We can have the surveyor mark the exceptions that apply. This new survey has excluded from Tract A the easements to the South Carolina Public Service Authority at C143, Page 319 and the easement to SCE&G at C95, Page 130. The easement at Book 1802, Page 330 shows up on sheet 2 of 5 along Line 1, which is on the east side of Highway 41 across the road from Tract B, Parcel A, which is the small triangular portion of Tract B.

7. 3. My clients are working on obtaining a letter with regard to the timber roads or other roads which cross this property. Enclosed are Map Number 76 and Map Number 84 from the Berkeley County GIS Book. From these maps you can see that Berkeley County does not recognize Trooper Lane on the east side of Highway 41. Trooper Lane does show up on the west side of Highway 41.

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Paul J. Smith, Esq.
May 11, 2007
Page 3

8. 4. As previously stated, the easements at C95, Page 130, and C143, Page 319 are no longer located upon Tract A. The easement at Book 1802, Page 330 is marked on sheet 2 of the referenced plat.

9. 5. The title search should have indicated that there were two Quitclaim Deeds into International Paper Realty Corporation, as to mineral rights; one from International Paper Company in Book 4130, Page 254 and one from IP Timberlands Operating Company, Ltd. at Book 4130, Page 243. All these mineral rights were listed in the Deed to my clients at Book 4537, Page 132 in the derivation clause. Your abstractor should have found no other mineral rights from or out of those entities and the abstractor should have found no conveyance of mineral rights by International Paper Realty Corporation. Based upon these deeds, you should find that there are no previous reservations or, if there were, they were conveyed to International Paper Realty Corporation which conveyed the mineral rights to my clients.

10. 6. We will be preparing the Seller documents.

11. Schedule C of your Title Commitment needs to be amended to reflect that the property is in Berkeley County, South Carolina.

Please call me if you have any questions.

Sincerely,


J. Sidney Boone, Jr.

JSBJR:mm

cc: Mr. Josh Hulen (via e-mail - w/o encl.)
Ms. Carol E. Jones (via e-mail - w/o encl.)
Mr. James D. Reynolds (via e-mail - w/o encl.)
Mr. Bob Rogers (via e-mail - w/o encl.)
Mr. Thomas Boulware (via e-mail - w/o encl.)
Mr. Pete Bailey (via e-mail - w/o encl.)

From: AMERICAN REAL ESTATE

/UD 453 4/43

05/18/2007 10:22 AM 000 P.002/002

May 18, 2007

Mr. Daniel J. Burns, Manager
Vanguard Properties
4521 Sharon Road
Suite 370
Charlotte, NC 29211

RE: Contract for Purchase of Property dated March 7, 2007 with
Vanguard Properties of the Carolinas LLC, as Modified by
Addendum dated March 21, 2007

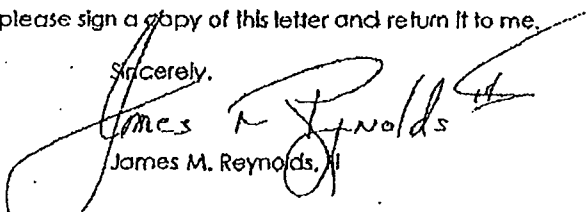
Dear Mr. Burns:

It is anticipated that you will put up the Additional Earnest Money Deposit, either today or Monday, May 21, 2007 by 5:00 p.m. We want to clarify that all title objection issues have been resolved, other than the requested statements and affidavit concerning the logging roads as set forth in paragraph 7 of your attorney's letter dated May 15, 2007. Seller hereby agrees that it will deliver on or by June 1, 2007, the requested statements and affidavit. If the statements and affidavit are not delivered, Buyer may request a return of the deposit or waive the delivery of those documents and proceed to closing.

Seller shall remain obligated to deliver good and marketable title and keep the property free from any title objection arising subsequent to the date of this letter.

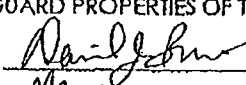
If this is acceptable, please sign a copy of this letter and return it to me.

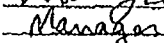
Sincerely,


James M. Reynolds, II

ACCEPTED:

VANGUARD PROPERTIES OF THE CAROLINAS LLC

By: 

Its: 

cc: Paul J. Smith, Esq.

CHARLESTON 2013661

NO. 9752 P. 2

WINNETT-MARKET

MAY 18, 2007 4:01 PM

Paul Smith

From: Robert Pittenger
Sent: Friday, May 25, 2007 1:38 PM
To: Daniel Fogarty
Subject: Re:

Max density is one lot in fifteen acres. Get our money back and cancel contract

-----Original Message-----

From: Daniel Fogarty
To: Robert Pittenger
Sent: Fri May 25 11:38:28 2007
Subject:

I talked with Josh Hulen the seller's broker. He is going to talk to the Reynolds and get back to me with there response. I will let you know what they say as soon as he calls me back.

Daniel Z. Fogarty

Robert Pittenger Company | Real Estate Investments

4521 Sharon Road, Suite 370 | Charlotte, NC 28211

T 704.365.0065 | F 704.365.0910 C 704.763.3911

df@pittengercompany.com <<mailto:df@pittengercompany.com>> | www.pittengercompany.com
<<http://www.pittengercompany.com/>>

Paul Smith

From: Robert Pittenger
Sent: Friday, May 25, 2007 1:40 PM
To: Daniel Fogarty
Subject: Re: Neil Robinson

Its over. Too many conservation easements between us and the river cost prohibitive to run sewer look for land out 176

-----Original Message-----

From: Daniel Fogarty
To: Robert Pittenger
Sent: Fri May 25 11:17:51 2007
Subject: Neil Robinson

I have talked with Neil this morning and we went over everything he will need and I have complied all the info he asked for and I am FedExing it to him.

Daniel Z. Fogarty

Robert Pittenger Company | Real Estate Investments

4521 Sharon Road, Suite 370 | Charlotte, NC 28211

T 704.365.0065 | F 704.365.0910 C 704.763.3911

df@pittengercompany.com <<mailto:df@pittengercompany.com>> | www.pittengercompany.com
<<http://www.pittengercompany.com/>>

Paul Smith

From: Paul J. Smith [pjs@ceclaw.com]
Sent: Friday, May 25, 2007 2:11 PM
To: jhulen@vdlgllc.com; SBoone@mcnair.net; Daniel Fogarty; scott.mansfield@ctt.com
Cc: Robert Pittenger; Chris Hannum
Subject: Vanguard Properties of the Carolinas LLC/North Pleasant, LLC and Vintage Land, LLC/Contract for Berkeley County, SC
Attachments: Scan4162.pdf

Gentlemen,

Please see attached correspondence.

Paul

Paul J. Smith, Esq.
Culp Elliott & Carpenter, P.L.L.C.
4401 Barclay Downs Drive, Suite 200
Charlotte, North Carolina 28209
Direct: 704-973-5325
Fax: 704-551-5700
Main: 704-372-6322
Email: PJS@ceclaw.com <mailto:PJS@ceclaw.com>
Website: www.ceandc.com <http://www.ceandc.com/>

IRS CIRCULAR 230 DISCLOSURE:

Under requirements imposed by the U.S. Internal Revenue Service, we inform you that any advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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-----Original Message-----

From: konica7145@ceclaw.com [mailto:konica7145@ceclaw.com]
Sent: Thursday, May 24, 2007 11:51 PM
To: Paul J. Smith
Subject: Attached image data

CULP ELLIOTT & CARPENTER, P.L.L.C.

"A PROFESSIONAL LIMITED LIABILITY COMPANY INCLUDING A PROFESSIONAL ASSOCIATION"

ATTORNEYS AT LAW
(704) 372-6322

WILLIAM R. CULP, JR., P.A. *
W. CURTIS ELLIOTT, JR. §
JOHN JOSEPH CARPENTER *
CHRISTOPHER E. HANNUM *
PAUL M. HATTENHAUER *
JEFFREY D. BARNES §
MARK L. RICHARDSON §
CARL L. KING ‡
RICHARD A. PELAK *
HOLLY B. NORVELL †
PAUL J. SMITH *
STANTON P. GELLER *
BENJAMIN H. ELLIS §
VALERIE P. WOODRICK §

DOUGLAS P. MUNSON
1950 - 1992

4401 BARCLAY DOWNS DRIVE
SUITE 200
CHARLOTTE, NORTH CAROLINA 28209
TELEFAX (704) 551-5700

www.ceandc.com

May 25, 2007

* Licensed in NC
§ Licensed in NC and FL
/ Licensed in NC and MA
§ Licensed in NC and SC
‡ Licensed in NC, PA and NJ
† Licensed in NC and TX
§ Licensed in NC, MA and NY
§ Licensed in NC and NY

VIA FEDERAL EXPRESS

North Pleasant, LLC
Monarch Plaza, Suite 117
3414 Peachtree Road NE
Atlanta, GA 30326
Attn: James D. Reynolds

VIA FEDERAL EXPRESS

Vintage Land, LLC
Monarch Plaza, Suite 117
3414 Peachtree Road NE
Atlanta, GA 30326
Attn: James D. Reynolds

RE: Vanguard Properties of the Carolinas LLC ("Buyer")/North Pleasant, LLC and Vintage Land, LLC (together, "Seller")/Purchase of Approximately 2,582.95 Acres on S.C. Highway 41, Berkeley County, South Carolina (the "Property")

Dear Mr. Reynolds:

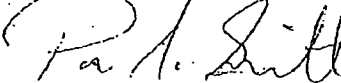
Pursuant to the Contract and that certain correspondence from John R. Rogers on behalf of Seller dated May 20, 2007 (copy enclosed), please consider this letter to be written notice of the Buyer's termination of the Contract within the Inspection Period, including all obligations of the parties thereunder.

By copy of this letter to Chicago Title Insurance Company, as Escrow Agent, Buyer hereby requests a return of the \$50,000 Deposit and the \$450,000 Additional Deposit, together with accrued interest.

If you have any questions or comments, please feel free to contact our office.

Sincerely,

CULP ELLIOTT & CARPENTER, P.L.L.C.



Paul J. Smith, Esq.
For the Firm

Enclosure

cc: Charles E. Reynolds, Esq. (Via Facsimile - 513.852.5969)
J. Sidney Boone, Jr., Esq. (Via Email)
Josh Hulen (Via Email)
Chicago Title Insurance Company, c/o Scott Mansfield, Esq. (Via Email)
Daniel Fogarty (Via Email)

30160_14:267112

May 20, 2007

Mr. Daniel J. Burns, Manager
Vanguard Properties of the Carolinas
4521 Sharon Road
Suite 370
Charlotte, NC 29211

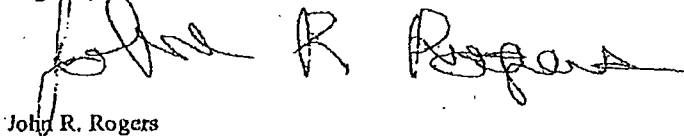
RE: Contract for Purchase of Property dated March 7, 2007 with Vanguard Properties of the Carolinas, LLC as modified by Addenda dated March 21, 2007 and May 18, 2007.

Dear Mr. Burns:

Pursuant to our conversation with Daniel Fogarty regarding the issue of the Coastal Conservation League and their interest in our pending sale of the Keystone Tract, we are hereby granting you an extension of the due diligence period to 5:00 p.m. Monday, June 4, 2007. The \$500,000 earnest money shall remain refundable until that time.

We trust this will be an adequate amount of time for you to deal with this issue to your satisfaction. Please let us know of anything we may do to assist you in this matter.

Regards,



John R. Rogers

North Pleasant, LLC
Vintage Land, LLC

cc: Paul Smith, Esq.
Robert Pittenger
Daniel Fogarty
James M. Reynolds, III
James D. Reynolds
Pete Bailey
Sid Boone, Esq.
Chuck Reynolds, Esq.
Josh Hulen

Paul Smith

From: Robert Pittenger
Sent: Friday, May 25, 2007 2:28 PM
To: Daniel Fogarty
Subject: RE: Neil Robinson

tell neil robinson we will terminate the contract following the discussion with Dan Davis who said that there is a significant number of conservation easements between the river and our property that would preclude cost effective sewer lines and also that the maximum density that he saw from the tract was one lot/fifteen acres...

From: Daniel Fogarty
Sent: Fri 5/25/2007 1:46 PM
To: Robert Pittenger
Subject: RE: Neil Robinson

I will start looking hard out that way... the sword tract is on 176 so I think we can get them back on the hook for that tract. Also I am sending the termination letter and will get the money back from Chicago Title....
And then I will be getting Really drunk tonight.....

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0065 | F 704.365.0910 C 704.763.3911
df@pittengercompany.com | www.pittengercompany.com

-----Original Message-----

From: Robert Pittenger
Sent: Friday, May 25, 2007 1:40 PM
To: Daniel Fogarty
Subject: Re: Neil Robinson

Its over. Too many conservation easements between us and the river cost prohibitive to run sewer look for land out 176

-----Original Message-----

From: Daniel Fogarty
To: Robert Pittenger
Sent: Fri May 25 11:17:51 2007
Subject: Neil Robinson

I have talked with Neil this morning and we went over everything he will need and I have complied all the info he asked for and I am FedExing it to him.

Daniel Z. Fogarty

Robert Pittenger Company | Real Estate Investments

4521 Sharon Road, Suite 370 | Charlotte, NC 28211

T 704.365.0065 | F 704.365.0910 C 704.763.3911

df@pittengercompany.com <<mailto:df@pittengercompany.com>> | www.pittengercompany.com
<<http://www.pittengercompany.com>>

Paul Smith

From: Robert Pittenger
Sent: Friday, May 25, 2007 2:52 PM
To: Daniel Fogarty
Subject: RE:

good

From: Daniel Fogarty
Sent: Fri 5/25/2007 2:29 PM
To: Robert Pittenger
Subject:

Talked to Paul, I am trying to get someone from the sellers' side to call Chicago title and have them release the money.

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0065 | F 704.365.0910 C 704.763.3911
df@pittengercompany.com | www.pittengercompany.com

Paul Smith

From: Daniel Fogarty
Sent: Friday, May 25, 2007 3:01 PM
To: Robert Pittenger
Subject: Re:

I have talked to him and him know

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Robert Pittenger
To: Daniel Fogarty
Sent: Fri May 25 14:58:29 2007
Subject: RE:

guess you need to inform the atty Neil...

From: Daniel Fogarty
Sent: Fri 5/25/2007 2:29 PM
To: Robert Pittenger
Subject:

Talked to Paul, I am trying to get someone from the sellers' side to call Chicago title and have them release the money..

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211 T 704.365.0065 | F 704.365.0910 C
704.763.3911 df@pittengercompany.com | www.pittengercompany.com

Paul Smith

From: Josh Hulen [jhulen@vdgllc.com]
Sent: Tuesday, May 29, 2007 9:17 AM
To: Daniel Fogarty
Subject: RE: deal

No. Try to resend it.

JNH

-----Original Message-----

From: Daniel Fogarty [mailto:df@pittengercompany.com]
Sent: Tuesday, May 29, 2007 8:45 AM
To: Josh Hulen
Subject: RE: deal

Josh did you get the wave file that I sent you of the voicemail.

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211 T 704.365.0065 | F 704.365.0910 C
704.763.3911 df@pittengercompany.com | www.pittengercompany.com -----Original Message-----
From: Josh Hulen [mailto:jhulen@vdgllc.com]
Sent: Friday, May 25, 2007 2:42 PM
To: Daniel Fogarty
Subject: deal

Sorry about the deal. We still need to get a copy of that voicemail from you guys.

JNH

Paul Smith

From: Josh Hulen [jhulen@vdgllc.com]
Sent: Tuesday, May 29, 2007 4:39 PM
To: scott.mansfield@ctt.com; Daniel Fogarty; Paul J. Smith; Boone, Sid
Cc: bobrogers1@bellsouth.net; jreynolds@selandco.com; petebailey2000@comcast.net; tboulware@vdgllc.com
Subject: FW: Chicago Title

Scott-

Please accept this email from Jamie as the Seller's acknowledgment for the release of the earnest money regarding the Berkeley County project.

Thank you,

Josh Hulen

Josh,

Please notify all relevant parties that we, the seller, acknowledge that the buyer is entitled to the full refund of the deposit and furthermore; the seller agrees to release said deposit to the buyer.

Thanks

Jamie D. Reynolds

CHICAGO TITLE INSURANCE COMPANY

200 SOUTH TRYON STREET, SUITE 800, CHARLOTTE, NC 28202 (704) 375-0700
TOLL FREE (800) 532-3643 FAX (704) 945-0637 TOLL FREE FAX (800) 279-2842



May 30, 2007

VIA HAND-DELIVERY

Daniel Z. Fogerty
Robert Pittenger Company
4521 Sharon Road, Suite 370
Charlotte, North Carolina 28211

**Re: Chicago Title Insurance Company Escrow File #: C-3457
Contract for Purchase of Property between Vanguard Properties of the
Carolinas, LLC ("Buyer") and North Pleasant, LLC ("Seller")**

Dear Daniel:

Per the Termination of Contract, I hereby enclose our escrow account check number 16543 in the amount of \$500,000.00, payable to Robert Pittenger Company, representing the earnest money funds we were holding in connection with the above-referenced Contract.

Should you have any questions or need further information, please feel free to call me.

Thank you,

Scott Mansfield
M. Scott Mansfield
Underwriting Counsel

Enclosure

cc: James D. Reynolds, North Pleasant, LLC (via facsimile to 404-995-4416)
Charles E. Reynolds, Santen & Hughes (via facsimile to 513-852-5969)
Christopher Hannum, Culp Elliot & Carpenter (via facsimile to 704-551-5700)
File

Paul Smith

From: Josh Hulen [jhulen@vdgllc.com]
Sent: Thursday, March 15, 2007 3:49 PM
To: Daniel Fogarty
Subject: RE:

I am assuming this address is for information that will be delivered on Saturday. Anything else we send will be sent to your office next week? Is that correct?

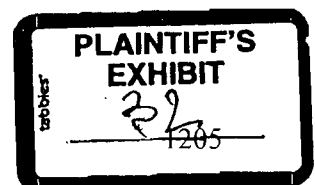
From: Daniel Fogarty [mailto:df@pittengercompany.com]
Sent: Thursday, March 15, 2007 3:46 PM
To: Josh Hulen
Subject:

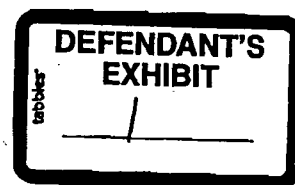
Josh, if you could please provide all due diligence items including but not limited to the following:

- Phase 1
- Endangered species
- Preliminary wetlands map
- Archeology study
- Alta Topo
- Soil studies
- Any site planning info
- Traffic studies
- Easement/ Right of way information
- Cultural Resources
- Complete Appraisal
- Timber Stand Maps/ Timber Vol.
- All title Documents/ Title Insurance

Please FedEx to:
Daniel Fogarty
11847 Ridgeway Park Drive
Charlotte, NC 28277

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0065 | F 704.365.0910 C 704.763.3911
df@pittengercompany.com | www.pittengercompany.com





Nancy Jane Murphy - Revised Keystone DA

From: "Bullwinkel, George J. III" <GBullwinkel@nexsenpruet.com>
To: Hamilton Davis <HamiltonD@scccl.org>
Date: 10/8/2007 11:59 AM
Subject: Revised Keystone DA
CC: "Robinson, Neil C." <NRobinson@nexsenpruet.com>
Attachments: WS_BinaryComparison_#370577v3_NPCHAR1_ - Keystone DevelopmentAgreemen-
#370577v4_NPCHAR1_ - Keystone.DOC

Hamilton,

Please find the revised DA attached per our conversation. Let me know your thoughts.

George

George J. F. Bullwinkel, III
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
T: 843.577.9440, F: 843.720.1777
gbullwinkel@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET



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SCCCL 0191

1206

**KEYSTONE TRACT
DEVELOPMENT AGREEMENT
BY AND BETWEEN**

**NORTH PLEASANT, LLC,
VINTAGE LAND, LLC
AND
BERKELEY COUNTY, SOUTH CAROLINA**

**Prepared by:
Neil C. Robinson, Jr., Esquire
George Bullwinkel, III, Esquire
Nexsen Pruet, LLC
205 King Street
Charleston, SC 29401**

SCCCL 0192

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
NORTH PLEASANT, LLC,
VINTAGE LAND, LLC**

AND

BERKELEY COUNTY, SOUTH CAROLINA,

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SCCCL 0193

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SCCCL 0194

EXHIBITS

- Exhibit A: Legal Description
- Exhibit B: Boundary Plat
- Exhibit C: Density Schedule
- Exhibit D: Development Schedule
- Exhibit E: Berkeley County Development Standards Ordinance (Current Regulations)
- Exhibit F: Development Agreement Ordinance

SCCCL 0195

DEVELOPMENT AGREEMENT
BY AND BETWEEN
NORTH PLEASANT, LLC
VINTAGE LAND, LLC
AND
BERKELEY COUNTY, SOUTH CAROLINA,

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is entered into effective as of the ____ day of _____, 2007 (the "Effective Date"), by and between North Pleasant, LLC, an Ohio limited liability company, Vintage Land, LLC, a Georgia limited liability company (collectively the "Property Owner"), and Berkeley County, a political subdivision of the State of South Carolina (the "County"). The County and Property Owner are sometimes separately referred to in this Agreement as a "Party" or jointly referred to as the "Parties."

RECITALS

This Agreement is predicated upon the following:

- I. The Code of Laws of South Carolina (the "S.C. Code") Sections 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the "Act"), enables counties to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act.

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II. Under S.C. Code §6-31-30, the County Council has adopted County Ordinance Number 97-1-2, establishing procedures and requirements for considering and entering development agreements.

III. Pursuant to the Act, the County conducted public hearings regarding its consideration of this Agreement on September 24, 2007 and October 8, 2007, after publishing and announcing notice, in accordance with the Act and the current County Zoning Ordinance adopted August 27, 2001.

