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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Berkeley County
Court of Common Pleas

Thomas L Hughston, Jr , Circuit Court Judge

Opinion No 2010-UP-382 (S C Ct App filed August 4, 2010)

Sheep Island Plantation, LLC

Respondent,

v

Bar-Pen Investments, LLC,

Petitioner

APPENDIX – VOLUME II

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we have

THE COURT All right, cross examination

CROSS EXAMINATION

BY MR ALTMAN

Q Mr Carter, are there any errors in your appraisal in the document you ---

A There is During the deposition on my discussion of adjustments, if we can go to that page, when I proofed it I missed a percentage that was incorrect

Q That's on page 53?

A That's going to be 53 analysis and adjustment of sales, and we corrected that during the deposition That should have been 6% and not 24%

Q That's near the bottom of the page on the third to last line, is that correct?

A That's correct, under time economic trends, that should be 6%

Q Okay, any other errors in your appraisal?

A Not that I know of

Q Not that you know of

I'm going to ask you to look, page 47 First tell us what a TMS number is?

A That's a tax map number that the assessor uses in the county to identify a piece of property

Q And you've used those numbers in your appraisal to

identify the properties, the comparables you're talking about
A If you don't have an address for unimproved property you normally identify it by the TMS or a legal description may identify it as lot and block
Q Am I correct in your appraisal that the jury will have in the jury room with them that the properties you are appraising there's a color map on each of the comparables and those are outlined in yellow those are the properties you're using, is that correct?
A No, what you have there is a Berkeley County GIS map that identifies the property by zoning, and if you look on the map that comparable, which is 1970001, that piece of property is outlined in yellow and it has the zoning on it In this case it was planned development, mixed use
Q Okay, but I believe the number that's outlined in yellow is 1970001008, is that correct?
A That's correct
Q Okay, now, I'm going to ask you to look in the paragraph you have above that and you referred to 1970001021
A Correct That would be an error It should be 0008 It's Tract C
Q So, which number is correct?
A It should be the one on the GIS map, 008
Q Okay, did you make any other mistakes in preparing your appraisal?

A Not that I know of
Q Not that you know of, but we know there were two
A Correct
Q Okay, when you're doing an appraisal I believe you testified that there's some considerations when you look at the comparables One of those considerations would be the size of the property, is that correct?
A Yes, correct
Q How much size difference does there have to be before you will consider making an adjustment because of size?
A It depends Again, when you look at the market and you abstract the values of property from the market you may find that in some areas that 10 acres and 50 acres will sell the same per acre Then I've seen it also in other areas where one acre and 10 acres requires adjustments It's called regression, which typically is just like square footage of a house the more you build you get economy of scale the price per acre sold is inversely proportional to the number of acres sold, but it doesn't always hold hard and fast So, what you have to do is look at the properties in your market area and determine from the market whether an adjustment is required or not
Q So, sometimes you could say one acre is going to sell for the same price as a hundred acres?
A It depends If that's what the market is indicating,

yeah
Q Your comparables that you've used here ---
A Correct
Q --- the piece of property that we were -- we're talking about here it is a hundred acres, correct?
A Correct, approximately
Q Do you have a comparable that's seven acres?
A Because you always want to bracket your size You want them some smaller and you want some larger
Q Then you have a comparable 20 acres?
A Correct
Q 36 36 acres?
A Correct
Q 33 87 acres?
A Correct
Q 61 34 acres?
A Correct
Q And 147 87 acres?
A Correct
Q And I understand you're telling us today that there does not need to be any size adjustment with regard to any of those pieces of property?
A This market indicated to me there was not
Q No, no, between a seven acre tract and 147 acre tract there's no change in market price

A Not according to this market
Q Not according to this market
Now, in your comparable chart you show that the seven acre tract had a value of or an adjusted value of $30 986 correct?
A No, that's the raw value That's what it sold for
Q Well, I'm looking ---
A You're looking at the top 39-86?
Q I'm looking at the property of 2130 State Road, comparable number one, across the line it says adjusted price
A I'm looking at sale price per acre $30,986
Q Okay, but it's the same, same number but you're looking a little bit higher up Let's look at that
A Yeah, that's the raw value That's what it sold for per acre
Q And that's the seven acre tract correct?
A Correct
Q And then you're saying the 20-acre tract sold for $30,000 an acre, correct?
A Well, that's fact That's what it sold for
Q That's what it sold for, and the 36 36 sold for 28,823 an acre
A Correct
Q Correct? And then the 33 87 acres sold for $39,061 an acre

A Correct
Q Correct? And that is pretty close, that's three acres difference but $11,000 difference in price, correct?
A Correct
Q And then 61 34 acre tract sold for $32,605 correct?
A Correct
Q Then the 146 acre tract sold for 20,288
A Correct
Q And there's no difference in those numbers according to what you're telling us today?
A What I'm telling you is you've got four that sold for basically the same Then you've got one that's really high and one that's really low and there's no way of explaining it because you can't say that that 20,000 would cause a hundred acres because you've got the high one at 39,000 an acre for basically whatever acreage it was on that one for number four So, it's telling you that the prices there for those two they're like abborations They don't fit in to the scale You can't say if you, you've got two there that are three acres apart in size and one sold for 39 and one sold for 28 and they're virtually the same properties So not all properties are going to sell for exactly the same, even if they're identical properties just because the market because you've got buyers and sellers that are going to pay different

amounts So, that's why you want to pull as many comparables as possible to eliminate those So, by pulling six and I look at those six, you've got four properties that sold for virtually the same per acre You've got one that's high, one that's low that is not explainable So, by the time you throw all those two out you've got the four that show you what your value is

Q Do you use the average of all of -- all six of them to come up with the value here?

A No, you don't use averages

Q Well, how did you do it then?

A What you do is you look at it and you get rid of your highs and lows So, you get down to where you've got them adjusted basically the same and then your opinion of value is based on what you think that property is most like

Q So, size made no difference to you in this appraisal

A In this appraisal

Q Between seven acres and 146 acres you say they were all worth the same

A It showed me that they were, that the market indicated that an adjustment was not required

Q Despite the fact that two of the properties very close in price or very close in size have a difference of $11,000 an acre correct?

A Absolutely, it has nothing to do with size

Q Nothing to do with size
A That one doesn't if they're three acres apart and they sold for 11,000 difference it has nothing to do with size
Q What does it have to do with?
A Don't know Sometimes you can't determine that
Q Did you make any attempt to determine it?
A You look at the comparables visually as well as pull all the records and deeds on them and you try to determine it but sometimes it's just not possible You may have a distress sale You may have somebody who buys one high strictly because they want that property and some things some of those things you cannot determine
Q Did you make any phone calls to the buyer or seller and ask if they were fair market value sales or ---
A Absolutely not
Q Absolutely not You didn't want to know why they sold for different prices?
A I don't know who they are other than their name in the deed, can't look at it in the phone book and find them
Q Isn't there a grantee's address on every deed in South Carolina?
A Possibly
Q Possibly? What else do you take into consideration when you're appraising that might affect the price?
A Well, it depends You see it on the adjustment page

There's a lot of things You look at real property rights conveyed, financing terms, conditions of sale, time, economic, expenditures location, size, and regressions shape, zoning topography, frontage, etcetera

Q How about utilities, availability of utilities?

A Availability of utilities can make a difference if you're doing a subdivision development In this case we were all doing raw land Utilities are available at some distance for most of the properties, but they don't have utilities onsite with hookups

Q You didn't make an adjustment for the availability of utilities on this either, did you?

A No, there's no reason to

Q No reason to

A Because these are raw -- the raw, they're all raw land

Q Raw land On your comparable number two ---

A Okay

Q --- you cite to the fact that all utilities were available at the site is your third sentence, page 46

A Correct

Q You don't make that statement with regard to any of your other comparables or with regard to the subject property, do you?

A No, I do not

Q Does that make a difference to you?

A No, because it was 30,000 per acre So, that's what I'm talking about I'm bracketing everything You've got one near utilities were available at it, five others that weren't, but they sold for the same So, an adjustment was not required for the utilities It didn't show that there was a $5,000 differential It showed they were basically sold for the same

Q But you didn't ---

A That's why you try to bracket everything

Q You didn't tell us the utilities were or were not available to the other properties Why not?

A I didn't need to say it I mean, I said they were available here and by omission on the others they're not there

Q So I understand there is no difference in size value or value per -- value considering size between seven acres and something that is ten times or 12 times bigger?

A In this appraisal ---

MR FUTERAL Your Honor, I, pardon, pardon me one second Your Honor, I object I think this has been asked and answered

THE COURT This is the last time I'm going to let him ask that, the last time that question is going to be asked

MR ALTMAN Okay, Your Honor, I have nothing further

THE COURT All right Anything on redirect?

MR FUTERAL Briefly, Your Honor

REDIRECT EXAMINATION

BY MR FUTERAL

Q Two errors were pointed out in your report One was, I think the difference between six or 24% in your report What was that in relation to, population or something?

A No, that was economic adjustment on the -- and on the grid it's six percent It was 5% per month ---

Q Okay

A --- adjustment for time factor and then when I did the narrative part of it my fat fingers hit 24% instead of 6%

Q Okay so, then you relied on the actual, the correct figure but typed it wrong

A Yes, if you look at the ---

Q All right

A --- adjustment chart it is based on the 6%

Q Okay, all right, which is the one, the adjustment chart is really where we get down to the nitty gritty

A Correct page 52

Q Okay, so, that wouldn't change your opinions that you had a typo?

A No

Q Okay and this comparable you were asked some questions about I guess comparable number three where you may have flipped flopped the TMS number for a GIS number? I don't know

what a GIS number or TMS number is, but would it make any difference?

A No, because the deed book and page, the date of sale, all the recording information is there for the property

Q Okay, and lastly you were asked some questions about these two pieces of property that you, I guess, threw out of your considerations or eliminated because they were high and low You mentioned something like a distress sale Could that be like hypothetically somebody had a death in the family and needed to sell the property or some reason like that? What do you mean by distress sale?

A Could be that

Q Okay

A Could be a divorce, could be anything where the property needed to be marketed quickly

Q And just so I'm all four when you say they wanted that property like somebody hypothetically says it has to be that one piece of property I want to buy

A Assemblage a lot of times will do that If a person owns one piece of property and one next, that goes on sale they'll pay a premium for it to get that

Q And in your training as an appraiser is it a requirement that you would go and hunt down folks like these and actually talk to them about what their reasons were for ---

A No, no

Q Okay
A Typically that is not done by my peers or anybody in the appraisal business
Q Okay, that's all the questions we have Thank you
THE COURT Thank you very much You can step down
MR FUTERAL We're going to ask Mr Carter to stay, so
THE COURT What?
MR FUTERAL We're going to ask him to stay
THE COURT All right
MR FUTERAL All right
THE COURT Have a seat in the audience
Members of the jury panel I need to return a telephone call that I just got and everything So I'm going to ask you to go to the jury room The jury if you would go to the jury room Be back with you in just a few minutes
*****OFF THE RECORD*****
(On the record)
THE COURT All right, we have the jury back with us Call your next witness
MR FUTERAL Your Honor, we'd like to call our last witness, Mr Hill, Mr Steve Hill
WHEREUPON Mark Stephen Hill was called to the stand, duly sworn by the Court as testified as follows
THE COURT Have a seat Tell us your name
MR HILL My name is Mark Stephen Hill, H-I-L-L

DIRECT EXAMINATION

BY MR FUTERAL

Q Mr Hill can you tell the jurors a little bit about yourself, please?

A I'm 62 years old I'm a graduate of the University of Pittsburgh, been in the building business since the day I got out of school and been here for 31 years building houses mostly in Berkeley and Dorchester County, about 2500 of them and I've been in the building and real estate business my basically my whole adult life

Q Any military service in your background?

A Yes, I'm a Vietnam vet, did that between graduating from college and graduating from graduate school I have an MBA and I have a wife been married to for 39 years I have two adult female daughters, Megan and Meredith, one married, one divorced and I'm active in the Town of Summerville I'm a member of the First -- Summerville Presbyterian Church where I was an elder I am on the board of directors at Habitat for Humanity for Dorchester County I'm involved in the Summerville Exchange Club where I have been president I was president of the Trident Homebuilders Association in 1995 and now I'm semi-retired and build some houses in Pine Forest Subdivision in Summerville with my son-in-law

Q All right, and your company's name again is?

A Steve Hill and Company Builders

Q Okay, can you tell the jurors some, over the years some of the neighborhoods that you've built or houses in neighborhoods?
A Well, in Berkeley County I have built in Crowfield and the Hamlets in Crowfield both areas, Cherry Hill and the Hamlets, finished up there in the early 2000s, built Fairfax on 176, built Eagle Landing down behind the mall In Dorchester County I've probably built 400 houses in Sangaree I'm sorry, that's Berkeley County Dorchester County I've built a lot on Trolley Road, Summer Ridge, Iron Gate, Summer Trace, Quail Harbor, Quail Harbor V I've been doing it for 31 years I've been in a lot of locations over the past 31 years
Q You've heard some testimony regarding what the market for real estate was like back say in July of 2006 or even December of 2005 Would you disagree with the testimony you've heard about the condition of the market?
A No, sir the market was good
Q And so, properties are appreciating rapidly in your opinion?
A Rapidly
Q All right, how did you come to get involved in this particular deal?
A I got involved in this particular deal, my son-in-law, Patrick was using a concrete company that was either owned or

partially owned by Mr Marshall I don't know exactly, and Patrick came to me at the end of June or the beginning of July of 2006 and said Steve, ``There is a Mr Marshall who is involved with the concrete finisher who has an opportunity for you to buy some land,'' and I said, ``Where is the land '' and he said, ``I don't know It's in Berkeley County and I think it's up there in that area where Cane Bay is going and all of that stuff up there and you know, it might be interesting,'' and I said, ``Okay, I'll talk to Mr Marshall Do you have his number?'' And he said, ``I can get your -- get his number'', and he got the number and I called Bruce and ---

Q Do you recall when you all first spoke approximately?

A I'm as bad as everybody else, sir You know, it was the end of June it was the beginning of July it was somewhere in that timeframe I don't have any notes I've tried to, you know, I've tried to get more specific on that but I'm not, I'm not positive

Q Without, just trying to keep the pace going here, without telling us, unless you want to, the very exact words you all used in terms of your first conversation, would I be correct that at some point you became interested in getting involved in this deal?

A Thought I'd get interested

Q Okay

A A lot of questions

Q All right, like, like questions such as?
A ``Let me see the property Where exactly are you on the sewer and water? You know, how big is it? What's in the area?'' I mean, I had to go out there and take a look to kind of bring myself up to speed I knew -- he had told me that it was going to close at the end of July, and I've been in this business a long time That's a short period of time and I had a lot of work to do
Q Okay, so, in other words I'd be correct you're not just going to sign off on it until you take -- do your due diligence if you will?
A That's correct
Q And you, of course, were given at some point a copy of the contract You knew what the contract price and terms were correct?
A At some point I actually got that from Benjamin Lafond
Q Okay so, to move it along I would -- as we know you got involved in it So, I'm assuming when you looked at the property it seemed like a good deal to you at least at the time
A At the time it seemed like a very, very good location for me to be involved
Q Okay, do you know why Bruce Marshall or Sheep Island Plantation why they were bringing you in? Why were they going

to make you a member of the LLC?
A They very nicely told me ---
MR ALTMAN Unless, unless he had -- it's based on hearsay we would object and that's specifically where it's going
THE COURT Ask another question
Q All right why did you invest? What was your understanding, not based on something what somebody else said what was your understanding as to why you were becoming a member of Sheep Island LLC?
A The location was great There was lots of activity out there I checked around to find out who Mr Marshall was in particular because he seemed to be leading the effort I really didn't have any information on how the LLC was set up but I had talked to him on numerous occasions I met Mr Hilleshiem I liked him He was a business owner, local a lot of things fit I was willing to go forward and do my due diligence to see whether or not the deal would work
Q And would I be correct also that you had money?
A I had money
Q Okay, you have been described as a ten Would you say you're actually a ten, you're not Bill Gates?
A There's no question that I am not a ten I know what tens can do I am significantly less than a ten The bank obviously lets you know that I am less than a ten since they

would not take me on and just give every, just, you know let it flow through They obviously cut back on what they were willing to give us on the last day So, I think that that takes a ten away from me pretty much but I had enough to close that loan

Q Okay, you didn't have any direct dealings with Mr Rakes, the seller's realtor, did you?

A No, but I know Mr Rakes I've known him for years

Q Okay, and you didn't have any direct dealings with one of the members of the LLC and its attorney, Mr Wooddy?

A None

Q Okay, but at some point you found out that an additional sum was due under the commitment letter correct?

A Yes, I did

Q You, I believe the testimony is, you went into the bank and signed the commitment letter or how did you go about signing the commitment letter?

A If I'm not mistaken, I went into the bank on Friday afternoon It may have been Thursday, that's where I say I may be mistaken I'm not sure which day it was, but it was Thursday or Friday afternoon That young man was under a bunch of pressure to try to get that bank loan done because I had come in late financially okay, but I had come in late, and he was under a bunch of pressure They asked me to sign the commitment letter I do not believe that there was a

commitment attached I said to him, ``There is not a commitment attached to this,'' and he said, ``I have got to get this to,'' whoever his, whoever his further up in the bank chain needed to be Probably not the smartest thing I've ever done but I figured I'm not closing this until Monday I have time for my attorney to look it over, make sure it's what I was told that it was, and I did pretty much the same thing that has been testified by Mr Hilleshiem I said, ``Has anything changed,'' and he said no

Q Just because you sign a commitment letter, well, does -- that binds the bank to give you the money, right?

A That's correct

Q But does it bind you to actually borrow the money if you sign it?

A No, the closing was on the 31st, was the following Monday, and I really wasn't concerned about it until that time I had an attorney looking at it To be fair, I am not in the legal profession I use professionals to help me through this Do I read a contract? Yes I want to know how much it costs I want to know how big it is I want to know what the terms are and I can figure out in my mind if I borrow this much how much it's going to cost me, but the legalese of it the attorney is going to tell me if there's a problem

Q I want you to assume that additional time of some period would have been given past August, or I'm sorry, July 31st to

close this transaction, would you have been able to come up with the extra 211 and change?
A I probably could have come up with it the next day I, per my deposition, it said that I had enough money, I think almost enough money to do it myself
Q Okay, and when you said you had enough money was this money in checking, savings or can you just walk into the bank on the 31st and get this money?
A No, I had to take it out of an account but I'm sure I could have gotten it the next day
Q Okay, so, you would have to shuffle some things around to come up with it To your knowledge was Sheep Island LLC, ready, willing and able to close at any period of time after the 31st?
A To the best of my knowledge
Q Okay one second, please You all are asking for damages in this case?
A Yes, sir, we are
Q Claiming they breached the contract, right?
A We are
Q Why are you asking for damages?
A Well, we're asking for damages because the market has changed and I know I for one at this time have invested in other things I'm not ready to go back and buy that piece of property today I was willing to buy it then and for a number

of days after then but now I'm not
Q All right you're aware that monies have been spent in preparation for the closing
MR ALTMAN Your Honor, Your Honor, he's leading the witness
Q As a member of the LLC what if any information did you have whether the LLC had put any or any of its members had put any money into this deal prior to July 31st?
MR ALTMAN Your Honor, unless he has his own personal knowledge he's not, cannot testify
THE COURT I sustain the objection
Q All right, Mr Hill, what exactly are the damages that Sheep Island, LLC, is seeking?
A The damages that they're seeking are the difference between the value of the property the day that we were to purchase it versus the value of our contract, which was somewhat earlier than that, and to recoup the losses that we have in the terms of down payments, payments made to subcontractors and, too, for attorney's fees
Q Okay, and the value you're talking about that would be the value you heard Mr Carter testify to today?
A That would be that value, yes, sir
Q Minus the contract price, do you have an idea exactly how much that dollar ---
A It sounds like it's 600,000

Q Okay, one moment, please That's all the questions that I have

CROSS EXAMINATION

BY MR ALTMAN

Q Mr Hill, sounds like you were a pretty successful businessman, doesn't it?

A Average

Q Average, you've done well in your life?

A Yes, sir

Q Made good business decisions?

A Certainly have been lucky

Q Been lucky, has something to do with it, but you're careful normally aren't you?

A Pretty careful

Q Normally have your attorney look at contracts before you sign them?

A Yes I do

Q You didn't in this case, did you?

A Didn't have time

Q Didn't have time

Didn't say to Mr Knight, ``I need to see this document and have my attorney look at it?''

A No, sir

Q Didn't even read it yourself, did you?

A Wasn't there

Q Wasn't there -- you heard Mr -- you were here when Mr Knight testified
A I've heard -- I heard that testimony, yes, sir
Q And he said it was there?
A I say the same thing I said in my deposition, it was not there
Q It was not there You came into this deal sometime late June, early July, correct?
A That's correct
Q And you saw the contract at some point because Mr Lafond gave it to you?
A Mr Lafond showed it to me, yes
Q When did you see the contract?
A I don't know
Q Sometime after early July?
A My best recollection is probably the 10th, plus or minus, I don't know
Q Okay, some time around the 10th of July you see the contract
A Some time in that range
Q Were you aware when you saw the contract that there was no water and sewer available for the property?
A No, sir
Q Mr Marshall had not told you that?
A Around the 10th of July I went and talked to Berkeley

County or after the 10th of July I went and talked myself to Berkeley County Water and Sewer I talked to Mica Miley [spelled phonetically]

Q You heard, you were here when Mr Marshall testified yesterday?

A I was here

Q You heard him testify that he knew in early July that there was no water and sewer available?

A He -- that's, that's what he said, yes

Q And you heard Mr Knight testify today that he knew in early July there was no water and sewer available?

A Yes, they did

Q And nobody bothered telling you that?

A I don't remember whether I was told that or not I knew that subsequent to looking at the contract

Q And you spent some time between the time you met Mr Marshall and July 26th doing some due diligence correct?

A Yes, sir

Q During that period of time did you speak to Mr Knight? Prior to July 26th did you speak to Mr Knight?

A Prior to July 26th did I speak to Mr Knight? Yes, I did

Q How many times?

A I don't recall

Q You had seen the contract You knew the closing date

had to be done by July 31st?
A July 31st
Q Time is of the essence?
A I saw that
Q Have you signed time is of the essence contracts before?
A Yes, I have
Q You know what they mean, don't you?
A I know what they mean
Q Meaning come that day it's all over if you haven't done it, right?
A Usually
Q Usually, that is the issue
Okay, so, you've testified that sometime on the 27th or 28th of July you go to the bank, you sign your name on the commitment letter, which I believe is the Plaintiff's Exhibit Number 13, correct, and you sign that twice, once as a member of the LLC and once individually as a guarantor, correct?
A I signed it on the 28th of July, yes
Q You signed it on the 28th
A That's what it's dated the 28th
Q You signed -- the only thing you were signing was the signature page because you say you hadn't seen the commitment letter?
A That's correct He needed, he needed to have the signature page, I believe, I may be wrong, but I believe he

said they were doing the commitment letter
Q They were doing the commitment
A That could be, that might be in my mind but you know, that was a year and a half ago
Q And at some point you received a copy of the commitment letter, correct, sometime by the 31st, is that correct?
A No, sir, I never attended the closing on the 31st, never attended it
Q I thought you testified that you gave the commitment letter at some point to an attorney to look at after the fact?
A Wasn't my, wasn't my testimony
Q Okay, you didn't do that? It's my mistake I thought you testified to that
A No
Q You did due diligence on the property correct?
A Yes, sir
Q Did you do due diligence on your partners, other members of the LLC?
A Well, in a roundabout way, yes, sir
Q In a roundabout way Did you do due diligence on Mr Marshall, Mr Bruce Marshall?
A I talked with a very, very good friend of mine who was -- who knew Mr Marshall a girl who had worked with me for about a dozen years a girl by the name of Bonnie Duckworth who is also from Goose Creek Bonnie said she knew Bruce

Marshall and that he was an upstanding, fair person or I would have never made the first -- I would have never even talked to him the first time, but it was a good recommendation She was a solid recommendation

Q How about Mr Curtis, did you check him out?

A No I have no idea who he is

Q How about Mr Bordine?

A I have no idea who he is

Q He's listed as one of the members of the LLC

A I understand that

Q So you were going into his LLC with people you didn't know anything about

A I owned 50 percent of this LLC and as I have said numerous times to everybody when you own 50% you're pretty much in control I didn't care if there were seven of them or two of them I was going to have at least half the votes and to be quite honest with you I felt as though my risk was very, very much reduced

Q But you were getting into business with people you did not know, correct?

A I was owning a piece of property that I thought was more valuable than the sales price with some people that I didn't know, yes

Q You said you knew Mr Rakes, correct?

A I know of him

Q Had you ever had dealings with him before?
A I can't answer that question I don't know I mean, I've met him Whether or not we ever finished doing something or didn't I can't tell you
Q Did you try and contact Mr Rakes to get more time to close?
A No, no, I did not
Q Did you tell anybody, Mr Lafond or Ms Richard or anybody, you know, ``We're supposed to have that 15 extra days You need to tell them we need to have the 15 extra days so we can close?''
A No, I didn't do that
Q You didn't do that?
A I didn't do that No, I called my attorney and my attorney was fronting that I'm pretty much a hands-off If I've got a good attorney, if I've got good solid people in place I don't I don't need to go do that stuff myself They know far more about that than I do
Q You had read the contract, correct?
A I read the contract in Mr Lafond's office Probably what I cared about was when did it close how big is it and how much is it going to cost us and where is it located Those, those to me are the things that make the business deal The boilerplate quite honestly I don't worry about Before I close yes Have I made mistakes before? Yes

Q I have nothing further Your Honor

MR FUTERAL I have nothing further, Your Honor

THE COURT Let me ask you I just want to make sure I understood your testimony You were asked something about could you close after the 31st and you said that you could Why didn't you close on the 31st?

A The 31st, can I explain to you what my recollection of the 31st?

THE COURT Well, why didn't you close on the 31st? Wasn't it because of $211,625 ---

A Because my attorney ---

THE COURT --- that the bank asked for on the 28th wasn't in the bank?

A I did not know until probably noon or one o'clock and I'm not even sure that it was then, but I put a call into Mr Lafond because I was about to go to the bank and pick up a cashier's check for 400 well half of 885, whatever a half of 885 was, to pick up that check, and when I called Mr Lafond, Mr Lafond said ``The bank has come back with a changed commitment, and you guys are going to need $211,000 more '' and I said, ``What do we do?'' And he said, ``I don't know I need to talk to your other partners,'' and I said ``Well call me back '' And he said, ``As soon as I have things straightened out I will call you back '' He called me back Tuesday morning and, you know, at that point I assumed that

you know, we were trying to do something else, but that's where I was on that deal

THE COURT Okay, thank you very much

Any other witnesses?

MR FUTERAL No, Your Honor

THE COURT All right that finishes the testimony then from the Plaintiff We'll take a break at this time I have to deal with some matters with the lawyers So we'll take a little early lunch break I'm going to have to do some work with them between now and when we get started with the other side of the case So, I'm going to let you go to lunch and ask you to be back in the jury room downstairs about two o'clock We'll get started just as soon as we can after that Leave your notepads out here Be back at two o'clock

(Whereupon, the following takes place outside the presence of the jury)

THE COURT All right, Mr Altman, you ready to go forward?

MR ALTMAN Before we go forward Your Honor, I'd move for a directed verdict

THE COURT All right tell me why you think I should direct a verdict

MR ALTMAN Your Honor, I think that the issue here is simply that the Plaintiffs, the purchasers of this property defaulted They had a contract that required them to close no

later than July 31st, 2006 They did not do so They did not -- they claim that they have a 15-day extension of time to close under paragraph 33 of the contract, but they made no attempt during the 15-day period to tender the purchase price or to schedule a closing I believe the reason they did not do that is they did not realize what the terms of the contract were but be that as it may, that doesn't matter They had the contract They made no attempt They did not contact the seller They did not have their attorney contact the seller They did not have anybody contact the seller That's one part of it

The second part of it is they're only entitled to that extension of time if the contingency that they are seeking, the 15-day extension through was not caused by their fault The contract was signed in mid-December 2005 There was a seven and a half month period after that for the purchaser, for the buyer, for the Plaintiff to get everything arranged for the closing They had a 45-day opportunity they were supposed to have their financing in place, and despite what the Plaintiff tries to indicate, that is for the -- their benefit to know if they're going to be able to go through with the closing The seller would like to have a contract without a contingency for financing but the buyer needs to know if they've got their money

The time came and went for the 45 days Seller said,

``We haven't heard anything We assume it's there '' We go another 45 days because they have a 90-day due diligence period and if they didn't have their financing even in that 90-day period they could have said, ``We don't, you know, we just don't want to close '' They could have walked away for any reason They didn't do it They paid an additional $40,000 plus gave the seller the $10,000 that was already there, went hard it became nonrefundable There's testimony from there the buyer's agent, Ms Richard, that on April 26th she conveyed to Mr Rakes, the seller's agent, ``We've got financing '' We've got no reason to think there's anymore contingencies

Early on when we -- when they were dealing with BB&T, the buyers knew that they didn't have enough financial strength They needed more than the people they were considering They knew that throughout We fast forward to July, end of June, sometime in June 2006 first of July, we find out they haven't gotten anybody else, no more financial strength They're still scampering They've talked to 50 people and all they have is Mr Jeremy Marshall, Mr Bruce Marshall for 1%, Mr Funk and Mr Hilleshiem but they need more people They know they need more people They haven't gotten the people yet They haven't gotten the financial strength

They talk to Mr Bordine They talk to Mr Curtis Then they bring Mr Hill in the first part of, end of June, first

part of July Mr Hill needs to do some due diligence He does his due diligence Now, we're at July 26th, five days before the closing is to take place, but three business days before the closing is supposed to take place, and he finally gets his information to the lender The lender would like to have had the commitment letter done several weeks before the closing so they can order the appraisal with a guarantee from the purchaser that they're going to get reimbursed if the closing doesn't take place, but the bank moves forward, and they, but they cannot get the approval done Why? The approval is done the last business day before the closing is supposed to take place They can't get it done because they don't have the information on time un-contradicted testimony from Mr Knight, the loan officer So, the reason that they couldn't close they claim surprise is because last minute, why were we at the last minute because there was not sufficient time for the bank to get things done because the buyer did not bring the information in a timely fashion That's their fault

When I was in law school my torts professor went on a tear one day and went around the classroom wanting to know what fault was finally found somebody that could tell him what fault was and he says, ``Fault is somebody said fault is bad '' The professor was excited because it was bad, and that's what's happened here It's bad that the fault, that

they did not get their information on time to get this transaction completed There was fault on behalf of the buyer So, even if they had claimed the right to a two-week extension they would not have been entitled to it, but we don't have any -- there's nothing in writing nothing that was sent to the seller saying ``We've got a problem We need a two-week extension We're entitled to a two-week ---

THE COURT I hate to use the term fault You know, that's a bad, I mean, this case that's a bad term Maybe it would have been better to say through doing something or failing to do something that you should have done Fault just sounds too bad

MR ALTMAN I understand that That's why I made the statement about the professor

THE COURT Well, that's what I say I don't know that I'd like -- I don't like that word fault in this situation

MR ALTMAN Okay

THE COURT But I think, I think in that -- in the context of this case is through ---

MR ALTMAN Responsibility

THE COURT The fact that the, yeah, the fact that the Defendants were supposed to do something and they didn't get it done in a timely fashion I don't like the word fault

MR ALTMAN Okay, I'll withdraw ---

THE COURT They were too busy doing other things making money otherwise to get all this done

MR ALTMAN They were doing something otherwise They did not do what they were supposed to do They did not fulfill their responsibility ---

THE COURT They didn't get their loan by the 31st

MR ALTMAN They didn't get their loan in time

THE COURT That's what it boils down to

MR ALTMAN And interestingly, Your Honor, the last thing that was said from the witness stand today I think really tells the whole story and that is if Mr Hill had gotten a phone call ---

THE COURT Why am I not surprised you think that?

MR ALTMAN I have -- I think I know, but I think if Mr Hill had been told sometime on the 31st, ``Get the 211, we can close,'' I think we would have had it I think we would have had it, but nobody bothered to call him, nobody, and it's interesting again that the correspondence said for the 30-day extension that everybody knew was gone, but the bottom line is what Mr Hill said that last statement on the stand that nobody called him back until the 1st, and you know, one day may sound like it's not a long time but, Your Honor, there was seven and a half months and there was a 15-day window 16-day window to close These people had ample opportunity

Somewhere it's got to come to an end, lack of communication They could have done it had they acted responsibly in time and that's why we're here and I just don't think there's a case to go to the jury I think the facts are clear They haven't proven they're entitled to relief

THE COURT All right, what do you say in opposition to that?

MR FUTERAL Thank you, Your Honor

What we have here I believe, Your Honor, is a case of repudiation I've going to back up for a moment and talk about, let me talk about the issue of fault first and I'll get to repudiation second

One I think there is enough evidence here that while we can all sort of play Monday morning quarterback as to what the Plaintiff and its members might have done different under the circumstances, I think there is enough evidence that a jury, a reasonable juror could infer that they were in fact, doing everything they were supposed to do under the terms of this agreement to try and close

One of the things ---

THE COURT All right, let me cut in a second

MR FUTERAL Yes sir

THE COURT If you've got to have the money by the 31st, then you don't, how can it be anything other than the buyer's fault?

MR FUTERAL To answer Your Honor's question that's your answer

THE COURT Well, you're saying extension I understand that extension but by the 31st when they were supposed to close not taking into account the 15-days extension ---

MR FUTERAL Yes, sir

THE COURT --- but if they didn't have the money on the 31st how can it be anything other than their fault?

MR FUTERAL Here's why, Your Honor, and this way this contract is written in and of itself is a little odd, but it has ---

THE COURT All right let's say that they have the word is, like I say I don't like to use the word fault, responsibility

MR FUTERAL Yeah

THE COURT And if it's their responsibility to have all the money ready to close on the 31st and they didn't ---

MR FUTERAL Yes, sir, I understand

THE COURT I hate to say this but they went to the wrong bank

MR FUTERAL Well ---

THE COURT Or something, talking to Mr Knight back there or whatever I'm just kidding and everything, but I mean ---

MR FUTERAL I think ---

THE COURT --- you know, on the, on the 28th here come here the banks comes in with $211,000 more that they want and they're not able to get it together by the 31st Whose fault it that?

MR FUTERAL Yes, sir and I think I can answer that question for you In fact, I know I can

In answering it it's necessary to look at the contract because part of this, of course, depends upon Your Honor's interpretation of the law and part of it depends on the facts So we've got mixed facts of question and law going on here

First of all, in terms of interpreting the contract because this is where we go to the source to see whether we have a case or not This is -- we start with the four corners of this agreement We know that it was drafted by the sellers It is ambiguous or otherwise, it's going to be construed against them

The extension agreement says if the transaction has not closed within the stipulated time period because -- not because you didn't bring your money, Your Honor It says because a contingency has not been satisfied Your Honor, when we go down to paragraph 34 one of the contingencies is closing by 31st Now, we didn't draft it this way, and I know that sounds odd, but that's what the contract says an actual contingency is the closing date So, then we have to ask

ourselves was it through no fault of either parties That's where we get into a question of fact as to whether there is evidence that our clients were not at fault and I would say first of all, the burden of persuasion showing that they were entitled to terminate this agreement as a defense they need to meet that burden, but we've anticipated that through the following testimony at trial

First, you have testimony from the members themselves that they were working diligently to obtain a loan We can toss out the 30 and 45 day loan application in seeking the loan

THE COURT Well, there's no question about that They were trying to get the loan

MR FUTERAL Yeah, and the seller had waived that period So, I think that's a non-issue at that point

THE COURT To me it just boils down to did they close on the 31st and if they didn't do they have any recourse after that

MR FUTERAL Okay, and getting right down to that point the testimony is at least from the sellers that they were never told they were going to need to come up with another 211 and Mr Hill said he could have come up with it but not that day

THE COURT Right

MR FUTERAL He had to move some money around

THE COURT Yeah, yeah

MR FUTERAL And that's where it boils right down to, was that our fault that the bank then decided to put another 211 on top Now, the reason why it took so long they had reasonable explanations The bank wasn't going to make a commitment until it understood the water and sewer issue which according to the testimony was somewhere in late June early July It had to do with a political shift from Mr Roshire, I believe the name was, to somebody else until they finally learned months down the road that this was going to be an issue that effected the type of loan they received, going from planned unit development to raw land You've heard plenty of testimony on that So, now what we're talking about, Your Honor, if the shift in the water and sewer is not our clients' fault and it's not, that left them somewhere about a month, 30 to 40 days to completely shift gears to get this thing closed by the 31st, and so, I think the focus the jury will have on this and there are facts to show that they hustled to get this done is really between the end of June and the first of July Nothing is their fault up until this point So, they get thrown a wrench by Roshire leaving office They notify the bank The lender's representative has testified that none of this was their fault, that they complied, they gave them everything they needed, etcetera, and it's -- the bank of course if they're looking at a different transaction and they

want additional investors they've got to tell the borrower which they did, that's the testimony and then the borrower's testimony, Sheep Island is, ``All right, we started going out there and getting more investors,'' leading all the way up to Mr Hill What it sounds like from the testimony is that these guys basically broke their backs putting this deal together, and when it got right down to the 31st even with a 15-day extension they weren't going to be given a day or two

Your Honor, the testimony also shows that no one from the seller's side, they want to claim we're at fault somehow at a time they didn't even care whether we were at fault or not

THE COURT Well I don't think, based on the testimony and the evidence I don't think that that point ever came up till way after the fact

MR FUTERAL Sure and that's where ---

THE COURT You can look at the suit and see that nothing was mentioned in that, nothing ever came up about that till way after the fact over a year later

MR FUTERAL And that's where we get into repudiation but before moving on to there ---

THE COURT Tell me what you want to say about that

MR FUTERAL Okay, I just wanted to finish up on this part and say, Your Honor, you may disagree with the interpretation of the facts but I really think the question as to whether the Plaintiff, Sheep Island, was at fault in

this transaction is a question of fact for a jury Your Honor may feel differently about that outcome, but I still think it's a fact that the jurors should decide whether they were at fault, particularly given the testimony from the lenders and his affidavit and so on that they weren't

THE COURT I've got a little different view on it Go ahead

MR FUTERAL All right, we were talking about this in conjunction with the summary judgment motion, and we tossed about the term anticipatory breach of contract The term that comes up in conjunction with that is repudiation and this is really a letter, this is an issue of black letter law I'll tell you what I was looking at in terms of preparing for today's argument as being the authority, one being South Carolina Jurisprudence There is a case in South Carolina and ---

THE COURT Where do you say that there was an anticipated breach that took place?

MR FUTERAL Yes sir I'll get -- I wanted to give Your Honor the black letter law on repudiation and then I'll list specifically the testimony that shows repudiation under the circumstances unless you want me to go right into what happened at trial

THE COURT I'm not sure I understand your theory I don't know what you want to say

MR FUTERAL Yes, sir, let me, if I may, this is the Honorable Ralph King Anderson in his civil charges book, ``A repudiation is a statement by the obligor '' in this case the seller ``to the obligee,'' in this case the buyer, ``indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach The doing of something by a party that is inconsistent with the contract's existence may be treated as a breach thereof where such refusal or inconsistent act occurs after the time performance of the contract Repudiation includes a refusal or declination to perform in accordance with the contract A repudiation before the time for a performance which amounts to a refusal to perform it gives the adverse party the option to treat the entire contract as broken and to sue immediately for damages for total breach There is no necessity in such case for a tender of performance or compliance with conditions precedent or waiting for the time of performance to arrive, although this is optional No notice need be given that the repudiation is treated as a breach '' and in this case we have presented an ample amount of evidence of repudiation Specifically, you have the testimony of the following individuals, Georgia Richard ---

THE COURT I mean if you're talking about if you're talking about that the seller said, ``We're not going to close after the 31st,'' there's no question about that

MR FUTERAL That's the repudiation That's the breach when they started making that statement

THE COURT I disagree with you as far as that's concerned

MR FUTERAL Well ---

THE COURT But anyway, that's what, that's what you claim was the repudiation, okay

MR FUTERAL This -- let me allow -- if I may, Your Honor, this goes back to whether we were at fault This is a legal matter for the Court According to the charges by Judge Ralph King Anderson relying on black letter law, Osten-Sacken and the like

THE COURT That makes it sound awfully bad if I disagree with that if it's black letter law I wish you'd quit saying that

MR FUTERAL Oh, I'm sorry Well, this is -- the reason why I'm saying that, Your Honor is there is ---

THE COURT Hornbook law, that still sounds bad

MR FUTERAL Look, I had to go back and look it up myself

THE COURT Just tell me what you think -- you just tell me what you think the law is without using those terms

MR FUTERAL All right Your Honor, what it means is according to the law of repudiation when they repudiated it gave us the option to treat the entire contract as a matter of

law as broken and to sue immediately for damages So, the question becomes before we get to the July 31st closing had the sellers already breached and the answer is yes Mickey Rakes and this has been admitted into evidence, e-mail, July 20th, and he said the seller will grant quote, ``no extension,'' end quote There has been testimony by Mr Lafond and Georgia Richard both before and after the 31st that they were told unequivocally there would be no extensions So, by July 20th was the first communication of no extensions and then Mr Rakes's testimony, as we were discussing for the other motion is that he clearly communicated that also on the 21st to Ms Richard and to Benji Lafond, both of whom testified to this So, they repudiated

THE COURT All right, but they were never granted an extension

MR FUTERAL They repudiated before we ever got to a July 31st closing and the law in this area says we can treat it as a breach It is optional that we attempt to perform, that is what I'm quoting and in this case we did try to perform by the 31st until we got thrown the wrench of $211,000 of interest That's a question of whether it's our fault I'm asking Your Honor let the jury decide that as a matter of fact and not as a matter of law whether we were at fault in doing that

THE COURT But the problem is there that and this is

the way I felt, go ahead

MR FUTERAL Well ---

THE COURT I'm not going to argue with you

MR FUTERAL No, sir, and I don't take it as argument I want to answer the Court's questions in that regard, too

THE COURT I appreciate your position, but anyway, I'm going to let the case go forward I want to hear what your folks have to say It's always good to hear from both sides I'm going to allow the case go forward I deny your motion for directed verdict at this point I'll revisit it at the end of the case

MR FUTERAL Thank you, Your Honor

THE COURT All right, be back at two o'clock

MR ALTMAN Your Honor, how will we ---

MR FUTERAL Yes, sir

MR ALTMAN How are we going to handle the situation with Mr White?

THE COURT Who?

MR ALTMAN Mr White the appraisal

THE COURT Well, we're going to get him here tomorrow I mean, as far as I know he's going to, you know, well, let's put it on the record about what I did I went back there and called the Master's Office in Charleston and found out that he is down there for a hearing this afternoon I told him to deliver a message to him to get in touch with

Mr Altman as soon as he can, that we need him here tomorrow and so we'll wait, we're going to probably go till tomorrow and everything as far as getting him here and everything is concerned So, I'm anticipating him being here tomorrow

MR ALTMAN Okay, thank you, Your Honor because I don't know that we'll take all afternoon, Your Honor

THE COURT Well, we'll quit whenever we -- whenever you all run out of something to do and come back again tomorrow

MR ALTMAN Thank you, Your Honor

THE COURT All right

*****OFF THE RECORD*****

(On the record)

BAILIFF They're all here, Your Honor

THE COURT Bring them in

(Whereupon, the following takes place in the presence of the jury)

THE COURT All right, we have the jury back with us The Plaintiff has finished presenting all the testimony and evidence that it wishes consider Now we switch to the Defendant and the Defendant will present testimony and physical evidence if it so desires Call your first witness

MR ALTMAN Call Mr Wooddy

WHEREUPON Aubrey J Wooddy, Jr , was called to the stand, duly sworn and testified as follows

BAILIFF Have a seat and state your name and spell your last name for us

MR WOODDY My name is Aubrey J Wooddy Jr Wooddy is spelled W-O-O-D-D-Y

DIRECT EXAMINATION

BY MR ALTMAN

Q Mr Wooddy, you're also known by the name Skipper?

A Yes that's correct

Q Okay, so I'm going to use that ---

A Okay

Q --- since we've known each other a while Skipper, what do you -- what's your profession? What do you do for a living?

A I'm an attorney

Q How long have you been practicing law?

A 35 years

Q In Mt Pleasant or Charleston area?

A In the Charleston area, correct

Q Where are your offices?

A We have one in Mt Pleasant and one in Goose Creek

Q Do you specialize in any particular area of law?

A Real estate and real estate development

Q You do both commercial and residential closings?

A I used to do them both The firm does them both, but I pretty much concentrate on the commercial area
Q Are you a member of Bar-Pen Investments, LLC?
A Yes, I am
Q Who are the other members of that limited liability company?
A A fellow named Joe Bartone and Steve Pendley
Q Is Mr Pendley still alive?
A No, he's deceased and his wife inherited their share
Q Okay so it is now you Mr Bartone and Mrs Pendley
A Mrs Pendley, correct
Q Do you remember -- did Bar-Pen Investments purchase a piece of property on Sheep Island Road in Berkeley County?
A Yes, we did
Q When was that purchase?
A July of 2005, I think
Q What was the reason you purchased it?
A Investment property
Q Buy and then to sell it?
A Correct
Q Okay, did there come a time in December of 2005 when you were approached about a purchaser for that property?
A Yes
Q Was a contract entered into?
A Yes, there was

Q Okay I'm going to show you what has been marked as Plaintiff's Exhibit Number One and ask if you have seen that document before and can identify it for us
A Yes, I have This is the contract between E Bruce Marshall and Bar-Pen, LLC
Q And it's actually E Bruce Marshall and/or Jeremy Marshall?
A Correct
Q What was the purchase price?
A $2 530,000
Q Do you know who drafted that contract, who prepared it?
A I do not I assume the agents participated in the drafting of it
Q Did you review the contract before you signed it?
A Actually not but I was told the terms by Mickey Rakes
Q Did you sign the contract on behalf of the LCC or did someone else sign it?
A No, Steve Pendley signed it, yeah, it was Steve
Q Does the contract have provisions regarding a contingency for the purchaser to obtain financing?
A Yes, it does
Q How long was that contingency for?
A The contingency is for 45 days
Q And is there a contingency for the purchaser to do other inspections of the property, a due diligence period?

A Yeah, the due diligence or inspection period as we refer to them is 90 days
Q And that's from the date the contract is signed is it not?
A Correct
Q Was there a provision in the contract regarding a closing date?
A Yes, there was
Q What was the closing date supposed to be?
A On or before or not -- let's see, no sooner than July 15th, 2006 and no later than July 31st 2006, with time being of the essence
Q What does time being of the essence mean?
A It becomes a term of the contract just like a sales price or any other term
Q That's the date by which it must be done?
A Correct
Q After the contract was entered into were you provided with an executed copy of the contract?
A Yes, I was
Q Okay, after the contract was entered into what did you do with regard to the obligations of Bar-Pen Investments, LLC? Did you do anything?
A No, I mean, no not as seller We would have waited till closer to closing time to prepare the documents necessary for

closing
Q You had no obligations under that contract, did you?
A Just to, just to close
Q Just to close by the ---
A The date ---
Q --- 31st
A --- the date specified
Q Who would set the closing date?
A The buyer's attorney
Q The buyer's attorney would set it some time between July 15th and July 31st
A Correct
Q Between the entering into the contract and early to mid July 2006 did you have any involvement with the purchaser with regarding the -- anything in the contract?
A No, no, I never met the purchaser
Q Okay, around July 10th to 13th 2006 were any requests made by the purchaser with regard to the contract?
A The -- well, that time period I think there was an extension requested
Q Who requested it?
A They did
Q Did you extend an offer to extend the contract based on that request?
A We did

Q What was that offer?
A For $50,000 we'd allow a 30-day extension I think the others terms were it was non-applicable to the sales price
Q Was it also non-refundable?
A Correct
Q Why did you ask for more money to extend the contract, closing date?
A Well we -- well we, we would be put without the benefit of the deal if it did not close in the time required by the contract, but we were expending monies, also, all during this period of time
Q Did you have a loan that you were paying?
A We did
Q Was there a response from the buyer with regard to the offer to extend the closing date by 30 days?
A No, there was not
Q Did you hear anything from anyone regarding that extension prior to July 20th, 2006?
A No
Q On July 20th 2006, what if anything did you do?
A We withdrew the offer
Q Why did you withdraw it?
A They had not responded to the offer
Q Did you see an e-mail from Mr Rakes to the buyer's attorney not the buyer's attorney the buyer's real estate

agent regarding that withdrawal?
A Yes, I think I've seen it
Q Let me show you Plaintiff's Exhibit Number 12 Have you seen that before?
A Yes
Q That is the e-mail withdrawing the offer for the 30-day extension?
A This is the notification that the offer has been withdrawn
Q Okay, does it also ask that a closing date be set?
A Yes it does
Q After that did you have any communication or did you hear anything from the buyers regarding saying, ``No, we did not, we do want the extension, the 30-day extension?'' Did you hear any request like that?
A I heard nothing from the buyers from that period forward
Q Did you then prepare the closing documents for the seller?
A Yes, I did
Q Do you remember when you did that?
A It would have been some time a couple of weeks into July so July 15th I don't have an exact date
Q Did you transmit those to Mr Lafond?
A Yes I did
Q Because he was -- you knew he was the closing attorney

A Yes, I mean, I think I contacted him earlier to ask him who would be the buying entity, and I think he gave me that information and I prepared the documents

Q Were there any complaints about any of the documents you prepared? Did you have to change them?

A Not to my knowledge, not to my knowledge

Q Was a -- were you informed that a closing date was set?

A Yes, I think around July 25th, maybe somewhere right in that period of time closing was set

Q What was -- when was it set for?

A It was set for July 31st at, I think, four p m

Q Okay, were you going to attend the closing on behalf of Bar-Pen Investments?

A Yes I was

Q On July 31st did you become aware of some issues of whether the closing was going to take place?

A The first time that I became aware that the closing was not going to take place was Mickey called me It must have been around ---

THE COURT Mickey who?

A I'm sorry, Mickey Rakes the -- our real estate agent

THE COURT That was you all's real estate agent?

A Correct, called me around 3 30 and said that he didn't think it was going to close

Q What did you do?

A I put them on notice that we were ready willing and able to close and that we considered this to be a default in the contract

Q Let me show you a document that's been marked previously as Plaintiff's Exhibit Fourteen Is that the letter you wrote?

A This is correct

Q Would you please read the letter for us the entire letter?

A Sure It says, ``Dear Ben it is my understanding that the closing was canceled today at your office on the above-captioned,'' referring to the transaction, ``I have spoken to my client and they are ready willing and able to close on the above-captioned property We believe the closing date was to be on or before July 31st 2006 Time being of the essence it is our opinion that your client has defaulted under the terms of the agreement between the parties and we are hereby terminating the agreement With best regards, I am ''

Q Did you have a response to that letter?

A A response came into my office a little after five

Q Did you have a response that said ``No, we're ready to close?''

A No

Q Did you have a response saying ``No we're going to close before the end of the day?''

A No
Q Okay, did you have a response that came in by e-mail subsequent to the letter?
A Correct
Q Okay when did that e-mail come in?
A It was some time after five o'clock I had left work
Q Okay, what time do you normally leave work?
A Before five generally
Q You're in your office pretty early in the morning?
A Between five and six in the morning
Q You believe in early to bed early to rise?
A I tend to watch the sun
Q When you arrived at your office the morning of August 1st was there an e-mail from Mr Lafond?
A Yes, there was
Q What did that e-mail say?
A In essence here's 50,000, "We're sending $50,000 to you for a 30-day extension"
Q What was your -- did you respond to it?
A I did
Q What was that response?
A I told him this offer had been withdrawn two weeks before and that I was going to return the check
Q Did you then receive a letter from Mr Lafond?
A I don't remember receiving anything other than the 5-10

letter
Q Okay, let me show you what has been marked as Defendant's Exhibit Number Four
A Yeah, this is the cover letter for the check, the $50,000 check
Q That's the cover letter from Mr Lafond, the $50,000 check, correct?
A Correct
Q Okay, would you please read that letter to us?
A ``Dear Skipper, enclosed is my check for $50 000 for the extension on this purchase If you have any questions please call or e-mail me With kindest regards
Q Okay, and there's an attachment to the letter?
A Yes, there is It's a copy of the check
Q It's a copy of a check Okay, is the -- who is the check made payable to?
A Bar-Pen
Q Okay, what's the date on the check?
A 7-30-2006 so it's July 30th
Q Is there an explanation as to what the check is for?
A For extension through 8-30-2006
Q Did you respond to the letter?
A I sent the check back with a cover letter basically again telling him that the offer had been withdrawn two weeks before

Q Let me show you what's previously marked as Plaintiff's Exhibit 15 Is that your letter to Mr Lafond?
A Yes, it is
Q Would you please read that letter for us?
A ``Dear Ben, please find enclosed the check for $50 000 you had delivered from Sheep Island Plantation, LLC, to my office The seller has terminated the agreement between the parties because of Sheep Island Plantation, LLC's, failure to close in a timely manner With best regards I am ''
Q Skipper, I'm going to back up a little bit You heard Mr Lafond testify yesterday that he had a telephone conversation with you on the 31st
A Correct
Q Do you have any remembrance of a telephone conversation with him that day?
A I did not talk to Ben on that day, Benji
Q Not at all?
A No
Q After you sent your letter of August 1st did Mr Lafond call you?
A No
Q Did anybody call you about the closing?
A No
Q Did anybody ever mention to you that there was supposed to be a 15-day extension pursuant to paragraph 33 of the

contract?
A No
Q Okay I'm talking about anybody after July 31st?
A I'm confused by the question, just ---
Q Okay, okay, after July 31st did anyone contact you and tell you that there was a 15-day extension pursuant to the terms of paragraph 33 of the contract?
A No
Q Did anybody contact you and advise you that the purchaser or the buyer was willing to close between August 1st and August 15th?
A No
Q Skipper, the contract provide any language regarding default by the parties with regard to the payment of attorney's fees and costs?
A Yes, it does
Q Has Bar-Pen Investments LLC been required to incur legal fees as a result of this action?
A Yes, we have
Q Approximately how much ---
MR FUTERAL Your Honor, Your Honor, I object We actually have an outstanding legal matter to address on this particular issue
THE COURT I'm sorry, Mr -- jury panel ask you to go to the jury room for a minute, please Let me discuss this

with the lawyers

(Whereupon, the following takes place outside the presence of the jury)

THE COURT What is it, Mr Futeral? What do you want to say?

MR FUTERAL I have a -- one moment, Your Honor I apologize Pardon me, Your Honor

This is in regard to the language of the contract, and as a legal matter of whether the Defendant in this case, if it prevails, is entitled to any attorney's fees whatsoever and what I want to show Your Honor again would be the contract itself

THE COURT I'm looking at it

MR FUTERAL Your Honor, under paragraph 22 ---

THE COURT I don't think it really provides, Mr -- looking at it the way I read I don't think it provides for the seller to get attorney's fees in this action

MR ALTMAN Your Honor, it reads if buyer or seller fails to perform any covenant of this agreement the other may elect to seek any remedy provided by law including, but not limited to, attorney's fees

THE COURT Well, any remedy I think you'd be right if your client had brought an action for specific performance, but I don't, I don't -- this is -- they're not seeking the remedy They are, and I think this is an unusual -- this

this contract one way on that in my opinion Now, I don't think it's exactly right

MR ALTMAN I understand

THE COURT Fair, but I don't think the contract provides for your client to get attorney's fees in this situation

MR ALTMAN Your Honor, if that is your ruling, that is your ruling, we disagree

THE COURT But I mean but let's let's go ahead and put it in I may be wrong Why don't you go ahead and put it in That's my ruling, but let's go ahead and put it in on the record so we can see how it balances out

MR ALTMAN Without without the jury

THE COURT Yeah without the jury You may put it in I may be wrong We'll see how it balances out I'm always interested in what attorneys make, really more interested in what Mr Wooddy makes He's chosen the right field, not us litigators

A Shoot

MR ALTMAN That used to be a year ago

THE COURT Okay, I think he -- I don't think he needs a guardian

A I could live off the, I could live off the interest I owe Your Honor

THE COURT All right

A The question was have we ---

THE COURT How much money, how much, how much attorney's fees have you paid or are you obligated to pay ---

A Well, it's ---

THE COURT --- as a result of this case

A --- as of this moment in time it's been a little over $20,000

Q And there are ongoing amounts being accrued as a result of this trial

A Correct

MR ALTMAN Your Honor, that would be

THE COURT All right, bring the jury back in I sustain the objection to that I don't think that it's -- the contract provides for attorney's fees in this situation for the Defendant

(Whereupon, the following takes place in the presence of the jury)

THE COURT All right, you may continue to examine the witness

MR ALTMAN Your Honor, I have no further questions of the witness

THE COURT Cross examination

MR FUTERAL Thank you, Your Honor

CROSS EXAMINATION

BY MR FUTERAL

Q Good afternoon, Mr Wooddy
A Good afternoon
Q Sir, would I be correct that over the course of the years you've probably done hundreds if not thousands, of real estate closings yourself as a real estate closing attorney?
A That's correct
Q Okay, you've been practicing law for what did you testify, I think 35 years?
A Roughly 35 years
Q Okay, and would I also be correct that predominantly your practice in particular is just, well, devoted to real estate closings?
A That and business law
Q Okay, and as to the closing side of things that would be both business and commercial closings, correct?
A Correct
Q All right, so in the course of that I would also be correct that you have probably looked at Lord knows how many thousand contracts for purchase and sale both -- well, let's just say commercial closings Forget about residential, commercial closings, would I be correct?
A I've looked at numerous contracts
Q Okay, have you drafted a few over the years?
A Yes, yes
Q Okay, and I'm also correct that you're, well you're an

entrepreneur of sorts, correct?
A Yes
Q In addition to being a lawyer you're also in the business of buying and selling property, correct?
A Correct
Q And in fact, you and your other business partners, at the time I guess the now deceased Mr Pendley ---
A Correct
Q --- but Mr Joe Bartone, who is a member of the Defendant in this case correct?
A Correct
Q All right the two of you all have purchased property together over the years, developed property and that sort of thing, correct?
A Correct
Q I believe, what, a marina, an office park in Goose Creek, many acres of land up Highway 41, some property on Highway 17 those areas being in Mt Pleasant, correct?
A Correct
Q Amongst many others
A Correct
Q Okay, so it would be fair to say that in being an entrepreneur of things related to the purchase and sale of real estate you have some experience in this regard both as a lawyer and a businessman, correct?

A Correct
Q Okay, this would be in part one of the reasons why you and Mr Bartone and the now deceased Mr Pendley would have purchased this 101 acres in the first place
A Correct
Q You buy it and either development it and sell it and make money off of it, correct?
A Correct
Q I mean, nothing wrong with that It's the American dream, right?
A Correct
Q I think Hollywood always the father is supposed to tell the son buy land correct? All right, now, you have probably seen in your 35 years both the ebb and flow of the real estate market have you not?
A I have
Q Okay, and for a period of time say right around the end of 2005 and 2006 I would be correct that it was a pretty hot real estate market, correct?
A It was
Q You probably noticed other young lawyers jumping into the business of doing real estate closings and the like because there is so many of them going on, correct?
A I don't know about young lawyers jumping in but we saw plenty of investment in the -- in that time

Q Oh, sure, and you probably also saw plenty of properties that were bought and sold within a relatively short period of time that appreciated significantly in value during that period of time, correct?
A Yes, correct
Q Okay which is -- well, that's a good thing You're in business of buying and selling You want it to appreciate correct?
A Correct
Q Okay
MR ALTMAN Your Honor, we object Don't see any relevance to it
THE COURT Members of the jury panel, need you to go to the jury room again for a moment, please Let me look over this and discuss it with the lawyers
(Whereupon, the following takes place outside the presence of the jury)
THE COURT Okay what is it you're wanting to do, Mr Futeral?
MR FUTERAL Your Honor, this is the title to the real estate that is the subject of this transaction purchased by Bar-Pen Mr -- a couple of things going on here, first of all, Mr Altman on direct examination specifically asked him when did you buy the property and so on So, this is the type ---

THE COURT Did you? I didn't remember that
MR FUTERAL Yes, he did
MR ALTMAN I think I asked when you bought the property I did not mention anything about price of the property because it's irrelevant just trying to establish he, in fact owned it
MR FUTERAL Well, Your Honor I ---
THE COURT Anyway, anyway, but I don't remember -- I didn't remember that, but anyway, go ahead So, assuming that you did, okay
MR FUTERAL Your Honor okay
THE COURT This is, this is ---
MR FUTERAL This is, this is theirs This is something produced
THE COURT Who is Sheep Island Property, LLC? I thought that was the Defendant in this, I mean, the Plaintiff in this case
MR ALTMAN Well, Your Honor, Sheep Island Property, LLC, is another entity ---
MR FUTERAL It's Sheep Island
THE COURT Oh
MR ALTMAN --- that owns ---
MR FUTERAL Is the ---
THE COURT What's the name of, what's the name of the one in this case?

MR ALTMAN Sheep Island Plantation, LLC
MR FUTERAL Plantation Your Honor
THE COURT Oh, oh, oh
MR FUTERAL So, it's a different entity
THE COURT Okay, okay
MR ALTMAN Your Honor ---
THE COURT So, this is the deed -- this -- supposedly this is the deed where the Defendant bought it from this other Sheep Island the property for 1 4 million
MR FUTERAL Sure
THE COURT Okay
MR FUTERAL Your Honor, one can assume that the Defendant in this case is going to argue against the valuation of the property or the benefit of the bargain and we've heard lots of testimony about how hot this market in particular is I think it would be relevant to show the jurors that here's the purchase price for which the Defendant purchased the property and then was able to sell it for over or presumably try and sell it for over a million dollars more five months later I want to demonstrate to the jury just how hot this market is Plus, I don't want to go into our trial strategy, but there are issues that will arise later on as to the reasons for terminating this contract Your Honor, I would ask for latitude on cross examination, please
THE COURT What do you want to say about it?

MR ALTMAN Your Honor, we're here about whether or not the party breached the contract, not whether how much money somebody is making on the property, and the fact is that how much Bar-Pen Investments paid for this property is totally irrelevant to that Now, Mr Futeral is standing here trying to show you something which is a copy of this deed that's in the appraisal What we're talking about here is the investment, that the deed itself being introduced separately, it's totally irrelevant to this case

MR FUTERAL Well, I could actually if it please the Court simply refer to the appraisal that's already in evidence and say is this the deed because it's already in this case, this same document, Your Honor It's already been admitted

THE COURT What has?

MR FUTERAL This has, this document that you're looking at

THE COURT Oh it's in the, in the ---

MR FUTERAL Part of the admitted appraisal report

THE COURT In the appraisal, it's in there?

MR FUTERAL Yes, sir, it sure is

THE COURT Bring the jury back in

It's already in, it's already in

(Whereupon, the following takes place in the presence of the jury)

THE COURT You may continue to examine the witness

BY MR FUTERAL
Q Mr Wooddy, you have before you Plaintiff's Exhibit Number 19 Do you mind?
THE COURT You talking about the copy of the deed?
MR FUTERAL Yes, sir
THE COURT You don't need to put that in since it's already in It's a part of the appraisal
MR FUTERAL I could do it either way, Your Honor
THE COURT Do that, keep it out
MR FUTERAL Yes, sir, all right, that's fine
THE COURT It's not an exhibit Give it to the court reporter We don't need to duplicate it
MR FUTERAL All right, sorry, she had just already numbered it Your Honor
THE COURT Well, she can take that off
MR FUTERAL Okay, that's okay
BY MR FUTERAL
Q All right, let's look at Plaintiff's ---
THE COURT Why don't you just ask him how much did they pay for the property
Q Do you know how much you paid for the real estate when you purchased it?
A I do not
Q Okay, that's what I thought So, let me just find it Tommy what page is it on?

A I'm sorry
THE COURT $1,441,601
A That sounds correct Your Honor
Q Here it is
A $1,441 601
Q Okay, all right so, that's the purchase price of the property that you got in July 7th, 2005, correct?
A Correct
Q And by the time this property was to close by July 31st 2006 you were selling it for 2 5, how much was it?
A 2 5 -- 2,530,000
Q Okay, so, essentially about a million one hundred thousand dollars more than what you paid for it a year earlier
A Correct
Q Okay, and Mr Wooddy, isn't it true that the actual closing dates themselves or the dates that were put into the agreement, which is Plaintiff's Exhibit Number One -- pardon me the terms that were stated in this particular document Plaintiff's Exhibit Number One ---
A Yes
Q --- do you have it in front of you?
A Uh-huh
Q You do?
A Yeah, I do

Q Okay, the actual dates for specific areas of performance were dates that were chosen by you all, the sellers correct?
A That's true
Q In other words, the date by which the buyers had to for example apply for a loan 30 days from the date of the contract this was something that had been determined by who, you?
A Well, they were agreed upon terms between the parties
Q Okay, was it you specifically that came up with those terms?
A I can't remember who came up with the terms, but I perhaps suggested some of them I don't remember
Q All right, Mr Pendley was he available at the time that this contract was entered into in December or was he out of the country?
A I think he was here I think that's why he signed it
Q Okay, now, would I be correct that in addition to being a member of the selling party you also were acting as the attorney with respect to this particular closing for the sellers?
A Yes, I was drafting the seller documents
Q Okay so, as we already know you had put in various loan-to-ratio values in this contract told them they had 30 consecutive days to provide -- well, they had to apply for the loan within 30 days and provide you with satisfactory loan

approval within 45, correct?
A That's, yes that's what in the contract
Q All right, and as we all know, I be correct that they never provided you any satisfactory loan approval by the 31st, correct?
A That's correct that's correct
Q And we would also be clear that by the 31st you all never asked for any loan approval, well, satisfactory loan approval documents or anything of that nature
A That s correct
Q Okay, so, in essence then I would be correct that as to the dates that you all the seller, put into this document you waived those requirements correct? I mean, you didn't ask for it and they didn't give it to you
A Yes, but I mean, you keep referring to that we put in these were negotiated terms I don't know whether the buyer suggested those for the purpose of getting the loan or not I honestly just don't remember
Q Well, okay, well, as it stands, I believe, just to clarify you previously testified you don't remember who came up with those numbers
A I don't
Q Okay, so, it might not have been negotiated, it might have been you, Mr Pendley or somebody on your behalf put those numbers in

A It could have been or it could have been the buyer
Q Okay, now, I want to make sure though we've made something clear here that you waived as the sellers any right to terminate this agreement because they weren't working on the loan or hadn't provided you satisfactory loan application documents I mean, you waived that right under the agreement, correct?
A We did not, we did not enforce our right under the agreement, correct
Q Okay, you waived it, right?
A Yes that's fine
Q Okay, all right, so correct me if I'm wrong let's take it from the period of time that they were supposed to give you, well, obviously indication that they were getting a loan, that's what that's all about right, right? You have to give a ---
A I'm sorry I'm sorry, yes
Q Yes all right so, from the period of time 45 days out from July or I'm sorry, December what is the contract date, December 14th what is the date 45 days out?
A 19th I think was the last signature date
Q Okay, so, all right, so, by January 28th they had to give you this information regarding their loan they didn't and you waived it, right?
A Correct

Q All right, so, let's go from January 28th forward, when you waive it, it's as if they aren't required to give you anything with respect to that, correct?
A No
Q And if they're no longer supposed to give you and you have waived any requirements that they provide you information on the loan it doesn't matter if they told you that they were having problems because they didn't have to give you any notice, you'd already waived this provision correct?
A Correct
Q Okay, now, so, between this period of time we get up into June or July, I guess you testified at some point you're -- you want to close right?
A Correct
Q Okay, and would I be correct that as of the date of closing, July 31st, you had no knowledge whatsoever of any fault on the part of the buyers in this transaction
A That is correct
Q Okay, I would also be correct that at that point in time while you were in communication with Steve Pendley and others you were the focal person for this transaction to close on the seller's end by the 31st, correct?
A That's correct
Q Okay so, no knowledge of fault as of the 31st, I'd also be correct then that 10 days prior to that you had a

conversation with Mickey Rakes, your realtor, where you said there would be no extensions, correct?
A Yes we were referring to the 30-day extension, there would be no additional extensions
Q So it's your testimony that when you converse with Mr Rakes and told them if they tried to get an extension, ``We will litigate,'' according to Mr Rakes that was with regard to a 30-day extension?
A That's, that's correct
Q That didn't have anything to do with the 15-day extension
A Nobody knew anything about the financing We didn't know there were any potential default under the financing
MR FUTERAL Your Honor
THE COURT You can open it
MR FUTERAL Okay I have a copy for Your Honor This is unusual Your Honor This is the first time I've seen an original deposition unbound, but there it is, nonetheless
BY MR FUTERAL
Q Mr Wooddy, you remember that during the course of this case I asked you to come to my office and I took your deposition as a party to this case correct?
A Yes
Q You would agree with me then that a deposition is basically I'm asking you questions while you are sworn under

oath to tell the truth as you are today I'm asking you questions regarding what you know about the facts and circumstances of this particular case, correct?
A Correct
Q All right all right so, once again, let's think about the comment with regard to extensions and litigation, all right, and it's your testimony now that, in fact, this related to a 30-day extension Would you kindly turn to page 29 of your deposition, starting at line 21, tell me when you're there
A I'm there
Q I asked you, question, ``Okay, but what I'm wondering is and I'm not trying to put words in your mouth, and if I understand correctly, this comment regarding the extension of time does not relate to paragraph 33,'' and if you read here and I'll give you a moment, you will recall what we were talking about We were talking about the comment that you made to Mickey Rakes on the 21st of July Do you remember this?
A Correct
Q Okay and I asked you whether your comment did not relate to paragraph 33, which is the 15-day extension and what was your answer?
A I said, ``I think it does in this sense that we believed there were no contingencies So, my response back to Mickey

was `If there are no contingencies, Mickey, they can't use paragraph 3 to the extent of the closing'''

Q Paragraph 33

A 33, I'm sorry

Q Okay, so, what that means then, in fact on July 21st when you're having a conversation with Mr Rakes saying no extensions you will litigate, you are, in essence, or in a sense referring to the 15-day extension clause, correct?

A Mickey Rakes had called me, I think I was in the Atlanta ---

Q I need a -- please give me a yes or no and then, of course, I'll allow you to

A You're going to let me explain the answer?

Q I'll allow you to explain it

A Yes

Q Yes?

A Yes as to what?

Q My question was your comment about no extensions and litigation did, in fact refer to a 15-day extension under the contract

A No it did not

Q You want to look at your deposition testimony again? When I asked you ---

MR ALTMAN Your Honor, I think Mr Futeral is getting argumentative The witness is trying to answer the question

Mr Futeral doesn't like the answer

THE COURT Go ahead

Q Thank you Let's just so we're clear, sir, I asked you, ``What I'm wondering is, and I'm not trying to put words in your mouth, and if I understand correctly this comment regarding the extension of time does not relate to paragraph 33 '' and you began by saying, ``I think it does in this sense ''

A Yes the issue ---

Q Okay, all right

A Now I can explain?

THE COURT Go ahead

Q Sure

A Thank you Mickey Rakes had called me in the Atlanta airport to ask me about speaking to Bruce Marshall Bruce had evidently called him and had discussed or wanted to inquire as to why we had withdrawn the offer the $50,000 offer for the 30-day extension In that conversation Mickey said, 'Well, what about the 15 days,'' and I said, ``Mickey, you can't have it both ways '' In other words, the 15 days requires that a contingency not be met All the contingencies had been met as far as we know Therefore, you can't invoke paragraph 33 You'd have to have somebody litigate that to determine that and that's what the conversation was about

Q All right, when you're referring to all the contingencies

having been met, correct me if I'm wrong, but in part what you're referring to is the contingency that they had obtained financing, right?

A That's correct That's the only contingency I know that was in the contract

Q And so, you're telling Mr Rakes, in essence, ``Look, you can't invoke that 15 days because they met that contingency '' This is on the 21st you're telling him, right?

A I'm telling you you have -- I told Mickey you have no right to use paragraph 33

THE COURT When was this conversation you're talking about?

A The 20th of July 21st of July

Q 21st of July, ten days before closing

A Correct

Q All right I'm sorry, again, I'm not trying to put words in your mouth, were you referring to the financing contingency if they had met it then they couldn't invoke the 15-day extension? Is that your ---

A Yes, Mickey had asked me a question He said, ``Do you have 15 days under this contract, if you don't have -- I mean if the contingency's still not there,'' and I said, ``You can't do that, Mickey You've got to have a contingency ''

Q Right, and you're talking about the financing contingency?

A Correct, well, that's the only one again I know
Q Okay, and I would also be correct that when you're saying, ``Hey they've met this contingency financing,'' this would be the same contingency we're talking about where you never asked for anything in writing to show that they actually had the loan, correct? We're talking about the same contingency?
A Well Mickey, had received on the 20th ---
Q Yes or no and then kindly explain yourself
A Okay
Q We're talking about the same thing for which you received nothing in writing confirming they had a loan, right?
A We had received something in writing
Q Oh, you had the commitment letter on the 21st because ---
A No we, we ---
Q I -- do you know when it came out?
A We had -- yes, I do know when it came out
Q The 28th, right?
A Correct
Q Okay, so you didn't have anything showing they had financing
A Mickey had indicated he had a letter from Georgia or had spoke to Georgia Richard
Q He, which one, he had a letter from Georgia he spoke to Georgia?

A I don't remember the form of the acknowledgement
Q A letter from the bank through Georgia?
A Again Steve I don't remember but the financing was not a concern of ours in terms of whether we thought they had it or not because we thought they had it
Q Would I be correct that if you came up to July 31st and the buyers were not in fault in being unable to close on that day then they would have been entitled to a 15-day extension to close, correct?
A If the contingency had not been met they would be entitled to 15 days I don't think there's any question about that
Q Okay, and you would agree with me that one of the very contingencies you're talking about that they had to meet was just simply closing on the 31st ---
A Correct
Q --- not financing just closing
A Correct
Q Okay, and you were at some point notified they're having problems closing on the 31st
A I was notified that they were not going to close
Q Okay, and if they weren't at fault and they couldn't close on the 31st financing notwithstanding, then under the contract I d be correct they'd get 15 more days right?
A They had the 15 days if that was the situation

Q Okay and I'm also correct that you had no knowledge of fault according to your own testimony as of that day
A I did not know of any financing problem as of December -- I mean, July 31st
Q Okay, and you're aware that they asked for extensions obviously because you said there would be none
A I am not aware that they asked for extensions
Q You had a conversation on the 21st where they were asking for some, we just went through that
A The 30-day extension, that's correct
Q Bear with me one second, please You said you had no notice I believe you testified earlier you didn't talk to Benji Lafond about this either -- well, what, on the 31st or even afterwards, right?
A That's correct
Q Okay, would you please turn to page 61 of your deposition Tell me when you're there, please
A Okay
Q Are you there, sir?
A Yes, I am
Q Now, if you'll see on line 10 I start to ask you questions relative to what the buyer's attorney, Benji Lafond testified in his deposition and I said, ``If you look at his deposition testimony it's page 41, I can show it to you, where he's testified that either that Friday or Monday he talked to

you about there being an issue of the amount of money the buyers were supposed to come to closing with '' You said, answer ``I do not recall that conversation'', correct?
A Correct
Q And then I said, ``Is it possible that you did have that conversation with Benji Lafond?'' Would you read to the jury what your answer was?
A Anything's possible
Q Thank you
So, on the date of the closing itself with no knowledge of fault and possibly having a conversation that the buyers were having problems closing on that day, you then send this letter, correct?
A That's correct
Q Plaintiff's Exhibit Number 14 on the same day saying ``It is our opinion your client has defaulted under the terms of the agreement and we're terminating ''
A That's correct
Q Okay, and subsequently just so I'm clear Plaintiff's Exhibit Number 15, on August 1st you state your reasons for terminating the agreement between the parties because of Sheep Island Plantation's failure to close in a timely manner '' In other words, they didn't close on the 31st
A Correct
Q Okay Mr Wooddy, isn't it true that in your conversation

with Mr Rakes in addition to telling him you would litigate it that you also indicated to Mr Rakes that you're an attorney with money and you would gladly take this case to court if they tried to invoke a 15-day extension?

