

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, Jr.

Appellate Case No.: 2014-001296

National Bank of SC,.....Respondent,

v.

Thaddeus F. Segars; KCS Investments, LLC; Singleton
Place Homeowners Association Inc.; and Suntrust
Mortgage Inc.,..... Defendants,

Of Whom Thaddeus F. Segars is the ,.....Appellant.

RECORD ON APPEAL VOLUME I

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Thaddeus F. Segars,)
)
Plaintiff,)
vs.)

Case No. 2008-CP-07-2791

Richardson Street Partners, LLC;)
J. Paul Gaughf; and Fidelity)
National Title Insurance Company,)
)
Defendants.)

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**ORDER GRANTING DEFENDANTS RICHARDSON STREET PARTNERS, LLC
AND J. PAUL GAUGHF'S MOTION TO DISMISS**

This matter came before me for a hearing on May 12, 2009 on a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, filed by Defendants Richardson Street Partners, LLC ("Richardson") and J. Paul Gaughf ("Gaughf"). Present at the hearing were Demetri "Jim" K. Kourakos on behalf of Gaughf and Richardson and Michael Mogil on behalf of the Plaintiff, Thaddeus F. Segars ("Plaintiff").

Gaughf and Richardson have moved to dismiss Plaintiff's Complaint on the grounds that the claims asserted by Plaintiff against Gaughf and Richardson in Plaintiff's Complaint are all barred by the applicable statute of limitations.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006). In deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint and such a motion should not be granted if "Facts alleged and inferences reasonably deducible therefrom would

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entitle the plaintiff to any relief on any theory of the case." Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999). When an action is barred due to the expiration of the statute of limitations, the defendant may move to dismiss the action pursuant to Rule 12(b)(6), SCRPC. Spell v. S.C. Dept. of Highways & Pub. Trans., 292 S.C. 223, 355 S.E.2d 860 (1987).

With that in mind, Plaintiff alleges in his Complaint that in November 2002, a plat of the subdivision where the subject property is located was presented to both Plaintiff and Gaughf which showed a "future OCRM line for Lot 2." Complaint ¶ 8. This plat was recorded on January 29, 2003 in Plat Book 91 at Page 90. Id.

Plaintiff alleges Richardson and Gaughf had an architectural drawing prepared on November 13, 2003 "that depicted a residence approximately 4,000 square feet could be constructed on Lot 3 of Singleton Beach Place, which is adjacent to but smaller than Lot 2." Complaint ¶ 9. Lot 2 is the property that is the subject of this case, not Lot 3. Complaint ¶ 3.

Plaintiff claims a corrective plat was recorded on November 20, 2003, which included Lot 2, but "removed the future OCRM line depicted in that certain plat recorded in Plat Book 96 at Page 90." Complaint ¶ 10. On December 15, 2003, a corrective plat was recorded by Richardson and others that included Lot 2, but "removed the future OCRM line depicted in that certain plat recorded in Plat Book 96 at Page 90." Complaint ¶ 11.

Plaintiff alleges Richardson purchased Lot 2 on December 19, 2003. Complaint ¶ 12, and on June 7, 2004, Plaintiff purchased Lot 2 from Richardson. Complaint ¶¶ 3, 15. Plaintiff alleges that, during negotiations for Plaintiff's purchase of Lot 2, Richardson and Gaughf provided Plaintiff with a copy of the architectural drawing prepared in November 2003, which depicted a 4,000 square foot residence. Complaint ¶ 13.

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The Complaint further states that "in late 2005 [the Plaintiff] learned of the corrective plat recorded on December 15, 2003, and as a result, the residence represented in the architectural drawing provided to [the Plaintiff] could not be constructed on Lot 2, but that pursuant to said plat only a residence approximately 2,000 square feet could be constructed on Lot 2." Complaint ¶ 16. Similarly, Plaintiff alleges he did not "learn of the falsity of these representations [made by Defendants] until late 2005." Complaint ¶ 33.

Gaughf and Richardson argue Plaintiff's claims are barred by the applicable statute of limitations because this action was commenced more than three years after the date on which Plaintiff has admitted he had knowledge of his claims. I agree.

Plaintiff has asserted causes of action against Gaughf and Richardson for breach of contract, fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment, all of which are based on alleged representations regarding the square footage of a house that could be built on Lot 2. Each of these causes of action are governed by a three-year statute of limitations. See S.C. Code Ann. § 15-3-530 (1) (providing a three-year limitation period for breach of contract claims); S.C. Code Ann. § 15-3-530 (5) and (7) (providing a three-year limitations period for fraud claims).

In determining whether a statute of limitations bars a cause of action, the Court must first determine when the cause of action arose. Under the "discovery rule," a statute of limitations begins to run on the date when the underlying cause of action reasonably ought to have been discovered, or when a "party knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). The standard as to when the limitations period begins to run is objective rather than subjective. Burgess v. Am. Cancer Socy, S.C. Div., Inc., 300 S.C. 182, 186,

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386 S.E.2d 798, 800 (Ct. App. 1989). Courts must determine "whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Young v. S.C. Dep't of Corr., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

Here, Plaintiff admits in his Complaint he was put on notice that a claim might exist when he discovered the existence of the corrective plat. Plaintiff alleges "in late 2005 [he] learned of the corrective plat recorded on December 15, 2003, and as a result, the residence represented in the architectural drawing provided to [him] could not be constructed on Lot 2, but that pursuant to said plat only a residence approximately 2,000 square feet could be constructed on Lot 2." Complaint ¶ 16. Similarly, Plaintiff alleges he did not "learn of the falsity of these representations [made by Defendants] until late 2005." Complaint ¶ 33.