IV. The County Council adopted Ordinance Number _____ on _____, 2007, (a) determining that this Agreement is consistent with the County Comprehensive Plan, the Act, and the Current Regulations of the County, and (b) approving this Agreement. A copy of the Ordinance is attached hereto as Exhibit F.

NOW THEREFORE, in consideration of the premises of this Agreement and the mutual benefits to the parties, the parties agree as follows:

1. The Property. The property subject to this Agreement currently consists of approximately four thousand one hundred sixty-three and 13/100 (4,163.13) acres, of which approximately two thousand seven hundred sixteen and 63/100 (2,716.63) acres are highland. A legal description of the Property is set forth in Exhibit A, and the boundary lines of the property are shown on the plat contained in Exhibit B.

2. Definitions. In this Agreement, unless the word or phrase is non-capitalized:

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(a) "Agreement" means this Development Agreement, including the recitals and exhibits attached hereto.

(b) "Building Development Standards" mean minimum standards for the area, width, building coverage, building setback and yard requirements for Lots or Development Parcels.

(c) "Comprehensive Plan" means The Berkeley County Comprehensive Plan, Ordinance No. 99-4-18, as amended with Ordinance No. 04-08-48 and Ordinance No. 05-06-39, and adopted pursuant to S.C. Code Section 6-7-510, et seq., 5-23-490, et seq., 6-29-310, et seq., or 4-27-600 and the official map adopted pursuant to S.C. Code Section 6-7-1210 et seq.

(d) "County" means Berkeley County, South Carolina.

(e) "Current Regulations" mean the Comprehensive Plan; Berkeley County Zoning and Land Development Standards Ordinance, Ordinance Number 01-8-35, adopted August 27, 2001, as amended by Ordinance Numbers 02-02-33, 02-12-58, 04-11-68, 05-03-08, and 05-08-58; The Land Development and Subdivision Regulations Ordinance as set forth in Ordinance number 99-4-20, as amended by Ordinance 04-11-67, adopted April 26, 1999; The Storm Water Drainage Ordinance, Ordinance Number 89-4-9; The Berkeley County Engineering, Construction, and Development Standards Manual; the Vested Rights Ordinance; Ordinance Number 05-06-38; The Standards of Potable Water Sanitary Sewer Connection to Authority System; and the Stormwater Management Ordinance; Ordinance Number 07-07-44; adopted July 23, 2007.

(f) "Density" means the number of Dwelling Units (hereinafter defined) per acre. Parcel Density equals the number of Dwelling Units divided by the gross acreage of a specific parcel.

SCCCL 0198

(g) "Development" means the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels, and is intended by the Parties to include all uses of, activities upon or changes to the Real Property as are authorized by the Agreement. This definition does not include commercial timbering and silviculture, which may continue on Undeveloped Land (hereinafter defined) during the Term of this Agreement.

"Development," as designed in a land or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "Development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(h) "Development Parcel" means any tract of land on which Development may occur, including platted Lots and unplatted parcels, but excluding street rights-of-way.

(i) "Development Permit" includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy and any other official action of Local Government having the effect of permitting the Development or use of property.

(j) "Dwelling Unit" means one or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with cooking, sleeping and sanitary facilities provided within the dwelling unit.

(k) "Facilities" means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water. Except as

may be specifically provided for in this Agreement, the Property Owner is specifically exempted from any County requirement for the provision of facilities relating to public education, public health systems and facilities, libraries, public housing, jails and other detention sites, courts, police and trash or garbage disposal sites. Such exemptions shall not, however, exempt Property Owner from payment of applicable user fees for any such facilities.

(l) "Fresh Water Wetlands" mean those wetlands which in their natural state are certified as jurisdictional by the U.S. Army Corps of Engineers ("Corps").

(m) "Green Space" means areas dedicated to parks, buffers, or naturally occurring or developed wetlands.

(n) "Land Development Regulations" means ordinances and regulations enacted by the County or the State of South Carolina for the regulation of any aspect of Development and includes Berkeley County zoning, subdivision, building construction, occupancy or sign regulations or any other regulations controlling the Development or use of property.

(o) "Law" means all ordinances, resolutions, regulations, comprehensive plans, Land Development Regulations, policies and rules, custom and usage (formal and informal) adopted by a Local Government affecting the Development of property and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications.

(p) "Local Government" means any county, municipality, special district, or governmental entity of the State, county, municipality, or region established pursuant to law which exercises regulatory authority over, and grants Development Permits for land Development or which provides public facilities.

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(q) "Lot" means Development Parcel identified in a Subdivision Plat recorded in the Berkeley County Register of Deeds Office.

(r) "Open Space" means areas dedicated to roadways and Green Space.

(s) "Parties" means the Property Owner and County.

(t) "Parcel" means any of those tracts of Real Property that are identified on the Boundary Plat, attached as Exhibit B, as same may be specifically identified by the filing of a subdivision application.

(u) "Project" is the Development that will occur within and upon the Property described in Exhibit A and Exhibit B.

(v) "Property Owner" means North Pleasant, LLC, an Ohio limited liability company, and Vintage Land, LLC a Georgia limited liability company, together with all subsidiaries thereof and other entities, which have a legal and/or equitable interest, on the date of execution hereof in any of the Real Property as described in Section 5 and includes North Pleasant, LLC and Vintage Land, LLC's successors in interest or successors in title and/or assigns by virtue of assignment or other instrument pursuant to Section 27 hereof.

(w) "Property Owner's Association" means the Property Owner's Association that shall be established prior to the sale of any Real Property, pursuant to Paragraph 11(b) hereof.

(x) "Real Property" is the real property referred to in Section 5 and includes any improvements or structures customarily regarded as part of real property.

(y) "Subdivision Plat" means a recorded graphic description of property prepared and approved in compliance with the Current Regulations, as modified in this Agreement.

SCCCL 0201

(z) "Undeveloped Lands" in existence on the date of execution of this Agreement is the Real Property indicated on Exhibits A. Undeveloped Lands shall, during the term of this Agreement, include Real Property that either (i) has not received final plat approval or (ii) has received preliminary, conditional or final plat approval but consists of five (5) or more contiguous acres of Real Property, depicted as Lots or parcels thereon, and has not been sold. Properties designated by the Owner as "Undeveloped Lands" shall be taxed as "agricultural" by the County and may only be used for agricultural purposes, including forestry, while taxed as agricultural.

(aa) "Vested Units" means the new single family Lots which may be approved for all Undeveloped Lands.

3. Parties. Parties to this Agreement are the Property Owner and the County.

4. Relationship of the Parties. This Agreement creates a contractual relationship between the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Property Owner constitutes "state action" for any purposes.

SCCCL 0202

5. Legal Description of the Real Property. The Real Property which is the subject of this Agreement is described as follows:

(a) A legal description of the Real Property is set forth in Exhibit A.

(b) A boundary plat of the Real Property is set forth in Exhibit B.

The Real Property currently consists of approximately 2,716.63 acres of highland and approximately 1,446.5 acres of wetlands, with a total gross acreage of approximately four thousand one hundred sixty-three and 13/100 (4,163.13) acres.

The Property Owner may notify the County from time to time of property proposed to be added to the legal description of Real Property by the filing of a legal description of subsequently acquired properties with the Clerk of Council and the Planning and Zoning Administrator; provided, however, that no other property shall be added to the Agreement unless: (1) the Development Plan is duly amended; and (2) this Agreement is duly amended to add the legal description of the subsequently acquired properties to the legal description of the Real Property, pursuant to S.C. Code Section 6-31-10 et seq.

6. Intent of the Parties. The County and the Property Owner agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure, to each of them and to their successors in interest and, in the case of the Property Owner, its successors in title and/or assigns. The County and the Property Owner are entering into this Agreement in order to secure benefits and burdens referenced in the Code of Laws of South Carolina, Sections 6-31-10 et seq.

SCCCL 0203

7. Consistency with the County's Comprehensive Plan and Land Development Regulations.

This Agreement is consistent with the County's Comprehensive Plan and Current Regulations.

Whenever express or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Current Regulations, the standards set forth in the Current Regulations and the standards set forth in this Agreement shall, to the extent possible, be considered in *pari material* to give effect to both the Current Regulations and this Agreement; provided, however, that in the event of a conflict, and subject to the provisions of Section 6-31-80, the standards set forth in this Agreement shall govern. In the event of a dispute between the parties to this Agreement as to whether a provision in the Comprehensive Plan or Current Regulations is inconsistent with express or implied substantive provisions of this Agreement, the parties must first submit such disputed interpretation to County Council and must wait fourteen (14) days after such submittal before invoking the remedies afforded them under this Agreement.

8. Legislative Act. Any change in the standards established by this Agreement or to Laws pertaining to the same shall require the approval of County Council, subject to compliance with applicable statutory procedures and consistent with Section 9(a). This Agreement constitutes a legislative act of County Council. County Council adopted this Agreement only after following procedures required by S.C. Code Section 6-31-10, et seq. This Agreement shall not be construed to create a debt of the County as referenced in Section 6-31-145.

SCCCL 0204

9. Applicable Land Use Regulations.

(a) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by Section 6-31-10, et seq., the Laws applicable to Development of the Real Property, subject to this Agreement, are those in force at the time of execution of this Agreement, defined as the Current Regulations, attached hereto as Exhibit E. The County shall not apply subsequently adopted Laws and Land Development Regulations to the Real Property or the Project unless the County has held a public hearing and has determined: (1) the proposed, subsequent Laws or Land Development Regulations are not in conflict with the Laws or Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement; (2) the proposed, subsequent Laws or Land Development Regulations are essential to the public health, safety, or welfare and the proposed, subsequent Laws or Land Development Regulations expressly state that they apply to a development that is subject to a development agreement; (3) the proposed, subsequent Laws or Land Development Regulations are specifically anticipated and provided for in this Agreement; (4) the County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement, which changes, if not addressed by the County, would pose a serious threat to the public health, safety, or welfare; or (5) this Agreement is based on substantially and materially inaccurate information supplied by the Property Owner. Nothing herein shall preclude Property Owner from agreeing to abide by such new Laws, regulations, or ordinances subsequently passed by the County which it, in its sole discretion, deems appropriate; and in such case the Laws, regulations; or ordinances, so agreed to by Property Owner shall become part of the Current Regulations.

SCCCL 0205

(b) Vested Rights. Subject to the provisions of subparagraph (a) above, all rights and prerogatives accorded the Property Owner by this Agreement shall immediately constitute vested rights for the Development of the Real Property.

Subparagraph 9(a) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-140 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

10. Building Codes and Laws Other Than Land Use Regulations. The Property Owner, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing and gas codes subsequently adopted by the County or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, and gas codes subsequently adopted by the County or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the County to exercise governmental powers and pass laws not applicable to Development of the Real Property including, but not limited to, the power of eminent domain and the power to levy and collect taxes; provided, however, that Laws applicable to the Development of the Real Property shall be subject to Section 9(a).

SCCCL 0206

11. Local Development Permits and Other Permits Needed. The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project:

Zoning permits, plat approvals (preliminary, conditional or final), roads and drainage construction plan approvals, building permits, certificates of occupancy, potable water and septic field permits, and utility construction and operating permits.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Property Owner of the necessity of complying with the law governing permit requirements, conditions, terms, or restrictions.

A. LAND USES

(a) Permitted Uses. With the exception of mobile homes, all permitted, accessory, and conditional uses set forth in Flex I Agricultural District in the Current Regulations, attached hereto as Exhibit E, are allowed on the Real Property.

(b) Density. Up to a maximum of eight hundred thirty-three (833) Dwelling Units may be constructed on the Real Property. The respective Parcel Density shall be as set forth in Exhibit C, attached hereto. The allocation of Parcel Density as specified above allows for the clustering of Development on any respective Parcel within the Real Property; provided, that each Dwelling Unit shall be counted against the total allowed Density on the Real Property and in no case shall either this or the respective Parcel Density be exceeded. Notwithstanding the above, if two or more Parcels: (1) are contiguous with Charity Church Road and/or Highway 41 and (2) are under the common ownership of an individual or entity; then the common boundary line(s) may be abandoned and the densities allocated to those respective Parcels aggregated for use within the newly formed larger Tract; provided: (1) that the County planning staff approves the

development plan for the larger tract formed by the abandonment of the property line(s).—~~Such approval shall not be unreasonably withheld;~~ and (2) that in no case shall the Parcel Density for Tract 1-12 and Tract A exceed 39 Dwelling Units and 42 Dwelling Units, respectively.

(c) Building Development Standards. The criteria as set forth in Flex I Agricultural District in the Current Regulations, attached hereto as Exhibit E, shall apply with respect to Lot width, depth, height, coverage, setback and yard requirements, respectively.

(d) Lot Area. The minimum Lot size for Dwelling Units shall be one and one-half (1.5) acres on the Real Property.

(e) Buffers, Fencing, and Signage. The criteria as set forth in Flex I Agricultural District in the Current Regulations, attached hereto as Exhibit E, shall apply with respect to buffers, fencing, and signage. Notwithstanding the above, on Tracts 1-12, 1-4B, 1-4A and 1-3, as further described on Exhibit B attached hereto, there shall be a minimum buffer of two hundred feet (200') along the Real Property therein that is contiguous with the Francis Marion National Forest. Additionally, there shall be a minimum buffer of one hundred feet (100') on either side of the centerline of the headwaters of the French Quarter Creek that is located on the Real Property.

(f) Security Gates. The Property Owner may establish one or more residential communities within the Project as a limited access community, with ingress/egress controlled by manned or unmanned security checkpoints. Responsibility for operation and maintenance of such security checkpoints may be transferred by the Property Owner to the Property Owner's Association. While roads behind security gates will remain private, Property Owner acknowledges jurisdiction of the sheriff, local fire department, and the need for access by the public utilities that serve the property and shall not interfere or in any way hinder either public

safety or public utility activities on the Real Property regardless of whether such may be a restricted community.

B. PROPERTY OWNER'S ASSOCIATION

Prior to the sale of any Real Property, a Master Property Owner's Association (MPOA) will be established. Membership in the MPOA will be mandatory for any property owner. The MPOA will be funded by dues to be established in its recorded restricted covenants. The MPOA's responsibility will be to manage the affairs of the MPOA including the enforcement of recorded documents and the maintenance of common areas. There may be individual property owner associations (POA) established for each development tract which will incorporate its own common areas and be managed by each POA and governed by the MPOA. The POA may contract with the MPOA for maintenance and/or management services. The MPOA's documents may also establish an Architectural Review Board (ARB) to review and approve all structures and any additions or improvements such as fences, ponds, garages, barns, etc. This review will be for aesthetic purposes (e.g.: height, architectural detail, materials, colors) and does not replace the building permit review and approval by the County. The County agrees that it will not establish an architectural review body during the term of this Agreement which replaces or duplicates the jurisdiction of the ARB as reserved under this paragraph. Further, the County will maintain the roadways and drainage systems and any other property that is properly dedicated to and accepted by the County.

SCCCL 0209

C. OPEN SPACE/GREEN SPACE

The Property Owner may convey portions of the Open Space to: (1) the County; or (2) one or more qualified organizations under 26 U.S.C. Section 501(c)(3) in a form required by state or federal law and may subsequently transfer all or portions of such Open Space to a POA. The Property Owner will at all times reserve to itself, its successors and assigns easements for access and infrastructure purposes (e.g.: roads, walkways, paths, utility easements and rights of way) necessary or desirable for the Development.

The County agrees that the future Facilities and Open Space specified in this Agreement shall satisfy all current and future obligations of the Property Owner to the County relating to the same for monetary exactions and/or the provision or dedication of parks, parklands, community recreational facilities, Open Spaces, and recreational areas within the Project.

D. SUBDIVISION PLAN REVIEW AND APPROVAL

Preliminary Plans and Final Plats for each phase of the Development shall be submitted for review and approved at staff level by the Berkeley County Administrative Officer pursuant to the provisions of Article VI of Ordinance 99-4-20, adopted April 26, 1999, as amended by Ordinance Numbers 04-11-67 and 07-03-14. However, in instances where submitted plans can show where certain physical constraints impose a hardship or show where implementation of alternative method(s) will meet or exceed the intentions of the applicable County Ordinance, the County's Board of Zoning Appeals may grant such variances.

SCCCL 0210

12. Facilities and Services. Although the nature of this long-term project prevents the Property Owner from providing exact completion dates, the general phases of Construction and Development are set forth in Section 14 and described in Exhibit D attached hereto and incorporated herein by reference. The Property Owner certifies that the services and Facilities will be in place (or if not fully in place, the cost of construction fully bonded or letter of credit posted pursuant to the Current Regulations) at the times provided herein, and as to roads at the times Lots or Dwelling Units in subdivided Real Property are sold to the public. Subject to compliance with applicable Laws, all provisions of this Agreement, and prior approval of construction plans by the County or other applicable governmental entity, the County hereby authorizes the Property Owner, on its own or through its affiliated companies, to install the Facilities. Notwithstanding any provision herein to the contrary, the Property Owner hereby assures the County that adequate Facilities shall be available concurrent with the phases of Development.

(a) Rights-of-Way/Easement. The Property Owner shall at its expense develop and provide roads and other related infrastructure within the Project and pursuant to and at such time required by the development plans for the Project and the Current Regulations. Such Facilities may be transferred by the Property Owner to the County, subject to proper dedication and acceptance by County, or a POA, as required by recorded Covenants.

(b) Water and Sewer. The Property Owner acknowledges and agrees that it shall not seek and that the Berkeley County Water and Sanitation Authority ("BCWSA") shall not provide sewer services for the Term (hereinafter defined) of this Agreement. Furthermore, the Lots may be served by a public or private water system, or a combination thereof. The commitments of

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this section are subject to the approval of the South Carolina Department of Health and Environmental Control.

(c) Fire and EMS Services. Property Owner agrees and acknowledges to pay, or to cause to be paid by a third party, the County, for the Term of this Agreement, a fire and EMS fee ("Fee") in the amount of three hundred dollars (\$300) per Dwelling Unit constructed on the Real Property. The Fee shall be paid by the Property Owner or third party at the time of issuance of a building permit. Further, the County agrees that the Fee shall only be used for capital costs and improvements (i.e. equipment, construction/remodeling of fire stations, etc...) in the fire district that services the Real Property. The Fee shall in no event be place in the general operating budget of the fire department.

(d) Acceptance of Facilities. The Facilities described in this Paragraph 12(a) will be accepted by the County, pursuant to the applicable provisions of the Current Regulations, upon tender by the Property Owner, provided said Facilities are designed for construction in accordance with the specifications approved by the County, and provided further that the Facilities, as built, are in good condition and not subject to any monetary lien.

13. Traffic Considerations.

(a) Planning. Long-term planning is essential to assuring safe and convenient ingress and egress for the Project. It is equally essential that this planning be done in a manner that considers existing and future traffic impacts – both within and outside of the Project site. The Property Owner agrees to work with all appropriate planning agencies to assure said planning occurs.

SCCCL 0212

(b) Future Road Improvements. The Property Owner agrees, at its sole expense, to construct roads within the Project to provide ingress and egress to the Development from existing public roadways, including but not limited to Highway 41. Furthermore, Property Owner agrees, at its sole expense, to cause or be caused by third parties the paving of that portion of Charity Church Road which is located between the end of the pavement on the eastern boundary of the Real Property and the western boundary line of the Real Property. The County shall issue final plat approvals for those Parcels contiguous with Charity Church Road upon: (1) the satisfaction of the requirements under the Current Regulations; and (2) the earlier of (i) the completion of the paving of that portion of Charity Church Road located within the boundaries of the Real Property or (ii) the cost of said paving being fully bonded or letter of credit posted pursuant to the Current Regulations.

(c) Acceptance of Facilities. The road improvements, described in paragraph (b) above shall be accepted by the County, pursuant to the applicable provisions of the Current Regulations, upon proper dedication by the Property Owner provided said roadways are built in accordance with specifications approved by the County, applicable regulations of the County, and other applicable governmental entities, and provided further that the roadways are in good condition and not subject to any monetary lien.

14. Schedule for Project Development.

(a) Commencement Date. The Project will be deemed to commence Development upon the execution and adoption of this Agreement.

SCCCL 0213

(b) Interim Completion Date. The Property Owner projects that during the years after the execution and adoption of this Agreement, the following percentages of the Undeveloped Lands within the Real Property will be developed:

<u>YEAR</u>	<u>% COMPLETE</u>
5	10
10	20
15	35
20	50
25	70
30	75
35	80
40	95
50	100

(c) Completion Date. The Property Owner projects that by the year 2058 the Project should be substantially completed (i.e., all recreational amenities erected, built, and essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses).

15. Term of the Agreement. This Agreement shall expire on December 31, 2058 (the "Termination Date"); provided, however, that the terms of this Agreement shall automatically renew for two (2) successive ten (10) year periods absent a material breach of any terms of the Agreement, pursuant to S.C. Code Section 6-31-40, by the Property Owner during the initial or renewal terms as applicable.

SCCCL 0214

16. Amending or Canceling the Agreement. Subject to the provisions of Section 6-31-80, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties in writing or by their successors in interest.

Any amendment to this Agreement shall comply with the provisions of Section 6-31-10, et seq. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld. A major modification of this Agreement shall occur only after public notice and a public hearing by the County.

17. Modifying or Suspending the Agreement. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

18. Periodic Review. The County Supervisor or their designee of the County shall review the Project and this Agreement at least once every twelve (12) months, at which time the Property Owner shall demonstrate good-faith compliance with the terms of this Agreement.

If, as a result of its periodic review or at any other time, the County finds and determines that the Property Owner has committed a material breach of the terms or conditions of this Agreement, the County shall serve notice in writing upon the Property Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and

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determination, and providing the Property Owner a reasonable time in which to cure the material breach.