A That's not true

Q That's all the questions that I have, thank you

THE COURT Anything on redirect?

MR ALTMAN Yes Your Honor

THE COURT Why don't you pass this over and see if maybe you can put that around that deposition to keep it together

A Thank you

REDIRECT EXAMINATION

BY MR ALTMAN

Q Skipper, is it fair to say that with you as a member of Bar-Pen Investments wanted this contract to close on time?

A Yes

Q Pursuant to the terms

A I'm sorry?

Q Pursuant to the terms of the contract

A Correct

Q Did you care where the buyer got its money?

A No

Q Did it matter if they had to get a loan or not?

A No

Q Would it have mattered if Mr Hill came up with $2,530 000?
A Not at all
Q Cash?
A No
Q No loan Did you ever receive a written request from anyone or written notification from anyone prior to this suit being filed stating that the purchaser is entitled to a two-week extension, a 15-day extension?
A I don't think I've seen it in writing or heard it
Q In fact the letter from Mr Lafond sending the $50,000 check, which I believe you have in front of you Exhibit Four, Plaintiff's Exhibit Number, Defendant's Exhibit Number Four just say he's sending the $50,000 for the 30-day extension
A Correct
Q Doesn't mention 15 days, correct?
A No, it does not
Q Doesn't mention paragraph 33 of the contract, does it?
A No
Q Was there any 30-day extension discussed other than the one that Bar-Pen extended on July 13th?
A No
Q Nothing further, Your Honor
THE COURT Thank you very much You can step down
MR FUTERAL If Your Honor would indulge me since ---

THE COURT You want to ask him another question?

MR FUTERAL Yes

THE COURT Okay

MR FUTERAL Just on that point Thank you, Your Honor

RECROSS EXAMINATION

BY MR FUTERAL

Q Looking at the extension agreement here and its language, Mr Altman was asking you questions whether anybody had ever sent you something in writing asking you for a 15-day extension Isn't it not -- isn't it true that there is nothing in this agreement that even requires them to put such a request in writing?

A There is nothing in paragraph 33 that requires them to put anything in writing but I think you have to understand that it is a contingent It has a contingency in it and you would have to certainly notify the seller that you are affecting your remedy under paragraph 33

Q And if in fact, Mr Lafond or Georgia Richard and so on were asking for any form of extension, that, in fact would be notice ---

A No, I ---

Q --- of a request for an extension, would it not?

A No, I would think it would have to go to closing The reason for that, Steve, is that you cannot -- in other words

under paragraph 33 you are not, you are asking for an extension of the contract due to a contingency If you don't tell the other side that you're, in effect, your contingency hasn't been met then I don't know, you know, I don't know how you can affect your remedy under 33

Q Uh-huh so, then just so I understand you, even though there's -- is there anything in that document anywhere that says they must provide you notice in writing of a 15-day extension, anywhere in that agreement at all?

A No, no ---

Q Okay

A But by ---

Q Is there ---

A Okay, go ahead

Q Is there anything in that agreement that says the time for giving the 15-day notice and place is at the closing on the 31st? Anything in that agreement that says that whatsoever?

A No, but you've got to close

Q In fact, there's nothing in that agreement whatsoever that even talks about how this notice is supposed to be given when and if it's given, correct?

A You'd have to close, Steve If you're going to use your 15 days use your 15 days, but you've got to close

Q I'm sorry The 15 days you have to close you have to --

you keep saying you have to close, you have to close You had already said there are no extensions, correct?
A There were no additional extensions to the 30-day extension We weren't talking about the 15-day extension You keep, you keep referring to it as if we had cut off all extensions or the term of the contract I don't have the right to cut 33 off
Q So, you then it's your testimony that when Mr Rakes specifically pointed out to you on the 21st, your own realtor, that there's a 15-day extension and you said, "We ll litigate," that ---
A I did not say that
Q --- you weren't referring to the 15-day extension
A What I -- he had asked me a question about what paragraph 33 meant I had responded by saying, ``Listen you can't have it both ways Either you've got a contingency that hasn't been met and therefore you've got 15 more days or you don't have a contingency '' We knew of no financing contingency that was outstanding I mean, we just because of their actions believed that they were ready willing and able to close I mean, I never stopped them from closing during the 15-day period
Q Can you turn to page 55 of your deposition for me?
A Yes
Q All right, we are discussing here at this point what it

is they had to do to invoke the 15-day extension, right?
A Correct
Q Just as we're discussing now, and I asked you to ``Look at the specific language in the contract itself, okay If we can just go back to the contingency right before extension again is there any requirement that they say anything about 15 days,'' and you answered and correct me if I'm wrong, ``No, it's just a requirement they close just I'm sorry, you're going to -- I want to make sure I understand this They need 15 more days but they actually have to close to get the 15 days that they need because they can't close?''
A No, they have to close within the 15 days
Q Okay, I'm just -- that's all I have Thanks
MR ALTMAN Nothing further Your Honor
THE COURT Thank you very much You can step down
A Thank you, Your Honor
THE COURT Any other witnesses?
MR ALTMAN Your Honor, I have one more I need to call today I'd like to call the bank ---
THE COURT Okay, go right ahead
MR ALTMAN It will be short I'd like to recall Mr Mark Knight
WHEREUPON, Mark Knight was recalled to the stand and testified as follows
THE COURT You're still under oath

MR KNIGHT Yes, sir

DIRECT EXAMINATION

BY MR ALTMAN

Q Mr Knight, you testified earlier that you were the loan officer for Community -- not Community, but South Coast Community Bank with regard to this transaction, correct?

A Yes, sir

Q And that you were responsible to put all of the documentation together for loan approval, is that correct?

A Yes sir

Q Is one of the pieces of documentation you need an appraisal for the property?

A Yes, sir

Q Okay, did you receive, did you obtain an appraisal for the property as part of your process?

A Yes sir

Q Okay let me show you a document and ask if this is a copy of the appraisal you received

A This looks like it, yes sir

Q Okay, did you use this appraisal as part of the process in approving the loan?

A Yes, sir

MR ALTMAN You Honor, we'd ask that this be accepted into evidence

THE COURT Any objection?

MR FUTERAL Yes, Your Honor, there is
THE COURT Members of the jury panel ask you go to the jury room, please, just a moment
(Whereupon, the following takes place outside the presence of the jury)
THE COURT All right, what's your objection?
MR FUTERAL Your Honor, I would object to this summary appraisal report being introduced because it's not relevant to anything and it's prejudicial because we're slipping in an appraisal number without laying any foundation that it is appropriate having Mr White here Now if Mr Altman were willing to redact that figure, I wouldn't have any objection to it whatsoever All the other pages can come in
THE COURT Assuming we're going to have, assuming we're going to have whatever his name is here that did the actual appraisal tomorrow, actually I've got a note here to call about him So, just wait a minute
MR FUTERAL Yes, sir
*****OFF THE RECORD*****
(On the record)
(Whereupon, the following takes place outside the presence of the jury)
THE COURT Keep your seat Keep your seat
I got a recording So, I don't -- I didn't get through but I'd say assuming that Mr White is going to be here and

testify and so forth and everything I'd let it in

MR FUTERAL I'm sorry, Your Honor?

THE COURT I said assuming that Mr White who made this appraisal is going to be here and testify about it and it's his and so forth and so on, he's qualified to do it and so forth and so on I would let it in

MR FUTERAL I wouldn't object to it if he was here to say this is

THE COURT Okay, well, but anyway, I'm going to let it in assuming that Mr White is going to be here You know, if you want to -- you still going to try to get him here

MR ALTMAN Still try to get him here, Your Honor I will call him again when we finish

THE COURT Okay Have you heard from him since I called?

MR ALTMAN I have not heard back -- I spoke to my office ---

THE COURT Like I say, I was trying to get through to him but assuming that he's going to get here and testify and everything I'll let it in

MR ALTMAN Your Honor, what number do you, phone number do you have there?

THE COURT You know, I hadn't been keeping up with it

MR ALTMAN No, the one that you just tried

THE COURT Oh, it's the Master-In-Equity's number

MR ALTMAN I have a phone number for Mr White, a mobile phone number which I tried to reach him at last night which is [redacted]

THE COURT Anything else you want to say?

MR FUTERAL Sir we would just ask at this point that the Court limit any questions as to that number through this witness or that this not be ---

THE COURT Are you going to ask him about anything else?

MR ALTMAN Your Honor, I was going to -- that's all I'm going to ask him about but this is the basis that the loan was made on

THE COURT Okay

MR ALTMAN They used that number to determine ---

THE COURT You can ask him those things You can ask him those things Let me go try again

MR FUTERAL Your Honor, I -- I'm sorry, just so I understand, he's going to -- he can ask him about the number? Are we waiting for Mr White to get here to ask him about the number? We wouldn't have an objection if Mr White was here

THE COURT Well, I'm assuming he's going to be here So, I'm going to give him full rein

*****OFF THE RECORD*****

(On the record)

(Whereupon, the following takes place outside the presence of the jury)

THE COURT All right, the report is that actually the guy is testifying right now and well, I told the clerk there to tell him to be here by nine o'clock tomorrow morning in this courtroom So, assuming he's going to be here tomorrow morning and testify that that's his appraisal and he's qualified to give it and all that sort of stuff and everything I'm going to let it in All right, you can ask him any questions you want to about it

MR ALTMAN Your Honor, Your Honor, just from a standpoint of where we are, Mr Knight is the last witness I'm going to call today

THE COURT Right, right

MR ALTMAN So, I assume after that we will recess for the night

THE COURT Right right This would be Defendant's Exhibit what?

MR ALTMAN Six

THE COURT Six

(Whereupon Defendant's Exhibit Number entered into evidence and appropriately marked)

THE COURT All right, bring the jury back in

(Whereupon, the following takes place in the presence of the jury)

THE COURT All right you may continue to examine the witness

BY MR ALTMAN

Q Mr Knight, you have before you what has been marked as Defendant's Exhibit Number Six, which is a summary appraisal report of the property that's involved here, is that correct?

A Yes, sir

Q You obtained this, the bank obtained this as a part of its approval process for the loan that was to be made to Sheep Island Plantation, LLC, is that correct?

A Yes, sir

Q Okay, did you order the appraisal?

A Yes sir

Q Ands it was done by Mr Michael A White?

A That's correct

Q Okay, and when you reviewed this did you -- what did you determine the amount, the value of the property according to the appraisal was?

A Well the loan amount is based on the 65% of the contract price or the appraisal price, whichever is less, and in this case the appraisal came in at $2 625,000

Q And as of what date was that appraisal made?

A July 26th

THE COURT I'm sorry?

A July 26th

Q 2006?
A Yes sir
Q I have nothing further Your Honor
CROSS EXAMINATION
BY MR FUTERAL
Q Sir do you have any knowledge whatsoever as to whether that appraisal is in any way accurate? You're not an appraiser are you?
A No, sir
Q Can you testify that that's an accurate value given in that appraisal?
A That's why we have somebody else do it for us
Q So, the answer would be, no, you can't
A No
Q Okay
THE COURT All right, who is Mr White? Do you know him?
A Do I know Mr White?
THE COURT Yes
A Yes, sir
THE COURT What does he do?
A He's a real estate appraiser
THE COURT All right, thank you very much You can step down
MR ALTMAN Nothing further

MR FUTERAL Your Honor may this gentleman be released from ---

MR ALTMAN From our standpoint, yes

THE COURT Thank you very much for coming You're free to go

You have Mr Altman you have one more witness but he's detained otherwise today, but you will have him here tomorrow morning is that right?

MR ALTMAN He has informed us he will be here in the morning, Your Honor

THE COURT All right members of the jury panel that finishes the testimony for today but we still have one more witness, actually the witness is actually actually it's Mr White that was just mentioned and he's down in Charleston testifying in another court today, but I told him to be here tomorrow morning at 9 30 So, we'll have him here and I believe that's your anticipated last witness

MR ALTMAN That is correct Your Honor

THE COURT And so then we'll conclude the trial tomorrow So with that, then I'll tell you not to discuss the case with family, friends, or anyone else They're not the 12 people that will make a decision You are Leave your notepads with the bailiff as you leave Be back tomorrow morning by 9 30

Have a nice evening

(Whereupon the following takes place outside the presence of the jury)

THE COURT All right, keep them in here about five minutes so the jury has an opportunity to clear the courthouse area and then we'll be back tomorrow morning at 9 30 Anything else?

MR ALTMAN Your Honor just one thing, Your Honor Mr Bartone who I do not intend to call, was subpoenaed by Mr Futeral He's advised me that he is not going to call Mr Bartone

THE COURT Is that right?

MR FUTERAL Yes, sir, he's excused

THE COURT Okay, all right He may have some interest He may want to stay

MR FUTERAL For housekeeping after he's through we may have one or two rebuttal witnesses, Your Honor, and that's it

THE COURT All right all right

Let me see the lawyers back here just a minute

*****OFF THE RECORD*****

(On the record, March 13 2008)

(Whereupon, the following takes place outside the presence of the jury)

THE COURT Bring the jury in

MR FUTERAL Your Honor, while the jury is still out

there, there is a motion in limine that I'd like to make

THE COURT For what?

MR FUTERAL Regarding any discussions we had in chambers concerning settlement

THE COURT Oh, sure

MR FUTERAL Okay

THE COURT I'm not going to say anything That's up to you all

MR FUTERAL Oh no, I'm not talking a motion in limine to ---

THE COURT There's nothing going to be put in as far as before the jury about that

MR FUTERAL Yes, sir, and I wasn't -- that isn't directed at Your Honor, of course

THE COURT Okay

MR FUTERAL That was a motion in limine for counsel not to do that

THE COURT Well it's not going to be talked about before the jury, no question about that

MR ALTMAN Your Honor, I understand the rules

THE COURT Yeah, no question about that

BAILIFF You ready now, Your Honor?

THE COURT Yeah bring them in

(Whereupon, the following takes place in the presence of the jury)

THE COURT All right we have the jury back with us The parties are present and all of their attorneys Again I appreciate you being on time this morning and I've been here since nine o'clock and we've been working ever since then I apologize that you had to sit back there for an hour, but we had been working Call your next witness

MR ALTMAN I'd call Mr Michael White

WHEREUPON, Michael White was called to the stand duly sworn by the Clerk and testified as follows

THE CLERK Please be seated and state your name spelling your last name for the record

MR WHITE My name is Michael White W-H-I-T-E

DIRECT EXAMINATION

BY MR ALTMAN

Q Mr White, where are you employed?

A I own my own company the Charleston Appraisal Company

Q How long have you owned your own company?

A Almost two years now

MR FUTERAL Your Honor, pardon we would actually stipulate to Mr White's qualifications to be an expert witness

THE COURT All right, you can explore, you know introduce him a little more to the jury

MR ALTMAN Thank you, Your Honor

THE COURT If you want to

MR ALTMAN Your Honor, I would like to, Your Honor

THE COURT All right, all right, go ahead

MR ALTMAN Just to -- for background purposes

THE COURT Go ahead

BY MR ALTMAN

Q Mr White, how long have you been with your own business?

A My own business approximately two years now and I've been a real estate appraiser for 17 years June 1st

Q Seventeen years and you are certified by the State of South Carolina?

A Yes, sir, I'm certified general appraiser

Q Okay, when you say a general appraiser, what does that entitle you to do?

A Basically entitles me to do any type of appraisal necessary residential, commercial, industrial, any type of appraisal overall

Q Okay, prior to opening your own business where were you employed?

A I was a partner with the Hartnett Realty Company

Q In your ---

THE COURT Partner with who?

A The Hartnett Realty Company It's a Realty Company but it was a, basically a full-time appraisal firm

THE COURT Right, thank you

Q In your capacity with Hartnett Realty Company were you

asked to do an appraisal for South Coast Community Bank for ---

A I've done many appraisals oh, excuse me

Q --- for a 101 165 acre tract located on Sheep Island Road?

A Yes, sir, Mark Knight asked me to do the report

Q Okay do you remember when that was done?

A Yes, sir, if I can reference my report, please

Q Let me provide you with what has been marked as Defendant's Exhibit Number Six and ask if you can identify that

A That looks to be a copy of my appraisal report

Q Would you go through there and see if you can positively identify it as your appraisal report?

A It is

Q Okay, a few moments ago you testified that you are certified to do residential commercial and industrial appraisals Is there any difference in the process you would use in doing those three types of appraisals?

A Yes, sir Generally in a residential appraisal would be comparing houses to houses Different types of commercial properties you compare to one another and the same with industrial properties You're comparing those types of property together and not mixing the properties

Q What is the difference between commercial and industrial

when you're talking about that type of property?
A There's a slight difference An industrial might be a plant, manufacturing plant whereas a commercial appraisal, well, I'm saying commercial but it's more of a general term, you're talking maybe like an office building, a shopping center a retail center, something like that Commercial is a general term in our business
Q When you are looking at appraisals do you look at if their property is zoned industrial versus zoned commercial? What category would those properties fit into?
A Well, you're looking at the property and when you're doing the appraisal determine highest and best use and you take into consideration zoning is one of the one of the things you do take into consideration for highest and best use
Q Well if you were looking at a piece of property that was zoned industrial and looking at a piece of property that was zoned commercial would you be looking at those two pieces of property as being comparable to each other?
A They could be, yes
Q And how would they, could they be comparable?
A Generally in most municipalities industrial zoning classification is one of the highest zoning classification In a commercial zoning classification would be slightly below that So, some of the uses under each zoning classification

would be similar
Q Are you familiar with a concept of making adjustments between good pieces of property to come up with value?
A Yes, sir
Q Would you explain that to us?
A Generally you try to compare properties to one another and break down their differences so they can get a common basis between the two Common adjustments are for size location, market conditions or time adjustment Those are some of the things you adjust for and if you're doing a residential property it would be square footage, porches, screen porches, number of bathrooms, bedrooms, those type of things You're trying to basically find the differences between the two properties
Q Would the -- for commercial property that has not yet fully developed with the availability of utilities such as water and sewer be an adjustment if it was not available versus if it was available?
A It could be yes
Q Property that you are looking at that is not developed but is going to be used for residential purposes how would that -- what category would that fit into?
A It would be a -- if I was asked to do a report on something like this, 101 acres, we'd -- well we'd do as in a narrative report Again when I say commercial it's more of a

general term This is a -- the report that I did is a narrative report as opposed to like a form report you would do on a house or a bank or a condominium or a residential condominium

Q This would be more of a commercial appraisal?

A Yes, sir

Q Okay, you said that you appraised this 101 165 acre tract of land When did you do that?

A The appraisal was dated July 26, 2006

Q That is the date your appraisal would be valid as of?

A Yes, sir, that's the day that I inspected the property and is also the date of the appraisal report Looks like I was contacted by Mr Knight on July 20th and engaged by him on that date to do the report according to the engagement letter contained in the report

Q Did he tell you that it was a rush job?

A You know, to be honest with you I don't remember It seems like if I got it on the 20th and returned it to him by the 26th it probably was a rush job, but specifically him telling me that I don't recall There's a lot -- excuse me I'll preface that by saying most of the calls that appraisers get are rush jobs from lenders, so

Q What did you value this property at per acre and what was your total appraised value of the property?

A I came to an opinion of value of $26,000 an acre and

there's 101 165 acres So, if you multiply those together it's $2,630 290 I rounded that to $2 625,000

Q I'm going to ask you to do this Rather than me trying to ask you specific questions I'm going to ask you to tell the jury exactly what you did to arrive at that number and talk about the comparables, but if you would first explain what a comparable is and how you adjust that, if you adjusted it with regard to this particular piece of property

A A comparable is just a similar property to the subject as you're trying to appraise What I did was I researched the market area to try to find some sales of vacant tracts of land that I considered similar to the subject I located four tracts that I thought were the most similar to the subject which are contained in the report The sales occurred two in November of '05, one in January of '06, one in February of '06 They ranged from sales price from $1,300,000 to over $6 million The size of the tracts ranged from 33 acres to 261 acres, and my subject property was 101 acres So, that's within the range of the comparable sales that I used, the size of those sales I adjusted all four sales for time from the date of sale up to the date of the appraisal report but then I made an adjustment to each of the sales for size differences as compared to the subject I also adjusted the comparables for a location difference as compared to the subject as well I had a range of values of adjusted values there from $20,000

an acre to $32,000 an acre It was my opinion that all four of the sales were good indicators of value So basically I took the weighted average of all four of them and came up with $26,000 an acre as my opinion and multiplied it by the 101 acres to come up with my value

Q You said you adjusted for size

A Yes sir

Q And I believe the properties that you were looking at varied in size You tell me How much did they vary in size?

A Well they were -- one of them was smaller, 33 acres One of them was pretty close but still a little bit big, 147 acres The other two were larger than the subject You try to get a balance of -- the ideal thing would be find four sales of all 101 acres that have recently sold You're not going to find that in the market It just doesn't happen So, you try to find a balance of sales and make the adjustments, try to figure out what is the most reasonable per acre price that a buyer and seller would pay for the property and based upon those adjustments you come up with that opinion

Q If the property is larger than the subject property

A Yes sir

Q Is that an upward adjustment or a downward adjustment?

A It depends on what -- it depends on how it's dictated by the market In some cases there wouldn't be any adjustment

In my opinion when I looked at the comparable sales I thought that it was reasonable to make an adjustment based upon the fact that comparables one two and three were all larger than the subject, and if you looked at comparables one and four, which were very similar to each other, sold by the same grantor in the same period, pretty close to the same period of time, one was 147 acres, the other was 33 acres One sold for $20 000 an acre, the larger one sold for $20,000 an acre The small one smaller one sold for $39,000 an acre Therefore, it told me that probably it would need to be a size adjustment in there to make the comparables equal

Excuse me Can I get a sip of water? I have a slight cold if you don't mind, and ---

Thank you Your Honor

Q Were all of the -- pardon me I thought you were still taking a drink of water

A I'm sorry

Q Were all of these properties, were they similar as far as availability of utilities?

A No, they weren't The four comparables I used were sales that were in the Canes Bay Development that were vacant tracts of land sold to builders who were going to develop the properties themselves with their lots They had the infrastructure in place ready to be tapped in to those parcels Whereas the subject property at the time did not

have water and sewer That was part of my opinion that these four sales were of a superior location overall compared to my subject was based upon the fact that it is in a property that has been approved for development versus one that's basically a raw tract of land

Q So, you took that into consideration in arriving at the value for this piece of property?

A In the overall scheme, yes, sir

Q That would be a downward adjustment for this piece of property?

A Yes, sir, I adjusted all four of the sales downward for superior location in my opinion as compared to the subject All four are located, like as I said in Canes Bay off of State Road 176, Highway 176 whereas my property is located on Sheep Island, which I thought was an inferior location

Q And if you would and I'm not sure if I asked this question or not, how did you appraise this property? Was it fair market value and for what purpose?

A I appraised the property for mortgage loan purposes It was going to be used as collateral for a loan that South Coast was going to make to the borrowers, but it was fair market -- market value is what -- I rendered an opinion of market value for the property for mortgage loan purposes

Q And for what, for what use?

A Excuse me Maybe I'm ---

Q What use? What -- how was the property going to be used? What did you feel was the highest and best use for the property?
A Oh, I thought, excuse me, the highest and best, in my opinion the highest and best use of the property was for -- currently the whole for future speculation and then as water and sewer became available to the site for future residential development
Q I have nothing further at this time, Your Honor

CROSS EXAMINATION

BY MR FUTERAL
Q Good morning, Mr White, how are you?
A Good morning good
Q Mr White, did you notice any inaccuracies or omissions in your report?
A Pertaining to?
Q Anything?
A I know I just got, to explain, this file was with my previous company I did not acquire the file until -- today is Thursday, Tuesday afternoon I was in court all day yesterday So, I did review the report last night I did notice I had a typographical error on page -- I've got this copy on page seven of the report, under owner of record I've got the date as July 7th 2006 and that section is actually 2005

Q Correct So, you made a typo there, right?
A Yeah, but in a later section of the report it's correct saying 2006
Q Okay
A And the deed is also in the report
Q And obviously if you've made a typo or two I'm assuming that didn't affect your valuation or your appraisal
A No, sir
Q Okay, the four subject properties that we're talking about, if you'll turn to page 41 of Defendant's Exhibit Number, I believe it's Four or your appraisal
A Four comparable sales?
Q Or the comparable sales that you looked at
A Okay, yes, sir
Q This is on page 41, this would be one of them, comparable sale number one? This is in Canes Bay Development correct?
A Yes, sir
Q All right, look at page number 42 You took another comparable sale, Canes Bay Development correct?
A Yes, sir
Q Comparable number three you took off -- well Canes Bay Development is the property correct?
A Yes, sir
Q And comparable number four, same thing
A All four are from that development, yes sir

Q And ultimately a few pages later this is what you show various sizes and sales prices ranging from about 20,000 to about 40,000 correct?
A Correct
Q Okay, and these are the four properties that you took from which you derived, I guess, a particular number by which to value this other piece of property, the one that's in issue, correct?
A Yes, sir
Q All right, there were no other comparables that you looked at?
A Oh, I looked at plenty of others These were the four that I thought were most comparable to the subject
Q Okay
Now, you were testifying earlier about adjustments and I notice on page 47 of your report that you reference with respect to the location of the four comparables they're all located in Canes Bay approved development located off of Highway 176 and you said the location of all four of the comparable sales is considered to be superior This is better property than the one you were valuing at least in terms of price and value, correct?
A In terms of location, yes sir
Q Okay, all right, and superior in location Therefore, the appraiser will make a negative adjustment to all four of

the comparable sales
A Correct
Q Okay, and if I understand what that means then is that the number that you assign, the price per acre you decreased it because you had to adjust in saying that Canes Bay development is a superior piece of property, if I'm going to compare those to this one I'm going to mathematically reduce their price per are, is that correct?
A Correct
Q All right
A That's one of the adjustments
Q And you said that would be one of the main adjustments you made in your appraisal, correct?
A It was one of one, two, three, four, five adjustments that I looked at, but one of the ones that actually required an adjustment yes, sir
Q Do you, out of the five adjustments how many adjustments did you make overall, I'm sorry?
A How many adjustments total?
Q Yeah
A There was two adjustments to each of the four comparable sales plus the time adjustment to each one of them So, that would be 12
Q Okay, in terms of percentages or effect on this number we're trying to get at the appraisal, which one of those

adjustments had the greatest effect? It would be the comparable sales

A Well, in comparable number one the location had the greatest effect on the per acre value On comparable number two, size and location each had the same effect, which totaled out to be zero Comparable number three the size and location had the similar effect as well, and as well with comparable number four

Q Okay, I would be correct that if you did not make a negative adjustment to the four comparable sales that you used the price per acre that you ultimately would arrive at would be higher

A Yes, sir

Q Okay, meaning the overall appraised value that you gave to this property would be higher if you did not negatively ---

A It would raise the per acre values, yes, which I would assume, I have not done so would assume it would also raise the appraised value

Q Okay, now if I understand what you found mostly superior in this property is its location, okay Now, you've testified in part that also there was water and sewer going into that Canes Bay, is that?

A It was available to the tracts of land from what I understand

Q All right, the availability from what you understand, as

far as the availability did you put anything in your report to confirm water and sewer availability, where it was going to run?

A On the, on the comparable sales?

Q Yes, sir

A No, sir, I did not

Q All right, so, it's not in your report?

A No, sir

Q All right, so, but you did base in part your opinion that it was superior on an assumption that that was available?

A Yes, sir

Q Okay, and also anything else with respect to location that made it superior?

A In my opinion I think the Highway 176 is a better overall location than Sheep Island I would consider 176 a primary traffic thoroughfare versus a secondary traffic thoroughfare on Sheep Island

Q Okay, all right, so, the location of just the highway How many lanes is that highway?

A 176?

Q Yeah

A At what point? Canes Bay Point?

Q Back when you were ---

A Two lanes

Q It was two lanes, 176 I'm curious at the time that you

put a value on the property do you recall how many points of ingress and egress there was to Canes Bay, meaning how many ways ---

A I, I could not

Q --- if you developed the neighborhood somebody could actually get in there?

A No, sir, I could not

Q And how many ways somebody could get out?

A No, I couldn't tell you exactly I know that I remember riding through Canes Bay when I did the report For exactly how many entrances and exits off of 176 at the time or ones or how many had been approved, I could not tell you

Q You would agree with me though -- would you agree with me that if you have an area like this that is possibly going to be developed residential and there's only one point of ingress and egress to a rather large area that could have a hundred plus homes in it and that one point of ingress and egress is a two-lane highway, you know it's hard to get in and out of it with that many homes and that much traffic, that in fact, that land might not be superior?

A I wouldn't say that I haven't done an analysis to be able to say that

Q You didn't do an analysis

Thank you, sir That's all the questions that I have

THE COURT Anything on redirect?

MR ALTMAN Nothing on redirect
THE COURT Thank you very much
A Thank you, sir
THE COURT I appreciate you coming, Mr White, by the way We know you were occupied in court in Charleston yesterday We appreciate you making the effort to get here
A Well, I apologize for that, so
THE COURT Thank you very much
All right, any other witnesses from the Defendant?
A Thank you, Your Honor
MR ALTMAN We have no further witnesses Your Honor
THE COURT Anything in reply?
MR FUTERAL Yes, sir
First we'd like to recall Mr Edward Carter to the stand
WHEREUPON, Edward Carter was recalled to the stand and testified as follows
THE COURT You're still under oath
MR CARTER Yes, sir

DIRECT EXAMINATION

BY MR FUTERAL
Q All right, sir, Mr Carter, you've heard the testimony regarding the other appraiser who has put a value, well at the time less than the value that you had placed on the subject property
A Correct

Q Okay, and you heard his testimony that unlike the six comparables that you looked at he used four comparables in Canes Bay

A Correct

Q All right, what if any effect does this appraisal, Defendant's Exhibit Number Four and the way he did his in terms of his comparables and said it was superior in value, what if any effect does that have on your prior testimony as to the value? In other words, you heard what he had to say

A Correct

Q Do you agree with him?

A I select my comparables the way I like to build my appraisal and in this case I would not have -- I personally did not select all the comparables from the same development I tried to get comparables from across the spectrum within that market area to try to remove any variables that would be apparent Now, as far as location I chose in mine not to make a location adjustment because the subject property is a corner property with access to two two-lane roads As the crow flies it's less than a mile from the other development, approximately The other development has a single ingress egress road to what was to become the development at the time and the new Canes Bay High School sits right there on that road which is 2500 to 3000 students So, I didn t -- in my opinion I did not think that the property was superior In

fact, I could probably make you an argument that the subject is superior because of the traffic conditions

Q All right let me, let me stop you if I can This is taken from Defendant's Exhibit Number Four and if you'd orient us which one is Sheep Island?

MR ALTMAN Your Honor, if I may, the correct destination is number five -- six

MR FUTERAL Oh, six I'm sorry I thought it was four

MR ALTMAN Yeah, I just didn't want to confuse the jury

MR FUTERAL Yes, I'm sorry

BY MR FUTERAL

Q Defendant's Exhibit Number Six has this particular map in it Is this what you were talking about earlier in terms of ingress and egress or does it not show enough detail?

A No, it doesn't show enough detail

Q Okay, but can you orient us ---

A That's just an overall location map

Q Which, these are the comparables here, right, one through four Do you see that?

A The balloon, correct, with the pen

Q Okay, and this is Sheep Island over there?

A That's the subject on the left

Q Okay, so, this doesn't show the roads of ingress and

egress here?
A No, it's an overall view
Q Okay
A And it doesn't have the detail to show the ingress egress
Q Okay, but as to the Canes Bay property itself how many points of access, ingress and egress does it have?
A There's, there's one road
Q Just one road, two lanes?
A Correct
Q Okay, and as to Sheep Island how many points of ingress and egress?
A Well, it's a corner property and it sits right on Sheep Island and it sits right on, I believe it's the road just to the south of it It's a corner property The Canes Bay Development has the one road off of 176 that accesses the subdivision
Q So would I be -- so, if I understand ability to get to the property and how much traffic is going in and out can effect value
A It can It's all part of your adjustment process So, in my way of thinking I did not see that that those four in Canes Bay were superior to our subject So, I made no adjustment for that
Q Okay, so, in other words you wouldn't have decreased

those numbers as the other appraiser did?
A Remember yesterday we talked about matched pairs ---
Q Yes, sir
A --- on location, if you don't have a matched pair to abstract from the market data what the value of the difference is you end up making an across the board adjustment If you make an across the board adjustment it's purely opinion, there's no hard data to support that In other words, if you reduce it by X dollars why not reduce them by XX dollars I mean, there s no hard data there If you had a matched pair what you would have was a comparable over there on Sheep Island Road that sold and then if it sold less per acre than the four in Canes Bay then that difference is what you would use for your adjustment That's hard data that's abstracted from the market
Q In -- did you have an opportunity to review this other appraisal?
A I've looked at it
Q All right, did you see any basis for hard data in terms of that paragraph I put up that he put, I guess, a negative adjustment because he thought the property was superior? Let me state it more simply Did you see any hard data to show that the Canes Bay property was superior to Sheep Island?
A No
Q Okay, and in talking about the traffic, points of ingress

and egress to Cane Bays, are there any other factors there like large other developments, schools or anything that would effect the traffic even, even more?

A Well, Canes Bay High School is right there on the same road right at the corner of the ingress egress Canes Bay and 176

Q Okay, do you have any opinion then with regard to the appraisal that is prepared by this other gentleman here the way you went about choosing comparables and such?

A No, I defend my appraisal In my opinion the locations are basically the same They're close to each other They're basically the same developments It's in an area that's going through intense subdivision development They're all two lane roads and I think one's as good as the other and I don't see as one being superior to the other in my opinion

Q Okay, thank you, sir, that's all the questions

THE COURT Any cross examination?

CROSS EXAMINATION

BY MR ALTMAN

Q Mr Carter in making your determination, your testimony just now, did you land plan the Sheep Island Road property? Did you make any determinations how many points of ingress and egress would be allowed by the state or the county?

A No because I'm not doing a subdivision development I'm appraising raw land

Q You don't know how many points of ingress and egress would be allowed into or out of the Sheep Island property, do you?
A That would be up to DOT
Q And you can't say that there would be more there as compared to Canes Bay, can you?
A Well, if it's the same that makes them probably about the same
Q Tell me about the amenities in the Canes Bay development There's a high school?
A There is Canes Bay High School in the corner as far as amenities for a subdivision at the time those sold there was no subdivision It was sold for development It was raw land
Q Is the high school something -- having a school in an area is that positive?
A Generally if it impacts your traffic it is not positive
Q People are attracted to having their homes near a school?
A Not in your backyard
Q How big is Canes Bay Development?
A It's going to be very large
Q So school is not necessarily going to be in the backyard, is it?
A Not to all of them but it impacts the traffic on the one road that comes in and out of the development

Q Did you land plan Canes Bay?
A No
Q So you didn't do any land planning considerations, you just didn't take any adjustments because your belief that your appraisal is right, correct?
A No, it's my belief that there's no difference in superiority between the subject and the four comps
Q Okay, and Mr White believed there was, correct?
A He did
Q So, the two -- you're two appraisers and you have difference opinions
A Absolutely
Q Okay, thank you No further questions
THE COURT Thank you very much You can step down Anything else from the Plaintiff on reply?
MR FUTERAL Nothing, Your Honor
THE COURT Thank you very much Members of the jury panel ask you to go to the jury room That finishes all the testimony
MR FUTERAL I'm sorry not from this witness I have one more rebuttal
THE COURT Any other reply witnesses?
MR FUTERAL Yes, sir I do
Your Honor, I'd like to call Mr -- is it Michael Rakes? I believe he goes by Mickey Rakes

MR ALTMAN Your Honor, I'd ask that Mr White be excused

MR FUTERAL Yes, please, I'm sorry

THE COURT Thanks for coming You're free to go

MR WHITE Thank you, Your Honor

MR FUTERAL And Mr Carter as well

Your Honor, may he be excused?

THE COURT Sure as far as I'm concerned

MR ALTMAN I have no problem with that

AT THIS TIME Michael Rakes was called to the stand, duly sworn by the Clerk and testified as follows

THE CLERK Please be seated and state your name, spelling your last for the Court

MR RAKES My name is Michael Rakes, R-A-K-E-S but I go by the name of Mickey

DIRECT EXAMINATION

BY MR FUTERAL

Q All right, Mr Rakes, you were the realtor for the seller in this case, Bar-Pen, correct?

A Yes, sir that's correct

Q All right and would I be correct that predominantly you dealt with Attorney Skipper Wooddy in this transaction correct?

A Not necessarily

Q Who else did you deal with?

A Steve Pendley
Q Okay, sir, you made notes regarding this particular transaction?
A I did
Q Okay, do you have a computer program that as a realtor you might keep notes of conversations, dates and times that they took place?
A I do May I say one thing about my notes?
Q I haven't asked really a question about your notes but Your Honor, I'd say that's non-responsive to my question
THE COURT I mean, if you feel like there's sometimes that you need to explain your answer just tell me He won't allow you, I will
A Okay
THE COURT And let me know if you feel like you need to explain something
Q All right are you explaining something in response to a question I asked?
A Yes, in my deposition you asked me ---
Q I haven't asked about your deposition yet
A My notes ---
MR FUTERAL Your Honor, he's about to launch into deposition testimony I haven't even impeached him
A No, no
MR ALTMAN Your Honor, Mr Futeral has no idea what

Mr Rakes is going to say

THE COURT Ask another question

BY MR FUTERAL

Q All right, Mr Rakes yes or no, you have notes regarding the transaction correct?

A I do

Q All right, and would I be correct that the purpose of keeping notes is so that later on down the line if there's any problems with the transaction you could refer to your notes to see what your conversations were, correct?

A They were, they were meant to jog my memory

Q To jog your memory and those notes would be with regard to whether you spoke to the seller or the buyer's agent or the closing attorney, to the lender anybody you talked to

A Yes, sir

Q Correct?

A But not all-inclusive

Q All right, Mr Rakes, Plaintiff's Exhibit Number One in this case is the contract for sale, if you'll look at that, please You've heard a lot of testimony in the courtroom about that contract, right?

A Yes sir

Q All right and that is in fact, the contract that as the seller's realtor you prepared, correct?

A It was negotiations They submitted a contract We

countered the contract They accepted the terms
Q I understand about negotiations I'm talking about typing it in and preparing it You did, correct?
A I did, yes
Q Okay now, the contract itself, the contract itself, as we already know, provided for, well, a requirement that the buyers provide satisfactory written loan approval, correct?
A Yes
Q All right, satisfactory written loan approval is a commitment letter, would be, correct?
A Not necessarily
Q Not necessarily, but a commitment letter could be satisfactory written loan approval, correct?
A A commitment letter could be but that is not usually what we get
Q Okay, could be, but as we all know and as Mr Wooddy testified to that requirement was waived by the sellers, right?
A Pretty much based on testimony or a conversation that I had with Georgia Richard telling me that not to worry their loan was pretty much in order They were still going through their 90-day diligence period
Q Is that a yes?
A Yes
Q Okay I'm going to allow you to explain your answers

A Thank you
Q Typically my questions just ask for a yes or no but if you feel the need to explain please do
A Well, I had a conversation ---
Q Okay
A --- with Georgia Richard who told me not to worry, they would get their loan
Q Okay, but the fact remains never got the written confirmations that the contract requires, but the parties proceeded, and therefore, that provision as we all know is waived, yes?
A Yes, sir
Q Okay, now, let's get down sort of to the heart of the transaction At some point you hear testimony that the transaction is going awry right?
A I need you to explain further what you're asking
Q All right, well I want you to look at those notes of yours They are your notes, correct?
A Yes, sir
Q What exhibit number is that again, 19?
A Yes
Q All right, I want you to look at your notes with respect to the annotation you made on July 20th Tell me when you're there
A I'm there

MR ALTMAN Mr Futeral, would you specify which July 20th entry you're talking about?
Q The July 20th entry at 14-15, would I be correct that's military time?
A Yes
Q Okay, so, that's really, what 2 15 in the afternoon?
A 2 15 I spent ten years in the Navy
Q Okay, all right, five in the Army All right you said you met with Steve I'm assuming you meant Steve Pendley, correct?
A Correct
Q ``Steve Pendley got Skipper on the phone '' and we're talking about the attorney in this case, correct?
A That is correct
Q ``We discussed the contract ''
A Yes
Q And then ``Skipper the attorney told us that the buyers had contacted Joe Bartone, the other partner, trying to flip the property to him not knowing that Joe was a partner ''
A Correct
Q Nothing wrong with them trying to sell it to somebody else, is there?
A Absolutely not
Q Okay now, this is in regard to withdrawing the extension or the offer to purchase an extension and so it was

withdrawn, right?
A Yes I was instructed to withdraw it
Q Okay, and that began with the buyer or somebody on their behalf contacting you or somebody upon the seller's behalf going, ``Can we have an extension of time'', correct?
A Correct
Q Now, at the time that you were contacted and the testimony, you tell me if it's correct, is there weren't any terms, the buyer was just asking for an extension of time initially when you were contacted or somebody was contacted correct?
A Not true
Q All right
A Georgia Richard told me that it had something to do with water and sewer
Q Oh, okay, so this initial conversation you had with Georgia Richard when did that take place about water and sewer? Approximately was it prior to this or ---
A May I look at my notes ---
Q Absolutely
A --- which are these same notes only I've just got them highlighted where I can see them
Q Well you'll have to refer to the exhibit, but yes, I don't mind if you look if they are the same
A Somewhere around July the 13th Georgia Richard called me

and requested could the buyers obtain or could they obtain an extension and I asked something to the effect what it was about She said it was something to do with the water and sewer

Q Okay

A That's what I was told

Q So, they asked for an extension? They told you it was about water and sewer At that time I'm assuming you and Georgia Richard didn't talk about for how long or money or anything of that nature at that point, correct?

A At that point, but at that point I also made the comment to Georgia Richard that that was part of their due diligence period which ended several months ago

Q Okay is that reflected in the notes? I'm sorry I don't have it up on the screen

A Part of the conversation

Q It s part of the conversation but it's not in your notes

A No, sir, but there's a lot of things that aren't in my notes

Q Okay, so, then at some point I guess they had not formally accepted the offer to extend it for $50,000 nonrefundable by the 20th In other words the buyers hadn't said, ``Yes, we'll do that ''

A On the 13th ---

Q Yes?

A Well, you asked me about timing and everything Georgia Richard asked me about the extension I called my clients and talked to them They said that we would -- to make them the offer that we would allow them to obtain an extension for 30 days for $50 [sic] That extension would be non-refundable and non-applicable and it was to do with whatever was going on with the water and sewer

Q Sure and by the 20th or thereabouts it was withdrawn it's off the table, correct?

A Yes

Q This would be right after I guess, whatever meeting where you found out they were trying to resell the property

A Right

Q Okay

A May I read my notes?

Q I'm sorry?

A May I read my notes?

THE COURT Sure

Q Sure

A Because you've talked about my notes On July the 20th I called Georgia Richard, which I had tried calling her several times prior to that which are also in my notes never got an answer, never got a response, and I was in Steve Pendley's office at that point listening to my telephone conversation and I told I told her the seller had instructed me to call

her and inform her, and I'm reading from my notes, that they were withdrawing their offer to the buyer allowing them to purchase this time of extension to close She told me at that point the buyer had just received their financing commitment letter and were working towards closing but she did not know if they could make July the 31st and she would let her buyer know

MR FUTERAL Your Honor, not exactly sure ---

A It's in my notes

MR FUTERAL --- how to address this I mean, I m asking him a question and he is going way beyond what I asked him I mean, I haven't asked him to just read his notes aloud

THE COURT What do you want me to do?

MR FUTERAL Well, instruct the witness, please to answer the question, which, of course ---

THE COURT And he answered the question Go ahead

MR FUTERAL Okay

BY MR FUTERAL

Q All right, Mr Rakes, I'm asking you a question about this one telephone call on July 21st at 9 30 Just my question is about this It's true as reflected from your notes Mr Marshall called you up to tell you they were working hard to close All right, he left you, I'm sorry, a voicemail

A Correct
Q Okay, then according to your notes, and I'm only asking about this one conversation, okay, is this correct that on July 21st at 12 15 you had a conversation with the attorney, ``I asked Skipper about the extension clause in the contract,'' that's the 15-day one, and Skipper said to you if they try to use it he would litigate it, a lawsuit That's what your notes say right?
A And yes
Q Are your notes different from this?
A That's what I'm trying to read so I can see The conversation again ---
Q I asked you are your notes different from this?
A The context was different to this It was paraphrased
THE COURT You want to explain what you just said?
A May I please?
THE COURT Go ahead
A Thank you The context was different These notes were meant to jog my memory My conversation with Skipper, and he did not have his notes in front of him, and we were, at that point I was doing what any good realtor would do I said, ``Hey Skipper, they're asking about this 30-day extension about the water and sewer We've withdrawn it Mr Marshall has called and left me a message I have not returned his telephone call Do you have a problem with me returning the

telephone call?'' I mentioned to Skipper at that point would this have any bearing on this 15-day clause, and again, at this point we're talking about the water and sewer issue At that point Skipper said something to the effect to me that if they did they would have to litigate it or they may have to litigate it, something to that effect My notes are paraphrased to jog my memory, but that was the context of the contract That was the context of the conversation and it was about, it was about the water and sewer issue

Q Okay, simple question, is that the note you made of the conversation on the 21st? You can look at the notes that you brought with you Is that the notation you made on the 21st?

A Yes

Q Okay, I'm looking at a notation that looks like it is on -- at 1 30 on the 21st So this is 10 days prior to the closing It says you returned Mr Marshall's call ``He wanted me to know they were working diligently towards closing, asked you to stop calling the lender '' You told him you weren't, etcetera Said there was some conversation about him being disparaging towards Georgia and it says, ``He asked about a day or two extension I told him the partners had made it clear there would be no extension,'' and so on Now, my question is is that the note right up on the screen of the conversation you had with Bruce Marshall on the 21st at 1 30? Is that the note you made of the conversation, yes or no?

A Well, the way you read it
Q You can ---
A Your Honor, may I explain it?
THE COURT Yes, and then you can explain it
A Thank you
THE COURT I assume your answer is yes because everybody can read it
Q Yes
THE COURT You can read it
A Yes I read it
THE COURT Obviously the answer is yes Now do you want to explain it?
A But I did not say etcetera, which you said
Q Right
A What was said was Bruce Marshall called me I returned his telephone call Bruce Marshall has testified that I was rude to him, was not rude to him but I did tell him right up front, ``Hey, man I shouldn't be talking to you You need to be talking with your real estate agent '' I was never rude to him or anyone else At that point I told him he needed to be talking to his agent I said disparaging I didn't say what he said because he said a whole bunch of he said a whole bunch of things about Georgia, and he said he had no idea how he got Georgia as his agent, but it was his agent He did ask about a day or two extension at which point we're still

talking about this 30-day water and sewer We're still talking about an extension over the water and sewer, which in my opinion still went back to the due-diligence period I told him the partners had told me that they would not allow an extension over that I'm not the owner I relayed it to my clients and that's the context of that statement

Q Okay Mr Rakes, would I be correct or would it be true rather that at the point in time that they started asking for any form of an extension neither the sellers nor yourself on behalf of the sellers contacted them and said, ``Well you know, you've got this 15-day extension in the contract Do you want to use it,'' or words to that effect? In other words, I'll state it simply

A Did I say that?

Q Did anybody contact the buyers after they were asking for an extension, you all the sellers, and say, ``Well, you've got the 15 days Use that?'' You didn't?

A Well, I would, I would tell you the answer to that is no We were talking about, at that point we were still talking about something that should have been resolved during due diligence, which was over months ago Typically, since you've asked the question, what happens is the seller, their real estate agent, because I've seen this clause triggered many times, the seller, their real estate agent or their attorney calls me up and says, ``Hey we're going to set a closing date

for August the 5th or August the 10th, and we expect you to be there We're using it because paragraph 33, something happened that's through no fault of ours '' and that was never said to me

Q I'm sorry They didn't say paragraph 33 no fault of ours, that's your testimony they didn't say it to you

A That is exactly correct

Q Okay, would that be they didn't, they didn't say it to you before or after you specifically discussed the 15-day extension yourself with the attorney?

A They never discussed it with me

Q Okay, all right, I have a note up here from the 31st, so it is true then that their realtor called you she was nervous that closing might not go off, wanted to know about the possibilities of a day or two extension, and ultimately you had indicated that she should talk to the attorney because ``he had drawn the line of a firm no with me'' correct?

A I told her to talk to her attorney, the closing attorney and I asked her again to explain the context of these notes I said, ``Please have the closing attorney call Mr Wooddy and explain it to him attorney to attorney '' At this point I was still being, you want to make it seem like it's about financing We still assumed this was over water and sewer

Q Assumed Now, you do know that under the contract you, yourself as the agent for the sellers could just go to the

bank at any time and ask questions, right?
A I did
Q Okay and in fact, I believe you've already testified before that you contacted the bank to see what was going on with the loan itself?
A I did?
MR ALTMAN Objection, Your Honor
Q All right
A I did not, I did not testify to that fact That was in my deposition
Q In your deposition So, it would be true then you had conversations with the bank about the loan
A No, no, no, I had a conversation asking them what was going on and in that same note since it's open may I explain it?
THE COURT Sure
A Okay, it says on July the 31st because Georgia Richard was nervous I called the closing attorney, Benji Lafond myself It's in my notes You want to flash them up there
Q Sure
A It says, ``I called Benji Lafond at 1301,'' one minute after one o'clock ``I told him that Georgia had informed me the closing might not happen He said that was a possibility I asked him if he had the loan package He said he had most of it However, he was working on a four and a half million

dollar closing in front of this one and that he had to go and that he had the closing planned for 1600,'' four o'clock, ``and he would let me know or and we would know then if we were going to close I told Mr Lafond, I told him this was the last day of closing per contract that we could close, with time being of the essence, and I asked him and I told him that the sellers had made it clear there were no extensions '' Again, we're still talking about -- no one has said there's a problem with financing to us We're still talking about the 30-day, what we're assuming something over water and sewer That was my assumption that was the seller's assumption, nothing had been said otherwise In this it says, ``I told Mr Lafond that this is the last day we can close with time being of the essence Should I let Skipper,'' the other attorney, ``know about this and he said maybe, maybe I should '' Then he rushed off the phone basically and I don't mean to say it like this, but it s true, he basically blew me off because he had something much more important to deal with, but I will tell you in the conversation I basically I pleaded with Mr Lafond to contact Skipper Wooddy. In my note to Georgia prior to that I asked Georgia to ask Mr Lafond to call Mr Wooddy

Q Okay your notes reflect, I guess Mr Lafond had to get off the phone because he had a closing ahead of yours, correct time-wise?

A Correct
Q I mean, you've attended numerous closings I'm sure
A I have
Q Have you ever seen that poster they have in closing attorney's office with all the people in the rowboat?
A I have one in my office
Q Okay, and the poster has all these people in a rowboat and it has closing attorney someplace and lender here and realtor here and buyer and seller here and then it's like a bunch of people on both sides of the rowboat and then it s like ready, set, go Everybody has to row at the same time, right?
A Correct
Q Okay, so, essentially he has another loan, whether it's for a million bucks, four and a half million bucks, whatever the case may be, he has another closing ahead of yours that he has to go take care of, correct?
A Correct
Q All right, and in this conversation you've indicated to Mr Lafond no extensions per what Mr Wooddy is telling you correct?
A Again, we're talking about the whole assumption is over this water and sewer thing
Q The assumption is
A Mr Lafond never told me there was a problem with the

financing
Q Correct, and I'm also correct that you never specifically asked anybody neither did Skipper Wooddy, ``What seems to be the problem?''
A Roll right back to my notes that you asked me about, Georgia Richard told me they had their commitment letter, July the 20th, roll back to the notes
Q Okay all right she told you there was a commitment letter one that you never said would you fax it to me?
A Correct, not necessarily We had $50 000 non-refundable money By their very actions we had every belief that they were going to close
Q Sure
A I don't know about you but $50,000 is a lot of money to me
Q It is Now, at 2 10 in the afternoon on July 31st you call the attorney again told him about your conversations that you just previously testified to with Georgia and the closing attorney What did Skipper say according to your notes? He said, ``He had been expecting something would happen, but he would see me at 15-30 and we would take it from there '' He was expecting something would happen right?
A Correction, you said it was 2 10 It's actually 1 10
Q Goodness you're right It's 1 10 in the afternoon
A And yes, he did say that, and he said, ``Mickey, I'll be

at your office at 15-30 `` He didn't say 15-30, my habit He said ``I'll be at your office at 3 30 We'll ride over to the closing attorney and close '' We were assuming we were going to close

Q This is the assumption you're making while they keep asking for an extension This is the same assumption we're talking about, right?

A Correct

Q Okay, and then you get down to 15-45 military time That makes it ---

A 15-45 is 3 45

Q 3 45 on the 31st talk with Skipper twice, Georgia Richard, Steve Pendley in the last half hour, in essence the buyer wants to exercise the option to buy an extension They're still trying to pay more money to get more time right?

A For a 30-day extension

Q Skipper wants to kill the deal

A My words, not his

Q Okay, and asked me to call Steve, so on and so forth Well, ultimately we know the deal didn't go through right?

A Right

Q So, as I've gone through all of your notes, and you correct me if I'm wrong, I see one note in there where you had the presence of mind to talk about a 15-day extension, one

conversation with the attorney and I don't see a single note where you had a conversation with the buyer's realtor or anybody else about the 15-day extension Let's just use that I'm correct, right?

A I was about -- sure They had -- may I speak?

Q Sure

A They had a buyer's agent They had representation I represented the sellers and we weren't talking about -- this whole thing seems to be made about financing Right up to the last day Mr Lafond didn't tell me they weren't getting their financing We were going under the assumption they had their loan commitment package No one told us that they didn't have their financing No one asked me for an extension No one said to me, ``Mr Rakes, please convey to your clients that we are setting the closing at a later date because we have a 15-day extension due to -- through no fault of ours the lender has changed the terms '' That was never said to us What I was talking to Mr Wooddy about to directly answer your question about that I'm a professional agent I pride myself on that I just said, ``Hey, Skipper, you know there's this paragraph in here with the 15-day extension'' In that 15-day extension we're talking about, we're talking about the 30-day request for water and sewer That was in their 90-day due diligence The contract was not contingent on them obtaining water and sewer They should have verified that during their

90-day due diligence, which has been testified that during due diligence you check out everything about the property, and if you at the end of that 90 days do not wish to proceed for almost any reason whatsoever, you the buyer, have the right to terminate this contract What did they do? They gave us another $40,000, made their $50 000 hard, non-refundable We assumed we were going to close I cannot help it if their agent or their attorney did not tell them about the 15-day clause

Q All right, if you'd look at Plaintiff's Exhibit Number 12 I just want to make sure I've got this correct. In all the communications that you had with Ms Richard, some with Mr Marshall Benji Lafond you also had an e-mail communication on July 20th, 11 days prior to the closing, you sent an e-mail to Ms Richard, and please correct me if I'm wrong, saying ``Please inform the buyer the seller is ready willing and able to close per the contract and will grant no extension of time '' So, in this document, too, you said no extension of time correct?

A Yes, in the context of the document it's over the water and sewer extension request, and that document is in my notes which we already testified to confirming our phone conversation in which the same day because of this same document Ms Richard tells me and I quote, ``She told me that the buyer has just received their financing commitment letter

and we were working towards closing but she didn't know if we'd make July the 31st She said she'd let the buyer know '' and this is how she let the buyer know

Q All right, you testified earlier that your notes were sort of to jog your memory, right?

A Correct

Q Okay, that your notes didn't contain everything in them completely, correct?

A Correct

Q There might be typos in there or your own words versus somebody else's, like ---

A Yes, sir

Q --- Skipper didn't actually say kill the deal You put a label on it

A That's exactly right

Q Okay

A He did not use those words

Q All right, and your -- you continue to claim that the -- you said the buyer's agent, Ms Richard gave you an assurance that they had received a commitment letter Right?

A Yes, sir

Q Okay, and if you look at Plaintiff's Exhibit Number Two is a letter from Southcoast Bank to whomever it may concern saying, ``We're working with them on a loan,'' this is not a commitment letter right?

A Correct
Q This is just a letter from the bank
A We never received it
Q Okay, so, bearing in mind the accuracy of your notes and all of this stuff, is it possible that in your conversation with Ms Richard all she was referring to is saying they got some kind of letter from the bank that they're working on the loan and that she didn't say to you specifically, ``We have a commitment letter,'' is it possible?
A Your letter here your letter here is dated February 14th
Q That's right
A My notes on July the 20th, the day all this is talking about, Ms Richard told me, and she could have said ``They've got their loan, they've got their commitment, they've got their commitment letter,'' but I wrote commitment letter So I assume she told me commitment letter
Q Okay
A But you're using my words as verbatim and gospel Right there she tells me, ``Hey, they got their commitment letter '' July the 20th We had no reason to doubt they had any financing problems and all everything about this extension, everything has been about our assumption that this is over water and sewer, which was over during the 90-day due diligence

MR FUTERAL One moment, Your Honor
I don't have any other questions Thank you
THE COURT Any questions?
MR ALTMAN No questions Your Honor
THE COURT Thank you very much You can step down
Anything else in reply?
MR FUTERAL Nothing, Your Honor
THE COURT All right members of the jury panel we're going to take a short break at this time In all I've been out here since about nine o'clock working on this thing in one way or another You know, so, I need a little break whether you need it at this point or not I do So, I'm going to let you go to the jury room, have a cup of coffee coke or whatever We'll take about a 10 to 15-minute break
*****OFF THE RECORD*****
(On the record)
(Whereupon the following takes place outside the presence of the jury)
THE COURT Thank you Please be seated
All right, so, I'm correct, that finishes all the testimony and the evidence
Any motions?
MR ALTMAN Yes, Your Honor
THE COURT All right, go right ahead, Mr Altman
MR ALTMAN Your Honor, we would renew our motion for

a directed verdict I don't believe anything has changed since the previous time we made that at the end of the Plaintiff's case I don't see any purpose in trying to reiterate it We have ---

THE COURT Go ahead and tell me why you think I should grant the motion, why you grant your motion

MR ALTMAN Your Honor, well, simply, first of all, with regard to their claim for specific performance, there's been ---

THE COURT That's out They're not claiming specific performance anymore

MR ALTMAN Okay, there was -- okay, there was no order to that effect, and I just wanted to ---

THE COURT As I understood it that's correct, isn't it?

MR FUTERAL Yes, sir, that's correct

THE COURT All right

MR ALTMAN Your Honor, the contract here called for a closing as of a certain date, July 31st, by a certain date, July 31st 2006 It did not occur At no time prior to on or prior to that date or within the two weeks that they contend they had a right did they tender performance As a matter of a fact performance was never tendered at any point in time and they had an obligation It wasn't our obligation to come beg them to do something they had a contractual right

to do Mr Rakes was just testifying that he was a professional realtor He was aware of what his obligations were He discussed those issues with his clients I don't know what happened on the other side, Your Honor, but they had an obligation to come forward and say, ``We're prepared to perform We had this right to an extension '' They just plain out right didn't do that, and most importantly and we talked about this yesterday and Your Honor's comment you weren't surprised, Mr Hill's testimony, Mr Hill's testimony at the very end when you asked him a question he was waiting on the call from Mr Lafond to know how much money he needed to bring They could have closed that day I think it's clear they could have closed that day but they didn't do it and they didn't communicate There is nothing in writing The only thing in writing that we have are continued comments about the 30-day extension that had nothing to do with financing It had to do with the termination of water and sewer availability They didn't respond to it within a reasonable period of time, the offer was withdrawn Then on July 31st after business hours, Mr Lafond sends a message ``We're going to send you the $50,000 for the extension '' There's only one extension that's been discussed and that's the 30-day extension that was withdrawn on July 20th The next day 30-day extension for the $50 000 for the extension you look at the check and I don't remember the exhibit number,

you look at the check and the check says for the extension through August 30th It says it twice on the check That check is dated July 30th, not July 31st So, the check was prewritten but there's no indication, nothing that we have that they said they're entitled to any other extension that they're looking for any other extension, and I remind the Court, when this complaint was first filed it was filed regarding the 30-day extension The first time we see anything regarding a 15-day extension is in April of 2007 when they abandon the 30-day extension, totally abandon it and say ``Oh, by the way, we were entitled to a 15-day extension` They never said they were entitled to it They never asked for it

THE COURT You're giving them the benefit I thought it was June of '07 that was when the, I see the amended complaint was dated Maybe they sent it to you before that or whatever

MR ALTMAN Well, they and I say that ---

THE COURT June of '07 was in the file and then the order granting them the right to amend was in July of '07, excuse me, I said `05

MR ALTMAN Your Honor, what happened was we had the summary judgment motion

THE COURT Right

MR ALTMAN A week before, I think in May, the week

before ---

THE COURT I see

MR ALTMAN --- they asked for the right to amend to add that I said, "No, we've got the summary judgment motion pending " After the summary judgment was denied, knowing the leniency of the -- required by the rules to allow the amendment, I agreed to the, I agreed to the amendment because it was going to be allowed

THE COURT Right, right, so, that's April of '07 was when you first found out that they were claiming the 15-day

MR ALTMAN Correct So, there was never any request It was their responsibility, Your Honor They never came up within a time period, and you know, if the contract didn't have a time is of the essence clause there's a reasonableness standard, but when you put the time of the essence that's deemed to be the reasonable date It didn't happen We weren't telling them they had to close in a week from the day the contract was signed They had seven and a half months They didn't communicate They had an obligation to communicate They didn't do it They weren't responding and I will point this out and I'm about finished On July 20th Mr Rakes sends the e-mail to Ms Richard saying the offer is withdrawn because there is no response Mr Marshall testifies that he had told Ms Richard that they wanted to wait until the end of the month to decide if they wanted to do

that Ms Richard shows Mr Marshall the e-mail He sees the language in there and doesn't say, ``Why didn't you tell him? What do you mean there was no response? We told you what to tell him '' She didn't do that He didn't do that She didn't do it, and lastly, Your Honor, the August 2nd letter very telling, the second sentence, ``Mr Curtis and Mr Bordine didn't come up with their money That's why we couldn't close '' They had partners, knew who the partners were They didn't know anything about them They didn't perform They didn't close because their partners didn't come up with the money Mr Hilleshiem says, ``We got rid of those people in June '' Mr Marshall is talking in August They didn't perform in late July They were still there They just didn't perform The people didn't perform There was no notice, no communication My client did everything they were supposed to do It's not our responsibility We did what we're supposed to We lived up under the contract and that's where we are, Your Honor and for those reasons we believe that there should be a directed verdict Thank you

THE COURT All right, Mr Futeral

MR FUTERAL Thank you, Your Honor

In preparing for this I was thinking back to the questions Your Honor had asked during the course of the case, and what I've tried to come up with, and what I think I've come up with is actually an explanation and a rather simple

one as to why it should be denied I think in all of the discussions we have regarding the facts and circumstances of this case, it's easy to sort of lose some focus, but here is my thought process and it's rather linear and I think it takes us straight to the jury All right, we start off, one, we're here on this motion and Your Honor to consider whether there's -- well, basically, whether the evidence yields more than one inference or the inference is in doubt

All right, there are three things, Your Honor that are not in doubt in this case to simplify it One, written satisfactory loan approval or the commitment letter by January 28th we breached that part of the contract and they waived it We know that Two we know the contract was contingent upon financing, and three, we know that we did not meet the financing contingency by July 31st None of those things are in doubt So, on July 31st the question became then as it is today, are we the buyers at fault in not satisfying this contingency? That's really the question, what it all boils down to is are we at fault in not satisfying the financing contingency? We have evidence that we're not at fault We went to two separate banks beginning in January We chose Southcoast by February Southcoast testified we were diligent throughout the entire process The evidence showed through all the testimony and the witnesses that both the structure of the loan was uncertain because of the uncertainty of the water

and sewer Approximately one month prior to closing through no fault of our own because no one said we had anything to do with water and sewer and that voting out of Mr Rosier it became certain that the water and sewer flowed away from the property which is not our fault Immediately we began seeking investors to meet the increased cost of the best loan Southcoast would give us This is what the evidence is in this case We talked to numerous investors continued to communicate several times a day with the underwriter, and continued to provide any requested information or documents to the underwriter There's testimony to that The testimony further is at that time neither the underwriter nor the Plaintiff envisioned that the loan would require prepaid interest We've got plenty of testimony on that and then ---

THE COURT What about if I just told you that I'm not going to find your clients to be at fault?

MR FUTERAL Then ---

THE COURT Anything else you want to say?

MR FUTERAL Yes, sir

THE COURT All right

MR FUTERAL Let me move then if we're not at fault then we turn to repudiation Okay which means if we're not at fault what should have happened on July 31st when the deal didn't close? The answer is two things should have happened There should have been a discussion between the parties

regarding why there wasn't a closing, not just us but them, good faith and fair dealing on both sides and after the discussion to determine whether we were at fault and if we are not at fault we should have set a new closing date This is something that everybody should have done, buyer and seller should have had this discussion, clearly We have the benefit of the tool of discovery to see that there was discussion on the sellers end about 15 days and after a discussion with Mr Rakes there's a big hush ``If they try to use it we'll litigate '' In other words, when the discussion takes place of the 15 days what I would look at a jury and say is essentially it's like saying, ``Shhh, don't say it, they use it, we'll try it ''

All right

THE COURT The question is did they use it

MR FUTERAL All right, well, repudiation resolves this in favor of the jury hearing the case According to Judge Anderson ---

THE COURT I never have understood this idea of repudiation

MR FUTERAL I think I can explain it

THE COURT Okay

MR FUTERAL All right let me quote, small quote from Judge Anderson, and you'll see how this precisely fits what's going on here A repudiation of a contract before the time

of performance, which amounts to a refusal to perform it at any time, gives the adverse party, that would be us, the option to treat the entire contract as broken and to sue immediately for damages as for a total breach There is no necessity in such case for tender of performance or compliance with conditions precedent

THE COURT When do you say that they repudiate the contract? I mean, how?

MR FUTERAL I'm going to point out all the evidence on that, Your Honor I just wanted to ---

THE COURT Go on right ahead, do that I want you to do that I want you to do that

MR FUTERAL I think, I think this language here is important There is no requirement of the waiting for the time of performance to arrive, no notice need be given that the repudiation is treated as a breach So, what did they do to repudiate? We have heard testimony beginning July 20th communications through their realtor to our realtor Bruce Marshall, our closing attorney, there would be no extensions We have conflicting testimony between Georgia Richard and Mickey Rakes as to what their conversations were She's ---

THE COURT Well, I wrote down, I wrote down what Georgia said

MR FUTERAL Yeah

THE COURT She didn't say anything about that

MR FUTERAL She said ---
THE COURT All she said was in her testimony about people are ready to close and tell Pendley and so forth, ready to close, and ---
MR FUTERAL She ---
THE COURT --- so forth, talking to Rakes, he said there would not be any -- that -- said there's no closing beyond the 31st, said there was a problem with the financing
MR FUTERAL Yeah, she ---
THE COURT That's what she said, but there was never any mention in her testimony of any 15 days
MR FUTERAL Okay, let's talk about that for a second then In order to resolve that issue, we go to the four corners of the contract itself, and in that contract there are several points in time where under certain circumstances either buyer or seller are required to give notice or written notice to one another This one section regarding the 15 days is absolutely silent as to notice, and in fact, if you read -- reading the precise language ---
THE COURT Well, wouldn't you say then that the person who seeks to use that has to give the other party -- notice that they're seeking to use it? Wouldn't that make sense?
MR FUTERAL I think they would have to give that notice, Your Honor, that they want 15 days and that's --

Benji Lafond testified that after the closing date, which would be the time when you start asking for the 15 days that he talked to Skipper Wooddy and while he did not refer to it as paragraph 33 and he did not refer to it necessarily as 15 days and they did have a discussion about buying more time, he also asked him, ``Look if you'd just give us a day or two Mr Hill'' -- you don't have to ask for the full 15 You're going to set a closing date He's trying to say, ``Look, two or three days later we can close this ''

THE COURT Why?

MR FUTERAL And here's the response the answer -- we know why and that's a question of whether we're at fault

THE COURT If that had been communicated to the sellers you've got a point but that wasn't

MR FUTERAL Your Honor, good faith and fair dealing on both ends of this transaction they responded to the discussion, as Mr Lafond said, he just said, ``Look, there are no extensions '' Mr Wooddy didn't ask why and we never got around to explaining why, but Your Honor, there is circumstantial evidence to show that they knew exactly why and here's why Georgia Richard testified that she communicated to Mickey Rakes that the water and sewer problem somehow affected their ability to get a loan Benji Lafond specifically told him that they dropped the bomb with regard

to the interest He knew why, that he dropped the bomb on the 211 and, Your Honor says they didn't know why They knew exactly why We didn't have $211,000 that day and that's Benji Lafond's testimony He had all the information we had to give

THE COURT Well, he told them that they had a fact -- that they -- that he told him that after the fact, that's when he's still asking for one or two days more to close

MR FUTERAL That's the -- wait, Your Honor, that's the perfect time, looking at the contract, 15 days is not invoked unless you don't close on the 31st

THE COURT All right anything else?

MR FUTERAL It says, it says if it has not closed then 15-day extension It had not closed on the 31st, and so, right after that Mr Lafond says, "Hey, a day or two," and explains what the problem is This contract does not call for hyper-technicality saying, "We invoke paragraph 33 We want all 15" ---

THE COURT Well, you're wanting them to pay you between six -- your clients between 600 and $700,000 I think they ought to be pretty technical

MR FUTERAL Well, then it should be construed against the drafters who did not ---

THE COURT That was negotiated, both sides negotiated that

MR FUTERAL That's fine You don't even have to construe it There's nothing in the contract that tells us how we're to ---

THE COURT Okay, anything else?

MR FUTERAL This is my anything else Your Honor If the contract is silent as to what was supposed to happen to trigger the 15, other than a closing didn't take place, then good faith and fair dealing would require there be some discussion Mr Lafond ---

THE COURT Somebody has to initiate it Nobody did

MR FUTERAL Mr Lafond initiated it He testified directly to it

THE COURT No he didn't I wrote down what he said You may think that but that's not what my memory is I wrote down what he said about that

MR FUTERAL He said ---

THE COURT In my notes he said they had a problem with their financing, can we have two or three more days

MR FUTERAL Exactly

THE COURT That's basically what he said

MR FUTERAL Exactly

THE COURT That doesn't trigger, that doesn't say "Hey, you've got to give us 15 days to close "

MR FUTERAL No, Your Honor, it says no later than 15 days Your Honor, if -- to rule this way ---

THE COURT But it gives an extension of 15 days

MR FUTERAL Your Honor ---

THE COURT Both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date

MR FUTERAL Not to exceed 15 days He asked for a closing date two to three days out

THE COURT I agree, but he didn't tell them why

MR FUTERAL Now, he told them they could not close because they didn't have the funds

THE COURT All right I've heard, I've heard enough now as far as that's concerned and everything My ruling is it's amply summed up by the last witness actually when he said, ``I cannot help it if their attorney and their agent did not tell them about the 15-day clause'' I rule as a matter of law under this contract the Plaintiff had an obligation to bring it to the Seller's attention to the Defendant's attention if they wanted to exercise their rights under the 15-day clause and there's absolutely no testimony in the record which would support the idea they notified them that they were proceeding under that 15-day clause I grant the motion for a directed verdict

MR ALTMAN Thank you, Your Honor

THE COURT Bring the jury back in

(Jurors discharged)

C E R T I F I C A T E

I, the undersigned, Grace L Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing of Sheep Island Plantation, LLC v Bar-Pen Investments, LLC, held in the Court of Common Pleas for Berkeley County, Berkeley County Courthouse, Moncks Corner, South Carolina on March 10-13, 2008

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto

Grace L Hurley

Grace L Hurley, CVR-CM
Official Reporter

July 22, 2008

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO 2006-CP-08-01650
SHEEP ISLAND PLANTATION, L L C ,	)	
PLAINTIFF,	)	
vs	)	TRANSCRIPT OF RECORD
BAR-PEN INVESTMENTS, L L C ,	)	
DEFENDANT	)	

May 8, 2008

Charleston, South Carolina

B E F O R E

THE HONORABLE THOMAS L HUGHSTON, JR , JUDGE

A P P E A R A N C E S

THOMAS C NELSON, ESQ
Attorney for the Plaintiff

CHARLES S ALTMAN, ESQ
WILLIAM L HOWARD, ESQ
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EXHIBITS

None

THE COURT: All right, we're here in regard to a case that I presided over the trial of up in Berkeley County a few weeks ago This is Sheep Island Plantation, L L C , against Bar, B-A-R, Pen, P-E-N, Investments, L L C , Case Number 2006-CP-08-1650

And the plaintiff is asking me to undo the directed verdict that I granted at the close of the -- at the conclusion of the testimony and before the case was submitted to the jury

And is it Mr Nelson?

MR. NELSON Yes, sir

THE COURT Mr Nelson is here on behalf of the plaintiff, and Mr Altman is here on behalf of the defendant

Mr Nelson, tell me what you want me to do and why I should do it

MR. NELSON: Thank you, Your Honor We filed the motion as a 59 Motion, but really we're just here on Rule 59(e), Motion to Alter or Amend the Judgment And one of the main reasons we did that is when Your Honor made his ruling, ---

THE COURT Yes?