Plaintiff's Summons and Complaint were filed on August 4, 2008, but they were not served on Gaughf and Richardson until January 31, 2009, more than 120 days after the Complaint was filed. Thus, this action was commenced on the date of service of the Summons and Complaint on Gaughf and Richardson, January 31, 2009, which is more than three years after "late 2005."

Even with the Court's review of this motion being confined to the four corners of the Plaintiff's Complaint, it is without question that Plaintiff knew of his alleged claims in late 2005 and thus all of his causes of action are barred by the applicable statutes of limitations. See Brown v. Lexington County, 283 S.C. 27, 28-29, 320 S.E.2d 498, 499 (Ct. App. 1984) (affirming the circuit

Because Plaintiff did not serve the Complaint on Defendants within 120 days of the date of the filing of the Summons and Complaint, I find that Plaintiff does not receive the benefit of Rule 3(a), SCRCP or S.C. Code Ann. §15-3-20, both of which provide that a civil action is commenced when the summons and complaint are filed with the clerk of court, but if not served within the statute of limitations, actual service must be accomplished not later than 120 days.

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court's dismissal of an action where the complaint revealed on its face that the statute of limitations had run).

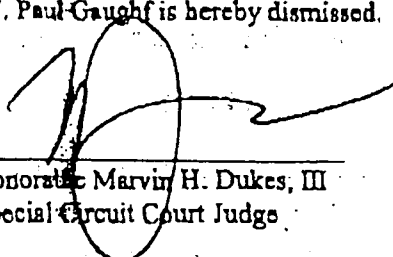
I therefore find and conclude that all of Plaintiff's claims asserted against Gaughf and Richardson are barred by the statute of limitations and grant Gaughf and Richardson's motion to dismiss.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants Richardson Street Partners, LLC and J. Paul Gaughf's motion to dismiss is hereby granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Plaintiff's Complaint as to Defendants Richardson Street Partners, LLC and J. Paul Gaughf is hereby dismissed.

AND IT IS SO ORDERED.

5/22, 2009
Beaufort, South Carolina


Honorable Marvin H. Dukes, III
Special Circuit Court Judge

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STATE OF SOUTH CAROLINA

CITY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

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CASE NO. 09-CP-07-00381

BEAUFORT COUNTY, S.C.
CLERK OF COURT

Thaddeus Segars,

Plaintiff,

vs.

Jones, Patterson, Simpson & Newton, P.A.

Weston Jones Newton,

Defendants.

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS**

This is a legal malpractice action brought by the Plaintiff, Thaddeus Segars ("Segars"), against the Defendants, the law firm of Jones, Patterson, Simpson & Newton, P.A. ("Firm") and attorney Wm. Weston Jones Newton ("Newton"). On June 17, 2010, the Court held a hearing on the motion of Newton and the Firm for summary judgment based on the expiration of the statute of limitations. Appearing at the hearing were Sean A. O'Connor, Esquire, representing Segars, and Charles J. Baker III, Esquire, representing the Firm and Newton.

Newton and the Firm dispute most of the factual allegations made by Segars concerning the legal advice on which the lawsuit is based. These factual disputes, however, are not material to the summary judgment motion since, in considering the statute of limitations issue, the Court views the allegations in the Complaint and Segars' deposition testimony in the light most favorable to him. For the following reasons, the Court concludes there is no genuine issue of material fact and Newton and the Firm are entitled to judgment as a matter of law on the grounds that the statute of limitations expired before Segars commenced the action.¹

¹ Newton handled the matter on behalf of the Firm, and there are no independent allegations of negligence against any members of the Firm, which is, at most, vicariously liable.

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that judgment shall be rendered when depositions and other evidence "show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *See also Smith v. TH Shipes & Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439, 440 (1991). To avoid summary judgment, the non-moving party must submit a scintilla of evidence to demonstrate that there is a genuine material fact. *See Hancock v. Mid-South Management Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

STATUTE OF LIMITATIONS

The parties agree that the applicable statute of limitations in this matter is three years. *See Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) (S.C. Code §15-5-530 provides a three-year statute of limitations for legal malpractice actions). "Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *Id.* In the present case, Segars filed the Summons and Complaint on January 29, 2009, and the statute of limitations bars his claim if he knew or should have known prior to January 28, 2006, that a claim against Newton might exist.

DISCUSSION

Newton represented Segars in the purchase of a beachfront lot on Hilton Head Island, South Carolina. The lot was subject to the Beachfront Management Act (now part of the Coastal Zone Management Act), which generally prohibits construction of new houses seaward of the baseline established by the Office of Ocean and Coastal Resource Management ("OCRM"). In his deposition, Segars admits that, as an experienced real estate agent and investor, he was

familiar with the baseline concept at the time he bought the lot in question and understood that the baseline could restrict the use of beachfront property.

Segars asserts that, before he bought the lot, he saw a 2002 plat depicting two OCRM baselines: an existing "Beachfront Management Act Baseline" and, at a location significantly seaward, a "Future Beachfront Management Act Baseline." He asserts that the purchase of the lot was not financially worthwhile unless the "future" baseline was enforceable because the location of the "existing" baseline did not leave room to build a house of sufficient size. Segars believed that OCRM and the Town of Hilton Head Island had officially approved the movement of the baseline to the "future" location and that it was, in his words, "a done deal."