If the Property Owner fails to cure any material breach within the time given, then the County unilaterally may terminate or modify this Agreement; provided, that the County has first given the Property Owner the opportunity: (1) to rebut the County's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the County with respect to the findings and determinations.

19. Severability. Subject to the provisions of Section 6-31-150 if any word, phrase, sentence, paragraph or provision of this Agreement shall be finally adjudicated to be invalid, void, or illegal, it shall be deleted and in no way affect, impair, or invalidate any other provision hereof.

20. Annexation of Real Property. Subject to the provisions of S.C. Code Section 6-31-10, the Agreement shall remain in effect, if the Real Property is incorporated or annexed into a municipality, for the earlier of: (1) the duration of the Agreement; or (2) eight (8) years from the effective date of the incorporation or annexation of the Real Property. The Property Owner, the County and the municipality may agree that this Agreement remains valid for more than eight (8) years; provided, that the period may not exceed fifteen (15) years from the effective date of the incorporation or annexation.

21. Merger. This Agreement, coupled with its Exhibits which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions. In return for

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the respective rights, benefits and burdens undertaken by the Parties, the Property Owner shall be, and is hereby, relieved of obligations imposed by future land development laws, ordinances and regulations, except those which may be specifically provided for herein.

The parties hereto agree to cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under the Agreement.

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action.

22. Conflicts of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

23. Remedies. Each Party recognizes that the other Party would suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law exists to enforce this Agreement. Consequently, the Parties agree that any nonbreaching Party who seeks enforcement of the Agreement is entitled to the remedies of injunction and specific performance but not to any other legal or equitable remedies including, but not limited to, damages; provided, however, the Property Owner shall not forfeit its right to just compensation for any violation by the County of Property Owner's Fifth Amendment rights. The County will look solely to the Property Owner as to any rights it may have against the Property Owner under this Agreement, and hereby waives any right to assert claims against limited partners or members of the Property

SCCCL 0217

Owner, and further agrees that no limited partner, member or agent of the Property Owner has any personal liability under this Agreement. Likewise, Property Owner agrees to look solely to the County's assets as to any rights it may have against the County under this Agreement, and hereby waives any right to assert claims for personal liability against individuals acting on behalf of the County, its County Council members, agencies, boards, or commissions.

24. Recording. Within fourteen (14) days after execution of this Agreement, the Property Owner shall record the agreement with County Register of Deeds. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the Parties to this Agreement.

25. Third Parties. Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities who are not Parties or successors and assigns to this Agreement.

26. County Approval of Agreement. The County Council has approved the Project under the process set forth in Section 6-31-50 of the Act on the terms and conditions set forth in this Development Agreement.

27. Successors and Assigns.

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Property Owner in the ownership or Development of any portion of the Real Property or the

Project. A purchaser, lessee or other successor in interest of any portion of the Real Property shall be solely responsible for performance of Property Owner's obligations hereunder as to the portion or portions of the Real Property so transferred. Assignees of development tracts shall be required to execute a written acknowledgment accepting and agreeing to the Property Owner's obligations in this Agreement, said document to be in recordable form and provided to the County at the time of the recording of any deed transferring a development tract. Following delivery of such documents Property Owner shall be released of any further liability or obligation with respect to said tract.

This paragraph shall not be construed to prevent Property Owner from obtaining indemnification of liability to the County from third parties. Further, Property Owner shall not be required to notify the County or obtain the County's consent with regard to the sale of Lots in single family residential subdivisions or Lots in commercial areas which have been platted and approved in accordance with the terms of this Agreement. Property Owner shall be released from obligations as to sale of individual Lots in single-family subdivisions:

This Agreement shall also be binding on the County and all future County Councils for the duration of this Agreement, even if the County Council members change.

(b) Transfer of Project. Property Owner shall be entitled to transfer any portion or all of the Real Property to a purchaser(s), subject to the following exceptions:

(i) Notice of Property Transfer. If the Property Owner intends to transfer all or a portion of the Real Property to a purchaser who, by virtue of assignment or other instrument, becomes the "Property Owner" under and within the meaning of this

SCCCL 0219

Agreement, Property Owner shall notify the County by thirty (30) days prior written notice and provide it a copy of the assignment of such status as the "Property Owner".

(ii) Transfer of Facility and Service Obligations. If the Property Owner transfers any portion of the Real Property on which the Property Owner is required to provide and/or construct certain Facilities or provide certain services, distinct from those provided throughout the Project and which are site-specific to the portion of the Real Property conveyed, then the Property Owner shall be required to obtain a written agreement from purchaser expressly assuming all such separate responsibilities and obligations with regard to the parcel conveyed and the Property Owner shall provide a copy of such agreement to the County.

(iii) Assignment of Development Rights. Any and all conveyances of any portion of the Real Property subject to the density unit totals and size limits set forth herein to third party developers shall, by contract and covenant running with the land, assign a precise number of Vested Units, and/or commercial square footage, (in reduction of the minimum Vested Units, and/or vested commercial square footage provided for herein.)

(iv) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Section shall not apply: (i) to any mortgage lender either as the result of foreclosure of any mortgage secured by any portion of the Real Property or any other transfer in lieu of foreclosure; (ii) to any third party purchaser at such a foreclosure; or (iii) to any third party purchaser of such mortgage lender's interest subsequent to the mortgage lender's acquiring ownership of

SCCCL 0220

any portion of the Real Property as set forth above. Furthermore, nothing contained herein shall prevent, hinder or delay any transfer or any portion of the Real Property to any such mortgage lender or subsequent purchaser. Except as set forth herein, any such mortgage lender or subsequent purchaser shall be bound by and shall receive the benefits from this Agreement as the successor in title to the Property Owner.

(c) Release of Property Owner. In the event of conveyance of all or a portion of the Real Property and compliance with the conditions set forth therein, the Property Owner shall be released from any further obligations with respect to this Agreement as to the portion of Real Property so transferred, and the transferee shall be substituted as the Property Owner under the Agreement as to the portion of the Real Property so transferred.

(d) Estoppel Certificate. Upon request in writing from an assignee or the Property Owner to the County sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the County will provide a certificate (the "Certificate") in recordable form that solely with respond to the portion of the Real Property described in the request, there are no violations or breaches of this Agreement, except as otherwise described in the Certificate. The County will respond to such a request within thirty (30) days of the receipt of the request, and may employ such professional consultants, municipal, county and state agencies and staff as may be necessary to assure the truth and completeness of the statements in the certificate. The reasonable costs and disbursements of private consultants will be paid by the person making the request.

The Certificate issued by the County will be binding on the County in accordance with the facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof. No claim or action to enforce compliance with this Agreement may be

brought against the Property Owner or its assignees properly holding rights hereunder, alleging any violation of the terms and covenants affecting such portion of the Real Property except as otherwise described in the Certificate.

If the County does not respond to such request within thirty (30) days of the time of its receipt, the portion of the Real Property described in the request will be deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Property Owner, including a copy of the request and the notice of receipt and it shall be binding on the County as of its date. Such notice shall have the same effect as a Certificate issued by the County under this Section.

28. General Terms and Conditions.

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property as described in Exhibit A and shown on Exhibits B attached hereto. The agreements contained herein shall be deemed to run with the land. The burdens of this Agreement are binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the Parties to the Agreement.

(b) Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting the public health, safety and welfare, including but not limited to ensuring the adequacy of Facilities and compatibility between Developed and Undeveloped Lands.

(c) Mutual Releases. At the time of, and subject to (i) the expiration of any applicable appeal period with respect to the approval of this Agreement without any appeal

having been filed or (ii) the final determination of any court upholding this Agreement; whichever occurs later, and excepting the parties' respective rights and obligations under this Agreement, Property Owner, on behalf of itself and Property Owner's partners, officers, directors, employees, agents, attorneys, consultants, hereby releases the County and the County's council members, officials, employees, agents, attorneys and consultants, and the County, on behalf of itself and the County's council members, officials, employees, agents, attorneys and consultants, hereby releases Property Owner and Property Owner's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Agreement in connection with the Real Property or the application, processing or approval of the Project; provided, however, that each party shall not be released from its continuing obligation to comply with the law, including the Current Regulations.

(d) State and Federal Law. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of the development agreement, the provisions of this Agreement shall be modified or suspended as may be necessary to comply with state or federal laws or regulations. The Parties further agree that if any provision of this Agreement is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

(e) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some

future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the County Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the County has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the County by making any promise or representation contained herein. Any amendments are subject to Section 16 herein.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

(g) Attorneys Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or rehearings, the prevailing Party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified herein.

(h) Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the County:

Supervisor of Berkeley County
(P.O. Box 6122)
1003 Highway 52
Moncks Corner, SC 29461

SCCCL 0224

With copies to:

Planning/Zoning Administrator of Berkeley County
(P.O. Box 6122)
1003 Highway 52
Moncks Corner, SC 29461-6120

To the Property Owner:

Jamie Reynolds
3455 Peachtree Road NE, Suite 725
Atlanta, Georgia 30324

With Copy to:

Neil C. Robinson, Jr., Esquire
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401

(i) Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

[SEPARATE SIGNATURE PAGE ATTACHED]

SCCCL 0225

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

Witness:

BERKELEY COUNTY (County)

By: _____

Daniel W. Davis, Supervisor

Attest: _____

Barbara B. Austin, Clerk of Council

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named Berkeley County, by Daniel W. Davis, its Supervisor, and Barbara B. Austin its Clerk of Council, sign and seal the within written Development Agreement, and as the act and deed of Berkeley County deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this

_____ day of _____, 2007

Notary Public for South Carolina

My Commission Expires: _____

SCCCL 0226

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

Witness:

NORTH PLEASANT, LLC

By: _____

Its: _____

STATE OF _____)

COUNTY OF _____)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named North Pleasant, LLC, by _____, its _____, sign and seal the within written Development Agreement, and as the act and deed of North Pleasant, LLC, deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this

_____ day of _____, 2007

Notary Public for _____

My Commission Expires: _____

SCCCL 0227

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

Witness:

VINTAGE LAND, LLC

By: _____

Its: _____

STATE OF _____)

COUNTY OF _____)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named Vintage Land, LLC, by _____, its _____, sign and seal the within written Development Agreement, and as the act and deed of Vintage Land, LLC, deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this

_____ day of _____, 2007

Notary Public for _____

My Commission Expires: _____

SCCCL 0228

EXHIBITS

- Exhibit A: Legal Description
- Exhibit B: Boundary Plat
- Exhibit C: Density Schedule
- Exhibit D: Development Schedule
- Exhibit E: Berkeley County Development Standards Ordinance (Current Regulations)
- Exhibit F: Development Agreement Ordinance

SCCCL 0229

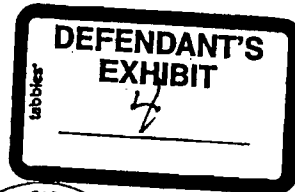
Document comparison done by Workshare Professional on Monday, October 08, 2007
11:11:10 AM

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Document 2	interwovenSite://CHARDMS/NPCHAR1/370577/4
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Style of deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	6
Deletions	5
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	11

SCCCL 0230



John E. Frampton
Director

South Carolina Department of Natural Resources

December 12, 2005

Mr. Mercer Reynolds
300 Main Street
Fifth Floor
Cincinnati, OH 45202

Dear Mr. Reynolds:

Thank you for your recent letter describing potential options for the protection of Keystone. We are very appreciative of the time and effort you have put into this negotiation and of your interest in conservation of this tract. After reviewing the provided options and meeting again with our conservation partners, we offer the following.

Unfortunately, our available funding sources cannot be used to purchase a conservation easement or development rights. In addition, the neighboring landowners remain firm in their desire to see the entire Keystone tract protected. If we accept such limited development, as you have proposed, we will lose their commitment to conservation of the neighboring properties, and therefore our incentive to pursue this project. We simply cannot ask them to give away the majority of their rights when we would be paying you to keep such a large amount of yours.

We have analyzed the development opportunity on Keystone and its corresponding value. We continue to believe that our offer of \$26 million is extremely fair. In fact, we have serious concerns than an appraised value would not support a higher offer. As you may know, there has been much publicity about an agreement between local officials to prevent water and sewer extensions and limit the density of developments near the National Forest. This would create substantially lower development opportunity for the entire Cooper River area. For these reasons, we stand committed to our offer of \$26 million and are leaving it on the table for your consideration.

We are still very interested in the conservation of Keystone and sincerely hope you will reconsider our offer. If you are not familiar with the conservation efforts being initiated by local officials, I encourage you to consider them and the effects they will have on the development scenarios you proposed. For your convenience, I am enclosing a copy of a recent article that describes this proposal.

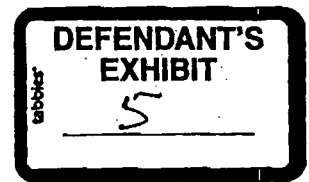
I firmly believe we can work with you and the SC Department of Revenue to identify legitimate tax incentives based on a bargain sale and our offer. Thank you again for your interest in the Cooper River conservation efforts. I look forward to meeting with you again soon.

Sincerely,

John E. Frampton
Director

Enclosure

cc: Governor Mark Sanford
Bob Royall



APPRAISAL
OF
NORTH PLEASANT & VINTAGE LAND
KEYSTONE TRACT
BEING
4,478.28 ACRES +/-
IN
BERKELEY COUNTY, SOUTH CAROLINA
AS OF
OCTOBER 17, 2005

FOR
MR. CHUCK CAMMACK
TRUST FINANCIAL
13300 OLD BLANCO ROAD, SUITE 321
SAN ANTONIO, TEXAS 78216

PREPARED BY
E. DANTZLER FRAZER
PIEDMONT APPRAISERS, INC.
LAFAYETTE, ALABAMA

COPY

NP01760

1247

PIEDMONT APPRAISERS, INC.

**Post Office Box 250
LaFayette, Alabama 36862**

Offering Certified Appraisals in Alabama, Georgia, and Mississippi

Office 334-864-9955 Fax 334-864-9389

E. Dantzler Frazer

October 21, 2005

Mr. Chuck Cammack
President
Trust Financial
13300 Old Blanco Road, Suite 321
San Antonio, Texas 78216

RE: Appraisal of the Keystone Tract being 4,478.28 acres
(+/-) of timberland property located in Berkeley Co., SC.,
PAI Job # 05-0916

Dear Mr. Cammack:

At your request I have performed an appraisal of the above referenced property in order to offer an opinion of the market value of that property. This appraisal was performed to determine the value that will serve as a basis of a loan from your financial institution.

Based on my inspection of the subject property, cursory examination of the comparable sales, and on the facts, details, information, and opinions contained in this report, it is my opinion that the market value of the subject property as of October 17, 2005, is:

**TWENTY FIVE MILLION TWO HUNDRED THOUSAND DOLLARS
(\$25,200,000)**

This appraisal report is an opinion of value in writing in order to tell the reasons why the above conclusions were made. Attention is invited to the Table of Contents, which outlines the steps in this report and identifies the supporting material. Each comparable sale is identified on a separate page in the Addenda to this report, and the maps illustrate the location of the comparable sales and the subject property.

This appraisal was developed as a "complete appraisal" in accordance with Standards Rule 1 of the Uniform Standards of Professional Appraisal Practice (USPAP). This appraisal is being reported as a "self contained appraisal report" in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

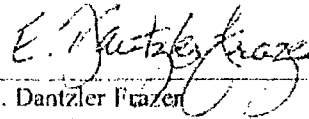
I certify that I have no present or future contemplated interest in the subject property and that the fee for the services rendered is in no way contingent to the value reported.

NP01761

1248

Assumptions and Limiting Conditions and Certification of this appraisal are included in this report on Page 6 and 49 of the following 90 pages.

Sincerely yours,



E. Dantzer Frazer
SC Certified General
Real Estate Appraiser
License # 97005166

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Region Map



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SUMMARY OF SALIENT FACTS

SUMMARY OF SALIENT FACTS

DATE OF VALUATION

October 17, 2005

PROPERTY OWNERSHIP

The subject property is currently owned by North Pleasant, LLC and Vintage Land, LLC

RIGHTS APPRAISED

Fee Simple

LOCATION

The subject property consists 4,478.28 acres (+/-) located in Berkeley County, South Carolina approximately 14 miles north of Charleston on South Carolina Highway 41, Charity Church Road, and United Drive.

PROPERTY DESCRIPTION

The subject property is currently used for timber production and recreation. The property is fully stocked in merchantable and premerchantable planted-pine and natural timber. The property has a large amount of frontage on public paved and graded roads. Electrical and telephone services are available on the road frontage. The acreage breakdown by land class is as follows:

Land Classes	Acreage
Upland Timberland	3,496.81
Bottomland Timberland	981.47
Total	4,478.28

Please refer to the "property Description" for a more detailed presentation of the characteristics of the subject property.

HIGHEST AND BEST USE

"Transition"

APPROACHES TO VALUE

Approach	Acre	Value
Sales Comparison	4,478.28	\$25,200,000

RECONCILIATION OF VALUE

It is my belief the Sales Comparison Approach to Value is the best indicator of the subject property value; therefore, based on my inspection of the subject property, cursory examination of the comparable sales, and on the facts, details, information, and opinions contained in this report, it is my opinion that the market value of the subject property as of October 17, 2005, is:

TWENTY FIVE MILLION TWO HUNDRED THOUSAND DOLLARS
(\$25,200,000)

ASSUMPTIONS AND LIMITING CONDITIONS

Title to the property is assumed to be good, free of any defects, marketable, unencumbered and in fee simple.

Sketches and/or maps in this report are included only for illustration purposes in order to assist the reader. No survey of the property has been made and no responsibility is assumed in connection with such matters.

No responsibility is assumed for matters legal in character nor is any opinion rendered as to title.

Whereas the information in this report is considered to be reliable to the best knowledge of the appraiser, it is not guaranteed.

Possession of this report, or any copy thereof, does not carry with it the right of publication, reproduction, and/or the right to use in court nor may it be used by anyone other than the addressee for any purpose whatsoever without the expressed written consent of the appraiser.

The appraiser, by reason of this appraisal report, is not required to give testimony or attendance in court with reference to the property described herein, unless prior written consent and arrangements have been made.

Neither all nor any part of the contents of this report or copy thereof, shall be conveyed to the public through advertising, public relations, news, sales, or other media, without the written consent and approval of the author, particularly as to valuation conclusions, the identity of the appraiser, or the firm with which he is connected.

Subsurface rights (minerals and oil) were not considered in making this appraisal.

The comparable sales data relied upon in this appraisal are believed to be from reliable sources; however, it was not possible to inspect the comparables completely, and it was necessary to rely on information furnished by others as to said data, therefore, the value conclusions are subject to the correctness and verification of said data.

The appraiser has inspected, as far as possible, by observation, the land and improvements thereon; however, it was not possible to personally observe conditions beneath the soil. Therefore, no representations are made herein as to those matters, and unless specifically considered in this report, the value estimate is subject to any such conditions that could cause a loss in value. No study has been performed, to my knowledge, to determine if there are any sites that contain any material or substance that may cause a loss in value. The appraiser did not notice any potential environmentally hazardous materials, underground storage tanks, soil contaminants, or other hazards during the inspection of the subject property that could have a negative impact upon the subject property value; however, the appraiser is not an expert in this field of study and it is strongly recommended a qualified licensed individual perform a study to insure there are no such hazards.

This appraisal is performed for Trans Financial in their efforts to finance the borrowers purchase of the subject property. This appraisal is performed for their use only and may not be used by any other party or for any other use. Any party using the information and/or conclusions provided in this report does so at their own risk. The information and conclusions found in this appraisal report cannot be released to any other party without the written authorization of the original client.

**OBJECTIVE OF APPRAISAL
AND
DEFINITION OF VALUE**

Purpose

The purpose of this appraisal is to estimate the market value of the subject property.

Effective Date of the Appraisal

October 17, 2005

E. Dantzler last inspected the subject property and the comparable sales on October 17, 2005.

Function

The reported appraised value will serve as the basis of a loan from a financial institution.

Definition of Market Value

For the purpose of this appraisal market value is defined as: "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) buyer and seller are typically motivated;
- 2) both parties are well informed or well advised, and acting in what they consider their best interests;
- 3) a reasonable time is allowed for exposure in the open market;
- 4) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Appraisal Institute, *The Appraisal of Real Estate, 11th Edition*; Chicago: Appraisal Institute, 1996)

PROPERTY OWNERSHIP

Property Rights Appraised

This property is appraised in fee simple subject to encumbrances of record. We are not aware of any encumbrances upon this property, which may influence its fair market value as appraised within this report.

Present Ownership

The subject property is currently owned by North Pleasant, LLC and Vintage Land, LLC.

Ownership History

The subject property was purchased by North Pleasant, LLC and Vintage Land, LLC from International Paper Realty Corporation on February 23, 2005. (Deed Book 4537, Page 132) It is the same portion of property conveyed to International Paper Realty Corporation from Sustainable Forests, LLC, a subsidiary of International Paper Corporation, Deed Book 4130, Page 230, dated July 19, 2004 in the Register of Deeds of Berkeley County, South Carolina. The property was also conveyed to International Paper Realty Corporation through an internal transaction by quitclaim deed dated July 19, 2004 from IP Timberlands Operating Company, LTD, formerly known as IP Assets, LP, Deed Book 4130, Page 243, Berkeley County Register of Deeds.

Legal Description

The property is described as lying and being in Berkeley County, South Carolina containing 4,478.28 acres and is more particularly described on a plat entitled "Plat of a Survey of The Keystone/Walnut Creek Tract containing 4,478.28 acres owned by International Paper Realty Corporation" prepared by F. Elliott Quinn, III of Thomas & Hutton Engineering Co, dated November 10, 2004 and recorded in Plat Cabinet Q, Page 310-C, Office of the Clerk of Court, Berkeley County, South Carolina.