MR NELSON: --- to grant the directed verdict, ---

THE COURT: Right

MR. NELSON: --- there were several issues that were

raised to Your Honor And when you made your ruling, it appeared that it was specifically on the issue that they were entitled to a notice of the fifteen day extension under the contract, and we don't think we -- we are unclear if we got a clear ruling on whether or not there was a -- you ruled on the issue of repudiation, whether or not the sellers, by terminating the contract on July 31st, constituted a repudiation and whether that issue should have gone to the jury

And while there was some argument with Your Honor on that issue, and you heard us, and you actually made some comments you made in return, we don't think we got a clear ruling That's why we filed this motion

THE COURT. All right

MR. NELSON As to the service of the 59(e) Motion, we never received a written notice -- or a -- we never received the written notice of the entry of the Order from the Court, so I think the time is still good for that And the 59(b) is out, because we did originally file under 59(b)

And for those reasons, we'd like Your Honor to rehear us on the issue of repudiation

THE COURT. I'm not sure I understand what you're asking me

MR NELSON· The action was on a breach of contract

on a real estate contract

THE COURT: Right I know that

MR NELSON. And there was a fifteen day extension, and ---

THE COURT I understand all that, but I thought you were asking for some permission to be heard in regard to something, or something That's what I was saying, I don't understand what you're asking

MR NELSON: I'm asking that Your Honor rule on the issue of repudiation

THE COURT: Okay

MR. NELSON: Whether or not it was a jury issue that should have been submitted to the jury

THE COURT: Okay All right Go ahead, then

MR NELSON. As to that issue, there's no clear law in South Carolina or no good precedent on that And in all the research we did, we kept falling back to Judge Anderson's Request to Charge book to find language in there, because that's all we could really find in South Carolina

THE COURT Let me -- let me -- I think I finally understood late in the game, so to speak, what your -- what your position was on that, and that was, of course, we had some dealings back and forth, by that I mean we had some conversations back and forth There were -- there

were some conversations back and forth in the month of July leading up to the closing date, which I can't remember, was it July 31st, August 1st?

MR ALTMAN July 31st, Your Honor

THE COURT: Drop-dead date July 31st And there were some conversations back and forth between representatives of the parties, I believe it was basically representatives, at least on one side, and -- and saying Well, we might not be able to close, might need a few more days, or something like that, and rejections

And, of course, there was that, trying to say that they purchased it and so forth and so on And your position, as I understood it, and as I understand it, is that during at least one of those conversations, the seller says We're not giving any extensions

And your position is that this was ten, fifteen, twenty days, I don't remember, before the closing date, and that by saying that at that time, that repudiated the contract, and your client didn't have any further obligation to do anything, because the contract had been repudiated at that time, was broken, and that was it

MR. NELSON That is -- that is part of it, Your Honor There was ---

THE COURT Okay What's the other part?

MR. NELSON There were a couple communications that

there would be no extensions

THE COURT What?

MR NELSON. There were a couple communications that there would be no extensions, no extensions

THE COURT: Yeah

MR. NELSON But then also, they terminated the agreement on July 31st, and if you look to the language of the Extension Agreement, it says If the transaction has not closed within the stipulated time, that language right there, "if the transaction has not closed," that means we cannot even assert the extension, even if they were entitled to notice, until August 1st, until the last day to close has expired And by them terminating it on the 31st, they didn't give us that opportunity

And there was also some testimony that we did communicate with them that we still wanted to close after that One, when we wrote them the letter and enclosed a fifty thousand dollar check

And also our realtor testified that two days after the closing, she said Hey, we need another day or two We had a problem with the bank

All of that together adds up to repudiation, and I'd just ask that Your Honor consider that

THE COURT. Okay I appreciate your position, but I stick by my prior ruling that the seller, the defendant in

this case, did not repudiate the contract, and there was no issue regarding that to be submitted to the jury So I'm ruling clearly that's the way I see it Okay?

Anything else?

MR ALTMAN Your Honor, anticipating an appeal, I would just like to put on the record and preserve our rights that we have filed a Memorandum There are some issues in there about proper service of the motion and timing of service of the motion um on us, that we did not receive this motion until April 1st It was mailed to us on -- excuse me, March 31st The ten days ran on actually the 23rd, which was a Sunday, so we did not receive it until -- the 24th would have been the time, the extra day

The Order was entered, like I said, on the 13th And so we feel that they were out of time in serving the motion We bring that out solely to preserve that for the record

THE COURT: I'm going to rule against you on that I'm going to say I have the jurisdiction, that it was timely filed and so forth and that I'm allowing them to make this motion And I'm ruling against the plaintiff on their motion

MR ALTMAN I understand that, Your Honor I understand also that there is no motion for a new trial here

THE COURT: Okay

MR ALTMAN So that's been removed, so we did not have to address that We will not have to address that, if they appeal

THE COURT All right And just ---

MR. NELSON: Your Honor ---

THE COURT. Go ahead

MR NELSON. I'm sorry, Your Honor While we're not making a 59(b) Motion for a New Trial, if Your Honor were to rule for us today, the result would be a new trial

THE COURT Okay

MR NELSON So while we're not making a specific 59(b) motion, that is what we're asking for

THE COURT. Okay

MR ALTMAN So, Your Honor, with regard to that, the rule is the law is that that motion has to be made at the conclusion of the trial as soon as the jury is discharged, or the party that is making that motion has to ask -- has to ask the Court for ten days

THE COURT I gave ten days for any post-trial motions I always do If I didn't, I always do

MR ALTMAN. Your Honor, the ---

THE COURT I always give ten days for any post-trial motions

MR ALTMAN. The transcript has you saying, "I grant

the motion for directed verdict "

I say, "Thank you, Your Honor "

THE COURT Oh, well, maybe in this instance I did not, and everything, but that's my standard practice is to give ten days for any post-trial motions, but maybe it -- that's certainly in regard to jury trials when they come back with a jury verdict Maybe in this instance, being it's so unusual and everything, I neglected to say that

MR ALTMAN The record is there

THE COURT. Okay

MR ALTMAN Again, that's just to preserve the record

THE COURT All right Because that's my standard practice, but anyway, maybe in this instance I overlooked it because of the unusual nature of my doing what I did

All right, anything else?

MR. ALTMAN That's it Thank you, Your Honor

THE COURT Again, my ruling here is that as far as the -- I rule that there was no repudiation, as a matter of law, of the contract under the facts of this case as shown in the record

And then my previous motion -- my previous ruling, again, was that in order for the plaintiff to take advantage of that fifteen day no-fault provision, they had to give some notice of that to the other side They

couldn't just sit back and not say anything about it, if they wanted to exercise their rights under that They did not give a clear, unequivocal notice that they were wanting that fifteen day period, through no fault of their own, because of no fault of their own

The first notice that the defendant had of that was six, eight, nine months later when the plaintiff amended its Complaint They started out -- the Complaint started out saying, and I think I can take notice of all the pleadings that are in the file, it started out saying We had an extension, the thirty days that we tried to buy or whatever period of time it was

And they started out under that theory, and then six, eight, nine months later changed and said We want the fifteen days

That's the first notice, as I see it, that the defendant had that they were proceeding under that idea

And further, it just doesn't seem right If this was about a specific performance, it might be a little bit different, but to -- to wait and turn around and want hundreds of thousands of dollars in damages later just doesn't seem right

All right Thank you very much

MR ALTMAN: Your Honor, I'd just like to note for the record William Howard's appearance also on behalf of

the defendant in the case

THE COURT: Glad to have him here

MR. HOWARD Thank you, sir

MR. NELSON: Your Honor, and if I could add one more thing to the record?

THE COURT. Yes, sir

MR NELSON: In Mr Altman's Memorandum, he cites to a deposition a few times, and we just object to any consideration of the deposition testimony with regard to a directed verdict motion

MR ALTMAN: The record -- the record on appeal, if we get there, will show that those same questions were asked, and they'll deal with that

THE COURT All right Thank you very much

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

I, RONDA T CUMMINGS, Official Court Reporter for the Judicial Department of the State of South Carolina do hereby certify that the foregoing is a true accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case relative to appeal, in the Court of Common Pleas for Berkeley County South Carolina heard in Charleston County, South Carolina on the 8th day of May 2008

I do further certify that I am neither of kin, counsel nor interest to any party hereto

July 26 2008

RONDA T CUMMINGS Court Reporter

PLAINTIFF'S EXHIBIT 1 EVD 3-11-08 GM

PEVEAR 800-451-8998

AGREEMENT TO BUY AND SELL REAL ESTATE
(FOR GENERAL USE AND LOTS/ACREAGE)

1 PARTIES This legally binding Agreement entered into on December 14 2005
between Buyer(s) E Bruce Marshall And/Or, Jeremy S Marshall (hereinafter
called "BUYER") and Seller(s) Bar-Pen, LLC
(hereinafter called SELLER") The property shall be deeded in the name(s) of To Be Determined

THE ☐ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2. PROPERTY TO BE SOLD Subject to terms and conditions herein Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon

Lot _____ Block _____ Section _____ Subdivision Tract 3A
Address Sheep Island Road
Tax Map # 194-00-02-162 City Summerville Zip 29483
County of Berkeley State of South Carolina.

3 PURCHASE PRICE shall be $ 2,530,000 00
Two Million Five Hundred Thirty Thousand dollars.

4 METHOD OF PAYMENT Purchase price shall be paid as follows ☐ Cash or ☒ Subject to Financing Financing to be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms

5 EARNEST MONEY This offer is accompanied by an earnest money deposit of $ 10,000 00
Buyer and Seller authorize Prudential Carolina R E , as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement Earnest money paid by ☐ Cash ☒ Check, or ☐ Other Broker does not guarantee payment of a check or checks accepted as earnest money All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations At the consummation of this sale the earnest money deposit shall be credited to the Buyer

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT

6 LOAN PROCESSING AND APPLICATION Buyer's obligation under this agreement is contingent on Buyer obtaining said loan Buyer shall apply for a maximum 80 000 % loan (loan to value ratio) within 30 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 45 consecutive days that contains no credit, income or asset conditions unless otherwise set forth in this contract. Time is of the essence Should the Buyer fail to make loan application or receive approval within said period and to diligently pursue the application the Seller shall have the option to terminate this Agreement, with the written notice Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner Buyer will take any action that is needed or requested by Lender to process the loan application Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s) If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 22

FHA Mortgage Insurance ☐ will ☒ will not be added to the mortgage. VA funding fee ☐ will ☒ will not be added to the mortgage

EBM BUYER GSM BUYER SELLER ____ SELLER HAVE READ THIS PAGE

CENTURY 21 Southern Homes 205 St. James Ave Suite 5 Goose Creek, SC 29445
Phone (843) 572 3131 Fax (843) 572 3137 Micky Rakes Contact Bar

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7 **CLOSING COSTS** Unless otherwise agreed closing costs, including all loan charges and prepaid recurring items shall be paid as follows

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property and all costs necessary to deliver a marketable title including recording of satisfactions and property taxes to the day of closing

(b) BUYER shall pay unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance appraisal survey cost of obtaining loan discount points title examination escrow deposits and prepaid expenses. The Buyer shall also pay if applicable interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender Other terms _____

8 **OPTION TO TERMINATE AFTER DUE DILIGENCE** (A) Seller grants to Buyer a 90 day right ("Termination Right") from the date of this agreement during which Buyer may do any or all of the following

1 Conduct at Buyer's sole expense whatever due diligence inspections examinations surveys and testing, if any Buyer deems appropriate to evaluate the suitability of Property for Buyers intended use including but not limited to zoning governmental regulations environmental concerns availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence)

(B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence. Buyer hereby agrees to indemnify and hold Seller Broker and Broker's Affiliated Licensees harmless from and against any and all loss injury cost or expense associated with Buyer's inspection of and entry upon Property

(C) If Buyer decides to exercise Buyer's right to terminate this Agreement Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property "as-is The expiration of the Termination Right shall not, however remove or terminate and other contingencies to which the Agreement may be subject, or limit any other rights which Buyer may have under this Agreement.

9 **BUILDING PERMIT** This Agreement ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property If Buyer notifies Seller in writing within N/A days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property then in such event this Agreement shall terminate If Buyer fails to provide said notice then this contingency shall be deemed to have been waived by Buyer

10 **REZONING** This Agreement ☐ is ☒ is not contingent upon Property being rezoned to N/A on or before the _____ day of N/A, _____ by the appropriate governmental authorities For purpose herein the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed The ☐ Buyer ☐ Seller shall be responsible for pursuing such rezoning and paying all associated costs All rezoning applications shall be submitted to Seller for Seller's approval prior to filing which approval shall not be unreasonably withheld. All parties agree to cooperate to sign the necessary documentation and to support the rezoning application. If Buyer notifies Seller or Broker in writing within forty eight hours after the above date the Property cannot be so rezoned then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer If Buyer fails to provide said notice then this contingency shall be deemed to have been waived by Buyer

11 **WELL SEPTIC TANK SEWER AVAILABILITY** It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing in the event a well and/or septic tank is needed to be placed on the property

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure then in such event, the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed $ N/A then in such event the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system

Seller represents that the property is connected to ☐ public sewer system or to ☐ septic tank or to ☐ public water or to ☐ well system or to ☒ other There is no public water or sewer at subject property

12 SURVEY Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the ☐ BUYER ☐ SELLER The surveyor shall set and flag all property pins, showing encroachments and easements Property must be N/A x N/A or having at least 101 165 acres The survey to be approved in writing by Buyer prior to closing The purchase price is based upon $ 25,009 00 per acre (acre, sq ft or front ft) and shall be adjusted in accordance with the area set forth in such a survey If applicable

13 CONVEYANCE SHALL BE MADE Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes ordinances rules and regulations Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable free of encumbrances except as herein stated Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing and transaction closed on or before See Paragraph 30 , no later than 9 00 p m Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing

14 POSSESSION Possession of said property will be given to Buyer on the day of closing Seller agrees to deliver property free of debris and in a clean condition Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy

15 CONDITION OF PROPERTY The Seller shall not remove any timber dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement All timber dirt minerals, etc., shall remain with the property and be a part of the property and be transferred to the Buyer The Seller shall not bring any trash refuse debris medical or hazardous waste or other improper materials upon the property In the event any condemnation proceeding is brought by any governmental authority agency utility, etc. prior to the closing then the Buyer may elect to rescind the agreement

16 EXPIRATION OF OFFER The offer from Buyer shall be withdrawn at 5 00 o clock P M on December 21 2005 unless countered or accepted by Seller in written form prior to such time Time is of the essence

17 SPECIAL STIPULATIONS The following stipulations concerning restrictions and easements affecting desired use drainage hazardous waste availability of water and sewer soil test, wetlands study subordination lot releases, etc should be included here If conflicting with printed matter, the following stipulations shall control (See addendum if applicable)

18 ADJUSTMENTS Taxes water all sewer assessments sewer charges, fuel oil rents as when collected insurance premiums if applicable and other assessments including homeowner's association fees shall be adjusted as of the date of closing Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing and are to be prorated on that basis. BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS Property taxes and rent, as well as other expenses and income of the property if applicable, shall be apportioned to the date of closing Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing Prorations at closing shall be final.

19 NON-RESIDENT TAX. Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12 8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute

20 ROLLBACK TAXES (IF ANY) When rollback taxes are subsequently determined and billed to the Buyer the Seller and Buyer agree that the rollback taxes shall be paid by ☒ Buyer or ☐ Seller

21 RISK OF LOSS OR DAMAGE In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder or of terminating this Agreement.

22 DEFAULT If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23) or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless If either Buyer or Seller refuses to execute release Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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23 ACTUAL COST INCURRED shall include all costs and expenses incurred or obligated for by Buyer Seller or Broker in an effort to consummate this sale. Such costs shall include but are not limited to cost of credit report, appraisal survey inspections and reports title examination and Broker's fee or commission for this sale

24 SURVEY, TITLE EXAMINATION, AND INSURANCE The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made have examination as to the title to the property obtain owner's title insurance and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement Flood insurance if required by Lender at Buyer's option shall be assigned to Buyer with permission of carrier and premium prorated to date of closing

25 APPRAISED VALUE (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon if any appraising according to the lenders appraisal or other appraisal as agreed for the selling price

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any appraising according to the lenders appraisal or other appraisal as agreed for the selling price or more, if the lot or parcel with building and improvements thereon appraises for less than the selling price the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However if Seller does not agree to sell at the appraised value the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation or terminate the agreement without penalty

26 SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS All reports and certifications called for by the lending agencies and any governmental body, by the Buyer concerning any special study area wetlands or for any environmental protection matter shall be at the expense of the Buyer In the event such studies are wanted or required the studies must be furnished by the proper parties within 90 days of complete execution of the agreement. The Buyer and Seller must have access to all studies within five (5) days of receipt of the studies If Buyer fails to meet these deadlines Buyer is deemed to have waived any and all rights under this paragraph If the Buyer is not satisfied with the results the Seller shall have the option of correcting the problem. If the Seller elects not to correct the problem the Buyer's obligations under this Agreement terminate

27 COASTAL TIDELANDS & WETLANDS ACT In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48 39-10 et seq South Carolina Code of Laws) an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense

28 DISCLAIMER BY BROKERS AND AGENTS The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s) (1) Give no guaranty or warranty of any kind express or implied as to the physical condition of the property or as to condition of or existence of improvement services or systems thereto included but not limited to termite damage roof basement, appliances heating and air conditioning systems plumbing sewage electric systems and to the structure, (2) Give no warranty express or implied as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed (3) Give no warranty as to title, (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property (b) any matters which would be reflected by current survey of the property and (c) the accuracy of the published square footage of the property (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer

29 MEDIATION CLAUSE. Any dispute or claim arising out of or relating to this Agreement the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® Disputes shall include representations made by the Buyer(s) Seller(s) or any real estate broker or other person or entity in connection with the sale purchase financing condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud

Any agreement signed by the parties pursuant to the mediation conference shall be binding This mediation clause shall survive for a period of 120 days after the date of the closing

The following matters are excluded from mediation hereunder (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or land contract, (b) an unlawful detainer action, (c) the filing or enforcement of a mechanics lien (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action to resolve earnest money disputes The filing of a judicial action to enable the recording of a notice of pending action for order of attachment, receivership injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision nor shall it constitute a breach of the duty to mediate

30 **ENTIRE BINDING AGREEMENT** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included expresses the entire agreement and all promises covenants and warranties between the Buyer and Seller It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein The benefits and obligations shall inure to and bind the parties hereto and their heirs assigns successors executors or administrators Whenever used singular includes plural and use of any gender shall include all.

31 **SURVIVAL.** If any provision herein contained which by its nature and effect is required to be observed kept or performed after the closing it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed kept or performed

32 **FACSIMILE AND OTHER ELECTRONIC MEANS** The parties agree that the offer any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means including but not limited to electronic mail and the internet, and the signatures initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

33 **EXTENSION AGREEMENT** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date Time is of the essence

34 **CONTINGENCIES** These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) (a) With reference to Paragraph 9, Closing shall take place no sooner than July 15, 2006 and no later than July 31, 2006 with "Time being of the essence" (2) With reference to Paragraph 8, Buyer agrees to make an additional $40,000 deposit directly to the Seller at the end of said Due Diligence Period" This $40,000 plus the original $10,000 deposit become Non-Refundable should the Buyer not close for any reason whatsoever as stipulated in Paragraph 34 (a) above and Paragraph 33. Buyer authorizes the Escrow Agent to disburse the original $10,000 deposit to the Seller at the end of said "Due Diligence Period"

Lafond 000109

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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THIS IS A LEGALLY BINDING AGREEMENT BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties

BUYER E Bruce Marshall And/Or — Date 12-16-2005 Time _____

WITNESS _____ Date _____ Time _____

BUYER Jeremy S Marshall — Date 12-19-05 Time 12 35

WITNESS _____ Date _____ Time _____

SELLER Bar-Pen, LLC — Date 12-15-05 Time _____

WITNESS _____ Date 15 DEC 05 Time _____

SELLER _____ Date _____ Time _____

WITNESS _____ Date _____ Time _____

LISTING AGENT AND COMPANY CENTURY 21 SOUTHERN HOMES, INC / MICKEY RIKE

SELLING AGENT AND COMPANY PCRE / GEORGIA RICHARD

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER

ESCROW AGENT ACKNOWLEDGMENT Prudential Carolina R E

Lafond 000110

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ADDENDUM "B"

THIS ADDENDUM WHEN SIGNED SHALL BECOME AN INTEGRAL PART OF THE CONTRACT OF SALE DATED 11/19, 20 05 BETWEEN Sheep Island Property, LLC (SELLER) & Marshall (BUYER) OF LOT Tract 3A BLOCK ADDRESS 0 Sheep Island Road, Seville AND SHALL BIND ALL PARTIES THIS ADDENDUM SHALL PREEMPT ALL PRINTED MATTER OF THE SUBJECT CONTRACT WHEN CONFLICTING

1 The purchase Agreement may be assigned to an entity or LLC, prior closing

BUYER	DATE	WITNESS	DATE
Bruce Marshall	11/21/2005		11/21/05
BUYER	DATE	WITNESS	DATE
	11/21/2005		11/21/05
SELLER	DATE	WITNESS	DATE
SELLER	DATE	WITNESS	DATE

SOUTHCOAST
COMMUNITY BANK

February 14, 2006

To Whom It May Concern

Southcoast Community Bank has been in discussions with Bruce Marshall and other investors on the purchase of property located on Sheep Island Road Summerville SC 29483 TMS # 194-00-02-162 An agreement to buy this property was initiated on December 14, 2005 between Bar Pen LLC (the seller) and E Bruce Marshall and / or Jeremy S Marshall (the buyer) and shall be deeded in a real estate holding company yet to be named

Southcoast Community Bank would welcome the opportunity to assist with the purchase of the property mentioned above We will ask that the buyer provide all financial information and qualify for such a loan as to meet our normal banking requirements prior to a commitment letter being issued

We look forward to serving Mr Marshall and will work diligently to fulfill our customer s financial endeavors If you have any questions please fill free to contact me directly at (843) 576-1367

Best regards,

Marc Knight
Vice President

PLAINTIFF'S EXHIBIT 2 3-14-08

597 Old Mount Holly Road Goose C eek SC 29445 843 553 0021 Fax 843 553 6551

00669

B-P 112

PLAINTIFF'S EXHIBIT 3 3-11-08

JEREMY S MARSHALL
[redacted]

1015

11-21-2005

Pay to the order of Prudential Carolina's Realty $ 10,000 00

Ten Thousand and 00/100 Dollars

MINIMUM $500

First Federal
GOOSE CREEK SC 29445

For Escrow on property [redacted]

[redacted]

APP 689

Mar 27 2006 1 47AM Residential Greenfield No 9 7 P 2/3

RELEASE OF EARNEST MONEY

This release entered into this 23 day of March, 2006 between the undersigned Purchaser(s), the undersigned Seller (s) and the undersigned Realtors who are parties to that certain contract of sale dated 12/14, 2005 covering the following described property

Sheep Island, TMS# 194-00-02-162

Witnesseth

The escrow agent holding the deposit under the terms of said contract is hereby directed and instructed forthwith to disburse said deposit held in escrow in the following manner

$ 10,000 to BAR-PEN, LLC (Per Contract

$_____ to _____

$_____ to _____

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

WITNESSED BY

Purchaser

As to Purchaser (s)

Purchaser

Seller

As to Seller (s)

Seller

Realtor

Realtor

This is a legally binding contract If not understood, seek further advice The printed matter in this form is approved by the South Carolina Association of Realtors

PLAINTIFF'S EXHIBIT 4 VID 3-1-08 BW

Lafond 000112

00670

APP 690

00671

R & B CONSTRUCTION
[redacted]

658

3-15-2006

Pay to the Order of Bar-Pow LLC $ 40000.00

Forty thousand and 00/100 Dollars

SOUTH CAROLINA
Federal Credit Union

For Addition Down Payment / Bruce Marshall

[redacted] 0658

PLAINTIFF'S EXHIBIT
5
3-11-08

LETTER OF ASSIGNMENT TO PURCHASE

3-1 2006

E BRUCE MARSHALL AND / OR JEREMY MARSHALL HAVE AGREED TO ASSIGN THEIR CONTRACT TO PURCHASE THE 101 ACRE TRACT OF LAND FROM BAR PEN LLC TO SHELP ISLAND PLANTATION LLC THE PROPERTY TAX MAP # IS 194 00 02 162 THIS CONTRACT IS FOR THE PURCHASE PRICE OF $ 2,350,000 00

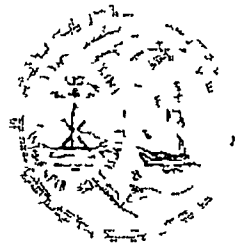
ASSIGNOR E. Bruce Marshall DATE 3/1/2006

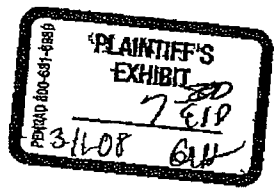
ASSIGNOR Jeremy D. Marshall DATE 3/1/2006

ASSIGNEE Shelp Island Plantation LLC DATE 3/1/2006

PLAINTIFF'S EXHIBIT 10. 610 53408 NCH

The State of South Carolina





Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that

SHEEP ISLAND PLANTATION, LLC A Limited Liability Company duly organized under the laws of the State of South Carolina on March 23rd 2006 with a duration that is at will has as of this date filed all reports due this office including its most recent annual report as required by section 33-44-211 paid all fees taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 11th day of April, 2006

Mark Hammond

Mark Hammond Secretary of State

Trico Engineering Consultants
4425 Belle Oaks Drive
N Charleston, SC 29405

Phone # 843-740-7700
Fax # (843) 740-7707

** INVOICE **

INVOICE # 066069

INVOICE DATE January 31, 2006

DUE DATE March 2, 2006

CUSTOMER # 5274

TO CR Thompson and Sons LLC
8096 Rivers Ave

N Charleston, SC 29406

TRICO JOB # 06-008

CUSTOMER P O #

LOCATION

PROJECT Sheep Island

WORK PERFORMED THIS PERIOD	HOURS	PRICE	TOTAL
I See Attached AIA			41,800 00

296-

PLAINTIFF'S EXHIBIT 30

TOTAL DUE THIS INVOICE 41,800 00

TERMS NET 30 DAYS INTEREST AT 1-1/2-
PER MONTH ON PAST DUE ACCOUNTS

APPROVED FOR TRICO

CREDIT CARDS NOW ACCEPTED

SIP 0035

00674

Continuation Sheet

AIA Document G703

Pag 1 of 1 Pages

AIA Document G702 APPLICATION AND CERTIFICATION FOR PAYMENT containing
CONTRACTOR S signed Certificate is attached
In tabulation below amounts are stated to the nearest dollar
Use colum 1 on C ntracts where variable retainage for line items may apply

Appl ation Number
Application Date.
Period To. 1/31/2006
Architect s Project No 06-008

A	B	C	D	E	F	G		H	I
Item No	Description of Work Number of Lots= C R. Thompson & Sons Sh ep Island R ad TMS #194 00 02 162 277-0971	Scheduled Value	Work Completed From Previous Application N(D+E)	 This Period	Materials Presently stored (Not in D o E)	Total Completed and Stored to date D+E+F	% (G/C)	Balance to Finish (C G)	Retainage
I	Preparation of Conceptual Plan	3 500 00		3 500 00		3,500 00	100 00%		
II.	Topographic Survey	30 400 00		30 400 00		30 400 00	100 00%		
III	Route Survey For Water Main Extension ($1 5/LF) Approx 2 000 lf	COMPLETE							
IV	Boundary Surv y	7 900 00		7 900 00		7 900 00	100 00 %		
V	Wetland Coordination	500 00					0 00%	500 00	
VI	Civil Engineering Plan & Report Prep 600 Hydrologic Analysis & Report Water Distribution System/Fire Flow Analys s & R port Preliminary Plat Roadway Plan Paving, Grading & Drainage Plan Wat r Distribution System Plan Coordinate with SC DHEC for Septic Installation Erosion & Sediment Control Plan Detail r levant to the above Initial Permitting of the project								
VII.	Final Plat & Set Property Corners 00								
VIII	Construction Staking 600 Stake Centerline & Flag Clearing Limits 30 Offsets for Rough Grade Storm Drain ge Layout Curb & Gutter Lay out W ter Layout Sewer Layout								
IX	Record Drawings 200 Water Asbuilts Sewer Asbuilts Storm D ainage Asbuilts								
X	Close Out Administration ($5000 per phase)	5 000 00					0 00%	5 000 00	
XI	Entrance Features/Landscape enhancement (hourly)								
XII.	Construction Observation & Testi g (hourly)								
	TOTALS	47,300 00		41 800 00		41 800.00	88.37 %	5 500 00	

AIA DOCUMENT G703 APPLICATION AND CERTIFICATE FOR PAYMENT MAY 1983 EDITION AIA
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N W WASHINGTON D C 20006

SOUTH CAROLINA
Federal Credit Union
PO Box 190012 N Charleston SC 29419 9012
(843) 797 8300 1 800-845-0432

No 113266

WMRX CHECK DISBURSED 04/21/06 11:18 AM 24178 1 OF 1 JLN 073 BR 19
[redacted] EARL B MARSHALL EFF DATE 04/21/06
CASH RECVD: 0.00 CHECK RECVD: 0 00 TOTL RECVD 0 00
CASH RETURNED 0 00
CHECK RET: 41,000.00 TO: Tri Co Engineering 113266

ACCOUNT. [redacted]

SFX	TRAN	AMOUNT	FEE	BALANCE
71S	SWD	41,000 00	0 00	2,780 79

PLAINTIFF'S EXHIBIT 9

RECEIVED BY

DETACH THIS PORTION BEFORE DEPOSITING

Hussey, Gay, Bell & DeYoung, Inc
Consulting Engineers of South Carolina

INVOICE

PLAINTIFF'S EXHIBIT 10 3-11-08

Sun Marsh Development Group
Attn Mr Buddy Martin
3227 Walter Drive
Johns Island SC 29455

Invoice Date June 23 2006
Invoice No 893446
Project No 406123802

Sheep Island Road Tract - Land Planning

Site planning for subdivision layouts and revisions per Ryland comments

For professional services rendered through June 9, 2006

Title	Rate	Hours	Amount
Principal Engineer	130.00	16 00	$2,080 00
Technician III	75.00	4 00	$300 00
Technician I	65.00	33 00	$2 145 00
Total Hourly Fee			$4 525 00
Invoice Total			$4,525 00

TERMS NET UPON RECEIPT

474 WANDO PARK BLVD., SUITE 201 P O BOX 1771 MT PLEASANT SC 29465
TELEPHONE (843) 849-7500 - FACSIMILE (843) 849-7502

Hussey, Gay, Bell & DeYoung, Inc
Consulting Engineers of South Carolina

INVOICE

Sun Marsh Development Group
Attn Mr Buddy Martin
3227 Walter Drive
Johns Island SC 29455

Invoice Date July 18 2006
Invoice No 993489
Project No 406123602

Sheep Island Road Tract - Land Planning

Site planning for subdivision layouts and revisions per Ryland comments

For professional services rendered through July 7 2006

Title	Rate	Hours	Amount
Principal Engineer	130 00	10 00	$1 300 00
Engineer IV	106 00	2 50	$282 50
Total Hourly Fee			$1 582 60
Reimbursable Expense			
Bullet Deliveries			21 37
Total Reimbursable Expenses			$21.37
Invoice Total			**$1,583 87**

TERMS NET UPON RECEIPT

474 WANDO PARK BLVD SUITE 201 - P O BOX 1771 MT PLEASANT SC 29465
TELEPHONE (843) 849-7500 - FACSIMILE (843) 849 7502

Hussey, Gay, Bell & DeYoung, Inc
Consulting Engineers of South Carolina

INVOICE

Sun Marsh Development Group
Attn Mr Buddy Martin
3227 Walter Drive
Johns Island SC 29455

Invoice Date August 14 2006
Invoice No 993613
Project No 406123602

Sheep Island Road Tract - Land Planning

Meeting with Berkeley County Water & Sewer and Coordination with Owner

For professional services rendered through August 4 2006

Title	Rate	Hours	Amount
Engineer IV	105 00	4 00	$420 00
Total Hourly Fee			$420 00
Invoice Total			**$420 00**

TERMS. NET UPON RECEIPT

474 WANDO PARK BLVD., SUITE 201 - P O. BOX 1771 MT PLEASANT SC 29465
TELEPHONE (843) 849-7000 FACSIMILE (843) 849-7502

LCMT@comcast.net

From Benjamin A. Lafond [benjy@summervillelawyer com]
Sent: Friday, July 14 2006 7:23 AM
To LCMT@comcast.net
Subject: FW Sheep Island Rd

Benjamin A. Lafond
Lafond & Lafond, LLC
120 South Magnolia Street
Summerville, South Carolina 29483
843-832-2007 Fax: 843-832-2009

*An association of Professional Corporations

CONFIDENTIAL & PRIVILEGED

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From Georgia Richard [mailto grichard@prucar com]
Sent: Thursday, July 13, 2006 10:07 PM
To benjy@summervillelawyer com
Subject FW Sheep Island Rd.

Hi Benjy
Bruce Marshall asked me yesterday for an extention for closing on the Sheep Island property and this is what the sellers' response.

[redacted]



Georgia Richard
Prudential Carolina Real Estate
Phone: (843) 574-3082
Fax: (843) 202-8804
grichard@prucar com

7/14/2006

http://georgiarichard.bravehost.com

From MickRakes@aol com [mailto MickRakes@aol com]
Sent: Thursday, July 13, 2006 3 49 PM
To gnchard@prucar com
Cc. Spendley@aol com, skipper@wooddylaw com
Subject: re. Sheep Island Rd

Hi Georgia.

This email is to confirm our discussion earlier today The Seller is willing to allow the Purchaser to BUY an extension of 30 days for $50 000

This money would be both Nonrefundable AND **Non-applicable** to the original purchase price. It would be in **addition** to the contract Purchase Price.

Should your Buyer wish to purchase the extension, the check would be made out directly to Bar-Pen LLC If not, please set the closing date and let me know as soon as possible As you are aware I've been trying to get it for a couple of weeks.

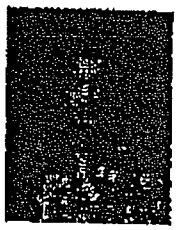
Mickey Rakes
Broker Associate
CENTURY 21 Southern Homes Inc.
Office. (843) 572-3131
Mobile. (843) 696-5748
Fax. (843) 572-3137

Georgia Richard

To MickRakes@aol com

Subject RE Sheep Island Rd.

Thank you Mickey I'm forwarding this e-mail to Mr Lafond Bruce s Lawyer and drop off a copy to Bruce Marshall himself



Copy to Bruce on 7/21/06



Georgia Richard
Prudential Carolina Real Estate
Phone (843) 574-3082
Fax (843) 202 8804
gnchard@prucar com
http://georgiarichard bravehost.com

From MickRakes@aol.com [mailto MickRakes@aol com]
Sent: Thursday, July 20, 2006 9 00 PM
To gnchard@prucar.com
Cc Spendley@aol.com, skipper@wooddylaw com, MickRakes@aol.com
Subject Re Sheep Island Rd.

Hi Georgia

This email is to confirm our conversation at approximately 2 30 PM this afternoon.

As I informed you during our discussion the Seller has instructed me to contact and inform you that they **immediately withdraw their offer to your Purchaser allowing them to buy an extension of time** to close on the subject property

The Buyer has not responded in any way to said offer which was made several days ago and we are several months past the "Due Diligence" timeframe

I did relay to one of the partners that you informed me the Buyer had just received their financing commitment letter and was preparing to close

Please inform the Buyer that the Seller is ready willing and able to close per the contract and will grant no extension of time

As you are aware the Seller has been requesting a closing date and time for approximately 3 weeks Please set the closing date immediately and let me know the day and time

Thank You

Mickey Rakes
CENTURY 21 Southern Homes Inc

SOUTHCOAST
COMMUNITY BANK

July 28 2006

M Stephen Hill
John Bourdean
Cecil O Curtis
Jeremy S Marshall
Walter M Funk III
David L Hilleshiem
Sheep Island Plantation LLC
[redacted]



Dear Sirs

Southcoast Community Bank (hereinafter referred to as Bank ') is pleased to provide a loan commitment to Sheep Island Plantation LLC (hereinafter referred to as Borrower') based on representations contained in the financial statements and other financial information made available to the Bank Our loan is subject to the following terms and conditions

Borrower(s) Sheep Island Plantation LLC

Guarantor(s) M Stephen Hill John Bourdean Cecil O Curtis Jeremy S Marshall Walter M Funk III and David L Hilleshiem

Amount $2 530 000

Purpose The purpose of the loan is to purchase 101 acres known as Tract 3A Sheep Island Road Summerville SC 29483 (TMS# 194-00 02-162)

Terms and Conditions 11 monthly payments of interest only with 1 final payment of principal and interest due at maturity The interest rate will be based on the current Wall Street Journal Prime Rate on the day of adjustment and will continue to adjust with changes in the Prime Lending Rate

Renewal The loan may be renewed for an additional six month term for a renewal fee of $12 650 00

Bank Fees
1 Non-Refundable Commitment Fee of 1% of Loan Amount, of which ½ is due upon the acceptance of this Commitment Letter with the remaining ½ due at Loan Closing If the loan is not closed, the remaining fee will be due and payable upon receipt of Bank s invoice for same
2 Underwriting Fee $500 00
3 Mortgage and Assignment of Rents Satisfaction Fee $10 00

Collateral
1 First mortgage security interest on the real estate and known as Tract 3A, Sheep Island Road Summerville SC 29483 (TMS# 194 00 02 162)
2 Assignment of Southcoast Community Bank CD Account #07 300000424 in the amount of $885,500 00 The CD will only be released when the loan is paid in full
3 Assignment of Southcoast Community Bank money market account #07-400000209 in the amount of $211 625 00 Borrower agrees that the money market account will be debited monthly for the required payment due

SCB 00016

597 Old Mount Holly Road Goose Creek SC 29445 843 553 0021 Fax 843 553-6531

00684

Title Insurance A standard ALTA title insurance commitment insuring the Bank s first lien position together with copies of all exceptions to the title will be required After closing a title insurance policy is to be issued in accordance with the title insurance commitment in a form and substance satisfactory to the Bank

Survey A current survey prepared and certified by a registered land surveyor showing the location of any and all setbacks, side lines existing buildings streets roads rights of way, easements encroachments etc will be required in the event that the title insurance company takes exception to title for reason of survey The survey shall include a certification as to the location of the property within any flood hazard area

Appraisal The loan is subject to the Bank receiving an appraisal addressed to Southcoast Community Bank in form and content acceptable to the Bank The Bank reserves the right to inspect the property prior to closing The borrower is responsible for any fees attached to the appraisal

Waiver of Appraisal Rights You are hereby notified that a Waiver of Appraisal Rights will be required from you in connection with the above referenced transaction As part of that transaction you will be required to execute one or more documents containing the following language

> The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY

Environmental In the event that there is notice of any environmental problems evidence of the nature of the problem and its remedy will be required and such information may include opinions and certification from appropriate governmental authority your counsel and/or environmental specialist acceptable to us. Should the property contain hazardous material of any quantity or material unacceptable to us the Bank reserves the right to void this commitment

Loan Documentation The Borrower will enter into any and all documentation necessary to close this transaction in a form and substance acceptable to the Bank

Closing Cost All costs incurred in this transaction including but not limited to attorney fees will be the responsibility of the Borrower This would include both the Borrower s and the Bank s closing attorney

Prepayment The Borrower shall have the right to prepay the principal and accrued interest in full or in part at anytime without premium or penalty

Financial Information Before closing the Bank must have current financial statements and signed copies of the last two years tax returns on the borrowing entity(s) if applicable, and all guarantors Borrower and all guarantors agree to provide the Bank with the name of their accountant/tax preparer and by acceptance of this commitment authorize the Bank to request and their accountant/tax preparer to provide, copies of all tax returns extensions and financial statements of the Borrower and guarantors

Financial Condition The Borrower and guarantors are at all times to maintain a satisfactory financial condition and are to submit at a minimum annual financial statements Tax Returns and any other documentation as the Bank may request from time to time

The commitment is for the sole and exclusive benefit of the Borrower and may not be assigned by the Borrower No third party is intended to be benefited in any respect by this commitment.

This Commitment will also survive the Loan Closing

We appreciate the opportunity to make this financing available to you If you are in agreement with the above terms and conditions please acknowledge by signing the enclosed copy and returning it to Southcoast Community Bank

This Commitment to lend expires on July 31 2006 If not accepted by then it becomes null and void If accepted **closing must occur within 45 days of acceptance** Failure to close within the period set forth herein shall give the Bank the option to void this commitment

Again, it is certainly a pleasure to extend this commitment I look forward to hearing from you soon

Sincerely

Marc Knight
Vice President

MK/emm

The terms and conditions of this commitment letter are hereby accepted this ____ day of July 2006

Sheep Island Plantation, LLC

By _____
M Stephen Hill
Member

John Bourdeau
Member

Cecil O Curtis
Member

Jeremy S Marshall
Member

Walter M Funk III
Member
Walker

David L. Hilleshiem
Member

Guarantor(s)

M Stephen Hill

John Bourdeau

Cecil O Curtis

Jeremy S Marshall

Walter M Funk III
walker

David Hilleshiem

The terms and conditions of this commitment letter are hereby accepted this 28th day of July 2006

Sheep Island Plantation LLC

By _____
M Stephen Hill
Member

_____
Cecil O Curtis
Member

_____
Walter M Funk III
Member

_____
John Bourdean
Member

_____
Jeremy S Marshall
Member

_____
David L Hilleshiem
Member

Guarantor(s)

_____
M Stephen Hill

_____
John Bourdean

_____
Cecil O Curtis

_____
Jeremy S Marshall

_____
Walter M Funk

_____
David Hilleshiem

The terms and conditions of this commitment letter are hereby accepted this ____ day of July 2006

Sheep Island Plantation, LLC

By _____
M Stephen Hill
Member

_____
John Bourdeau
Member

_____
Cecil O Curtis
Member

_____
Jeremy S Marshall
Member

_____
Walter M. Funk III
Member

_____
David L. Hillesheim
Member

Guaranton(s):

_____
M Stephen Hill

_____
John Bourdeau

_____
Cecil O Curtis

_____
Jeremy S Marshall

_____
Walter M Funk

_____
David Hillesheim

The terms and conditions of this commitment letter are hereby accepted this ___ day of July 2006

Sheep Island Plantation LLC

By _____
M Stephen Hill
Member

_____
Cecil O Curtis
Member

_____
Walter M Funk III
Member

_____
John Bourdeau
Member

_____
Jeremy S Marshall
Member

_____
David L. Hillesheim
Member

Guarantor(s)

_____
M Stephen Hill

_____
John Bourdeau

_____
Cecil O Curtis

_____
Jeremy S Marshall

_____
Walter M Funk III

_____
David Hillesheim

P 002/002 (FAX)843 553 6551 SOUTHCOAST BANK JUL-28-2006(FRI) 17 03

THE WOODDY LAW FIRM
Attorneys at Law
622 Johnnie Dodds Boulevard
Mt Pleasant, SC 29464
Telephone (843) 881 3700
Fax Number (843) 881 2511
E mail www wooddylaw com

Aubrey J Wooddy, Jr
Aubrey J Wooddy III
(SC & DC)
Andrew L McLester

July 31, 2006

Benjamin A Laford, Esq
Lafond & Lafond, LLC
120 South Magnolia Street
Summerville, South Carolina 29483

By Fax and E mail

RE 101+/- acres in Berkeley County, South Carolina
Bar-Pen Investments, LLC to Sheep Island Plantation LLC

Dear Ben

It is my understand that the closing was cancelled today at your office on the above captioned

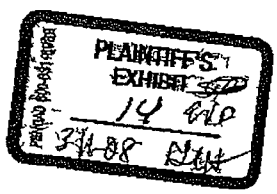
I have spoken to my client and they are ready, willing and able to close on the above captioned property We believe the closing date was to be on or before July 31, 2006 Time Being of the Essence

It is our opinion that your client has defaulted under the terms of the Agreement between the parties and we are hereby terminating the Agreement

With best regards, I am,

Very truly yours

Aubrey J Wooddy, Jr



BP 38



THE WOODDY LAW FIRM
Attorneys at Law
622 Johnnie Dodds Boulevard
Mt Pleasant, SC 29464
Telephone (843) 881-3700
Fax Number (843) 881 2511
E mail www.wooddylaw.com

Aubrey J Wooddy Jr
Aubrey J Wooddy III
(SC & DC)
Andrew L McLester

August 1, 2006

Benjamin A Lafond, Esq
Lafond & Lafond, LLC
120 South Magnolia Street
Summerville, South Carolina 29483

BY HAND

RE 101+/- acres in Berkeley County, South Carolina
Bar Pen Investments, LLC to Sheep Island Plantation, LLC

Dear Ben

Please find enclosed the check for $50,000 you had delivered from Sheep Island Plantation, LLC to my office

The Seller has terminated the agreement between the parties because of Sheep Island Plantation, LLC's failure to close in a timely manner

With best regards, I am,

Very truly yours,

Aubrey J Wooddy, Jr

BP 42

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY SHEEP ISLAND PLANTATION, LLC, Plaintiff, vs BAR-PEN INVESTMENTS, LLC, Defendant	IN THE COURT OF COMMON PLEAS 9TH JUDICIAL CIRCUIT CASE NO 06-CP-08-1650



AFFIDAVIT OF ATTORNEY'S FEES
BY STEPHAN V FUTERAL, ESQ

PERSONALLY, appeared before me, Stephan V Futeral, who after being duly sworn, deposes and says

1 He is the Attorney for the Plaintiff in the captioned action.

2 He received his Juris Doctorate from the University of South Carolina School of Law in 1993 During law school, he was a member of the Moot Court Bar and the Order of the Barristers He also was a student editor of the American Bar Association's Real Property and Trust Journal After graduating law school and being admitted to the South Carolina Bar, Plaintiff's counsel worked as a judicial clerk for the Honorable C Tolbert Goolsby, Jr , Judge of the South Carolina Court of Appeals

3 He is admitted to practice in the State of South Carolina, the U S District Court Bar, District of South Carolina, the U S Court of Appeals 4th Circuit, and U S Supreme Court

4 He is a certified civil mediator

5 He is a former Adjunct Professor of Law at the Charleston School of Law

6 He is a member of the Charleston County Bar Association, the Association of Trial Lawyers of America, and the South Carolina Trial Lawyers Association.

7 He has published written works such as *Unfair Trade Practices Act*, 28 S C Jurisprudence 191 (West Group 1998), *Public Impact The Stumbling Block to Stating a Private Cause of Action Under the South Carolina Unfair Trade Practices Act*, South Carolina Lawyer Magazine, Sept /Oct. 1995, and *Developing a Firm Web Site*, ABA General Practice, Solo and Small Firm Section, Volume 16 No 4, 1999 Defendant's counsel has lectured at seminars including Top Ten Things You Need to Know Tort Law, South Carolina Bar, 2000, The Internet for Attorneys, Half Moon, LLC, 1996, Personal Injury Practice for Paralegals, Clearwater Information Systems, Inc , 1995, and Computer Technology- Making the Right Choices for Your Law Office, South Carolina Bar, 1994

8 Between 1996 and 1998, he taught a paralegal certification program in Charleston, South Carolina sponsored by the University of South Carolina.

9 He relies on the discretion of this Court in the determination of the amount of attorney's fees based among other things, upon the Court's file, the Court s knowledge of the litigation between the parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the professional standing of counsel and the fees customarily charges in this area for similar legal services

10 His associate, Thomas C Nelson, Esq , and other members of his staff, have assisted him in this case and have exerted time and effort on behalf of Plaintiff. Thomas C Nelson received his Juris Doctorate from the University of South Carolina School of Law in 2003 and was admitted to the South Carolina Bar in January of 2004

11 He is informed and believes that the time spent as set forth more fully hereinafter, was necessary for the protection of his client's interests

12 The undersigned in accordance with his time and expense records which are maintained on a daily basis, states to the Court that the time and expenses shown hereafter were necessarily expended by him, and his staff, in this litigation

13 That his client has incurred attorney s fees in costs in this matter in the amount of $39,855 82 through March 10, 2008

14 He also plans on spending additional time in the trial of this case and finalization of this matter and reserves the right to supplement this affidavit

FURTHER AFFIANT SAYETH NAUGHT

_____

Stephan V Futeral, Esq

SWORN to and subscribed before me)
this ____day of _____)
)
_____) NOTARY SEAL
NOTARY PUBLIC FOR SOUTH CAROLINA)
)
My commission expires)

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY SHEEP ISLAND PLANTATION, LLC, Plaintiff, vs BAR-PEN INVESTMENTS, LLC, Defendant	IN THE COURT OF COMMON PLEAS 9TH JUDICIAL CIRCUIT CASE NO 06-CP-08-1650 **AFFIDAVIT OF MARC KNIGHT**

2007 APR 13 AM 8 59
BERKELEY COUNTY, SC

PERSONALLY appeared before me, Marc Knight who after being duly sworn deposes and says

1 My name is Marc Knight, and I am a VP Commercial Loan Officer with Southcoast Community Bank My branch is located at 597 Old Mount Holly Rbad, Suite 200 Goose Creek South Carolina 29445 My job responsibilities include commercial lending and business development.

2 On or about January 30 2006 E Bruce Marshall and Jeremy S Marshall applied for financing for a loan to finance the purchase of property pursuant to a contract dated December 14 2005 between E Bruce Marshall and Jeremy S Marshall as buyers and Bar Pen LLC as sellers From reading the contract, the property appeared to be Tract 3A Sheep Island Road TMS # 194-00-02-162 under paragraph 2 of the contract

3 My discussions and meetings with Bruce Marshall were frequent, and he was always very attentive to my requests for information and supplied me with any requested information promptly and timely, usually within a day The buyers always returned my telephone calls promptly I never had to ask for anything twice or follow up with the buyers as the great diligence they showed allowed me to process their application with relative ease for a loan of this size Over the

PLAINTIFF'S EXHIBIT 17

next month and after numerous requests for information Bruce Marshall supplied me with among other things, the following documents

a Loan Application

b Executed Contract

c Tax returns and

d Personal financial documents

4 The buyers applied for a 12-month interest only commercial loan Southcoast Community Bank s policy states that raw land needs to carry a 65% loan-to-cost or loan to-value ratio whichever is less In this particular case the loan-to cost ratio was the lesser of the two

5 On July 28 2006 I supplied E Bruce Marshall with written loan approval a copy of which is attached hereto as Exhibit A

6 It was my understanding that according to the contract, the closing was supposed to occur on or before Monday July 31 2006 Having had worked with buyers for several months on this loan we believed we had come to terms on the loan which required the buyers to pay $885 500 00 down at closing The buyers informed me that they had everything ready including the down payment and were ready to close Unfortunately at approximately 2 00 p m on July 28 2006 Southcoast Community Bank decided it required from the buyers a year s worth of interest which amounted to an additional $211 625 00 from the buyers at closing This change in closing conditions was of no fault by the buyers Actually the buyers did everything they could to come up with the extra $211 625 00 but they could not do so by the end of the day Had the buyers notified me that they could have come up with the extra money at any time in August of 2006 I could have issued to them the loan immediately

7 Currently Southcoast Community Bank would still issue this loan to the buyers under the same terms and conditions that existed around August 1 2006

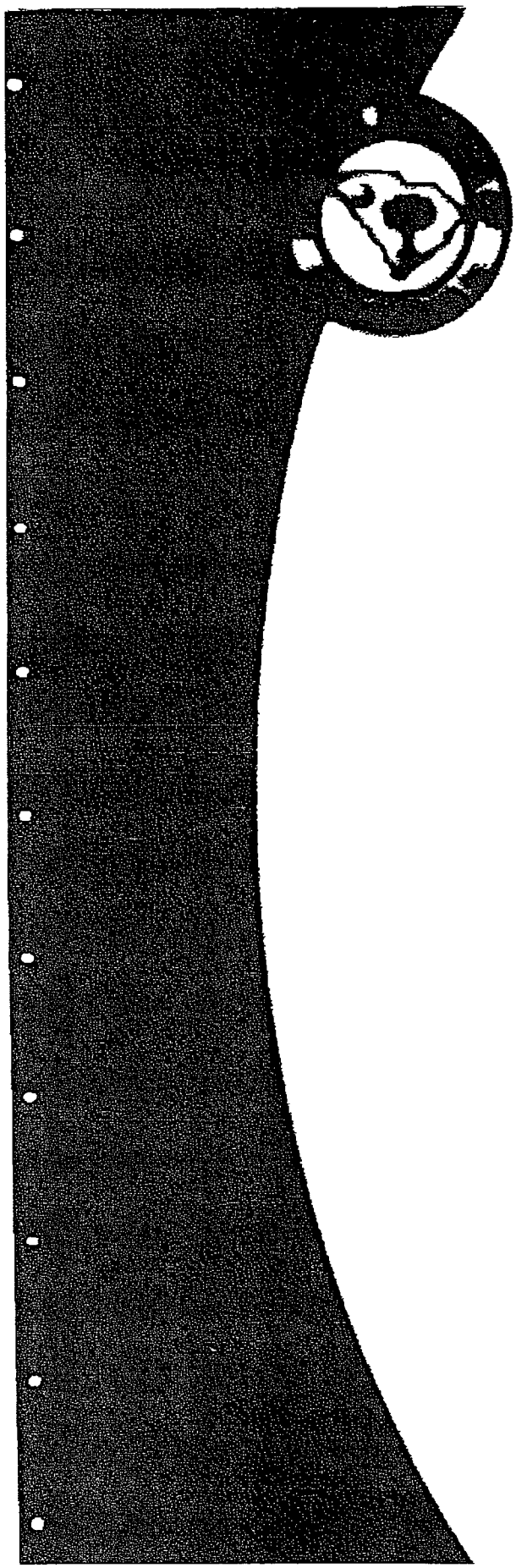
FURTHER AFFIANT SAYETH NAUGHT

Marc Knight

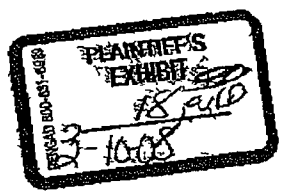
SWORN to and subscribed before me)
this 11 day of April, 2007)
)
)
NOTARY PUBLIC FOR SOUTH CAROLINA)
)
My commission expires)

NOTARY|SEAL

LINDA L BYRD
NOTARY
My Comm. Exp.
04-20-2014
PUBLIC
SOUTH CAROLINA



REAL ESTATE APPRAISERS
AND CONSULTANTS



A NARRATIVE APPRAISAL & SUMMARY REPORT

OF
An Unimproved
101 165 Acre Tract of Land

LOCATED AT
TRACT 3A
TMS # 194-00-02-162
Sheep Island Road and Leisure Drive
Summerville, SC 29483

AS OF
RETROSPECTIVE
August 1, 2006

PREPARED FOR
Thomas Nelson, Esq
Futeral Law Firm, LLC
1004 Anna Knapp Boulevard
Mount Pleasant, SC 29465-1543

PREPARED BY
Edward B Carter MSA, MFLA, MRA
Appraisal Services of SC, Inc.
P O Box 1385
Summerville, SC 29484

File # 12195ec

Appraisal Services of SC, Inc
P O Box 1385
Summerville SC 29484
(843) 875-1487
(843) 851-0323
ecarter@asosc com

February 21, 2008

Thomas Nelson, Esq
Futeral Law Firm, LLC
1004 Anna Knapp Boulevard
Mount Pleasant, SC 29465-1543

Re TRACT 3A
TMS # 194-00-02-162
Sheep Island Road and Leisure Drive
Summerville, SC 29483

Dear Mr Nelson.

At your request, we have prepared an appraisal for the above referenced property The purpose of this appraisal is to estimate the market value of the fee simple estate of the property, retrospectively, based on market conditions prevailing on August 1, 2006 for for purposes of litagation. This appraisal is intended for the use of the client only

The accompanying Narrative Appraisal and Summary Report have been completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) and applicable Federal regulations

The attached report details the scope of the appraisal, level of reporting, definition of value valuation methodology, and pertinent data researched and analyzed in the development of this appraisal

We certify that we have no present or contemplated future interest in the property beyond this estimate of value Your attention is directed to the Limiting Conditions and Assumptions, located on page 14 Acceptance of this report constitutes an agreement with these conditions and assumptions

In our opinion, the retrospective value of the subject property, as of August 1, 2006 was as follows

Value Conclusion	**$3,136,000**

Further, we estimate the market exposure period necessary for the subject to have achieved this value to be 4-6 months

Respectfully submitted,

Edward B Carter MSA, MFLA, MRA
SC Certified General Real Estate Appraiser
CG 4057, Expires 6/30/2008

Certification of Appraisal

I certify that to the best of my knowledge and belief

- 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 are my personal, impartial, and unbiased professional analyses, opinions, and conclusions
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment
- My engagement in this assignment was not contingent upon developing or reporting predetermined results
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification

Edward B Carter MSA, MFLA, MRA
SC Certified General Real Estate Appraiser
CG 4057 Expires 6/30/2008

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Summary of Salient Facts

Subject Property	Property is Tract 3A, TMS # 194-00-02-162, located on the northwest corner of the Sheep Island Road and Leisure Drive intersection
Interest Appraised	This appraisal considers the subject's fee simple interest, retrospectively as of August 1, 2006
Highest and Best Use Land As Vacant	Residential development
Highest and Best Use As Improved	NA
Zoning	Flex 1
Retrospective Sales Comparison Approach	**$3,136,000 as of August 1, 2006**
Retrospective Reconciled Value	**$3,136,000 as of August 1, 2006**
Extraordinary Assumptions	There were no extraordinary assumptions utilized in forming the opinions and conclusions of the appraiser primary generated information
Hypothetical Conditions	There were no hypothetical conditions utilized in forming the opinions and conclusions of the appraiser primary generated information.

Appraisal Specifics

Appraisal Purpose

The purpose of the appraisal is to estimate the retrospective market value of the fee simple estate of the property under market conditions prevailing on August 1, 2006

Intended Use

This report is intended for use only by the client and identified other known intended users by name or type for decision making This report is not intended for any other use or by others than the client and other named intended users

Definition of Market Value

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 own 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

The definition of market value was taken from the Uniform Standards of Professional Appraisal Practice (AO-22 – Advisory Opinion 22 2006 edition) as promulgated by the Appraisal Standards Board of The Appraisal Foundation.

NOTE The above economic definition has been agreed upon by the federal financial institutions in the United States of America.

Market Value Comments The factors of utility scarcity desire and effective purchasing power are apparent in the definition. The implication that buyer and seller are working under equal pressure is seldom completely true although typical motivation for each does imply a reasonable balance for a market value transaction.

Market prices do not necessarily follow all of these concepts and are often affected by salesmanship and the urgency and need of the buyer and/or seller The central difference

between market price and market value lies in the premise of knowledge and willingness both of which are contemplated in market value but not in market price Stated differently, at any given moment of time, market value denotes what a property is actually worth under certain specified conditions, while market price denotes the actual sale price

Probability of Value Change The market value of the property appraised in the report is estimated as of the aforementioned date Constantly changing economic, social, political and physical conditions have varying effects upon real property values Even after the passage of a relatively short period of time, property values may change substantially and require a review of the appraisal and recertification

Three-Year Sale History

The property was purchased on July 7, 2005 by Bar-Pen Investments LLC from Sheep Island Property, LLC for $1,441,601 The sale was recorded in Deed Book 4827, at Page 260 in the Office of the RMC for Berkeley County Subject property is shown on a Plat dated April 18, 2005 and recorded April 19, 2005 in the RMC Office for Berkeley County in Plat Cabinet Q at Page 367E Deed and Plat attached.

This being the same property conveyed to Sheep Island Property, LLC by Deed from Byron Scott Toney dated 04/20/2005 and recorded 04/21/2005 in Deed Book 4655, Page 35 in the RMC office for Berkeley County

This being a portion of the same property conveyed to Byron Scott Toney by Deed from Nexco, Inc and Carolina Income Management Group, LLC dated 04/11/2005 and filed for record in Deed Book 4633, Page 116 in the RMC office for Berkeley County

This being the same property conveyed to Nexco Inc and Carolina Income Management Group, LLC by Deed from Carolina Centers LLC dated 03/29/2005 and recorded 03/31/2005 in Deed Book 4609 Page 91 in the RMC office for Berkeley County

This being the same property conveyed to Carolina Centers, LLC by Deed from Meadwestvaco Forestry, LLC dated 03/24/2005 and recorded 3/30/2005 in Deed Book 4603, Page 275 in the RMC office for Berkeley County

Current Listing/Pending Contracts

To our knowledge, there are no agreements of sale options or listings of the subject property current as of the effective date of the appraisal Property was previously listed on July 23, 2005 by Mickey Rakes of Century 21 Southern Homes for $2,529,125 under MLS listing number 2523251 This listing expired on July 31, 2006

Appraisal Scope

The scope of the appraisal requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation and Appraisal Services of SC, Inc The standards contain binding requirements and specific guidelines that deal with the procedures to be followed in developing an appraisal, analysis or opinion These uniform standards set the requirements to communicate the appraisers' analyses, opinions, and conclusions in a manner that will be meaningful and not misleading in the marketplace The scope of the assignment further requires compliance with the client's requirements

A narrative appraisal report on the subject property has been prepared. The subject property data such as size, location and zoning are considered and presented in this report. Land sales, (search period August 2004-August 2006) within the Jedburg/New Hope/Carnes Crossroads market area are considered The data is used to consider the highest and best use of the subject property and to conclude an opinion of the market value

The appraisers lack the knowledge and experience with respect to the detection and measurement of hazardous substances Therefore, this assignment does not cover the presence or absence of such substances as discussed in the General Underlying Assumptions section. However, any visual or obviously known hazardous substances affecting the property will be reported and an indication of its impact on value will be discussed

The documentation necessary to arrive at the value is considered in this appraisal report. The market data has been **collected, confirmed,** and **analyzed.** Comparable sales were chosen for their similar highest and best uses as outlined within the report. All sales were analyzed and compared to the subject property based on their similarities and dissimilarities

SCOPE OF WORK

Appraisal & Report Type	This is a Narrative Appraisal Summary Report, which is intended to comply with the reporting requirements set forth under Standard Rule 2-2 (b) of USPAP for a real property appraisal report Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's work file The information contained in the report is specific to the needs of the client and for the intended use stated in this report.
Property Identification and Inspection	The subject has been identified and inspected by the appraiser as follows An inspection of the site was made on February 17, 2008 and photographs were taken.
Analysis of Physical Factors	All pertinent physical factors were analyzed
Analysis of Economic Factors	All pertinent economic factors were analyzed.
The Extent of Data Research	The appraiser(s) maintain a current and comprehensive database of sales and listings for the Trident market area In addition to market data developed in the course of previous appraisal work and retained in the appraiser(s) work files, other sources of information include • MLS • Deed Transfers • Realtors • Developers Where warranted, market data has been confirmed

The Type and Extent of Analysis

Cost Approach The Cost Approach is not an appropriate method of valuation since the site is unimproved.

Sales Comparison Approach The Sales Comparison approach has primary influence An opinion of the site value was formed by the Direct Comparison Approach. A quantitative line by line adjustment grid was utilized Many of the property characteristics were considered including; the land size, date of sale, topography, location, etc

Income Approach. The Income Approach is not an appropriate method of valuation since the site is unimproved and there is no income stream.

Limiting Conditions and Assumptions

Acceptance of and/or use of this appraisal report constitutes acceptance of the foregoing General Underlying Assumptions and General Limiting Conditions These can only be modified by written documents executed by both parties

The appraisers' duties, pursuant to the employment to make the appraisal, are complete upon delivery and acceptance of the appraisal report. However, any corrections or errors should be called to the attention of the appraisers within 60 days of the delivery of the report. Amendments/modifications to appraisals based on new information made available after the appraisal was completed will be made, as soon as reasonably possible, for an additional fee

Legal Matters

The legal description used in this report is assumed to be correct, but it may not necessarily have been confirmed by survey No responsibility is assumed in connection with a survey or for encroachments or overlapping or other discrepancies that might be revealed thereby Any sketches included in the report are only for the purpose of aiding the reader in visualizing the property and are not necessarily a result of a survey

No responsibility is assumed for an opinion of legal nature, such as to ownership of the property or condition of title

The appraisers assume the title to the property to be marketable, that, unless stated to the contrary the property is appraised as an unencumbered fee which is not used in violation of acceptable ordinances, statutes or other governmental regulations

Unapparent Conditions

The appraisers assume that there are no hidden or unapparent conditions of the property, subsoil or structures which would render it more or less valuable than otherwise comparable property The appraisers are not experts in determining the presence or absence of hazardous substance, defined as all hazardous or toxic materials, waste, pollutants or contaminants (including but not limited to, asbestos, PCB, UFFI, or other raw materials or chemicals) used in construction or otherwise present on the property

The appraisers assume no responsibility for the studies or analysis which would be required to conclude the presence or absence of such substances or for loss as a result of the presence of such substances The client is urged to retain an expert in this field, if desired. The value estimate is based on the assumption that the subject property is not so affected

Molds typically grow in buildings affected by water damage and have been found in homes, hospitals, schools and office buildings. It is estimated that from 50 to 100 common indoor mold types have the potential to create health problems We are not qualified to identify mold. I am not aware of any mold or mold problems associated with

the subject property However, if the client is concerned that mold may be present, we suggest the proper professional opinion be obtained.

Information and Data

Information and opinions furnished to the appraisers and contained in the report were obtained from sources considered reliable and relieved to be true and correct. However, no warranty is given for its accuracy of such items furnished the appraisers

All mortgages, liens, encumbrances, and servitudes have been disregarded unless so specified within the appraisal report The subject property is appraised as though under responsible ownership and competent management.

Zoning and Licenses.

It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconforming use has been stated, defined and considered in the valuation

It is assumed that the subject property complies with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined and considered in the valuation

It is assumed that the information relating to the location of or existence of public utilities that has been obtained through a verbal inquiry from the appropriate utility authority, or has been ascertained from visual evidence is correct. No warranty has been made regarding the exact location or capacities of public utility systems

It is assumed that all licenses, consents or other legislative or administrative authority from local, state or national governmental or private entity or organization have been, or can be, obtained or renewed for any use on which the value estimate contained in the valuation report is based

General Limiting Conditions

The appraisers will not be required to give testimony or appear in court due to preparing the appraisal with reference to the subject property in question, unless prior arrangements have been made If the appraisers are subpoenaed pursuant to a court order, the client agrees to pay the appraiser(s) our regular rate of $150 00 per hour, to include travel time

Possession of the report does not carry with it the right of publication Out-of-context quoting from or partial reprinting of this appraisal report is not authorized Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of media for public communication without the prior written consent of the appraisers signing this appraisal report.

The authentic copies of this report are bound with a clear cover which reveals the *Appraisal Services of SC Inc* name and logo Any copy that does not have original

signatures of the appraiser plus raised seal on page 2 of the transmittal letter, is unauthorized and may have been altered, and is considered invalid.

Disclosure of the contents of this report is governed by the By-Laws and Regulations of the Appraisal Institute Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute or to the appraisal designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the author

The distribution of the total valuation in this report, between land and improvements, is applicable only as a part of the whole property The land value or the separate value of the improvements, must not be used in conjunction with any other appraisal or estimate and is invalid if so used

No environmental or concurrency impact studies were either requested or made in conjunction with this appraisal report The appraisers, thereby, reserve the right to alter, amend, revise, or rescind any of the value opinions based upon any subsequent environmental or concurrency impact studies, research or investigation.

The Americans with Disabilities Act ("ADA") became effective January 26, 1992 The appraisers have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property Since the appraisers have no direct evidence relating to this issue, possible noncompliance with the requirements of ADA in estimating the value of the property has not been considered.

An appraisal related to an estate in land that is less than the whole fee simple estate applies only to the fractional interest involved The value of this fractional interest plus the value of all other fractional interests may or may not equal the value of the entire fee simple estate considered as a whole

The appraisal report related to a geographical portion of a larger parcel is applied only to such geographical portion and should not be considered as applying with equal validity to other portions of the larger parcel or tract. The value for such geographical portions plus the value of all other geographical portions may or may not equal the value of the entire parcel or tract considered as an entity

If this appraisal is used for mortgage loan purposes, the appraisers invite attention to the fact that (1) the equity cash requirements of the sponsor have not been analyzed, (2) the loan ratio has not been suggested, and (3) the amortization method and term have not been suggested

This appraisal is to be used only for the purpose stated herein While distribution of this appraisal in its entirety is at the discretion of the client, individual sections shall not be distributed, this report is intended to be used in whole and not in part

All files, work papers and documents developed in connection with this assignment are the property of Appraisal Services of SC, Inc Information, estimates and opinions are verified where possible, but cannot be guaranteed. Plans provided are intended to assist the client in visualizing the property, no other use of these plans is intended or permitted.

Unless stated herein, the property is assumed to be outside of areas where flood hazard insurance is mandatory Maps used by public and private agencies to determine these areas are limited with respect to accuracy Due diligence has been exercised in interpreting these maps, but no responsibility is assumed for misinterpretation.

Region Analysis

The Trident Area, known as the "Low Country", consists of three counties Berkeley, Charleston and Dorchester The economy of the Tri-county area is based on military, tourism, manufacturing and industry Federal, State, and Local Governments employ 28% of the work force Manufacturing represents 13% and tourism accounts for more than 8% of the employment in the civilian labor force The exclusive resort areas that have been developed in the last 10 years along the coastlines have enhanced the role of tourism in the local economy Military and governmental employment continues to drop and is filled by industry and manufacturing

County Analysis

Berkeley County is located in the Southeastern part of South Carolina and is part of the Charleston Trident Metropolitan Statistical Area. Moncks Corner serves as the county seat and is located approximately 30 miles north of the region's largest city, Charleston. Berkeley County has been a center of commerce and industry since its founding in the early 1600s Many of the early settlers were English, Scots-Irish, French Huguenot, and German artisans and farmers Today, Berkeley County is one of the fastest growing counties in the state With a 1990 population of 128,776 the population of the county is expected to expand by over 5% annually reaching 196,000 by the year 2015 The economy of Berkeley County is also changing While agriculture and forest remain important, the manufacturing sector has become one of the county's largest expanding employment sectors Companies such as Amoco, Dupont, and Bayer Corporation are among the 50 plus manufacturing facilities operating in Berkeley County today

Town Analysis

The town of Summerville situated on a pine-forested ridge was first inhabited in the late 1700's as Charlestonians and other inhabitants of the SC Low country sought respite from the summer heat, mosquitoes and disease From May to September plantation families along the nearby Ashley River and other coastal areas headed for higher elevation to live temporarily or "maroon " in the tiny forest colony soon dubbed Summerville Other pioneer residents descended from those 1696 puritans who settled the nearby former colonial settlement of Dorchester, endowing Summerville with a heritage spanning three centuries

The town's population remained around 3,000 for nearly a century, not reaching 6,000 until the late 1970's Then, as a bedroom community for the larger urban centers in the area, the charm of Summerville resulted in a doubling of the population in the 1980's It continues to attract families, business people and military personnel, all looking for a quality of life that has long since disappeared in cities The 2000 Census declared that the Town of Summerville's population was 27,752 Several large developments are planned for the area and numerous subdivisions are under development.

The subject property is located in the County of Berkeley, outside the city limits of the town of Summerville, South Carolina. The subject neighborhood is defined as the Jedburg/New Hope/Carnes Crossroads area.

The Summerville area and Berkeley County have seen a tremendous increase in residential development in the last decade, which has spawned an equal amount of commercial development. To compliment this growth of retail and office development is a substantial increase in industrial development The outlook for continued commercial/industrial development for the area is positive

The current growth projections for the Central Summerville area are for a substantial number of new, primarily single family, residential developments around Summerville, particularly to the south and west with some commercial activity on main roads
Schools – Overall substantial increase in enrollment, with some variation in growth rates between schools Traffic – High growth in traffic on major roads, including Jedburg Road, Old Orangeburg Road, Central Avenue, Miles Jamison Road, Parsons Road, and Berlin Myers Parkway

For the Southwestern area of Summerville, projections are for a high number of single family residential developments, particularly along Dorchester Road and Ladson Road along with some commercial and multi-family development Schools – One new school opened since 2000 to accommodate growth, with others showing a moderate amount of growth in enrollment and a high growth rate in enrollment overall Traffic – Moderate to high growth in traffic on major roads, including Trolley Road, Dorchester Road and Ashley Phosphate Road.

In summary, we believe the long term overall economic conditions of the Summerville/Berkeley County area to be positive Growth, both residential and commercial should continue for the foreseeable future and property values should continue to increase at a rate greater than inflation

Education

The region's educational institutions comprise a strong backbone for industry, with 17 colleges and universities offering a range of two-year, bachelor s and master's degree programs, advanced medical degrees at the state's largest medical complex and teaching hospital and the diverse industrial training programs of Trident Technical College, the largest campus of one of the nation s "cutting edge" state technical college systems In 2004, the area's postsecondary educational offerings were again bolstered by the creation of the Charleston School of Law In 2003, the tri county trident One-Stop Career Center celebrated its five-year anniversary This award winning, grant-funded program has assisted more than 165,000 local residents with employment matters since it opened. This multi-jurisdictional center combines a variety of resources including career counseling, job search, training programs, and labor market information under one roof

Demographics

Summerville South Carolina Statistics and Demographics
(US Census 2000)

	Number	Percent
Summerville Population	27 752	100 00%
Sex and Age		
Male	13156	47 41%
Female	14596	52 59%
Under 5 years	1932	6 96%
5 to 9 years	2260	8 14%
10 to 14 years	2427	8 75%
15 to 19 years	2003	7 22%
20 to 24 years	1515	5 46%
25 to 34 years	4041	14 56%
35 to 44 years	4618	16 64%
45 to 54 years	3933	14 17%
55 to 59 years	1204	4.34%
60 to 64 years	879	3 17%
65 to 74 years	1498	5 4%
75 to 84 years	1045	3 77%
85 years and over	397	1 43%
Median age (years)	34 4	
18 years and over	19783	71 28%
Male	9054	32 62%
Female	10729	38 66%
21 years and over	18840	67 89%
62 years and over	3461	12 47%
65 years and over	2940	10 59%
Male	1083	3 9%
Female	1857	6 69%
Race		
One race	27379	98 66%
White	21421	77 19%

Black or African American	5379	19 38%
American Indian and Alaska Native	129	0 46%
Asian	248	0 89%
Asian Indian	24	0 09%
Chinese	54	0 19%
Filipino	77	0 28%
Japanese	20	0 07%
Korean	25	0 09%
Vietnamese	30	0 11%
Other Asian	18	0 06%
Native Hawaiian and Other Pacific Islander	16	0 06%
Native Hawaiian	2	0 01%
Guamanian or Chamorro	4	0 01%
Samoan	0	0%
Other Pacific Islander	10	0 04%
Some other race	186	0 67%
Two or more races	373	1 34%

Hispanic or Latino and race

Total Population	27,752	100 00%
Hispanic or Latino(of any race)	547	1 97%
Mexican	214	0 77%
Puerto Rican	122	0 44%
Cuban	29	0 1%
Other Hispanic or Latino	182	0 66%
Not Hispanic or Latino	27205	98 03%
White alone	21131	76 14%

Relationship

Total Population	27,752	100 00%
In households	27144	97 81%
Householder	10391	37 44%
Spouse	5718	20 6%
Child	8815	31 76%
Own child under 18 years	7208	25 97%
Other relatives	1134	4 09%
Under 18 years	561	2 02%
Non-relatives	1086	3 91%
Unmarried partner	504	1 82%

In group quarters	608	2 19%
Institutionalized population	266	0 96%
Non-Institutionalized population	342	1 23%
Households by Type		
Total Households	10391	100 0 %
Family households (families)	7525	72 42%
With own children under 18 years	4063	39 1%
Married-couple family	5718	55 03%
With own children under 18 years	2876	27 68%
Female householder, no husband present	1450	13 95%
With own children under 18 years	972	9 35%
Non Family households	2866	27 58%
Householder living alone	2393	23 03%
Householder 65 years and over	871	8 38%
Households with individuals under 18 years	4407	42 41%
Households with individuals 65 years and over	2002	19 27%
Average Household size	2 61	
Average family size	3 08	
Housing Occupancy		
Total housing units	11087	100 00%
Occupied housing units	10391	93 72%
Vacant housing units	696	6 28%
For seasonal, recreational, or occasional use	44	0 4%
Homeowner vacancy rate (percent)	1 7	
Rental vacancy rate (percent)	6 8	
Housing Tenure		
Occupied housing units	10391	100 00%
Owner-occupied housing units	6827	65 7%
Renter-occupied housing units.	3564	34 3%

Based on 2000 US Census data. For more information on population visit U S Census Bureau, providing access to a full range of U S Census information and data products.