Segars alleges that he informed Newton the decision to purchase was based on the enforceability of the "future" baseline and the ability to build a house of at least 4,000 square feet on the lot. He claims that Newton was negligent in advising him the "future" baseline was enforceable. He further claims that Newton was negligent in failing to disclose to him a subsequently filed 2003 plat, which did not show the "future" baseline and depicted the OCRM baseline at the same location as the "existing" baseline on the 2002 plat. According to Segars, if he had seen the 2003 plat, he would have realized the baseline had not been moved to the "future" location and would not have purchased the lot.

The undisputed evidence demonstrates that Segars was on notice a claim might exist against Newton well over three years before bringing this action. Segars closed on the purchase of the lot on June 9, 2004. Shortly thereafter, two things occurred. First, on August 2, 2004, the Town of Hilton Head Island filed a document purporting to revoke the 2003 plat due to alleged inaccuracies on the plat. JJ Development Corp., which had developed the group of ten lots including the lot in question, challenged the plat revocation and filed a lawsuit against the Town.

which added Segars, among others, as a third-party defendant. On October 11, 2004, Segars, through counsel, served an answer and counterclaim specifically alleging that he had "a right to rely upon any recorded plats in the chain of [his] title," which, of course, included the subject of that lawsuit, the 2003 plat.

Second, on September 1, 2004, JJ Development Corp. filed a petition in the South Carolina Administrative Law Court ("ALC") to move the OCRM baseline to the "future" location as endorsed by OCRM. It appears that, while OCRM had recommended moving the baseline, the Town had objected, and based on a provision of state law requiring the Town's consent, OCRM had refused to move it. On March 16, 2005, Segars, through counsel, moved to intervene in the ALC matter. Segars admits that, at this time, he clearly understood the baseline had not been moved and that the issue in the ALC proceeding was whether the "future" baseline would or would not be honored.

The statute of limitations begins to run from the point of constructive notice and not when advice of counsel is sought or a full-blown theory of recovery is developed. *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 278 S.E.2d 333, 334 (1981). Further, the date on which discovery should have been made is an objective, not subjective, question. *Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157, 159-160 (Ct. App. 1998). Based on the records of the ALC proceeding and Segars' own deposition testimony, it is clear that, by March 2005 at the latest, he had actual knowledge Newton's alleged advice regarding the enforceability of the "future" baseline was wrong and, accordingly, should have known a claim against Newton might exist. Further, while Segars asserts he did not actually see the 2003 plat until late 2006, it is clear he was on constructive notice of the plat and its contents in October 2004 due to his participation

as a party in the plat revocation lawsuit, the very subject of which was the 2003 plat. Either way,
failed to file this action within three years.

NOW, THEREFORE, IT IS ORDERED that summary judgment be granted to the
Defendants, Jones, Patterson, Simpson & Newton, P.A. and Wm. Weston Jones Newton, and
that this action be dismissed with prejudice.

AND IT IS SO ORDERED.



Carmen T. Mullen
Presiding Judge

BEAUFORT, SC
July 2, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

THADDEUS F. SEGARS,

Plaintiff,

vs.

FIDELITY NATIONAL TITLE INSURANCE
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-07-0093

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

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THIS MATTER CAME ON FOR HEARING before the Honorable Carmen T. Mullen, Judge presiding over the April 25, 2012 Session of the Beaufort County Common Pleas Court upon the motion of Defendant Fidelity National Title Insurance Company to dismiss Plaintiff's Complaint pursuant to Rules 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6).

Attorney Michael Mogil entered an appearance on behalf of Plaintiff, and attorney Amy Hunt appeared on behalf of Defendant. The Court reviewed and considered the Complaint, Motions to Dismiss, authorities presented, and arguments of counsel; and the Court makes the following findings of fact and conclusions of law:

1. The title insurance policies at issue in this lawsuit were issued on June 23, 2004 (the Lot 2 Policy) and August 9, 2004 (the Lot 3 Policy).
2. The restrictions and plats of which Plaintiff complains were matters of public record prior to the issuance of the title insurance policies and are specifically referenced in the policies.
3. Plaintiff filed two prior actions against the same Defendant on July 16, 2008 (Beaufort County Case Number 2008-CP-07-2579) and August 4, 2008 (Beaufort County Case

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Number 2008-CP-07-2741). In these prior actions, the claims against Defendant were substantially the same as in the present action.

4. A Stipulation of Dismissal without prejudice was filed as to both of the prior actions on February 19, 2010.

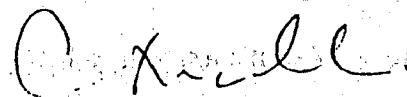
5. The present action was filed on February 24, 2011.

6. The Court finds that Plaintiff discovered or should have discovered the facts underlying his Complaint at the time of the issuance of the title insurance policies, because the matters of which he now complains were matters of public record at that time. Plaintiff is not a bona fide purchaser because sufficient record notice was available as of the date of the issuance of the policies to charge him with a duty to inquire, which if pursued with due diligence, would have supplied him with knowledge of the restrictions and plats.

7. Accordingly, the Court finds that Defendant's Motion to Dismiss should be allowed, because Plaintiff's claims are all barred by the applicable statute of limitations under S.C. Code. Ann. § 15-3-530(1).

IT IS HEREBY ORDERED that the motion to dismiss is allowed as to all claims in the Complaint.

AND IT IS SO ORDERED.