REGIONAL, AREA, & NEIGHBORHOOD ANALYSIS

This is a detailed map of South Carolina, showing major cities, towns, and geographical features. The map includes labels for counties such as Clarendon, Orangeburg, Berkeley, and Charleston. Key locations marked include Columbia, Charleston, and various coastal areas. A scale bar at the bottom indicates distances from 0 to 25 miles.

REGIONAL, AREA, & NEIGHBORHOOD ANALYSIS

The subject property consists 4,478.28 acres (+/-) located in Berkeley County, South Carolina approximately 14 miles north of Charleston. The neighborhood is considered to be the immediate area around the subject property. The area is considered to Berkeley, Charleston, and Dorchester Counties and the region is considered to be the southeastern United States.

REGION

Outside of the metropolitan areas the dominant land use is for agricultural production, primarily timber, row crop, and livestock. Interstate Highways 26 and 95 and U. S. Highways 17 and 17A corridors offer easy access to the metropolitan area for the movement of products, materials, and people. Due to these traffic arteries the land along these routes is becoming more pressured for residential, commercial, and industrial uses. As the development pressures increase in the areas outside of the expanding metropolitan areas the value of the land in those areas also increases.

The southeastern U. S. is attractive to businesses, industries, and others due to the infrastructure, available land, weather, cost of living, and resources available. The region is continuing to increase in population as many are taking advantage of the opportunities offered by the region.

AREA

The subject property area is considered to be Berkeley, Charleston and Dorchester Counties, which are included in the Charleston metropolitan statistical area (MSA). Though limited as a regional distribution center, Charleston is a major port city. The recent deepening of the harbor and the anticipated completion of the Cooper River Bridge in 2006, are major capital investments are crucial to area employment. The Ports Authority will also expand onto the southern portion of the old Charleston Naval Complex and has signed lease agreements with the Charleston Naval Complex Redevelopment Authority to extend cargo operations. As of the year 2000 the population in the tri-county area was estimated at 549,033, an increase of 8.3 percent from the 1990 census. The table below shows the population within incorporated places in the tri-county area.

Municipality	2000 Population
Berkeley County	142,651
Goose Creek	29,208
Moncks Corner	5,952
Bonneau	354
Charleston County	309,969
Charleston	96,650
Mt. Pleasant	47,609
North Charleston	79,641
Isle of Palms	4,583
Dorchester County	96,413
Summerville	27,752
St. George	2,092
Ridgeville	1,599

The Charleston metropolitan statistical area labor market includes the three counties of Charleston, Berkeley and Dorchester. The largest county within the labor market area is Charleston County with a total population of 309,969 in 2000.

In 2003 it was estimated the area contained 283,554 full and part time jobs. Since 1999 the civilian labor force is estimated to have increased 9 percent while the total employment increase over the same period of time was approximately 8 percent. Unemployment within the area was 4.3 percent in 2003. There were 296,303 persons in the Charleston MSA civilian labor force in 2003 of which 12,749 were unemployed. Most employment appears to be in the Services, Retail & Wholesale Trade and Government sectors.

In 2004, the Charleston Regional Development Alliance had 13 announcements of new development in the region, 7 of which were manufacturing, 2 in the knowledge-based sector such as biosciences and software and 4 in retail sales. Vought Aircraft Industries and Alenia North America will open a 600,000 square foot manufacturing plant at the Charleston International Airport to supply Boeing with fuselages for the new 7E7 Dreamliner passenger jet, a \$560 million capital investment that will employ approximately 645. Verizon Wireless has opened a customer call center, which will employ 1,110.

Tourism has an estimated \$4.5 billion annual economic impact to the Charleston region that provides over 94,000 direct and indirect jobs in the local economy. In 2003 an estimated 4.6 million visitors came to the Charleston region for conventions, recreation or sightseeing with an economic impact of close to \$5.1 billion. The tourist industry is experiencing less seasonality throughout the year, resulting in a more constant level of occupancy and less fluctuation in the daily rate.

The per capita income for the Charleston MSA has increased at a steady rate from \$15,406 in 1990 to \$24,458 in 2000. In 1999, Charleston County had the higher per capita income at \$21,393 followed by Dorchester County, which was reported to be \$18,840. Berkeley County had a per capita income of \$16,879. In comparison, South Carolina's per capita income was in line with Dorchester County at \$18,795 and Charleston County was reflective of the nation's per capita income of \$21,587.

An estimated 16.4 percent of Charleston County residents had income below the poverty level in the year 1999. This is higher than the national rate of 12.4 percent and the state rate of 14.1 percent. For the Charleston MSA, Dorchester County had the lowest income poverty level of 9.7 percent with Berkeley County reporting 11.8 percent of their residents with income below the poverty level.

There were 148,065 occupied housing units in Charleston County, 39,031 units in Dorchester County and 56,918 units in Berkeley County according to the 2000 census. It is reported to be an increase in housing units of approximately 17 percent for the Charleston MSA from 1990 to 2000. Households have also increased in all three counties within the Charleston MSA with median household incomes in line with South Carolina at \$37,082 and the nation at \$41,994 as of 1999.

The primary land use in the county is for timber production and recreation. The table below shows the total, timberland, and other land use acreage compared to the state total:

Place	Total Area	Timberland	Other
Berkeley County	703,712	552,928	150,784
Charleston County	587,149	285,716	301,433
Dorchester County	367,866	258,544	109,322
Total Area	1,658,727	1,097,188	561,539
South Carolina	19,262,384	12,645,557	6,616,827

As seen in the table above the area contains 8.61 percent of the state's acreage, 8.67 percent of the forested acreage, and 8.49 percent of the other acreage of the state. The "Other" classification includes pasture, row crop, commercial, industrial, residential, special use, and recreational acreage. The higher percentage of "Other" acreage in Charleston County is attributable to the population density within that county.

The table below shows the timberland by ownership class.

Place	Total Acreage	Public	Industry	Private
Berkeley County	548,104	211,665	162,595	173,844
Charleston County	270,370	61,927	53,848	154,595
Dorchester County	257,459	1,217	80,959	175,283
Total Area	1,075,933	274,809	297,402	503,722
South Carolina	12,454,925	1,113,979	2,394,261	8,946,685

As seen in the table above the area contains 8.64 percent of the state timberland acreage, 24.67 percent of the public timberland, 12.42 percent of the industry timberland, and 5.63 percent of the privately owned timberland.

The table below shows the total farm acreage, cropland acreage, and harvested acreage by county compared to the state totals.

Place	Total Farm Acreage	Cropland	Harvested
Berkeley County	51,426	18,227	11,930
Charleston County	44,082	17,297	8,036
Dorchester County	65,333	37,521	28,222
Total Area	160,841	73,045	48,188
South Carolina	4,593,452	2,462,818	1,654,535

As seen in the table above the area contains 3.50 percent of the state farm acreage, 2.97 percent of the cropland acreage, and 2.91 percent of the harvested cropland. The area contains 8.61 percent of the total state acreage.

These timberland and farmland figures are indications that timber, row crop production, and farming within the area are decreasing as the population of this area increases.

NEIGHBORHOOD

The property is located approximately 14 miles north of Charleston and 12 miles east of Goose Creek. The property is located on South Carolina State Highway 41 adjacent to the Marion National

Forest in an area containing an increasing number of residential properties; however, the primary neighborhood land use is for agricultural purposes.

Primary shopping, employment, medical facilities, and entertainment are located in Charleston. Fire protection is by local volunteer fire department. Governmental facilities and police protection are located in Monks Corner, the county seat. Schools are located throughout the county within or in proximity to the municipalities within the county.

CONCLUSION

The subject property is located in the southern portion of Berkeley County in proximity to Charleston County. Charleston is the shopping, financial, services, and manufacturing center for the area. Land within Charleston County has been subject to increasing development pressures and as a result those lands are rapidly increasing in value. Agricultural properties near the metropolitan area are being substituted for property within Charleston and are being converted for residential and hobby farm use. Berkeley County contains the Francis Marion National Forest and other publicly owned forestlands. The high percentage of public ownership restricts the amount of land within the county that can be made available for alternative uses. Based on the increasing population of the area and neighborhood, the amount of land that can be made available for developmental purposes, and other trends it is anticipated that the value of lands similar to the subject property will increase at a rate exceeding the rate attributable to the property's current use.

PROPERTY DESCRIPTION

NP01776

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1263

This map illustrates the North Pleasant & Vintage Land Keystone Tract, a 4,478.28-acre property owned by Berkeley Co., SC. The tract is centrally located and outlined in a bold line. Surrounding the tract are various roads and landmarks. To the north, roads include Cordesville Rd, Alligator Rd, and Hell Hole Rd. To the east, roads like Yellow Jacket Rd and Buckle Island Rd are shown. To the south, roads such as Wando Rd and Clements Ferry Rd are visible. The map also identifies several locations, including Cordesville, Kensington, and the Francis Marion National Forest. A scale bar at the bottom indicates distances in miles, ranging from 0 to 5.

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PROPERTY DESCRIPTION

The subject property consists 4,478.28 acres (+/-) located in Berkeley County, South Carolina approximately 14 miles north of Charleston on South Carolina Highway 41, Charity Church Road, and United Drive.

Access to the property is provided by South Carolina Highway 41, United Drive, and Charity Church Road. Electrical and telephone services are available on the public road frontage. The table below shows the frontage feet by road.

Road	Paved	Graded
South Carolina Highway 41	14,390	-
United Drive	15,680	-
Charity Church Road	-	11,590
Totals	30,070	11,590

The property also contains approximately 11,450 feet frontage on a railroad right of way. Internal access is by a series of woods roads that provide good access to most portions of the interior of the property. These roads are currently in average condition and should be passable during wet weather conditions.

The acreage breakdown by land class is as follows:

Land Classes	Acreage
Upland Timberland	3,496.81
Bottomland Timberland	981.47
Total	4,478.28

Soils of the subject property are typical for the area. These soils are well suited for timber production and moderately to fairly well suited for pasture, and urban uses. The bottomland timberland acreage consists of acreage within and adjacent to streams and water drainage ways and have some legal restrictions and physical limitations due to soil strength and wetness. Utility, road, and railroad rights of way are included in the bottomland timberland acreage total. The terrain ranges from level to gently rolling with no noted physical limitations due to slope. Erosion potential of the soils is limited.

The subject property is currently used for timber production and recreation. The property is fully stocked in natural timber and merchantable and premerchantable planted-pine; however, no timber volume estimates or planted acreage breakdowns were provided. Without sufficient information it was not possible to estimate contributory timber values.

The subject property tax parcel number, tax fair market value (FMV), and 2004 tax bill were reported by the Berkeley County Tax Assessors Office to be as follows:

Tax Parcel #	Tax FMV	Ad Valorem Tax
240-00-00-001-C	\$10,247,600	\$150,640
Total	\$10,247,600	\$150,640

The property is zoned F-1, R. This zoning allows for all agricultural uses and for single family conventional and manufactured homes on a minimum lot size of 30,000 square feet.

Photographs and tax maps and assessment sheets are included on the following pages.



South Carolina Highway 41



South Carolina Highway 41



United Drive



United Drive



Charity Church Road



Charity Church Road



Interior Road



Interior Road



Interior Road





Merchantable Planted Pine



Merchantable Planted Pine



Merchantable Planted Pine



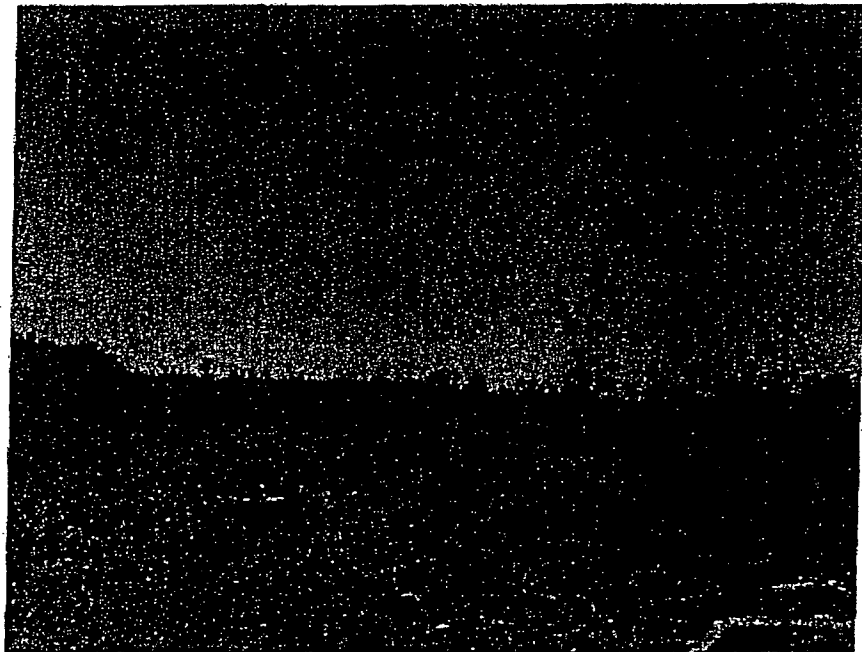
Merchantable Planted Pine



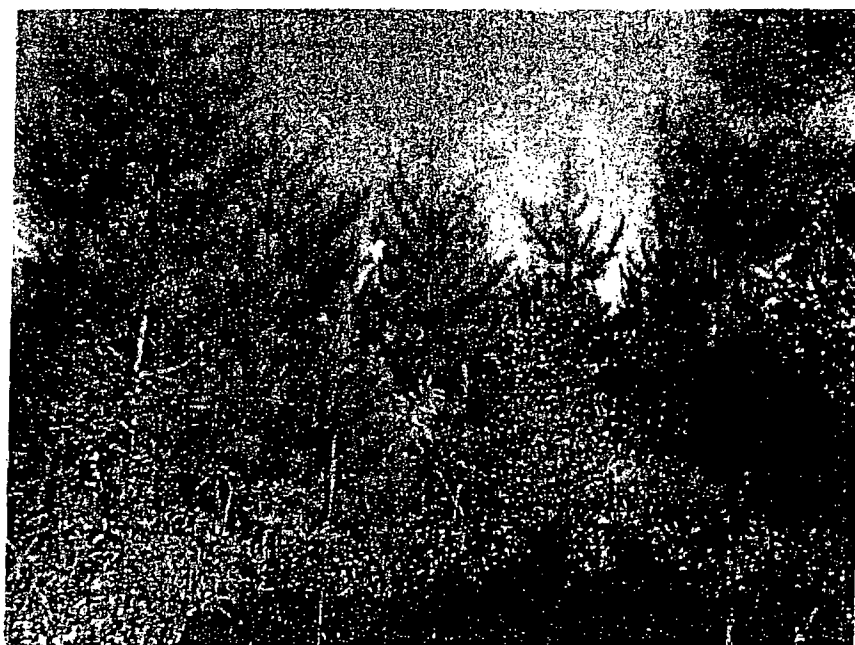
Merchantable Planted Pine



Merchantable Planted Pine



PremERCHANTable Planted Pine



PremERCHANTable Planted Pine



PremERCHANTable Planted Pine



PremERCHANTable Planted Pine

NP01788



PremERCHANTable Planted Pine



PremERCHANTable Planted Pine



Bottomland Hardwood



Bottomland Hardwood



Bottomland Hardwood



Bottomland Hardwood

PIEDMONT APPRAISERS, INC.
Post Office Box 250
LaFayette, Alabama 36862

Offering Certified Appraisals
In Alabama, Georgia, and Mississippi

E. Dantzler Frazer
Office 334-864-9955
Fax 334-864-9389

October 21, 2005.

Mr. Chuck Cammack
President
Trust Financial
13300 Old Blanco Road, Suite 321
San Antonio, Texas 78216

RE: Appraisal of the Keystone Tract being
4,478.28 acres (+/-) of timberland property
located in Berkeley Co., SC., PAI Job # 05-
0916

INVOICE

Activity	Amount
Appraisal	\$6,170.00
Total	\$6,170.00

TERMS: DUE UPON RECEIPT

MAKE CHECK PAYABLE TO: PIEDMONT APPRAISERS, INC.

NP01792

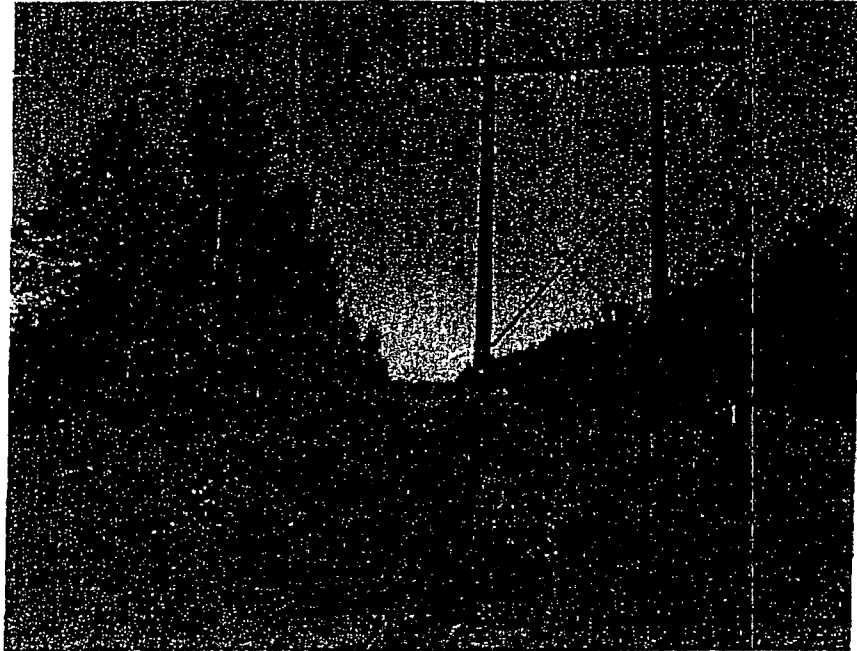


Quinby Creek



Quinby Creek

NP01793



Power & Gas Line Right of Way



Power & Gas Line Right of Way



Railroad Right of Way



Railroad Right of Way



TAX MAP



TAX MAP

HIGHEST AND BEST USE

The highest and best use of a property is described as "the reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of the appraisal." It may also be described as, "the reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value," or "the most profitable use." (*The Dictionary of Real Estate Appraisal*, 152.)

Physically Possible

It is physically possible to use the subject property for its current use of timber production and recreation. It would also be physically possible to use the subject property for residential, commercial, or industrial uses. It would also be possible to convert the subject property into cropland or pastureland. Any area that would be considered as environmentally sensitive would physically limit any of the aforementioned uses; however, no such area has been identified.

Legally Permissible

There are no legal restrictions limiting the subject properties for its current use of timber production and recreation other than the State of South Carolina Best Management Practices pertaining to timber harvesting activities. Development for any purpose would be subject to the county ordinances pertaining to development. Conversion of the subject into crop or pastureland would be subject to the U.S. Department of Agriculture regulations governing these uses.

Financially Feasible

It is financially feasible to use the subject property for their current use of timber production and recreation as those uses produce a positive cash flow. It is my belief the cost of converting the subject into pastureland or cropland would offset any benefits that could be derived from those uses; therefore, it is my opinion it would not be financially feasible to convert the subject property for those uses. The financial feasibility of development is dependent upon the cost to develop, the period of time required to develop, the income to be derived, and the time needed for liquidation of the developed acreage. Due to the subject property location, the amount of similar vacant land in the subject neighborhood, and my appraisal experience it is my opinion it would not be financially feasible to develop the subject property at this time.

Maximally Productive

The maximally productive use of the subject property is that use which produces the highest value for the property. As stated above it is my opinion it would not be financially feasible to develop the property, at this time, or to convert for pasture or cropland uses. The fee simple value as indicated by the Sales Comparison Approach to Value is much higher than the value that could be associated with timber production and recreation. The difference between the raw land value indicated by the current use and the raw land value indicated by the Sales Comparison Approach is attributable to speculation. The subject property area has an increasing population, which has increased development pressures on all land creating values that are higher than the values that could be associated with agricultural uses.

Conclusion

Based upon my appraisal experience, my inspection of the subject property, and the beliefs presented above it is my opinion the Highest and Best Use of the subject property is in "Transition" from timber production and recreation to some form of development.

THE APPRAISAL PROCESS

The first step of the appraisal process begins with the definition of the appraisal problem, which includes

1. Identification of the real estate,
2. Identification of the property rights to be valued,
3. Date of the value estimate,
4. Use of the appraisal,
5. Definition of value,
6. Other limiting conditions." (*The Appraisal of Real Estate*, 63-64.)

After identifying the appraisal problem, the appraiser prepares a preliminary analysis of the character and scope of the assignment and the amount of work required to gather the necessary data.

After this preliminary analysis, the appraiser begins gathering the information necessary to complete the assignment, both general and specific information. "General data consist of information on the principles, forces, and factors that affect property value. This information describes trends in the social, economic, governmental, and environmental forces that affect the property value. Specific data relate to the property being appraised and too comparable properties. These data include physical, location, cost, and income and expense information on the properties as well as details of comparable sales. Financial arrangements that could affect selling prices are also considered. The amount and type of data collected for an appraisal depend on the approaches used to estimate value, which in turn directly relates to the appraisal problem." (*The Appraisal of Real Estate*, 67-68.)

After gathering the necessary information, the appraiser begins analyzing the data. The first step of analysis is to determine the Highest and Best Use of the subject property as improved and as vacant. This analysis helps the appraiser identify comparable properties and identifies the use that would produce the maximum income to the property. After determining the Highest and Best Use of the subject property, the appraiser begins to analyze the value of the property using the Three Approaches to Value which are described as follows: (*The Appraisal of Real Estate*, 59-75.)

Sales Comparison Approach - Defined as "An approach through which an appraiser derives a value indication by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison and making adjustments, based on the elements of comparison, to the sale prices of the comparables." (*The Dictionary of Real Estate Appraisal*, Page 265).