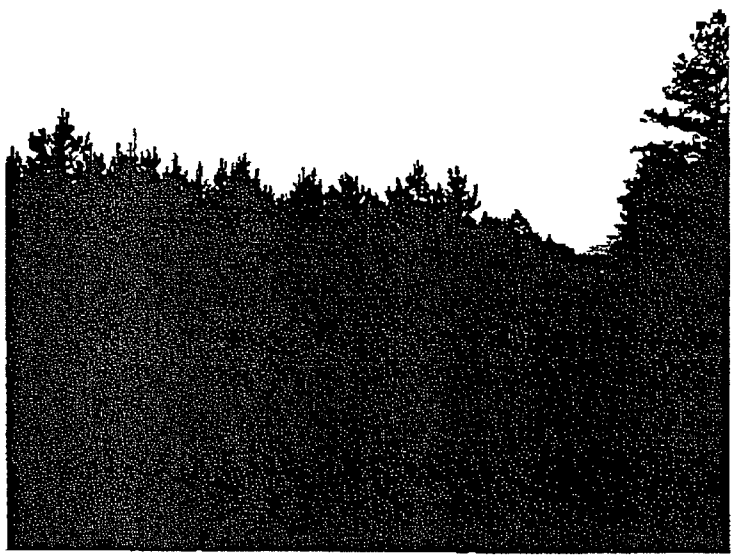
Property Description

	SITE
Total Site Size	101 165 Acres
Usable Site Size	101 165 Acres
Site Shape	Mostly rectangular, northern boundary follows the centerline of the creek and is therefore irregular (see attached plat)
Road Frontage/Access	Site has frontage on Sheep Island Road and Leisure Drive Access is good (see attached plat)
Site Topography	Mostly Level
Utilities	Electricity at road
Site Improvements	None noted
Flood Zone	The subject is located in an area mapped by the Federal Emergency Management Agency (FEMA) The subject is not located in a flood hazard zone FEMA Map Number 45015C0560D FEMA Map Date October 16, 2003 FEMA Zone Classification X
Easements/ Encroachments	Normal utility easements
Drainage	Site appears well drained
Landscaping	NA

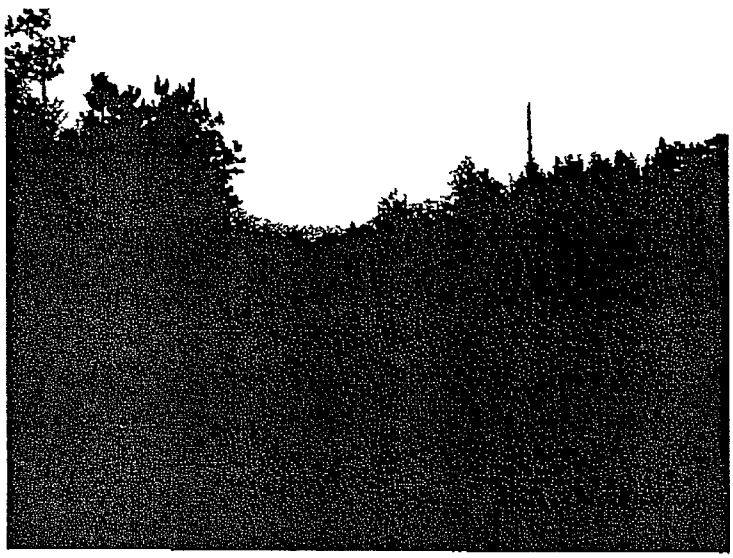
	PROPERTY ANALYSIS
Functional Utility	Good
Highest and Best Use	Residential development

On the following pages are the Subject Photographs, Location Map, Plat Map, Flood Map and Aerial Photo

Subject Photographs



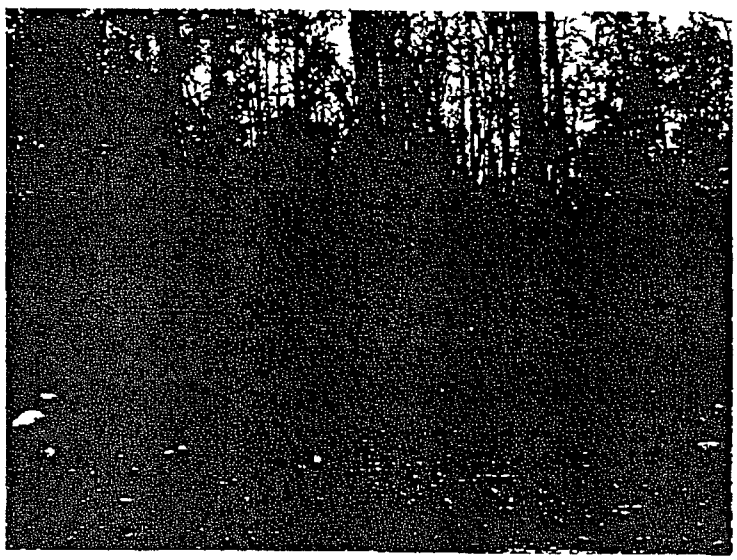
Looking north along Sheep Island Road from the intersection with Leisure Drive



Looking west along Leisure Drive from the intersection with Sheep Island Road



Looking west at subject property from Sheep Island Road



Northern property line

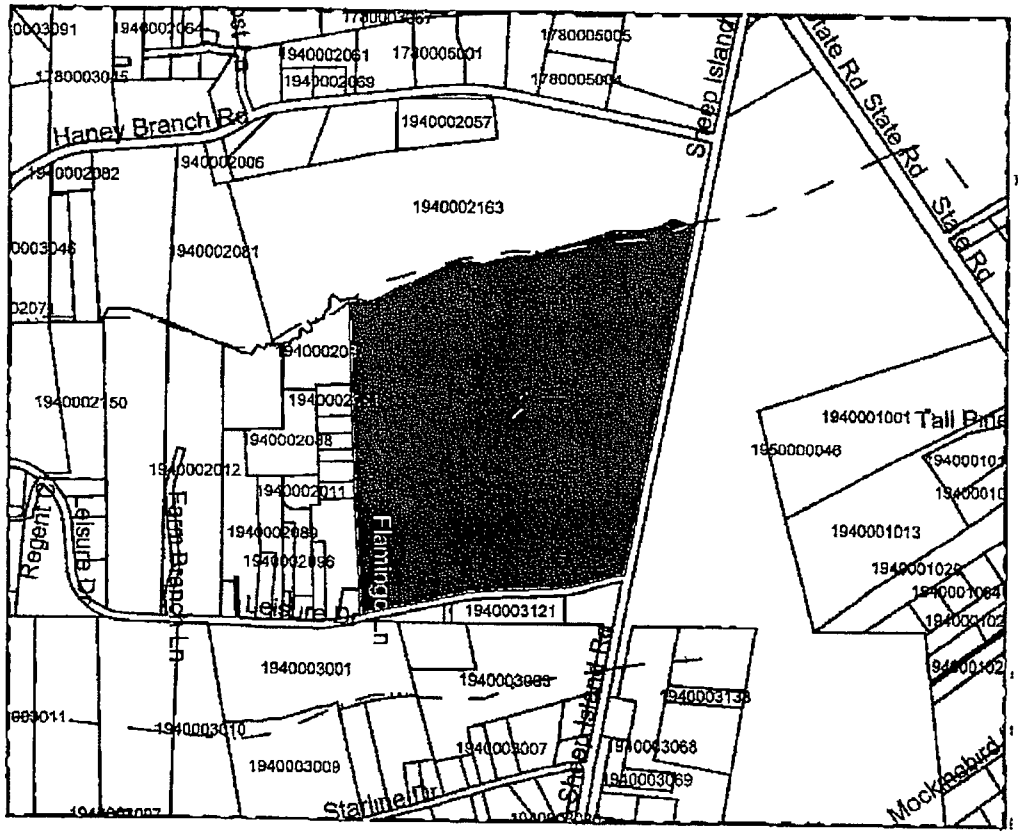


Western property line adjacent to Flamingo Lane

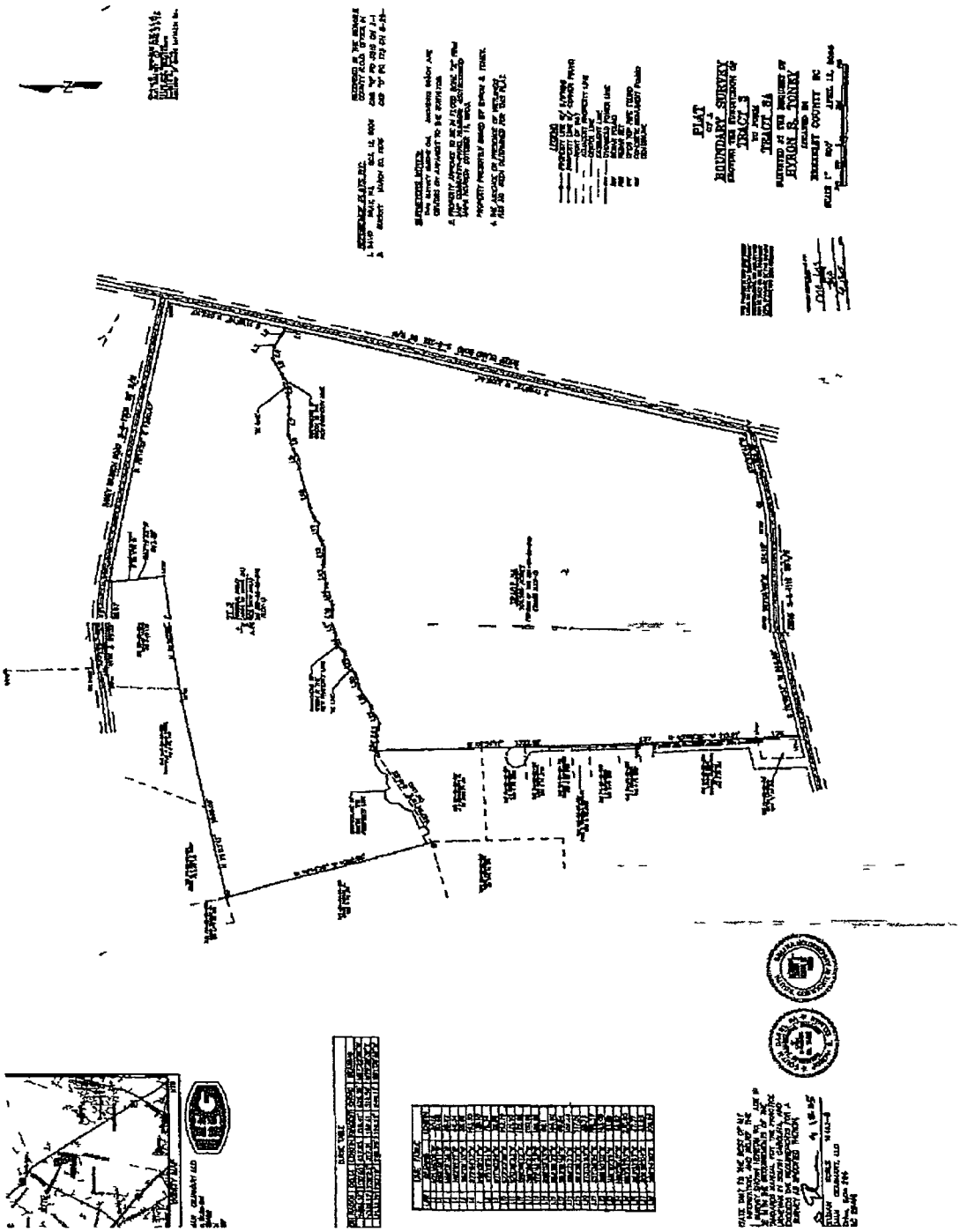


Looking north at subject property from Leisure Drive

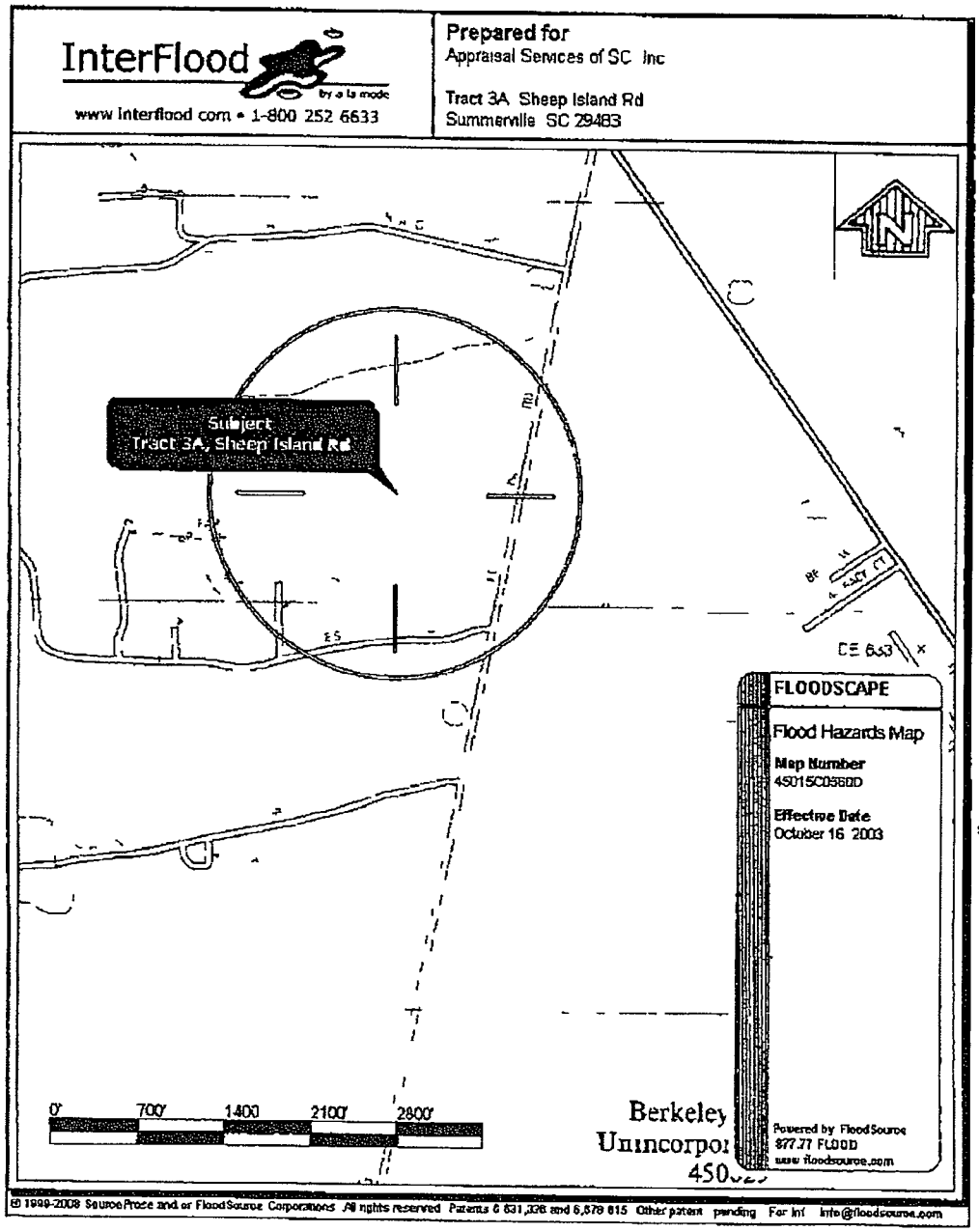
Location Map



Plat Map



Flood Map


InterFlood
www.interflood.com • 1-800 252 6633
Prepared for
Appraisal Services of SC Inc
Tract 3A Sheep Island Rd
Summerville SC 29483
Subject
Tract 3A, Sheep Island Rd
FLOODSCAPE
Flood Hazards Map
Map Number
45015C0560D
Effective Date
October 16 2003
0'
700'
1400
2100'
2800'
Berkeley
Unincorpo
Powered by FloodSource
877.77 FLOOD
www.floodsource.com
© 1999-2008 SourcePrice and or FloodSource Corporations All rights reserved Patents 6,631,308 and 6,879,815 Other patent pending For inf Info@floodsource.com

Aerial Photo

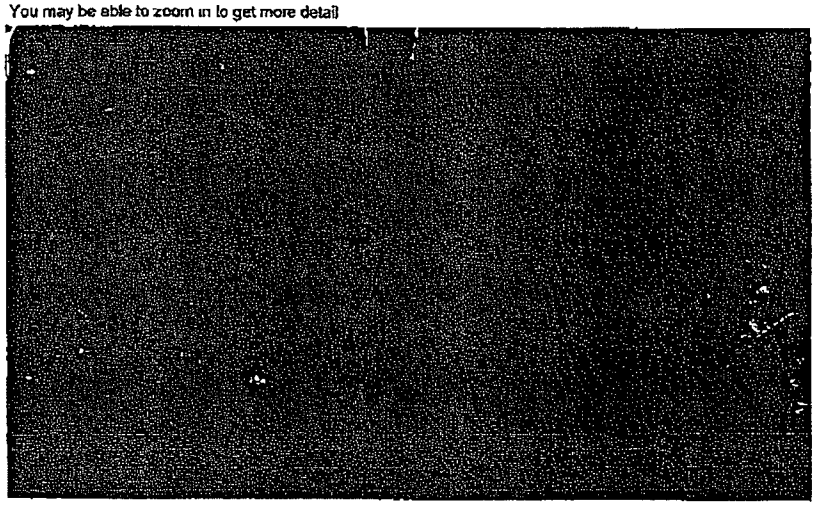
CRS PowerTool Real Estate

Aerial Photos

Print

Aerial Photo for SC

You may be able to zoom in to get more detail



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Assessment & Taxes

Tax Parcel ID#	TMS # 194-00-02-162
Tax Year	2007
Assessed Value Land	$910,400
Total Assessment	$54,620
Tax Rate	6%
Real Estate Taxes	$12,429 96

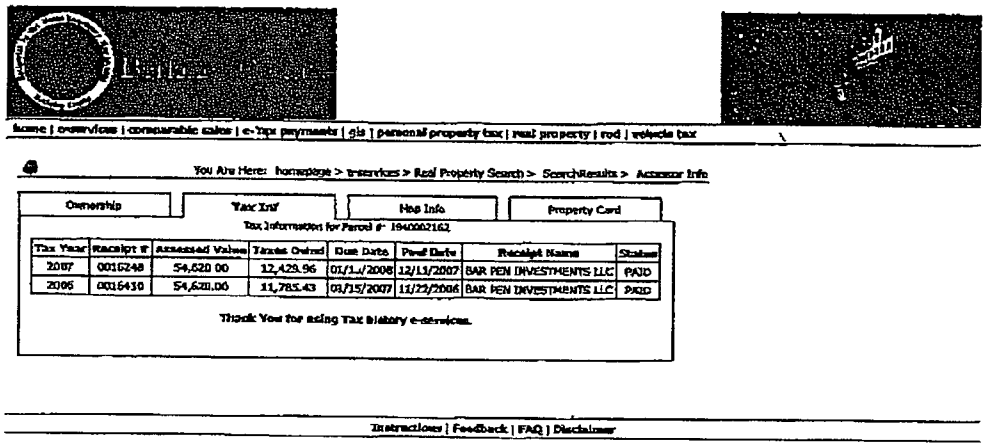
Assessment Analysis

Subject property is unimproved and assessed at 6% for an assessed taxable value for Ad Valorem taxes of $54,620 All South Carolina Counties undergo reassessment every 5 years Berkeley County reassessed in 2004 and will reassess again in 2009 under current state law Subject is in Berkeley County and outside the limits of any of the towns County taxes include School Operating, Trident Tech, Fire & Police Protection Emergency Medical Services, Senior Centers Operations, Library, County Debt and Capital, School Operations and Debt.

Tax Card

Electronic Government Solutions - E Services

Page 1 of 1



home | e-services | comparable sales | e-Tax payments | gis | personal property tax | real property | rod | vehicle tax

You Are Here: homepage > e-services > Real Property Search > SearchResults > Assessor Info

Ownership | Tax Inf | Hse Info | Property Card

Tax Information for Parcel #: 1940002162

Tax Year	Receipt #	Assessed Value	Taxes Owed	Due Date	Paid Date	Receipt Name	Status
2007	0016248	54,620.00	12,429.96	01/15/2008	12/13/2007	BAR PEN INVESTMENTS LLC	PAID
2006	0016430	54,620.00	11,785.43	01/15/2007	11/29/2006	BAR PEN INVESTMENTS LLC	PAID

Thank You for using Tax History e-services.

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Property Report

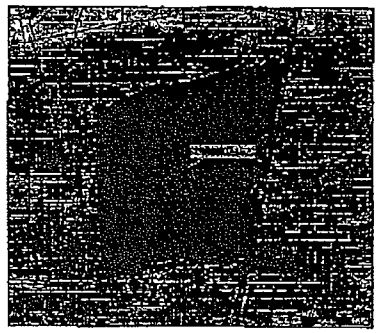
Friday February 15, 2008

SC
Berkeley County SC parcel# 1940002162

Property Report

Location

Property Address	SC
Subdivision	000
County	Berkeley County SC



Current Owner

Name	Bar Pan Investments Llc
Mailing Address	622 Johnnie Dodds Blvd Mount Pleasant SC 29464-3013

Property Summary

Property Type	
Land Use	Other
Improvement Type	
Total Square Feet	0 sf

Click here to see the county's Property Record Card

General Parcel Information

Parcel/Tax ID	1940002162
Alternate Parcel ID	
Account Number	
District/Ward	08
Census Tract/Block	

Sales History through 01/30/2008

Date	Amount	Buyer/Owners	Buyer/Owners 2	Instrument	Quality	Book/Page or Document#
07/07/2005	$1,441,601	Bar Pan Investments Llc				4627/260
04/20/2005	$559,902	Toney Byron Scott				4555/35
04/08/2005		Nexeo Inc & Carolina Incom				4533/116
03/29/2005		Meadwestvaco Forestry				4503/275
03/29/2005		Carolina Centers Llc				4609/91
03/17/2005		Plat Recorded				

Tax Assessment

Appraisals	Amount	Taxes	Amount
Tax Year	2007	City Taxes	$0
Appraised Land	$910,400	County Taxes	$0
Appraised Improvements	$0	Total Taxes	$12,429.96
Total Tax Appraisal	$910,400	Exempt Amount	
Total Assessment	$54,520	Exempt Reason	
Assessment Rate	6 %		

Mortgage History

No mortgages were found for this parcel.

Property Characteristics: Building

No Buildings were found for this parcel.

Property Characteristics: Extra Features

No extra features were found for this parcel.

Property Characteristics: Lot

Land Use	Other
Lot Dimensions	
Acreage	101.16
Block/Lot	
Latitude/Longitude	33.114160 /-80.146745

Property Characteristics: Utilities/Area

Gas Source		Road Type	
Electric Source		Topography	
Water Source		District Trend	
Sewer Source		Special School District 1	16
Zoning Code	F-1	Special School District 2	
Owner Type			

Legal Description

Subdivision	000	Plat Book/Page	CAB /367E
Block/Lot		Description	Tract 3A 000000000000 District 08 Council District 7 Jurisdiction 1 School District 15
District/Ward	08		

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Berkeley County Property Card

Print Property Card Back

DAT" 2/15/08 BERKELEY COUNTY SOUTH CAROLINA PAGE 1
194-00 02 162- -C TD 08 JUR 1 ASMD 20 /ID NO CARD 1 OF 1 LOT 00 ACRES 101.16
BAR PEE INVESTMENTS LLC LOT BLK SEC SUBD
622 JOHNNIE DODDS BLVD TRACT 3A MEK 14 00
ASMT DESC
MOUNT PLEASANT SC 29464 ZONING CODES F-1 GC
DIST 1 AREA 3 SUB 5 PROP ADDRESS

101 16 12 OVER 50 ACRES 9000 $10400 UT

TYPE	LAND	BLDG	CT	REMARKS	TOTAL VALUE	$10 400 ASSMT	54 620
QR				57 86 AC SEP BY PLAT CAB Q PG 3675 5/05			
QT	910400			$399 027 IS THE CONSIDERATION FOR 162 & 163 03/05			
AQ				$798 430 IS THE CONSIDERATION FOR 162 & 163 04/05			
AC				SALES VAC BO 7/05 SPLITS/VAC BO 8/05			
MA				CHG D/R/G FROM 530 TO 135 BO 11/07			

LF= FF= 14 00 OTHER FEE =
PREV OWNER SHEEP ISLAND PROPERTY LLC FLD ID 221 00-00-048
07/08/2005 07/07/2005 4027-0260 CAB Q 3675 $1 441 601 02/15/2008 WKB

PREVIOUS OWNER INFO FOR TMS NUMBER 194 00-02 162

PREVIOUS OWNER	RECORDED	SALDTE	DEED PGE	PLAT	PGE	ACRE	SALE PR
PLAT RECORDED	20050317	20050317		CAB Q	3510		0
MEADWESTVACO FORESTRY	20050330	20050329	4603 0275	CAB Q	3672	101 16	0
CAROLINA CENTERS LLC	20050331	20050329	4609 0091	CAB Q	3673	101 16	
NEXCO INC & CAROLINA INCO	20050411	20050408	4623 0116	CAB Q	3672	101 16	0
TONEY BYRON SCOTT	20050421	20050420	4655 0035	CAB Q	3672	101 16	859902
SHEEP ISLAND PROPERTY LLC	20050708	20050707	4827 0260	CAB Q	3672	101 16	1441601

Zoning Analysis

Agricultural District (Flex1)

Intent A significant portion of the county's land area is used for agricultural, forestry, and agricultural/residential purposes These areas represent the county's rural landscape and historic character of Berkeley County The viability of agricultural operations and production is contingent upon their protection from incompatible land uses and development Additionally, premature conversion of these lands to accommodate urban and suburban development increases the demand for costly public infrastructure

A The Flex1 agricultural district is intended to implement the land use goals of the agriculture and resource conservation areas within rural areas in the unincorporated portions of Berkeley County

B This district is intended to

1 Preserve agricultural activities as a primary use, but to allow residential development as a secondary use

2 Manage growth to protect agricultural land and land uses from development pressures to avoid increasing demands for road improvements and public infrastructure

3 Provide standards to control the intensity of development in rural areas of sensitive natural and historical resources

4 Preserve wetlands, watercourses and other significant natural resource areas, and to preserve the scenic quality of the landscape

5 Preserve and protect the rural residential character of specific areas within the county

6 Ensure that the cultural integrity of the county's historical resources is protected.

7 Protect these areas from infiltration of incompatible land uses

Location This district should be applied in the resource conservation areas and agricultural areas mapped on the future land use map in the comprehensive plan.

Agricultural nuisance disclaimer Lands within the agricultural districts are used for commercial agricultural and forestry production. Owners, residents, and other users of this property may be subjected to inconvenience discomfort, and the possibility of injury to property and health arising from normal and accepted agricultural practices and operations, including, but not limited to, noise odors, dust, the operation of machinery of any kind, including aircraft, the storage and disposal of manure, the application of fertilizers, herbicides, and pesticides clear cutting, and prescribed burning Owners, residents, and users of this property should be prepared to accept these conditions

Permitted uses The following uses are permitted within the Flex1 agricultural district

A Agricultural uses

1 Agriculture crop
2 Agriculture home animal production
3 Agriculture home horses

4 Forestry

B Recreation uses
1 Ecotourism
2 Golf course
3 Indoor recreation
4 Outdoor recreation, active
5 Outdoor recreation, passive

C Institutional uses
1 Assembly and worship
2 College and professional schools
3 School, neighborhood and community
4 Institutional, residential
5 Government office, public services, and local utilities

D Industrial uses
1 Borrow pit.

E Residential uses
1 Single-family detached.
2 Duplex (residential, two-family)
3 Manufactured home

Accessory uses Accessory uses are permitted as a detached structure or use subordinate to the main building or classification that is used for purposes customarily incidental to the principal use Accessory uses shall not exceed 65 percent of the size of the principal classification, excluding agricultural uses Freight/cargo containers may be used as accessory storage uses within this classification with restrictions as defined below in sub-item A (Agricultural), 2 (Agricultural, storage)

The following uses are permitted as accessory uses within the Flex1 agricultural district

A Agricultural
1 Agriculture, sales and services
2 Agriculture, storage Freight/cargo containers may be permitted by the county for the storage of agricultural supplies, products and/or machinery = Freight/cargo containers are limited to one container to [on] parcels of at least one acre with not more than three containers on parcels of five acres or more as described above The container must adhere to all necessary zoning and building codes
3 Sale of products produced on-site
4 Accessory agricultural uses shall include all residential accessory uses and those accessory uses and activities customarily associated with agricultural operations, as determined by the zoning administrator Barns and farm-related structures, including roadside stands selling sweet-grass baskets or indigenous produce grown or produced on the farm where the roadside stand is located, shall be allowed in all parcels in agricultural zoning districts

B Recreation.
1 Campground.

2 Other necessary and customary uses determined by the zoning administrator to be appropriate, incidental and subordinate to the principal use of the property, subject to compliance with any development and performance standards imposed by the planning department as a means of ensuring land use compatibility

C Residential

1 Fences and walls
2 Garages, carports, and off-street parking
3 Gate houses and guard houses
4 Playhouses, patios, cabanas, porches, gazebos, and incidental household storage buildings
5 Radio and television receiving antennas
6 Recreational and play facilities for the use of residents
7 Tennis courts, swimming pools, and hot tubs
8 Other necessary and customary uses determined by the zoning administrator to be appropriate, incidental and subordinate to the principal use of the property, subject to compliance with any development and performance standards imposed by the planning department as a means of ensuring land use compatibility

D Institutional and civic

1 Cemetery
2 Refreshment stands and food and beverage sales located in uses involving public assembly
3 Cafeterias dining halls, and similar food services when operated primarily for the convenience of employees, residents, clients, patients, or visitors to the principal use
4 Gift shops, newsstands, and similar commercial activities operated primarily for the convenience of employees residents, clients, patients, or visitors to the principal use
5 Recreation areas and facilities for the use of the employees
6 Other necessary and customary uses determined by the zoning administrator to be appropriate incidental and subordinate to the principal use of the property, subject to compliance with any development and performance standards imposed by the planning department as a means of ensuring land use compatibility

Uses permitted with conditions The following uses are permitted as conditional uses within the agricultural districts All listed conditions shall be demonstrated prior to permit approval See article 11 for the procedure for approval of conditional uses

A Agricultural uses.

1 Boarding facility

B Commercial uses

1 Bed and breakfast.
2 Domestic boarding facility

a. The facility shall be buffered with an opaque eight-foot tall privacy fence between the facility and all adjoining properties in addition to any landscaping requirements found in article 15 of this ordinance

C Institutional uses

1 Family day care home

a Permitted as accessory use only

b Care is provided in a family home during the day for no more than six children including the day care parents' own children

c All conditions and regulations found in article 11 6 shall be met prior to permit approval

D Office and industrial uses

1 Commercial communication towers

a. List of conditionally approved uses

1 Locating antennas on existing structures with modifications consistent with the conditions [in] article 11 7

2 Locating antennas on existing towers with modifications consistent with the conditions [in] article 11 7

3 Locating new monopole, guyed, or lattice towers consistent with the conditions [in] article 11 7

b District conditions

1 Maximum height 150 feet, unless a special exception permit is granted by the Berkeley County Board of Zoning Appeals

2 A tower and/or antenna mounted on an existing building, water tank, or structure other than a freestanding or guyed tower must not extend more than 20 feet above the highest part of the structure

c General conditions

1 All conditions and regulations found in article 11 7 shall be met prior to permit approval

2 Proposed communications equipment [co-locating] on existing towers and structure without adding to their height shall not be subject to the requirements of this conditional use

E Residential uses

1 Home occupation

a. Permitted as accessory use only

b All conditions and regulations found in article 11 9 shall be met prior to permit approval

Prohibited uses The following uses are prohibited within agricultural districts

1 Mobile home park.

2 All uses not listed as permitted are prohibited

LOT AND BUILDING STANDARDS

Lot requirements

A Minimum lot size when subdividing 30,000 square feet (69 of an acre)
B Minimum lot frontage
1 Standard lot 20 feet
2 Corner lot 40 feet

Density regulations

A. When not subdividing, there shall be no more than two principal dwelling units per one acre (43,560 square feet) of platted land, lot, or parcel.

B In no case shall there be more than four units placed on one parcel

C In the situation whereby the parcel is legally designated to as "heirs" property the density of principal dwelling units when not subdividing may [be] no more than three units per one acre (43,560 square feet) In no case shall there be more than ten units placed on one parcel legally referred to as "heirs" property

Minimum yard requirements
TABLE INSET

Parcel Size	Front (feet)	Sides (feet)	Rear (feet)	Second Street Front (feet)	Open Drainage* (feet)	Ingress/Egress Easements†
14,000 sq ft and greater	35	15	30	35	30	Min required for front, rear, or side
10 000 sq ft to 13,999 sq ft	30	10	25	30	30	Min required for front, rear, or side
6,001 sq ft to 9,999 sq ft	25	7.5	20	25	30	Min. required for front, rear or side
6 000 sq ft and under	20	7.5	20	20	30	Min required for front, rear, or side

* This is the minimum setback required for open drainage ditch and/or storm water pond easement lines (excluding swales)

† This is the minimum setback from any ingress/egress easement.

Accessory structures are permitted in the rear and side yards only with minimum of five-foot setbacks from the side and rear property lines or ingress/egress easements, whichever is greater If the accessory structure is placed in that portion of the yard that fronts a second street frontage of the property, the setback from the second street frontage property line for the accessory structure is the required second street frontage setback for the primary structure

Unit separation The minimum distance between dwelling units shall be

A Side to side 15 feet minimum
B Front to front or rear 15 feet minimum
C Rear to rear 15 feet minimum.

Building requirements

A Impervious coverage 50 percent maximum.

B Building height Less than 35 feet to the eave of the structure Building height may be exceeded providing that the entity providing fire protection service certifies either

1 That it can provide adequate fire protection service to a taller structure at the site in question, or

2 The certification will state the maximum height to which adequate fire protection is available, and the structure may be built to this height, provided that the entity providing fire protection service shall not certify any extension in allowable height that will adversely affect the entity's or the county's ISO fire rating

Antennas, chimneys, flues, vents or other similar structures may extend up to five feet above the maximum specified height. Church spires, bell towers, flagpoles, and like architectural features may extend over the specified height limit by 50 percent of the height limit, but shall not have habitable spaces above the maximum height limit

SITE STANDARDS

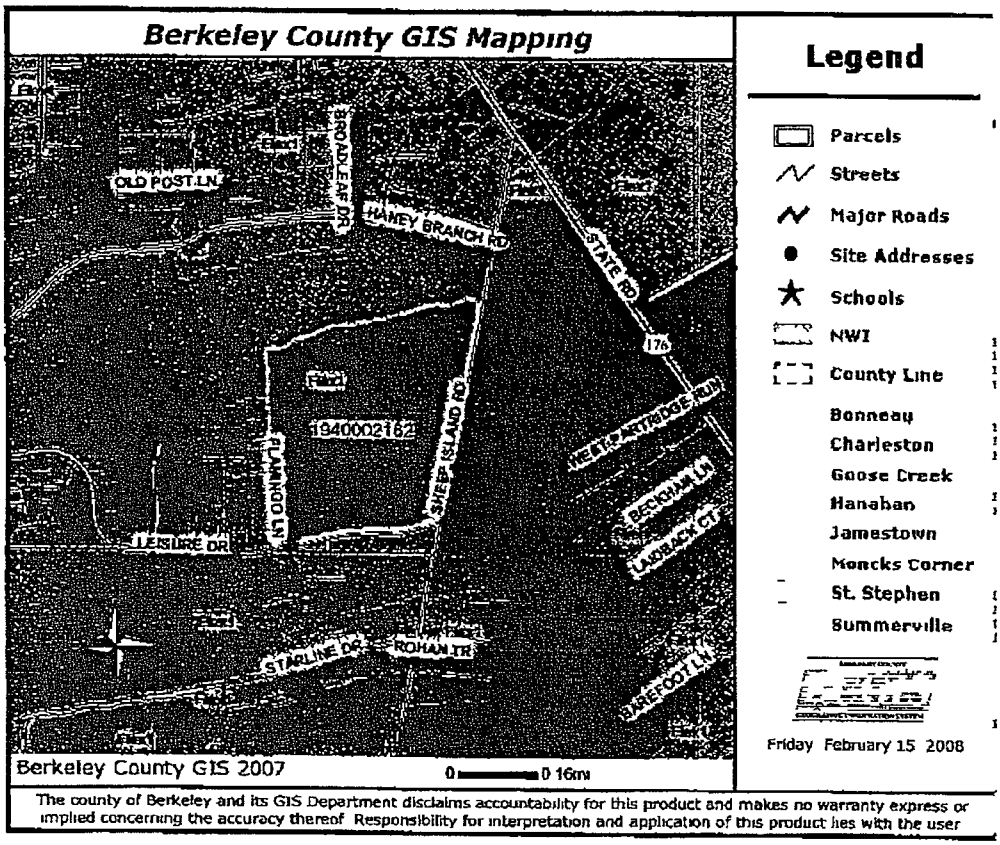
Parking standards All uses within this district shall conform to the standards outlined in article 15 Off-Street Parking Requirements

Buffer yard standards

A Residential development of parcels consisting of 15 or more lots shall conform to the buffer yard regulations outlined in article 17 to minimize conflicts between residential and agricultural or forestry practices

B All other uses shall conform to the buffer yard regulations

Zoning Map


Berkeley County GIS Mapping
Legend
Parcels
Streets
Major Roads
Site Addresses
Schools
NWI
County Line
Bonneau
Charleston
Goose Creek
Hanahan
Jamestown
Moncks Corner
St. Stephen
Summerville
OLD POST LN
HAMEY BRANCH RD
STATE RD
176
SHEEP ISLAND RD
LEISURE DR
BLANDON LN
1940002162
BECKHAM LN
LADBACK CT
STAGLINE DR
ROHAN TR
BAREFOOT LN
Berkeley County GIS 2007
0 0.16mi
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The county of Berkeley and its GIS Department disclaims accountability for this product and makes no warranty express or implied concerning the accuracy thereof. Responsibility for interpretation and application of this product lies with the user

Highest and Best Use Defined

The reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible and results in the highest value The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability (The Dictionary of Real Estate Appraisal, fourth Edition, by Appraisal Institute, 2002, page 135)

The definition immediately preceding applies specifically to the highest and best use of land and/or property It is to be recognized that in cases where a site has existing improvements on it, the highest and best use may very well be concluded to be different from the existing use The existing use will continue, however, unless and until land value in its highest and best use exceeds the total value of the property in its existing use

Also implied, is that the estimation of highest and best use results from judgment and analytical skill, i e , that the use concluded from analysis represents an opinion, not a fact to be found. In appraisal practice the concept of highest and best use represents the foundation on which market value rests In the context of most probable selling price (market value), another appropriate term to reflect highest and best use would be most probable use In the context of investment value, an alternative term would be most profitable use

The highest and best use of both land as though vacant and property as improved must meet four criteria The highest and best use must be 1) physically possible, 2) legally permissible, 3) financially feasible, and 4) maximally productive These criteria are usually considered sequentially, a use may be physically possible, but this is irrelevant if it is feasibly impossible or legally prohibited. Only when there is a reasonable possibility that one of the prior, unacceptable conditions can be changed is it appropriate to proceed with the analysis If, for example, current zoning does not permit a potential highest and best use but there is a reasonable possibility that the zoning can be changed, the proposed use can be considered on that basis A full analysis may be included in the report when the conclusions are based on techniques applied to identify the highest and best use among two or more potential uses (For full discussion refer to The Appraisal of Real Estate, Twelfth Edition by Appraisal Institute 2001 pages 305-319)

Physically Possible

Size, shape, area, soils, and topography affect the uses to which a site may be physically developed The utility of a parcel may depend on its frontage and depth. Irregularly shaped parcels may cost more to develop and, when developed, may have less utility than a rectangular parcel

The site is zoned Flex 1 by Berkeley County The site consists of 101 165 acres and reflects good development potential All permitted uses would be physically possible Based on an inspection of the land and the site description as outlined in this report, there are no known physical restraints which inhibit development of the site

Legally Permissible

The uses that are legally permissible were considered. The appraiser considered the current zoning and future rezoning if such is determined to be probable Except in rare circumstances, a change in zoning would not be considered unless it could be shown that a zoning change was reasonably probable in the foreseeable future The subject site is zoned Flex 1 and could be considered for a change to planned development.

Financially Feasible

The next analysis involves consideration of those uses that have been determined to be physically possible and legally permissible to determine which are financially feasible As outlined under Legally Permissible, the site can be used for many of the permitted uses A combination of physical inspection, conversations with property managers and listing agents showed demand for property like the subject was good due to its potential development The property is close to numerous new and planned residential subdivisions which make it desirable for residential development

Maximally Productive

The maximally productive use of the subject site "as though vacant" would be for residential development Such development would conform to the trend of the neighborhood, meet typical building coverage ratios exhibited by neighboring subdivisions, and represent the highest and best use of the land This new development can take place in the next year or two due to the demand for this type of property in the area.

Valuation Methodology

Three basic approaches may be used to arrive at an estimate of market value They are

- The Cost Approach
- The Income Approach
- The Sales Comparison Approach

The **Cost Approach** is summarized as follows

Cost New
- Depreciation
+ Land Value
= Value

The **Income Approach** converts the anticipated flow of future benefits (income) to a present value estimate through a capitalization and or a discounted process

The **Sales Comparison Approach** compares sales of similar properties with the subject property Each comparable sale is adjusted for its inferior or superior characteristics The values derived from the adjusted comparable sales form a range of value for the subject. By process of correlation and analysis, a final indicated value is derived

The appraisal process concludes with the **Final Reconciliation** of the values derived from the approaches applied for a single estimate of market value Different properties require different means of analysis and lend themselves to one approach over the others This appraisal includes the following

- **Cost Approach** The Cost Approach is not an appropriate method of valuation since the site is unimproved

- **Sales Comparison Approach** The Sales Comparison approach has primary influence An opinion of the site value was formed by the Direct Comparison Approach. A quantitative line by line adjustment grid was utilized Many of the property characteristics were considered including, the land size date of sale view, topography and location.

- **Income Approach** The Income Approach is not an appropriate method of valuation since the site is unimproved and there is no income stream

Sales Comparison Approach

The Sales Comparison Approach is based on the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership It is based on the principals of supply and demand, balance, substitution and externalities The following steps describe the applied process of the Sales Comparison Approach.

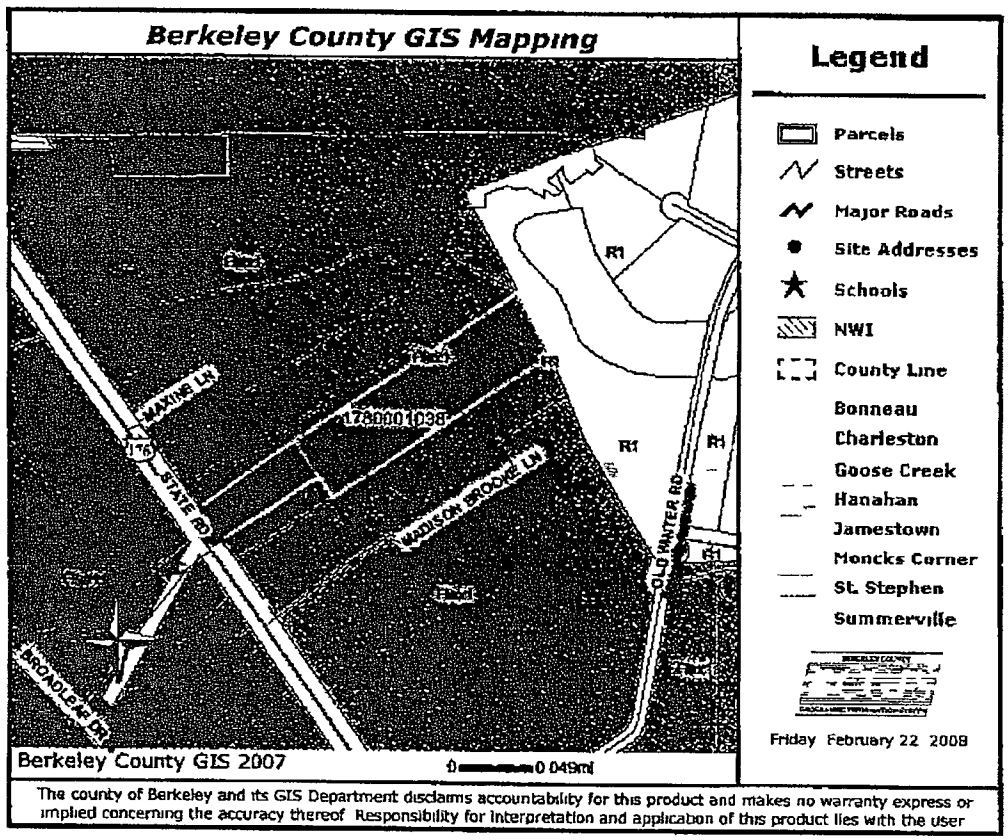
- The market in which the subject property competes is investigated, comparable sales, contracts for sale and current offerings are reviewed
- The most pertinent data is further analyzed and the quality of the transaction is determined
- The most meaningful unit of value for the subject property is determined.
- Each comparable sale is analyzed and where appropriate, adjusted to equate with the subject property
- The value indication of each comparable sale is analyzed and the data reconciled for a final indication of value via the Sales Comparison Approach

Comparable Site Sales Summary

Comparable 1

Comp 1 is a 7 1 acre parcel of property at 2130 State Road It is described as Tract B, TMS # 178-00-01-038 The Grantor was Lawrence A. Smith and the Grantee was James P Gladden. It was recorded in Deed Book 5875, Page 171 in the office of the Berkeley County RMC The plat was recorded in Plat Book I at Page 128 also in the Berkeley County RMC It was a private sale and not listed in the Trident MLS It sold on July 31, 2006 for $220,000 or $30,986 per acre It is zoned Flex-1

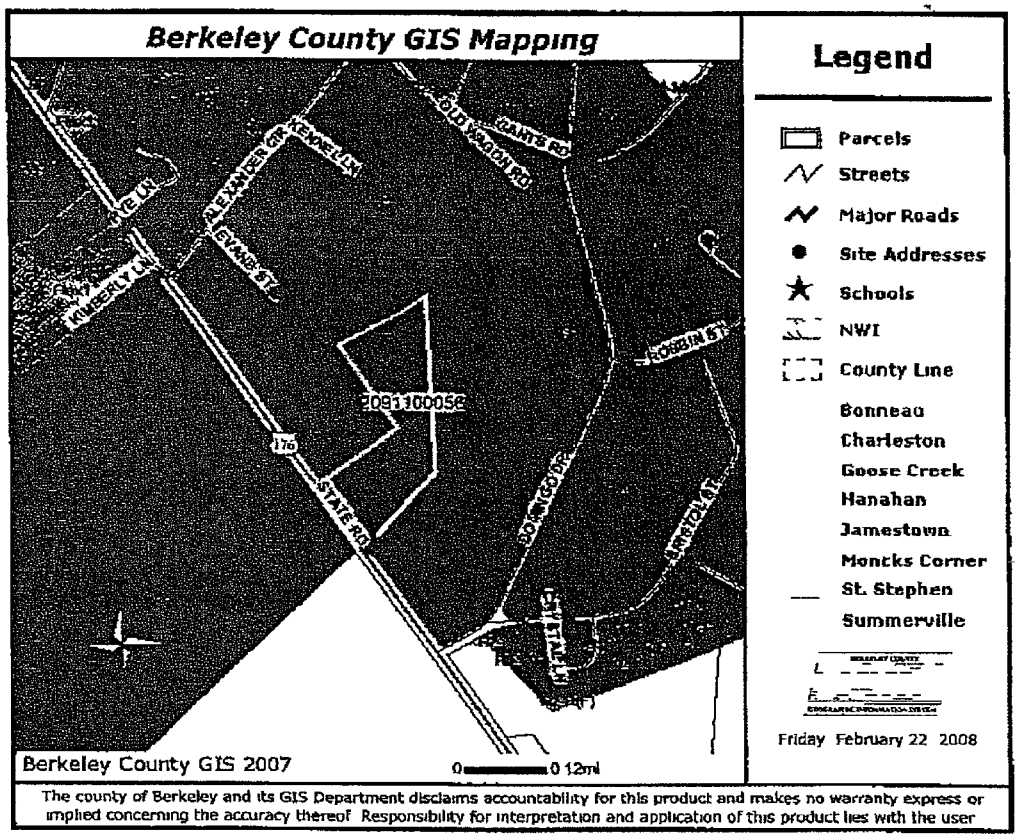
Comparable 1 Location and Zoning Map



Comparable 2

Comp 2 is a 20 2 acre parcel of property on State Road. It is described as Tract A, TMS # 209-11-00-056 All utilities were available at the site The Grantor was Charles L Smoak and the Grantee was Eldridge R. Clark and Genesis A Clark It was recorded in Deed Book 5557, Page 129 in the office of the Berkeley County RMC The plat was recorded in Plat Book Q at Page308-E also in the Berkeley County RMC It was listed in the Trident MLS for $606,000 on February 5, 2006 The listing agent was David G Smoak with Prudential Carolina Real Estate The listing number was MLS # 2604192-VAC It sold on April 20, 2006 after 19 days on market for $606,000 or $30,000 per acre It is zoned GC-Commercial General

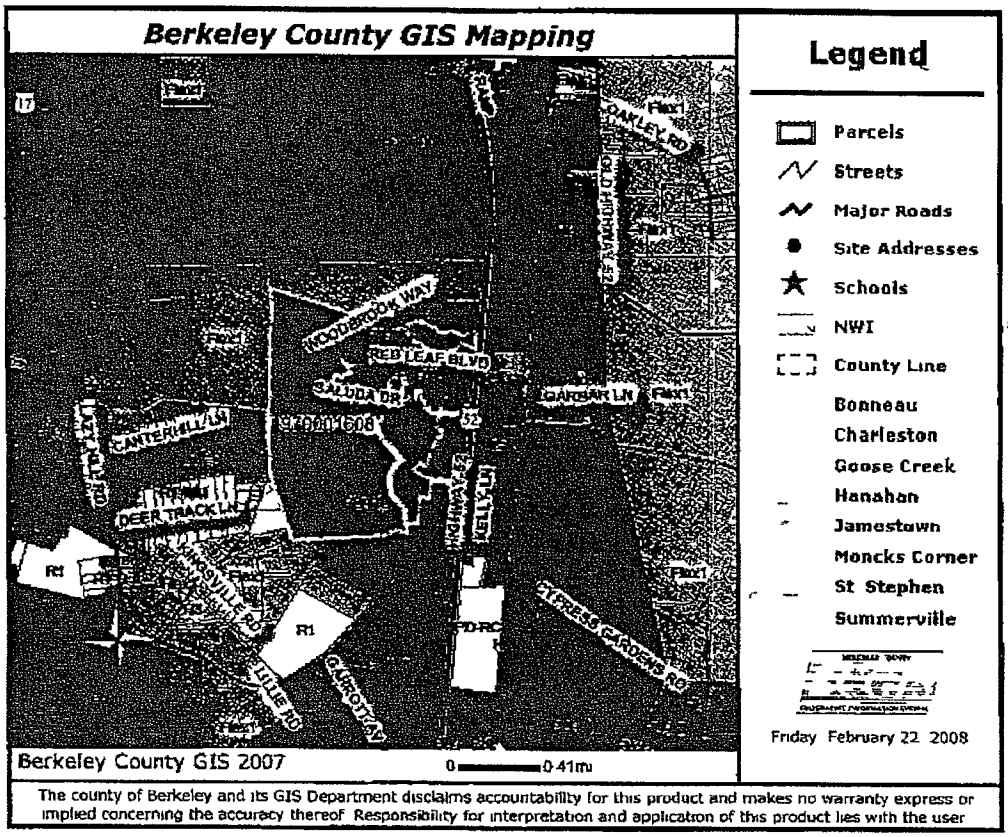
Comparable 2 Location and Zoning Map



Comparable 3

Comp 3 is a 36.36 acre parcel of property at the intersection of Cypress Gardens Road and US Highway 52 It is described as Tract C, TMS # 197-00-01-021 The Grantor was Foxbank Ventures, LLC and the Grantee was KB Home South Carolina, LLC It was recorded in Deed Book 4433, Page 318 in the office of the Berkeley County RMC The plat was recorded in Plat Book Q at Page 310-B also in the Berkeley County RMC It was a private sale and not listed in the Trident MLS It sold on December 23, 2004 for $1,048,000 or $28,823 per acre It is zoned PD-MU Planned Development Mixed Use

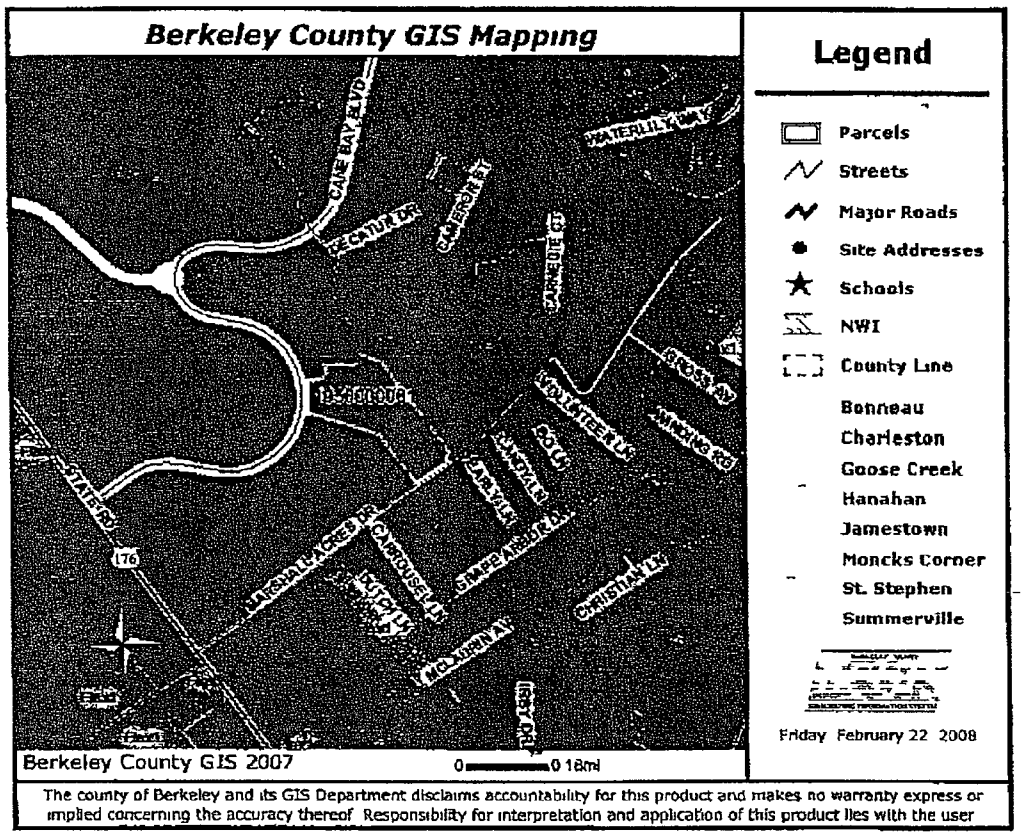
Comparable 3 Location and Zoning Map



Comparable 4

Comp 4 is a 33 87 acre parcel of property on Marshall Acres Drive It is described as Tract B11-B, TMS # 195-00-00-061 The Grantor was BMG III, LLC, MRG, LLC, and JTG III, LLC and the Grantee was Centex Homes It was recorded in Deed Book 5584, Page 294 in the office of the Berkeley County RMC The plat was recorded in Plat Book R at Page 5-A also in the Berkeley County RMC It was a private sale and not listed in the Trident MLS It sold on May 2, 2006 for $1,323,000 or $39,061 per acre It is zoned PD-MU, Planned Development Mixed Use

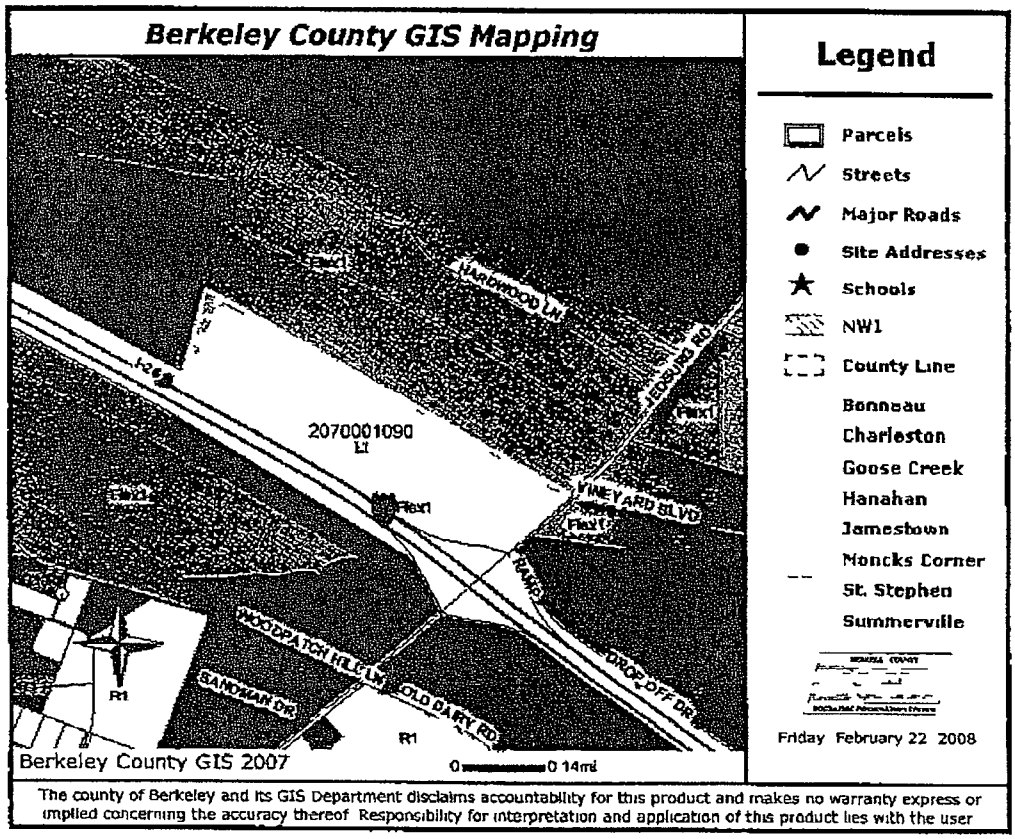
Comparable 4 Location and Zoning Map



Comparable 5

Comp 5 is a 61 34 acre parcel of property on Frontage Road It is described as Parcel 90, TMS # 207-00-01-090 The Grantor was Hazel A Moorer and the Grantee was GSR Jedburg, LLC It was recorded in Deed Book 5364, Page 237 in the office of the Berkeley County RMC The plat was recorded in Plat Book P at Page 32-B also in the Berkeley County RMC It was a private sale and not listed in the Trident MLS It sold on February 9, 2006 for $2 000,000 or $32 605 per acre It is zoned LI-Light Industrial

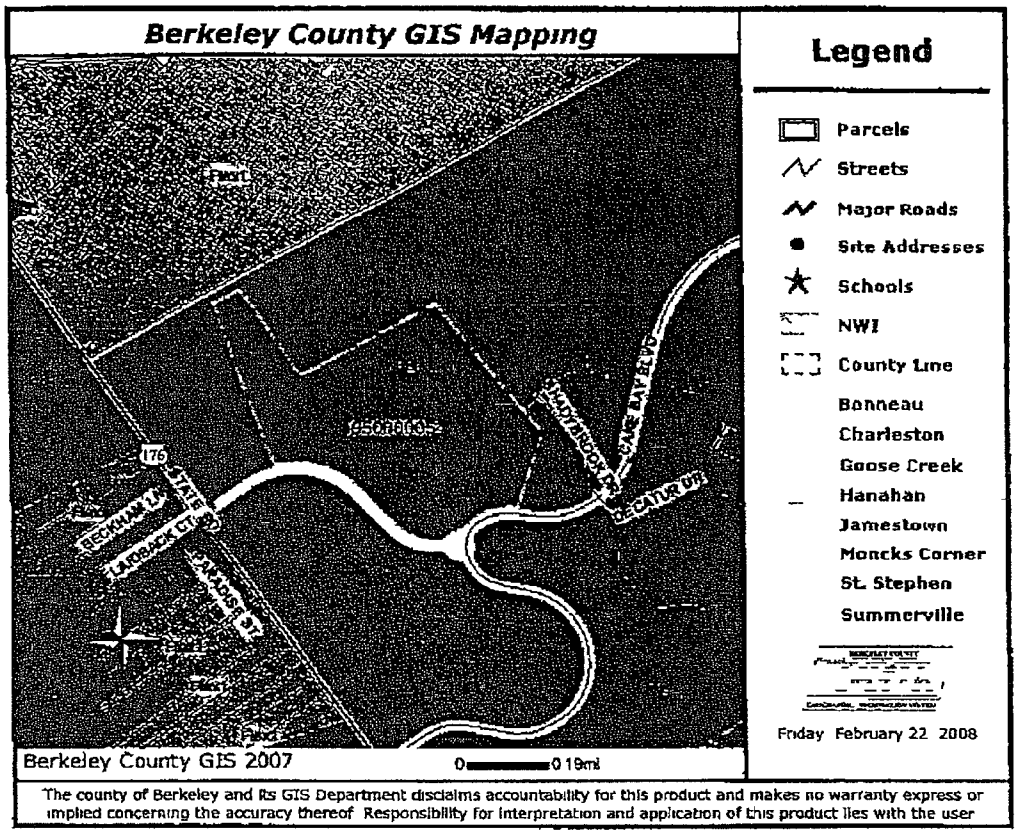
Comparable 5 Location and Zoning Map



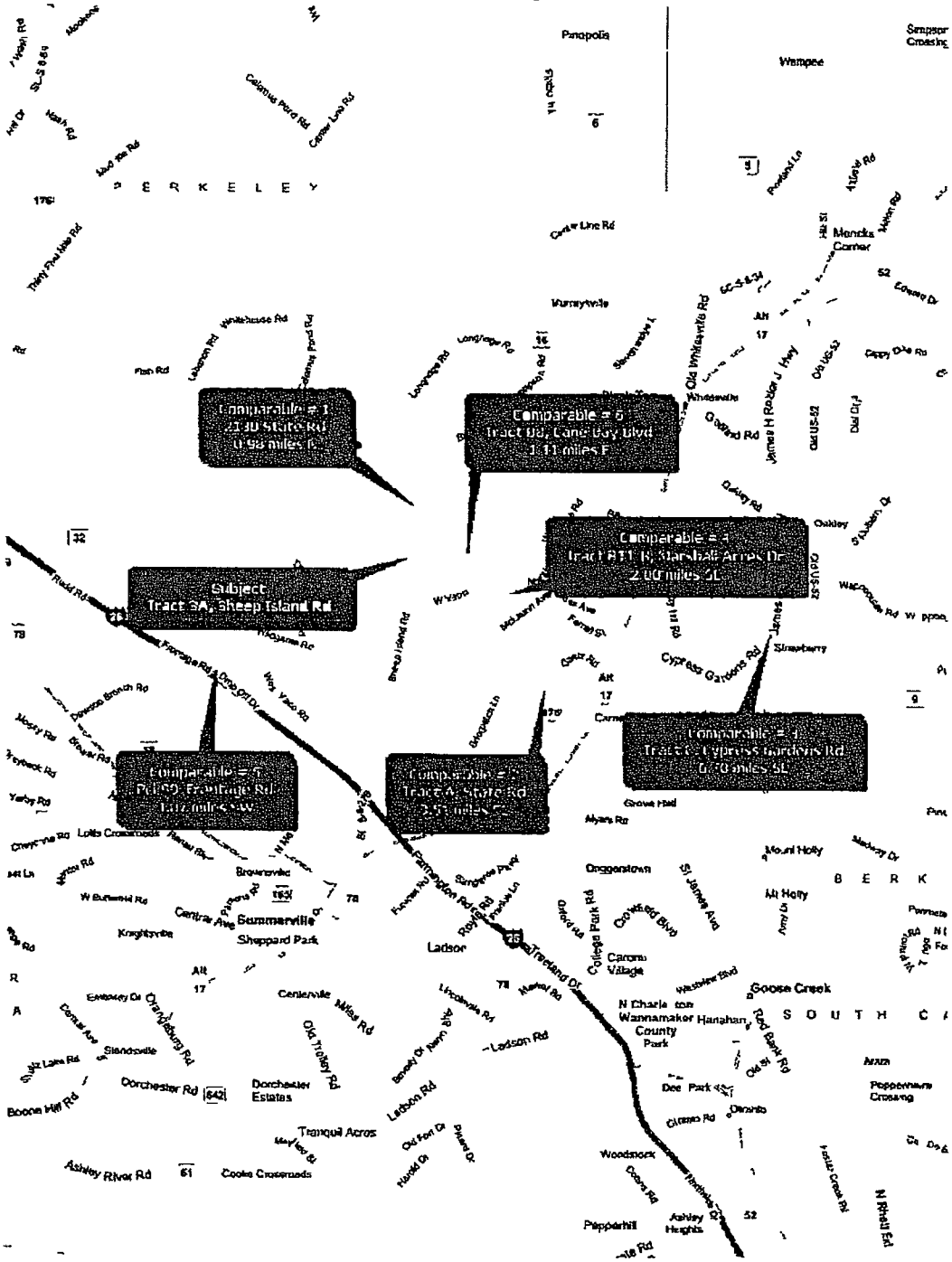
Comparable 6

Comp 6 is a 147 87 acre parcel of property on Cane Bay Boulevard. It is described as Tract B8, TMS # 195-00-00-054 The Grantor was BMG III, LLC, MRG, LLC, and JTG III LLC and the Grantee was CB Sanctuary Development, LLC It was recorded in Deed Book 5149, Page 138 in the office of the Berkeley County RMC The plat was recorded in Plat Book M at Page 175-H also in the Berkeley County RMC It was a private sale and not listed in the Trident MLS It sold on November 8, 2005 for $3,000,000 or $20,288 per acre It is zoned PD-MU, Planned Development Mixed Use

Comparable 6 Location and Zoning Map



Comparable Land Sales Location Map



Analysis Grid

The five comparable sales have been analyzed and compared with the subject property We have considered adjustments in the areas of

- Property Rights Sold
- Financing
- Conditions of Sale
- Economic Trends (time)
- Location
- Physical Characteristics

The following is a sales comparison grid displaying the subject property, the comparables and the adjustments applied

Analyst: Edward [redacted] Cantr

Sales Analysis Grid

Address	Tract 3A, Sheep Island Rd	2130 State Rd	Tract A, State Rd	Tract C Cypress Gardens Rd	Tract B11-B Marshall Acres Dr	Pcl 90 Frontage Rd	Tract B8 Cane Bay Blvd
Sale Date	NA	7/31/2006	4/20/2006	12/23/2004	5/2/2006	2/9/2006	11/8/2005
Sale Price	NA	$220 000	$608 000	$1 048,000	$1,323,000	$2 000 000	$3 000 000
Sale Price/Acre	NA	$30 986	$30,000	$28,823	$39,061	$32 605	$20,288
Property Rights	NA	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
% Adjustment		0.00%	0 00%	0 00%	0 00%	0 00%	0 00%
Financing	NA	Cash	Conventional	Cash	Cash	Conventional	Conventional
A Adjustment		0.00%	0 00%	0 00%	0 00%	0 00%	0 00%
Conditions of Sale	NA	Normal	Normal	Normal	Normal	Normal	Normal
% Adjustment		0 00%	0 00%	0.00%	0 00%	0 00%	0 00%
Economic Trends	8/1/2006	7/31/2006	4/20/2006	12/23/2004	5/2/2006	2/9/2006	11/8/2005
% Adjustment	0 50%	0%	2%	10%	2%	3%	4%
[redacted]		$30,986	$30,600	$31,205	$39,842	$38,583	$21,100
[redacted]		$30,986	$30,600	$31,205	$39,842	$38,583	$21,100
Net Adjustments		$0	$0	$0	$0	$0	$0
[redacted]	Reconciled Value	$34,000					

Analysis and Adjustment of Sales

The adjustment process is typically applied through either quantitative or qualitative analysis, or a combination of the two Quantitative adjustments are often developed as dollar or percentage amounts and are most credible when there is sufficient data to perform a paired sales or statistical analysis Qualitative adjustments are developed through relative comparisons (e g , superior, inferior, etc) and are often a realistic way to reflect the thought process of market participants when only limited data is available Adjustments are based on my rating of each comparable sale in relation to the subject If the comparable is rated superior to the subject, the sale price is adjusted downward to reflect the subjects relative inferiority, if the comparable is rated inferior, its price is adjusted upward Adjustments were considered under the elements of comparison discussed below

Real Property Rights Conveyed
This adjustment is generally applied to reflect the transfer of property rights different from those being appraised, such as differences between properties owned in fee simple and in leased fee In this analysis no adjustments were required

Financing Terms
This adjustment is generally applied to a property that transfers with atypical financing, such as having assumed an existing mortgage at a favorable interest rate Conversely, a property may be encumbered with an above market mortgage which has no prepayment clause Such atypical financing often plays a role in the negotiated sale price In this analysis, no adjustments were required

Conditions of Sale
This adjustment category reflects extraordinary motivations of the buyer or the seller to complete the sale Examples include a purchase for assemblage involving anticipated incremental value or a quick sale for cash This adjustment category may also reflect a distress related sale or a corporation recording at non-market price In this analysis, no adjustments were required

Time-Economic Trends
Real estate values normally change over time The rate of this change fluctuates due to investors' perceptions of prevailing market conditions This adjustment category reflects market differences occurring between the effective date of the appraisal and the sales date of a comparable, when values have appreciated or depreciated In this analysis, comps were adjusted 24% per year for Economic trends These were straight line adjustments and not compounded. This rate of value increase is considered conservative, in this market, for vacant developable sites

Expenditures
This adjustment is appropriate in situations where the sale price has been influenced by expenditures that the buyer intended to make immediately after purchase Examples include buyer paid sales commissions, buyer paid back taxes, and costs to demolish obsolete structures to clear a site for redevelopment In this analysis, no adjustments were required

Location
Location has a great impact on property values This adjustment category considers general market area influences as well as a property's visibility from a main thoroughfare In this analysis, no adjustments were required.

Size and/or Regression Factor
Comps were adjusted for regression if required Regression is defined as the price per acre sold is inversely proportional to the number of acres sold In other words the initial value is in the site that can support the improvements and the remaining land contributes much less to the overall value In this analysis, no adjustments were required

Shape
A site's shape can affect the value per unit of the property An unusual shape may reduce the overall development potential of a site as a portion of the site may not be suitable for development and add little to the overall value of the site In this analysis, no adjustments were required.

Zoning
Zoning regulations specify how a parcel of land can be developed In the valuation of vacant land zoning is one of the primary determinants of the highest and best use of the property because it serves as the test of legal permissibility In this analysis, no adjustments were required

Topography
A site's topography is an important factor in development costs. Poor topography can increase development costs and result in a lower value for the site due to the increased costs to develop it. In this analysis, no adjustments were required

Frontage
This adjustment category reflects differences in road frontage Depending on the highest and best use of a property, road frontage can be an important factor in value as it affects a property's exposure, development costs and the ability to sell out parcels. Some of the adjustment for frontage is typically considered in the overall location adjustment and an adjustment is not usually required here unless there is a large difference between the amount of frontage for the subject and the sale In this analysis, no adjustments were required.

Access
Access can have a great impact on the highest and best use of a property In most cases, adequate parking area and the location and condition of streets, alleys, connector roads, freeways, and highways are important to land use In this analysis, no adjustments were required

Utilities
The availability of water and sewer increases the development potential for a site Public water availability is an important factor when considering the development of sites, especially commercial or industrial sites in rural areas. In addition lack of either public water or sewer requires a portion of the site be devoted to well or septic and therefore reduces the amount of the site that can be developed with building or parking improvements In this analysis, no adjustments were required.

Other
This adjustment category is added to consider any difference between the subject and the comparables which could not be appropriately reflected in the other adjustment categories In this analysis no adjustments were required

Comparable Sales Conclusion

In conclusion the six sales given the most consideration in the valuation of the subject land reflect adjusted unit value opinions ranging from a high of $39,842 per acre to a low of $21,100 per acre and a mean adjusted unit value of $31,303 and a median of $31,345 Therefore, giving a little less weight to those sales at the extremes of the range, the subject land opinion reflected a site value of $31,000 per acre rounded The market value opinion of the fee simple estate of the subject land is calculated as follows

101 165 Acres x $31,000 = $3,136,115

Based on the above analysis, we have reconciled to a rounded sales comparison value of **$3,136,000**, as of August 1 2006 and subject to the Limiting Conditions and Assumptions of this appraisal

Final Reconciliation

The process of reconciliation involves the analysis of each approach to value The quality of data applied and the significance of each approach as they relate to market behavior and defensibility of each approach are considered and weighed

In this appraisal, only the Sales Comparison approach to value was considered.