The Honorable Carmen T. Mullen
Common Pleas Judge, Beaufort County

May 23, 2012
Beaufort, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-03201

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KCS
INVESTMENTS, LLC; SINGLETON
PLACE HOMEOWNERS ASSOCIATION,
INC. AND SUNTRUST MORTGAGE,
INC.,

Defendants.

ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

This matter came before me for hearing on March 14, 2013, upon Motion by the Plaintiff for Summary Judgment on the counterclaims filed by Defendant Segars and KCS Investments, LLC (hereinafter "Defendants"). Appearing at the hearing were counsel for the Plaintiff, Daniel A. Saxon, counsel for the Defendant, Thomas J. Finn, and the Defendant Thaddeus F. Segars. Subsequent to the hearing, the parties engaged in an unsuccessful mediation. On November 18, 2013 a status conference was held via telephone during which the parties agreed and did submit supplemental briefs on or before December 6, 2012.

Defendant Segars' counterclaims are the sole remaining issues before the Court. All other claims have been previously determined. At the outset of the hearing Defendant conceded his third counterclaim, Breach of Contract Accompanied by a Fraudulent Act. The Court has reviewed and considered the pleadings, the motions and memoranda submitted, arguments of counsel and authorities submitted. For the following reasons, the Court concludes there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law as to all Defendants' counterclaims on the grounds that the statute of limitations expired before

Defendants' commenced the action against Plaintiff. Based upon my ruling, I need not address the remaining grounds upon which Plaintiff moves.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E.2d 563 (Ct.App. 2001).

STATUTE OF LIMITATIONS

The Defendants' counterclaims are subject to a three (3) year statute of limitations. S.C. Code Ann. § 15-3-530 (1) and (7) (1996, as amended). The "discovery rule" provides an exception to the general rule and tolls the statute of limitations until a person knows or by the exercise of reasonable diligence should know that he has a cause of action. Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct.App.1998). The statute of limitations starts to run upon the discovery of such facts, as would have led to the knowledge thereof if pursued with reasonable diligence. Id. A party has constructive notice if the party knows of facts and circumstances of an injury that would put a person of common knowledge and experience on notice that some right has been invaded or that some claim against another party might exist. Graniteville Co. v. IH Services, Inc., 316 S.C. 146, 447 S.E.2d 226 (Ct.App.1994). The date on which discovery should have been made is an objective, not subjective, question. Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995). In the present case, Defendants filed their counterclaims on or about August 19, 2009, and the statute of limitations bars his claims if Defendants knew or should have known prior to August 19, 2006, that the claim against Plaintiff might exist.

DISCUSSION

On or about March 15, 2004, Defendant Segars entered into a contract for the purchase of Lot 2 Singleton Beach Place Extension (the "Property") located on Hilton Head Island. On or about June 9, 2004, Segars borrowed from Plaintiff the principal sum of \$1,360,000.00 for the purpose of financing the purchase of the Property. In connection with the loan, Plaintiff obtained an appraisal on the Property which indicated the value thereof to be \$1,600,000.00. The Defendants base their counterclaims on the assertion that the appraisal was in error and that, based on the existing baseline established by the Office of Ocean and Coastal Resource Management (the "OCRM Line") and the applicable private use covenants, the Property was "unbuildable" and thus had little or no value. Segars testified that he relied on the appraisal in his decision to purchase the Property, but also testified that his reserved contingencies to terminate the contract had expired prior to the appraisal.

The Property is depicted on two (2) separate subdivision plats recorded in the Office of the Register of Deeds for Beaufort County. The first, dated November 12, 2002 and recorded on January 29, 2003 (the "2002 Plat") depicts the OCRM Line and, located further toward seaward on the Property, a line marked as "Future Beach Management Act Baseline". This plat does not bear the approval stamp of the Office of Ocean and Coastal Resource Management ("OCRM"). The plat, dated December 4, 2003 and recorded on December 15, 2003 (the "2003 Plat") depicts the same OCRM Line, but removes any reference to the "Future Beach Management Act Baseline". The 2003 Plat bears the approval stamp of the OCRM. Both the 2002 Plat and the 2003 Plat were recorded of record in Beaufort County prior to the loan from Plaintiff to Defendant Segars and prior to Segars' contract to purchase the Property.

Segars testified that he purchased the Property and borrowed the funds from the Plaintiff under the mistaken belief that the OCRM Line had been relocated to the location depicted as the "Future Beach Management Act Baseline" on the 2002 Plat, which would have allowed for

construction of a residence of a certain size. He further testified that, at some point after purchasing the Property, he learned that the OCRM Line had not been relocated and that no residence could be constructed on the Property, due to the location of the OCRM Line and the private use covenants applicable to the Property. Segars alleges that, due to the fact that neither he nor anyone else could build on the Property, the value of the Property was a fraction of the appraised value. Thus, for the purposes of Plaintiff's motion for claim preclusion under the statute of limitations, the question becomes what date Segars' learned or was placed on constructive notice that construction on the Property was impaired.

Segars testified that he could not remember when he first learned that the OCRM Line had not been relocated as he believed. However, by March 16, 2005, Segars had retained an attorney to represent him to intervene in a pending Administrative Law Court case against the South Carolina Department of Health and Environmental Control ("DHEC") wherein he alleged that he was adversely affected by DHEC's position refusing to relocate the OCRM Line. Thus, at least by March 16, 2005, Segars knew of the correct location of the OCRM Line.