Cost Approach - Defined as "An approach through which an appraiser derives a value indication of the fee simple interest in a property by estimating the current cost to construct a reproduction of or replacement for the existing structure, deducting for all evidence of accrued depreciation from the cost new of the reproduction or replacement structure, and adding the estimated land value plus an entrepreneurial profit. Adjustments may be made to the indicated fee simple value of the subject property to reflect the value indication of the property interest being appraised." (*The Dictionary of Real Estate Appraisal*, Page 72). This approach is especially important when comparable sales and income data are weak or not available. The subject property does not contain any improvements; therefore, the Cost Approach to Value is not applicable to this appraisal.

Income Capitalization Approach - Defined as "A set of procedures in which an appraiser derives a value indication for income-producing property by converting anticipated benefits, i.e., cash flows and reversions, into property value. This conversion can be accomplished in two ways: One year's income expectancy or an annual average of several years' income expectancies may be capitalized at a market-derived capitalization rate or a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment; secondly, the annual cash flows may be discounted for the holding period and the reversion at a specified rate." (*The Dictionary of Real Estate Appraisal, Page 156*) The Highest and Best Use Analysis concluded the subject property is in "Transition" from the current use of timber production to some form of development. There is no relativity between the income productivity of the current use and the current value market value of the property. Without specific knowledge of the anticipated future development and when that development would take place it is not possible to accurately and reasonably estimate income based on development. Based on these factors the Income Approach to Value was not considered applicable to this appraisal assignment.

Reconciliation of Value - Defined as "A step in the valuation process in which an appraiser analyzes alternate value indications to arrive at a final value estimate." (*The Dictionary of Real Estate Appraisal, Page 249*).

SALES COMPARISON APPROACH TO VALUE

Sales of properties were researched, confirmed, inspected, and adjusted to reflect the subject property characteristics and value. The comparable sales used in this appraisal for an indication of the market value are presented in the table below. Each comparable sale is presented on individual pages in the Addenda to this report.

Sale	1	2	3
State	South Carolina	South Carolina	South Carolina
County	Berkeley	Berkeley	Berkeley
Date	Mar-05	Dec-04	Jul-04
Grantor	MeadWestVaco	MeadWestVaco	W.A. Moncrief
Grantee	Crescent Resources, LLC	BMG, III, LLC	Liberty Village, LLC
Size (Acres)	3,402.0	1,101.0	729.0
Sales Price	\$15,721,132	\$3,301,995	\$5,057,265
\$/Acre	\$4,621	\$2,999	\$6,937
Land Class Acreage			
Upland Timberland (Class I)	2,732.0	975.8	440.0
SMZ (Class II)	670.0	125.2	289.0
Possible Adjustments			
Terms			
Time (Months)	7	10	15
Location	Similar	Similar	Superior
Size (Acres)	B	A	A
Timber Stocking	Full-Premerchantable	Full-Merchantable	Moderate-Merchantable
Access/Frontage	Paved-Good	Easement-None	Paved-Fair
River Frontage	No	No	No

Sale	4	5	6
State	South Carolina	South Carolina	South Carolina
County	Berkeley	Charleston/Dorchester	Berkeley
Date	Mar-04	Feb-04	Dec-02
Grantor	MeadWestVaco	MeadWestVaco	W.A. Moncrief
Grantee	South Carolina DNR	County Line Investors, LLC	Centex Homes
Size (Acres)	10,713.0	5,749.0	672.0
Sales Price	\$48,200,000	\$12,000,000	\$4,000,000
\$/Acre	\$4,499	\$2,087	\$5,952
Land Class Acreage			
Upland Timberland (Class I)	6,720.0	4,957.0	460.0
SMZ (Class II)	3,992.0	561.0	212.0
Possible Adjustments			
Terms			
Time (Months)	19	20	34
Location	Similar	Inferior	Superior
Size (Acres)	C	B	A
Timber Stocking	Full-Natural	Full-Merchantable	Moderate-Merchantable
Access/Frontage	Paved-Average	Paved-Good	Paved-Fair
River Frontage	Cooner River	No	No

Introduction

The above sales differ from the subject property in the acreage of each land type, improvements, date of sale, and other characteristics. Therefore I am required to make adjustments for these items in order for the sales to indicate reliable indications of the subject's value.

The first adjustments applied to the sales are for quantitative differences in the components of value of the sales. These are items such as acreage of each land type and standing timber. These adjustments are calculated by using an analysis of the per unit contributory values for the component indicated by the sales to estimate the value of the subject's component. The difference in the subject's estimate component value per acre and the sale's contributory component value per acre is an indication of the adjustment, which is either added to or subtracted from the sale in order to adjust it to the subject property. Since the subject property timber value was determined by using timber comparable sales, this adjustment is calculated and applied after the sales have been analyzed for a time adjustment and adjusted for date of sale if necessary.

Land Mix Adjustment

The first of the above adjustments applied to the sales is termed the Land Mix Adjustment. This adjustment adjusts the sales prices of the sales to what they most likely would have sold for if they consisted of the same land class mix as the subject property. The first step in this process is to estimate the per acre values of each land class on the sales. These land class values are then multiplied by the subject's corresponding land class acreage, summed, and divided by the subject's total acreage. The resulting value is the value per acre of the sale adjusted for land mix. The difference in this value and the sale's unadjusted value is the Land Mix Adjustment.

Land Class	Ratio
Upland Timberland	100%
SMZ/Bottomland Timberland	40%

The above ratios allow for the calculation of the actual sales price of each land class of the comparable sales. The values are then used to calculate the land mix adjustment as discussed above. The actual land class adjustments can be seen in the Adjusted Sales Table found at the end of this approach to value.

Terms

All of the comparable sales terms were in cash or were in terms considered to be equivalent to cash. No adjustment for terms is made to these comparable sales in this portion of this appraisal.

Date of Sale

In order to estimate an adjustment for date of sale, or time, I paired selected similar sales that took place on different dates and calculated the difference in their sales prices on a percent per month basis. The table below shows the results of selected pairing of sales for an indication of the monthly rate of change due to time.

Pairings			Adjustment Indications
1	To	4	0.22%
2	To	5	0.81%
3	To	6	3.69%

The historic use of the subject property and a large portion of the area and neighborhood properties is for timber production. The Producers Price Indexes (PPI) for Wood and Lumber Products and Paper and Allied Products were analyzed for a rate of change applicable for this appraisal. The table below shows the PPI by product with the change in value for the previous ten years.

Price Index	August - 1995	August - 2005	Monthly	Annual
Pulp, Paper, & Allied Products	175.6	202.2	0.12%	1.41%
Lumber and Wood Products	172.2	192.9	0.09%	1.14%

In my opinion the PPI rates do not reflect the speculative interest in the land; therefore, a rate between the rates found in the pairings and the Producer Price Index will be used. Based upon the paired sales, the producer Price Indexes, and my appraisal experience a rate of 0.75% monthly will be applied to the comparable sales to adjust the sale prices to reflect the effective date of this appraisal.

The remaining adjustments sought are for location, size, timber stocking, access/frontage, and river frontage. The adjustments for these items are sought through paired sales analysis. Ideally this is the pairing of sales with only one difference to indicate a value adjustment for that difference. The adjustments found are then applied to the sales based on the relationship to the subject property. If the subject property has a superior characteristic when compared to the comparable sale a positive adjustment is applied to the sale. Conversely if the subject property has an inferior characteristic when compared to the comparable sale a negative adjustment is applied to the sale.

Location Adjustment

The comparable sales are considered to have superior, similar or inferior locations in relation to the subject property. The ranking is based on the development pressures each of the properties are perceived to be subject to. The location of the comparable sales are ranked as follows:

Rank	Location	Comparable Sales
A	Superior	3 & 6
B	Similar	1, 2, & 4
C	Inferior	5

The adjustments are based on the paired sales analysis and my appraisal experience. The following per acre adjustments for location are applied to the comparable sales:

Pairings	Per Acre Adjustments
B to A	-\$2,500
B to C	+\$2,500

Size Adjustment

Typically large acreage sales sell at lesser per acre raw land values than small acreage sales and conversely small acreage sales typically sell at greater per acre raw land values than large acreage sales. Due to these differences in size, an adjustment must be made to the sales to reflect the subject property's acreage.

The sales were placed into the following acreage ranges:

Rank	Acreage Range	Comparable Sales
A	0 acres to 2,500 acres	1, 4, & 6
B	2,501 acres to 7,500 acres	2 & 5
C	7,501 acres to 15,000 acres	3

The subject property consists of 4,478.28 acres (+/-) and is in the "B" category. The adjustments for size are based on the paired sales analysis and my appraisal experience.

Pairings	Per Acre Adjustments
B to A	-\$500
B to C	+\$500

Timber Adjustment

The subject property is currently used for timber production and is fully stocked in natural timber and merchantable and premerchantable-planted pine. The comparable sales, at the time of sale, were also used for timber production and contained merchantable and premerchantable timber. The anticipated use of the subject property and the intended use of the comparable sales is for some form of development where timber is only considered to contribute to the aesthetic quality of the property. Merchantable timber on the subject property and the comparable sales can be thinned without damaging the aesthetic quality of the property while premerchantable timber cannot be thinned and is not considered to be as aesthetically pleasing as mature timber. Property with a higher percentage of merchantable timber is considered to be superior to property with a higher percentage of premerchantable timber. The ranking for the comparable sales is as follows:

Rank	Access	Comparable Sales
A	Superior	4
B	Similar	2 & 5
C	Similar	1, 3, & 6

Based upon my cursory inspection of the comparable sales, my appraisal experience, and the adjustment indications found in the paired sales analysis the following per acre adjustments for timber stocking will be used:

Pairings	Per Acre Adjustments
B to A	-\$500
B to C	+\$500

Access & Frontage Adjustment

The subject property and comparable sales have access either by paved or graded roads with varying amounts of frontage or by easements. It is our belief the amount and quality of the frontage has a similar impact upon sales price as the type access. For the purposes of this appraisal the subject property and comparable sales were ranked based on access type and quality road frontage.

The sales were ranked as follows for access and frontage:

Rank	Access	Comparable Sales
A	Paved - Good	1 & 5
B	Paved - Average	4
C	Paved - Fair	3 & 6
D	Easement - None	2

The subject property has a good amount of frontage on the county maintained graded roads and is ranked in the "B" category. Pairing the sales by rank resulted in the following per acre adjustments for access and road frontage:

Pairings	Per Acre Adjustments
A To B	+\$500
A To C	+\$1,000
A To D	+\$2,000

River Adjustment

Comparable Sale 3 has significant frontage on the Cooper River. Frontage on this type of water is considered as a positive amenity and is subject to increasing demands. The comparable sales were paired to isolate an indication of an adjustment for this characteristic. Based on those pairings and my appraisal experience a negative adjustment of \$1,000 per acre is applied to the comparable sale for river frontage.

Conclusion to Property Valuation

It is my opinion no other adjustments are necessary to accurately reflect the subject property value. The table on page 46 shows the adjustments made to the comparable sales for an indication of the subject property value. The adjusted comparable sales indicate a range in value from \$20,278,046 to \$32,369,734, a 59.63 percent difference in values. Based on my inspection of the subject property, a cursory examination of the comparable sales, the adjustments made to the comparable sales, and my appraisal experience it is my opinion this approach to value indicates a value of the subject property as follows:

TWENTY FIVE MILLION TWO HUNDRED THOUSAND DOLLARS
(\$25,200,000)

**NORTH PLEASANT AND VINTAGE LAND
KEYSTONE TRACT
4,478.28 ACRES +/-
BERKELEY COUNTY, SOUTH CAROLINA**

ADJUSTED COMPARABLE SALES TABLE

Sale	1	2	3	4	5	6
County	Berkeley	Berkeley	Berkeley	Berkeley	Charleston/Dorchester	Berkeley
Date	Mar-05	Dec-04	Jul-04	Mar-04	Feb-04	Dec-02
Grantor	MeadWestVaco	MeadWestVaco	W.A. Moncreif	MeadWestVaco	MeadWestVaco	W.A. Moncreif
Grantee	Crescent Resources, LLC	DMQ, III, LLC	Liberty Village, LLC	South Carolina DNR	County Line Investors, LLC	Center Homes
Size (Acres)	3,402.0	1,101.0	729.0	10,713.0	5,749.0	672.0
Time (Months)	7	10	15	19	20	34
Location	Similar	Similar	Superior	Similar	Inferior	Superior
Size (Acres)	B	A	A	C	B	A
Timber Stocking	Full-Premerchtable	Full-Merchtable	Moderate-Merchtable	Full-Natural	Full-Merchtable	Moderate-Merchtable
Access/Frontage	Paved-Good	Easement-Noth	Paved-Fair	Paved-Average	Paved-Good	Paved-Fair
River Frontage	No	No	No	Yes	No	No
Sales Price	\$15,721,132	\$3,301,995	\$5,057,265	\$48,200,000	\$12,000,000	\$4,000,000
Sales Price Per Acre	\$4,621	\$2,999	\$6,937	\$4,497	\$2,087	\$5,952
Adjustments:						
Land Quality Adjustment	-\$70	-\$204	\$968	\$534	-\$76	\$424
Subtotal	\$4,551	\$2,795	\$7,905	\$5,033	\$2,011	\$6,377
Time Adjustment	\$248	\$233	\$823	\$686	\$336	\$1,722
Subtotal	\$4,799	\$3,028	\$8,728	\$5,720	\$2,348	\$8,098
Timber Adjustment	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal	\$4,799	\$3,028	\$8,728	\$5,720	\$2,348	\$8,098
Improvement Adjustment	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal	\$4,799	\$3,028	\$8,728	\$5,720	\$2,348	\$8,098
Location Adjustment	\$0	\$0	-\$2,300	\$0	\$2,500	-\$2,500
Subtotal	\$4,799	\$3,028	\$6,228	\$5,720	\$4,848	\$5,598
Size (Acres) Adjustment	\$0	-\$500	-\$500	\$500	\$0	-\$500
Subtotal	\$4,799	\$2,528	\$5,728	\$6,220	\$4,848	\$5,098
Timber Stocking Adjustment	\$500	\$0	\$500	-\$500	\$0	\$500
Subtotal	\$5,299	\$2,528	\$6,228	\$5,720	\$4,848	\$5,598
Access/Frontage Adjustment	\$0	\$2,000	\$1,000	\$500	\$0	\$1,000
Subtotal	\$5,299	\$4,528	\$7,228	\$6,220	\$4,848	\$6,598
River Frontage Adjustment	\$0	\$0	\$0	-\$1,000	\$0	\$0
Subtotal	\$5,299	\$4,528	\$7,228	\$5,220	\$4,848	\$6,598
Adjusted Value / Ac.	\$5,299	\$4,528	\$7,228	\$5,220	\$4,848	\$6,598
Total Subject Acreage	4,478.3	4,478.3	4,478.3	4,478.3	4,478.3	4,478.3
Total Indicated Subject S	\$23,732,244	\$20,278,046	\$32,369,734	\$23,378,209	\$21,709,901	\$29,548,542

Minimum Value	\$20,278,046
Maximum Value	\$32,369,734
Range in Values	\$12,091,689
Percent Difference	89.63%
Average Values	\$25,168,946

Value Estimated	\$25,200,000
Timber Value	\$0
Improvement Value	\$0
Total Raw Land Value	\$25,200,000
Per Acre Raw Land Value	\$5627

NP01808

1295

RECONCILIATION OF VALUE

The two approaches performed in this appraisal indicate values for the subject properties as follows:

Tract	Sales Comparison	Cost	Income
Keystone	\$25,200,000	N/A	N/A

The Sales Comparison Approach to Value is based on the actual sales of similar property adjusted for land quality, time, timber values, size, and other characteristics. These adjustments are based on paired sales analysis and my experience in the market. This approach to value reflects current market conditions that affect the subject property.

The Cost Approach to Value was not performed in this appraisal. The subject property contains no improvements that contribute to value; therefore, the Cost Approach to Value is not applicable for this appraisal.

The Highest and Best Use Analysis concluded the subject property is in "Transition" from the current use of timber production to some form of development. There is no relativity between the income productivity of the current use and the current value market value of the property. Without specific knowledge of the anticipated future development and when that development would take place it is not possible to accurately and reasonably estimate income based on development. Based on these factors the Income Approach to Value was not considered applicable to this appraisal assignment.

It is my belief the Sales Comparison Approach to Value is the appropriate indicator of value; therefore, it is my opinion the subject property value has a market value as of October 17, 2005 as follows:

TWENTY FIVE MILLION TWO HUNDRED THOUSAND DOLLARS
(\$25,200,000)

MARKETING PERIOD

For the purpose of this appraisal market value is defined as: "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 6) buyer and seller are typically motivated;
- 7) both parties are well informed or well advised, and acting in what they consider their best interests;
- 8) a reasonable time is allowed for exposure in the open market;
- 9) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- 10) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

It is required that the value of properties requiring a sales period of greater than one year be discounted for the estimated marketing period. The subject property is located in an area of rapidly expanding population, which is placing increasing pressure on agricultural properties for development purposes. It is my opinion the subject property could be sold within a one-year period, if priced within market range of value and earnestly marketed; therefore, it is my opinion there is no discount of the appraised value for a marketing period.

CERTIFICATION

I certify that, to the best of my knowledge and beliefs...

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent on any action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

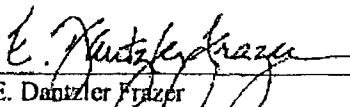
My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice and the Code of Ethics of the National Association of Master Appraisers.

I have made a personal inspection of the property that is the subject of this report.

I certify that this appraisal, as a minimum, conforms both to part 323 of the FDIC Rules and Regulations and the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation except that the departure provision of the USPAP shall not apply to federally related transactions.

J. Bradford Wright provided significant professional assistance, research, analysis, and appraisal development, to the undersigned.

Respectfully submitted,


E. Dantzler Frazer
SC State Certified General
Real Estate Appraiser
#2005166

BIBLIOGRAPHY

American Institute of Real Estate Appraisers. 1998. *The Appraisal of Real Estate*. 11th Ed. Chicago, IL: The American Institute of Real Estate Appraisers of the National Association of Realtors.

United States Department of Agriculture, Forest Service. Forest Statistics for South Carolina. Southeastern Forest Experiment Station Resource Bulletin

United States Department of Agriculture, 1997 Census of Agriculture, Highlights of Agriculture: 1997 and 1992. South Carolina

ADDENDA

NP01813

RECORDED DEED

NP01814

1301

000005205 BK:04537 PG:00132

After recording return to
Sean P. Dolan, Esq.
1011 Park Lane, Suite C
Greensboro, GA 30642

FILED, RECORDED, INDEXED
02/24/2005 01:52:52PM
Rec Fee: 14.00 St Fee: 49136.19
Ls Fee: 20782.35 Pages: 8
Issued to: FIDELITY NATIONAL TITLE
Register of Deeds Berkeley Co., SC
Cynthia R. Forte

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

TITLE TO REAL ESTATE

RECEIVED
02/24/2005
ASSESSOR
BERKELEY COUNTY SC
JANET BROWN JORDAN
AUDITOR BERKELEY COUNTY

KNOW ALL MEN BY THESE PRESENTS, that INTERNATIONAL PAPER

REALTY CORPORATION, a Delaware corporation (the "Grantor"), having an address at 3
Paragon Drive, Montvale, NJ 07645, for and in consideration, of the sum of TEN AND
NO/100 (\$10.00) DOLLARS and other valuable consideration, to it in hand paid at and
before the sealing of these Presents by NORTH PLEASANT, LLC, an Ohio limited liability
company, and VINTAGE LAND, LLC, a Georgia limited liability company, having an
address of ~~125 Crookville Drive, Salenton, GA 31024~~ 300 MAIN STREET, CINCINNATI, OH 45202 (each a "Grantee"), the receipt
whereof being hereby acknowledged, has granted, bargained, sold and released, and by
these Presents does grant, bargain, sell and release unto the said Grantees, their
successors and assigns, as tenants in common, a 71.875% undivided interest to North
Pleasant, LLC and a 28.125% undivided interest to Vintage Land, LLC, in the real
property containing 4,478.28 acres, more or less, more particularly described in Exhibit A
attached hereto and made a part hereof ("Premises"), subject to those matters set forth on
Exhibit B attached hereto and made a part hereof.

TO HAVE AND TO HOLD, all and singular the said Premises unto the said
Grantees, their successors and assigns, and the said Grantor hereby covenants unto the
said Grantee, their successors and assigns, that Grantor will forever warrant and defend
all and singular the said Premises unto the said Grantees, as hereinabove provided,
against itself, its successors and assigns, and all other persons whomsoever lawfully

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claiming, or to claim the same or any part thereof, by, through or under Grantor, but
against no other; provided, however, that this conveyance is made subject to and hereby
excepted from the warranties herein above set forth, those matters set forth on EXHIBIT
"B" attached hereto and incorporated herein.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF, Grantor has caused these Presents to be executed in its name by L. H. Ronnie, Jr., its duly authorized President this 23rd day of February, 2005

Witnesses:

Deborah S. Stivers
Carol E. Brown

INTERNATIONAL PAPER REALTY CORPORATION

By: L. H. Ronnie, Jr.
 President

STATE OF NEW JERSEY)

PROBATE

COUNTY OF BERGEN)

PERSONALLY appeared before me Deborah S. Stivers, who, on oath, says that she saw the within named International Paper Realty Corporation, by L. H. Ronnie, Jr., its President, sign the within Deed and that she with Carol E. Brown witnessed the execution thereof.

Deborah S. Stivers
 (Witness)

SWORN to before me this 23rd day of February, 2005.