Value Indications

Cost Approach	Not Applicable
Sales Comparison Approach	$3,136,000
Income Approach	Not Applicable

Cost Approach

The Cost Approach is not an appropriate method of valuation due to the subject being an unimproved tract of land.

Sales Comparison Approach

The Sales Comparison approach has primary influence Comparable sales for the subject property were analyzed and did not require any adjustments

Income Approach

The Income Approach is not an appropriate method of valuation due to the subject being an unimproved tract of land.

Deed

000022530 Bk:04827 Pg:00240

State of South Carolina
County of Berkeley

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT

Sheep Island Property, LLC, a South Carolina limited liability company in the State aforesaid for/and in consideration of the sum of $1 441 601 00 to me in hand paid at and before the sealing of these presents by **Bar-Pen Investments, LLC, a South Carolina limited liability company** in the State and County aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents to grant, bargain, sell and release unto the said **Bar-Pen Investments, LLC, a South Carolina limited liability company** its Heirs and Assigns forever the following described property to wit.

All that piece, parcel or tract of land, situate, lying and being in Berkeley County South Carolina and known and designated as Tract 3A, containing 101.165 acres, as shown on that certain plat entitled, "PLAT OF BOUNDARY SURVEY SHOWING SUBDIVISION OF TRACT 3 TO FORM TRACT 3A SURVEYED AT THE REQUEST OF BYRON S. TONEY LOCATED IN BERKELEY COUNTY, SC" prepared by Joseph O. Eelman dated April 18, 2005 and recorded on April 19 2005 in the Register of Deeds Office for Berkeley County in Plat Book Q, at Page 367E, said tract of land having such actual size, shape, dimensions, buttings and boundings as shown on said plat, reference to which is hereby made for a more complete description.

And being the same property conveyed to Sheep Island Property LLC, a South Carolina limited liability company by Deed from Byron Scott Toney dated 04/20/05 and recorded 04/21/05 in Book 4655, Page 35 in the RMC Office for Berkeley County

TMS# **PORTION OF 221-00-00-048**

Grantee's Address: **622 Johnnie Dodds Blvd.**
Mount Pleasant, SC 29464

SUBJECT TO covenants, restrictions, easements of record and taxes for the current year

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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the said **Bar-Pen Investments, LLC, a South Carolina limited liability company** its Heirs and Assigns forever.

AND does hereby bind its Successors, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **Bar-Pen Investments, LLC, a South Carolina limited liability company,** its Heirs and Assigns, against it and it s Successors, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

05RGC249A

3

The Woodcliff Law Firm
827 Old Mount Holly Road Suite 208
Goose Creek, South Carolina 29445

000022530 Bk:04827 Pg:00261

Deed Page 2
05RGC249A

WITNESS our Hands and Seals this 7th day of July, 2005

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

WITNESS #1

WITNESS #2

Sheep Island Property LLC,
a South Carolina limited liability company

By: Peter D. DeLuca, Jr., Member

The State of South Carolina
County of Berkeley

I, the undersigned notary a Notary Public for South Carolina do hereby certify that Peter D DeLuca, Jr Member of Sheep Island Property LLC, a South Carolina limited liability company personally appeared before me this 7th day of July 2005 and acknowledged the due execution of the foregoing instrument.

NOTARY PUBLIC
My commission expires 8/19/2014

FILED, RECORDED, INDEXED
07/08/2005 04:34:07PM
Rec Fee: 10.00 St Fee: 3749.20
Co Fee: 1584.20 Pages: 3
Issued to: MURDOY LAW FIRM
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

RECEIVED

07/08/2005

ASSESSOR
BERKELEY COUNTY SC
JANET BROWN JURISED
AUDITOR BERKELEY COUNTY SC

Letter of Engagement

Futeral Law Firm LLC
Serving South Carolina's Lowcountry

February 12, 2008

VIA FACSIMILE ONLY 851-0323
Ed Carter
Appraisal Services

RE. Sheep Island Plantation, LLC v Bar-Pen Investments LLC
06-CP-08-1650
Client ID 31207
Matter ID 9123174

Dear Mr Carter

Per our conversation, please perform an appraisal for the approximately 100-acre tract, TMS # 194-00-02 162 and call me to provide me your opinion as to the value It is my understanding that you will charge $2,000 for this assessment and will bill at $150 per hour in the event we formally retain you as an expert and you are called on to provide any deposition or trial testimony

If you need any additional information, please contact me. Otherwise, I look forward to hearing from you. As we also discussed, this case is up for trial on February 25 2008, so time is of the essence. Thank you for your prompt attention to this matter

Sincerely,

Thomas Nelson

Local 843-284-5500 Toll Free 877-913-5500 Fax 843-284-5501
1004 Anna Knapp Blvd., 2nd Floor Mount Pleasant, South Carolina 29464
Reply to. P O Box 1543 Mount Pleasant, South Carolina 29465-1543
www.charlestonlaw.net

License

South Carolina

Real Estate Appraisers Board

EDWARD B. CARTER

Is hereby entitled to practice as a

Certified General Appraiser

CG 4057

License Number

06/30/2008

Expires

OFFICE COPY

Administrator

Resume

Appraisal Services of South Carolina, Inc.

Bill Ford
Ed Carter
Bruce Davis
Paul Thies
Wendy Baker
Bill Minus

P O Box 1385
Summerville SC 29484
Office (843) 875-1487
Fax. (843) 851-0323
Mob (843) 709 2555

Qualifications of Appraiser

Edward B (Ed) Carter
SC State Certified General Real Estate Appraiser
CG 4057 MSA MFLA, MRA
E mail ecarter@asosc com

Education

1966 BA in Political Science The Citadel Charleston SC
1995 MS in Aeronautical Science, Embry Riddle Aeronautical Institute Daytona Beach, FL

Employment History

1966 1992 United States Air Force Colonel (Ret) Fighter Pilot
1993-2000 Dorchester County Airports Mgr., Deputy County Administrator County Administrator
2001 Present State Licensed Real Estate Appraiser

Professional Associations

President South Carolina Professional Appraisers Coalition
Member National Association of Master Appraisers
Member SC Association of Realtors, Appraisal Section
Designations Master Senior Appraiser (MSA), Master Farm & Land Appraiser (MFLA) Master Residential Appraiser (MRA)

Appraisal Education

2001 Principles of Residential Appraisal, Trident Technical College Charleston, SC
2001 Market Data Analysis, Trident Technical College Charleston, SC
2001 Uniform Standards of Professional Appraisal Practice, Trident Technical College Charleston. SC
2001 Residential Analysis for Small Income Property Appraisals, Trident Technical College Charleston, SC
2003 Introduction to Income Property Appraisal. JT & T Seminars Columbia, SC
2004 7 Hour National USPAP Update Course JT & T Seminars, Columbia, SC
2004 Discounted Cash Flow Analysis, JT & T Seminars, Columbia, SC
2004 Advanced Income Capitalization Procedures JT & T Seminars, Columbia. SC
2004 Applied Income Property Valuation JT & T Seminars Columbia SC

2006 Small Hotel/Motel Valuation Appraisal Institute Columbia. SC
2006 Subdivision Valuation, Appraisal Institute Columbia. SC
2005 7 Hour National USPAP Update Course. The Spearman Center Charleston, SC
2007 The New URAR, Appraisal Institute, Columbia, SC

Community Service

The Citadel Alumni Association President-Elect; Vice-President. District 1 Director (three terms)
Summerville Citadel Club-Past President (three terms) and Board Member
Rotary Club of Summerville Past President and Board Member
Rotary District 7770 Assistant District Governor 2005 2006 2006 2007 2007 2008
Summerville Dorchester County Chamber of Commerce Board of Directors
Tri-County Regional Chamber of Commerce-Past President and Board Member
The South Carolina Aviation Association-Past President (two terms)
Veterans Trust Fund of SC Board of Directors 2002 to present
First National Bank of SC Board of Advisors-1998 to present

Appraisal Experience

I am currently affiliated with Appraisal Services of South Carolina. I am performing appraisals on commercial properties residential properties, 2 4 family properties and vacant land for sales, refinancing probate divorce insurance and tax purposes Sample appraisals available upon request.

17:751

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Thomas L Hughston Circuit Court Judge

Case No 06-CP-08-1650

Sheep Island Plantation, LLC, Appellant,

v

Bar-Pen Investments, LLC, Respondent

RECORD ON APPEAL
VOLUME III

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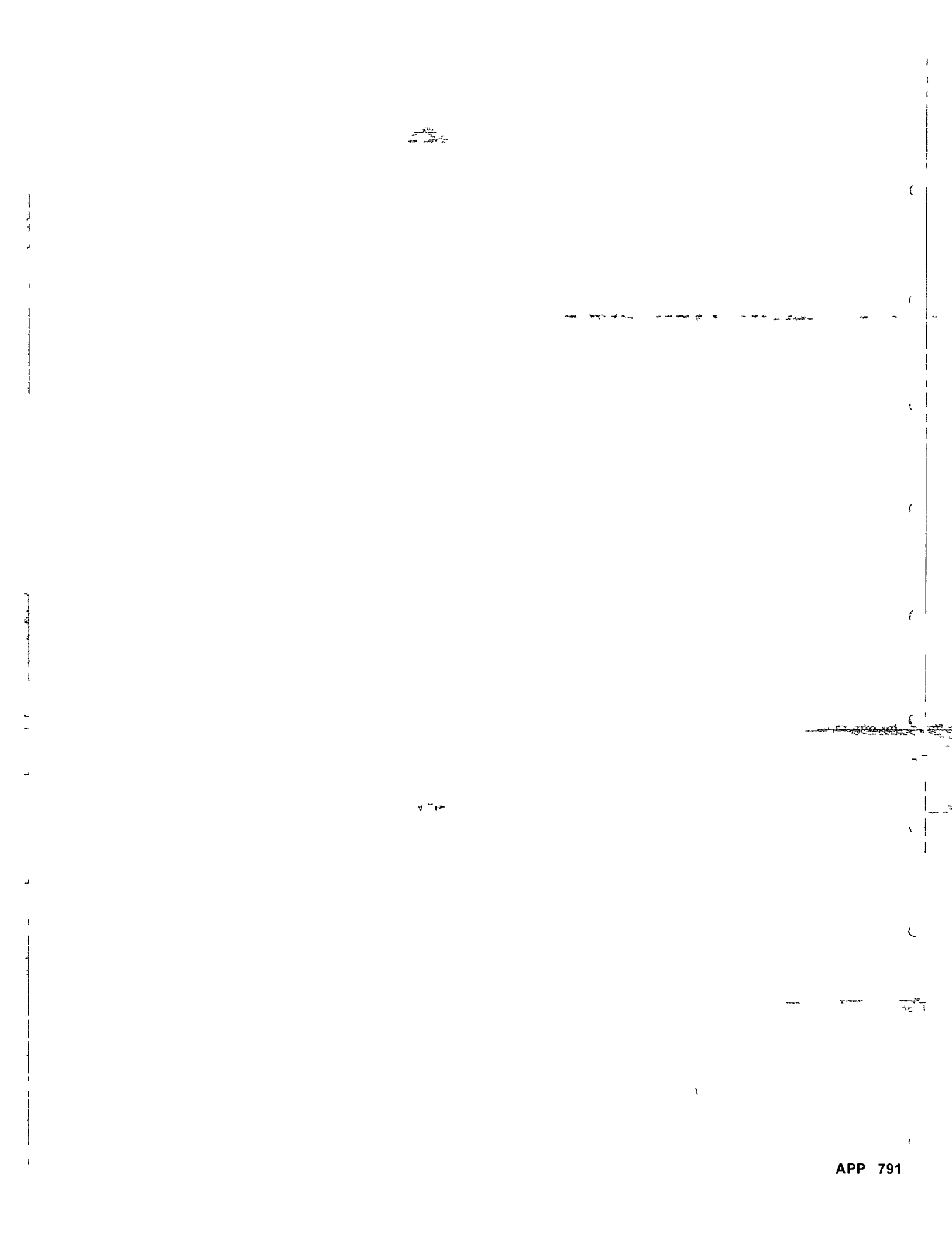
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07/31/2006 15 45 Taslked with Skipper twice Georgia Richard and Sleve Pendley in the last half hour in essence the Buyer wants lo exercise the option to BUY an extension for $50 000 (Seller withdrew said offer see previous notes) Skipper wants to kill the deal & asked me to call Sleve - he said Joe was in agreance with him I called Steve he said he would call Skipper and call me back

07/31/2006 13 10 Called Skipper - relayed my conversations with Georgia and with Benjy he said he had been expecting something would happen but that he would see me at 1530 and we would take it from there

07/31/2006 13 01 Called Benjy and told him that Georgia had informed me that the closing might not happen he said that was a possibility I asked if he had the loan package he said most of it however he was working on a 4 5 million dollar closing in front of this one and that he had to go and that the planned closing was at 1600 and he would know then if we were going to close - I told him that this was the last day per contract that we could close and "Time is of the essence and that the Sellers had made it clear there would be NO EXTENSIONS he said he understood that - I asked if I should let Skipper know this he said maybe but that he had to go and rushed off the phone

07/31/2006 12 49 Called to speak with Benjy - he coulnd t take the call left a message for him to call me

07/31/2006 12 30 Talked with Georgia - she was nervous that the closing might not go off today and wanted to kno v the possibilities of a day or two extension I told her that I felt that she should have the closing attorney relay the info and request directly to Skipper because he had drawn the line of a firm NO with me she said she would call Benjy and talk to him

07/31/2006 09 30 Talked with Benjy - told him I was returning Daisy s call from Friday about the commission he said he would give her the info that I had relayed to him

07/28/2006 13 45 Skipper returned my call he said he would sign the paperwork and would meet me at my office @ 1530 to follow me over

07/27/2006 13 02 I called Benjy (the attorney) and have verified the closing IS for Monday @ 4 00 PM

07/26/2006 16 12 I called Goergia told her that I did not get an email she said they sent it to Skipper I told her he was out of town she said she would forward it to me

07/26/2006 16 00 Called the closing attorney left a message trying to verify a closing

07/25/2006 15 45 I called Georgia Richard she informed me that there was an email sent to me to let me know that there is a closing slated for 1600 for Monday (7 31 06) I did not receive an email

07/25/2006 12 15 Received an email from Georgia Richard (of an email to her) setting the closing

07/21/2006 15 30 Recieved an email from Georgia indicating she had forwarded a copy to the Buyer s attorney & dropped off a copy to the Buyer of the withdrawal of the offer to extend the contract

07/21/2006 13 30 Returned Bruce Marshall s (Buyer) call he wanted me to know they were working diligently towards closing and asked me to stop calling the lender I told him I had not called the lender he said Georgia told him I had I said Not True that I did not even know who his present lender was he was very disparaging towards Georgia he asked about a day or two extension - I told him that the partners had made it clear there would be no extension aftermy call I called Georgia to let her know he had called me and relayed our conversation (except the disparaging part)

07/21/2006 12 15 Called Skipper he was at the airport in Atlanta told him about my message from Bruce Marshall I asked Skipper about the extension clause in the contract he said if they try to use it he would litigate it he also said he had no problem with me returning Bruce Marshall s call

07/21/2006 11 30 Called Georgia left message on her VM to call me (she doen t return the majority of my calls)

07/21/2006 09 30 Had a call on my VM from Bruce Marshall informing me the y were working hard to try to close next week

07/20/2006 21 30 Emailed Georgia (cc to Skipper & Steve) confirming our conversation

07/20/2006 14 30 I called Georgia (got her this time) I was in Steve s office with him listening to my side of the conversation - told her the the Seller had instructed me to call her and inform her that they were withdrawing their offer to the Buyer allowing him to purchase an extension of time to close - She told me that the Buyer had just received their financing commitment letter and were working towards closing but she did not know if they could make July 31st she said she would let the Buyer know

07/20/2006 14 15 I met with Steve in his office - he got Skipper on the phone and we discussed the contract Skipper told us that the Buyer had contacted Joe Bartone (other partner) trying to flip the property to him (not knowing that Joe was a partner) - Skipper suggested to Steve that they withdraw their offer to allow Buyer to purchase an extension Steve agreed they instructed me to call and convey such to Georgia which I did

07/19/2006 16 36 Called Georgia on her mobile she said she neede to call me back (had a bad connection)

07/19/2006 11 00 Called Georgia for an update left message with her assistant to call me

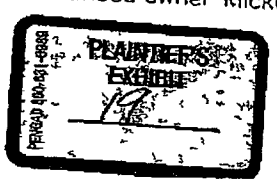
07/17/2006 13 30 Called Georgia left message on her VM to call me with an update

07/13/2006 16 45 Emailed Georgia the requested extension info and CC to Steve & Skipper

07/13/2006 15 48 Called Georgia on her mobile and conveyed Bar Pen s offer for the extension - she asked me to email it to her

07/13/2006 15 38 Called Sleve about my conversation with Georgia he called Skipper and called me back & I called Skipper - Skipper said they would agree to allow them to BUY and extension of 30 days for $50 000 wich v ould be non refundable AND non APPLICABLE (in other words it does not come off the price

07/13/2006 12 15 Called Georgia earlier about the closing date she told me the Buyer s wanted to know if they could get a



30 day extension ith some non refundable money I told her that I doubted it but I would forward the request
07/07/2006 16 00 Have called Georgia se eral times over the recent past to get a closing date set due to Skipper & Steve being out of town on vacation towards the end of the month she has not gotten back to me
03/31/2006 14 20 I called Skipper - he was in Nashville I brought him up to speed about my conversations v ith Georgia he said to keep working on it
03/31/2006 14 17 I called Georgia and asked her about the check again I told her that technically her people are in default of the contract and it was Prudential Real Estate s fault she said she would look into it and get back to me
03/30/2006 15 15 Sa v Georgia at Skipper Wooddy s office - I asked her about the $10 000 Earnest Money check again (I have had numerous conversations with her in the past week) She said she would look into it and get back to me
03/23/2006 17 30 Emailed Georgia Richard a letter about the prices (for her buyers) we were selling Spring Grove Tract C lots for
12/19/2005 16 42 Faxed Addendum A to Georgia Richard
12/19/2005 16 40 Faxed the Sheep Island Rd contract to Skipper
12/19/2005 13 45 Called Steve about contract told him I faxed to Skipper
12/19/2005 13 30 Faxed Skipper a contract
12/14/2005 16 45 Called Georgia Richard to let her know that the Sheep Island Road contract is being countered back to them tomorrow (left message on her VM)
12/09/2005 15 01 Called Skipper and talked with him about the Sheep Island Rd contracts told him I would fax the one I ha/e to him
11/21/2005 16 28 Faxed Skipper a contract (from Chuck Thompson) for Sheep Island Rd
11/17/2005 16 26 Emailed AJ Conger & CC to Jim West a package
11/11/2005 10 30 Emailed Eric Elkins a package
11/03/2005 16 15 Emailed Susan Kubush (Keystone) a package
10/24/2005 16 23 Emailed Tommy Thornhill a package
10/24/2005 15 00 Emailed Stuart (Keystone Builders) a package
10/13/2005 16 22 Emailed Chuck Buck requesting a status update
09/21/2005 14 15 Received an email from Chuck Buck with Beazer indicating they have a contract and are waiting for Frank Finlaw s signature
09/19/2005 13 15 Emailed Chuck Buck additional info
09/09/2005 15 15 Received an email from Chuck Buck indicating they have instructed their attorney to draft a contract
09/02/2005 13 00 Emailed Ken Wolfrom with Beazer a package (twice)
09/02/2005 12 15 Received an email from Ken Wolfrom with Beazer requesting another package
09/02/2005 10 30 Emailed Chuck Buck with Beazer Homes a package
09/01/2005 15 30 Emailed Jason Fabrizio with Eastwood Homes a package
09/01/2005 15 00 Emailed Lee McLoud with Harbor Homes (Mungo) an info package
08/31/2005 15 45 Called Steve let him know that Jessco was backing out of the contract we discussed the situation I recommended raising the price told him I would touch base with Skipper

SOUTH CAROLINA) **OPERATING AGREEMENT**
BERKELEY COUNTY) **SHEEP ISLAND PLANTATION, LLC**

THIS OPERATING AGREEMENT (the "Agreement") of Sheep Island Plantation LLC (the "Company") a limited liability company organized pursuant to the South Carolina Limited Liability Company Act (the "Act") is executed effective as of the __ day of _____ 200__, by and among the Organizing and Initial Members

***Article I* Formation of the Company**

1 Formation

The parties establish Sheep Island Plantation LLC to engage in any lawful business that limited liability companies may be organized under the South Carolina Limited Liability Company Act. The principal place of business of the Company is **** or such other place as the Manager determines

2 Nature of Members Interests.

The interests of the Members in the Company are personal property for all purposes Legal title to all Company assets is in the name of the Company Neither any Member nor a successor representative or assign of such Member has any right, title or interest in or to any Company property or the right to partition any real property owned by the Company

***Article II* Members**

3 Names and Addresses of Members.

The names addresses and Membership Interests of the Initial Members following the admission of Initial Members by the Organizing Members are as reflected in the attached Exhibit A that is made a part of this agreement. Exhibit A will be as amended by the Company as of the effective date of any redemption or issuance of any Membership Interest.

4 Meetings of Members

The Members of the Company will hold their meetings both regular and special, according to the Company Bylaws as they may adopt

5 Transferability of Membership Interests

No Membership Interest may be transferred voluntarily or involuntarily by sale assignment, gift, pledge exchange or other disposition, except as provided in this agreement.

6 Voluntary Transfers

No Membership Interest may be transferred voluntarily by sale assignment, gift, pledge, exchange or other disposition, except as provided in this agreement or with the prior written approval of the Managers The Members acknowledge that



any transfer of a Membership Interest may involve considerations of laws and regulations including but not limited to, laws and regulations governing limited liability companies as business organizations taxation of the Company as a partnership and treatment of Membership Interests and transfers of such interests as securities the effect of which on the Company and its Members may vary depending on the circumstances, all of which cannot be anticipated at this time Therefore the Members agree that the Managers may approve or disapprove, or set conditions on approval of the transfer of any Membership Interest as the Managers in their sole and complete discretion, may decide provided however that the Managers may not approve any transfer that will violate any Federal or applicable state securities law or that would adversely affect the Company from being taxed as a partnership for Federal income tax purposes Any attempted transfer without the Managers express written approval shall be void

7 Involuntary Transfers.

If the Membership Interest of any Member is purported to be transferred involuntarily, including without limitation, any purported transfer by or pursuant to bankruptcy receivership attachment divorce equitable distribution inheritance or operation of law then, and in that event, the Company shall purchase the Membership Interest purportedly transferred at its Purchase Value as determined as provided in the paragraphs below

8 Method of Determining Purchase Value

Purchase Value means the Purchase Value of the Membership Interests of the Company established by a Certificate of Agreed Value signed by each Member and filed with the Company If, at any time when it becomes necessary to determine Purchase Value of the Membership Interests of the Company a Certificate of Agreed Value is in existence and such certificate of agreed value is dated less than two (2) years before the date as of which the Purchase Value is to be determined then the agreed value set forth in such certificate shall be conclusive as to the Purchase Value and shall be accepted as the Purchase Value as of the date on which Purchase Value is to be determined and no accountant's determination of book value shall be required or made In no event shall a Certificate of Agreed Value be effective unless signed by all the Members The Members may at any time execute a new Certificate of Agreed Value which shall automatically replace all prior Certificates of Agreed Value and in no event shall any but the last Certificate of Agreed Value be effective If at all for the purpose herein specified

In the event there is no Certificate of Agreed Value or in the event the same is more than two (2) years old then the Purchase Value of a Membership Interest for the purposes of this agreement is the amount that would be received by the owner of such Membership Interest if all the assets of the Company were sold for cash equal to their fair market value the Company paid all of its liabilities including reasonable costs of liquidation and liquidated in accordance with this Agreement, all as of the last day of the calendar month immediately prior to the occurrence of the event triggering the Company's obligation to purchase the Members Membership Interest. The determination of the fair market value of a Membership Interest by the accountant is binding on all parties

9 Payment of Purchase Value.

Whenever under this Agreement the Company or the Members exercise any option or right to redeem or purchase Membership Interests of any Member the Purchase Value must be paid immediately upon the receipt by the Company of the proceeds of any insurance on the life of a deceased Member owned by and payable to the Company to the extent of such proceeds Whenever under this Agreement the Company exercises any option or right to redeem or purchase Membership Interests of any Member the Purchase Value must be paid to the Member whose Membership Interests have been redeemed or purchased in cash within thirty (30) days after notice to the affected Member

10 Admission of New Members.

Unless and until admitted as a Member of the Company the transferee of a Membership Interest shall not be entitled to any of the rights powers, or privileges of a Member except that the transferee shall be entitled to receive the distributions and allocations to which the Member would be entitled but for the transfer of his Membership Interest

In the case of a person acquiring a Membership Interest after the admission of Initial Members the person shall only be admitted to Membership in the sole and exclusive discretion of the Managers and upon compliance with all the terms specified by the Managers including but not limited to such additional Member's execution of and becoming a party to this Agreement

***Article III* Management of the Company**

11 Management.

The business and affairs of the Company shall be managed by the Members Each member is an agent of the limited liability company for the purpose of its

business and an act of a member including the signing of an instrument in the company's name for apparently carrying on in the ordinary course the company s business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority

12. Restrictions on Members Authority

Notwithstanding anything to the contrary elsewhere in this Agreement, no Member can take or agree to take any of the following actions without the consent of all the Members

(a) Sell transfer, or otherwise dispose of all or substantially all of the Company s assets

(b) Merge the Company into or with another limited liability company

Article IV Limitation of Liability and Indemnification of Members

13 Limitation of Liability

No Member of the Company is liable to the Company or its Members for monetary damages for any act or omission in such person s capacity as a Member except as provided in the Act If the Act is amended to authorize action further eliminating or limiting the liability of Members then the liability of a Member is eliminated or limited to the fullest extent permitted by the Act as so amended Any repeal or modification of this section will not adversely affect the right or protection of a Member existing at the time of such repeal or modification

14 Indemnification.

The Company will indemnify the Members to the fullest extent permitted or required by the Act The Company may advance expenses incurred by the Members upon the approval of the Members provided the Member agrees to reimburse the Company unless it is finally determined the Member is entitled to be indemnified by the Company against the expenses The Company may also indemnify its employees and other agents to the fullest extent permitted by the law provided that a Majority in Interest of the Members first approve the indemnification The indemnification provided is exclusive of any other rights that a person seeking indemnification is entitled will continue as to a person who ceases to be a Member inure to the benefit of the estate heirs, personal representatives or other successors of the indemnity and do not create any rights for the benefit of any other person or entity

***Article V* Capital Accounts and Tax Matters**

15 Capital Contributions, Loans

Upon execution of this Agreement, each Initial Member will contribute cash or property to the Company in the amount set forth on the attached Exhibit A

Any Member may make a loan to the Company on commercially reasonable terms on approval of such terms by the Members. Loans by a Member are not capital contributions

16 Capital Accounts

The Company will maintain a separate capital account for each Member pursuant to the principles of this section and applicable Treasury Regulations The Initial capital account of each Member which is the Member's initial capital contribution will be increased by the amount of the Member's subsequent capital contributions and by the Member's allocable share of Company Income and Net Income as provided, and each Member's capital account will be decreased by the amount of cash distributed to the Member by the Company and by the Member's allocable share of Loss and Net Loss as provided

17 Allocation of Taxable Income and Tax Losses

Taxable Income and Tax Losses of the Company for each fiscal year is determined as of the end of each fiscal year and is allocated as follows

For purposes of this Agreement, net profits or net losses are determined as required by the regulations promulgated under Section 704 of the Internal Revenue Code Taxable Income and Tax Losses of the Company for each fiscal year is determined as of the end of each fiscal year and is allocated as below set forth and is subject to the rules for special allocations set forth in this agreement

(a) Taxable Income is first allocated to the Members to the extent of and in proportion to the excess of prior cumulative allocations of Tax Losses over prior cumulative allocations of Taxable Income

(b) The balance of Taxable Income is then allocated to the Members in proportion to their Capital Accounts

(c) Tax Losses are first allocated to the Members to the extent of and in proportion to, the excess of prior cumulative allocations of Taxable Income over prior cumulative allocations of Tax Losses

(d) The balance of Tax Losses is allocated in proportion to the Capital Contributions of the Members until any Members Capital Account is reduced to zero (0)

(e) To the extent remaining Tax Losses are allocated to the Members in

proportion to their adjusted tax basis in the Company as determined for Federal income tax purposes

(f) Notwithstanding the foregoing provisions, if Taxable Income to be allocated includes income treated as ordinary income for income tax purposes because it is attributable to the recapture of Depreciation and/or Amortization under Section 1245 or Section 1250 of the Internal Revenue Code or any other similar provision such Taxable Income to the extent it is treated as ordinary income is allocated to and reported by the Members in proportion to their accumulated depreciation allocations and the Company will keep records of such allocations

(g) If a transfer of or other change in an interest in the Company occurs during a fiscal year, each item of taxable income or loss will be prorated in accordance with Section 706 of the Internal Revenue Code using any convention permitted by law and selected by the Members

(h) No allocation of any item of income or loss will be made to a Member if the allocation would not have economic effect pursuant to Treasury Regulations To the extent an allocation cannot be made to a Member due to the application of such Treasury Regulations the allocation will be made to the other Members entitled to receive such allocation under this agreement

18 Compliance with Tax Code.

Each Member recognizes that the Company is subject to all provisions of the Internal Revenue Code The provisions of this Agreement relating to the proper maintenance of capital accounts and allocation of income gains deductions and losses are designed to cause the overall allocations of items to have substantial economic effect and are intended to comply with and to be interpreted and applied in a manner consistent with the requirements of applicable Treasury Regulations The Members are authorized to modify the manner in which the capital accounts are maintained and items of income gain deductions and losses are allocated if they determine that such modification is required or prudent to comply with the Treasury Regulations and is not likely to have a material effect on the amounts distributable to any Member upon dissolution of the Company

19 Company Tax Returns and Annual Statements.

The Members will cause the Company to file all tax returns required to be filed for the Company for each fiscal year or part thereof and will provide each person who at any time during the fiscal year was a Member with an annual statement (including a copy of Schedule K-1 to Internal Revenue Service Form

1065) indicating such Member's share of the Company's income, loss gain expense and other items relevant for income tax purposes Such annual statement may be audited or unaudited as required by the Members

20 Tax Matters Member

One of the Members shall act as the "Tax Matters Member" for Federal and state income tax purposes The Tax Matters Member has the final decision with respect to all Federal and state income tax matters involving the Company, and represents the Company in connection with all examinations of the Company s affairs by tax authorities, including resulting administrative and judicial proceedings. The Members agree to cooperate with the Tax Matters Member and to do or refrain from doing any and all things reasonably required by the Tax Matters Member to conduct such proceedings The Tax Matters Member is authorized to expend Company funds for professional services and costs associated with tax matters Any direct out-of-pocket expense incurred by the Tax Matters Member in carrying out the obligations hereunder shall be reimbursed by the Company

The Tax Matters Member is

21 Withdrawal or Reduction of Contributions to Capital.

No Member has the right to withdraw any part of his capital contribution or to receive any return on any portion of his capital contribution except as otherwise provided in this Agreement. Under circumstances involving a return of any capital contribution no Member has the right to receive property other than cash No Member has priority over any other Member, either as to the return of capital contributions or as to net income net losses or distributions, provided that this subsection does not apply to loans which a Member made to the Company

***Article VI* Distributions**

22 Distributions.

The Members will distribute Distributable Cash and other property at times and in amounts determined in the sole discretion of the Members "Distributable Cash" means with respect to the Company for a period of time all funds of the Company which in the discretion of the Members, are available for distribution to Members after provision has been made for payment of all operating expenses and of all outstanding and unpaid current obligations of the Company as of such time and for such reserves as the Members deem appropriate or necessary

Distributable Cash shall be distributed on a cumulative basis, as follows

(a) First to the Members to the extent of, and in proportion to their Capital

Contributions

(b) Then to the Members to the extent of and in proportion to, prior cumulative allocations of Taxable Income over cumulative allocations of Tax Losses

(c) Then to the Members in a manner similar to the allocations set forth above

No distribution will be declared and paid if payment of the distribution would cause the Company to violate any limitation on distributions provided in the Act.

23 Records and Reports, Books of Account.

The Company will maintain the Company s books and records and determine all items of income loss, net income and net loss in accordance with the method of accounting selected by the Members, consistently applied All records and books of account of the Company will be kept at the principal office of the Company at all times and are open to inspection of the Members or their agents during reasonable business hours Such right may be exercised on behalf of a Member by an attorney certified public accountant or any other agent or employee designated by such Member The Member will bear all expenses incurred in any examination made on behalf of such Member All expenses of keeping the books and records of the Company and the preparation of financial statements required to implement the provisions of this Agreement or otherwise needed for the conduct of the Company's business will be borne by the Company

24 Bank Accounts

The Bank account or accounts of the Company will be maintained in the bank or other financial institution approved by the Members The terms governing such accounts will be determined by the Members and withdrawals from the accounts may only be made by parties as approved by the Members

25 Liability of Members

No Member is liable for the debts liabilities or obligations of the Company except to the extent of the Member's capital contributions Except as otherwise expressly provided herein no Member is required to contribute to the capital of or to loan any funds to, the Company

Article VII **Dissolution and Termination**

26 Withdrawal

Except as otherwise provided in this Agreement, no Member will at any time retire or withdraw from the Company or withdraw any amount out of his capital account Any Member retiring or withdrawing in contravention of this section will indemnify defend and hold harmless the Company and all other Members (other

than a Member who is at the time of the withdrawal in default under this Agreement) from and against any losses expenses judgments fines, settlements or damages suffered or incurred by the Company or any such other Member arising out of or resulting from such retirement or withdrawal

27 Dissolution.

The Company is dissolved when the first of the following to occur (i) expiration of the period fixed for the duration of the Company in the Articles of Organization as amended (ii) election by all the Members to dissolve the Company (iii) the happening of any event of withdrawal (as defined by the South Carolina Limited Liability Company Act) with respect to any Member, unless there is at least one remaining Member and the business of the Company is continued by written consent of all the remaining Members holding a Majority in Interest within ninety (90) days of the action by or affecting the withdrawing Member; or (iv) the entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act. On dissolution of the Company the business and affairs of the Company terminate and are wound up and the assets of the Company will be liquidated, provided however that the Members may distribute assets of the Company in kind to the Members to the extent practical Dissolution is effective the day the event occurs giving rise to the dissolution but the Company will not terminate until there is a winding up of the Company s business and affairs, and the assets of the Company are distributed

28 Distribution of Assets Upon Dissolution

In settling accounts after dissolution the assets of the Company will be paid in the following order first to creditors, in order of priority as provided by law including any loans to the Company from Members but excepting those to Members on account of their capital contributions second an amount equal to the then remaining credit balances in the capital accounts of the Members will be distributed to the Members in proportion to the amount of such balances and third any remainder will be distributed to Members of the Company pro rata to their respective Membership Interests

Article VIII **Miscellaneous Provisions**

29 Competing Business.

Except as otherwise provided in this Agreement or the Act, neither the Members nor their shareholders directors officers employees partners agents family members or affiliates is prohibited or restricted from investing in or

conducting, either directly or indirectly businesses of any nature whatsoever including the ownership and operation of businesses similar to or in the same geographical area as those held by the Company and any investment in or conduct of any such businesses by any such person or entity does not give rise to any claim for an accounting by any Member or the Company or any right to claim any interest therein or the profits therefrom

30 Notice

All Notices demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing All notices demands and requests to be sent to any Member or Members pursuant to this Agreement are deemed to have been properly given or served if addressed to such person at the address as it appears on the Company records and personally delivered deposited for next day delivery by an overnight courier service deposited in the United States mail prepaid and registered or certified with return receipt requested or transmitted via telecopier or other similar device to the attention of such person with receipt acknowledged

The Members have the right at any time during the term of this Agreement, to change their respective addresses by delivering to the other Members written notice of such change All distributions to any Member will be made at the address to which notices are sent unless otherwise specified in writing by any such Member

31 Governing Law

This Agreement is to be interpreted, construed and enforced in accordance with the laws of the State of South Carolina

32 Waiver

No consent or waiver express or implied by any Member to or for the breach or default by any other Member in the performance by the other Member of his or its obligations under this Agreement is a consent or waiver to or of any other breach or default in the performance by such other Member of the same or any other obligations of such other Member under this Agreement. Failure on the part of any Member to complain of any act or failure to act of any of the other Members or to declare any of the other Members in default, regardless of how long such failure continues is not a waiver by such Member of his or its rights hereunder

33 Benefits of Agreement

Subject to the restrictions on transferability set forth in this Agreement this Agreement inures to the benefit of and is binding on the undersigned Members and their respective legal representatives successors and assigns Nothing in this Agreement expressed or implied gives any creditor of the Company or any

creditor of any Member or any other person or entity whatsoever, other than the Members and the Company any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provisions herein contained and such provisions are for the sole and exclusive benefit of the Members and the Company

34 Entire Agreement; Amendments, Severability; General.

This Agreement including all attached exhibits and schedules as amended from time to time in accordance with the terms of this Agreement, contains the entire agreement between the parties This Agreement or the Articles of Organization may only be amended or modified by a writing executed and delivered by Members owning not less than seventy-five percent (75%) of the Membership Interests If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances is not affected thereby, and the intent of this Agreement is enforced to the greatest extent permitted by law The designations of Members as used herein includes singular plural masculine feminine or neuter as required by context

IN WITNESS WHEREOF the undersigned, being all Members of the Company caused this Agreement to be duly adopted by the Company as of the day and year first above written and do assume and agree to be bound by and to perform all of the terms and provisions set forth in this Agreement

David L. Hilleshiem Member

Earl Bruce Marshall Member

All of the Members

EXHIBIT A

Table of Membership Interests

This Exhibit A is a part of that certain Operating Agreement of Sheep Island Plantation LLC made the _____ day of _____ 200_ and is incorporated therein by reference as if fully set forth therein

The names addresses capital contributions and percentage of Membership Interest of each Member is as follows

Name	Address	Capital Contribution	% of Interest
David L Hilleshiem	88 Westview Blvd	Goose Creek, SC 29445	50
Earl Bruce Marshall	88 Westview Blvd	Goose Creek, SC 29445	50

FROM FAX NO 8639733 Aug 02 2006 12 27PM P1

SHEEP ISLAND PLANTATION L L C

8-2-2006

HELLO MARC,

HERE IS WHAT IS GOING ON SO YOU KNOW AS YOU KNOW WE WERE AWAITING ON THE FUNDS TO BE TRANSFERRED FROM TEX (CECIL O CURTIS AND JOHN BOURDEAN) ON 7-31-2006 EVERYBODY ELSES MONEY WAS HERE AND AVAILABLE. WE KNEW WITHOUT THEIR MONEY WE WOULD NOT HAVE ALL THE FUNDS TO CLOSE WHEN WE FIRST TALKED TO YOU WE WERE TOLD THAT WE WOULD NEED 25 % OF THE PURCHASE PRICE DOWN WE TOLD YOU THAT WE WOULD PUT A YEARS WORTH OF INTEREST PAYMENTS IN THE BANK IN THE LAST FEW DAYS BEFORE WE WERE ALL RUSHED TO CLOSE(YOU INCLUDED) YOU TOLD US THAT WE WOULD NOW BE REQUIRED TO PUT DOWN 35% THAT INCREASED OUR MONEY DOWN TO $885,000 00 WE HAD THE $885,000 00 PUT TOGETHER BUT NOT THE OTHER $211,625 00 WE COULD HAVE CLOSED ON 7-31-2006 IF WE COULD HAVE PUT OFF PAYING THE INTERST PAYMENTS UNTIL BEFORE THE FIRST PAYMENT WAS DUE THAT IS WHY CALLED YOU AND YOU TOLD ME THAT IT WAS PART OF THE LOAN PAPERWORK AND YOU DID NT THINK IT COULD BE CHANGED SO WE STARTED SCRAMBLING TO GET THE ADDITIONAL $211,625 00

IF IT WOULD NOT HAVE BEEN FOR EITHER THE 10% INCREASE IN THE MONEY ($ 250,000 00) OR HAVING TO PAY THE $211,625 00 WE COULD HAVE CLOSED

WHEN WE SAW THE FUNDS WOULD NOT BE THERE WE CARRIED A CHECK TO THE PROPERTY OWNER IN THE AMOUNT OF $50,000 00 HOPEFULLY SO THEY WOULD HONOR THEIR E-MAIL GRANTING US A 30 DAY EXTENSION FOR THE ADDITIONAL $50000 00

THEY HAVE REFUSED TO GIVE US EVEN 1 DAY EXTRA TO CLOSE EVEN WITH THE E-MAIL CONFIRMATION THEY HAVE RETURNED OUR CHECK TO OUR LAWYER I AM MEETING WITH A REAL ESTATE ATTORNEY TODAY TO GOOVER YHE CASE I WILL INFORM YOU OF THE RESULTS WE STILL WANT TO CLOSE

SINCERELY

BRUCE MARSHALL

DEFENDANT'S EXHIBIT 40 2 EID 3-11-08 GLH

Southcoast Community Bank
P O Box 1561
530 Johnnie Dodds Boulevard
Mt Pleasant, SC 29465-1561

Goose Creek
Main: (843) 884-0504
Fax: (843) 884-2886

Sheep Island Plantation LLC
89 Westview Blvd
Goose Creek, SC 29445

Date Dec 7, 2006
Period April 10 2006 to October 18, 2006
(192 days)

Personal Banker Travis Rose

Account [redacted] Commercial Checking

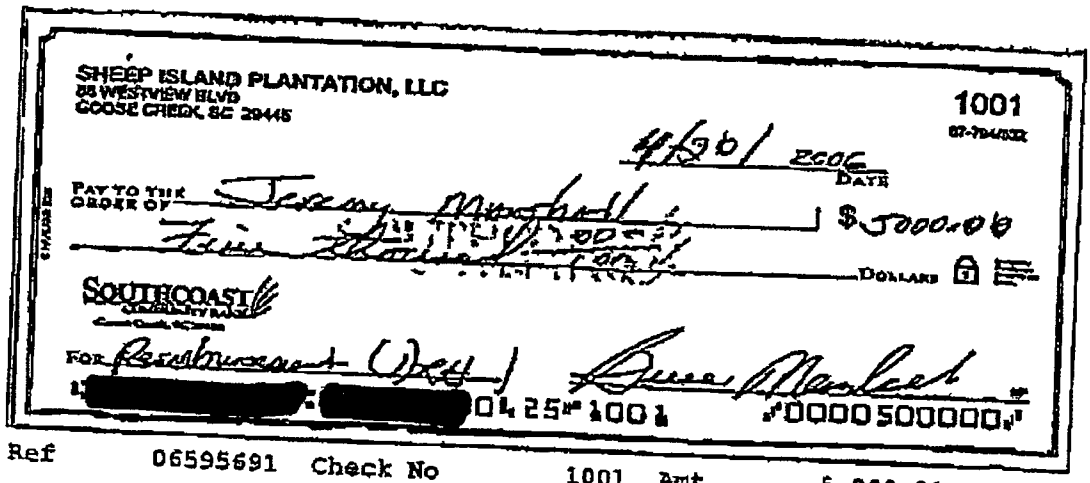
Transaction Information

Effective Date	Entered Date	CK #	Description	Amount	Balance
04/10/06	04/10/06		Deposit	10 000 00	10,000 00
04/19/06	04/19/06		CHK ORDERS, HARLAND CHECKS	14 75	9,985.25
04/24/06	04/24/06	1001	Check	5,000 00	4,985.25
05/01/06	05/01/06	1002	Check	4,000.00	985 25
05/05/06	05/05/06		Deposit	5,800 00	6 785.25
05/08/06	05/08/06	1003	Check	1,000.00	5,785 25
07/10/06	07/10/06	1004	Check	4 000 00	1 785 25
07/31/06	07/31/06		Deposit	115,000.00	116 785 25
08/07/06	08/07/06	1008	Check	80,000.00	36 785 25
08/08/06	08/08/06	1007	Check	35 000.00	1 785.25
08/16/06	08/16/06	1006	Check	134 09	1 651 16
10/18/06	10/18/06	0	Cashed Check	1 625 00	26 16

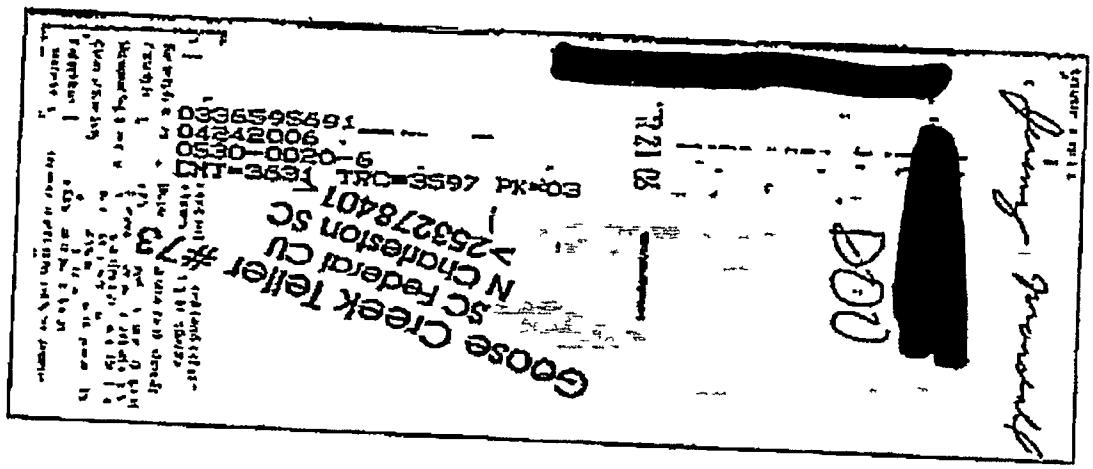
DEFENDANT'S EXHIBIT 30 3 CVD 3-11-08 ALH

Southeast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone: 843-884-0504 FAX: 834-884-2886

RESEARCH



Ref 06595691 Check No 1001 Amt 5,000 00



Southcoast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone 843-884-0504 FAX 834-884-2886

RESEARCH

SHEEP ISLAND PLANTATION, LLC
80 WESTVIEW BLVD
GOOSE CREEK, SC 29445

1002

4/20/ 2006
DATE

PAY TO THE ORDER OF Bruce Murdoch $ 4000.00

Four Thousand and 00/100 DOLLARS

SOUTHCOAST COMMUNITY BANK

FOR Reimbursement Loan Payment Bruce Murdoch

[redacted] 25#1002 #000004000000#

Ref 07628810 Check No 1002 Amt 4,000 00

[redacted]

0337628810
05012006
0530-0020-6
ENT=4160 TRC=4160 PK

GOOSE CREEK FEDERAL CU
80 CENTURY PL, N. #69
GOOSE CREEK, SC 29445-7801

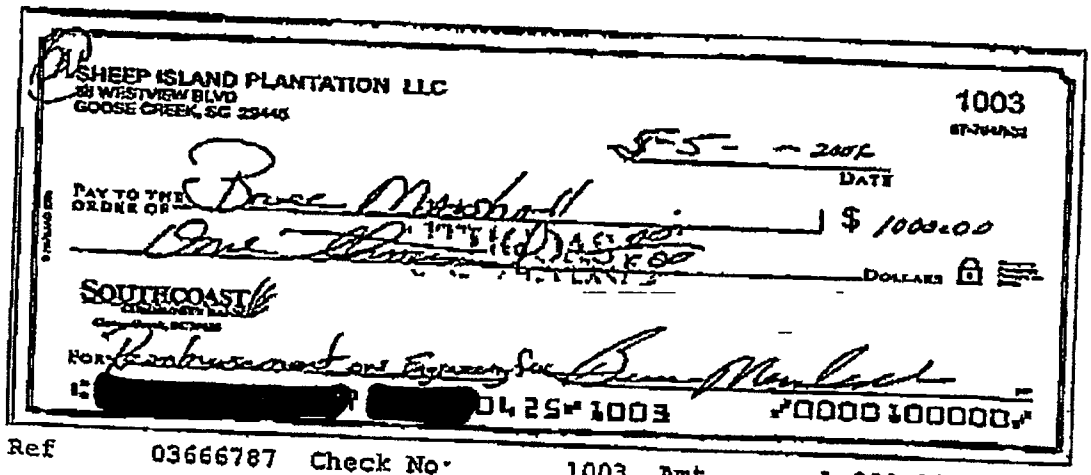
For Deposit Only

Bruce Murdoch

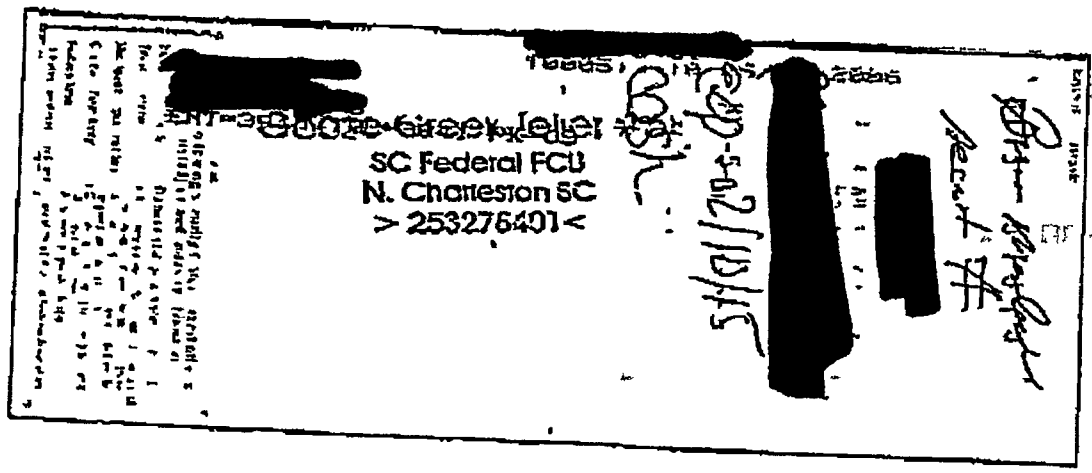
#[redacted]

Southcoast Community Bank
P.O Box 1561
Mt Pleasant, SC 29465
Phone 843-884-0504 FAX 834-884-2886

RESEARCH



Ref 03666787 Check No. 1003 Amt 1,000.00



Southcoast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone 843-884-0504 FAX 834-884-2886

RESEARCH

SHEEP ISLAND PLANTATION, LLC
88 WESTVIEW BLVD
GOOSE CREEK, SC 29445

1004

7/2/06
DATE

PAY TO THE ORDER OF [redacted] $ 4,000.00

DOLLARS

SOUTHCOAST

FOR [redacted]

[redacted] 004 25" 1004 "000004,00000,"

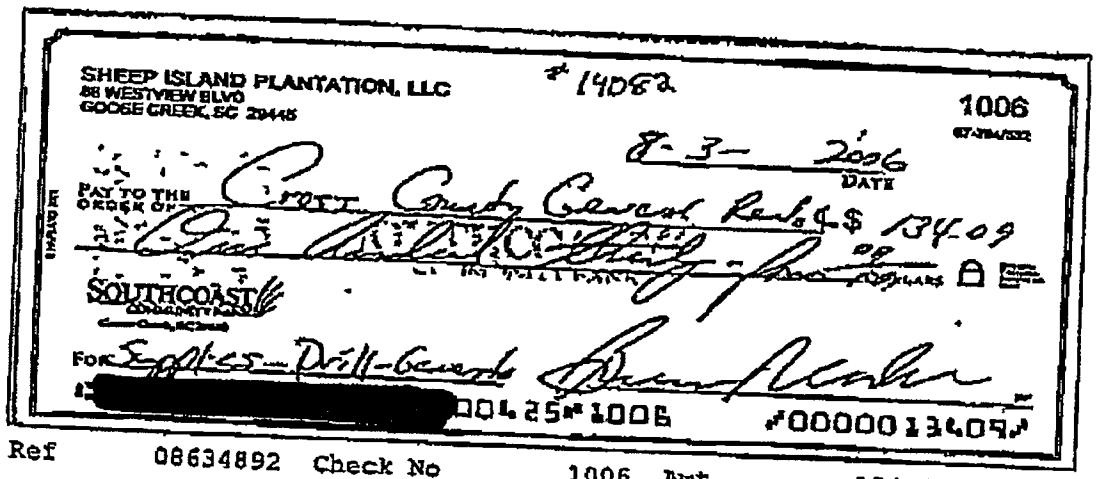
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[redacted]
071102005
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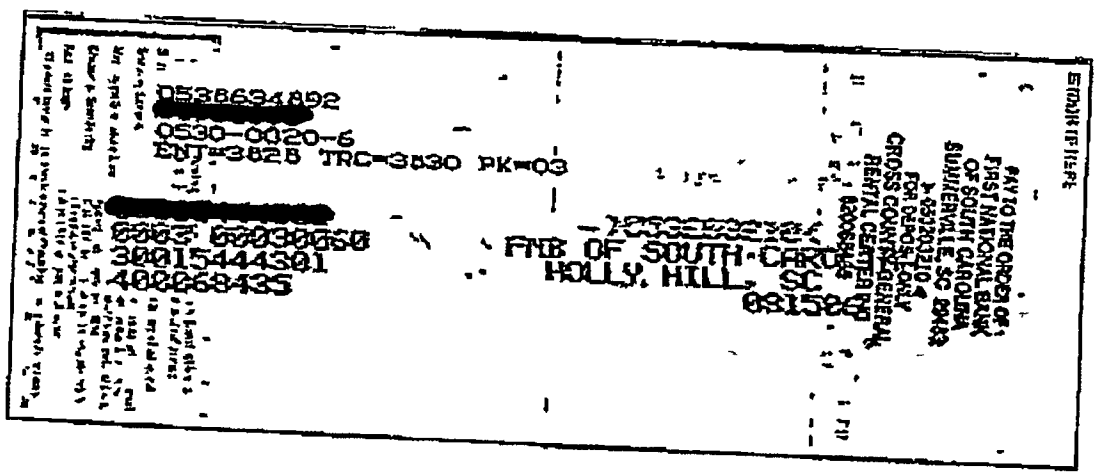
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Southcoast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone: 843-884-0504 FAX 834-884-2886

RESEARCH

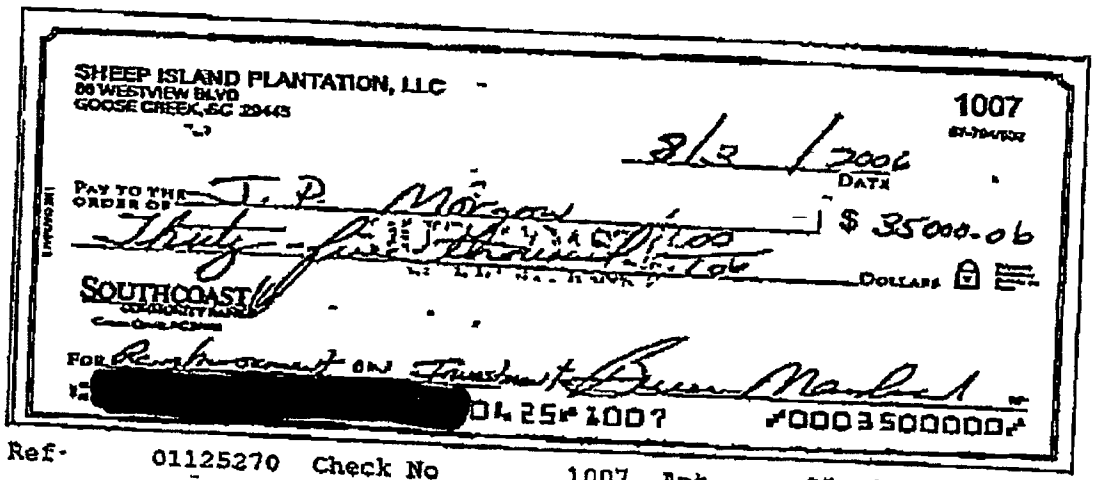


Ref 08634892 Check No 1006 Amt. 134 09



Southcoast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone 843-884-0504 FAX 834-884-2886

RESEARCH


SHEEP ISLAND PLANTATION, LLC
88 WESTVIEW BLVD
GOOSE CREEK, SC 29445

1007

DATE 8/2 /2006

PAY TO THE ORDER OF J. P. Morgan $ 35000.06

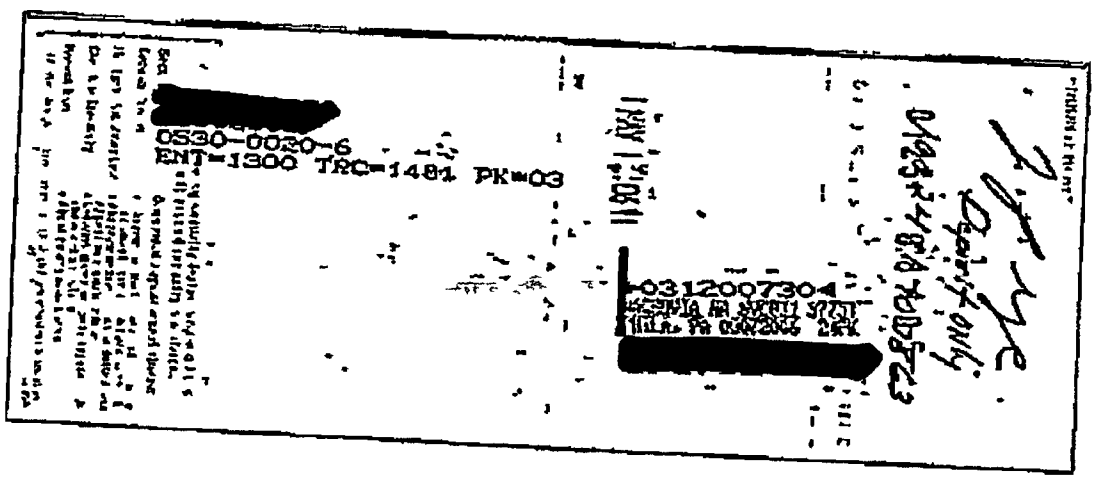
Thirty-five Thousand 06/100 DOLLARS

SOUTHCOAST COMMUNITY BANK

FOR Reimbursement on Investment Rivers Market

[redacted] 04 25 1007 ⑈000350000⑈

Ref- 01125270 Check No 1007 Amt 35,000 00


[redacted]

0530-0020-6
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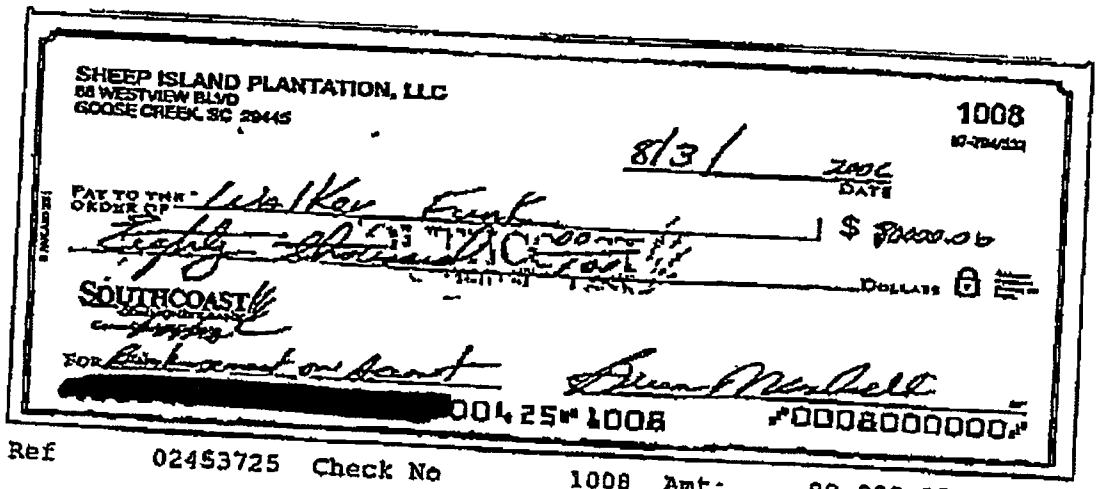
AUG 2006

03120073O4

[redacted]

Southcoast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone. 843-884-0504 FAX 834-884-2886

RESEARCH


SHEEP ISLAND PLANTATION, LLC
58 WESTVIEW BLVD
GOOSE CREEK, SC 29445

1008

8/31 2006
DATE

PAY TO THE ORDER OF Lisa Kay Ewart $ 80000.00

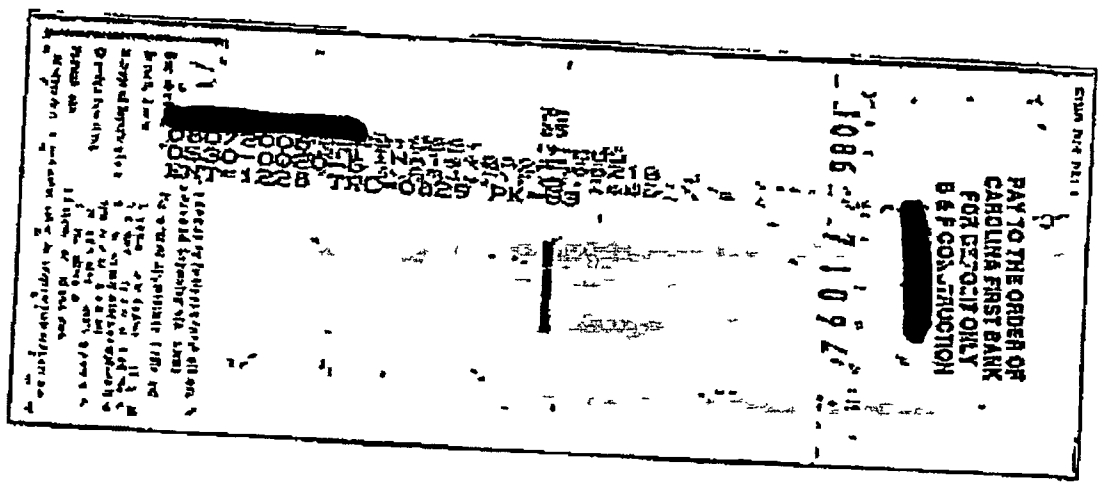
Eighty Thousand and 00/100 DOLLARS

SOUTHCOAST COMMUNITY BANK

FOR Reimbursement Loan Allen Mitchell

[redacted] 004 25 1008 "0008000000"

Ref 02453725 Check No 1008 Amt- 80,000 00

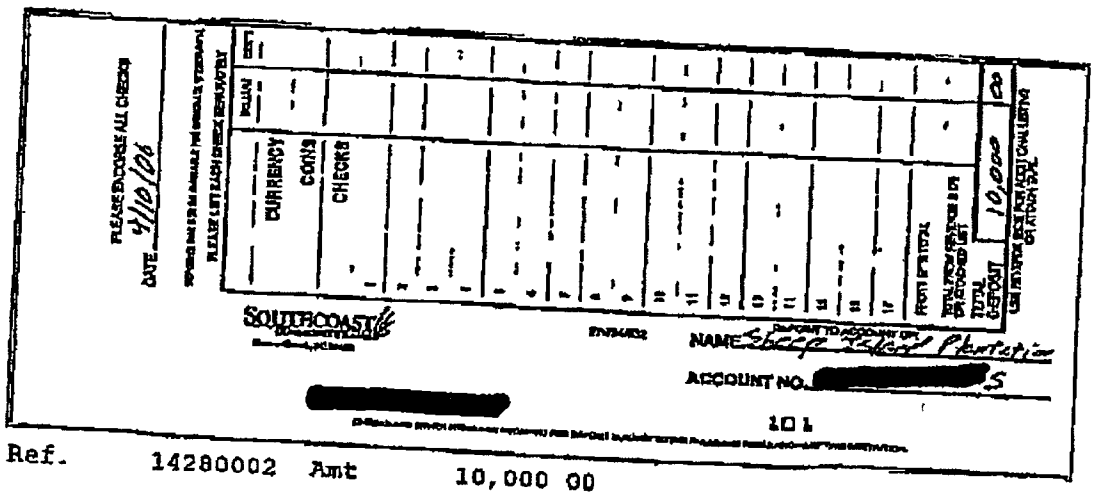

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08/07/2006
0530-00206 INQUIRY
ENT-1228 TRC-0829 PK-83

-1008

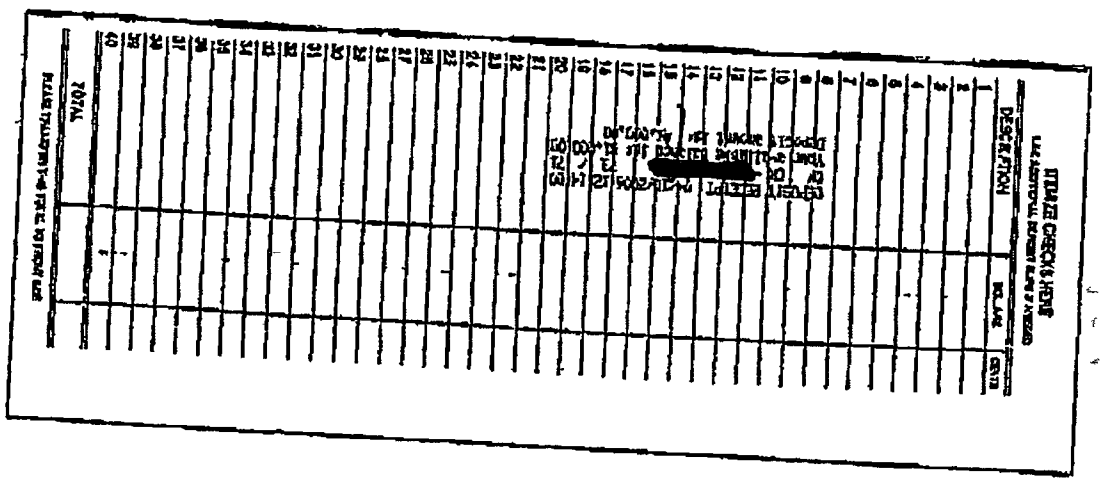
PAY TO THE ORDER OF
CAROLINA FIRST BANK
FOR DEPOSIT ONLY
B & F CONSTRUCTION

Southcoast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone. 843-884-0504 FAX 834-884-2886

RESEARCH

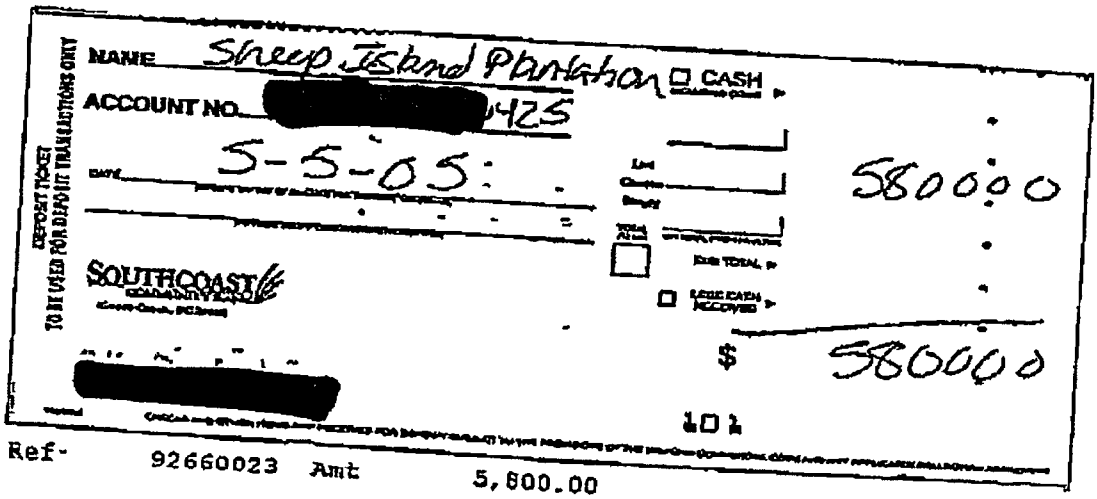


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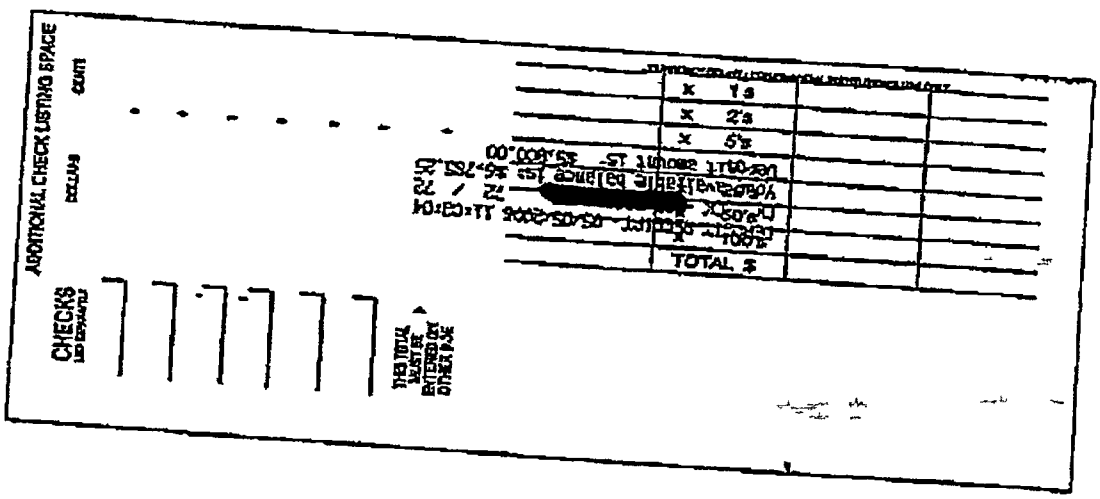


Southcoast Community Bank
P O Box 1561
Mt Pleasant, SC 29465
Phone: 843-884-0504 FAX 834-884-2886

RESEARCH

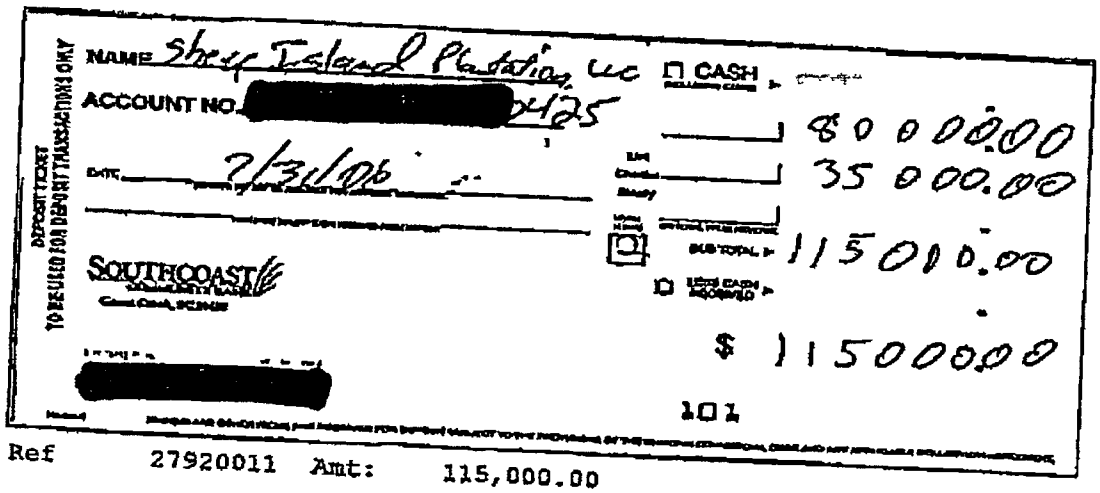


Ref- 92660023 Amt 5,800.00

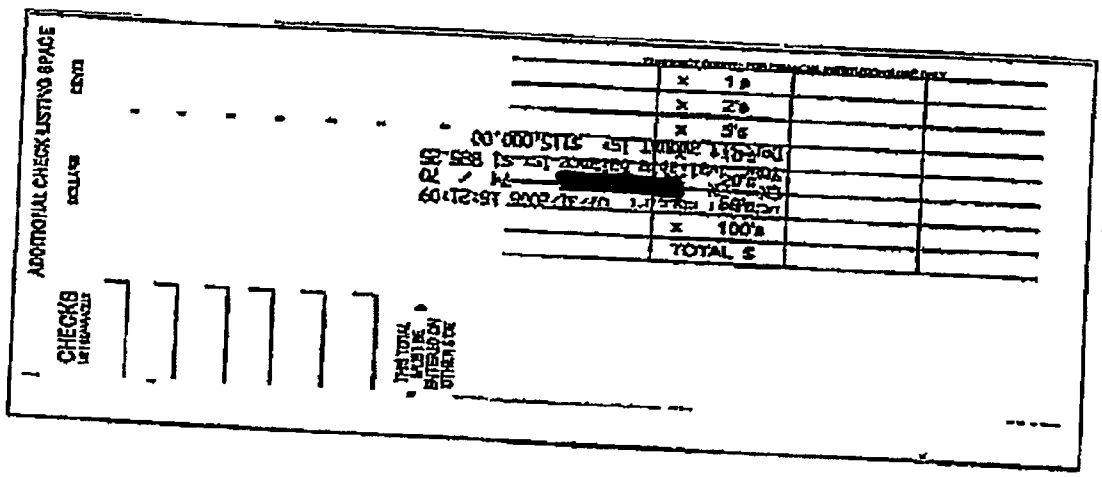


Southcoast Community Bank
P O Box 1561
Mt. Pleasant, SC 29465
Phone: 843-884-0504 FAX 834-884-2886

RESEARCH



Ref 27920011 Amt: 115,000.00



LAFOND & LAFOND, LLC
ATTORNEYS

Benjamin A. Lafond
Catherine B. Lafond
Jenny Anderson Horne

120 South Magnolia Street
Summerville, South Carolina 29483
(843) 832-2007 (843) 832-2009

benjy@summervillelawyers.com

August 1 2006

Via Hand Delivery
Aubrey J Wooddy Jr
The Wooddy Law Firm
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464

Re: Bar Pen Investments - Purchase of Sheep Island Tract

Dear Skipper

Enclosed is my client's check for $50 000 00 for the extension on this purchase.