The question of when Segars learned of the location of the OCRM Line in relation to his claimed inability to build on the property has been determined by this Court in three (3) prior cases. The cases were against: (i) the attorney representing him in the purchase of the Property (Civil Action No. 09-CP-07-00381); (ii) the title insurance company (who issued Segars title insurance upon the Property) and the sellers (Civil Action No. 2008-CP-07-2791); and (iii) against the title insurance company individually (Civil Action No. 2011-CP-07-00931). All of these cases have been dismissed based on the expiration of the Statute of Limitations.

In Civil Action No. 2008-CP-07-2791, the Court held that on May 5, 2009 "[Segars] admits in his Complaint he was put on notice that a claim might exist when he discovered the existence of the corrective plat. [Segars] alleges, 'in late 2005 [he] learned of the corrective plat recorded on December 15, 2003, and as a result the residence represented in the architectural

drawing provided to [him] could not be constructed on Lot 2, but that pursuant to said plat only a residence approximately 2,000 square feet could be constructed on lot 2.” Complaint, ¶ 16” [Order Granting Defendants Richardson Street Partners, LLC and J. Paul Gaugh’s Motion to Dismiss, filed May 20, 2009, Honorable Marvin H. Dukes, III, p. 4].

This Court has previously found and held that Segars, “was on constructive notice of the [2003 Plat] and its contents in October 2004 due to his participation as a party in a plat revocation lawsuit against the Town of Hilton Head Island, the very subject of which was the 2003 plat.” [Order Granting Summary Judgment to Defendants, Civil Action No. 09-CP-07-00381, filed July 2, 2010, Honorable Carmen T. Mullen, p. 4-5].

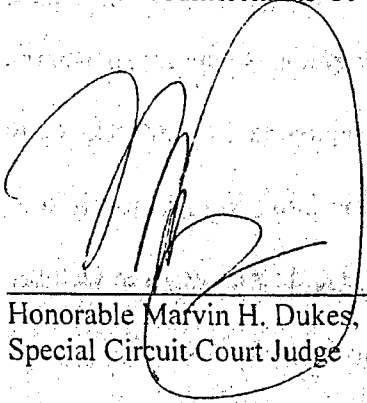
Finally, this Court has previously found and held that, “Plaintiff [Segars] discovered or should have discovered the facts underlying his Complaint at the time of the issuance of the title insurance policies [June 23, 2004], because the matters of which he now complains were matters of public record at that time. Plaintiff is not a bona fide purchaser because sufficient record notice was available as of the date of the issuance of the policies to charge him with a duty to inquire, which if pursued with due diligence, would have supplied him with knowledge of the restrictions and plats.” [emphasis added] [Order Granting Defendant’s Motion to Dismiss, Civil Action No. 2011-CP-07-0931, filed May 24, 2012, Honorable Carmen T. Mullen, p. 2].

Based on the evidence and deposition testimony in this matter and the previous findings of this Court, it is clear that, by March 16, 2005 at the latest, Segars had actual knowledge that the OCRM Line was not located where he thought at the time of purchase of the Property and that the actual location affected his ability to build a residence on the Property. This discovery, pursued with reasonable diligence would have led Segars to conclude that appraisal might be in error, and thus, should have known a claim based on the appraisal might exist. I find that Defendants failed to file the counterclaims on the alleged erroneous appraisal within three years. Accordingly,

NOW, THEREFORE, IT IS ORDERED that summary judgment be granted to Plaintiff National Bank of South Carolina and that all of Defendants' counterclaims be dismissed with prejudice.

AND IT IS SO ORDERED.

Beaufort, South Carolina
January 17, 2014



Honorable Marvin H. Dukes, III
Special Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07-03201

NATIONAL BANK OF SOUTH CAROLINA

2014 MAY 15 PM 3:39

THADDEUS F. SEGARS, ET AL.

PLAINTIFF(S)

BEAUFORT COUNTY, S.C.
CLERK OF COURT

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CAME BEFORE ME ON A MOTION TO RECONSIDER, FILED 2/27/2014.
THE MOTION IS DENIED.

ORDER INFORMATION

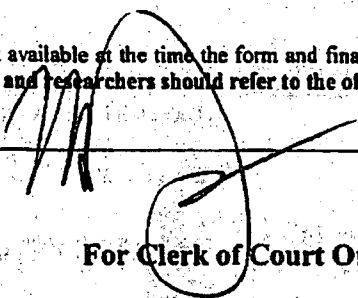
This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rule of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

3069

Judge Code

5/15/11
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

DANIEL A. SAXON

ATTORNEY(S) FOR THE PLAINTIFF(S)

MERRITT G. ABNEY

THOMAS J. FINN

MICHAEL W. MOGIL

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KCS
INVESTMENTS, LLC; SINGLETON
PLACE HOMEOWNERS ASSOCIATION,
INC. and SUNTRUST MORTGAGE, INC.;

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2009-CP-07-3201

**JUDGMENT OF FORECLOSURE AND
SALE**

2010 DEC 16 PM 2:56
CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA

This matter came before the Court for hearing on December 9, 2010, pursuant to Plaintiff's motion for summary judgment on its action for foreclosure of a mortgage with demand for deficiency judgment and its motion to amend its Reply to Counterclaims of Defendant Segars and KCS Investments, LLC to allege the defense of bar based on the applicable statute of limitations. The hearing was attended by Daniel A. Saxon, attorney for the Plaintiff. Mr. Saxon represented to the Court that Thomas J. Finn, Attorney for Defendants Segars and KCS Investments, LLC, had advised that he would not object the relief sought in either motion provided the Defendants' counterclaims be preserved for a future disposition.