Johnanna Curry
 Notary Public for State of New Jersey

JOHANNA CURRY
 Notary Public for State of New Jersey
 My Commission Expires October 5, 2005

My Commission Expires: Oct. 5, 2005

Attachments:

Exhibit A: Description of Premises
 Exhibit B: Permitted Exceptions

Document Prepared By:

Kathleen M. Willemain, Esq.
 International Paper Company
 3 Paragon Drive
 Montvale, NJ 07645

EXHIBIT A

Description of Premises

All those certain pieces, tracts or parcels of land situate in Berkeley County, South Carolina containing 4478.28 acres in total, as shown on that certain "Plat of a Survey of The Keystone/Walnut Creek Tract containing 4478.28 acres owned by International Paper Realty Corporation" prepared on 11/10/04 by F. Elliott Quinn, III, R.L.S. (S.C., Registration Number 10292 of Thomas & Hutton Engineering Co. and recorded in Cabinet Q, Page 310-C, Office of the Clerk of Court, Berkeley County, South Carolina.

Being a portion of the property conveyed to the Grantor herein by deed dated July 19, 2004 from Sustainable Forests L.L.C. and recorded in Book 4130, Page 230, Register of Deeds of Berkeley County, in quitclaim deed to minerals dated July 11, 2004 from International Paper Company and recorded in Book 4130, Page 254, Register of Deeds of Berkeley County and in quitclaim deed dated July 19, 2004 from IP Timberlands Operating Company, LTD, f/k/a IP N-S Assets, L.P. and recorded in Book 4130, Page 243, Register of Deeds of Berkeley County.

TAX MAP NO. 240 00 00 001

EXHIBIT B

Permitted Exceptions

1. Rights, if any, relating to the construction and maintenance in connection with any public utility of wires, poles, pipes, conduits and appurtenances thereto, on, under or across the Premises.
2. Real estate taxes, water rates and other governmental charges, if any.
3. Restrictions on Grantee's ability to build upon or use the Premises imposed by any current or future development standards, building or zoning ordinances or any other law or regulation of any governmental authority.
4. Rights of parties in possession and any state of facts which an accurate survey or an inspection of the Premises would reveal, including, but not limited to, the location of boundary lines, improvements and encroachments, if any.
5. All outstanding easements, servitudes, rights-of-way, flowage rights, restrictions, licenses, leases, reservations, covenants and all other rights in third parties of record or acquired through prescription or adverse possession.
6. All roll back taxes, if any, for any year and the current year's taxes, assessments and other charges of any kind or nature imposed upon or levied against or on account of the Premises by any governmental authority, which taxes, assessments and other charges are not yet due and payable but are liens on the Premises.
7. All previous reservations, exceptions and conveyances of the oil, gas, associated hydrocarbons, minerals and mineral substances and royalty and other mineral rights and interests.
8. All claims of governmental authorities in and to any portion of the Premises lying in the bed of any streams, creeks or waterways or other submerged lands or land now or formerly subject to the ebb and flow of tidal waters or any claims of riparian rights.
9. Any and all restrictions on use of the Premises due to environmental protection laws, including, without limitation, wetlands protection laws, rules, regulations and orders.
10. Such other matters as set forth in owner's policy of title insurance issued pursuant to the title commitment with respect to Grantee's purchase of the Premises from Grantor.

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11. Any interests created by or limitations on use imposed by, the Federal Coastal Zone Management Act or other Federal law and regulations or by South Carolina Code Section 48-39-220, as amended, or any regulations promulgated pursuant to said such federal or state laws.
12. All matters affecting the Premises shown on the plat filed of record in Cabinet Q, Page 310-C, Office of the Clerk of Court of Berkeley County.

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BERKELEY

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

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred contains 4,478.28 acres, more or less, and is shown on survey filed of record in the Office of the Clerk of Court for Berkeley County, South Carolina, in Cabinet Q, Page 318-C, and bearing Berkeley County Tax Map Number 240 00 00 001 and was transferred to North Pleasant, LLC and Vintage Land, LLC on February 24, 2005.
3. Check one of the following. The deed is :
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or in a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) exempt from the deed recording fee because (See Information section of affidavit):
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth of \$18,898,341.00.
 - (b) The fee is computed on the fair market value of the property is \$
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is
5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is:
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$18,898,341.00
 - (b) Place the amount listed in item 5 above here: -0-
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a)
and place result here: \$18,898,341.00

7. The deed recording fee due is based on the amount listed on Line 5101 above and the deed recording fee due is: \$69,884.45.
8. As required by Code Section 12-24-70, I state that I am the responsible person who was connection with the transaction as: Officer of Grantor.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
D. H. Hanna, Jr.

SWORN to before me this 23rd
day of February, 2005.

[Signature]
Notary Public for New Jersey
My Commission Expires: Oct. 5, 2005

JOHANNA CURRY
Notary Public, State of New Jersey
My Commission Expires October 5, 2005

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

MORTGAGE OF REAL ESTATE

FILED: RECORDED, INDEXED
02/24/2005 03:54:59PM
Reg Fee: 13.00 St Fee: 0.00
Co Fee: 0.00 Pages: 7
Issued to: FIDELITY NATIONAL
Register of Deeds Berkeley Co., S
Cynthia B. Forte

TO ALL WHOM THESE PRESENTS MAY CONCERN:

NORTH PLEASANT, LLC, an Ohio limited liability company, and VINTAGE LAND, LLC, a Georgia limited liability company (hereinafter collectively referred to as "Mortgagor") SENDS GREETING:

WHEREAS, the Mortgagor is well and truly indebted unto INTERNATIONAL PAPER REALTY CORPORATION, a Delaware corporation (hereinafter referred to as "Mortgagee") as evidenced by the Mortgagor's Promissory Note of even date herewith, the terms of which are incorporated herein by reference, in the sum of FIFTEEN MILLION ONE HUNDRED EIGHTEEN THOUSAND SIX HUNDRED SEVENTY-TWO AND NO/100 DOLLARS (\$15,118,672.00), with interest thereon as provided in said Promissory Note, said principal and interest to be paid as therein stated, and

WHEREAS, the Mortgagor may hereafter become indebted to the said Mortgagee for such further sums as may be advanced to or for the Mortgagor's account for taxes, insurance premiums, public assessments, repairs, or for any other purpose, and

NOW, KNOW ALL MEN, that the Mortgagor, in consideration of the aforesaid debt, and in order to secure payment thereof and of any other and further sums for which the Mortgagor may be indebted to the Mortgagee at any time for advances made to or for its account by the Mortgagee, and to secure the performance of all covenants, conditions, stipulations and agreements contained herein and/or in any other document given by the Mortgagor to the Mortgagee in connection therewith, and also in consideration of the further sum of Ten and No/100 (\$10.00) Dollars to the Mortgagor in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Mortgagee, its successors and assigns:

ALL AND SINGULAR, those certain pieces, parcels or tracts of land, situate, lying and being in Berkeley County, South Carolina, and being more particularly described on Exhibit A attached hereto and made a part hereof.

Being premises conveyed to the Mortgagor herein by deed of even date herewith.

TOGETHER with, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incident or appertaining.

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

AND the said Mortgagor does hereby bind itself and its heirs, successors and assigns to warrant and forever defend, all and singular, the said premises unto the Mortgagee, its successors and assigns, from and against them and their successors and assigns, and all other persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under said Mortgagor but against no others

THE MORTGAGOR covenants and agrees it will promptly pay the principal and interest on the indebtedness evidenced by the said Note, at the time and in the manner therein provided.

THE MORTGAGOR covenants that it will pay all taxes or other assessments levied upon or against said real estate, or improvements thereon, promptly as and when the same shall become due and payable; and if he neglects or fails to do so, the Mortgagee, its successors or assigns, may pay the same, and the Mortgagor shall reimburse the Mortgagee for its expenses and all sums expended in payment of said taxes or assessments, and all such sums are secured by the lien of this Mortgage and are to bear interest at the same rate as the Mortgage debt.

THE MORTGAGOR further covenants it will not create or permit to accrue any debt, lien or charge against or upon any part of the said property hereinabove described; that it will comply with all statutes, ordinances, regulations and requirements imposed by any governmental authority upon or with respect to the said property, including the procurement of the necessary licenses and permits and that it will not remove or destroy, or cause or permit the removal or destruction of any improvements upon said property without the written consent of the Mortgagee, its successors or assigns. Mortgagee agrees that consent hereunder will not be unreasonably withheld.

THE MORTGAGOR hereby agrees to assign all the rents, issues and profits of the mortgaged premises and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have a receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending to such proceedings, shall apply the residue of the rents, issues and profits toward the payment of the debt secured hereby.

THE MORTGAGOR does hereby grant and this Mortgage is and shall be deemed to create, grant, give and convey a mortgage of, a lien and encumbrance upon, and a present security interest in both real and personal property, including all improvements, goods, chattels, furnishings, fixtures, equipment, apparatus, appliances and other items of tangible or intangible personal property, hereinabove particularly or generally described and conveyed, whether now or hereafter affixed to, located upon, necessary for or used or useful, either directly or indirectly, in connection with the operation of the Premises or the Property for the purposes described in the approved Development Plan, and this Mortgage shall also serve as a "security agreement" within the meaning of that term as used in the Uniform Commercial Code as adopted and in force from time to time in the State of South Carolina, and shall be operative and

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TO HAVE AND TO HOLD, all and singular, the said premises unto the said Mortgagee, its successors and assigns, forever

AND the said Mortgagor does hereby bind itself and its heirs, successors and assigns to warrant and forever defend, all and singular, the said premises unto the Mortgagee, its successors and assigns, from and against them and their successors and assigns, and all other persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under said Mortgagor but against no others.

THE MORTGAGOR covenants and agrees it will promptly pay the principal and interest on the indebtedness evidenced by the said Note, at the time and in the manner therein provided.

THE MORTGAGOR covenants that it will pay all taxes or other assessments levied upon or against said real estate, or improvements thereon, promptly as and when the same shall become due and payable; and if he neglects or fails to do so, the Mortgagee, its successors or assigns, may pay the same, and the Mortgagor shall reimburse the Mortgagee for its expenses and all sums expended in payment of said taxes or assessments, and all such sums are secured by the lien of this Mortgage and are to bear interest at the same rate as the Mortgage debt.

THE MORTGAGOR further covenants it will not create or permit to accrue any debt, lien or charge against or upon any part of the said property hereinabove described; that it will comply with all statutes, ordinances, regulations and requirements imposed by any governmental authority upon or with respect to the said property, including the procurement of the necessary licenses and permits and that it will not remove or destroy, or cause or permit the removal or destruction of any improvements upon said property without the written consent of the Mortgagee, its successors or assigns. Mortgagee agrees that consent hereunder will not be unreasonably withheld.

THE MORTGAGOR hereby agrees to assign all the rents, issues and profits of the mortgaged premises and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have a receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending to such proceedings, shall apply the residue of the rents, issues and profits toward the payment of the debt secured hereby.

THE MORTGAGOR does hereby grant and this Mortgage is and shall be deemed to create, grant, give and convey a mortgage of, a lien and encumbrance upon, and a present security interest in both real and personal property, including all improvements, goods, chattels, furnishings, fixtures, equipment, apparatus, appliances, and other items of tangible or intangible personal property, hereinabove particularly or generally described and conveyed, whether now or hereafter affixed to, located upon, necessary for or used or useful, either directly or indirectly, in connection with the operation of the Premises or the Property for the purposes described in the approved Development Plan, and this Mortgage shall also serve as a "security agreement" within the meaning of that term as used in the Uniform Commercial Code as adopted and in force from time to time in the State of South Carolina, and shall be operative and

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effective as a security agreement in addition to, and not in substitution for, any other security agreement executed by Mortgagor in connection with the extension of credit transaction secured hereby. Mortgagor agrees to and shall, upon the request of Mortgagee, execute and deliver to Mortgagee, in form and content satisfactory to Mortgagee, such financing statements, descriptions of property and such further assurances as Mortgagee, in its sole discretion, may from time to time consider necessary to create, perfect, continue and preserve the lien and encumbrances hereof and the security interest granted herein upon and in such real and personal property and fixtures described herein, including all buildings, improvements, goods, chattels, furniture, furnishings, fixtures, equipment, apparatus, appliances, and other items of tangible and intangible personal property specifically or generally described and intended to be subject of the security interest, lien and encumbrance hereby created, granted and conveyed. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in such real and personal property and fixtures described herein. Upon the occurrence of a default hereunder or Mortgagor's breach of any other covenants or agreements between the parties entered into conjunction herewith, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, the remedies provided for in this Mortgage. Mortgagee, at the expense of Mortgagor, may or shall cause such statements, descriptions and assurances, as herein provided, and this Mortgage to be recorded and re-recorded, filed and refiled, at such times and in such places as may be required or permitted by law to so create, perfect and preserve the lien and encumbrance hereof upon all of the Premises and the Property.

THE MORTGAGOR covenants and agrees that, at the option of the Mortgagee, the indebtedness secured by this Mortgage shall become immediately due and payable if, without the written consent of the Mortgagee, the Mortgagor shall (i) convey away the mortgaged premises, or any portion thereof or pledge the mortgaged premises for the payment of any other debt; (ii) if the title shall become vested in any other person or entity in any manner whatsoever other than by death of the Mortgagor, or by and through a corporate reorganization or merger; (iii) make application for subdivision of the mortgaged premises, except pursuant to Mortgagor's development plan, approved by Mortgagee; or (iv) cut any of the merchantable timber from the Premises, except pursuant to Mortgagor's development plan, approved by Mortgagee. Mortgagee agrees that consent will not be unreasonably withheld. It is understood and agreed that in the event the Mortgagee consents to any transfer of title to the mortgaged premises or any related rights, the Mortgagee at its option, in consideration for such consent, may require changes in the rate of interest, term of loan, payments of principal and interest, and any other terms and conditions of this Mortgage and/or the Note secured thereby.

THE RIGHTS of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be to the exclusion of the others; that the invalidity of one or more of the clauses and covenants contained herein shall not in any way affect the validity or enforceability of the remaining provisions herein contained; and that no act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

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IT IS AGREED that the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this Mortgage or in the Note secured hereby. It is the true meaning of this instrument that if the Mortgagor shall fully perform all the terms, conditions and covenants of this Mortgage, of the Note secured hereby, or of any other agreement by the Mortgagor in connection therewith, this Mortgage shall be utterly null and void; otherwise, to remain in full force and effect. If there is a default in any of the terms, conditions or covenants of this Mortgage, of the Note secured hereby, or of any other agreement by the Mortgagor in connection therewith, then, at the option of the Mortgagee, all sums then owing by the Mortgagor to the Mortgagee shall become immediately due and payable and this Mortgage may be foreclosed. Should any legal proceeding be instituted for the foreclosure of this Mortgage, or should the Mortgagee become a party to any suit involving this Mortgage or the title to the premises described herein, or should the debt secured hereby or any part thereof be placed in the hands of an attorney at law for collection by suit or otherwise, all costs and expenses incurred by the Mortgagee and a reasonable attorney's fee shall thereon become due and payable immediately or on demand, at the option of the Mortgagee as a part of the debt secured hereby and may be recovered and collected hereunder.

THE COVENANTS, AGREEMENTS and CONDITIONS herein contained shall bind and the benefits and advantages shall inure to, the respective heirs, successors and assigns of the parties hereto. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Notwithstanding anything contained herein or in the Note, the undersigned shall be liable for the indebtedness evidenced by the Note and for the performance of all agreements in this Mortgage to the fullest extent (but only to the extent) of the property, rights, and estates described in this Mortgage ("Premises"). If there is a default in any payment due under the Note or this Mortgage, or in the performance of any agreement thereunder, any judicial proceedings brought by the note holder against the undersigned shall be limited to the protection of the Premises and the enforcement and foreclosure of the liens created by this Mortgage. If there is a foreclosure of such liens, by power of sale or otherwise, no judgment for any deficiency shall be sought or obtained by the note holder against the undersigned.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, this Mortgage has been duly executed by the
Mortgagor this 24 day of February, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

WITNESS:

Glenn J. Russell

[Signature]

WITNESS:

Glenn J. Russell

[Signature]

MORTGAGOR:

NORTH PLEASANT, LLC

By: Charles E. Reynolds

Printed Name: CHARLES E. REYNOLDS

Its: Manager

MORTGAGOR:

VINTAGE LAND, LLC

By: James E. Reynolds

Printed Name: JAMES M. REYNOLDS

Its: MAN. PART

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

PERSONALLY appeared before me Allice J. Russell who, on oath, states that s/he saw the within named Charles C. Reynolds manager of North Pleasant, LLC an Ohio limited liability company sign and deliver the within written Mortgage and that s/he with J. Sidney Burr witnessed the execution thereof.

Allice J. Russell
(Witness #1)

SWORN to before me this 24 day of February, 2005

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan 17 2013

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

PERSONALLY appeared before me Allice J. Russell who, on oath, states that s/he saw the within named Vintage Land, LLC a Co. A. limited liability company sign and deliver the within written Mortgage and that s/he with J. Sidney Burr witnessed the execution thereof.

Allice J. Russell
(Witness #1)

SWORN to before me this 24 day of February, 2005.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: 1-17-2013

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EXHIBIT A

All those certain pieces, tracts or parcels of land situate in Berkeley County, South Carolina containing 4478.28 acres in total, as shown on that certain "Plat of a Survey of The Keystone/Walnut Creek Tract containing 4478.28 acres owned by International Paper Realty Corporation" prepared on 11/10/04 by F. Elliott Quinn, III, R.L.S. (S.C. Registration Number 10282 of Thomas & Hutton Engineering Co. and recorded in Cabinet Q, Page 310-C, Office of the Clerk of Court, Berkeley County, South Carolina

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Page 31

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ENVIRONMENTAL STATEMENT

NP01831

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1318

ENVIRONMENTAL ADDENDUM **APPARENT* HAZARDOUS SUBSTANCES AND/OR DETRIMENTAL ENVIRONMENTAL CONDITIONS**

Owner/Client	North Pleasant & Village Land		
Address	SC Hwy 41, United Drive, & Cherry Church Road		
City	Monks Corner	Curry Berkeley	State SC Zip code
Lender	Trust Financial		

*Apparent is defined as that which is visible, obvious, evident or manifest to the appraiser.

This universal Environmental Addendum is for use with any real estate appraisal. Only the statements which have been checked by the appraiser apply to the property being appraised.

This addendum reports the results of the appraiser's routine inspection of and inquiries about the subject property and its surrounding area. It also states what assumptions were made about the existence (or nonexistence) of any hazardous substances and/or detrimental environmental conditions. The appraiser is not an expert environmental inspector and therefore might be unaware of existing hazardous substances and/or detrimental environmental conditions which may have a negative effect on the safety and value of the property. It is possible that tests and inspections made by a qualified environmental inspector would reveal the existence of hazardous materials and/or detrimental environmental conditions on or around the property that would negatively affect its safety and value.

DRINKING WATER

- Drinking Water is supplied to the subject from a municipal water supply which is considered safe. However the only way to be absolutely certain that the water meets published standards is to have it tested at all discharge points.
- Drinking Water is supplied by a well or other non-municipal source. It is recommended that tests be made to be certain that the property is supplied with adequate pure water.
- Lead can get into drinking water from its source, the pipes at all discharge points, plumbing fixtures and/or appliances. The only way to be certain that water does not contain an unacceptable lead level is to have it tested at all discharge points.
- ☒ The value estimated in this appraisal is based on the assumption that there is an adequate supply of safe, lead-free Drinking Water.

Comments: No Comments

SANITARY WASTE DISPOSAL

- Sanitary Waste is removed from the property by a municipal sewer system.
- ☒ Sanitary Waste is disposed of by a septic system or other sanitary on site waste disposal system. The only way to determine that the disposal system is adequate and in good working condition is to have it inspected by a qualified inspector.
- ☒ The value estimated in this appraisal is based on the assumption that the Sanitary Waste is disposed of by a municipal sewer or an adequate properly permitted alternate treatment system in good condition.

Comments: No Comments

SOIL CONTAMINANTS

- There are no apparent signs of Soil Contaminants on or near the subject property (except as reported in Comments below). It is possible that research, inspection and testing by a qualified environmental inspector would reveal existing and/or potential hazardous substances and/or detrimental environmental conditions on or around the property that would negatively affect its safety and value.
- ☒ The value estimated in this appraisal is based on the assumption that the subject property is free of Soil Contaminants.

Comments: No Comments

ASBESTOS

- All or part of the improvements were constructed before 1979 when Asbestos was a common building material. The only way to be certain that the property is free of friable and non-friable Asbestos is to have it inspected and tested by a qualified asbestos inspector.
- The improvements were constructed after 1979. No apparent friable Asbestos was observed (except as reported in Comments below).
- ☒ The value estimated in this appraisal is based on the assumption that there is no uncontained friable Asbestos or other hazardous Asbestos material on the property.

Comments: No Comments

PCBS (POLYCHLORINATED BIPHENYLS)

- There were no apparent leaking fluorescent light bulbs, capacitors or transformers anywhere on or nearby the property (except as reported in Comments below).
- There was no apparent visible or documented evidence known to the appraiser of soil or groundwater contamination from PCBs anywhere on the property (except as reported in Comments below).
- ☒ The value estimated in this appraisal is based on the assumption that there are no uncontained PCBs on or nearby the property.

Comments: No Comments

RADON

- ☒ The appraiser is not aware of any Radon tests made on the subject property within the past 12 months (except as reported in Comments below).
- The appraiser is not aware of any indication that the local water supplies have been found to have elevated levels of Radon or Radium.
- The appraiser is not aware of any inside properties (except as reported in Comments below) that were or currently are used for uranium, thorium or radium extraction or phosphate processing.
- ☒ The value estimated in this appraisal is based on the assumption that the Radon level is at or below EPA recommended levels.