If you have any questions please call or e-mail me. With kindest regards, I am

Sincerely,

Benjy Lafond

dlg/BL
enclosure(a) as stated
cc:

DEFENDANT'S EXHIBIT 4 EVD 3-14-08 BH

SHEEP ISLAND PLANTATION LLC
89 WESTVIEW BLVD
GOOSE CREEK, SC 29445

1005

7-30 - 2006
DATE

PAY TO THE ORDER OF [redacted] $ 50000 00

SOUTHCOAST COMMUNITY BANK
Extension through 8-30-2006

Dollars

SOUTHCOAST COMMUNITY BANK

FOR For Extension Through 8-30 [redacted] 25[redacted] 1005

COMMERCIAL LOAN APPLICATION

CREDIT REQUESTED

Amount Requested	Term of Credit Requested	Loan Type	Credit Request
1,875000 00	18 month Interest	Commercial Land	☑ Applicant Only ☐ Joint With Co-Applicant(s)
Market Survey	**Purpose of Credit Request**	**App #**	We intend to apply for joint credit*
	Purchase 101 ACRES of Land		Applicant _____ Co-Applicant _____

COMPLETION INSTRUCTIONS FOR APPLICANT

Complete the Applicant information for the first Applicant. Mark the appropriate box to indicate whether the Applicant is applying as a Borrower Guarantor Cosigner Grantor (of collateral) or Other for a different capacity If the Applicant is a married individual he or she may apply for individual credit. (Do Not complete Marital Status question below if application is for individual unsecured credit)

APPLICANT INFORMATION

Applicant is a ☑ Borrower ☑ Guarantor ☐ Cosigner ☐ Grantor ☐ Other _____

Name of Applicant (Business Name or Last Name if Individual)	Applicant First Name (If Individual)	SSN/TIN#
Jeremy S Marshall	Jeremy	[redacted]

Assumed Business Names (If Any)	Filing Dates	Filing Locations	DBA Name
To Be Incorporated under the Name Sheep Island Plantation LLC			

Check Appropriate Box

- ☐ If you are applying for individual credit and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, do not complete the section for marital status
- ☐ If you are applying for individual credit, but are relying on income from alimony child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all sections to the extent possible providing information about the person whose alimony support or maintenance payments or income or assets you are relying.
- ☑ If you are applying for joint credit with another applicant, complete all sections and attach joint application

Marital Status(If Individual Borrower)
☐ Married ☐ Unmarried ☐ Separated

Street Address	City	ST	Zip Code	Phone Number
88 Westview Blvd	Goose Creek	S.C	29445	843-863-9983
Mailing Address	**City**	**ST**	**Zip Code**	
Same As Above				
Principal Office Address (if not listed above)	**City**	**ST**	**Zip Code**	

State of Organization	Applicant is					
South Carolina	☑ An Individual	☐ A Proprietorship	☐ A Partnership	☐ A Corporation	☐ Non Profit	
	☐ An Association	☐ A Trust	☐ A Gov t Entity	☑ A LLC To Be Incorporated		

SCHEDULE OF COLLATERAL OFFERED BY THIS APPLICANT

Description	Value	Total Liens	Ownership Status for This Applicant	Creditor Name
101 ACRES of Land off TMS # 194-00-02-162	$2500000.00	$	☑ Purchase Money ☐ Presently Owned	
		$	☐ Purchase Money ☐ Presently Owned	
		$	☐ Purchase Money ☐ Presently Owned	
		$	☐ Purchase Money ☐ Presently Owned	
		$	☐ Purchase Money ☐ Presently Owned	

Additional Sheet if Necessary

LINDA L BYRD
Assistant Vice President/Goose Creek Branch

SOUTHCOAST COMMUNITY BANK

197 Old Mount Holly Road Suite 200 Goose Creek SC 29445
Email: lbyrd@southcoastbank.com Main. 843 553-0021
Cell 843 532 2042 Fax. 843 553-6551

DEFENDANT'S EXHIBIT 5 6/10 Hicks Burt

FINANCIAL AND INCOME STATEMENT SUMMARY

Child Support or Separate Maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this

Total Assets	$ 1172000.00	Total Annual Income	$ 10,000.00
Total Liabilities	$ 0	Total Annual Expenses	$ 0
Net Worth	$ 1172000.00	Net Annual Cash Flow	$ 10,000.00

☐ See Attached Financial statements

RELATIONSHIP INFORMATION - APPLICANT'S HISTORY WITH LENDER

☒ New Customer
☐ Existing Customer

Customer Since(MM-YYYY) _____
Last Tax Return Date on File(YYYY) 12/31/2006

Last Financial Statement Date(MM DD-YYYY) 12/31/2006
Last Credit Report Date(MM-DD-YYYY) _____
Last Credit Bureau _____

Liabilities with Lender
Direct $ 0
Indirect $ 0
Total $ 0

Deposits with Lender
DDA Avg $ 0
Other Avg $ 0
Total Avg. $ 0

Total Credit With Lender
New Credit $ _____
Proposed Total $ 1,875000.00

SIGNERS FOR THIS APPLICANT

Name	Title	Authorized	SSN #
Tracy S Marshall	Secretary	Yes	[redacted]
Address: 81 Westview Blvd	City: Goose Creek	ST: SC	Zip Code: 29445
		Phone Number: 843-863-9983	
Name: Kevin S Hillestad	Title: President	Authorized: Yes	SSN #
Address: [redacted]	City	ST	Zip Code
		Phone Number: 843-863-9983	
Name: Mike Funk	Title: Treasurer	Authorized: Yes	SSN #
Address: [redacted]	City	ST	Zip Code
		Phone Number: 843-863-9983	
Name	Title	Authorized	SSN #
Current Address	City	ST	Zip Code
		Phone Number	

Use Additional Sheet If Necessary

APPLICANT SIGNATURES

The undersigned hereby apply for the loan or credit described in this application on behalf of the applicant business I/We certify that I/we made no misrepresentation in this loan application or in any related documents that all information is true and complete and that I/we did not omit any important information. I/We agree that any property securing the loan or credit will not be used for any illegal or restricted purpose Lender is authorized to verify with other parties and to make any investigation of my/our credit, either directly or through any agency employed by the Lender for this purpose Lender may disclose to any other interested parties information as to Lender s experiences or transactions with my/our account I/We understand that Lender will retain this application and any other credit information Lender receives even if no loan or credit is granted These representations and authorizations extend not only to Lender but also to any insurer of the loan and to any investor to whom Lender may sell all or any part of the loan. I/We further authorize Lender to provide any such insurer or investor any information and documentation that they may request with respect to my/our application credit or loan.

APPLICANT

Tracy S. Marshall
Holy Island Plantation LLC.

By _____
By _____

Use Additional Sheet If Necessary

FOR LENDER'S USE ONLY

Officer No / Name	Approved By	Concurrence By (If Needed)	Committee Date	Decision Date
Branch	Application Date 11/12/2006	Application No	Commitment No	Loan No

Decision and Comments ☐ Approved ☐ Denied ☐ Incomplete ☐ Counteroffer ☐ Conditional Approval ☐ Withdrawal ☐ Other _____

USER PRO Lending Ver 8.33.00.004 Copr. Harland Financial Solutions, Inc. 1997, 2007 All Rights Reserved

A SUMMARY APPRAISAL REPORT OF

Approximately 101 165 Acres of Vacant Land
Located on Sheep Island Road
Berkeley County, South Carolina
TMS# 194-00-02-162

CLIENT

Mr Marc A Knight
Vice President/Commercial Loan Officer
Southcoast Community Bank
597 Old Mount Holly Road
Suite 200
Goose Creek, South Carolina 29445

DEFENDANT'S EXHIBIT 60 EVD 3-12-08 MH

PREPARED BY

Michael A. White, GAA
S C Certified General Appraiser #CG200
Hartnett Realty Company
134 Meeting Street, Suite 120
Charleston, South Carolina 29401
Copyright 2006 Hartnett Realty Company

MARKET VALUATION DATE

July 26, 2006

HARTNETT REALTY CO., INC.

APPRAISERS BROKERS CONSULTANTS

Established 1947

Thomas F Hartnett, GAA, Certified General Appraiser
Michael A. White, GAA, Certified General Appraiser
W Joseph Clark Certified Residential Appraiser
Travis Lee Avant Appraiser
Thomas F Hartnett, Jr., Appraiser
William S Smith Real Estate Sales
Janet E. Thomas, Manager

134 Meeting Street Suite 120
Post Office Box 221
Charleston SC 29402
843 723 7222
843 723 9403 Fax
www hartnettrealty com

July 26, 2006

Mr Marc A Knight
Vice President/Commercial Loan Officer
Southcoast Community Bank
597 Old Mount Holly Road
Suite 200
Goose Creek, South Carolina 29445

In re Appraisal of approximately 101 165 acres of land
Located on Sheep Island Road
Berkeley County, South Carolina
TMS# 194 00-02 162

Dear Mr Knight

In accordance with your request, I have made a Summary Appraisal Report of the above captioned subject property for the purpose of estimating its Market Value as of July 26, 2006 I physically inspected the subject property on July 26, 2006

Market Value is defined as "The most probable price which a property should bring in a competitive and open market under all condition requisite to a fair sale the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus " The marketing time of the subject property as of the date of this report has been estimated to be three to nine months as discussed in the appraisal report

As a result of the appraisal it is my opinion that the current Market Value of the subject property as vacant as of July 26 2006 is

TWO MILLION SIX HUNDRED
TWENTY FIVE THOUSAND DOLLARS
$2,625,000

The supporting data and the analysis and conclusions upon which this value is based are contained in the accompanying report

This is a Summary Appraisal Report that is intended to comply with the reporting requirements set forth under Standard Rules 2 2 and 8 2(b) of the Uniform Standards of Professional Appraisal Practice (USPSP) for a Complete Appraisal Summary Appraisal Report

To the best of my ability this appraisal meets or exceeds the requirements of Title XI of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989, Public Law 101 73, 103 STAT, 183, 51 (1989) This appraisal has also been made in conformity with the Code of Ethics of the Appraisal Institute and the Appraisal Section of the National Association of Realtors

I certify that I have no present or future contemplated interest in the property which is the subject of this report and that my fee for making this appraisal was in no way contingent upon the value reported

Respectfully submitted,

Michael White, GAA
South Carolina Certified
General Appraiser #CG200

P O Box 221 Charlestor South Carolina 29402

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(MAW-06248)

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ADDENDUM

Engagement Letter
Sales Contract
Subject Property Deed
Qualifications of the Appraiser

LIMITING CONDITIONS

This certificate and report are made expressly subject to the following stipulations and conditions

The management of the property is assumed to be competent and the ownership to be in responsible hands

No responsibility is assumed by this Appraiser for matters that are legal in nature or for auditing or engineering opinions, nor is any opinion of the title rendered herewith This appraisal assumes that the title to the property is good and marketable Any liens or encumbrances that may now exist have been disregarded and the property has been appraised as though there were no delinquencies in the payment of general taxes or special assessments

Possession of this report or any copy does not carry with it the right of publication nor may the report be used for any purpose by any but the applicant without the previous written consent of the Appraiser, and in any event, only in its entirety and with proper qualification The value for land as contained in the within report, may not be used in making a summation appraisal by combination with values created by another Appraiser Either is invalidated if so used

This property has not been surveyed at my direction to establish the facts of legal description and exact dimensions which are to be presumed to be substantially as stated

This Appraiser, by reason of this report, is not obligated to give testimony or attendance in court, or at any governmental hearing, with reference to the property evaluated, unless arrangement has been made previously therefore I shall be available to testify in court as an expert witness regarding this appraisal upon reasonable notice for a period of six months following the reported date of valuation Constantly changing market conditions and prices tend to render the appraisal obsolete after that period Subsequent availability for appearance as an expert witness will be determined solely by me and will be contingent upon the opportunity to review the property and the report in light of market changes that have occurred The right to refuse appearance in court as an expert witness on this appraisal beyond two years after appraisal date is reserved unless special additional provisions are agreed upon

No guarantee of any kind or description is intended or implied by virtue of my inspection and estimate of value on the property herein appraised

It is assumed that revenue stamps placed on deeds, used to indicate comparable sales, were in the correct amount to reflect the true and actual money consideration involved, and that the information secured from brokers or interested parties to verify the transactions, is in conformity with the facts

No consideration has been given in this report as to easements, if any, or rights-of way over, upon, or under said premises unless specifically mentioned herein

In the event information becomes available in the future not known to the Appraiser as of the date of appraisal, he reserves the right to review his opinion in light thereof This appraisal represents the opinion of the Appraiser, based upon his experience over a period of many years, and assumes that all national, state, county and city laws, ordinances, and restrictions have been complied with

It is assumed that there are no hidden or unapparent soil conditions that would render the property's title or market value more or less valuable No responsibility is assumed for such conditions, or for engineering that might be required to discover such factors

To the best of the undersigned's knowledge, the presence of Radon has not been detected on this property or, if Radon has been detected, it has been determined that the level of Radon present is considered safe according to the standards established by the Environmental Protection Agency The undersigned does not, however, make any guarantees or warranties that the property has been tested for the presence of Radon, or, if tested, that the tests were conducted pursuant to EPA approved procedures

The American with Disabilities Act (ADA) became effective January 26 1992 This Appraiser has not made a specific compliance survey and analysis of the subject property to determine whether or not it is in conformity with the various detailed requirements of the ADA It is possible that a compliance survey of the subject property together with detailed requirements of the ADA could reveal that the subject property does not conform to one or more of the requirements of the ADA If so, this fact could have a negative effect on the Market Value of the subject property This Appraiser has not been provided nor has a compliance survey been performed for the subject property

GENERAL ASSUMPTIONS

This appraisal report has been made with, and is subject to, the following general assumptions

That title to the property is assumed to be good and marketable unless otherwise stated No responsibility is assumed for the legal descriptions or for any legal matter

That the definition of value together with other definitions and assumptions on which any analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included here in their entirety

- That title to the property is assumed to be marketable The property is considered to be under responsible ownership and management and free of all liens and encumbrances except as specifically discussed herein

- That the facts, estimates and opinions furnished the appraisers by others and contained in this report are considered to be from reliable sources and' where feasible have been verified However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report

- All engineering and/or surveys are assumed to be correct The sketches, plot plans and drawings included only to assist the reader in visualizing the property

- It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property that would render them more or less valuable The appraisers specifically accept no responsibility for damage for termites, woodborers or any other wood-infesting insects No responsibility is assumed for such condition or for engineering or inspection that would be required to discover them

- Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser The appraiser has no knowledge of the existence of such materials on or in the property The appraiser, however, is not qualified to detect such substances The presence of potentially dangerous or hazardous materials, gases or toxic substances may affect the value of the property and in this appraisal the value estimate is predicated on the assumption that there is no such element on or in the property that would cause a loss in value No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them

Good structural and mechanical conditions are assumed to exist and no opinion as to these matters is to be inferred or construed from the attached report

It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless non-compliance is stated, defined and considered in the appraisal report

It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a non-conformity has been stated, defined and considered in the appraisal report

It is assumed that all required licenses, certificates of occupancy, legislated or administrative consents from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the valued estimated contains in this report is based

- It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein unless noted within the report

SUMMARY OF IMPORTANT CONCLUSIONS

Location	Sheep Island Road and Leisure Drive Berkeley County, South Carolina 29483 TMS# 194-00 02 162
Owner of Record	Bar Pen Investments, LLC
Purchaser	E Bruce and or Jeremy Marshall
Land Area	101 165 Total Acres
Zoning	Flex 1
Estimated Market Value	$2,625,000
Highest and Best Use	Single-Family Residential Development
Date of Appraisal	July 26, 2006
Date of Inspection	July 26, 2006
Appraiser	Michael A White, GAA S C Certified General Appraiser #CG200
Flood Zone	Zone X F E M A Community Panel 450029 0560D Dated October 16, 2003
Census Tract	207 01
Client	Mr Marc Knight Vice President Southcoast Community Bank 597 Old Mount Holly Road Goose Creek, South Carolina 29445

IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is identified as the subject of this appraisal report is known as Tract 3A containing approximately 10 165 acres of land located on the northwest corner of Sheep Island Road and Leisure Drive, Berkeley County, South Carolina The subject property is additionally identified by the Berkeley County Tax Assessor as Parcel 162 on Berkeley County tax map number 194 00 02 This Appraiser has obtained a copy of the most recent subject property deed which contains the complete legal description of the subject property A copy of this deed as obtained by this Appraiser can be found in the addendum of this appraisal report

DATE OF THE APPRAISAL

July 26, 2006

DATE OF THE INSPECTION

July 26, 2006

PROPERTY RIGHTS APPRAISED

The property rights appraised are those of full, complete and unencumbered ownership, subject only to the governmental rights of taxation police power eminent domain and escheatment This is the greatest right and title that an individual can hold in real estate It is known as "Fee Simple Interest "

OWNER OF RECORD

The current owners of record of the subject property are Bar Pen Investments, LLC, 622 Johnnie Dodds Boulevard, Mount Pleasant, South Carolina 29464 according to the Berkeley County tax records for the subject property The current property owners acquired the subject property for $1,441,601 on July 7, 2006 according to the subject property deed obtained by this Appraiser A copy of this deed as obtained by this Appraiser can be found in the addendum of this appraisal report

PURPOSE OF THE APPRAISAL

The purpose of this appraisal report is to render an opinion of Market Value for the subject property, as if vacant, known as Tract 3A (TMS# 194-00-02 162) containing approximately 101 165 acres of land located at the northwest corner of Sheep Island Road and Leisure Drive Berkeley County, South Carolina as of July 26, 2006

INTENDED USE OF THE APPRAISAL

The intended use of this appraisal is to estimate the current Market Value of the subject property, as if vacant, known as Tract 3A (TMS# 194 00-02 162) containing approximately 101 165 acres of land located at the northwest corner of Sheep Island Road and Leisure Drive Berkeley County South Carolina as of July 26, 2006 for mortgage loan purposes

INTENDED USER OF THE APPRAISAL

This appraisal report is made for Mr Marc Knight of Southcoast Community Bank or his assigns There are no other intended users Any other party who relies on or utilizes this appraisal report for any purposes is considered an unintended user The Appraiser does not assume responsibility for the unintended use of this appraisal report

DEFINITION OF VALUE

Market Value is defined as follows

"The most probable price which a property should bring in a competitive and open market under all condition 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 are the consummation of a sale as a specified date and the passing of title from seller to buyer under conditions whereby

1 Buyer and seller are typically motivated

2 Both parties are well informed or well advised, and acting in what they consider their best interests,

3 A reasonable time is allowed for exposure in the open market,

4 Payment is made in terms of cash in U S dollars or in terms of financial arrangements comparable thereto,

5 The price represents a normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale

Sources Department of the Treasury- Office of Thrift Supervision (12 CFR Part 564 2) and Office of Comptroller of the Currency (12 CFR Part 34 42) and the Federal Deposit Insurance Corporation & Regulation (12 CFR Part 323 2)

SCOPE OF THE APPRAISAL INVESTIGATION

The appraisal analysis of the subject property will be completed in several individual phases, general data collection, neighborhood data collection, data collection on the subject property, market data collection, analysis of all collected data, highest and best use analysis, valuation of the subject property, and preparation of the appraisal report These phases are described below

GENERAL DATA COLLECTION

This involves the collection of data on national, regional, state, and local trends, and an identification and analysis of the social, economic, environmental, and governmental forces affection the market value of the subject property

NEIGHBORHOOD DATA COLLECTION

This aspect of the appraisal involves inspection of the subject property neighborhood, collection and analyzing data on growth trends in the area demographics of the area, physical characteristics, utilities available to the area, and public or private infrastructure

DATA COLLECTION ON THE SUBJECT PROPERTY

This phase of the appraisal process involves a physical inspection of the subject property, the people with knowledge of the subject property and with knowledge of the daily operations of the subject property are interviewed, site plans and specifications for the subject property are reviewed, information such as zoning and real estate tax information are gathered, and the overall condition of the subject property is determined This Appraiser physically inspected the subject property on July 26, 2006 This Appraiser has relied upon data gathered from the Berkeley County RMC Office, the Berkeley County GIS system and the local Multiple Listing Service for data on the subject property

MARKET DATA COLLECTION AND ANALYSIS OF ALL DATA

This phase of the appraisal process involves the investigation and confirmation of vacant land sales considered similar to the subject property This Appraiser has relied upon the local Multiple Listing Service, the county tax records and the records from the Berkeley County RMC office as my data sources

HIGHEST AND BEST USE ANALYSIS

This phase of the appraisal process involves analyzing all of the previously collected data and determining the Highest and Best Use of the subject property within the framework of supply and demand, legal uses of the subject property possible physical uses of the subject property, feasible uses of the subject property and the maximally productive use of the subject property as if vacant land or as improved property

VALUATION OF THE SUBJECT PROPERTY

In this phase of the appraisal process the Direct Sales Comparison Approach is used in the estimation of value for vacant land In the estimation of Market Value for improved properties, the Direct Sales Comparison Approach, the Cost Approach and the Income Approach are applied to the subject property These three approaches will then be reconciled into a final Market Value estimate for the subject property However, in the case of the subject property, the Cost Approach to Value and the Income Approach to Value are not considered applicable to the subject property Generally, in the appraisal of a vacant tract of land the Cost Approach and the Income Approach are not considered applicable and in the case of the subject property, this Appraiser is of the opinion that these two approaches are not applicable Therefore, this Appraiser will not utilize the Cost Approach to Value or the Income Approach to Value in this appraisal report A complete and detailed discussion of the omission of the Cost Approach to Value and the Income Approach to Value can be found in a later section of this appraisal report

PREPARATION OF THE APPRAISAL REPORT

The final phase of the appraisal process is the preparation of full, completed written appraisal report as per the request of the client, Mr Marc Knight of Southcoast Community Bank

REGIONAL DESCRIPTION

Charleston, South Carolina was incorporated in 1783 and has been described as 'America's Most Historic City" English colonists established the original settlement in 1670 under a grant from Charles II, King of England The city was then named "Charles Town' in honor of the king The City of Charleston itself is a peninsula of land situated at the confluence of the Cooper River and the Ashley River These two rivers meet to form what is known as the Charleston Harbor, the entrance of which is located approximately five to six nautical miles from the Atlantic Ocean The City of Charleston is one of America's most beautifully preserved architectural and historic treasures, with a rich 300-year history

The City of Charleston is located in Charleston County, which is a long, narrow county approximately 10 to 15 miles deep and 91 miles long Berkeley County and Dorchester County adjoin Charleston County to form a three county region known as the Tri County Area The Tri County Area covers approximately 3,842 square miles Charleston and Berkeley Counties are the largest of the three counties The two largest municipalities in Tri County area are the City of Charleston and the City of North Charleston Other large and growing municipalities in the Tri-County area include the Town of Mount Pleasant the City of Goose Creek, the Town of Summerville and the City of Hanahan Other smaller municipalities in the Tri County area include the Town of Sullivan's Island, the City of Isle of Palms, the City of Folly Beach, the Town of Moncks Corner, the Town of Bonneau and numerous other individual, smaller municipalities

POPULATION

The latest United States census which was completed in 2000, places the estimated population for the Tri County area at 549,033 with projected population of 769 483 by the year 2030 The 2000 census estimated the population for the City of Charleston at 96,650 people, the City of North Charleston at 79,641 people, the Town of Mount Pleasant at 47 609 people, the City of Goose Creek at 29,208 people, the Town of Summerville at 26,787 people, and the City of Hanahan at 12,937 people Over the past two decades the Tri County area has seen a population increase of over 27% The projected Tri County population of 769,483 people by 2030 would indicate that this trend will continue and actually increase over the next two decades
The rapidly increasing population trends for the Tri-County Area are reflected in the following chart

AREA	1980	1990	2000	% CHANGE
Berkeley	94,745	128 776	142,651	+50%
Charleston	276 556	295 039	309 969	+12%
Dorchester	59,045	83,060	96 413	+63%
Tri County	430,346	506 875	549,033	+8 3%

Today two and a half times as many people are living the Tri-County Area as there were in 1950 In the 1980s, Dorchester County had the second highest growth rate in the state, while Berkeley County, the third highest Population growth slowed during the 1990's, due in part to the closing of the Charleston Navy Base and Hurricane Hugo However, the regional economy rebounded and demographers estimate that the areas population will continue to increase The majority of the fastest growing areas in the State of South Carolina are located within the Tri County area

CLIMATE

The Tri-County Area, or the "Lowcountry", as it is referred to locally is a relatively flat coastal region of the state The Lowcountry enjoys a moderate to mild climate The average daily temperature is the Tri-County area is a high of 75 7 degrees and a low of 55 7 degrees During the winter months, low temperatures average around the mid 40's and during the summer months high temperatures average in the upper 80's The average elevations for the area range from sea level to no more than eighty (80) feet above mean sea level The Tri County area is a very humid region and rain can be a daily occurrence on summer afternoons The average annual rainfall is fifty-two inches (52") and the average humidity is eighty six percent (86%) During the hurricane season it is not uncommon for high tides and excessive rains to cause shallow flooding in the low elevations of the area

ECONOMY

For years, the economy of the Tri County area was heavily based on three economic forces government, the seaport and tourism The government employed one in four people at the beginning of 1990 However, as a result of

the closing of the Charleston Naval Shipyard and Naval Complex, coupled with the significant growth of such industries as tourism health care and the Port of Charleston, a significant shift has occurred Today the largest employment field in the Lowcountry is in the services sector, i e , hotels and accommodations, healthcare, and other professional business services Since January of 1995, the region has recorded more that $4 7 billion in new capital investment and has announced the creation of more than 29,500 new jobs The economy of the Tri County area has successfully transitioned from a government-oriented economy to a more diverse private sector oriented one The Tri-County area has a total civilian labor force of approximately 282 029 people of which approximately 271 227 were employed according to 2002 labor force figures Total unemployment is 10 802 people, which equates to an unemployment rate of 3 8% The following chart summarizes the current employment by sector for the Tri County area as provided by the Charleston Metro Chamber of Commerce

Employment Sector	% of Total Employment
Construction	8%
Manufacturing	9%
Transportation and Utilities	5%
Trade	24%
Financial Activities	4%
Services (Business Health etc)	30%
Government/Public Administration	20%

The Tri-County area and especially the Charleston area has long been a major tourist attraction along the eastern seaboard The economic impact of the tourist industry and business visitors is estimated at over five billion dollars annually Visitors to the Charleston area spend on the average of $225 per person per day and provided an estimated 86,000 jobs directly and indirectly for area residents The Tri County area has numerous attractions for visitors to the area Such attractions include the Charleston Museum, America's first museum, Fort Sumter, the manmade fortress where the Civil War began Patriot's Point the world's largest naval and maritime museum and home to the WWII aircraft carrier Yorktown, and Fort Moultrie, scene of the first decisive American victory of the Revolution Charleston's Aquarium Wharf home to the South Carolina Aquarium, IMAX Theater, the Charleston Maritime Center, Magnolia Gardens, Middleton Plantation, the beaches, golf courses and numerous and varied attractions and facilities

In addition to the impressive tourist industry, the Tri-County area has one of the Southeast's most notable medical hubs There are approximately 19,000 people employed in the region's ten (10) major hospitals and medical facilities and an estimated 32,000 people employed in the area's medical industry overall The largest of the concentration of the area's health care industry surrounds the Medical University of South Carolina (MUSC), which is located on the peninsula in the downtown area of the City of Charleston The Medical University is located on more than fifty (50) acres of land on the peninsula and continues to rapidly expand There six MUSC colleges which provided a superb and nationally recognized education Additionally, there are numerous patient care facilities, which also provide superb care and are also nationally recognized in such areas as cardiology, cancer and pediatrics

The second largest presence in the medical industry is Roper/St Francis Healthcare which operates the Roper and Bon Secours St Francis Hospitals as well as other smaller medical branches and medical facilities throughout the Tri County area Roper/St Francis Healthcare has received numerous national awards for healthcare, patient satisfaction and facilities over the past several years In addition to MUSC and Roper/St Francis Health care other major hospitals in the area include Charleston Memorial, East Cooper Regional Medical Center, Trident Health System and the Veterans Administration Medical Center

The Port of Charleston is one of the nation's top-ranked port facilities The Port of Charleston is the largest container port along the Southeast and Gulf coasts, second on the entire east coast and ranks fourth nationwide On the entire East and Gulf coasts, only the Port of New York and the Port of New Jersey handle more containers that of the Port of Charleston The Port of Charleston handles approximately two million units (twenty foot equivalent units) of cargo annually The Port of Charleston currently operates five terminals within the area and plans are currently being made for a sixth, state of the art facility located at the former Charleston Naval Base There is an estimated 54,000 port related jobs in the region, pumping more than three billion dollars into the local economy These related jobs include the trucking industry, stevedores, longshoreman, steamship lines, tug boat companies, custom house brokers, freight forwarders and numerous other companies

Although the military presence in the Tri-County area has dramatically declined over the past two decades, the military remains one of the largest employers in the area In total there are approximately 18,000 active duty and civilians employed in the area The largest military facility and employer is the

Charleston Naval Weapons Station with over forty (40) separate commands and a total of thirteen thousand (13,000) employees The second largest military employer is the Charleston Air Force Base which is home to fifty (50) C 17 aircraft and employs approximately five thousand (5,000) people Another major military employer in the area is the Space and Naval Warfare Systems Center (SPAWAR) which is a high technology, engineering facility that designs, builds, tests, fields and supports the Navy as well as other federal customers SPAWAR employs over 1,200 people directly and supports an estimated 7 000 local defense contractors in the area Other major military employers in area include the Nuclear Power Training Command and the Nuclear Power Training Units, Naval Facilities Engineering Command and the Army The following chart summarizes the ten largest employers in the Tri County area according to figures provided by the Charleston Metro Chamber of Commerce

Employer	# of Employees
1 US Navy	12,543
2 MUSC	8 200
3 Charleston Air Force Base	5,000
4 Charleston County School District	5,000
5 Roper/St Francis Healthcare	4,000
6 Berkeley County School District	3,457
7 Mead Westvaco Corporation	2,858
8 Piggly Wiggly Carolina Corporation	2,447
9 Charleston County	2,243
10 Robert Bosch Corporation	2 082

LOCATION

The Tri-County area is located half way between New York City and Miami The chart on the following page of this appraisal report indicates the distance to major cities from the Tri-County area

Atlanta, GA	291 miles	Miami, FL	590 miles
Chicago, IL	906 miles	New York, NY	768 miles
Los Angeles CA	2 458 miles	Washington, DC	532 miles

TRANSPORTATION

The road system in and around the Tri-County area is considered to be very good The area is served by the following three (3) US interstates Interstate 26, Interstate 526 and Interstate 95 The area has five (5) US primary

highways Highway 17, Highway 52, Highway 78, Highway 176 and Highway 701 The area is also served by seventeen (17) South Carolina highways

The Tri County area is served by one international airport and six private executive airports The Charleston International Airport is located ten miles northeast of downtown Charleston The terminal complex consists of 300 000 square feet and handles over one millions six hundred thousand (1 600,000) passengers per year flying to major cities throughout the United States and Europe via five major airlines

The Tri County area is served by three railroad lines These railroad lines include Norfolk Southern, CSX System and Amtrak The area is also serviced by one local bus service, which is the Charleston Area Regional Transportation Authority (CARTA)

EDUCATION

The Tri-County area enjoys a fine college and university system that includes the Medical University of South Carolina, Charleston Southern University, The Citadel, The College of Charleston and Trident Technical College Additionally, there are nearly one hundred (100) private and parochial schools that serve the Tri-County area providing alternatives to public education The primary and secondary public education system is administered by each of the respective counties

CHARLESTON COUNTY

Charleston County is a long, narrow county approximately 10 to 15 miles deep and 91 miles long Charleston County is the largest of the three counties in the area and consists of a total of 1,357 14 square miles, which includes all land and water area According to the 2000 United States census, Charleston County had a population of 309,969 people The population of the county is expected to exceed 350,000 people according to current population trends Charleston County is currently the third most populated county in the state The male population of the county is approximately 48 3% and the female population is approximately 51 7% according to the 2000 United States census The largest municipalities in Charleston County are the City of Charleston, the City of North Charleston and the Town of Mount Pleasant According to the 2000 census the City of Charleston has a population of 96,650 people, the City of North Charleston had a population of 79,641 people and the Town of Mount Pleasant had a population of 47,609 people Other municipalities with

populations in Charleston County according to the 2000 census include Awendaw (1,195 people), Folly Beach (2,116 people) Hollywood (3,946 people), Isle of Palms (4 583 people) Kiawah Island (1,163 people), Lincolnville (904 people), McClellanville (459 people), Meggett (1,230 people), Ravenel (2,214 people), Rockville (137 people), Seabrook Island (1,250 people) and Sullivan's Island (1 911 people)

Charleston County has experienced a tremendous amount of growth over the past decade The majority of this growth has taken place in the Mount Pleasant and East Cooper area Currently the City of North Charleston is experiencing a tremendous amount of growth The growth of the City of North Charleston should continue well into the future as numerous re-development projects (Noisette, Century Oaks, etc) are currently in their early phases The other outlying municipalities in Charleston County have experienced steady growth over the past decade This growth trend should continue well into the foreseeable future

BERKELEY COUNTY

Berkeley County is the second largest of the three counties comprising the Tri County area Berkeley County consists of a total of 1,229 23 square miles, which includes all land and water area According to the 2000 United States census, Berkeley County had a population of 142 651 people, which is up from the 1990 population of 128,658 According to the 2000 census, there were 61,646 people living in unincorporated (outside of cities and town limits) areas in Berkeley County

The largest municipality in Berkeley County is the City of Goose Creek which is the eleventh (11th) largest municipality in the state According to the 2000 census, the City of Goose Creek had a population of 29 208 people Other municipalities with populations in Berkeley County according to the 2000 census include Bonneau (354 people), Hanahan (12,937 people), Jamestown (97 people), Moncks Corner (5,952 people) and St Stephen (1,776 people) The Daniel Island/Cainhoy area although located in the City of Charleston, is also located in Berkeley County

Berkeley County is currently experiencing a tremendous amount of residential growth The areas of Daniel Island, the City Goose Creek and Hanahan are experiencing the majority of the development in Berkeley County This growth trend in Berkeley County should continue well into the foreseeable future

Dorchester County

Dorchester County is the smallest of the three counties comprising the Tri County area Dorchester County consists of a total of 576 74 square miles, which includes all land and water area According to the 2000 United States census, Dorchester County had a population of 96,413 people, which is up from the 1990 population of 83 060 According to the 2000 census, there were 61,646 people living in unincorporated (outside of cities and town limits) areas in Dorchester County

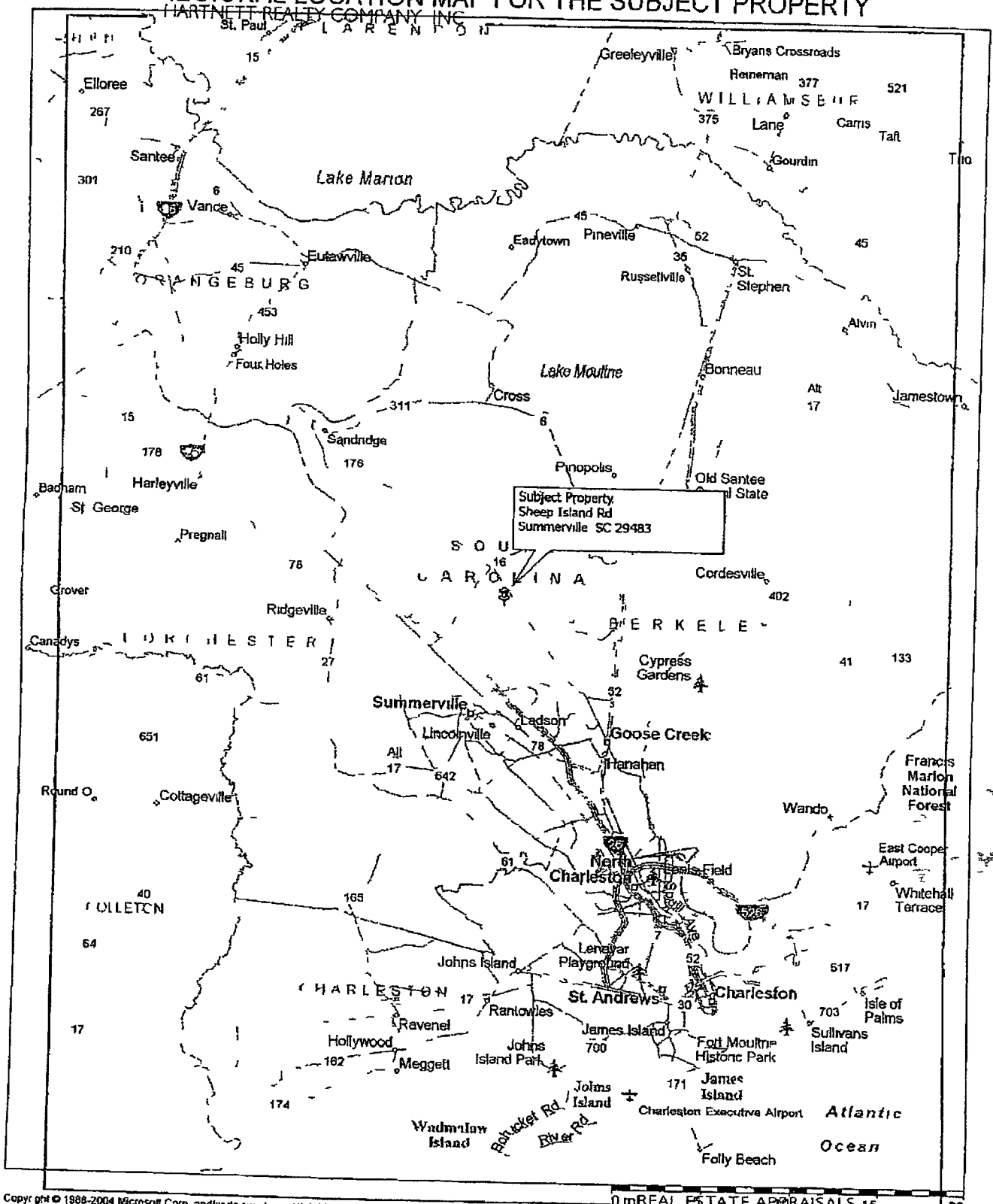
The largest municipality in Dorchester County is the Town of Summerville, which is the twelfth (12th) largest municipality in the state According to the 2000 census, the Town of Summerville had a population of 26,787 people Other municipalities with populations in Dorchester County according to the 2000 census include Harleyville (594 people), a portion of the City of North Charleston (3,397 people), Reevesville (207 people), Ridgeville (1,690 people) and St George (2,092 people)

Dorchester County is also experiencing a tremendous amount of growth and development The majority of the recent development the county is situated along the Dorchester Road area in the City of North Charleston and in the Town of Summerville This growth trend in Dorchester County should continue well into the foreseeable future

In conclusion, the major influences of the value of real estate that are economic physical, social and governmental, all appear to be relatively well balanced in the Tri County area The Tri-County area has experienced unprecedented and historical growth over the past decade Based upon the economic, social and governmental factors present in the Tri County area, growth and development should continue well into the foreseeable future

REGIONAL LOCATION MAP FOR THE SUBJECT PROPERTY

HARTNETT REALTY COMPANY INC



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NEIGHBORHOOD DESCRIPTION

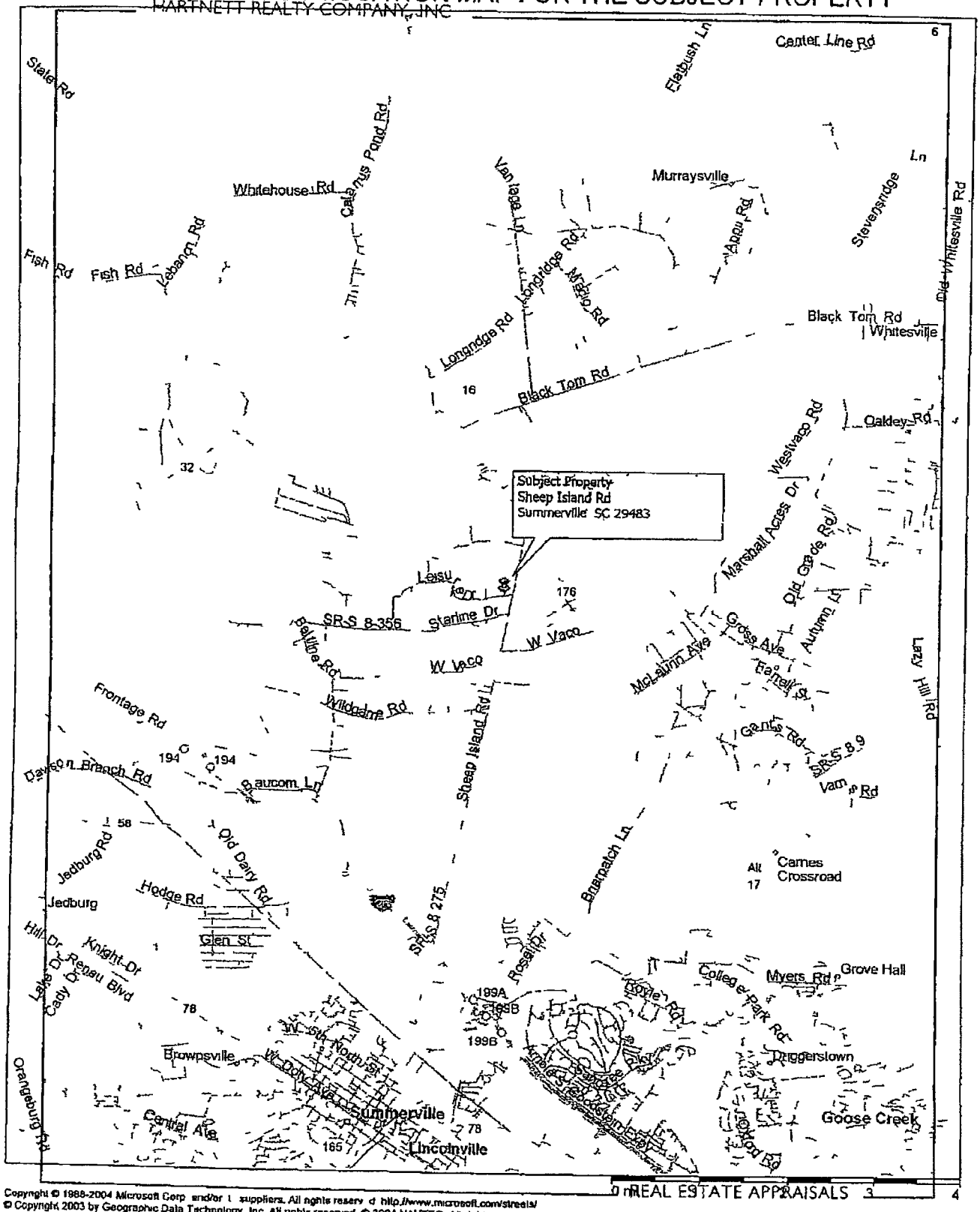
The subject property is located at the northwest corner of Sheep Island Road and Leisure Drive in Berkeley County, South Carolina The subject property is located approximately one mile south of the intersection of Sheep Island Road and Highway 176 For the purposes of this appraisal report, the immediate subject property neighborhood boundaries have been defined as Highway 16 (Jedburg Road) to the north, Highway 17-A to the south Interstate 26 to the west and Old Whitesville Road to the east

The subject property is located approximately seven miles north of the city limits of Goose Creek The subject property is located in an unincorporated area of Berkeley County The subject property is also located approximately four miles north of the intersection of what is known as Carnes Crossroads This is the intersection of Highway 176 and Highway 17-A The Carnes Crossroads area is fast becoming one of the major development areas in the Lowcountry Although development in this area has yet to really begin, there are numerous planned communities in this immediate area that are among the largest planned communities in the Charleston area The largest of these communities is the Cane Bay development which is located on Highway 176 approximately two miles southeast of the subject property This is a planned community that has been approved by the City of Goose Creek and is being annexed in to the City of Goose Creek The entirety of the Cane Bay development will consists of over 2 000 acres of land with approximately 5 000 homes being built within the development The Cane Bay development will be a town within a community as there will be schools (elementary, middle and high) located within the development along with recreational facilities and business and retail centers The largest of the planned developments in the subject property neighborhood is the Parks of Berkeley, which will be developed on approximately 3,402 acres of land located on Sheep Island Road south of the subject property This also will be a town within a planned community consisting of single family homes, multi-family homes, commercial properties, office buildings, schools and recreational facilities The development will consist of approximately 13,000 residential units upon its completion Additionally, the Daniel Island company has recently announced plans for a development in the Carnes Cross Roads area that will be modeled after its current development on Daniel Island This planned development will consist of single family homes, town homes and multi-family properties situated around a central town area

The subject property market area has easy access to the City of Goose Creek via Highway 176 The City of Goose Creek currently supplies the subject property market area with its supply of shopping centers and employment opportunities However this will change as these planned communities begin to develop over the next decade and these amenities will then be located in the immediate subject property neighborhood The subject property neighborhood has easy access to two other bedroom communities, the Town of Summerville and the Town of Moncks Corner, via Highway 17 A Highway 17 A is an east/west thoroughfare that links Summerville to Moncks Corner

As can be seen the immediate subject property neighborhood is rapidly growing This growth and development trend should continue well into the next decade as these proposed planned communities are developed

NEIGHBORHOOD LOCATION MAP FOR THE SUBJECT PROPERTY



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SITE DESCRIPTION

The subject property is located at the northwest corner of Sheep Island Road and Leisure Drive in Berkeley County, South Carolina The subject property is located approximately three miles south of the intersection of Sheep Island Road and Highway 176 The subject site is a regularly shaped parcel of land that is vacant and wooded as of the date of this appraisal report The subject property site contains approximately 101 165 total acres of land according to the plat of the subject site obtained by this Appraiser A copy of this plat identifying the subject site can be found in this section of the appraisal report

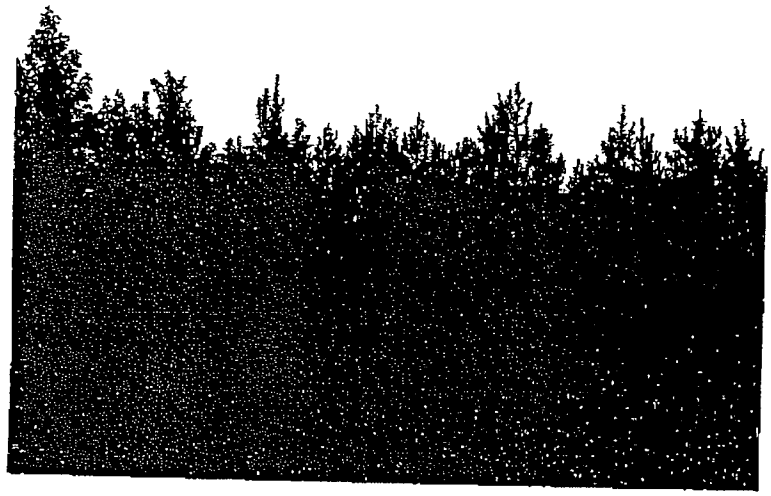
The subject property site has frontage along Sheep Island Road a distance of over two thousand three hundred and twenty five feet (2,325 44") and frontage along Leisure Drive a distance of over one thousand two hundred and one feet (1,201 32) according to the plat for the subject site

The subject site was heavily wooded as of the date of inspection Therefore this Appraiser did not walk the subject site From Sheep Island Road topographically, the subject property parcel is level or high to the street The plat of the subject site obtained by this Appraiser and contained in this appraisal report did not indicate any wetlands on the subject site However, this Appraiser has not been provided with a wetlands survey for the subject site Therefore, this Appraiser reserves the right to amend the opinion of Market Value rendered in this appraisal report, if necessary, if information becomes available that there are wetlands on the subject site Public water and public sewer are not available to the subject site as of the date of this appraisal report according to the information obtained by this Appraiser However public water and sewer will be available along Sheep Island Road in the future based upon information obtained by this Appraiser

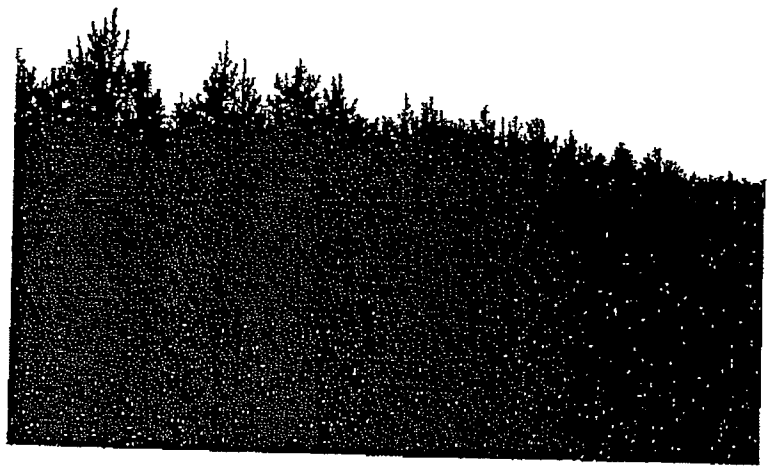
The Berkeley County Tax Assessor has identified the subject property as Parcel 162 on Berkeley County Tax Map Number 194-00-02 The subject site is located in a non hazard flood zone, Zone X, according to F E M A Community Panel 450029 0560D dated October 16, 2003 The subject site is located in Census Tract 207 01

Unless otherwise stated in this appraisal report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyl, petroleum leakage or agricultural chemicals, which may or may not be present on the subject property were not called to the attention or nor did this Appraiser become aware of such during the inspection of the subject property

This Appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated This Appraiser, however, is not qualified to test for such substances The presence of such hazardous substances may affect the opinion of value for the subject property The opinion of value reported in this report is predicated on the assumption that no such hazardous substances exist on or in the subject property or in such proximity thereto which would cause a loss in value This Appraiser assumes no responsibility for any such hazardous substances or for any expertise or knowledge required to discover such hazardous substances



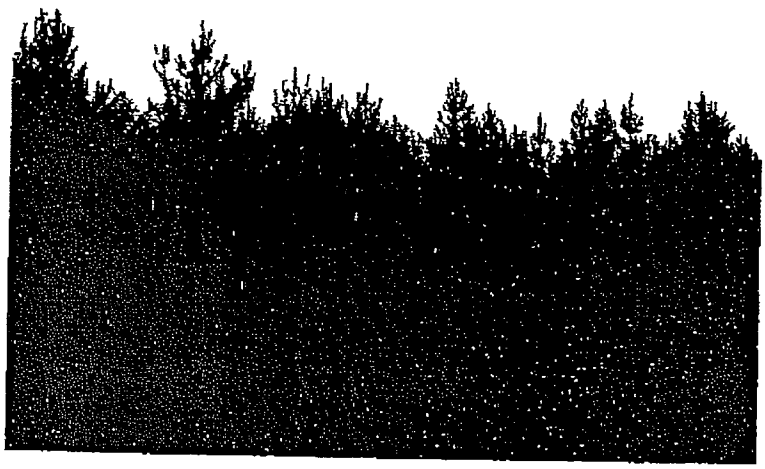
VIEW OF THE SUBJECT PROPERTY FROM SHEEP ISLAND ROAD



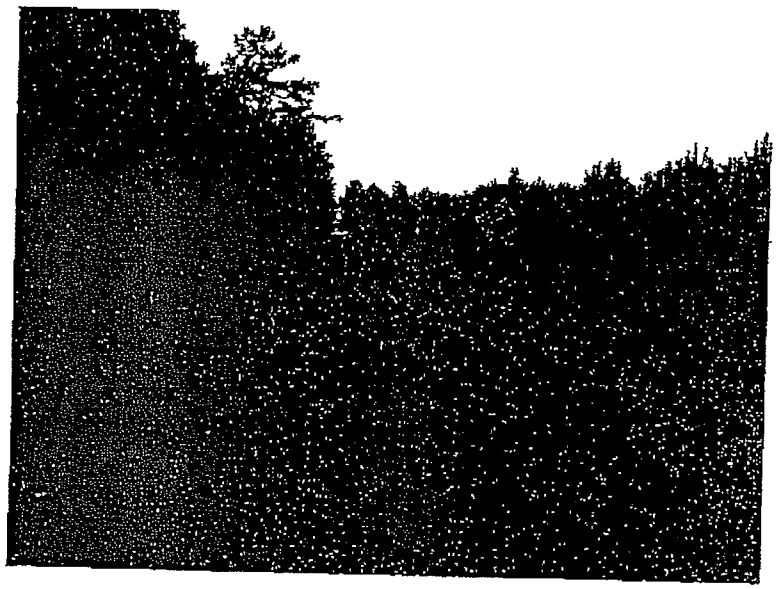
VIEW OF THE SUBJECT PROPERTY FROM SHEEP ISLAND ROAD



VIEW OF THE SUBJECT PROPERTY FROM SHEEP ISLAND ROAD



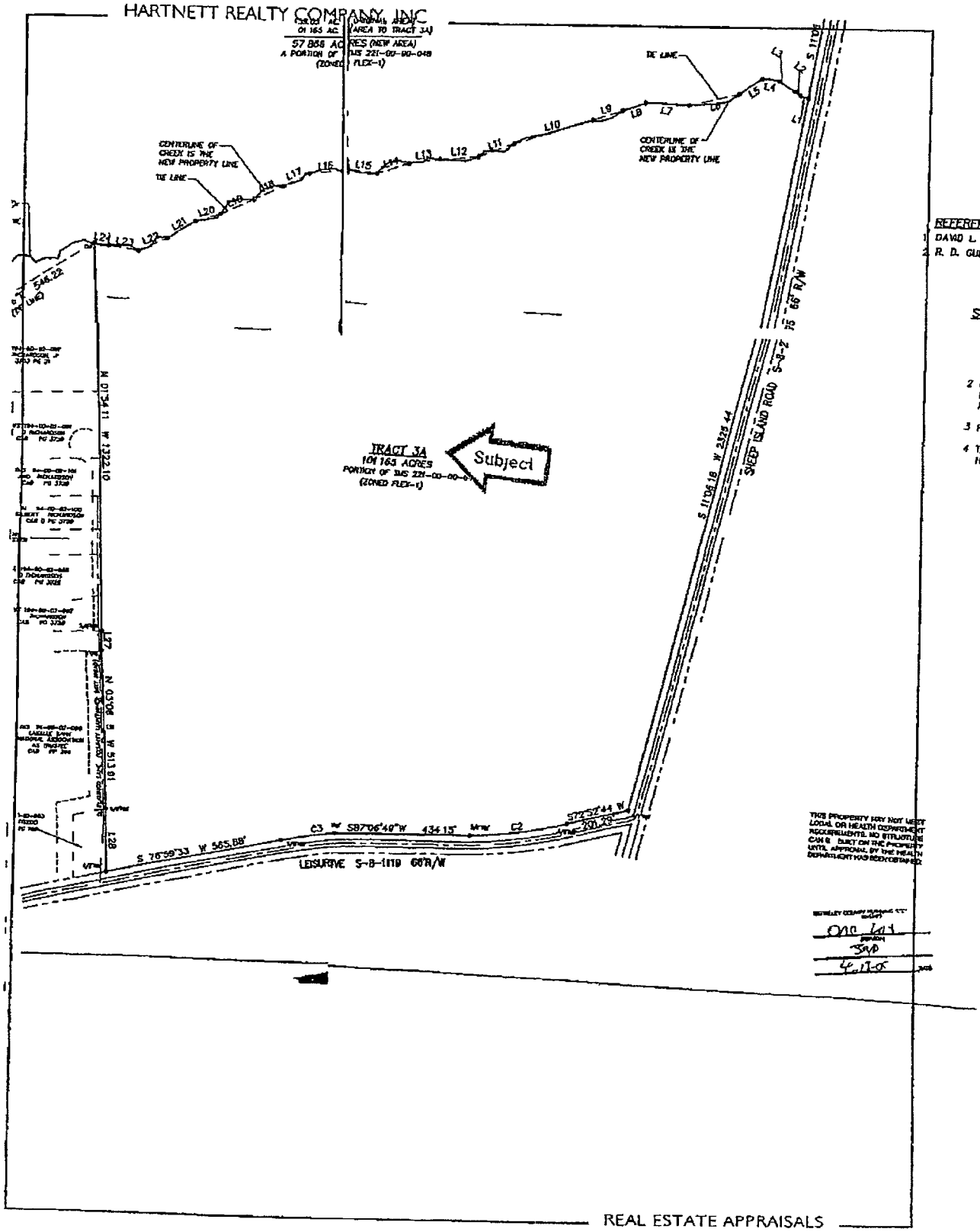
VIEW OF THE SUBJECT PROPERTY PARCEL



STREET VIEW LOOKING DOWN SHEEP ISLAND ROAD



STREET VIEW LOOKING DOWN SHEEP ISLAND ROAD



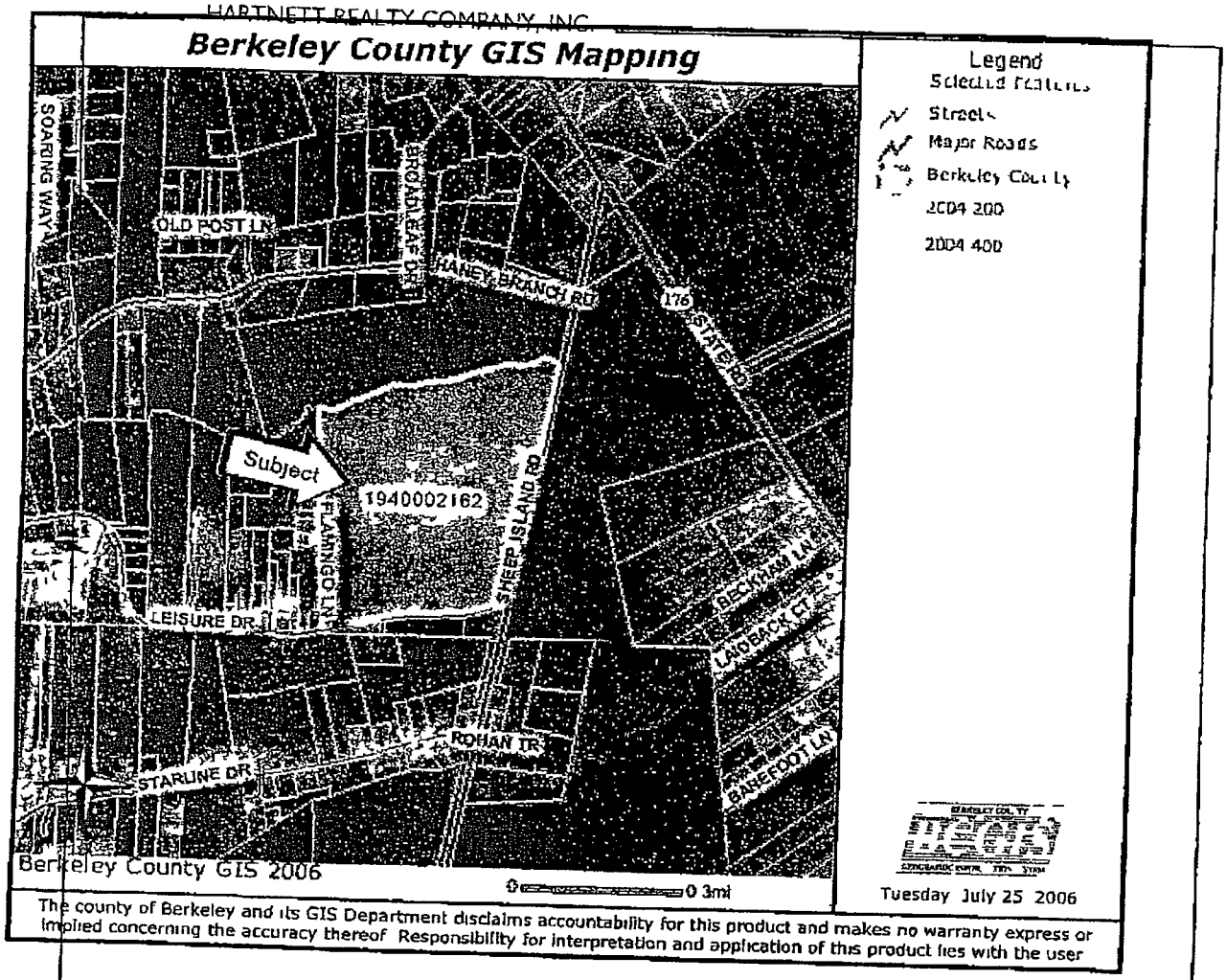
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APP 855

HARTNETT REALTY COMPANY, INC.



SCB 00072

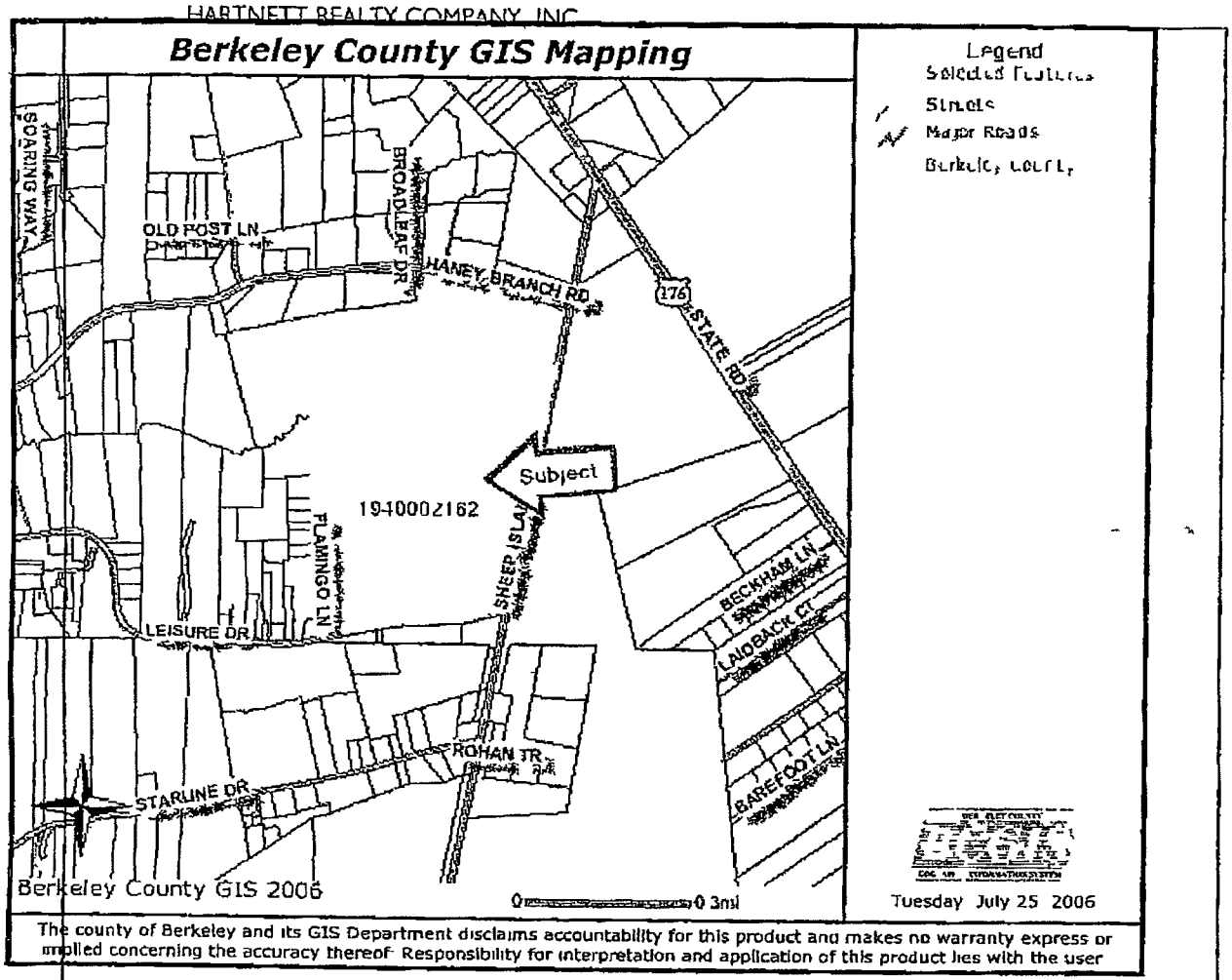
REAL ESTATE APPRAISALS

P O Box 221 Charlestor South Carolina 29402

http://gis.co.berkeley.sc.us/maps/IMS/MapFrame.htm

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HARTNETT REALTY COMPANY, INC



SCB 00073

REAL ESTATE APPRAISALS

P O Box 221 Charlestor South Carolina 29402

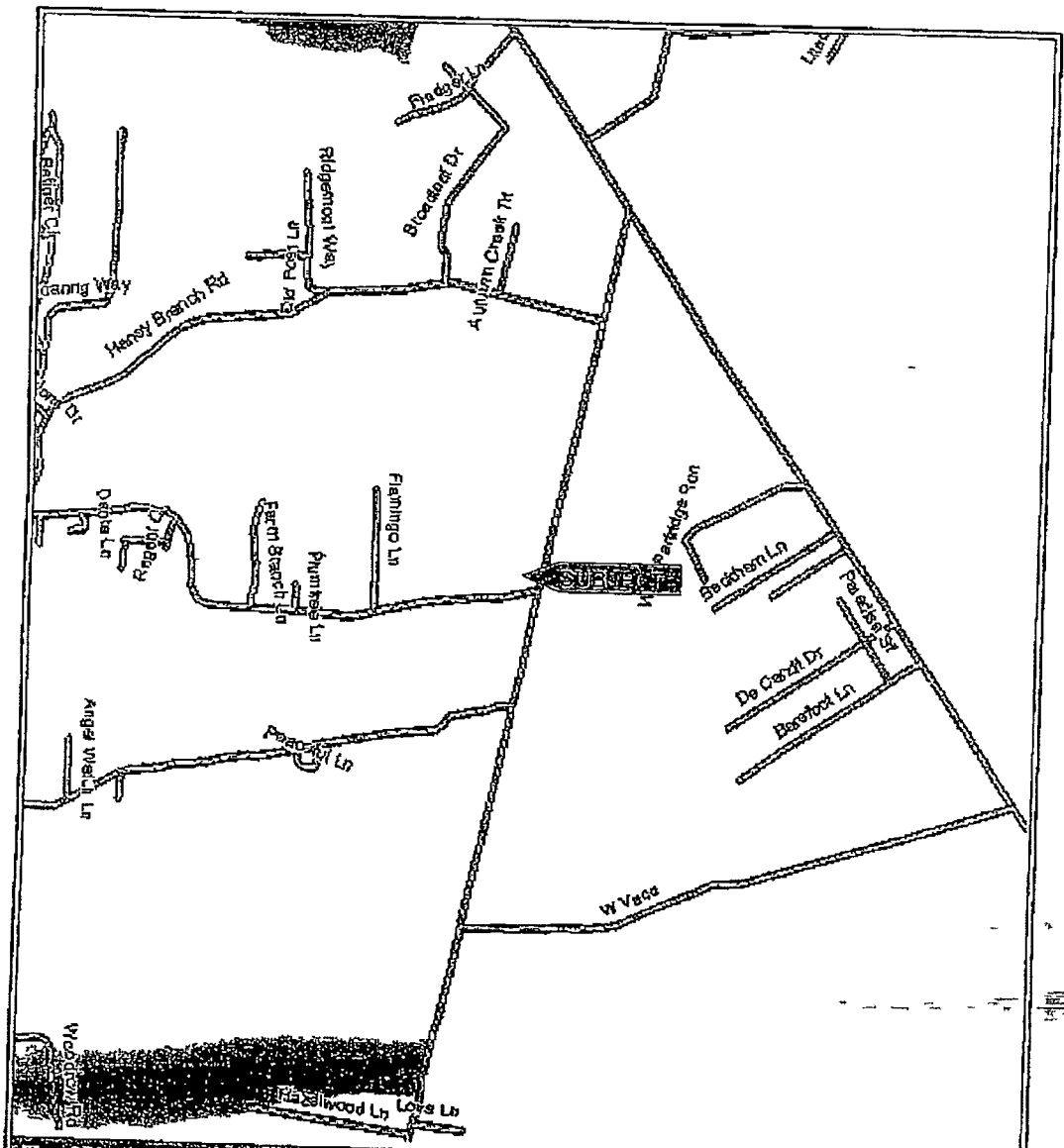
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HARTNETT REALTY COMPANY
FLOOD MAP ADDENDUM

File No
CASE NO

Borrower MARSHALL
Property Address HARTNETT REALTY COMPANY, INC
City SUMMERVILLE County BERKELEY State S C Zip Code 29483-2211
Lender/Client SOUTHCOAST COMMUNITY BANK Address GOOSE CREEK SOUTH CAROLINA



Flood Map Legends

Flood Zones

- Areas inundated by 500-year flooding
- Areas outside of the 100 and 500 year flood plains
- Areas inundated by 100-year flooding
- Areas inundated by 100-year flooding with velocity hazard
- Floodway areas
- Floodway areas with velocity hazard
- Areas of undetermined but possible flood hazard
- Areas not mapped on any published FIRM

Flood Zone Determination

SFHA (Flood Zone) **Out**
Within 250 ft of multiple flood zone? No
Community **450029**
Community Name **UNINCORPORATED AREA**
Zone **X** Panel **450029 0560D** Panel Date **10/16/2003**
FIPS Code **45015** Census Tract **0207 01**

This Flood Report is for the sole benifit of the Customer that ordered and paid for the Report and is based on the property information provided by the customer That customer's use of this report is subject to the terms agreed by that customer when accessing this product No third party is authorized to use or rely on this report for any purpose NEITHER FIRST AMERICAN FLOOD DATA SERVICES NOR THE SELLER OF THIS REPORT MAKES ANY REPRESENTATIONS OR WARRANTIES TO ANY PARTY CONCERNING THE CONTENT ACCURACY OR COMPLETENESS OF THIS REPORT INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE Neither FAFDS nor the seller of this Report shall, under any circumstances, be liable to any third party for any use or misuse of this Report

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SCB 00074

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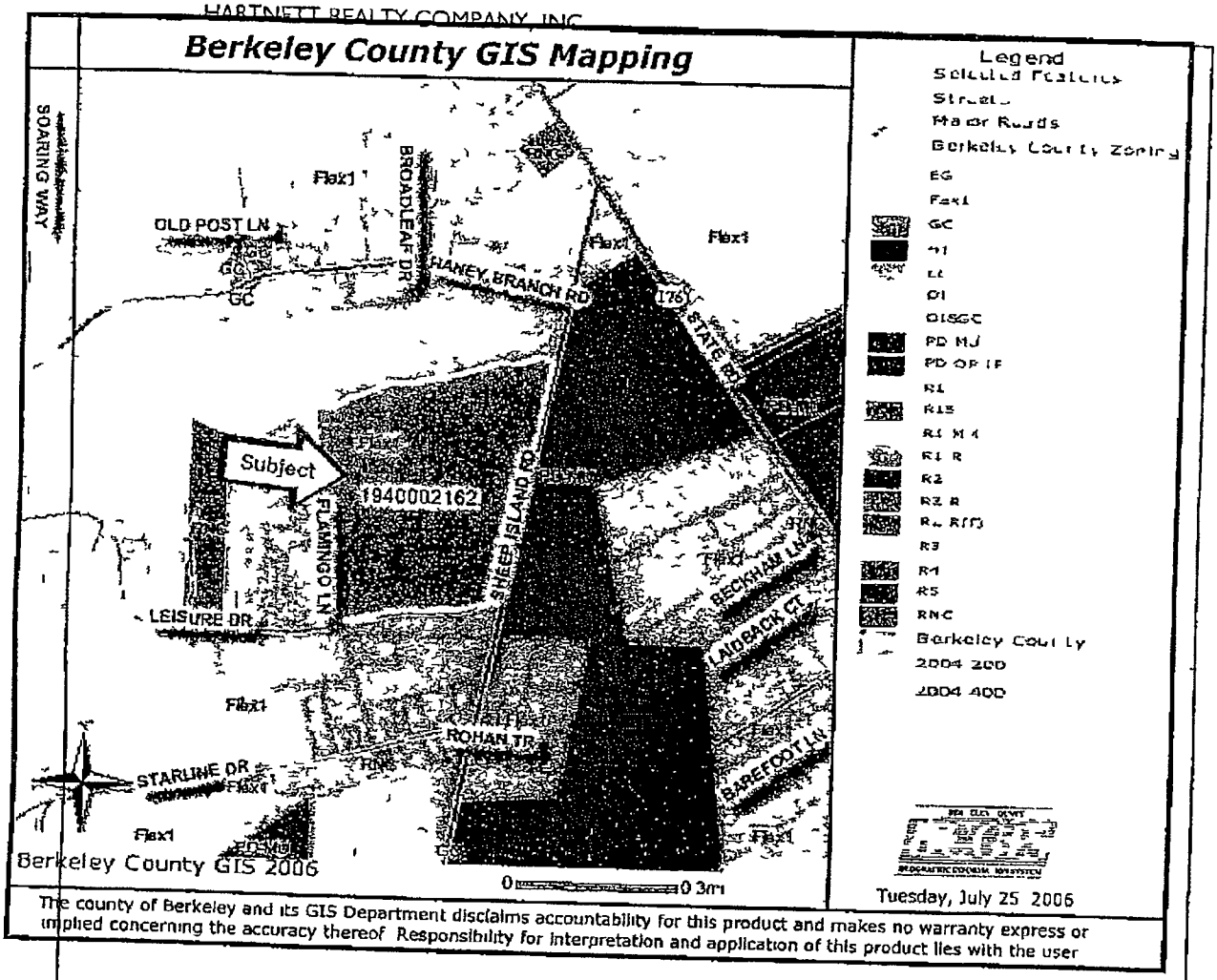
ZONING

The subject property is currently under the zoning ordinance of Berkeley County The subject property is presently zoned Flex 1 by Berkeley County according to the information obtained by this Appraiser from Berkeley County A copy of the Berkeley County zoning map identifying the subject property can be found on the following page of this appraisal report Permitted uses for the subject property under the current Flex 1 zoning classification include agriculture, forestry, single-family homes, mobile homes, indoor and outdoor recreation golf course and a church

SALES HISTORY OF THE SUBJECT PROPERTY

According to the Berkeley County tax records for the subject property, the subject property sold to the current property owner on July 7, 2005 for $1 441,601 This transaction is recorded in the RMC Office for Berkeley County at deed book 4837 on page 260 A copy of this deed as obtained by this Appraiser can be found in the addendum of this appraisal report The subject property also sold for $859,902 on April 20, 2005 according to the Berkeley County tax records This transaction is recorded in the RMC Office for Berkeley County at deed book 4655 on page 35 The subject property was listed for sale on August 1, 2005 for $2,529,125 according to the local multiple listing service The subject property is currently under contract of sale for $2,530 000 according to the sales contract provided to this Appraiser A copy of this sales contract as provided to this Appraiser can be found in the addendum of this appraisal report The sales contract appears to be a negotiated arms length transaction The subject property market area is set to become one of the largest and fastest growing areas in the Charleston over the next decade Purchasers and developers are causing property values to rapidly appreciate in this area based upon the proposed developments in the area This trend of appreciating values should continue as development continues in this market area