Having reviewed the pleadings, memoranda and affidavits presented and/or filed of record, and hearing the arguments and representations of counsel and evidence presented, I find summary judgment is appropriate on the Plaintiff's claims, that the Plaintiff should be allowed to amend its Reply as stated above, and that Counterclaims of Defendants Segars and KCS Investments, LLC be reserved for further hearing. I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Plaintiff filed its Lis Pendens, Summons and Complaint on July 6, 2009, and its Amended Lis Pendens, Amended Summons and Amended Complaint on August 14, 2009.
2. Service was made upon the Defendant(s) named in this Order as shown by the affidavits and certificates of service filed with the Court.

3. Defendant Singleton Place Homeowners Association, Inc. is in default as shown by affidavit of default filed with the Court. According to the affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act, 50 U.S.C. App. §501, et seq. and any amendments thereto.
4. Defendant Segars and Defendant KCS Investments, LLC filed an Answer and Counterclaim through its attorney, Thomas J. Finn.
5. Defendant Suntrust Mortgage, Inc. filed an Answer through its attorney, Bryson M. Geer.
6. All Defendant(s) entitled to notice and/or their attorneys of record were notified of the time, date and place of the hearing in this matter.
7. For value received, Defendant Thaddeus F. Segars made, executed and delivered a note dated June 9, 2004, promising thereby to pay to the order of National Bank of South Carolina the principal sum of One Million Three Hundred Sixty Thousand and 00/100 (\$1,360,000.00) Dollars with interest thereon at three and seventy four one hundredth (3.74%) percent per annum. Other terms and conditions are stated in the note, which is an exhibit to the Plaintiff's Amended Complaint.
8. To better secure the payment of the note described above, the Defendant Thaddeus F. Segars made, executed and delivered to National Bank of South Carolina a mortgage, in writing, dated June 9, 2004, covering real property in Beaufort County, South Carolina which is the same as that described in the Amended Complaint. The mortgage was filed on June 23, 2004, and is of record in the Office of the Register of Deeds for Beaufort County in Book 1976 at Page 1967.
9. The note was modified on July 7, 2005, for the purposes of amending the interest rate there under to Six and 1/100 (6.01%) percent per annum and to extend the maturity date through January 7, 2007, and further modified on January 24, 2007, for the purposes of amending the interest rate there under to Six and 7/10 (6.7%) percent per annum and to extend the maturity through January 24, 2010.
10. The real property was subsequently conveyed to Defendant KCS Investments, LLC subject to the mortgage.
11. The Plaintiff is the owner and holder of the note and mortgage which constitutes a purchase money first priority lien on the subject property.
12. Payment due on the note has not been made as provided in the note, and the Plaintiff has elected to require immediate payment of the entire amount due thereon and has placed the

note and mortgage in the hands of the attorneys of record herein for collection by foreclosure.

13. The sum of Eight Thousand Sixty Two And 50/100 (\$8,062.50) Dollars is a reasonable fee to allow as attorney's fees for Plaintiff's attorneys for services performed to date in adjudication of the within action under the terms of the note and mortgage. The Plaintiff may apply to the Court for an increase thereof as hereinafter provided.
14. After all payments received by the Plaintiff have been credited to the subject loan, the amount due and owing on the note, with interest at the rate provided in the note, and other costs and expenses of the within action, including attorney's fees, secured by the note and mortgage, is as follows:

a) Principal	\$ 762,186.45
b) Interest through December 9, 2010, at 6.7%	\$ 95,557.41
c) Late fees	\$ 159.50
d) Cost of collection prior to hearing (service, filing etc.)	\$ 1,440.95
e) Appraisal Fees	\$ 600.00
f) Attorney's fees	\$ 8,062.50
g) Real Estate Taxes Paid	\$ 28,317.18

TOTAL debt secured by the note and mortgage
Including interest to December 9, 2010

\$ 896,323.99

Interest for the period from the date shown in (b) above through the date of this judgment at the above stated rate to be added to the above stated Total Debt to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate stated above (pursuant to the terms of the note and mortgage) on the judgment debt shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

15. Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint, or subsequent thereto in writing, expressly reserved its right to a deficiency judgment should the proceeds of sale not be sufficient to satisfy the judgment debt.
16. The following Defendants claim or may claim a lien upon or interest in the subject property and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) of the South Carolina Rules of Civil Procedure. The said Defendants and such claims or liens are as follows:

- (a) that certain Notice and Certificate of Lien of Singleton Place Homeowners Association, Inc. recorded in the Office of the Register of Deeds on August 27, 2008, in Book 42 at Page 2454;
 - (b) that certain Judgment of SunTrust recorded in the Office of the Register of Deeds on February 9, 2009 in judgment roll or case number 08-CP-07-1607;
17. The Plaintiff submitted its affidavit in compliance with the South Carolina Supreme Court Administrative Order 2009-05-22-1 and such affidavit was not challenged by any Defendant.

CONCLUSIONS OF LAW

Based on the record herein I make the following conclusions of law:

1. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.
2. The Plaintiff should have a judgment against Thaddeus F. Segars should the proceeds of sale not be sufficient to satisfy the Total Debt together with accrued interest through the date of compliance with the bid, and, the amount the Plaintiff has been required to pay for the past due taxes on the property, if any.
3. That the Plaintiff has complied with the mandates of South Carolina Supreme Court Administrative Order 2009-05-22-1.