Comments: No Comments

USTs (UNDERGROUND STORAGE TANKS)

- There is no apparent visible or documented evidence known to the appraiser of any USTs on the property nor any known historical use of the property that would likely have had USTs.
- There are no apparent petroleum storage and/or delivery facilities (including gasoline stations or chemical manufacturing plants) located on adjacent property (except as reported in Comments below).
- There are apparent signs of USTs existing now or in the past on the subject property. It is recommended that an inspection by a qualified UST inspector be obtained to determine the location of any USTs together with their condition and proper registration if they are active and if they are inactive, to determine whether they were deactivated in accordance with sound industry practices.
- ☒ The value estimated in this appraisal is based on the assumption that any functioning USTs are not leaking and are properly registered and that any abandoned USTs are free from contamination and were properly drained, filled and sealed.

Comments: No Comments

NEARBY HAZARDOUS WASTE SITES

- There are no apparent Hazardous Waste Sites on the subject property or nearby the subject property (except as reported in Comments below). Hazardous Waste Site search by a trained environmental engineer may determine that there is one or more Hazardous Waste Sites on or in the area of the subject property.
- ☒ The value estimated in this appraisal is based on the assumption that there are no Hazardous Waste Sites on or nearby the subject property that negatively affect the value or safety of the property.

Comments: No Comments

UREA FORMALDEHYDE (UREA) INSULATION

- All or part of the improvements were constructed before 1982 when UREA foam insulation was a common building material. The only way to be certain that the property is free of UREA formaldehyde is to have it inspected by a qualified UREA formaldehyde inspector.
- The improvements were constructed after 1982. No apparent UREA formaldehyde materials were observed (except as reported in Comments below).
- ☒ The value estimated in this appraisal is based on the assumption that there is no significant UREA insulation or other UREA formaldehyde material on the property.

Comments: No Comments

LEAD PAINT

- All or part of the improvements were constructed before 1980 when Lead Paint was a common building material. There is no apparent visible or known documented evidence of peeling or flaking Lead Paint on the floors, walls or ceilings (except as reported in Comments below). The only way to be certain that the property is free of surfaces or subsurfaces Lead Paint is to have it inspected by a qualified inspector.
- The improvements were constructed after 1980. No apparent Lead Paint was observed (except as reported in Comments below).
- ☒ The value estimated in this appraisal is based on the assumption that there is no flaking or peeling Lead Paint on the property.

Comments: No Comments

AIR POLLUTION

- There are no apparent signs of Air Pollution at the time of the inspection nor were any reported (except as reported in Comments below). The only way to be certain that the site is free of pollution is to have it tested.
- ☒ The value estimated in this appraisal is based on the assumption that the property is free of Air Pollution.

Comments: No Comments

WETLANDS/FLOOD PLAINS

- The site does not contain any apparent Wetlands/Flood Plains (except as reported in Comments below). The only way to be certain that the site is free of Wetlands/Flood Plains is to have it inspected by a qualified environmental professional.
- ☒ The value estimated in this appraisal is based on the assumption that there are no Wetlands/Flood Plains on the property (except as reported in Comments below).

Comments: Please refer to the "Property Description"

MISCELLANEOUS ENVIRONMENTAL HAZARDS

- ☒ There are no other apparent miscellaneous hazardous substances and/or detrimental environmental conditions on or in the area of the site except as indicated below.
- ☒ Excess Noise Railroad Right of Way
 - ☐ Radiation - Electromagnetic Radiation
 - ☐ Light Pollution
 - ☐ Waste Heat
 - ☐ Acid Mine Drainage
 - ☐ Agricultural Pollution
 - ☐ Biological Hazards
 - ☐ Noisy Hazardous Proximity
 - ☐ Infectious Medical Wastes
 - ☐ Pesticides
 - ☒ Others (Chemical Storage - Storage Drums, Pallets, etc.) Gas & Power Lines Right of Ways
- ☒ The value estimated in this appraisal is based on the assumption that there are no Miscellaneous environmental Hazards (except those reported above) that would negatively affect the value of the property.

When any of the environmental assumptions made in this addendum are not correct, the estimated value in this appraisal may not be valid.

PAIRED SALES ANALYSIS

**NORTH PLEASANT AND VINTAGE LAND
KEYSTONE TRACT
4,478.28 ACRES +/-
BERKELEY COUNTY, SOUTH CAROLINA**

PAIRED SALES ANALYSIS

Location Adjustment Grid		(Like Subject)		
Sale		1	2	4
3	(Unlike Subject)	-\$3,929	-\$5,700	-\$3,008
6		-\$3,299	-\$5,070	-\$2,379
5		\$2,452	\$680	\$3,372

Size (Acres) Adjustment Grid		(Like Subject)	
Sale		2	5
1	(Unlike Subject)	-\$1,771	\$48
4		-\$2,692	-\$872
6		-\$2,570	-\$750
3		-\$3,200	-\$1,380

Timber Stocking Adjustment Grid		(Like Subject)	
Sale		2	5
4	(Unlike Subject)	-\$3,692	-\$1,372
1		-\$2,271	\$48
3		-\$3,200	-\$880
6		-\$2,570	-\$250

Access/Frontage Adjustment Grid		(Like Subject)	
Sale		1	5
4	(Unlike Subject)	-\$420	-\$872
3		-\$929	-\$1,380
6		-\$299	-\$750
2		\$2,771	\$2,320

River Frontage Adjustment Grid		(Like Subject)				
Sale		1	2	4	5	6
3	(Unlike Subject)	-\$1,929	-\$2,700	-\$1,008	-\$2,380	-\$630

COMPARABLE SALES

NP01836

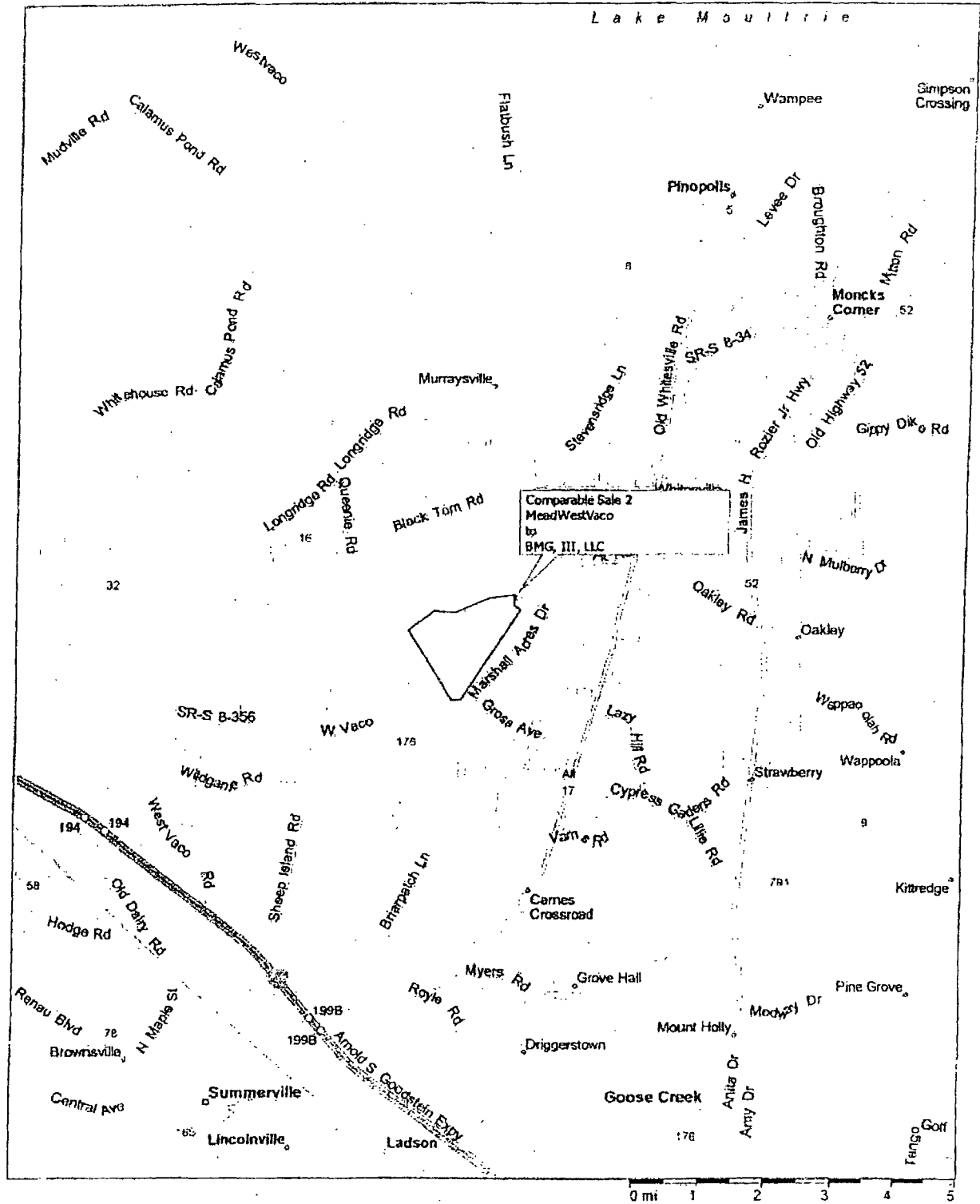
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COMPARABLE SALE 1

ACRES	3.402.0
LOCATION	The property is located in the southwestern portion of Berkeley County, South Carolina, approximately 7.5 miles southwest of Moncks Corner, two miles north of Summerville and one mile west of Whitesville, U.S. Highway 176 and Sheep Island Road.
DESCRIPTION	The property is described as lying and being in Berkeley County, South Carolina, and is more particularly described on a plat prepared by GPA Professional Surveyors, dated March 4, 2005 and recorded in Plat Cabinet Q, Pages 353A through 353D and 354A through 354C in the ROD Office of Berkeley County, South Carolina. TMS# 221-00-00-048 (portion) and TMS# 208-00-01-005.
DATE OF INSTRUMENT	March 24, 2005
DATE OF RECORDING	March 30, 2005
SELLER (Grantor)	MeadWestVaco Forestry, LLC
BUYER (Grantee)	Crescent Resources, LLC
RECORDED	Deed Book 4603 Page 282
STAMPS	\$58,169.55
CONSIDERATION	\$15,721,132
INDICATED PRICE PER ACRE	\$4,621
USE OF PROPERTY	The historic use has been for timber production; however, the property was purchased for development.
IMPROVEMENTS	None at time of sale
ZONING	Flex One and General Commercial
REMARKS	The property consists of approximately 2732 acres of highland and 670 acres of bottomland and streamside management zones. The property has extensive frontage on public paved and graded roads. Electrical, water, telephone, and cable services are available on the road frontages. There are an increasing number of residential properties in the neighborhood; however, there is a large amount of vacant land that could be made available for development. The property is fully stocked with timber, primarily merchantable and premerchantable planted-pine; however, that timber was not considered in the purchase.
RAW LAND VALUE PER ACRE	\$4,621

Comparable Sale 2 Location Map



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NP01839

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COMPARABLE SALE 2

ACRES	1,101.0
LOCATION	The property is located in the in the southwestern portion of Berkeley County, South Carolina, approximately six miles southwest of Moncks Corner, six miles north of Summerville and one mile northwest of Whitesville.
DESCRIPTION	The property is described as lying and being in Berkeley County, South Carolina, approximately four miles northwesterly of Carnes Crossroads, and is more particularly described on a plat prepared by R. A. Aldridge, P.L.S., dated March 22, 2004 and recorded in Plat Cabinet Q, Page 188-E in the Office of the ROD for Berkeley County, South Carolina.
DATE OF INSTRUMENT	December 14, 2004
DATE OF RECORDING	December 20, 2004
SELLER (Grantor)	MeadWestVaco Forestry, LLC
BUYER (Grantee)	BMG, III, LLC
RECORDED	Deed Book 4413 Page 217
STAMPS	\$12,217.40
CONSIDERATION	\$3,301,995
INDICATED PRICE PER ACRE	\$2,999
USE OF PROPERTY	The historic use has been for timber production; however, the property was purchased for development.
IMPROVEMENTS	None at time of sale
ZONING	Flex One. PUD
REMARKS	Access is provided by a 100-foot wide easement off of U.S. Highway 176. The property consists of approximately 975.8 acres of upland and 125.2 acres of bottomland and streamside management zones. There are an increasing number of residential properties in the neighborhood; however, there is a large amount of vacant land that could be made available for development. The property is fully stocked with timber, primarily merchantable and premerchantable planted-pine; however, that timber was not considered in the purchase.
RAW LAND VALUE PER ACRE	\$2,999

This map shows the Charleston, South Carolina area, with a specific property highlighted in red. The property is located near the intersection of W. A. Moncrief Rd and Liberty Village, LLC. The map includes labels for various roads, landmarks, and locations. Key roads shown include W. A. Moncrief Rd, Liberty Village, LLC, and several local streets. Landmarks such as Goose Creek, Hanahan, North Charleston, and Charleston AFB are marked. The map also shows the proximity to the Atlantic Ocean and the Charleston Harbor. A scale bar at the bottom indicates distances from 0 to 5 miles.

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COMPARABLE SALE 3

ACRES	729.0
LOCATION	The property is located in the southern portion of Berkeley County, South Carolina, within the municipality of Goose Creek, approximately one mile east of U.S. Highway 52 on Liberty Hall Road.
DESCRIPTION	The property is described as lying and being in the County of Berkeley, State of South Carolina, and is more particularly described on a plat prepared by Trico Engineering Consultants, Inc. for Centex Homes dated December 10, 2002 and recorded in Plat Cabinet P, Page 322 A & B and designated as TRACT E2 and TRACT J in the RMC Office of Berkeley County. TMS# 235-00-00-029 (Tract J), TMS# 559-06-00-014 (Tract E2)
DATE OF INSTRUMENT	July 22, 2004
DATE OF RECORDING	July 26, 2004
SELLER (Grantor)	W.A. Moncrief
BUYER (Grantee)	Liberty Village, LLC
RECORDED	Deed Book 4134 Page 45
STAMPS	\$18,712.75
CONSIDERATION	\$5,057,265
INDICATED PRICE PER ACRE	\$6,937
USE OF PROPERTY	Residential, Commercial and Multifamily Development
IMPROVEMENTS	None at time of sale
ZONING	Mixed Use
REMARKS	Special consideration of zoning was given to the developers in exchange for approximately 90 acres for the construction of a five-lane bypass highway through the property. Ryland Homes has since purchased approximately 120 acres for residential development. The property has approximately 440 acres highland with the remaining acreage deemed as lowland with no development possibilities. Property was annexed into the City of Goose Creek. The timber located on the property was considered to contribute only to the aesthetic quality of the land.
RAW LAND VALUE PER ACRE	\$6,937

This map illustrates the Cordesville area in South Carolina, highlighting the location of the 'Comparable Sale 4' (MeadWestVaco to South Carolina DNR) near Kensington. The map shows a network of roads including Cane Gully Rd, Ackerman Rd, Old Church Rd, and others. Key locations marked include Cherry Hill, Bethersa, Hagan Landing, and Cordesville. A scale bar at the bottom indicates distances from 0 to 5 miles.

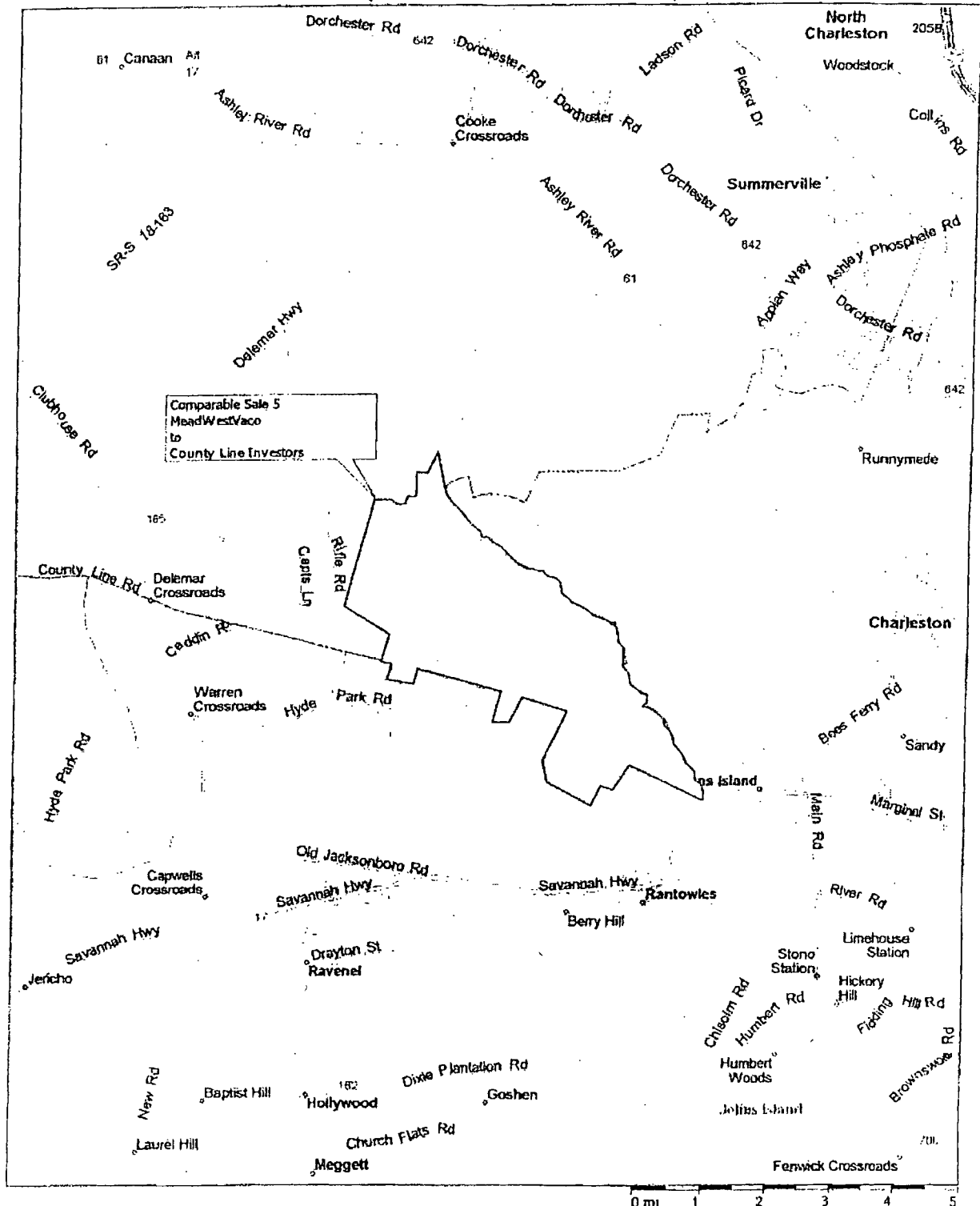
85

COMPARABLE SALE 4

ACRES	10,713.0
LOCATION	The property is located in the southeast central portion of Berkeley County, South Carolina, approximately eight miles southeast of Moncks Corner, eight miles northeast of Goose Creek and 2.5 miles west of Hugger on South Carolina State Highway 402 and the Cooper River.
DESCRIPTION	The property is described as lying and being Berkeley County, South Carolina, and is more particularly described on a plat prepared by Ashley Engineering & Surveying, Inc. dated March 15, 2004 and recorded March 26, 2004 in Plat Cabinet Q, Pages 190A, 190B, 191A, 191B, 192A, 192B, 193A, and 193B in the Office of the Register of Deeds for Berkeley County, South Carolina. TMS# 200-00-00-008
DATE OF INSTRUMENT	March 25, 2004
DATE OF RECORDING	March 30, 2004
SELLER (Grantor)	MeadWestVaco Forestry, LLC
BUYER (Grantee)	South Carolina Department of Natural Resources
RECORDED	Deed Book 3908 Pages 43-60
STAMPS	\$53,762.85 (Portion of acquisition was exempt from transfer fees)
CONSIDERATION	\$48,200,000
INDICATED PRICE PER ACRE	\$4,499
USE OF PROPERTY	Recreation, Preservation
IMPROVEMENTS	The property contained a number of improvements that were not considered to contribute to the value of the property at the time of sale.
ZONING	R15: Preservation Residential
REMARKS	This property is known as the Bonneau Ferry Plantation and consists of approximately 6,720 acres of upland highland, 2,172 acres of upland wetlands, 515 acres of lakes and 1,305 acres of old rice fields. It is estimated to have eight miles of frontage along the Cooper River and the East Branch of the Cooper River. The property is well stocked in mature natural and merchantable and premerchantable planted-pine. The timber was not considered to offer a separable value to the sale due to the intended use by the state.
RAW LAND VALUE PER ACRE	\$4,499

NP01844

Comparable Sale 5 Location Map



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COMPARABLE SALE 5

ACRES	5,749.0
LOCATION	The property is located in the extreme southern portion of Dorchester County, South Carolina, on the Dorchester-Charleston County lines, approximately 8.5 miles south of Summerville and 12 miles northwest of Charleston on County Line Road and Bulow Landing Road.
DESCRIPTION	The property is described as lying and being all those certain tracts of land, comprised of three contiguous parcels, situated on County Line Road near Bulow Landing, in Charleston County and Dorchester County, in the State of South Carolina. TMS# 201-00-00-001 Dorchester County, TMS# 233-00-00-006, TMS# 241-00-00-013, TMS# 242-00-00-014, TMS# 301-00-00-018 and TMS# 301-00-00-019 Charleston County, South Carolina.
DATE OF INSTRUMENT	February 25, 2004
DATE OF RECORDING	February 27, 2004
SELLER (Grantor)	MeadWestVaco Forestry, LLC
BUYER (Grantee)	County Line Investors, LLC
RECORDED	Dd Bk 4019, Pg 211 (Dorchstr Co.) Dd Bk K-485 Pg 137 (Christn Co)
STAMPS	\$44,400
CONSIDERATION	\$12,000,000
INDICATED PRICE PER ACRE	\$2,087
USE OF PROPERTY	Conservation Easement (portion), Development
IMPROVEMENTS	None of value at the time of sale.
ZONING	Agriculture
REMARKS	The property consists of approximately 4,957 acres highland and 561 acres of streamside management zone, bottomlands, and inoperable swamps. In May of 2005, 3,100 acres was granted Conservation Easement status, Deed Book 4741, Page 1 of the Dorchester County Register of Deeds, through an agreement with Wetlands America Trust, Inc. and Ducks Unlimited. A plat of this Easement is recorded in Plat Book K, Page 151, Dorchester County. The timber located on the property was not considered to offer a separable contributory value.
RAW LAND VALUE PER ACRE	\$2,087

[illegible]

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COMPARABLE SALE 6

ACRES	672.0
LOCATION	The property is located in the southern portion of Berkeley County, South Carolina, within the municipality of Goose Creek, South Carolina, approximately one mile east of U.S. Highway 52 at Liberty Hall Road.
DESCRIPTION	The property is described as lying and being in the County of Berkeley, State of South Carolina, know as TRACT E1, containing 672 acres and is more particularly described on a plat prepared by Trico Engineering Consultants, Inc. for Centex Homes, dated December 10, 2002 and recorded in Plat Cabinet P, Pages 332 A & B in the RMC Office for Berkeley County, South Carolina. TMS# 235-00-00-012
DATE OF INSTRUMENT	December 26, 2002
DATE OF RECORDING	January 3, 2003
SELLER (Grantor)	W.A. Moncrief
BUYER (Grantee)	Centex Homes
RECORDED	Deed Book 3082 Page 207
STAMPS	\$14,800
CONSIDERATION	\$4,000,000
INDICATED PRICE PER ACRE	\$5,952
USE OF PROPERTY	Residential Development
IMPROVEMENTS	None at time of sale
ZONING	PD (Planned District)
REMARKS	The property was reported to have approximately 460 acres of highland and 212 acres of marshland. The highland is currently being developed in phases for new homes ranging in price from \$124,000 to \$211,000 with square footages from approximately 1,100 sq. ft. to 2,600 sq. ft. The timber located on the property was considered to contribute only to the aesthetic quality of the land.
RAW LAND VALUE PER ACRE	\$5,952

NP01848

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QUALIFICATIONS

NP01849

E. DANTZLER FRAZER

EDUCATION

Born October 25, 1953 in Tallahassee, Florida. Attended Abraham Baldwin Agricultural College from 1972-1976. Attended University of Florida 1980-1982. Have successfully completed the following courses:

American Society of Farm Managers and Rural Appraisers Courses:

- Fundamentals of Rural Appraisal - Exam A-10
- Principals of Rural Appraisal - Exam A-20
- Advanced Rural Appraisal - Exam A-30
- Advanced Rural Case Studies - Exam A-40
- Standards of Professional Practice - Exam A-12
- Report Writing - Exam A-15
- Certification Preparation - Exam A-45
- Advanced Resource Appraisal - Exam A-34
- Appraising Rural Residential Properties
- Permanent Planting Seminar

Marshall & Swift Courses:

- Marshall Valuation Services: Calculation Method
- Marshall & Swift Residential Cost Seminar
- Marshall Valuation Services: Segregated Method

EMPLOYMENT

From 1968 to 1982 - Employed at F & W Forestry as a Crew Chief for Tree Planting and Timber Stand Improvement and as a Forest Technician assisting Management Foresters.