HARTNETT REALTY COMPANY, INC



The county of Berkeley and its GIS Department disclaims accountability for this product and makes no warranty express or implied concerning the accuracy thereof Responsibility for interpretation and application of this product lies with the user

SCB 00076

REAL ESTATE APPRAISALS

P O Box 221 Charlestor South Carolina 29402

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HIGHEST AND BEST USE DEFINITION

The Eleventh Edition, 1996 of the Appraisal of Real Estate, published by the American Institute of Real Estate Appraisers defines Highest and Best Use as follows

> "The reasonably probable and legal use of vacant land or an improved property, which is physically possible appropriately supported, financially feasible, and that results in the highest value "

Highest and Best Use analysis requires consideration of the Highest and Best Use of land as if vacant and available for development, as well as the Highest and Best Use as already developed with the existing improvements on site Four criteria must be examined to determine whether a use represents a property's Highest and Best Use These are that the use be legally permissible, physically possible, financially feasible and maximally productive

HIGHEST AND BEST USE

I ASSUMING VACANT SITE

The Highest and Best Use of Vacant Land must meet four criteria

A Physically Adaptable
B Legally Permissible
C Financially Feasible
D Maximally Productive

A Physically Adaptable

Size, shape, area, and terrain affect the use to which land may be developed The subject property is sufficiently regular to allow for utilization Surface water runoff appears to be adequate To the best of this Appraiser's knowledge the soil or sub-soil has no glaring irregularities that would prevent development The subject site has physical characteristics that would support utilization of the land

B Legally Permissible

The subject property parcels are presently zoned Flex 1 by Berkeley County This zoning classification allows for agriculture, forestry, single family, recreation and several other uses

C Financially Feasible

The financial feasibility of a product is best determined by comparing market value with acquisition and development costs If acquisition and development costs are less than or equal to market value, then feasibility is implied One evidence of probable uses is nearby land uses In the immediate subject neighborhood there is mainly undeveloped tracts of land Additionally, there single-family homes, mobile homes, several small commercial properties, churches, etc

D Maximally Productive

The maximally productive use of the subject property is to hold for speculation and for future single-family residential development of the subject property

THE APPRAISAL PROCESS

Three approaches normally used by appraisers to estimate market value are The Cost, Market Data, and Income Approaches Each is equally governed by the principle of substitution that holds that "when two (2) or more commodities or services with substantially the same utility are available, the one with the lowest price receives the greatest demand and widest distribution "

In the Cost Approach, the appraiser obtains an indication of value by estimating the value of the land and adding to this an estimate of the depreciated re-production costs of the building and other improvements

The Market Data Approach is essential to almost every appraisal of real property It is essentially based on the three fold assumption that

1 There is a market for a particular property

2 That both buyer and seller are fully informed as to the property

3 That the property would be exposed in the open market for a

The application of this approach produces an estimate of value for property by comparing it with similar properties that have recently sold or are currently offered for sale in the same or competing areas The sale prices of properties judged to be most comparable tend to set a range within which the value of the subject property will fall Further examination of the data should lead to a logical indication of the subject's most probable selling price

The Income Approach produces an indication of value through capitalization of a property's income earning potential over a projected holding period or its remaining useful life Data normally required for this computation are rents from comparable properties, expense ratios, typical mortgage financing available to that property at the time of appraisal, and typical investor's desired return on equity

The three approaches will seldom indicate the same value and, in many instances, one or two of the approaches will not be applicable to the current appraisal problem

In the case of the subject property, the Cost Approach to Value and the Income Approach to value are not considered applicable to the subject property due to the fact that the subject property is being appraised as a vacant site Therefore, both of these approaches to value will not be utilized in this appraisal report A detailed discussion of both of these approaches to value can be found in a later section of this appraisal report

The final step to the appraisal process is reconciliation of value indications from the approaches In this step, the appraiser places major emphasis on the approach or approaches which appear to produce the most reliable and applicable solution to the specific appraisal problem

COST APPROACH TO VALUE

The Cost Approach to Value is based upon the assumption that the site value, as if vacant, when added to the estimated depreciated value of the improvements, represents Market Value

The subject property is a vacant tract of land as of the date of this appraisal report The Cost Approach to value is not considered applicable to the subject property due to the fact that the subject property is a vacant as of the date of this report and the Cost Approach to Value would not render a reliable indication of Market Value for the subject property Therefore this Appraiser has chosen to omit the Cost Approach to Value from this appraisal report

SALES COMPARISON APPROACH TO VALUE

The Sales Comparison Approach to Value rests primarily on a comparison of the subject property with other similar properties that have been sold plus current asking prices and offers thereby establishing a measure of market reaction to the subject property In the process of comparison, adjustments are usually made to the actual sales price of the comparables or to the unit price of each of the comparables, in either dollars or percentages to account for differences that exist between the subject property and the comparables

This Appraiser has researched the subject property market area and surrounding similar market areas in an attempt to find properties that have recently sold that might tend to indicate the Market value of the subject property, as if a vacant tract of land Many sales were investigated but the following sales were believed to be sufficiently comparable to warrant further investigation and analysis The reader is referred to the following pages for a detailed discussion of each of the transactions

COMPARABLE SALE NUMBER 1

GRANTOR	BMG III LLC
GRANTEE	CB Sanctuary Development, Inc
LOCATION	Off of Highway 176—Cane Bay Development Berkeley County, South Carolina
DATE OF SALE	November 8, 2005
SALE PRICE	$3,000 000
DEED RECORDED	5149-137 PLAT RECORDED M 175
T M S REFERENCE	195 00 00-054
SITE AREA	147 867 Acres
TOPOGRAPHY	Level at Street Grade
UTILITIES	Electricity and Telephone
ZONING	Planned Development (PDMU)
IMPROVEMENTS	None, Vacant Land

REMARKS This is the sale of a vacant tract of land located in the Cane Bay development just southeast of the subject property

ANALYSIS OF SALE

ESTIMATED CONTRIBUTING VALUE OF LAND $3,000,000
ESTIMATED CONTRIBUTING VALUE OF IMPS -0-
ESTIMATED UNIT VALUE FOR LAND $20,289 per Acre

P O Box 221 Charleston, South Carolina 29402

COMPARABLE SALE NUMBER 2

GRANTOR	BMG III, LLC
GRANTEE	Centex Homes
LOCATION	Off of Highway 176—Cane Bay Development Berkeley County, South Carolina
DATE OF SALE	November 18, 2005
SALE PRICE	$5,555,000
DEED RECORDED	5189 078 PLAT RECORDED M 175
T M S REFERENCE	195-00-00-048 and 049
SITE AREA	261 050 Acres
TOPOGRAPHY	Level at Street Grade
UTILITIES	Electricity and Telephone
ZONING	Planned Development (PDMU)
IMPROVEMENTS	None, Vacant Land

REMARKS This is the sale of a vacant tract of land located in the Cane Bay development just southeast of the subject property

ANALYSIS OF SALE

ESTIMATED CONTRIBUTING VALUE OF LAND $5,555,000
ESTIMATED CONTRIBUTING VALUE OF IMPS 0-
ESTIMATED UNIT VALUE FOR LAND $21,279 per Acre

COMPARABLE SALE NUMBER 3

GRANTOR	SC Land Investors, LLC
GRANTEE	North Godley Developers, Inc
LOCATION	Off of Highway 176—Cane Bay Development Berkeley County, South Carolina
DATE OF SALE	January 31, 2006
SALE PRICE	$6,250,000
DEED RECORDED	5333 198 PLAT RECORDED M 303
T.M S REFERENCE	195-00-00 047 and 053
SITE AREA	208 940 Total Acres
TOPOGRAPHY	Level at Street Grade
UTILITIES	Electricity and Telephone
ZONING	Planned Development (PDMU)
IMPROVEMENTS	None, Vacant Land

REMARKS This is the sale of a vacant tract of land located in the Cane Bay development just southeast of the subject property

ANALYSIS OF SALE

ESTIMATED CONTRIBUTING VALUE OF LAND $6,250,000
ESTIMATED CONTRIBUTING VALUE OF IMPS -0
ESTIMATED UNIT VALUE FOR LAND $29,913 per Acre

COMPARABLE SALE NUMBER 4

GRANTOR	BMG III, LLC
GRANTEE	Centex Homes
LOCATION	Off of Highway 176—Cane Bay Development Berkeley County, South Carolina
DATE OF SALE	May 2 2006
SALE PRICE	$1,323,000
DEED RECORDED	5584-294 PLAT RECORDED R-005
T M S REFERENCE	195 00-00 050
SITE AREA	33 870 Acres
TOPOGRAPHY	Level at Street Grade
UTILITIES	Electricity and Telephone
ZONING	Planned Development (PDMU)
IMPROVEMENTS	None Vacant Land

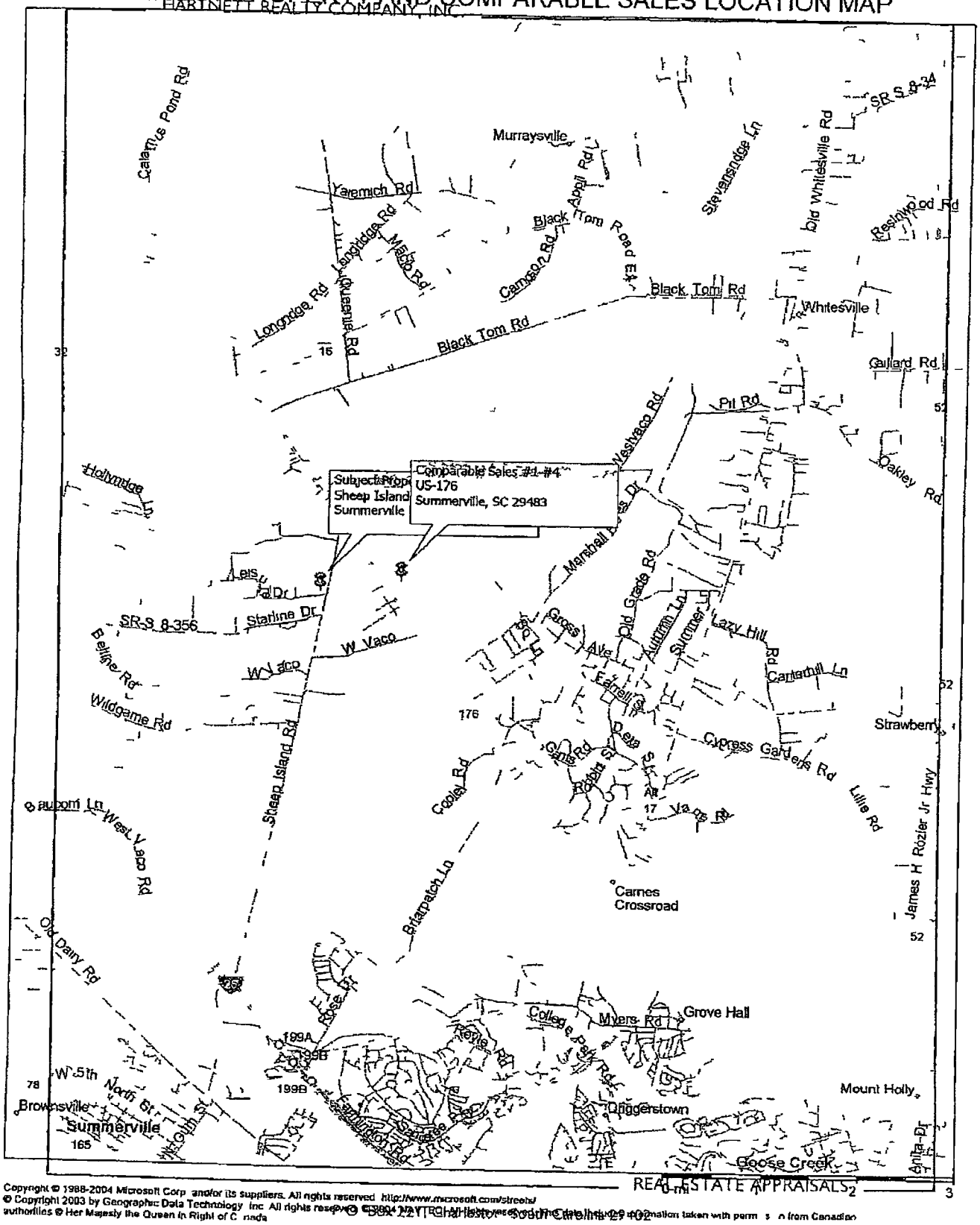
REMARKS This is the sale of a vacant tract of land located in the Cane Bay development just southeast of the subject property

ANALYSIS OF SALE

ESTIMATED CONTRIBUTING VALUE OF LAND $1,323,000
ESTIMATED CONTRIBUTING VALUE OF IMPS -0-
ESTIMATED UNIT VALUE FOR LAND $39,061 per Acre

SUBJECT PROPERTY AND COMPARABLE SALES LOCATION MAP

HARTNETT REALTY COMPANY, INC.



REAL ESTATE APPRAISALS

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© Copyright 2003 by Geographic Data Technology Inc. All rights reserved. © 2004 NAVTEQ. All rights reserved. The Data is derived in part from information taken with permission from Canadian authorities © Her Majesty the Queen in Right of Canada

Sale#	Date of Sale	Size (Acres)	Sales Price	$ Per Acre
1	11/08/05	147 867 Acres	$3,000,000	$20,289
2	11/18/05	261 050 Acres	$5,555,000	$21,279
3	01/31/06	208 940 Acres	$6,250,000	$29 913
4	05/20/06	33 870 Acres	$1 323 000	$39,061

The last column of the preceding chart shows the unadjusted price per acre for each of the comparable sales As can be seen, the range of values is from $20,289 per acre to $39,061 per acre This Appraiser has attempted to use sales of vacant tracts of land that are similar to the subject property

Adjustments to the comparable sales are necessary due to the differences that exist between the comparable sales and the subject property This Appraiser has found comparable sales that all sold with similar property rights, fee simple title, as the property rights being appraised by this Appraiser for the subject property Therefore, an adjustment for property rights is not required to the comparable sales This Appraiser did not find any sales concessions in the terms of sale for the comparable sales, therefore, an adjustment for cash equivalency is not necessary to the comparable sales The necessary adjustments to the comparable sales based upon the market data gathered by this Appraiser are for market conditions (time), size and location zoning

MARKET CONDITONS (TIME). The dates of the comparable sales range from November of 2005 to May of 2006 Property values in the subject property market area are rapidly appreciating due to the number of approved and planned developments in this market area As can be seen from the comparable sales, property values continue to increase This Appraiser is of the opinion that an annual compounded appreciation rate of 15% is reasonable for the comparable sales This estimated appreciation rate is based upon the comparable sales and this Appraiser's knowledge of the subject property market area Therefore, this Appraiser will adjust this comparable sale 15% compounded annually from the date of sale to the date of this appraisal report Based upon this 15% compounded annual adjustment, the adjusted per acre value of the comparable sales is as follows Comparable Sale #1 $22,328 per acre Comparable Sale #2 $23,418 per acre Comparable Sale #3 $32 515 per acre and Comparable Sale #4 $40,039 per acre

SIZE Generally all else being somewhat equal, larger properties tend to sell for smaller unit values and smaller properties tend to sell for larger unit value This trend is evident when analyzing the comparable sales Comparable Sales #1, #2 and #3 are larger than the subject property and thus a positive adjustment for size is required to these comparable sales in the opinion of this Appraiser Comparable Sale #4 is smaller than the subject property and thus this comparable sale requires a negative adjustment in the opinion of this Appraiser

LOCATION Adjustments are usually made to the comparable sales for location differences such as access, traffic flows, highway influence, corner location, visibility, etc All four of the comparable sales are located in the immediate subject property market area However, all four of the comparable sales are located in the Cane Bay development which is an approved development located off of Highway 176 The location of all four of the comparable sales is considered to be superior to the location of the subject property Therefore, this Appraiser will make a negative adjustment to all four of the comparable sales

SALE #	1	2	3	4
GRANTOR	BMG	BMG	SC Land	BMG
GRANTEE	CB Sanct	Centex	North	Centex
SALES DATE	11/05	11/05	01/06	02/06
SALES PRICE	$3 000,000	$5,555,000	$6,250,000	$1,323,000
ACRES	147 867	261 050	208 94	33 870
$ PER ACRE	$20,289	$21,279	$29,913	$39,061
TIME ADJ				
VALUES	$22,328	$23,418	$32,515	$40,049
PROP RIGHTS	-0-	-0	-0-	0
SALES CONC	-0	-0-	-0-	0
SIZE ADJ	+ 05	+ 15	+ 15	- 15
LOC ADJ	- 15	15	- 15	- 15
TOTAL ADJ	- 10	-0	0	- 30
ADJ VALUE	$20,095	$23,418	$32,515	$28,024

The last line of the preceding chart shows the adjusted unit prices of each of the comparable sales As can be seen the range of values is from $20,095 per acre to $32,515 per acre This Appraiser is of the opinion that all four of the comparable sales are good indicators of the per acre value of the subject property This Appraiser is of the opinion that all four of the comparable sales are good indicators of the per acre value of the subject property, as if vacant, This Appraiser has placed an equal amount of consideration on the adjusted per acre value of all four of the comparable sales Therefore, this Appraiser is of the opinion that $26,000 per acre is the indicated value per acre for the subject site, as if vacant, based upon the adjusted per acre values of the comparable sales

Therefore, the indicated value of the subject property, as if vacant, is as follows

101 165 Acres X $26,000 per Acre =		$2,630,290
	Rounded	$2,625,000

INCOME APPROACH TO VALUE

The Income Approach to value involves the processing of an income stream into an estimate of value The Net Operating Income (NOI) is obtained by deducting ownership costs from the effective economic rent and capitalizing the Net Operating (NOI) into value by means of an appropriate capitalization rate

The Income Approach to Value is generally not considered to be a reliable indicator of Market Value for vacant tracts of land This Appraiser has not been presented with any current rental information for the subject property nor is this Appraiser aware of any past rental history for the subject property This Appraiser is of the opinion that the Income Approach would not be a reliable indicator of Market Value for the subject property due to the fact that the subject property is a vacant tract of land Therefore, the Income Approach to Value will not be utilized in this appraisal report

CORRELATION AND FINAL ESTIMATE OF VALUE

In the preceding sections of this appraisal report I have obtained the following indications of value for the subject property

Sales Comparison Approach $2,625,000

The Cost Approach to Value and the Income Approach to Value have been omitted from this appraisal report as discussed in previous sections of this report This Appraiser is of the opinion that the Sales Comparison Approach to Value is the best and only reliable indicator of Market Value for the subject property Thus, this approach to value has been given the greatest amount of consideration in the final estimate of Market Value for the subject property

After considering all the available data, it is the opinion of this Appraiser that the Market Value of the subject property, as is vacant, as of July 26, 2006 is

TWO MILLION SIX HUNDRED
TWENTY FIVE THOUSAND DOLLARS
$2,635,000

CERTIFICATION

The undersigned does hereby certify that, except as otherwise noted in this appraisal report

1 The statements of fact contained in this report and true and correct

2 The report analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, impartial, and unbiased professional analyses, opinions and conclusions

3 I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives I certify that, to the best of our knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute

4 I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved

5 I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute

6 No one other than the undersigned prepared the analysis conclusions and opinions concerning the real estate that are set forth in the appraisal report

7 The appraisal assignment contained in this report was not based on a requested minimum valuation, a special valuation, or the approval of a loan

8 My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPSP)

9 This appraisal meets or exceeds the standards set forth in the Financial Institution's Reform, Recovery and Enforcement Act of 1989

10 I have made a personal inspection of the property that is the subject of this report No one provided significant real property appraisal assistance to the person signing this certification

11 Marketing Time is defined by the Appraisal Standards Board as "The reasonable marketing time is an estimate of the amount of time it might take to sell a property interest in real estate at the estimated market value level during the period immediately after the effective date of an appraisal Marketing time differs from exposure time, which is always presumed to precede the effective date of the appraisal " The estimated current marketing time for the subject property is estimated to be three to nine months based upon the current asking price for the subject property and based upon the marketing time of similar properties in the subject property market area

12 My estimate of Market Value for the subject property, as if vacant as of July 26, 2006 is **$2,625,000**

Michael A White, GAA
South Carolina Certified General
Appraiser #CG200

ADDENDUM

P O Box 221 Charleston South Carolina 29402

SOUTHCOAST COMMUNITY BANK

July 20, 2006

Michael A White
Hartnett Realty Co , Inc
P O Box 221
Charleston, SC 29402

Please review the contract attached for the purchase of property located at Subdivision Tract 3A, Sheep Island Road, Summerville, SC 29483 Southcoast Community Bank authorizes Michael White of Hartnett Realty Co , to perform a commercial appraisal on the properties mentioned above in connection with future financing TMS # is as follows 194-00-02-162 The buyer's is Bruce Marshall and he can be reached at 843-863-9983

If you have any questions please don't hesitate to contact me directly @ 576-1367

Best regards,

Marc Knight
Vice President

597 Old Mount Holly Road Goose Creek SC 29445 843 553-0021 Fax 843 553 6551

463-9983- Bruce
568-6556-Dan

AGREEMENT TO BUY AND SELL REAL ESTATE (FOR GENERAL USE AND LOTS/ACREAGE)

1 PARTIES This legally binding Agreement entered into on December 14 2005 between Buyer(s), E Bruce Marshall And/Or, Jeremy S Marshall, (hereinafter called "BUYER"), and Seller(s), Ben-Fen, LLC (hereinafter called "SELLER") The property shall be deeded in the name(s) of To Be Determined

THE ☐ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2 PROPERTY TO BE SOLD Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon

Lot _____ Block _____ Section _____ Subdivision Tract 3A

Address Sheep Island Road

Tax Map # 194-00-02-162 City Summerville Zip 29483

County of Berkeley, State of South Carolina

3 PURCHASE PRICE shall be $ 2,530,000 00

Two Million Five Hundred Thirty Thousand dollars

4 METHOD OF PAYMENT Purchase price shall be paid as follows ☐ Cash, or ☒ Subject to Financing Financing to be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms _____

5 EARNEST MONEY This offer is accompanied by an earnest money deposit of $ 10,000 00 Buyer and Seller authorize Prudential Carolina R E, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement Earnest money paid by ☐ Cash, ☒ Check or ☐ Other Broker does not guarantee payment of a check or checks accepted as earnest money All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations At the consummation of this sale the earnest money deposit shall be credited to the Buyer

THE PARTIES UNDERSTAND THAT UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT

6 LOAN PROCESSING AND APPLICATION Buyer's obligation under this agreement is contingent on Buyer obtaining said loan Buyer shall apply for a maximum 80 000 % loan (loan-to-value ratio) within 30 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 45 consecutive days that contains no credit, income or asset conditions, unless otherwise set forth in this contract Time is of the essence Should the Buyer fail to make loan application or receive approval within said period and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with the written notice Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner Buyer will take any action that is needed or requested by Lender to process the loan application Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s) If Buyer fails to comply with these above conditions Buyer shall be in default of this agreement subject to the terms of paragraph 22

FHA Mortgage Insurance ☐ will ☒ will not be added to the mortgage VA funding fee ☐ will ☒ will not be added to the mortgage

[EBM] BUYER [BSM] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

7 **CLOSING COSTS** Unless otherwise agreed closing costs, including all loan charges and prepaid recurring items shall be paid as follows
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report property insurance, appraisal survey cost of obtaining loan, discount points title examination, escrow deposits, and prepaid expenses The Buyer shall also pay if applicable interim interest and mortgage insurance premium or VA funding fee Buyer's hazard insurance policy shall provide coverage as required by lender Other terms _____

8 **OPTION TO TERMINATE AFTER DUE DILIGENCE** (A) Seller grants to Buyer a 90 day right (Termination Right) from the date of this agreement during which Buyer may do any or all of the following
1 Conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing If any Buyer deems appropriate to evaluate the suitability of Property for Buyers intended use including but not limited to zoning governmental regulations environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence)
(B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence Buyer hereby agrees to indemnify and hold Seller Broker and Broker's Affiliated Licensees harmless from and against any and all loss injury cost or expense associated with Buyer's inspection of and entry upon Property
(C) If Buyer decides to exercise Buyer's right to terminate this Agreement Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property "as-is The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject or limit any other rights which Buyer may have under this Agreement.

9 **BUILDING PERMIT** This Agreement ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property If Buyer notifies Seller in writing within N/A days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property, then in such event this Agreement shall terminate If Buyer fails to provide said notice then this contingency shall be deemed to have been waived by Buyer

10 **REZONING** This Agreement ☐ is ☒ is not contingent upon Property being rezoned to N/A on or before the ____ day of N/A , ____ by the appropriate governmental authorities For purpose herein the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed The ☐ Buyer ☐ Seller shall be responsible for pursuing such rezoning and paying all associated costs All rezoning applications shall be submitted to Seller for Seller's approval prior to filing which approval shall not be unreasonably withheld All parties agree to cooperate to sign the necessary documentation and to support the rezoning application If Buyer notifies Seller or Broker in writing within forty-eight hours after the above date the Property cannot be so rezoned then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer If Buyer fails to provide said notice then this contingency shall be deemed to have been waived by Buyer

11 **WELL, SEPTIC TANK, SEWER AVAILABILITY** It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing In the event a well and/or septic tank is needed to be placed on the property

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure then in such event, the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed $ N/A , then in such event, the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system

Seller represents that the property is connected to ☐ public sewer system or to ☐ septic tank or to ☐ public water or to ☐ well system or to ☒ other There is no public water or sewer at subject property

BUYER [JSM] BUYER [illegible] SELLER [___] SELLER HAVE READ THIS PAGE

12 SURVEY Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the ☐ BUYER ☐ SELLER The surveyor shall set and flag all property pins, showing encroachments and easements Property must be N/A x N/A or having at least 101 165 acres The survey to be approved in writing by Buyer prior to closing The purchase price is based upon $ 25,009 00 per acre (acre sq ft , or front ft) and shall be adjusted in accordance with the area set forth in such a survey if applicable

13 CONVEYANCE SHALL BE MADE Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations Seller agrees to convey by marketable title and deliver a proper general warranty deed if applicable free of encumbrances, except as herein stated Seller agrees to pay all statutory deed recording fees The deed shall be delivered at the stipulated place of closing, and transaction closed on or before See Paragraph 30 , no later than 9 00 p m Time is of the essence Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing

14 POSSESSION Possession of said property will be given to Buyer on the day of closing Seller agrees to deliver property free of debris and in a clean condition Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy

15 CONDITION OF PROPERTY The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement All timber dirt, minerals etc , shall remain with the property and be a part of the property and be transferred to the Buyer The Seller shall not bring any trash refuse debris medical or hazardous waste or other improper materials upon the property In the event any condemnation proceeding is brought by any governmental authority agency utility, etc., prior to the closing, then the Buyer may elect to rescind the agreement

16 EXPIRATION OF OFFER The offer from Buyer shall be withdrawn at 5 00 o'clock P M on December 21 2005 unless countered or accepted by Seller in written form prior to such time Time is of the essence

17 SPECIAL STIPULATIONS The following stipulations concerning restrictions, and easements affecting desired use drainage hazardous waste availability of water and sewer, soil test, wetlands study subordination lot releases etc should be included here If conflicting with printed matter, the following stipulations shall control (See addendum if applicable)

18 ADJUSTMENTS Taxes water, all sewer assessments sewer charges, fuel oil rents as when collected Insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing and are to be prorated on that basis. BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS Property taxes and rent, as well as other expenses and income of the property if applicable shall be apportioned to the date of closing Annual expenses or income shall be apportioned using 365 days Monthly property expenses or income shall be apportioned by the number of days in month of closing Prorations at closing shall be final

19 NON RESIDENT TAX. Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12 8-560 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute

20 ROLLBACK TAXES (IF ANY) When rollback taxes are subsequently determined and billed to the Buyer the Seller and Buyer agree that the rollback taxes shall be paid by ☒ Buyer or ☐ Seller

21 RISK OF LOSS OR DAMAGE In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement

22 DEFAULT If Buyer or Seller fails to perform any covenant of this Agreement the other may elect to seek any remedy provided by law including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23) or terminate this Agreement with a five day written notice If terminated both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless If either Buyer or Seller refuses to execute release Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition

[illegible] BUYER [illegible] BUYER [illegible] SELLER [illegible] SELLER HAVE READ THIS PAGE

23 **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer Seller or Broker in an effort to consummate this sale Such costs shall include but are not limited to cost of credit report appraisal survey inspections and reports, title examination, and Broker's fee or commission for this sale

24 **SURVEY TITLE EXAMINATION, AND INSURANCE.** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood Insurance, if required by Lender at Buyer's option shall be assigned to Buyer with permission of carrier and premium prorated to date of closing

25 **APPRAISED VALUE** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon If any appraising according to the lenders appraisal or other appraisal as agreed for the selling price

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any appraising according to the lenders appraisal or other appraisal as agreed, for the selling price or more, If the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value In such case the Buyer agrees to proceed with the consummation of this sale at the reduced price However If Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty

26 **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS** All reports and certifications called for by the lending agencies and any governmental body by the Buyer concerning any special study area, wetlands or for any environmental protection matter shall be at the expense of the Buyer In the event such studies are wanted or required, the studies must be furnished by the proper parties within 90 days of complete execution of the agreement. The Buyer and Seller must have access to all studies within five (5) days of receipt of the studies If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem If the Seller elects not to correct the problem the Buyer's obligations under this Agreement terminate

27 **COASTAL TIDELANDS & WETLANDS ACT** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10 et seq South Carolina Code of Laws) an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense

28 **DISCLAIMER BY BROKERS AND AGENTS** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s) (1) Give no guaranty or warranty of any kind, express or implied as to the physical condition of the property or as to condition of or existence of improvement services or systems thereto, included but not limited to termite damage roof, basement, appliances, heating and air conditioning systems plumbing sewage electric systems and to the structure (2) Give no warranty express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed (3) Give no warranty as to title (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals, (b) rental arrangements except that Buyer may rent the unit If Buyer so desires or (c) other economic benefits to the Buyer

29 **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase financing condition or other aspect of the property to which this Agreement pertains Including without limitation allegations of concealment, misrepresentation, negligence and/or fraud

Any agreement signed by the parties pursuant to the mediation conference shall be binding This mediation clause shall survive for a period of 120 days after the date of the closing

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

The following matters are excluded from mediation hereunder (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or land contract, (b) an unlawful detainer action, (c) the filing or enforcement of a mechanic's lien, (d) any matter which is within the jurisdiction of a probate court, (e) the filing of an interpleader action to resolve earnest money disputes The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedies shall not constitute a waiver of the right to mediate under this provision nor shall it constitute a breach of the duty to mediate

30 **ENTIRE BINDING AGREEMENT** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises covenants and warranties between the Buyer and Seller It can be changed only by a subsequently written instrument signed by both parties Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors executors, or administrators Whenever used singular includes plural and use of any gender shall include all

31 **SURVIVAL** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed kept or performed

32 **FACSIMILE AND OTHER ELECTRONIC MEANS** The parties agree that the offer any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means including but not limited to electronic mail and the Internet and the signatures initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

33 **EXTENSION AGREEMENT** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date Closing shall occur within this time extension but in no event shall closing occur later than the above extension date Time is of the essence

34 **CONTINGENCIES** These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) (a) With reference to Paragraph 9, Closing shall take place no sooner than July 15, 2006 and no later than July 31, 2006 with "Time being of the essence"
(2) With reference to Paragraph 8, Buyer agrees to make an additional $40,000 deposit directly to the Seller at the end of said "Due Diligence Period". This $40,000 plus the original $10,000 deposit become Non-Refundable should the Buyer not close for any reason whatsoever as stipulated in Paragraph 34 (a) above and Paragraph 33 Buyer authorizes the Escrow Agent to disburse the original $10,000 deposit to the Seller at the end of said "Due Diligence Period"

SCB 000101

[EM] BUYER [EM] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

THIS IS A LEGALLY BINDING AGREEMENT BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION S AGENCY DISCLOSURE FORM

IN WITNESS WHEREOF this Agreement has been duly executed by the parties

BUYER E Bruce Marshall And/Or Date 12-16-2005 Time _____

WITNESS _____ Date _____ Time _____

BUYER Jeremy S Marshall Date 12-17-05 Time 12 35

WITNESS _____ Date _____ Time _____

SELLER Bar-Pop, LLC Date 12-15-05 Time _____

WITNESS _____ Date 15 DEC 05 Time _____

SELLER _____ Date _____ Time _____

WITNESS _____ Date _____ Time _____

LISTING AGENT AND COMPANY CENTURY 21 SOUTHERN HOMES, INC / MICKEY RA

SELLING AGENT AND COMPANY PCRE / GEORGIA RICHARD

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER S AGENT OR ☐ SUBAGENT OF THE SELLER

ESCROW AGENT ACKNOWLEDGMENT _____
Prudential Carolana R E

SCB 000102

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State of South Carolina
County of Berkeley

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT

Sheep Island Property LLC, a South Carolina limited liability company in the State aforesaid for/and in consideration of the sum of $1 441,601 00 to me in hand paid at and before the sealing of these presents by **Bar Pen Investments, LLC, a South Carolina limited liability company** in the State and County aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents to grant bargain, sell and release unto the said **Bar Pen Investments, LLC, a South Carolina limited liability company, its Heirs and Assigns** forever the following described property to wit

All that piece, parcel or tract of land, situate, lying and being in Berkeley County, South Carolina and known and designated as Tract 3A, containing 101 165 acres, as shown on that certain plat entitled, "PLAT OF BOUNDARY SURVEY SHOWING SUBDIVISION OF TRACT 3 TO FORM TRACT 3A SURVEYED AT THE REQUEST OF BYRON S TONEY LOCATED IN BERKELEY COUNTY, SC" prepared by Joseph O Eelman dated April 18, 2005 and recorded on April 19, 2005 in the Register of Deeds Office for Berkeley County in Plat Book Q, at Page 367E, said tract of land having such actual size, shape, dimensions, buttings and boundings as shown on said plat, reference to which is hereby made for a more complete description

And being the same property conveyed to Sheep Island Property, LLC, a South Carolina limited liability company by Deed from Byron Scott Toney dated 04/20/05 and recorded 04/21/05 in Book 4655, Page 35 in the RMC Office for Berkeley County

TMS# **PORTION OF 221-00-00-048**

Grantee s Address: **622 Johnnie Dodds Blvd.**
Mount Pleasant, SC 29464

SUBJECT TO covenants, restrictions, easements of record and taxes for the current year

TOGETHER WITH all and singular the Rights, Members, Hereditaments and Appurtenances to said Premises belonging or in anywise incident or appertaining

TO HAVE AND TO HOLD all and singular, the said Premises before mentioned unto the said **Bar-Pen Investments, LLC, a South Carolina limited liability company,** its Heirs and Assigns forever

AND does hereby bind its Successors, Assigns, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said **Bar-Pen Investments, LLC, a South Carolina limited liability company, its Heirs and Assigns** against it and it s Successors and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof

05RGC249A

3

The Woodlty Law Firm
597 Old Mount Holly Road Suite 202
Goose Creek, South Carolina 29445

WITNESS our Hands and Seals this 7th day of July, 2005

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

WITNESS #1

WITNESS #2

Sheep Island Property, LLC,
a South Carolina limited liability company

By: Peter D DeLuca, Jr , Member

The State of South Carolina
County of Berkeley

I the undersigned notary, a Notary Public for South Carolina do hereby certify that Peter D DeLuca, Jr , Member of Sheep Island Property LLC, a South Carolina limited liability company personally appeared before me this 7th day of July, 2005 and acknowledged the due execution of the foregoing instrument

NOTARY PUBLIC
My commission expires 8/19/2014

FILED, RECORDED, INDEXED
07/08/2005 04:34:07PM
Rec Fee: 10.00 St Fee 3749.20
Co Fee: 1586.20 Pages: 3
Issued to: WOODDY LAW FIRM
Register of Deeds Berkeley Co , SC
Cynthia B Forte

RECEIVED

07/08/2005

ASSESSOR
BERKELEY COUNTY SC
JANET BROWN JURDSKO
AUDITOR BERKELEY COUNTY SC

000022530 Bk:04827 PG:00262

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY) **AFFIDAVIT**

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

101 165 Acre Tract 3A Berkeley County, South Carolina being a portion of that property bearing County Tax Number 221 00-00-048 was transferred by Sheep Island Property LLC, a South Carolina limited liability company to Bar Pen Investments LLC, a South Carolina limited liability company on 07/07/05

The transaction was (check one)

_X_ An arm s length real property transaction and the sales price paid or to be paid in money or money s worth was $1 441 601 00

____ Not an arm s length real property transaction and the fair market value of the property is $ _____

____ The transaction is exempt or partially exempt from the recording fee as set forth in S C Code Ann Section 12-24 10 et. seq because the deed is

_____

_____

____ As required by Code Section 12 24 70 I state that I am a responsible person who was connected with the transaction as the purchaser

I further understand that a person required to furnish this Affidavit who wilfully 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.

Bar Pen Investments LLC
a South Carolina limited liability company

By: _____
Aubrey J Wooddy Jr Member

By: _____
Steven L Pendley Member

By: _____
Joseph Bartone, Member

Sworn to before me this 7th day of July 2005

_____
NOTARY PUBLIC for South Carolina
My commission expires: 4/19/2011

QUALIFICATIONS OF APPRAISER

MICHAEL A. WHITE, GAA

PROFESSIONAL AFFILIATIONS

Employed by Hartnett Realty Company since 1991
Partner and Company Vice President since 1995
Licensed Broker - State of South Carolina
South Carolina Certified General Appraiser #CG200
Associate Member of the Appraisal Institute
pursuing the MAI Designation
General Accredited Appraiser of the Real Estate
Section of the National Association of Realtors
Member of the National Association of Realtors
Charleston Trident Association of Realtors

BIOGRAPHICAL

Born in Charleston, South Carolina (1969)
Graduated from local grammar and high schools
Graduated from the University of South Carolina
with degrees in Real Estate and Management (1991)

EDUCATION

The following Real Estate and Appraisal courses have been attended and completed

Introduction To Real Estate And Urban Development	-	Spring 1990, University of South Carolina Columbia, South Carolina
Real Estate Appraisal Fundamentals		Fall 1990, University of South Carolina Columbia, South Carolina
Real Estate Investment Fundamentals	-	Spring 1991, University of South Carolina, Columbia, South Carolina
Real Estate Finance	-	Spring 1991, University of South Carolina Columbia, South Carolina

Education (Cont)

REA 102	-"The Valuation Process & Collection of Data" Prelicensing/Precertification Course at the Citadel, Charleston South Carolina, June 1991
REA 103	"Valuation Methods, Sales Comparison, Cost/Income Approaches" Real Estate Appraisal Prelicensing/Precertification Course at the Citadel, Charleston, South Carolina, June1991
REA 104	- "Partial Interest, Unique Properties Reconciling Data and the Appraisal Report" Real Estate Appraisal Prelicensing/ Precertification Course at the Citadel, Charleston, South Carolina, July 1991
REA 105	- "Regulations Standards, Ethics and Law of Appraisals" Real Estate Appraisal Prelicensing/ Precertification Course at the Citadel, Charleston, South Carolina July 1991
REA 201	'Basic Income Capitalization Concepts Analysis and Math" Real Estate Appraisal Prelicensing/Precertification Class at the Citadel, Charleston, South Carolina, 10/91
REA 202	"Capitalization of Incomes, Cash Flows and Mortgage Calculations" Real Estate Appraisal Prelicensing/Precertification Class at the Citadel, Charleston, South Carolina, 10/91
REA 301	- "Applied Income Property Valuation" Triangle Real Estate Appraisal School, Columbia South Carolina, December, 1991
COURSE 410	- "Standards of Professional Practice," Part A, The Appraisal Institute, University of Georgia, March 1993 and June 1998
COURSE 420	- "Standards of Professional Practice ' Part B, The Appraisal Institute, University of Georgia, March 1993 and June 1998

Education (Cont)

COURSE 430	- "Standards of Professional Practice, ' Part C, The Appraisal Institute March 2002
COURSE I110	Successful Challenge of the Appraisal Institute's Appraisal Principles Course Exam, Durham, North Carolina, February 1997
COURSE I1120	-Successful Challenge of the Appraisal Institute's Appraisal Procedures Course Exam, Durham North Carolina, February 1997
COURSE 530	- Advanced Sales Comparison and Cost Approaches, Appraisal Institute, Chicago, Illinois April 2004

National Uniform Standards of Professional Appraisal Practice (USPAP) Update Course from the Appraisal Institute—April 2005

PARTIAL LIST OF CLIENTS

Carolina First Bank
Carolina Federal Savings Bank
First Federal of Charleston
BB&T
BB&T Mortgage
Town of Hilton Head Island
SouthTrust Bank, N.A
SouthTrust Mortgage Corporation
National Bank of South Carolina
Robert Rosen, Attorney at Law
Stephen M Slotchiver Attorneys at Law
John M Dodds, III Attorney at Law
RBC Centura Bank
Regions Bank
Tidelands National Bank
Wachovia Bank

STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) Case No 2006-CP-08-1650

SHEEP ISLAND PLANTATION, LLC,
Plaintiff,
-vs-
BAR-PEN INVESTMENTS, LLC,
Defendant.

DEPOSITION OF
GEORGIA RICHARD

ORIGINAL

Given before Ted J Brown, Court Reporter and Notary Public, at the Law Offices of The Wooddy Law Firm, 622 Johnnie Dodds Boulevard, Mt Pleasant, South Carolina, on Tuesday, May the 29th, 2007, commencing at 1 33 o'clock, p m

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY) IN THE COURT OF COMMON PLEAS
Case No 2006-CP-08-1650

SHEEP ISLAND PLANTATION, LLC,
Plaintiff,
-vs-
BAR-PEN INVESTMENTS, LLC,
Defendant

DEPOSITION OF
GEORGIA RICHARD

ORIGINAL

Given before Ted J Brown, Court Reporter and Notary Public, at the Law Offices of The Wooddy Law Firm, 622 Johnnie Dodds Boulevard, Mt Pleasant, South Carolina, on Tuesday, May the 28th, 2007, commencing at 1 33 o'clock, p m

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Lexington	Myrtle Beach	Newberry	Orangeburg
Spartanburg	Summerville	Sumter	West Columbia

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A P P E A R A N C E S

For the Plaintiff — Futeral Law Firm
By Thomas C Nelson, Esquire
1004 Anna Knapp Blvd 2nd Floor
Mt Pleasant, SC 29464

For the Defendant — Altman & Coker
By Charles S Altman, Esquire
171 Church Street, Suite 318 (29401)
Post Office Box 265
Charleston, SC 29402

Also present — E Bruce Marshall
Aubrey J Wooddy, Jr , Esquire

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INDEX TO EXHIBITS

Defendant's Exhibits for I D

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4	Email dated July 20, 2006	17

(Georgia Richard, being duly sworn, testified as follows)

DIRECT EXAMINATION BY MR ALTMAN

Q Ms Richard, before I begin, my name is Charles Altman I did not provide you with a witness fee and mileage, which I'm going to give to you now. That should buy you at least a cup of coffee or maybe a bottle of water

A Appreciate that

Q That's what the Rule requires So, we didn't set that rate

A Okay

Q Before we begin, I must tell you that pursuant to the Rules that we govern for taking depositions that if you don't understand a question that I'm asking you, ask me to repeat the question or rephrase it if you don't understand it If you answer the question, we will presume you do understand the question or you did understand the question

A Yes, sir

Q If you don't understand the question, I'm the only person you can ask to repeat it

A Okay

Q You cannot seek advice from anybody else, unless

there's a document that you have not seen before that I provide you with Do you have any questions about that?

A No

Q Okay I'm going to show you a copy of a document which is a copy of a subpoena we served on you, and ask if you've seen that before?

A Yes, sir

MR ALTMAN Mark that as Exhibit 1

(SUBPOENA MARKED DEFENDANT'S EXHIBIT 1 FOR I D)

Q Ms Richard, as part of this subpoena, we asked that you bring certain documents with you today Have you brought any documents with you?

A I have some

Q Okay Would you please show those to me? If you would just let me hold them

A Oh, okay

Q If we need to use any of them as Exhibits, we'll make copies

MR ALTMAN We can go off the record for a few minutes so I can go through these

(Deposition went off the record for a brief period of time)

Q Ms Richard, have you had any discussions with

anyone in preparation for your deposition here today?

A I spoke with Mr Nelson briefly

Q What did you speak to him about?

A Make sure I know how to get to the office here because originally I thought it was at his office

Q Okay Did you discuss your testimony with him?

A Yes

Q What did you discuss about your testimony?

A Basically, what kind of documents I need to bring, and maybe questions you might ask

Q Did you discuss your possible responses to any questions with him?

A No

Q He just told you what kind of questions to expect?

A Right

Q You did not tell him what your responses would be?

A Because it was very short conversation with Mr Nelson

Q Okay But, you did not tell him what your responses to the questions would be? Is that correct?

A That's correct
Q Okay How long have you been a real estate broker?
A About thirty years
Q Okay Where do you work?
A I work in Prudential Carolina Real Estate
Q In which office?
A At Goose Creek's office
Q How long have you been with Prudential?
A About eight years
Q Eight years? Do you specialize in any particular type of real estate or just anything that comes in the door?
A No
Q Anything that comes in the door?
A Anything that comes through the door
Q How much of your practice would be residential versus commercial in nature?
A I would say ninety-five percent residential Maybe five percent commercial
Q The commercial that you do, is that mostly in the way of acting as the purchaser's agent or do you have listings for commercial properties also?
A Both

Q Both? How long have you known Mr Marshall?
A Probably by now three years
Q Have you sold him any properties before --
A No
Q -- the one that we're talking about today? The Sheep Island property?
A No
Q Okay How did you meet Mr Marshall?
A Through a mutual friend
Q Back up a moment Do you know if a contract for a sale of real estate has to be in writing?
A Yes
Q Does it have to be?
A Yes.
Q That's a pretty absolute type of situation?
A Yes
Q Absolute statement? That's one of the first things you were taught in real estate school?
A Yes
Q Okay And do amendments -- is it your understanding that amendments to contracts need to be in writing also?
A Yes
Q What was your involvement in the contract for the -- let me show you a document and ask you if

you recognize that? Do you recognize this document I just handed to you?

A Yes

Q What is that document?

A Agreement to Buy and Sell Real Estate for General use and Lots/Acreage

Q Is this an executed contract that I handed to you or is it a blank contract?

A It's executed

Q Okay Is that contract a contract entered into by E Bruce Marshall and Jeremy Marshall, Bar-Pen, LLC for 101 acres of property on Sheep Island?

A Yes

Q Okay And the purchase price is $2,530,000 00? Is that correct?

A That's correct

Q Did you represent the purchaser with regard to the execution of the contract?

A Yes

MR ALTMAN Let's mark that as Exhibit 2

(CONTRACT MARKED DEFENDANT'S EXHIBIT 2 FOR I D)

Q Ms Richard, did the contract, which has been marked as Exhibit 2, did it have a closing date

or dates during which the closing had to take place? I'm going to ask you to look at the exhibit document please?

A Yes

Q When was the closing supposed to take place?

A See paragraph 30

Q When, pursuant to the contract, was the closing supposed to take place?

A With reference to paragraph 9, closing shall take place no sooner than July 15th, 2005, no later than July 31st, 2006 with time being of the essence

Q Okay You just said July 15th, 2005?

A No sooner than July 15th, 2005, no later than July 31st, 2006

Q Ms Richard, when was this contract executed?

A December 15, '05

Q Closing couldn't have taken place on July 15th, 2005, could it?

A No It say '06, 2006

Q You said July 15th --

A July 31st -- it says -- yes No sooner than July 15th, -- oh, I'm sorry, 2006 And no later than July 31st, 2006 I apologize

Q Okay I just want to make sure that we're

talking about the same document here
A It looked like five to me
Q I understand, and when you get copies And it says, time being of the essence, does it not?
A Yes
Q Okay When you were in real estate school and after that, have you learned anything -- what's your understanding of what time of the essence means?
A It's the time of being of the essence
Q Okay They didn't go over that with you in real estate school or did they?
A Yes
Q Does it mean that that's the final day? Those are absolute dates Is that what it means?
A (nods head) Yes
Q Okay You're going to have to speak up because the court reporter cannot take down nodding of your head
A Okay
Q All right Was there a contingency in the contract regarding funding?
A Yes
Q Okay What was that contingency?
A Paragraph 6, eighty percent loan to value within

thirty consecutive days from the execution of this agreement

Q Okay Does it also talk about when the approval for the loan was supposed to have been obtained?

A Within forty-five days

Q Do you know if a loan was applied for by your client within thirty days?

A Yes

Q Was it applied for?

A Within thirty days

Q Do you know when the loan was approved?

A No, I don't

Q Do you know what your clients' intentions were with regard to the property? Do you know what they were going to do with it after they purchased it?

A No

Q Were you trying to obtain someone to purchase the property from them? Were you seeking purchasers?

A No

Q You were not?

A. No

Q Were you aware of any letters of intent from a possible purchaser from your clients with regard

to the property?

A Could you repeat that again?

Q Were you aware of any people who were interested in purchasing the property from your clients, from the Marshall's, once they obtained title to it?

A Yes

Q Were you involved in obtaining any indications from people who wanted to buy the property?

A No

Q I believe you have a copy in your file of a letter of intent from someone Is that correct?

A Yes

Q How did you obtain that document?

A The same mutual friend give that to me to fax over to Mickey

Q To Mickey Who is Mickey?

A. Mickey Rake, the agent who represent the seller

Q All right But, was that letter of intent directed to Mr Marshall or was it directed to the owners of the property, Bar-Pen?

A It's direct to, I believe the Bar-Pen But, in the letter, it's addressed to Mr Chuck Thompson

Q Who is Chuck Thompson?

A It's a mutual friend actually brought the deal to the table

Q You represented Mr Marshall, E Bruce Marshall and Jeremy Marshall in getting this contract that we've identified as Exhibit 2 Correct?

A Correct

Q Okay The letter of intent that you're referring to, was that before or after this contract?

A After

Q After the contract? So, you had a client who was interested, who had contracted to buy the property And you sent another letter of intent from somebody else who wanted to buy it to the owner? Is that correct?

A Yes

Q Why did you do that?

A Mr Chuck Thompson has spoke with Mickey Rake, and mentioned about this person who's interested in purchasing the property And he had no way of fax over to Mr Rake So, he gave me the part, the letter, to fax on his behalf to Mr Rake

Q And you did that even though you knew there was another contract to buy the property in

existence at the time? Correct?
A Yes
Q Why did you do that?
A Mr Thompson asked me to do it And out of courtesy, I did it for him
Q Did you tell him there was already a contract on the property?
A He knew there was a contract on the property
Q Did you tell him that?
A Yes
Q Did you tell Mr Marshall you had done that?
A No
Q Why not?
A At that time, I was not represent the other party I'm just with them, Mr Marshall So, until I became a agent for the other party, as I said, I'm just doing this as a favor and as courtesy for Mr Thompson
Q Was there a point in time where you discussed with Mr Rakes a possible extension of the closing date for the purchase of the property under the contract?
A Yes
Q Do you remember when that was?
A I believe it's around July the 13th, 2006

Q Let me show you a document that has a series of emails on it and ask if you recognize the emails? It's a two-page document

A Sure Yes

Q Do you remember seeing those?

A Yes

MR ALTMAN Let's mark that as Exhibit 3, please

(EMAILS DATED JULY 13 AND 14, 2006 MARKED DEFENDANT'S EXHIBIT 3 FOR I D)

Q Looking at the second page of that document, Ms Richard, this email appears to be from Mickey Rakes addressed to you?

A That's correct

Q On July 13th, 2006?

A Yes

Q And in that email he conveys to you, I believe, the terms of it which the sellers would be willing to extend the closing date? Is that correct?

A That's correct

Q Okay What are those terms?

A Email is to confirm our discussion earlier today Seller is willing to allow the purchaser to buy an extension of thirty days for 50,000

Q Are there any other terms stated?
A This money would be both non-refundable and non-applicable to the original purchase price It would be in addition to contract purchase price Should your buyer wish to purchase the extension, the check would be made out directly to Bar-Pen, LLC If not, please set the closing date and let me know as soon as possible As you are aware, I have been trying to get it for a couple weeks
Q And did you respond to that email?
A Yes
Q And how did you respond?
A I forwarded it to Benjy
Q Benjy Lafond?
A Lafond
Q Okay Did you also forward a copy to Mr Marshall?
A I believe I called Mr Marshall
Q Okay What was Mr Marshall's response?
A He thought 50,000 a lot of money And he told me we ought be able to close by the deadline, at that time
Q Okay Did you convey that to Mr Rakes?
A Yes

Q How did you do that?
A I call him I said, I think we can close by July 31st
Q You told him you thought you could close by July 31st?
A Yes That is what Mr Marshall told me We're trying to get it closed by the deadline
Q Okay Did you tell Mr Rakes that the financing had been approved?
A No
Q Let me show you another document that contains some emails And the second one is at the bottom of the page It's from Mr Rakes addressed to you again on July 20th Do you see that?
A Yes
Q Do you remember seeing that before?
A Yes

MR ALTMAN Let's mark that as Exhibit 4, please

(EMAIL DATED JULY 20, 2006 MARKED DEFENDANT'S EXHIBIT 4 FOR I D)

Q Let me back up one minute Did you ask anyone, after you received what has been marked as Exhibit 3, the offer for the extension of time?

Did you prepare a document to extend the closing date?

A No

Q Okay Did you ask anyone to prepare a document?

A No

Q Did you ask Mr Marshall or Mr Lafond if one needed to be prepared?

A No

Q Okay Now, let's look at Exhibit 4 The email from Mr Rakes to you, July 20th, what was the purpose of that email?

A It's confirm our conversation on July the 20th that the seller instruct Mr Rakes to inform me immediately withdraw their offer to the purchaser allow time to buy an extension of time to close the property

Q Okay So, that offer that had been on the table was withdrawn? No extension of time to close? Correct?

MR NELSON I object to the form of the question

Q Was the offer to extend the closing date that had been made by the seller, was that withdrawn as a result of Mr Rakes email?

A I received that email Yes On July the 20th

Q Did you convey that information to Mr Marshall?
A Yes I forwarded that email to Mr Lafond and took a copy to Mr Marshall the next day
Q Okay So, on the 21st you took a copy to tell Mr Marshall that the offer to extend had been withdrawn and you informed Mr Lafond of that Correct?
A Yes
Q Were you told, at any time, that the purchaser, Mr Marshall or his company, had obtained a loan to close on the property?
A They were working with the banker
Q Okay Were you told, at any time, that the loan had been approved?
A Yes
Q When was that?
A By Mr Marshall that, I think -- I believe it's around April the 26th
Q April the 26th? Do you have a document that shows something to that effect?
A Oh, I'm sorry No That's not the document I was looking at Here's the document Mr Lafond sent me Yes July 25th, 2006 I got a copy of an email from Mr Lafond advise me that the closing would be scheduled for Monday, July 31st

at 4 00 o'clock

Q Okay Did he tell you in that email that the loan had been approved?

A He said he's getting a package

Q Okay Can I see the email you're referring, please? Okay What you've handed me is an email from Benjamin Lafond to Skipper Wooddy that says, I'm trying to schedule this closing for Monday, July 31 at 4 00 o'clock Please email me your fee As soon as I have the payoff from First Reliance Bank, I will email you the draft HUD It doesn't say he's waiting on a package, does it?

A No

Q Okay Did you believe, at that time, that the loan had been approved for the purchase?

A Yes

Q Did you know any of the terms of the loan that you thought was approved?

A No

Q Were you involved at all in discussions with the bank, Southcoast Community Bank?

A No

Q When did you find out that the closing would not take place on July 31st, 2006?

A On July 31st
Q How did you find out?
A I spoke with Mr Marshall And up until -- I think almost 4 00 o'clock, I was ready to go to the closing table And we had a little hard time to get in touch with Mr Lafond because he was in a closing all day And of course, I believe it was probably 4 00 or 5 00 o'clock, close to the end of the day, that I realized it's not going to happen
Q Why were you told the closing was not going to take place?
A That the bank need additional fund
Q Who told you that?
A Mr Marshall
Q Did he tell you how much in additional funds the bank wanted?
A Not very clear He just say they need some reserve for something I don't recall
Q Was there any discussion between you and Mr Marshall with regard to try and get an extension for the closing?
A Yes
Q Tell me what that discussion was
A At that time, I think we -- I mean Mr Marshall

and I were trying to get in touch with Mr Lafond to get in touch with Mr Skipper to deliver the $50,000 for the extension

Q The offer from the seller to extend had already been withdrawn Isn't that what you testified to?

A Right

Q Was there another offer on the table? Had somebody else made an offer with regard to an extension of the contract, or the closing date?

A No

Q Whose idea was it to try to send $50,000 to Mr. Wooddy?

A I believe it was Mr Lafond or maybe Mr Marshall I'm not really aware because at the last minute it's just very confusing and panic because we're trying to get this deal to work And to realize it's not going to work, we just trying to salvage it

Q Do you know when the $50,000 00 was delivered to Mr Lafond?

A No

Q Do you know if the $50,000 00 was ever delivered to Mr Wooddy?

A To my knowledge, yes

Q Who delivered that?
A I think Mr Marshall hand carried it to Mr Lafond and Mr Lafond took it to Mr Skipper or Mr Wooddy
Q Did you prepare any documents to extend the closing date on the contract?
A No
Q Do you know if anybody prepared any documents to extend the closing date on the contract?
A Not to my knowledge But I thought Mr Lafond is handling the whole thing
Q Did you suggest to anybody to prepare a document extending the closing date?
A No
Q Did anyone suggest that to you?
A No

MR ALTMAN Let's go off the record for a minute

(Deposition went off the record for a brief period of time)

MR ALTMAN I have nothing further

MR NELSON I don't either

(Deposition concluded at 2 10 o'clock, p m)

STATE OF SOUTH CAROLINA)

C-E-R-T-I-F-I-C-A-T-E

COUNTY OF BERKELEY)

I, Ted J Brown, Court Reporter and Notary Public, certify that I did have Georgia Richard to appear before me at 1 33 o'clock, p m on Tuesday, the 29th of May, 2007, at the Law Offices of The Wooddy Law Firm, 622 Johnnie Dodds Boulevard, Mt Pleasant, South Carolina, that the witness was duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth, that the foregoing pages constitute a true and accurate transcript of the testimony given at that time and place

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 3rd day of May, 2007

Ted J Brown

Notary Public for South Carolina

My Commission Expires August 15, 2012

STATE OF SOUTH CAROLINA
ISSUED BY THE CIRCUIT COURT FOR THE COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY SHEEP ISLAND PLANTATION, LLC Plaintiff v BAR-PEN INVESTMENTS LLC Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action Number 2006-CP-08 1650 SUBPOENA

DEFENDANT'S EXHIBIT
1 Richard
5-29-07 MB

TO Georgia Richard
Prudential Carolina Real Estate
567 Crowfield Blvd
Goose Creek, South Carolina 29445

Place of testimony — Date and Time:

Place of deposition. The Wooddy Law Firm
622 Johnny Dodds Blvd.
Mt. Pleasant, South Carolina 29464
Date: May 29 2007 Time: 1 30 p m.

Place The Wooddy Law Firm
622 Johnny Dodds Blvd.
Mt. Pleasant, South Carolina 29464
Date May 29 2007 Time 1.30 p.m.

Premises — Date
Time

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6) SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS DIRECTORS OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

ISSUING OFFICER S NAME, ADDRESS, AND PHONE NUMBER.	Charles S Altman, Esquire Post Office Box 265 Charleston South Carolina 29402 (843) 853-9907

I CERTIFY THAT THE SUBPOENA ISSUES IS IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(B)(1) HAS BEEN GIVEN TO ALL PARTIES

ISSUING OFFICER'S SIGNATURE AND TITLE	ATTORNEY FOR DEFENDANT — 5/3/07 DATE

PROOF OF SERVICE

Served On	Georgia Richard Prudential Carolina Real Estate 567 Crowfield Blvd Goose Creek, South Carolina 29445
Manner of Service	Certified Mail Return Receipt Requested
Date	May 3 2007
Served By	Carol A. Biddle, Paralegal

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

This the 3rd day of May 2007

Signature of Server

Carol A. Biddle, Paralegal
Post Office Box 265
Charleston, South Carolina 29402

Rule 45 South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, o production or inspection directed to a non-party the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party or an officer director or managing agent of party to travel to a place more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, developmental, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party or

(iii) requires a person who is not a party or an officer director or managing agent of a party to incur substantial expense to travel from the county where that person resides is employed or regularly transacts business in person, the court may to protect a person subject to or affected by the subpoena, quash or modify the subpoena or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT "A"

ALL CORRESPONDENCE, EMAILS, NOTES, CONTRACTS, AMENDMENTS, ADDENDUMS TO CONTRACTS OR OTHER DOCUMENTS WHICH ARE RELATED IN ANY WAY TO THE PROPERTY DESCRIBED IN EXHIBIT "B'

EXHIBIT "B"

ALL that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being in Berkeley County, South Carolina and known and designated as Tract 3A, containing **101 165** acres, more or less, as shown on that certain plat entitled " PLAT OF A BOUNDARY SURVEY SHOWING THE SUBDIVISION OF TRACT 3 TO FORM TRACT 3A SURVEYED AT THE REQUEST OF BYRON S TONEY LOCATED IN BERKELEY COUNTY, SC," prepared by Joseph O Eelman, R L S , dated April 8,2005, and recorded April 19, 2005 in Plat Cabinet Q at Page 367E in the Office of the Register of Deeds for Berkeley County, South Carolina, said tract of land having such actual size, shape, dimensions, buttings and boundings as shown on said plat, reference to which is hereby made for a more complete description.

Tax Map No 194-00-02-1 62

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No 06-CP-08-1650
COUNTY OF BERKELEY	)	
SHEEP ISLAND PLANTATION, LLC	)	
	)	
Plaintiff,	)	
	)	
vs	)	
	)	
BAR-PEN INVESTMENTS, LLC	)	
	)	
Defendant.	)	
	)	

NOTICE OF DEPOSITION

TO GEORGIA RICHARD

YOU WILL PLEASE TAKE NOTICE that at 1 30 p.m on May 29, 2007, at the offices of The Wooddy Law Firm, LLC, 622 Johnnie Dodds Blvd., Mt. Pleasant, South Carolina 29464, Defendant will take the deposition of **Georgia Richard**, upon oral examination pursuant to Rule 30 of the South Carolina Rules of Civil Procedure before a Notary Public or some other official authorized by law to take depositions The oral examination will continue from day to day until complete You are invited to attend and take such part as is fit and proper

ALTMAN & COKER, LLC

Charles S Altman
Post Office Box 265
Charleston, South Carolina 29402
843-853-9907
Attorneys for Plaintiff

May 3, 2007

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CIVIL ACTION NUMBER 06-CP-08-1650
SHEEP ISLAND PLANTATION, LLC	)	
Plaintiff,	)	
vs	)	
BAR-PEN INVESTMENTS, LLC	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of May, 2007, a copy of ***Notice of Deposition and Subpoena*** were served upon the below stated parties via United States Mail with sufficient first class postage affixed thereto and addressed as follows

Georgia Richard
Prudential Carolina Real Estate
567 Crowfield Blvd
Goose Creek, South Carolina 29445

ALTMAN & COKER, LLC

Carol A Biddle, Paralegal
Post Office Box 265
Charleston, South Carolina 29402
(843) 853-9907
(843) 853-9838 Facsimile

Z:\Data\Clients\49108\Discovery\Depositions\COS Richard.050307.wpd

DEFENDANT'S EXHIBIT
2 Richard
5-29-09 MB

AGREEMENT TO BUY AND SELL REAL ESTATE
(FOR GENERAL USE AND LOTS ACREAGE)

1 PARTIES This legally binding Agreement entered into on December 14 2005 between Buyer(s) E Bruce Marshall And/Or, Jeremy S Marshall (hereinafter called "BUYER") and Seller(s) Bar-Pen, LLC (hereinafter called "SELLER") The property shall be deeded in the name(s) of To Be Determined

THE ☐ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2 PROPERTY TO BE SOLD Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon

Lot _____ Block _____ Section _____ Subdivision Tract 3A

Address Sheep Island Road

Tax Map # 194-00-02-162 City Summerville Zip 29483

County of Berkeley State of South Carolina.

3 PURCHASE PRICE shall be $ 2,530,000 00 Two Million Five Hundred Thirty Thousand dollars.

4 METHOD OF PAYMENT Purchase price shall be paid as follows. ☐ Cash or ☒ Subject to Financing Financing to be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms:

5 EARNEST MONEY This offer is accompanied by an earnest money deposit of $ 10,000 00 Buyer and Seller authorize Prudential Carolina R E as Escrow Agent to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☒ Check, or ☐ Other Broker does not guarantee payment of a check or checks accepted as earnest money All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer

THE PARTIES UNDERSTAND THAT UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT

6 LOAN PROCESSING AND APPLICATION Buyer's obligation under this agreement is contingent on Buyer obtaining said loan Buyer shall apply for a maximum 80 000 % loan (loan to-value ratio) within 30 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 45 consecutive days that contains no credit, income or asset conditions unless otherwise set forth in this contract. Time is of the essence Should the Buyer fail to make loan application or receive approval within said period and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with the written notice Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner Buyer will take any action that is needed or requested by Lender to process the loan application Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s) If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 22

FHA Mortgage Insurance ☐ will ☒ will not be added to the mortgage VA funding fee ☐ will ☒ will not be added to the mortgage

[EBM] BUYER [JSM] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

CENTURY 21 Southern Homes 20 St. James Ave Suite 5 Goose Creek, SC 29445 Contract Bar
Phone (843) 572 3131 Fax (843) 572 3137 Mickey Rukes

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7 CLOSING COSTS Unless otherwise agreed closing costs including all loan charges and prepaid recurring items shall be paid as follows
(a) SELLER shall provide or pay for preparation of deed any recording charge based on value of property, and all costs necessary to deliver a marketable title including recording of satisfactions and property taxes to the day of closing
(b) BUYER shall pay unless otherwise agreed he an the cost of the Buyer's credit report property insurance appraisal survey cost of obtaining loan discount points, title examination escrow deposits and prepaid expenses The Buyer shall also pay if applicable, interim interest and mortgage insurance premium or VA funding fee Buyer's hazard insurance policy shall provide coverage as required by lender Other terms _____

8 **OPTION TO TERMINATE AFTER DUE DILIGENCE.** (A) Seller grants to Buyer a 90 day right ("Termination Right") from the date of this agreement during which Buyer may do any or all of the following

1 Conduct at Buyer's sole expense whatever due diligence inspections, examinations, surveys and testing, if any Buyer deems appropriate to evaluate the suitability of Property for Buyers intended use including but not limited to zoning, governmental regulations environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence")

(B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence Buyer hereby agrees to indemnify and hold Seller, Broker and Broker's Affiliated Licensees harmless from and against any and all loss injury cost or expense associated with Buyer's inspection of and entry upon Property
(C) If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property as-is" The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject, or limit any other rights which Buyer may have under this Agreement.

9 **BUILDING PERMIT** This Agreement ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property If Buyer notifies Seller in writing within N/A days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property then in such event this Agreement shall terminate If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer

10 **REZONING** This Agreement ☐ is ☒ is not contingent upon Property being rezoned to N/A on or before the ____ day of N/A _____ by the appropriate governmental authorities For purpose herein, the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed The ☐ Buyer ☐ Seller shall be responsible for pursuing such rezoning and paying all associated costs. All rezoning applications shall be submitted to Seller for Seller's approval prior to filing which approval shall not be unreasonably withheld. All parties agree to cooperate to sign the necessary documentation and to support the rezoning application If Buyer notifies Seller or Broker in writing within forty-eight hours after the above date the Property cannot be so rezoned, then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer If Buyer fails to provide said notice then this contingency shall be deemed to have been waived by Buyer

11 **WELL, SEPTIC TANK, SEWER AVAILABILITY** It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other [illegible] the event a well and/or septic tank is needed to be placed on the property

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure, then in such event the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed $ N/A then in such event, the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system

Seller represents that the property is connected to ☐ public sewer system or to ☐ septic tank or to ☐ public water or to ☐ well system or to ☒ other There is no public water or sewer at subject property

BUYER BUYER SELLER ____ SELLER HAVE READ THIS PAGE

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12 **SURVEY** Upon the acceptance of this offer the property shall be surveyed by a licensed surveyor at the expense of the ☐ BUYER ☐ SELLER The surveyor shall set and flag all property pins showing encroachments and easements Property must be N/A X N/A or having at least 101 105 acres The survey to be approved in writing by Buyer prior to closing The purchase price is based upon $ 25,000 00 per acre (acre so ft. or front ft) and shall be adjusted in accordance with the area set forth in such a survey if applicable

13 **CONVEYANCE SHALL BE MADE** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes ordinances rules and regulations Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances except as herein stated Seller agrees to pay all statutory deed recording fees The deed shall be delivered at the stipulated place of closing, and transaction closed on or before See Paragraph 30 no later than 9 00 p m. **Time is of the essence** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing

14 **POSSESSION** Possession of said property will be given to Buyer on the day of closing Seller agrees to deliver property free of debris and in a clean condition Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy

15 **CONDITION OF PROPERTY** The Seller shall not remove any timber dirt minerals or otherwise affect the condition of the property after the signing of this Agreement All timber dirt minerals etc, shall remain with the property and be a part of the property and be transferred to the Buyer The Seller shall not bring any trash refuse debris medical or hazardous waste or other improper materials upon the property In the event any condemnation proceeding is brought by any governmental authority agency utility, etc., prior to the closing then the Buyer may elect to rescind the agreement

16 **EXPIRATION OF OFFER** The offer from Buyer shall be withdrawn at 5 00 o'clock P M on December 21 2005 unless countered or accepted by Seller in written form prior to such time **Time is of the essence.**

17 **SPECIAL STIPULATIONS** The following stipulations concerning restrictions, and easements affecting desired use drainage hazardous waste availability of water and sewer soil test, wetlands study, subordination, lot releases, etc., should be included here. If conflicting with printed matter the following stipulations shall control (See addendum if applicable)

18 **ADJUSTMENTS** Taxes, water, all sewer assessments, sewer charges fuel oil rents as when collected insurance premiums if applicable and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing and are to be prorated on that basis. **BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing Annual expenses or income shall be apportioned using 365 days Monthly property expenses or income shall be apportioned by the number of days in month of closing Prorations at closing shall be final

19 **NON-RESIDENT TAX.** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

20 **ROLLBACK TAXES (IF ANY)** When rollback taxes are subsequently determined and billed to the Buyer the Seller will pay Buyer's proration unless otherwise paid by ☐ Buyer or ☐ Seller

21 **RISK OF LOSS OR DAMAGE** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder or of terminating this Agreement

22. **DEFAULT** If Buyer or Seller fails to perform any covenant of this Agreement the other may elect to seek any remedy provided by law including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23) or terminate this Agreement with a five day written notice. If terminated both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless If either Buyer or Seller refuses to execute release Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

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23 **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer Seller or broker in an effort to consummate this sale Such costs shall include but are not limited to cost of credit report, appraisal survey inspections and reports title examination and Broker's fee or commission for this sale

24 **SURVEY, TITLE EXAMINATION AND INSURANCE** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made have examination as to the title to the property obtain owner's title insurance and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement Flood insurance if required by Lender at Buyer's option shall be assigned to Buyer with permission of carrier and premium prorated to date of closing

25 **APPRAISED VALUE** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon if any appraising according to the lenders appraisal or other appraisal as agreed for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon if any, appraising according to the lenders appraisal or other appraisal as agreed for the selling price or more, if the lot or parcel with building and improvements thereon appraises for less than the selling price and Seller may elect to sell for the appraised value in such case the Buyer agrees to proceed with the consummation of this sale at the reduced price However if Seller does not agree to sell at the appraised value the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty

26 **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS** All reports and certifications called for by the lending agencies and any governmental body by the Buyer concerning any special study area, wetlands or for any environmental protection matter shall be at the expense of the Buyer In the event such studies are wanted or required, the studies must be furnished by the proper parties **within** 90 **days** of complete execution of the agreement. The Buyer and Seller must have access to all studies **within five (5) days of receipt** of the studies If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph. If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem. If the Seller elects not to correct the problem the Buyer's obligations under this Agreement terminate.

27 **COASTAL TIDELANDS & WETLANDS ACT** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq , South Carolina Code of Laws) an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense.

28 **DISCLAIMER BY BROKERS AND AGENTS** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s). (1) Give no guaranty or warranty of any kind express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems thereto included but not limited to termite damage roof basement, appliances heating and air conditioning systems plumbing sewage electric systems, and to the structure (2) Give no warranty express or implied as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed (3) Give no warranty as to title (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property (b) any matters which would be reflected by current survey of the property and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer

29 **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement the breach of this Agreement or the services provided in relation to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® Disputes shall include representations made by the Buyer(s) Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation negligence and/or fraud.

Any agreement signed by the parties pursuant to the mediation conference shall be binding This mediation clause shall survive for a period of 120 days after the date of the closing

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The following matters are excluded from mediation hereunder (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or land contract, (b) an unlawful detainer action (c) the filing or enforcement of a mechanics lien (d) any matter which is within the jurisdiction of a probate court (e) the filing or enforcement of a lis pendens (f) an interpleader action to resolve earnest money disputes The filing of a judicial action to enable the recording of a notice of pending action for order or attachment, receivership, injunction, or other provisional remedies shall not constitute a waive of the right to mediate under this provision nor shall it constitute a breach of the duty to mediate

30 **ENTIRE BINDING AGREEMENT** This written instrument including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises covenants and warranties between the Buyer and Seller It can be changed only by a subsequently written instrument signed by both parties Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns successors, executors or administrators Whenever used singular includes plural, and use of any gender shall include all.