IT IS THEREFORE ORDERED:

1. The Plaintiff's claims are referred to the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County, for sale consistent herewith, and to issue his Notice of Sale, Report on Sale and Disbursements and to issue a Deficiency Judgment as sought.
2. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$896,323.99, representing the total debt due Plaintiff as set out in the Findings of Fact above, together with interest at the rate provided therein on the balance of the principal from the date aforesaid to the date hereof.
3. The amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 14, supra, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the prime rate, currently 6.7% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth

herein. It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the Court without further hearing.

4. The Defendant shall, on or before the date of the sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
5. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint shall be sold by the Master-in-Equity at public auction, at the location, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, on the following terms, that is to say:
 - (a) For Cash: The Master-in-Equity will require a deposit of 5% on the amount of the bid in cash or equivalent (unless Plaintiff is the successful bidder) the same to be applied to the purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at the time of bid or comply with the other terms of the bid within thirty (30) days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).
 - (b) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 6.7%.
 - (c) The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any senior encumbrances.
 - (d) The Purchaser shall pay for any statutory commission on the sale from the proceeds of the final bid amount.
 - (e) The Purchaser shall pay for deed preparation, costs of recording the deed and satisfaction of mortgage, and transfer taxes on the deed.
 - (f) The Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Court.
6. If the Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expense and the indebtedness due Plaintiff, Plaintiff may pay to the Master-in-Equity

only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

7. A personal or deficiency judgment having been demanded, the bidding will remain open for thirty (30) days after the date of sale, with the sale to be final upon that date.
8. The Master-in-Equity will, by advertisement according to law, give notice of the date, time, and place of such sale, and the terms thereof, and will execute to the purchaser, or purchasers, a deed to the premises sold. If the purchaser or purchasers at the sale should fail to comply with the terms thereof within thirty (30) days after the date of sale, then the Master-in-Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

9. The Master-in-Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of the Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney's fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this Court.

10. In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Beaufort County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder of his assigns in full, quiet, and peaceable possession of the said premises without delay, and to keep said successful bidder of his assigns in such peaceable possession.
11. In the event the successful bidder is other than the Defendant(s) in possession and the occupants have voluntarily vacated the premises or have been ejected from the premises leaving furnishings fixtures and items not subject to the Plaintiff's mortgage in and about said premises, the Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's mortgage, which personal property shall be deemed abandoned, by placing said personal property adjacent to a public street or highway or by any other means.

12. The Defendant(s) named herein, and all persons whosoever claiming under the Defendant(s), are forever barred and foreclosed of all right, title interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.
13. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff(s) and the first-named Defendant(s), and the Defendants who were the titleholders of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and, the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
14. The Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.
15. The following is a description of the premises herein ordered to be sold:

ALL that certain piece, parcel or lot of land shown and depicted as "Lot 2", containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension: prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, SCRLS #7606 and recorded in the Beaufort County Register of Deeds Office on December 15, 2003 in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said lots, reference is hereby made to the above-described plat of record.

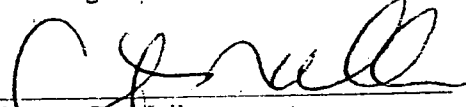
THIS BEING the same property conveyed to Thaddeus F. Segars by Deed of Richardson Street Partners, LLC, a South Carolina limited liability company, dated May 24, 2004 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on June 23, 2004, in Book 1976 at Page 1964, AS FURTHER conveyed to Kellie W. Segars by Deed of Thaddeus F. Segars, dated March 24, 2009 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on April 15, 2009, in Book 2832 at Page 1938.

Property Address: 17 Singleton Beach Place
Hilton Head Island, SC 29928

TMS Reference: R510 012 000 0350 0000

16. The Plaintiff is granted leave to amend its Reply to Defendants Counterclaims as sought, which shall require service only upon Defendant Segars and KCS Investments, LLC.

December 16, 2010
Beaufort, South Carolina


Carmen T. Mullen
Presiding Judge 14th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH CAROLINA

Plaintiff(s)

vs.

THADDEUS F. SEGARS, et al

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009 - CP - 07 - 03201

ELIZABETH M. SMITH
CLERK OF COURT
BEAUFORT COUNTY
2009 JUL - 6 AM 10:50

(Please Print)

Submitted By: Daniel A. Saxon, Esq.

Address: Post Office Drawer 14

Hilton Head Island, South Carolina 29938

SC Bar #: 15968

Telephone #: (843) 785-5850

Fax #: (843) 785-2090

Other:

E-mail: dsaxon@ns-lawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

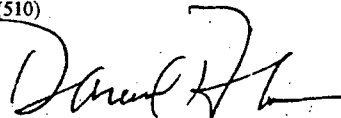
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☒ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (510)			

Submitting Party Signature:



Date: July 2, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FORTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT)

NATIONAL BANK OF SOUTH CAROLINA)

CERTIFICATE OF EXEMPTION
FROM ADR

Plaintiff(s))

vs.)

2009 - CP - 07 - 03201

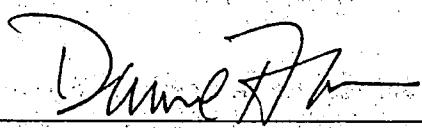
THADDEUS F. SEGARS, et al)

Defendant(s))

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ this Action is appellate in nature;
- ☐ this is a Post Conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is a forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

2009 JUL -6 PM 10:50
ELIZABETH H. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT



Plaintiff/Attorney(s) for Plaintiff(s)

Daniel A. Saxon
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, South Carolina 29938
(843) 785-5850

Defendant/Attorney(s) for Defendant(s)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KELLIE W.
SEGARS; SINGLETON PLACE
HOMEOWNERS ASSOCIATION, INC.
and SUNTRUST MORTGAGE, INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07- 03201
LIS PENDENS NO.: 2009-LP-07- 01505

LIS PENDENS

ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

2009 JUL -6 AM 10:50

NOTICE IS HEREBY GIVEN that an action has been or will be commenced in this Court upon the Complaint of National Bank of South Carolina against the above-named Defendant(s) for the foreclosure of that certain mortgage of real property given by Thaddeus F. Segars to National Bank of South Carolina dated June, 9, 2004 and recorded in the Office of the Register of Deeds for Beaufort, South Carolina on June, 23, 2004, in Book 1976 at Page 1967.