From 1982 to 1984 - Employed as a Forest Technician in F & W Forestry Services, Macon Office.

From 1984 to 1988 - Employed as "Special Projects" Manager for F & W Forestry Services, performing Inventories, Appraisals, and Trust Inspections over the Southeastern United States.

1988 to 1996 - Manager of Real Estate Sales, F & W Forestry Services, Inc.

1996 to 1997 - Macon District Real Estate Appraiser, F & W Forestry Services, Inc.

1997 to Present - Piedmont Appraisers, Inc., Vice President

REFERENCES

Mr. Robert G. Chambers, President, Timberland Investment Services, L.L.C., Woodstock, Georgia

Mr. Mark Seaman, Vice President, Wachovia Timberland Investment Management, Atlanta, Georgia

Mr. Mike Shearer, Vice President, UBS-Resource Investments, Inc., Franklin, Tennessee

Mr. Neil Hamm, President, Security National Bank, Macon, Georgia

Mr. Philip Gipson, President, Farmers and Merchants Bank, LaFayette, Alabama

Mr. Gerald McGill, Tallapoosa County Commissioner & Private Landowner, Alexander City, Alabama

Mr. William T. Divine, Attorney, Divine, Raulerson, and Fields, Albany, Georgia

Mr. Rick Wheatley, Vice President, Peoples Bank & Trust, Auburn, Alabama

AFFILIATIONS

Alabama Certified General Real Property Appraiser #G00338

Georgia Certified Real Estate Appraiser #001144

Member, National Association of Independent Fee Appraisers

President, LaFayette Rotary Club 1999-2000, Rotary Club International

Member, Board of Directors, Abraham Baldwin Agricultural College, Agricultural School, Alumni Council

Former Member, Membership Development Committee, American Society of Farm Managers and Rural Appraisers

Former Member, Board of Directors, Georgia Chapter, American Society of Farm Managers and Rural Appraisers

Former Chairman, Membership Committee, Georgia Chapter, American Society of Farm Managers and Rural Appraisers



Mark Sanford
Governor

Adrienne Higgins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Real Estate Appraisers Board



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Post Office Box 11847
Columbia, SC 29211-1847
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FAX: (803) 896-4404
www.llr.state.sc.us

TEMPORARY PRACTICE PERMIT

Pursuant to the requirements of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act and Section 40-60-110 of the South Carolina Real Estate Appraiser Registration, License, and Certification Act, this Real Estate Appraiser's Temporary Practice Permit is hereby issued to:

NAME: **ELEY D. FRAZER**

STATE OF RESIDENCE: **AL**

APPRAISER CLASSIFICATION: **CERTIFIED GENERAL APPRAISER**

LICENSE/CERTIFICATE NUMBER IN RESIDENT STATE: **G00338**

The above named appraiser has satisfied the qualifications of the South Carolina Real Estate Appraisers Board and is hereby granted a **TEMPORARY PRACTICE PERMIT**. This permit shall expire upon the completion date of the appraisal assignment described below.

APPRAISAL ASSIGNMENT

4,478.28 ACRES KNOWN AS THE KEYSTONE TRACT LOCATED IN BERKELEY COUNTY ON SC 41, CHARITY CHURCH ROAD AND UNITED DRIVE. PROPERTY SOLD BY MEADWESTVACO TO PRIVATE INVESTORS.

Beginning Date: **10/20/2005**

Ending Date: **04/20/2006**

SOUTH CAROLINA TEMPORARY PRACTICE PERMIT NUMBER: 2005166

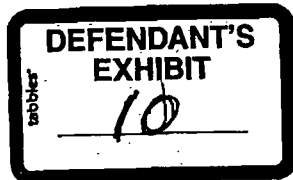
Persons granted a **TEMPORARY PRACTICE PERMIT** shall not advertise or otherwise hold themselves out as being a South Carolina State Certified or State Licensed Real Estate Appraiser.

October 20, 2005

Robert L. Selman
Executive Director

NP01852

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Vanguard 000005

Paul Smith

From: Josh Hulen [jhulen@vdgllc.com]
Sent: Tuesday, February 20, 2007 4:54 PM
To: Daniel Fogarty
Subject: RE: Keystone Tract
Attachments: Keystone Bulk Tract.pdf

From: Daniel Fogarty [mailto:df@pittengercompany.com]
Sent: Tuesday, February 20, 2007 2:00 PM
To: Josh Hulen
Subject: RE: Keystone Tract

Josh do you have a map of the tract you could email me?

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0066 | F 704.365.0910 C 704.753.3911
df@pittengercompany.com | www.pittengercompany.com

From: Josh Hulen [mailto:jhulen@vdgllc.com]
Sent: Tuesday, February 20, 2007 12:47 PM
To: Daniel Fogarty
Cc: bobrogers1@bellsouth.net; jreynolds@reynoldsplantation.com; petebailey2000@comcast.net; tboulware@vdgllc.com
Subject: Keystone Tract

Daniel,

Thank you for your renewed interest in the Keystone Tract. As you know, we have started moving forward with a plan to subdivide and sell off smaller tracts within the project. I have talked to the partners, however, and they have agreed to work with you in your interest to purchase land from them. The following is what I have been cleared to come to you with in terms of a proposal. After reviewing the proposed terms with Robert, please get back to me as soon as possible with how you would like to proceed regarding a deal.

1) The partnership desires to hold onto a portion of the tract and continue the disposition of smaller tracts to interested parties. They will block off the "heart" of the property for a bulk sale to you and give you plenty of land, as well as frontage on Hwy 41 for ample access and road frontage to the portion they would sell to you. In total, they would sell you roughly 2,600 acres, which would be more accurate when surveyed to reflect the land under discussion. Basically, it is everything on the east side of Hwy 41, north of the power line easement, and approaching the west side of United Drive. You will find a better description of this on the attached map.

2) The price for the property is proposed as \$10,000 per gross acre, or roughly \$26 million. This is somewhat of a discount to what the tracts are currently being sold for as subdivided tracts, which is anywhere from \$12,000 to \$15,000 per acre. Additionally, based on comps and listings in the immediate area and in places such as Awendaw, this is a tremendous discount, especially considering the existing zoning of the property, which is Flex-1 (minimum 30,000 sf lots). Comparable property in the immediate area is listed for almost \$20,000 per acre and property in Awendaw is in the same price range.

3) You would be given a 45-day due diligence period. This would be for you being able to inspect the property and do any other work you need to do. You would be provided with a current copy of the survey, as well as the Phase I that was conducted several years ago when the property was purchased.

4) You would put down \$50,000 earnest money and would increase it to \$500,000 at the end of due diligence, with it becoming non-refundable if you move forward with the deal.

Vanguard 000006

5) You would have 30 days to close, with the contingency of the property being correctly subdivided and recorded in the county to reflect what you are buying.

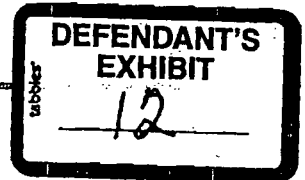
Again, please review these terms and get back to me with how you would like to move forward.

Regards,

Josh Hulen

Paul Smith

From: Paul J. Smith [pjs@ceclaw.com]
Sent: Tuesday, April 17, 2007 5:49 PM
To: jhulen@vdgllc.com
Cc: Daniel Fogarty
Subject: Vanguard\North Pleasant/Vintage Land - Keystone Tract
Attachments: Scan3688.pdf



Mr. Hulen,

Attached hereto for your review and record is the title binder received today from Chicago Title. We will review this binder and the related title work over the next 15 days and provide any comments or objections to the sellers. Please advise if this needs to be sent to anyone else on behalf of the sellers. Thanks.

Paul

Paul J. Smith, Esq.
Culp Elliott & Carpenter, P.L.L.C.
4401 Barclay Downs Drive, Suite 200
Charlotte, North Carolina 28209
Direct: 704-973-5325
Fax: 704-551-5700
Main: 704-372-6322
Email: PJS@ceclaw.com <<mailto:PJS@ceclaw.com>>
Website: www.ceandc.com <<http://www.ceandc.com/>>

IRS CIRCULAR 230 DISCLOSURE:

Under requirements imposed by the U.S. Internal Revenue Service, we inform you that any advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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-----Original Message-----

From: konica7145@ceclaw.com [mailto:konica7145@ceclaw.com]
Sent: Tuesday, April 17, 2007 3:27 AM
To: Paul J. Smith
Subject: Attached image data

ALTA COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
200 South Tryon Street, Suite 800 • Charlotte, NC 28202
Phone (704) 375-0700 • Fax (704) 945-0637

ECB

SCHEDULE A

Number
CH07-0012040

Effective Date
April 2, 2007
at 8:00 A.M.

1. Policy or Policies to be issued:

OWNER'S:

\$TO BE DETERMINED

Proposed Insured:

VANGUARD PROPERTIES OF THE CAROLINAS, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY

LOAN:

\$TO BE DETERMINED

Proposed Insured:

LENDER TO BE DETERMINED and/or its successors and assigns, as their interests may appear

2. The estate or interest in the land described or referred to in this Commitment and covered herein is a fee simple, and title thereto is at the effective date hereof vested in:

NORTH PLEASANT, LLC, AN OHIO LIMITED LIABILITY COMPANY (71.875% UNDIVIDED INTEREST) and VINTAGE LAND, LLC, A GEORGIA LIMITED LIABILITY COMPANY (28.125% UNDIVIDED INTEREST)

3. The land referred to in the Commitment is described in Schedule C.

SCHEDULE B - Section 1

The following are the requirements to be complied with:

1. Instrument(s) creating the estate or interest to be insured must be approved, executed and filed for record, to wit:

- (a) Warranty Deed from the authorized manager(s) of NORTH PLEASANT, LLC, AN OHIO LIMITED LIABILITY COMPANY and VINTAGE LAND, LLC, A GEORGIA LIMITED LIABILITY COMPANY to VANGUARD PROPERTIES OF THE CAROLINAS, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY.

The deed must be executed pursuant to authority contained in the Articles of Organization filed with the Secretary of State, and the Operating Agreement.

- (b) Mortgage from VANGUARD PROPERTIES OF THE CAROLINAS, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY, to LENDER TO BE DETERMINED securing \$TO BE DETERMINED.

The mortgage must be executed pursuant to the authority contained in the Articles of Organization filed with the Secretary of State, and the Operating Agreement.

2. Payment of the full consideration to, or for the account of, the grantors or mortgagors

3. Payment of all taxes, charges, assessments, and owners' association dues against subject premises which are due and payable.

4. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, subcontractors, labor and materialmen are all paid. NOTE: This item will be deleted upon receipt of satisfactory evidence that such liens cannot obtain priority over the lien of the instrument(s) to be insured.

[SCHEDULE B-Section 1 continues]

ALTA COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - Section 1 - continued

Number: CH07-0012040

5. Cancellation, satisfaction or release of the following documents:
 - (a) Mortgage to Trust Financial, a Mortgage Company, LLC recorded in the Office of the Register of Deeds for Berkeley County in Book 5115, at page 215; and assigned to Farm Credit Bank of Texas by Assignment recorded in said Office in Book 5427, page 93.
 - (b) UCC Financing Statement in favor of Trust Financial, a Mortgage Company, LLC, filed for record in Book 5115, page 240.
 - (c) UCC Financing Statement in favor of Trust Financial, a Mortgage Company, LLC, filed for record in Book 5115, page 245.
6. Verification as of closing of (1) the due organization and good standing of NORTH PLEASANT, LLC (herein "entity") in its state or country of organization, (2) recordation of certified copies of any articles or certificates of conversion, merger or other change(s) of name since deed vesting title in entity or its predecessor(s) in the Office of the Register of Deeds of the county in which the land is located and (3) authority of individual(s) executing documents on behalf of entity to enter into the transaction to be insured on its behalf.
7. Verification as of closing of (1) the due organization and good standing of VINTAGE LAND, LLC (herein "entity") in its state or country of organization, (2) recordation of certified copies of any articles or certificates of conversion, merger or other change(s) of name since deed vesting title in entity or its predecessor(s) in the Office of the Register of Deeds of the county in which the land is located and (3) authority of individual(s) executing documents on behalf of entity to enter into the transaction to be insured on its behalf.
8. Verification as of closing of (1) the due organization and good standing of VANGUARD PROPERTIES OF THE CAROLINAS, LLC (herein "entity") in its state or country of organization and (2) authority of individual(s) executing documents on behalf of entity to enter into the transaction to be insured on its behalf.
9. Payment of roll-back taxes, which may become due and payable as contemplated under Title 12, Article 3 of the South Carolina Code of Laws of 1976, as amended, provisions, sections 12-43-220 (D-4).
10. Satisfactory evidence should be had that improvements and/or repairs or alteration thereto are completed; that contractor, subcontractors, labor and materialmen are all paid.
 - (i) Seller/Mortgagor Affidavit (CTIC Form 3049) must be executed and returned to the Company.
 - (ii) Affidavit and Agreement (CTIC Form 3053) must be executed and returned to the Company; [OR] Builder's or Contractor's Affidavit (CTIC Form 3054) must be executed and returned to the Company.
11. The following endorsements will appear on the final OWNERS Policy issued pursuant to this commitment subject to underwriting approval:

SUBDIVISION [upon satisfaction of requirement #12]

[SCHEDULE B-Section 1 continues]

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - Section 1 - continued**

Number: CH07-0012040

12. Receipt of satisfactory evidence or certification of compliance with all applicable subdivision laws, ordinances, resolutions, regulations and rules, including but not limited to the recordation of a properly approved subdivision plat in the local registry.
13. Verification that at the time of closing, there are no parties with rights to the land pursuant to verbal leases or pursuant to recorded or unrecorded written leases.
14. Receipt by Company of an insurable metes and bounds legal description that accurately depicts the insured premises. Surveyor to certify to the Company that the metes and bounds legal description delineates the property described in Schedule C hereof. Company reserves the right to add or modify exceptions or requirements upon receipt of survey.

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - continued**

Number CH07-0012040

SCHEDULE B - Section 2

Schedule B of the policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for the value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes, dues and assessments for the year 2007, and subsequent years, not yet due and payable.
3. Easements, setback lines and any other matters shown on plat recorded in Plat Cabinet Q, page 310-C; Plat Cabinet R, page 165-A; Plat Cabinet R, pages 301-A and 301-B.
4. Right of Way Easement from International Paper Company to South Carolina Electric and Gas Company recorded in Deed Book C95 at page 130.
5. Terms, conditions, reservations and right of way contained in instrument from International Paper Company to M.D. Bates recorded in Deed Book C128 at page 100.
6. Terms, conditions and easements contained in instrument from International Paper Company to South Carolina Public Service Authority recorded in Deed Book C143 at page 319.
7. Power Line Easement(s) to Berkeley Electric Cooperative, Inc. recorded in Book 1802 at page 330; Book 2330 at page 60.
8. Jurisdiction of the U.S. Corps of Engineers with respect to any portion of the property which may constitute wetlands or marshlands or navigable waters.
9. Restrictions and reservations contained in Deed from International Paper Realty Corporation to North Pleasant, LLC and Vintage Land, LLC recorded in Book 4537 at page 132.
10. Rights of others in and to the continuous and uninterrupted flow of the waters bounding or crossing the land and riparian and/or littoral rights incident to the land.
11. Rights of way for railroad, switch tracks, spur tracks, railway facilities and other related easements, if any, on and across the land.
12. The correctness of the square footage/acreage computation contained in the description of the land is not insured.
13. Any discrepancies, conflicts, access, shortages in area or boundary lines, encroachments, overlaps, setbacks, easements or claims of easements, riparian rights, and title to land within roads, ways, railroads, watercourses, burial grounds, marshes, dredged or filled areas or land below the mean highwater mark or within the bounds of any adjoining body of water, or other matters which would be revealed by a current inspection and accurate survey of the land.

NOTE: All terms, provisions, conditions and stipulations of the American Land Title Association Commitment for Title Insurance (1966) are incorporated herein by reference including, but not limited to, the provision that all liability and obligations under this Commitment shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided the failure to issue such policy or policies is not the fault of the Company.

A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE C

Number CR07-0012040

The land referred to in this commitment is described as follows:

Lying and being situate in Mecklenburg County, North Carolina, and being more particularly described as follows:

BEING a portion of the property described in instrument recorded in Book 4537, page 132.

[A MORE PRECISE DESCRIPTION TO BE PROVIDED]



**Chicago Title Insurance Company
Security Union Title Insurance Company**
(Members of the Fidelity National Financial, Inc. group of companies)

Fidelity National Financial Group of Companies' Privacy Statement
July 1, 2001

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by, us, our affiliates, or others;
- From our Internet web sites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information:

- to agents, brokers or representatives to provide you with services you have requested;
- to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and
- to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right to Access Your Personal Information and Ability To Correct Errors Or Request Changes Or Deletion

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address:

Privacy Compliance Officer
Fidelity National Financial, Inc.
601 Riverside Avenue, 12th Floor
Jacksonville, FL 32204

Multiple Products or Services

If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 10 2014

SC Court of Appeals

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS

Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

North Pleasant, LLC and Vanguard Development Group, LLC, Appellants

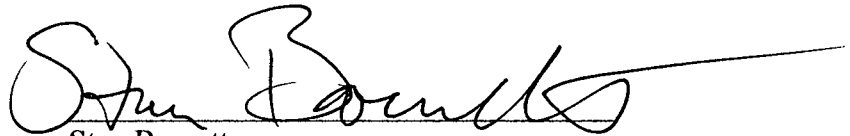
vs.

South Carolina Coastal Conservation League and Edward Dana Beach, defendants,

Of whom South Carolina Coastal Conservation League is the Respondent,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials
proposed to be included by any of the parties and not any other material.



Stan Barnett
Ellison D. Smith, IV
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mount Pleasant, SC 29465-1542
(843)881-1623
Attorneys for Appellants, North Pleasant, LLC and
Vanguard Development Group, LLC

September 16, 2014

5

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS

Roger M. Young, Circuit Court Judge

Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

RECEIVED

SEP 23 2014

SC Court of Appeals

North Pleasant, LLC and Vanguard Development Group, LLC..... Appellants

vs.

South Carolina Coastal Conservation League and Edward Dana Beach, Defendants,

Of whom South Carolina Coastal Conservation League is the Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on the Respondent by depositing a copy of it in the United States Mail, Postage prepaid, on September 22, 2014, addressed to their attorneys of record as follows:

G. Trenholm Walker, Esquire
W. Andrew Gowder, Jr., Esquire
John P. Linton, Jr., Esquire
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Charleston, SC 29405



Starr Barnett

Ellison D. Smith, IV
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mount Pleasant, SC 29465-1542
(843)881-1623
Attorneys for Appellants, North Pleasant, LLC and
Vanguard Development Group, LLC

September 22, 2014
Mount Pleasant, South Carolina