31 **SURVIVAL** If any provision herein contained which by its nature and effect is required to be observed kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed kept or performed

32 **FACSIMILE AND OTHER ELECTRONIC MEANS** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means including but not limited to electronic mail and the internet, and the signatures initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

33 **EXTENSION AGREEMENT** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date Closing shall occur within this time extension but in no event shall closing occur later than the above extension date. **Time is of the essence.**

34 **CONTINGENCIES** These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) (a) With reference to Paragraph 9 Closing shall take place no sooner than July 15, 2006 and no later than July 31, 2006 with "Time being of the essence" (2) With reference to Paragraph 8 Buyer agrees to make an additional $40,000 deposit directly to the Seller at the end of said "Due Diligence Period" This $40,000 plus the original $10,000 deposit become Non-Refundable should the Buyer not close for any reason whatsoever as stipulated in Paragraph 34 (a) above and Paragraph 33 Buyer authorizes the Escrow Agent to disburse the original $10,000 deposit to the Seller at the end of said "Due Diligence Period"

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THIS IS A LEGALLY BINDING AGREEMENT BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM

IN WITNESS WHEREOF this Agreement has been duly executed by the parties

BUYER E Bruce Marshall And/Or Date 12-16-2005 Time _____

WITNESS _____ Date _____ Time _____

BUYER Jeremy S Marshall Date 12-19-05 Time 12:55

WITNESS _____ Date _____ Time _____

SELLER Bar-Pen, LLC Date 12-15-05 Time _____

WITNESS _____ Date 15 DEC 05 Time _____

SELLER _____ Date _____ Time _____

WITNESS _____ Date _____ Time _____

LISTING AGENT AND COMPANY CENTURY 21 SOUTHERN HOMES, INC / MICKEY PA

SELLING AGENT AND COMPANY PCRE / GEORGIA RICHARD

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER

ESCROW AGENT ACKNOWLEDGMENT _____ Prudential Carolina R E

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ADDENDUM "A"

THIS ADDENDUM WHEN SIGNED SHALL BECOME AN INTEGRAL PART OF THE CONTRACT OF SALE DATED 11/19, 20 05 BETWEEN Sheep Island Property, LLC (SELLER) & Marshall (BUYER) OF LOT Tract 3A BLOCK ____ ADDRESS 0 Sheep Island Road, S'Ville AND SHALL BIND ALL PARTIES. THIS ADDENDUM SHALL PREEMPT ALL PRINTED MATTER OF THE SUBJECT CONTRACT WHEN CONFLICTING

1 The purchase Agreement may be assigned to an entity or LLC. prior closing.

BUYER	DATE 11/21/2005	WITNESS	DATE 11/21/05
BUYER	DATE 11/21/2005	WITNESS	DATE 11/21/05
SELLER	DATE 12 19 05	WITNESS	DATE 12/19/05
SELLER	DATE	WITNESS	DATE

LCMT@comcast.net

From Benjamin A. Lafond [benjy@summervillelawyer com]
Sent: Friday July 14, 2006 7:23 AM
To LCMT@comcast.net
Subject: FW Sheep Island Rd

Benjamin A. Lafond
Lafond & Lafond, LLC
120 South Magnolia Street
Summerville, South Carolina 29483
843-832-2007; Fax: 843-832-2009

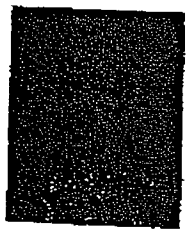
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From Georgia Richard [mailto:grichard@prucar.com]
Sent Thursday, July 13, 2006 10 07 PM
To benjy@summervillelawyer com
Subject: FW Sheep Island Rd

Hi Benjy,
Bruce Marshall asked me yesterday for an extention for closing on the Sheep Island property and this is what the sellers response



Georgia Richard
Prudential Carolina Real Estate
Phone. (843) 574-3082
Fax: (843) 202-8804
grichard@prucar com

7/14/2006

DEFENDANT'S EXHIBIT
3 Richard
5-29-07 MB

http://georgiarichard.bravehost.com

From MickRakes@aol com [mailto MickRakes@aol.com]
Sent. Thursday, July 13, 2006 3 49 PM
To grichard@prucar com
Cc Spendley@aol com, skipper@wooddylaw com
Subject re. Sheep Island Rd

Hi Georgia.

This email is to confirm our discussion earlier today The Seller is willing to allow the Purchaser to BUY an extension of 30 days for $50 000

This money would be both Nonrefundable AND Non-applicable to the original purchase price It would be in addition to the contract Purchase Price

Should your Buyer wish to purchase the extension the check would be made out directly to Bar-Pen LLC If not, please set the closing date and let me know as soon as possible. As you are aware I've been trying to get it for a couple of weeks.

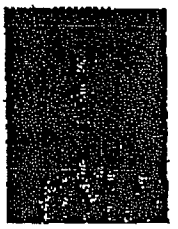
Mickey Rakes
Broker Associate
CENTURY 21 Southern Homes, Inc.
Office (843) 572-3131
Mobile (843) 696-5748
Fax (843) 572-3137

Georgia Richard

To MickRakes@aol com

Subject. RE. Sheep Island Rd

Thank you Mickey I'm forwarding this e-mail to Mr.. Lafond Bruce s Lawyer, and drop off a copy to Bruce Marshall himself.



Copy to Bruce on 7/21/06

Georgia Richard
Prudential Carolina Real Estate
Phone (843) 574-3082
Fax (843) 202-8804
gnchard@prucar com
http://georgiarichard bravehost.com

DEFENDANT'S EXHIBIT
Richard
5-29-07 GR

From. MickRakes@aol.com [mailto MickRakes@aol com]
Sent. Thursday, July 20, 2006 9:00 PM
To gnchard@prucar com
Cc: Spendley@aol.com, skipper@wooddylaw com, MickRakes@aol.com
Subject. Re. Sheep Island Rd

Hi Georgia

This email is to confirm our conversation at approximately 2 30 PM this afternoon

As I mformed you during our discussion the Seller has instructed me to contact and inform you that they immediately withdraw their offer to your Purchaser allowing them to buy an extension of time to close on the subject property

The Buyer has not responded in any way to said offer which was made several days ago, and we are several months past the "Due Diligence" timeframe

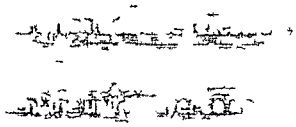
I did relay to one of the partners that you informed me the Buyer had just received their financing commitment letter and was preparing to close

Please inform the Buyer that the Seller is ready, willing and able to close per the contract and will grant no extension of time.

As you are aware the Seller has been requesting a closing date and time for approximately 3 weeks Please, set the closing date immediately and let me know the day and time

Thank You.

Mickey Rakes
CENTURY 21 Southern Homes Inc.



STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) Case No 2006-CP-08-1650

SHEEP ISLAND PLANTATION, LLC,

Plaintiff,

-vs-

BAR-PEN INVESTMENTS, LLC,

Defendant

DEPOSITION OF
MARC KNIGHT

ORIGINAL

Given before Ted J Brown, Court Reporter and Notary Public, at the Law Offices of The Wooddy Law Firm, 622 Johnnie Dodds Boulevard, Mt Pleasant, South Carolina, on Tuesday, May the 29th, 2007, commencing at 10 53 o'clock, a.m

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A P P E A R A N C E S

For the Plaintiff — Futeral Law Firm
By Thomas C Nelson, Esquire
1004 Anna Knapp Blvd 2nd Floor
Mt Pleasant, SC 29464

For the Defendant — Altman & Coker
By Charles S Altman, Esquire
171 Church Street, Suite 318 (29401)
Post Office Box 265
Charleston, SC 29402

Also present — E Bruce Marshall
Aubrey J Wooddy, Jr , Esquire

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(Marc Knight, being duly sworn, testified as follows)

DIRECT EXAMINATION BY MR ALTMAN

Q Mr Knight, have you ever done your deposition before? Had your deposition taken?

A No, sir

Q Okay I'm going to as you a series of questions And if you don't understand a question, please tell me If you need me to repeat, if you need me to rephrase it, I'll do that

A All right

Q If you answer the question, we're going to assume you understand it

A Okay

Q Okay? I'll ask you to speak up because the court reporter cannot take down nodding or shaking of heads, and please speak up because he not only repeats what you're saying, he also records it Okay?

A Got you

Q Okay If you have any questions during the course of the deposition, you have to address them to me You cannot address them to Mr Nelson or anybody else

A Okay
Q Okay? You're not yourself represented by anybody here today Is that correct?
A Right
Q Okay Please state your full name?
A Marc Alex Knight
Q Where do you work?
A Southcoast Community Bank
Q And what is your position there?
A VP/Commercial Loan Officer
Q How long have you been with the bank?
A Since September of 2005
Q What is your education?
A I went to McCauley School which is a boarding school in Chattanooga, Tennessee Graduated from Rhodes College, a private liberal arts school in Memphis And did not go to graduate school
Q Have you gone to any banking schools?
A Not specific banking schools, like LSU, etcetera Just did training through -- up in Columbia with National Bank of South Carolina, as well as local training classes that sometimes last a week, sometimes last a month
Q When did you graduate -- you said Rhodes

College?

A Rhodes College in 1998

Q Okay After you graduated, where did you go to work?

A After I graduated, I moved to Charlotte, North Carolina I was employed by Enterprise Rent A Car for twelve months, and then began my banking career with Bank America

Q How long were you with Bank America? That would have been 1999 with Bank America?

A Bank America, estimate a year and a half

Q And where did you go from there?

A I moved to Charleston and took up employment with National Bank of South Carolina

Q How long were you with National Bank of South Carolina?

A. Two and a half years

Q Okay And that would have taken you through what time? What date?

A I moved to Hilton Head with First Federal I was a Branch Manager with NBSC Hilton Head I moved in June of '03, if that's correct I answered that correctly June of '03 I believe

Q Okay So you went to work for First Federal in June of '03?

A Yes June of '03 That's correct Then I came here in September of '05
Q Okay How long were you with First Federal?
A From June of '03 to September of '05
Q Okay Then you went to work for Southcoast?
A That's correct
Q Okay Which branch of Southcoast do you work in?
A Goose Creek
Q Are you the manager at the Goose Creek branch or just the Loan Officer?
A Just a Loan Officer
Q Mr Marshall, who is sitting at the end of the table, how long have you known him?
A Probably about two months before he applied for the loan, which would put that, I guess, the end of '05, just because he's an account holder I've seen him at the branch, heard his commercials on the radio That type of thing
Q What type of commercials on the radio?
A Just for his business
Q What business is that?
A Lowcountry Mag and Tire
Q Was Mr Marshall a customer with some other officer at the bank or did you just become

acquainted with him because he was coming into the bank?

A Coming into the bank And then Linda Byrd, who is a Branch Manager, had called on his business several times And we would review businesses that she called on, you know, obviously so potentially I could try and get some loan business That's where the relationship began

Q Who came to you about the loan for the purchase of the Sheep Island property?

A It was Bruce and Dave

Q Dave who?

A I can't really pronounce his last name It's Hillshiber --

Q Hilleshiem?

A Yes

Q Just the two of them?

A Yes

Q Did they tell you there was anyone else involved with the project they were trying to borrow money for other than the two of them?

A At that time, no

Q Okay Tell me about the discussion they had with you the first time they came to talk to you about the loan

A We're -- want to get this piece of property Told me the location Obviously, the acreage, loan amount I knew that would be a very good deal, one, for them as well as for the bank That's the kind of -- they were trying to feel out the -- what they were looking at or what they needed to get done in order to get the loan Like what's our lending position, loan to value, that type of thing

Q What amount of the loan were they trying to get from you?

A Well, that wasn't discussed at the initial conversation However, when they came back and actually reviewed the contract, our stance on most things like that, are seventy-five percent loan devalue However, on raw land, which doesn't have water or sewer, it's sixty-five percent

Q Okay Did they apply for a sixty-five percent loan?

A At that time, we thought -- we were hoping that water was going to get to there, get out to that spot by then It had not But ideally, when he looked at when it was going to close, or when it needed to close by, the length of time that they

had from the time we met to when it needed to close, hoping that would be the case, did they apply for a seventy-five percent loan? I think, you know, at that time, yes

Q They applied for a sixty-five or a seventy-five?

A Well, it would just depend on if the water was there in time If the water was there in time, then it would be seventy-five If the water was not there, it was going to be sixty-five At that time, if I had to say which they applied for, it would be seventy-five because we're -- obviously everyone's hoping to get less money down

Q Did they provide you with a copy of the contract that they had for the property?

A Yes

Q I'll show you a document that and ask if you've seen that?

A Yes

Q What is that document?

A It's a contract for the Sheep Island Road

Q Okay

MR ALTMAN Would you mark that as Defendant's Exhibit 1?

(CONTRACT MARKED DEFENDANT'S EXHIBIT 1 FOR

I D)

Q Did you review the contract when you were speaking to Mr Marshall and Mr Hilleshiem?

A Yes

Q Okay Did you notice anything unusual about the contract, or anything that caught your attention about it?

A Yes

Q What did you notice?

A The length of time between the date of the contract and the closing date

Q Why did that catch your attention?

A Most contracts that I see on commercial land or structures is for sixty or ninety days, unless there's construction involved

Q Okay Did you ask Mr Marshall the reason for the long period of time on the closing date?

A No

Q It concerned you but you didn't ask him?

A It did not concern me

Q Okay

A I thought it was a -- I thought he was lucky to have it

Q Okay Is there a provision in the contract regarding findings?

A Yes
Q What is the maximum amount of loan? Is there a contingency regarding the financing?
A Well, then the contract's eighty percent
Q Okay The maximum loan amount is eighty percent?
A Uh huh
Q And they were applying for a seventy-five percent loan?
A Uh huh
Q Or somewhere between sixty-five and seventy-five?
A Sure
Q Depending?
A Yes, sir
Q Okay Was there a formal application given to you?
A Was there a formal application give to me?
Q To the bank? Was there a formal application filled out by the borrower?
A Yes Now, did I present it to him at that time, when we first started talking about this? No
Q When did you present it to him?
A Probably the second or third meeting
Q Did they fill out that application?

A I do believe so
Q Are you familiar with the fact that some time ago we subpoenaed the bank for a copy of all of the bank records?
A Uh huh
Q Okay
A Yes
Q Okay I have a file in front of me which has all the bank records I do not see an application in here I've not seen an application Do you know why I have not received that?
A No
Q But, there is an application form?
A I'm not positive I mean yes, there is an application form I can tell you that a lot -- most closings, not a lot, but most closings the application is actually part of the closing package You know, can I answer you honestly and say that I know I handed it to him? No Do I think we did that? Yes
Q And when did that take place, approximately?
A February
Q February of '06?
A Uh huh I'm guessing around the second time on

that one.

Q Did Mr Marshall and Mr Hilleshiem tell you who was involved in this project from the purchaser's standpoint?

A No Other than them two and probably Jeremy Marshall

Q Jeremy Marshall is Bruce Marshall's son?

A Yes

Q. Okay To your knowledge was anybody else involved at that point?

A At that point, no

Q Okay Did you later find out that there were other people involved?

A Yes

Q Do you know who they were?

A Do I know who they were?

Q Yes

A When they -- not until I met them

Q. Okay Were any of them customers of the bank?

A No Other than Mr Marshall Bruce Marshall

Q Was Jeremy Marshall a customer of the bank?

A He might be a signer on Lowcountry Mag and Tire But, had I met Jeremy prior? No

Q After the loan was applied for whether it was orally or in writing, what did you do? What was

your next step in the process?
A Tell them exactly what I needed as far as financial, personal financial statements, a minimum of two years tax returns I told them that we needed to get an appraisal of the property Just your basic financials that would be needed
Q In the normal process, when would you order the appraisal? Would the bank order the appraisal?
A The bank? Yes The bank usually orders the appraisal It doesn't always have to be that way The bank is usually -- the bank usually orders the appraisal upon the acceptance of the commitment letter because obviously if the bank orders the appraisal, it's usually on the bank to pay for it, and therefore, at closing It usually takes place on the HUD
Q So, usually you have the commitment letter Then the appraisal's ordered? Correct?
A Correct That's usually the way it goes
Q Did you do that in this case?
A No
Q Why not?
A We were in discussions They didn't know what they wanted to do with the property That was

-- there were a couple of different discussions on -- they didn't know what they wanted to do Well, I said, you know, it's going to be in your best interest to go ahead and order the appraisal But, obviously we're going to need you to pay for that, which they did

Q When did that occur? When did you order the appraisal?

A I'm not sure

Q Was it in late July of '06?

A I think the appraisal's probably dated in some documents that you have

Q Let me show you this document and ask if you recognize it?

A Uh huh

Q What is that?

A That's the appraisal That's for the Sheep Island Road project

Q What is the date of the appraisal?

A July 26th

Q The closing's supposed to take place by when?

A I believe it was --

Q I'll direct your attention to the next to the last page of the contract which is Exhibit 1

A No later than July 31st

Q Do you normally wait until five days before the closing's supposed to take place to obtain your appraisal?

A Well, this wasn't when the appraisal was ordered

Q When was it ordered?

A I would have to check with Michael White on that, because as you know, the -- or maybe you don't know -- commercial appraisals take anywhere from two weeks to five weeks

MR ALTMAN Let's go ahead and mark the appraisal as Exhibit 2

(APPRAISAL MARKED DEFENDANT'S EXHIBIT 2 FOR I D)

Q Who performed the appraisal for you?

A Michael White

Q Who is he with?

A At that time, he was working for Hartnett Realty Company

Q I'm going to show you a document we'll attach I just want to make some copies, because I didn't anticipate that Is that a letter which you sent to Mr White for the purpose of ordering the appraisal?

A That's correct

(LETTER DATED JULY 20, 2006 MARKED DEFENDANT'S EXHIBIT 3 FOR I D)

Q What is the date of that letter?

A July 20th

Q. So, you ordered it eleven days before the closing? Is that correct? The final date the closing was to take place?

A Uh huh That's what it looks like

Q You said normally it takes two weeks or more to get an appraisal back?

A Yes, sir

Q You were giving Mr White less than two weeks in this case?

A In this case, he did me a big favor and jumped right on this

Q You testified earlier that the Borrowers didn't know what they wanted to do with the property Is that correct?

A Yes, sir

Q Weren't sure what they wanted to do with it What did they tell you were there alternatives of what they were going to do?

A There was a discussion on they might buy it and just turn around to flip it There was some discussions that they may do a little bit of

soft cost development And those, I believe were the, you know, possibility of possibly doing soft cost and selling them off in lots But, there was never a this is what we're going to do There was never a straight answer in the discussions leading up to the last couple weeks

Q When you say soft cost development, what do you mean?

A Clearing Doing the environmental test studies Soil tests That type of stuff

Q At the time you ordered the appraisal, what size loan were you discussing with the borrower?

A At this point, you know, I think it was -- we knew that the water wasn't going to be there So, at that point, we're looking at sixty-five percent

Q Sixty-five percent?

A Loan to value, or loan to cost

Q Which one? There is a difference between loan to value and loan to cost, isn't there?

A Right The bank's, obviously, going to want to take the best position for the bank So, whichever was less, we were going to go on that

Q When was the first commitment letter issued to the borrowers?

A Not until the Friday before I believe it was Friday before

Q Why that short period of time before the closing?

A We didn't -- the bank didn't know who was going to be the members of the LLC that was going to purchase this until we got the last, or met the last individual and got his financials the Wednesday before

Q Was that because they were bringing somebody in or you required more financial strength -- the bank required more financial strength for the borrower?

A I think -- I can't answer that because one, it hadn't been -- it wasn't asked -- I wasn't asked to get the loan approved with specific individuals There wasn't four people Okay Marc, try to get this loan approved It was on Wednesday This is the last gentleman that's our best hand We're going to go forward

Q You've testified that Mr Marshall, Bruce Marshall, and Mr Hilleshiem first came to see you --

A Uh huh

Q -- back in January of '06 You had discussions

with the two of them over the ensuing months through July '06?

A Uh huh Yes

Q When they came to you, you had the two of them who were applying for the loan Correct?

A No I mean the two of them, but they knew and I knew that it wasn't going to be the two of them

Q Who were supposed to be the others?

A Well, who's to say? I don't know

Q You knew there were going to be others, but you didn't know who they were?

A That's correct

Q Okay When did you first find out who the other parties would be to the loan?

A When did I find out about who they would be?

Q Yes

A I believe a couple of them were the week prior, the end of the week prior

Q Week prior to the loan?

A Yeah The last one came in on that Wednesday, towards the end of the week before The last gentlemen started coming onboard and started -- finally met with them I believe I met with two other individuals I want to say that Monday afternoon or Tuesday afternoon before the

Wednesday afternoon when I met Mr. Hill

Q Approximately when did you become aware that M Stephen Hill would be involved with the loan?

A Wednesday

Q Wednesday before So, that would have been the 26th of July?

A I'd have to see a calendar, but if that's correct Yes

Q When did you become aware that John Bourdean, B-O-U-R-D-E-A-N, would be a party?

A What day, I'm not sure

Q Was it during that week?

A The week before Mr Hill came aboard

Q Okay How about Cecil O Curtis?

A The rest of those gentlemen, if I could see the list so I can make sure

Q Okay I'm going to go through the list with you

A Okay

Q Jeremy Marshall When did you become aware he was going to be involved?

A The second meeting with Mr Bruce

Q So, that would have been back in January, February '06?

A Yes

Q How about Walter M Funk, III?
A That same week
Q The week of the loan?
A The week the loan got approved
Q The week the loan got approved? And David Hilleshiem you knew from the beginning?
A Yes
Q So, you knew Bruce Marshall from the beginning, Jeremy Marshall from the beginning, Mr Hilleshiem, David Hilleshiem, from the beginning?
A Yes, sir
Q And the others you became aware of some time during the week before July 28th?
A That's correct
Q Why were the other people brought in? The people that came in during that last week? Why were they brought in?
A I don't -- I mean I can't answer that I mean they knew how much money was involved with getting this loan closed From the beginning, I suggested putting up the money in a CD to represent that twenty-five or thirty-five percent, one so that it would be evenly divided out between the partners It would be pretty

clear on who gave what. At the same time, they could earn some interest That's the way I recommended structuring their loan I believe, to answer your question, how did that take so long, was to come up with the money

Q Okay When was the $885,500 00 put into the CD? When did that happen?

A It never did

Q It never did?

A No

Q During the course of the negotiations for the loan, who was involved on behalf of the bank other than yourself?

A During the negotiations of the loan?

Q Yes

A Are you talking about getting -- prior to issuing the commitment letter?

Q Prior to issuing the commitment letter, who did you discuss, at the bank, with the terms of the loan?

A Tony Daniel, our Chief Lending Officer

Q Who else?

A A loan that size would have to get approved by Wayne Pierson, the president of the bank

Q Anybody else? Let me back up a minute In

coming up with the terms for the loan, eventually the loan amount was $2,530,000 00 Correct?

A Yes

Q. And there was a decision that there would be some fees? Commitment fee?

A Uh huh

Q Of a half percent, and some other fees Underwriting fees, etcetera Who came up with those terms? Who made those determinations? Was it you? Was it Tony Daniel?

A Well, on land deals, twelve months' interest only is kind of our standard policy, or is our standard policy, especially on -- yeah, on land deals like this, such as this

Q Okay

A The acreage is obviously a little larger than what we normally do But, twelve months' interest only, the fees, that's, you know, obviously we always want to get some sort of commitment fee, underwriting fee Those things are policy They stick that on every --

Q How about the amount of the fees? Who makes that determination?

A I can make a recommendation for approval

However, the ultimate decision is made by the signatures below mine

Q Or above yours, as the case may be?

A Or above mine Right

Q Okay When did you first advise any of the borrowers that they were going to be required to put $885,500 00 into a CD?

A Probably a week before

Q A week before?

A When it was determined that the sixty-five percent was, in fact, going to be the -- going to have to be the loan to value

Q Let me show you a document and ask if you recognize it?

A Yes It's a commitment letter

MR ALTMAN If we could mark that as Exhibit 4

(COMMITMENT LETTER MARKED DEFENDANT'S EXHIBIT 4 FOR I D)

Q Commitment letter dated July 28, 2006?

A Uh huh Yes

Q It's addressed to M Stephen Hill, John Bourdean, Cecil O Curtis, Jeremy S Marshall, Walter M Funk, III, and David Hilleshiem, as well as Sheep Island Plantation, LLC Why is

Bruce Marshall's name not on that document?
A I'm not sure
Q You knew he was going to be involved in it
A Well, yes
Q You signed this letter, did you not? It's on the third page
A Yes
Q Why would you have left Bruce Marshall's name off of the letter?
A I'm assuming that he told me that, you know, he wasn't going to be one of the people to sign for the Sheep Island
Q And the amount of the loan was how much?
A The amount of the loan is for the amount of the purchase price
Q Two million five hundred thirty thousand dollars?
A Yes, sir
Q And you have some terms in here that I see -- terms of conditions It's eleven month pay interest only with a final payment for the full amount Correct?
A Yes, sir
Q And you have a -- they can renew it for six months? There's a renewal fee?

A. Yes, sir
Q Twelve thousand six hundred and fifty dollars? Correct?
A Yes, sir
Q And then, there's some bank fees, one percent commitment fee Correct?
A Yes, sir
Q And there's an underwriting fee and a mortgage and assignment of rents satisfaction fee?
A Uh huh Yes, sir
Q Then you talk about the collateral What's the collateral to be for the loan?
A First mortgage for the land being purchased, the assignment of the CD which represents thirty-five percent, as well as twelve months' interest carried at the rate the date the commitment letter was made
Q The interest carried was supposed to be deposited into a money market account Is that correct?
A Yes, sir
Q Okay Now, this letter is dated July 28th Correct?
A Yes, sir
Q Okay And you refer to number 2 in the

collateral as being the assignment of Southcoast Community Bank CD Account number 07-300000424?

A Yes, sir

Q Did that account exist at the time that this commitment letter was sent?

A No

Q How did you know that was going to be the account number?

A We have a sheet of account numbers And due to the amount of time that we had to get this closed, we went ahead and set aside that account number so that one, we could put it in here, two, that we could set it aside to get it set up for the deposits

Q But, there was no money in the account that had not been opened as of July 28th Is that correct?

A That's correct

Q Okay And you were --

A For the CD

Q For the CD? And you had this number 3 on the collateral, assignment of Southcoast Community Bank money market account number 07-400000209?

A Yes, sir

Q Did that account exist at the time this letter

was issued?

A It was in the same situation as that They were getting monies together to transfer into these two accounts And it never happened, which they per se half percent fee if the commitment letters signed, whether the loan closes or not

Q Did they pay you the half percent fee?

A No

Q They did not pay it?

A No.

Q Why not?

A We didn't get all the signatures on the commitment letter So, we couldn't have gone after that fee if we wanted to because all of them had not signed

Q When did you tell any of the borrowers, any of the guarantors or the borrowers, what was going to be required for security for the loan?

A Can you repeat that?

Q Okay The commitment letter has a requirement that there are three elements of securing for the loan Mortgage on the land?

A Uh huh Yes

Q Assignment of the CD and assignment of the money market account?

A Yes
Q When did you tell the borrowers, the borrower or the guarantors, that those three items were going to be required as security for the loan?
A When this was issued
Q You didn't tell them before that?
A Not all three No
Q Who made the determination, the final determination that those three items would be required to secure?
A Who made that determination?
Q Yes
A The two other gentlemen that signed the loan approval sheet, Tony Daniel and -- I believe it was just Tony Daniel and Wayne who signed
Q I'll show you a document and ask if you recognize it?
A Yes
Q What is that document?
A That's the Credit Approval Document
Q Who prepared the Credit Approval Document?
A Excuse me?
Q Who prepared this document?
A I did
Q Okay At the --

MR ALTMAN Let's mark that as Exhibit 5

(CREDIT APPROVAL DOCUMENT MARKED DEFENDANT'S EXHIBIT 5 FOR I D)

Q At the bottom left-hand corner of the page, there's some handwriting, assign MMF to loan personal guarantee, check with RMC to see if any taxes -- I'm not sure --

A Any tax liens

Q -- any tax liens And then, it says Sam will close for us

A Yes, sir

Q Okay Who wrote that information on there?

A Wayne Pierson

Q Those were additional requirements, other than what you had presented?

A No That was just Wayne giving his stamp because, I mean there's assign with a money market, personal guarantee It's the guarantor section See attached summary

Q Okay In the comments section above that, it originally said, loan can be renewed for an additional six months with a -- it looks like $5,000 renewal fee See attachments for additional information And somebody wrote in 12,650 Who did that?

A That's actually my handwriting
Q Okay Why was that done?
A Wayne asked me to change that
Q Okay
A Along with the fees up there That's actually his handwriting
Q Okay So where it goes at the upper right where the fee is shown as 10,000, he changes it to one percent?
A Yes, sir
Q Twenty-five thousand three hundred?
A Yes, sir
Q And when was that done?
A The date that he approved this
Q Do you know what date that was?
A It was the end of the day on the 27th and the commitment letter was issued on the 28th
Q Okay At the bottom left-hand corner of the page, there appear to be some signatures and/or initials One looks like it could be yours, which has officer approval?
A That's mine Yes, sir
Q Okay Is that the first signature on that line, or the first initials on that line?
A Yes

Q Okay Is that -- on the officer approval line, is all of that your signature?
A On the officer approval line, yes sir
Q Okay On the next line, there's some signatures or initials Who are they?
A That is Tony Daniel and I believe the next one would be Ben Seabrook But, I'm not positive whose signature that is
Q And then, there's a third one at the bottom
A That's Wayne Pierson
Q Okay So, some time probably on the 27th is when the loan was finally approved?
A I can't say it was on the 27th It could have been the 28th I mean this is the date that I finished writing it up
Q Is it normal to run it to the very last day or next to last day before closing to get an approval?
A No, sir
Q Why did this take so long?
A Well, I never had -- I never was given the information I needed to get a normal approval until the last minute, or the thirteenth hour
Q The information from the borrower?
A The final -- as you mentioned earlier, I met Mr

Hill on Wednesday afternoon

Q Did you ever tell anyone, prior to July 28th, that the loan was approved or was going to be approved based on the information you had at whatever point in time that was?

A Yes

Q Who was that?

A I believe I told Bruce and David that, that if they could get the sixty-five, or the money down, that we, you know, we could somehow get this closed

Q Why wasn't the loan made for sixty-five percent? What was it going to be for $2,530,000 00?

A That was -- I recommended keeping it separate because there were going to be different partners, to put it in a CD, one, so they could earn some interest back I recommended doing the full amount instead of putting the money down at closing

Q Were you going to pay -- the interest rate that the bank was going to pay on that CD, was it equal to the interest rate that they were going to have to pay on the loan?

A No

Q So, it would cost them more, interest wise, to

borrow the full amount Correct?

A Cost them more interest wise?

Q Right They were -- if they borrowed sixty-five percent, they would have been paying the interest on the sixty-five percent Correct?

A Yes.

Q And the interest rate was going to be prime on the day of closing? The prime rate published by the Wall Street Journal? Correct?

A Uh huh Yes, sir

Q And the amount that was being paid by Southcoast Community Bank on CD's was not equal to the prime interest rate Was it?

A That's correct

Q Okay So, it was actually going to cost them more because they were borrowing more money?

A Well, it depends on how you look at it I mean it's -- it depends on how you look at it I was just trying to keep it all clean, keep it separate

Q If the borrowers were looking to borrow only sixty-five percent, would there have been a requirement for there to be a CD for $885,500 00 to be assigned to the bank as part of the security?

A No
Q If they were actually going to borrow sixty-five percent, would there have been a requirement for the money market account to guarantee the interest payment?
A I can't -- I don't know
Q From your experience, do you think there would have been?
A Like I said, I can't say because at that time, I didn't know what they were going to do with the loan If I knew that they were going to sell it right away, you know, it would just depend on the circumstances
Q Okay Let me show you another document and ask if you recognize it?
A Yes
Q What is that document?
A This is the affidavit that I believe Mr Nelson -- let's see -- that I signed at is office
MR ALTMAN Let me mark that as Exhibit 6, please?
(AFFIDAVIT MARKED DEFENDANT'S EXHIBIT 6 FOR I D)
Q You testified earlier that Bruce Marshall and David Hilleshiem came to see you about the loan

initially In your affidavit, paragraph 2, you state that on January 30th, 2006, E Bruce Marshall and Jeremy S Marshall applied for financing You don't mention Mr Hilleshiem in that statement Why is that?

A I'm not sure I mean the three of them were kind of in this all together

Q Okay In paragraph 3, it goes on to the second page, you state, over the next month they provided you -- Bruce Marshall supplied you with, among other things, a loan application Do you know where that loan application is?

A No

Q You say he also supplied you with tax returns and personal financial documents Was that on behalf of himself and his son or was there anybody else they provided you with the information for?

A David

Q David Hilleshiem?

A Uh huh

Q So, just the three of them at that point?

A Yes, sir

Q You did not receive the other information on the others until the week the loan was approved?

A Correct
Q Okay I'll refer you in paragraph 6 of your affidavit to the last sentence And I'm going to ask you to read that out loud, please?
A The last sentence?
Q Yes
A Had the buyers notified me that they could have come up with the extra money at any time in August of 2006, I could have issued to them the loan immediately
Q So, the extra money, you're referring to the $211,625 00? Is that correct?
A Not exactly. There was money still to be -- I hadn't seen the rest of the thirty-five percent I hadn't seen all of the CD money or the money market money It wasn't in the bank
Q What did you mean by this statement, the last sentence in paragraph 6? Explain that to me
A If the CD account as well as the money market account had been fulfilled, as the commitment letter stated, we would have closed
Q Okay Had the buyers notified me that they could have come up with the extra money at any time in August of 2006, I could have issued to them the loan immediately Immediately, is that

July 31st or is that immediately when they came up with the money?

A Well, I mean the money had to be in there before we could close

Q The money had to be in there before they could close?

A That's correct That's why we set aside those account numbers to speed things up

Q During the course of the loan -- the negotiations for the loan, the discussions about the loan, did you have any discussions with anyone representing the sellers?

A No

Q To your knowledge, did anyone representing the sellers have any contact with the bank about the loan or about the sale?

A No I mean with myself, or Tony, or Wayne, or anybody? No

Q Did any actions of the seller affect the loan process whatsoever?

A Any actions of the seller affect the loan process? No

Q Was there anything that the bank did to slow down the loan process? The application, the approval?

A That the bank did?
Q Yes
A No I think it's clearly obvious we tried to do everything we could to get this closed
Q But, would you state that the bank moved as quickly as it could under the circumstances?
A Yes
Q And any delays that were caused were caused by the borrower Is that a fair statement?
MR NELSON I object to the form of the question You can still answer the question
A Yeah
MR ALTMAN Go off the record for a minute
(Deposition went off the record for a brief period of time)
Q Okay You had been talking all along to Bruce Marshall, Jeremy Marshall, David Hilleshiem And then, three other people were brought in at the end within that last week Did the bank require those additional people or was that something the borrower did on their own?
A I'd have to say the borrower
Q The borrower did that on their own? The bank did not -- Were there three people you'd been

talking to, the two Marshalls and Hilleshiem, were they financially strong enough on their own to borrow the money?

A On the paper that I saw, no However, a lot of, you know, a lot of people get investor money and things like that So, what I saw, I wouldn't think so

Q You wouldn't think that the other people were needed or you think the other people were needed?

A Were needed

Q They were needed?

A I would think so Yes

Q Did you tell Mr Marshall that? Mr Marshall being Bruce Marshall

A Yes

Q Okay I have nothing further I don't know if Mr Nelson has any questions

While he's looking at his notes, I did forget one thing I was supposed to send you a witness fee and I forgot to do it, so there it is

MR NELSON I don't have anything

(Deposition concluded at 11 53 o'clock, a m)

STATE OF SOUTH CAROLINA)

C-E-R-T-I-F-I-C-A-T-E

COUNTY OF BERKELEY)

I, Ted J Brown, Court Reporter and Notary Public, certify that I did have Marc Knight to appear before me at 10 53 o'clock, a m on Tuesday, the 29th of May, 2007, at the Law Offices of The Wooddy Law Firm, 622 Johnnie Dodds Boulevard, Mt Pleasant, South Carolina, that the witness was duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth, that the foregoing pages constitute a true and accurate transcript of the testimony given at that time and place

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome

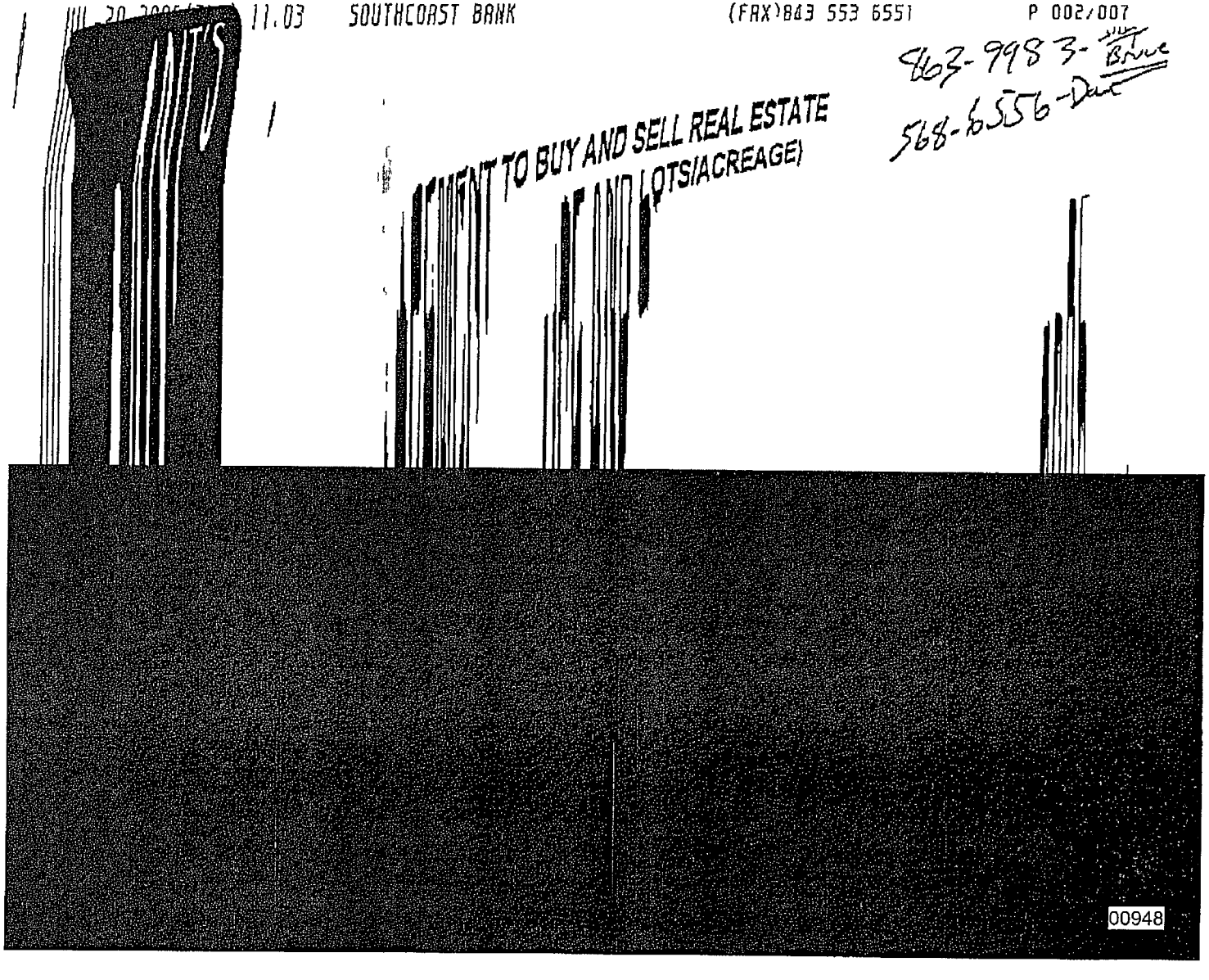
IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 3rd day of May, 2007

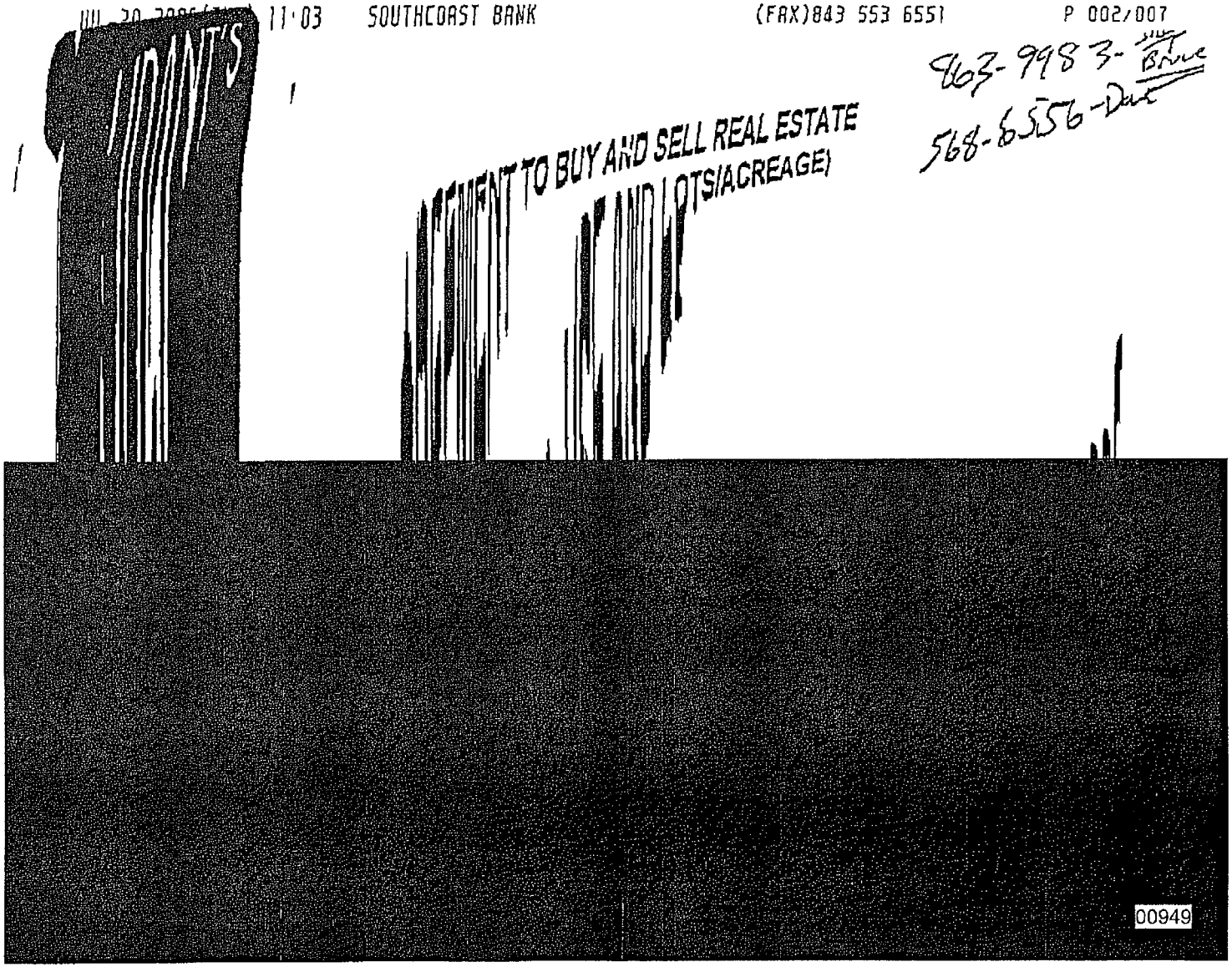
Ted J Brown

Notary Public for South Carolina

My Commission Expires August 15, 2012

463-9983- Bruce
568-6556-Dan





463-9983- Jim Bruce
568-6556 - Dan

DEFENDANT'S EXHIBIT
KNIGHT
5-29-07 MD

463-9983-Bruce
568-6556-Dan

AGREEMENT TO BUY AND SELL REAL ESTATE
(FOR GENERAL USE AND LOTS/ACREAGE)

1 PARTIES This legally binding Agreement entered into on December 14 2005
between Buyer(s), E Bruce Marshall And/Or, Jeremy S Marshall, (hereinafter
called 'BUYER'), and Seller(s) Bar-Ren, LLC
(hereinafter called SELLER") The property shall be deeded in the name(s) of To Be Determined

THE ☐ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2 PROPERTY TO BE SOLD Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon

Lot _____ Block _____ Section _____ Subdivision Tract 3A
Address Sheep Island Road
Tax Map # 194-00-02-162 City Summerville Zip 29483
County of Berkeley, State of South Carolina

3 PURCHASE PRICE shall be $ 2,530,000 00
Two Million Five Hundred Thirty Thousand dollars

4 METHOD OF PAYMENT Purchase price shall be paid as follows ☐ Cash, or ☒ Subject to Financing Financing to be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms _____

5 EARNEST MONEY This offer is accompanied by an earnest money deposit of $ 10,000 00
Buyer and Seller authorize Prudential Carolina R E, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement Earnest money paid by ☐ Cash ☒ Check, or ☐ Other Broker does not guarantee payment of a check or checks accepted as earnest money All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations At the consummation of this sale the earnest money deposit shall be credited to the Buyer

THE PARTIES UNDERSTAND THAT UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT

6 LOAN PROCESSING AND APPLICATION Buyer's obligation under this agreement is contingent on Buyer obtaining said loan Buyer shall apply for a maximum 80 000 % loan (loan-to-value ratio) within 30 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 45 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract Time is of the essence Should the Buyer fail to make loan application or receive approval within said period and to diligently pursue the application the Seller shall have the option to terminate this Agreement, with the written notice Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner Buyer will take any action that is needed or requested by Lender to process the loan application Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s) If Buyer fails to comply with these above conditions Buyer shall be in default of this agreement subject to the terms of paragraph 22

FHA Mortgage Insurance ☐ will ☒ will not be added to the mortgage VA funding fee ☐ will ☒ will not be added to the mortgage

EBM BUYER BSM BUYER SELLER ____ SELLER HAVE READ THIS PAGE

RE/MAX Southern Homes 205 St James Ave Suite 5 Goose Creek SC 29445
Phone (843) 572 3131 Fax (843) 572 3137 Mickey Rakes

Produced with ZipForm™ by RE FormsNet, LLC 18025 Fifteen Mile Road Clinton Township Michigan 48035

Contract Ber

SCB 00097

7 CLOSING COSTS Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows.
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report property insurance, appraisal survey cost of obtaining loan discount points title examination, escrow deposits, and prepaid expenses The Buyer shall also pay if applicable, interim interest and mortgage insurance premium or VA funding fee Buyer's hazard insurance policy shall provide coverage as required by lender Other terms _____

8 OPTION TO TERMINATE AFTER DUE DILIGENCE. (A) Seller grants to Buyer a 90 day right (Termination Right") from the date of this agreement during which Buyer may do any or all of the following
1 Conduct at Buyer's sole expense whatever due diligence, inspections, examinations surveys and testing If any Buyer deems appropriate to evaluate the suitability of Property for Buyers intended use including but not limited to zoning governmental regulations, environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as Buyer's Due Diligence)
(B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence Buyer hereby agrees to indemnify and hold Seller Broker and Broker's Affiliated Licensees harmless from and against any and all loss injury cost or expense associated with Buyer's inspection of and entry upon Property
(C) If Buyer decides to exercise Buyer's right to terminate this Agreement Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property as-is The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject or limit any other rights which Buyer may have under this Agreement.

9 BUILDING PERMIT This Agreement ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property If Buyer notifies Seller in writing within N/A days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property then in such event this Agreement shall terminate If Buyer fails to provide said notice then this contingency shall be deemed to have been waived by Buyer

REZONING This Agreement ☐ is ☒ is not contingent upon Property being rezoned to N/A on or before the ____ day of N/A, ____ by the appropriate governmental authorities For purpose herein the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed The ☐ Buyer ☐ Seller shall be responsible for pursuing such rezoning and paying all associated costs All rezoning applications shall be submitted to Seller for Seller's approval prior to filing which approval shall not be unreasonably withheld All parties agree to cooperate to sign the necessary documentation and to support the rezoning application If Buyer notifies Seller or Broker in writing within forty-eight hours after the above date the Property cannot be so rezoned then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer If Buyer fails to provide said notice then this contingency shall be deemed to have been waived by Buyer

11 WELL, SEPTIC TANK SEWER AVAILABILITY It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing in the event a well and/or septic tank is needed to be placed on the property

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure then in such event the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed $ N/A, then in such event, the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system

Seller represents that the property is connected to ☐ public sewer system or to ☐ septic tank or to ☐ public water or to ☐ well system or to ☒ other There is no public water or sewer at subject property

[EBM] BUYER [illegible] BUYER [illegible] SELLER [____] SELLER HAVE READ THIS PAGE

12 SURVEY Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the ☐ BUYER ☐ SELLER The surveyor shall set and flag all property pins showing encroachments and easements Property must be N/A x N/A or having at least 101 165 acres The survey to be approved in writing by Buyer prior to closing The purchase price is based upon $ 25,000 00 per acre (acre sq ft , or front ft) and shall be adjusted in accordance with the area set forth in such a survey, if applicable

13 CONVEYANCE SHALL BE MADE Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated Seller agrees to pay all statutory deed recording fees The deed shall be delivered at the stipulated place of closing and transaction closed on or before See Paragraph 30 , no later than 9 00 p m Time is of the essence Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing

14 POSSESSION Possession of said property will be given to Buyer on the day of closing Seller agrees to deliver property free of debris and in a clean condition Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy

15 CONDITION OF PROPERTY The Seller shall not remove any timber dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement All timber dirt minerals etc shall remain with the property and be a part of the property and be transferred to the Buyer The Seller shall not bring any trash refuse debris medical or hazardous waste or other improper materials upon the property In the event any condemnation proceeding is brought by any governmental authority, agency utility, etc. prior to the closing then the Buyer may elect to rescind the agreement

16 EXPIRATION OF OFFER. The offer from Buyer shall be withdrawn at 5:00 o'clock P M on December 21 2005 unless countered or accepted by Seller in written form prior to such time Time is of the essence

17 SPECIAL STIPULATIONS The following stipulations concerning restrictions, and easements affecting desired use drainage hazardous waste, availability of water and sewer soil test, wetlands study subordination, lot releases etc should be included here If conflicting with printed matter, the following stipulations shall control (See addendum if applicable)

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8 ADJUSTMENTS Taxes, water all sewer assessments sewer charges, fuel oil rents as when collected insurance premiums if applicable and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing and are to be prorated on that basis BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS Property taxes and rent, as well as other expenses and income of the property if applicable shall be apportioned to the date of closing Annual expenses or income shall be apportioned using 365 days Monthly property expenses or income shall be apportioned by the number of days in month of closing Prorations at closing shall be final

19 NON RESIDENT TAX. Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute

20 ROLLBACK TAXES (IF ANY) When rollback taxes are subsequently determined and billed to the Buyer the Seller and Buyer agree that the rollback taxes shall be paid by ☒ Buyer or ☐ Seller

21 RISK OF LOSS OR DAMAGE In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

22 DEFAULT If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23) or terminate this Agreement with a five day written notice If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless If either Buyer or Seller refuses to execute release Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition

[initials] BUYER [initials] BUYER [initials] SELLER [ ] SELLER HAVE READ THIS PAGE

23 **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer Seller or Broker in an effort to consummate this sale Such costs shall include but are not limited to cost of credit report, appraisal survey inspections and reports, title examination, and Broker's fee or commission for this sale

24 **SURVEY TITLE EXAMINATION, AND INSURANCE** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made have examination as to the title to the property obtain owner's title insurance and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option shall be assigned to Buyer with permission of carrier and premium prorated to date of closing

25 **APPRAISED VALUE** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon If any appraising according to the lenders appraisal or other appraisal as agreed, for the selling price

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, If any appraising according to the lenders appraisal or other appraisal as agreed for the selling price or more, If the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value In such case the Buyer agrees to proceed with the consummation of this sale at the reduced price However If Seller does not agree to sell at the appraised value the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty

26 **SPECIAL STUDIES AREA, WETLANDS AND ENVIRONMENTAL PROTECTION MATTERS** All reports and certifications called for by the lending agencies and any governmental body by the Buyer concerning any special study area wetlands or for any environmental protection matter shall be at the expense of the Buyer In the event such studies are wanted or required, the studies must be furnished by the proper parties within 90 days of complete execution of the agreement. The Buyer and Seller must have access to all studies within five (5) days of receipt of the studies If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem If the Seller elects not to correct the problem the Buyer's obligations under this Agreement terminate

27 **COASTAL TIDELANDS & WETLANDS ACT** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10 et seq South Carolina Code of Laws) an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense

1 **DISCLAIMER BY BROKERS AND AGENTS** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s) (1) Give no guaranty or warranty of any kind, express or implied as to the physical condition of the property or as to condition of or existence of improvement services or systems thereto included but not limited to termite damage roof, basement appliances, heating and air conditioning systems, plumbing sewage electric systems and to the structure (2) Give no warranty, express or implied as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed (3) Give no warranty as to title (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals, (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer

29 **MEDIATION CLAUSE** Any dispute or claim arising out of or relating to this Agreement the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase financing condition or other aspect of the property to which this Agreement pertains Including without limitation allegations of concealment, misrepresentation, negligence and/or fraud

Any agreement signed by the parties pursuant to the mediation conference shall be binding This mediation clause shall survive for a period of 120 days after the date of the closing

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

The following matters are excluded from mediation hereunder (a) judicial or non judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action, (c) the filing or enforcement of a mechanic's lien, (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the right to mediate under this provision nor shall it constitute a breach of the duty to mediate

30 ENTIRE BINDING AGREEMENT This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller It can be changed only by a subsequently written instrument signed by both parties Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors executors, or administrators Whenever used singular includes plural, and use of any gender shall include all

31 SURVIVAL If any provision herein contained which by its nature and effect is required to be observed kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed kept or performed

32. FACSIMILE AND OTHER ELECTRONIC MEANS The parties agree that the offer any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means including but not limited to electronic mail and the Internet and the signatures initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

33 EXTENSION AGREEMENT If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date Closing shall occur within this time extension but in no event shall closing occur later than the above extension date Time is of the essence

34 CONTINGENCIES These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) (a) With reference to Paragraph 9, Closing shall take place no sooner than July 15, 2006 and no later than July 31, 2006 with "Time being of the essence"
(2) With reference to Paragraph 8, Buyer agrees to make an additional $40,000 deposit directly to the Seller at the end of said "Due Diligence Period" This $40,000 plus the original $10,000 deposit become Non-Refundable should the Buyer not close for any reason whatsoever as stipulated in Paragraph 34 (a) above and Paragraph 33 Buyer authorizes the Escrow Agent to disburse the original $10,000 deposit to the Seller at the end of said "Due Diligence Period"

SCB 000101

[EM] BUYER [illegible] BUYER [illegible] SELLER [ ] SELLER HAVE READ THIS PAGE

THIS IS A LEGALLY BINDING AGREEMENT BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION S AGENCY DISCLOSURE FORM

IN WITNESS WHEREOF this Agreement has been duly executed by the parties

BUYER E Bruce Marshall Date 12-15-2005 Time
E Bruce Marshall And/Or

WITNESS Date Time

BUYER Jeremy S Marshall Date 12-17-05 Time 12 35
Jeremy S Marshall

WITNESS Date Time

SELLER Bar-Pop, LLC Date 12-15-05 Time

WITNESS Date 15 DEC 05 Time

SELLER Date Time

WITNESS Date Time

LISTING AGENT AND COMPANY CENTURY 21 SOUTHERN HOMES, INC / MICKEY RA

SELLING AGENT AND COMPANY PCRE / GEORGIA RICHARD

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER S AGENT OR ☐ SUBAGENT OF THE SELLER

ESCROW AGENT ACKNOWLEDGMENT
Prudential Carolana R E

SCB 000102

The foregoing form is available for use by the entire real estate industry The use of the form is not intended to identify the user as a REALTOR® REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics Expressly prohibited is the duplication or reproduction of such form or the use of the name South Carolina Association of REALTORS® in connection with any written form without the prior written consent of the South Carolina Association of REALTORS® This foregoing form may not be edited revised or changed without the prior written consent of the South Carolina Association of REALTORS®.

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DEFENDANT'S EXHIBIT
2 KNIGHT
5-29-07 AD

A SUMMARY APPRAISAL REPORT OF

Approximately 101 165 Acres of Vacant Land
Located on Sheep Island Road
Berkeley County, South Carolina
TMS# 194-00-02-162

CLIENT

Mr Marc A Knight
Vice President/Commercial Loan Officer
Southcoast Community Bank
597 Old Mount Holly Road
Suite 200
Goose Creek, South Carolina 29445

PREPARED BY

Michael A. White, GAA
S C Certified General Appraiser #CG200
Hartnett Realty Company
134 Meeting Street, Suite 120
Charleston, South Carolina 29401
Copyright 2006 Hartnett Realty Company

MARKET VALUATION DATE

July 26, 2006

HARTNETT REALTY CO., INC.

APPRAISERS BROKERS CONSULTANTS

Established 1947

July 26, 2006

Thomas F Hartnett GAA Certified General Appraiser
Michael A White GAA, Certified General Appraiser
W Joseph Clark, Certified Residential Appraiser
Travis Lee Avant Appraiser
Thomas F Hartnett Jr Appraiser
William S Smith, Real Estate Sales
Janet E. Thomas, Manager

134 Meeting Street Suite 120
Post Office Box 221
Charleston SC 29402
843 723 7222
843 723 9403 Fax
www hartnettrealty com

Mr Marc A Knight
Vice President/Commercial Loan Officer
Southcoast Community Bank
597 Old Mount Holly Road
Suite 200
Goose Creek, South Carolina 29445

In re Appraisal of approximately 101 165 acres of land
Located on Sheep Island Road
Berkeley County, South Carolina
TMS# 194-00 02 162

Dear Mr Knight

In accordance with your request, I have made a Summary Appraisal Report of the above captioned subject property for the purpose of estimating its Market Value as of July 26, 2006 I physically inspected the subject property on July 26 2006

Market Value is defined as "The most probable price which a property should bring in a competitive and open market under all condition requisite to a fair sale the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus The marketing time of the subject property as of the date of this report has been estimated to be three to nine months as discussed in the appraisal report

As a result of the appraisal it is my opinion that the current Market Value of the subject property, as vacant as of July 26, 2006 is

TWO MILLION SIX HUNDRED
TWENTY FIVE THOUSAND DOLLARS
$2,625,000

The supporting data and the analysis and conclusions upon which this value is based are contained in the accompanying report

This is a Summary Appraisal Report that is intended to comply with the reporting requirements set forth under Standard Rules 2-2 and 8 2(b) of the Uniform Standards of Professional Appraisal Practice (USPSP) for a Complete Appraisal, Summary Appraisal Report

To the best of my ability this appraisal meets or exceeds the requirements of Title XI of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989, Public Law 101 73, 103 STAT 183, 51 (1989) This appraisal has also been made in conformity with the Code of Ethics of the Appraisal Institute and the Appraisal Section of the National Association of Realtors

I certify that I have no present or future contemplated interest in the property which is the subject of this report and that my fee for making this appraisal was in no way contingent upon the value reported

Respectfully submitted,

Michael White, GAA
South Carolina Certified
General Appraiser #CG200

SOUTHCOAST
COMMUNITY BANK

July 20, 2006

Michael A White
Hartnett Realty Co., Inc
P O Box 221
Charleston, SC 29402

Please review the contract attached for the purchase of property located at Subdivision Tract 3A Sheep Island Road, Summerville, SC 29483 Southcoast Community Bank authorizes Michael White of Hartnett Realty Co , to perform a commercial appraisal on the properties mentioned above in connection with future financing TMS # is as follows 194-00-02-162 The "buyer is Bruce Marshall and he can be reached at [redacted]

If you have any questions, please don't hesitate to contact me directly @ 576-1367

Best regards

Marc Knight
Vice President

DEFENDANT'S EXHIBIT
3 KNIGHT
5-25-07 MB

SCB 00096

SOUTHCOAST
COMMUNITY BANK

July 28, 2006

M. Stephen Hill
John Bourdean
Cecil O Curtis
Jeremy S Marshall
Walter M Funk III
David L Hilleshiem
Sheep Island Plantation, LLC
88 Westview Blvd.
Goose Creek SC 29445

DEFENDANT'S EXHIBIT
4 PAGES
5-25-07 AB

Dear Sirs

Southcoast Community Bank (hereinafter referred to as "Bank") is pleased to provide a loan commitment to Sheep Island Plantation LLC (hereinafter referred to as "Borrower") based on representations contained in the financial statements and other financial information made available to the Bank Our loan is subject to the following terms and conditions

Borrower(s) Sheep Island Plantation LLC

Guarantor(s) M Stephen Hill John Bourdean Cecil O Curtis Jeremy S Marshall Walter M Funk III and David L Hilleshiem

Amount: $2 530 000

Purpose The purpose of the loan is to purchase 101 acres known as Tract 3A, Sheep Island Road Summerville SC 29483 (TMS# 194 00-02 162)

Terms and Conditions 11 monthly payments of interest only with 1 final payment of principal and interest due at maturity The interest rate will be based on the current Wall Street Journal Prime Rate on the day of adjustment and will continue to adjust with changes in the Prime Lending Rate.

Renewal The loan may be renewed for an additional six month term for a renewal fee of $12 650 00

Bank Fees
1. Non Refundable Commitment Fee of 1% of Loan Amount, of which, ½ is due upon the acceptance of this Commitment Letter with the remaining ½ due at Loan Closing If the loan is not closed, the remaining fee will be due and payable upon receipt of Bank s invoice for same
2. Underwriting Fee $500 00
3. Mortgage and Assignment of Rents Satisfaction Fee $10 00

Collateral
1. First mortgage security interest on the real estate and known as Tract 3A Sheep Island Road Summerville, SC 29483 (TMS# 194-00-02 162)
2. Assignment of Southcoast Community Bank CD Account #07 300000424 in the amount of $885,500 00 The CD will only be released when the loan is paid in full
3. Assignment of Southcoast Community Bank money market account #07-400000209 in the amount of $211 625 00 Borrower agrees that the money market account will be debited monthly for the required payment due

SCB 00016

597 Old Mount Holly Road Goose Creek SC 29445 843 553-0021 Fax 843 553 6551

Title Insurance A standard ALTA title insurance commitment insuring the Bank s first lien position together with copies of all exceptions to the title will be required After closing a title insurance policy is to be issued in accordance with the title insurance commitment in a form and substance satisfactory to the Bank

Survey A current survey prepared and certified by a registered land surveyor showing the location of any and all setbacks side lines existing buildings, streets roads rights-of way easements encroachments etc will be required in the event that the title insurance company takes exception to title for reason of survey The survey shall include a certification as to the location of the property within any flood hazard area.

Appraisal The loan is subject to the Bank receiving an appraisal addressed to Southcoast Community Bank in form and content acceptable to the Bank. The Bank reserves the right to inspect the property prior to closing The borrower is responsible for any fees attached to the appraisal

Waiver of Appraisal Rights You are hereby notified that a Waiver of Appraisal Rights will be required from you in connection with the above referenced transaction As part of that transaction you will be required to execute one or more documents containing the following language

> The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY

Environmental In the event that there is notice of any environmental problems, evidence of the nature of the problem and its remedy will be required and such information may include opinions and certification from appropriate governmental authority your counsel and/or environmental specialist acceptable to us Should the property contain hazardous material of any quantity or material unacceptable to us, the Bank reserves the right to void this commitment

Loan Documentation The Borrower will enter into any and all documentation necessary to close this transaction in a form and substance acceptable to the Bank.

Closing Cost All costs incurred in this transaction including but not limited to attorney fees will be the responsibility of the Borrower This would include both the Borrower s and the Bank s closing attorney

Prepayment The Borrower shall have the right to prepay the principal and accrued interest in full or in part at anytime without premium or penalty

Financial Information Before closing the Bank must have current financial statements and signed copies of the last two years tax returns on the borrowing entity(s) if applicable and all guarantors Borrower and all guarantors agree to provide the Bank with the name of their accountant/tax preparer and by acceptance of this commitment authorize the Bank to request, and their accountant/tax preparer to provide, copies of all tax returns extensions and financial statements of the Borrower and guarantors

Financial Condition The Borrower and guarantors are at all times to maintain a satisfactory financial condition and are to submit at a minimum annual financial statements Tax Returns and any other documentation as the Bank may request from time to time

The commitment is for the sole and exclusive benefit of the Borrower and may not be assigned by the Borrower No third party is intended to be benefited in any respect by this commitment.

This Commitment will also survive the Loan Closing

We appreciate the opportunity to make this financing available to you. If you are in agreement with the above terms and conditions, please acknowledge by signing the enclosed copy and returning it to Southcoast Community Bank.

This Commitment to lend **expires** on July 31, 2006 If not accepted by then it becomes null and void. If accepted **closing must occur within 45 days of acceptance** Failure to close within the period set forth herein shall give the Bank the option to void this commitment.

Again, it is certainly a pleasure to extend this commitment. I look forward to hearing from you soon

Sincerely

Marc Knight
Vice President

MK/emm

The terms and conditions of this commitment letter are hereby accepted this ____ day of July 2006

Sheep Island Plantation LLC

By _____
M Stephen Hill
Member

_____
John Bourdeau
Member

_____
Cecil O Curtis
Member

_____
Jeremy S Marshall
Member

_____
Walter M Funk III
Member
Walker

_____
David L Hilleshiem
Member

Guarantor(s)

_____
M Stephen Hill

_____
John Bourdeau

_____
Cecil O Curtis

_____
Jeremy S Marshall

_____
Walter M Funk III
Walker

_____
David Hilleshiem

The terms and conditions of this commitment letter are hereby accepted this 28th day of July 2006

Sheep Island Plantation LLC

By _____
M Stephen Hill
Member

_____
John Bourdean
Member

_____
Cecil O Curtis
Member

_____
Jeremy S Marshall
Member

_____
Walter M. Funk III
Member

_____
David L. Hilleshiem
Member

Guarantor(s)

_____
M Stephen Hill

_____
John Bourdean

_____
Cecil O Curtis

_____
Jeremy S Marshall

_____
Walter M Funk

_____
David Hilleshiem

The terms and conditions of this commitment letter are hereby accepted this ____ day of July, 2006

Sheep Island Plantation, LLC

By _____
M Stephen Hill
Member

_____
John Bourdeau
Member

_____
Cecil O Curtis
Member

_____
Jeremy S Marshall
Member

X _____
Walter M. Funk III
Member

_____
David L. Hillesheim
Member

Guarantor(s):

_____
M Stephen Hill

_____
John Bourdeau

_____
Cecil O Curtis

X _____
Jeremy S Marshall

X Walter M Funk
Walter M Funk

_____
David Hillesheim

The terms and conditions of this commitment letter are hereby accepted this ___ day of July, 2006

Sheep Island Plantation, LLC

By: _____
M Stephen Hill
Member

_____
Cecil O Curtis
Member

_____
Walter M Funk III
Member

_____
John Bourdeau
Member

_____
Jeremy S Marshall
Member

_____
David L. Hilleshiem
Member

Guarantor(s)

_____
M Stephen Hill

_____
John Bourdeau

_____
Cecil O Curtis

_____
Jeremy S. Marshall

_____
Walter M Funk III

_____
David Hilleshiem

9960OL-28-2006(FRI) 17 03 SOUTHCOAST BANK (FAX)843 553 6551 P 002/002

DEFENDANT'S EXHIBIT 5 RWLGHT 5-29-07 GB

Southcoast Community Bank
Credit Approval Document

Sheep Island Plantation LLC 56-2566839
BORROWER S NAME

7/27/06
LOAN GRADE DATE

Real Estate Investment 42314
NATURE OF BUSINESS NAICS CODE

Marc Knight
LOAN OFFICER LOAN NUMBER

88 Westview Blvd
ADDRESS
Goose Creek, SC 29445
CITY / ST / ZIP

110 $2 530 000.00
REAL ESTATE LTV CODE LOAN AMOUNT

1/0 25,300 $10 000 Prime Rate Floating

	FEES	RATE
	CONSUMER LOAN	
X	COMMERCIAL LOAN	
	HOME EQUITY LINE OF CREDIT	
	MODIFICATION / RENEWAL	
X	NEW MONEY	

PURPOSE OF CREDIT.
Purchase 101 acres on Sheep Island Road Goose Creek. Property to be sold to developer or National builder Purchase price is $2 530 000

REPAYMENT AGREEMENT.
12 monthly interest payments required Payments debited from Commercial Money Market to be set-up in the name of Sheep Island Plantation LLC with a hold placed on the account.

SOURCE OF REPAYMENT.
Interest carry for one year to remain in SOCB Money Market in the amount of $208 725 This represents twelve monthly interest payments based on current Prime Rate of 8.25%

COLLATERAL SUMMARY & COLLATERAL TYPE CODE.
FREM on property located on Tract 3A Sheep Island Road ~~Summerville~~ Berkeley Cty SC 29483 Tax Map # 194-00-02 162 SOCB CD in the amount of $885 500 CD will be held as collateral and will only be released when the loan has been paid in full Collateral Code 37 and 07

APPRAISED VALUE	3,625,000 ~~TBD~~
LOAN TO VALUE RATIO	65% of purchase price
APPRAISER	Hartnet Realty Company
DATE OF APPRAISAL	July 28 2006

COMMENTS. $12,650
Loan can be renewed for an additional 6 months with a ~~$5,000~~ renewal fee See attachments for additional information

POLICY GUIDELINE EXCEPTION & JUSTIFICATIONS.
Assign MMF TO LOAN
Personal guarantee
CHECK WITH RMC to see if any tax liens - SAM will close for us

RECAP OF TOTAL DIRECT AND INDIRECT DEBT BORROWINGS INCLUDING THIS REQUEST	
DIRECT DEBT OUTSTANDING	$0
INDIRECT DEBT OUTSTANDING	$0
UNFUNDED LINES	$0
LETTER OF CREDIT	$0
THIS REQUEST	$2 530 000
TOTAL TO BE APPROVED	$2,530,000

FINANCIAL POSITION & STATEMENTS

NAME(S)	DATE(S)
See attached summary	

Application

ASSETS	See attached summary
LIABILITIES	See attached summary
NET WORTH	See attached summary
ANNUAL INCOME	See attached summary
BEACON SCORE	See attached summary
AVERAGE DEPOSIT BALANCE	See attached summary
DEBT COVERAGE RATIO	1 to 1
Mortgage to Gross Income 28%	See attached summary
Total Debt to Gross Income 36%	See attached summary

GUARANTOR(s)
See attached summary

OFFICER APPROVAL

SECONDARY APPROVAL

SCB 0001 00967

Personal Financial Statement

David Hilleshiem Beacon - 723

Cash	25 000	Notes	0
Stocks	201 700	RE Mtg	575 000
RE (1)	1 035 000	Other	0
CVLI	50 000	NW	1 108 700
Other (2)	372 000	Total	1 683 700

Mtg to Gross Income 23% Total debt 27%

(1) Primary Home and Office Condo

(2) $300 000 Closely Held Business Interests
Remainder is Personal

Jeremy S Marshall Beacon - 747

Cash	125 000	Notes	0
Stocks	15 000	RE Mtg	69 000
RE (1)	540 000	Other	0
CVLI	N/A	NW	711 000
Personal	100 000	Total	780 000

Mtg to Gross Income 24% Total debt 24%

(1) Primary Hm 140k @ 49% LTV + 2 Rentals

Cecil O Curtis Beacon - 675

Cash	25 000	Notes	44 000
Retirement	0	RE Mtg	748 000
RE (1)	1 650 000	CC	25 000
CVLI	N/A	NW	999 000
Other (2)	141 000	Total	1 816 000

Mtg to Gross Income 17% Total Debt 24%

(1) Primary Home and three Rentals

(2) $66 000 Autos other Personal

Walker M Funk III Beacon - 767

Cash	196 000	Notes	21 000
Retirement	0	RE Mtg	99 000
RE (1)	230 000	Auto	18 000
CVLI	400 000	NW	932 000
Other (2)	244 000	Total	1 070 000

Mtg to Gross Income 9% Total debt 15%

(1) Hm 170k @ 58% LTV no mtg on acreage

(2) $224 000 Closely Held Business Interests
B&F Construction and 20k Personal

John Bourdean Beacon - 665

Cash	5 200	Auto	17 300
Retirement	0	RE Mtg	217 000
RE	245 000	CC	27 000
CVLI	N/A	NW	48 900
Other (1)	60 000	Total	310 200

Mtg to Gross Income 27% Total debt 45%

(1) $30,000 Closely Held Business Interests
$30 000 Personal

M Stephen Hill Beacon 722

Cash	908,000	Notes	1 450 000
AR	2,715 000	RE Mtg	0
RE	600 000	CC	0
Stocks	635 000	NW	5 110 000
Other (1)	1 702 000	Total	6 560,000

Mtg to Gross Income 0% Total debt 0%

(1) $1 700 000 Closely Held Business Interest

Debt listed are Business Notes

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY SHEEP ISLAND PLANTATION LLC, Plaintiff, vs BAR-PEN INVESTMENTS LLC Defendant	IN THE COURT OF COMMON PLEAS 9TH JUDICIAL CIRCUIT CASE NO 06-CP-08-1650 **AFFIDAVIT OF MARC KNIGHT**

PERSONALLY appeared before me Marc Knight, who after being duly sworn, deposes and says

1 My name is Marc Knight, and I am a VP Commercial Loan Officer with Southcoast Community Bank My branch is located at 597 Old Mount Holly Road Suite 200 Goose Creek South Carolina 29445 My job responsibilities include commercial lending and business development

2 On or about January 30, 2006, E Bruce Marshall and Jeremy S Marshall applied for financing for a loan to finance the purchase of property pursuant to a contract dated December 14 2005 between E Bruce Marshall and Jeremy S Marshall, as buyers and Bar-Pen LLC as sellers From reading the contract the property appeared to be Tract 3A Sheep Island Road TMS # 194-00-02-162 under paragraph 2 of the contract

3 My discussions and meetings with Bruce Marshall were frequent, and he was always very attentive to my requests for information and supplied me with any requested information promptly and timely, usually within a day The buyers always returned my telephone calls promptly I never had to ask for anything twice or follow up with the buyers as the great diligence they showed allowed me to process their application with relative ease for a loan of this size. Over the

DEFENDANT'S EXHIBIT 6 Knight 3-29-07 WB

next month and after numerous requests for information, Bruce Marshall supplied me with, among other things, the following documents

a Loan Application

b Executed Contract

c. Tax returns and

d Personal financial documents

4 The buyers applied for a 12-month interest only commercial loan Southcoast Community Bank's policy states that raw land needs to carry a 65% loan-to-cost or loan-to-value ratio whichever is less In this particular case the loan-to-cost ratio was the lesser of the two

5 On July 28, 2006 I supplied E Bruce Marshall with written loan approval, a copy of which is attached hereto as Exhibit A

6 It was my understanding that according to the contract, the closing was supposed to occur on or before Monday, July 31, 2006 Having had worked with buyers for several months on this loan we believed we had come to terms on the loan which required the buyers to pay $885,500 00 down at closing The buyers informed me that they had everything ready including the down payment, and were ready to close Unfortunately at approximately 2 00 p m on July 28 2006 Southcoast Community Bank decided it required from the buyers a year's worth of interest, which amounted to an additional $211 625 00 from the buyers at closing This change in closing conditions was of no fault by the buyers Actually, the buyers did everything they could to come up with the extra $211 625 00, but they could not do so by the end of the day Had the buyers notified me that they could have come up with the extra money at any time in August of 2006 I could have issued to them the loan immediately

7 Currently Southcoast Community Bank would still issue this loan to the buyers under the same terms and conditions that existed around August 1, 2006