The real property which is affected by the said mortgage and the subject matter of the foreclosure is described as follows:

ALL that certain piece, parcel or lot of land shown and depicted as "Lot 2", containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension: prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, SCRLS #7606 and recorded in the Beaufort County Register of Deeds Office on December 15, 2003 in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said lots, reference is hereby made to the above-described plat of record.

THIS BEING the same property conveyed to Thaddeus F. Segars by Deed of Richardson Street Partners, LLC, a South Carolina limited liability company, dated May 24, 2004 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on June 23, 2004, in Book 1976 at Page 1964, AS FURTHER conveyed to Kellie W. Segars by Deed of Thaddeus F. Segars, dated March 24, 2009 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on April 15, 2009, in Book 2832 at Page 1938.

Tax Map Reference No.: R510 012 000 0350-0000

NOVIT & SCARMINACH, P.A.

By:

Daniel A. Saxon

52 New Orleans Road, Suite 400

Post Office Drawer 14

Hilton Head Island, SC 29938

843-785-5850

Attorneys for National Bank of South Carolina

July 2, 2009

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KELLIE W.
SEGARS; SINGLETON PLACE
HOMEOWNERS ASSOCIATION, INC.
and SUNTRUST MORTGAGE, INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07- 03201

SUMMONS AND NOTICES
Foreclosure (Non Jury)

2009 JUL -6 AM 10:50
ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at the offices of Novit & Scarminach, P.A., 52 New Orleans Road, Suite 400, Post Office Drawer 14, Hilton Head Island, South Carolina, 29938, within thirty (30) days after service hereof, exclusive of the date of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

YOU WILL ALSO PLEASE TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a "master", "special master" or "special referee" pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

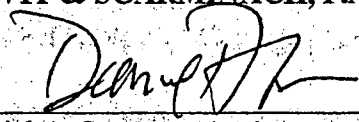
PLEASE TAKE FURTHER NOTICE that under the provisions of South Carolina Code Section 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached Mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable

N&S: 11275-131

directly to it by delivery to its undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignments directly to Plaintiff, said Motion to be based upon the original Note and Mortgage as well as the Complaint attached hereto.

PLEASE TAKE FURTHER NOTICE that you are hereby served with the "Notice Required by the Fair Debt Collection Practices Act" which is attached hereto and incorporated herein by reference.

NOVIT & SCARMINACH, P.A.

By: 

Daniel A. Saxon
52 New Orleans Road, Suite 400
Post Office Drawer 14
Hilton Head Island, SC 29938
843-785-5850
Attorneys for National Bank of South Carolina

July 2, 2009

Hilton Head Island, South Carolina

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION AND PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

1. The amount of this debt is stated in Paragraph 17 of the Complaint attached hereto.
2. Plaintiff, as named in the attached Summons and Complaint, is the creditor to whom the debt is owed.
3. The debt described in the Complaint attached hereto and evidenced by the copies of the Notes attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
4. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by the creditor's law firm.
6. Written requests should be addressed to Daniel A. Saxon, Esq. at Novit & Scarminach, 52 New Orleans Road, Suite 400, Post Office Drawer 14, Hilton Head Island, South Carolina 29938.
7. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and need not wait thirty (30) days.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07- 03201

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KELLIE W.
SEGARS; SINGLETON PLACE
HOMEOWNERS ASSOCIATION, INC.
and SUNTRUST MORTGAGE, INC.;

Defendants.

COMPLAINT
Foreclosure (Non Jury)

2009 JUL -6 AM 10:21
ELIZABETH M. SMITH
BEAUFORT COUNTY
CLERK OF COURT

PLAINTIFF, NATIONAL BANK OF SOUTH CAROLINA HEREIN COMPLAINS AND
ALLEGES THAT:

1. The Plaintiff, National Bank of South Carolina ("NBSC") is a banking institution charter pursuant to the laws of the United States of America.
2. Upon information and belief, the Defendant Thaddeus F. Segars ("Defendant Borrower") is a resident and citizen of Beaufort County, South Carolina.
3. Upon information and belief, the Defendant Kellie W. Segars ("Defendant Owner") is a resident and citizen of Beaufort County, South Carolina.
4. The subject of this action is real property located in Beaufort County, South Carolina and is more specifically described as follows (the "Property"):

ALL that certain piece, parcel or lot of land shown and depicted as "Lot 2", containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension: prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, SCRLS #7606 and recorded in the Beaufort County Register of Deeds Office on December 15, 2003 in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said lots, reference is hereby made to the above-described plat of record.

THIS BEING the same property conveyed to Thaddeus F. Segars by Deed of Richardson Street Partners, LLC, a South Carolina limited liability company, dated May 24, 2004 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on June 23, 2004, in Book 1976 at Page 1964, AS FURTHER conveyed to Kellie W. Segars by Deed of Thaddeus F. Segars, dated March 24, 2009 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on April 15, 2009, in Book 2832 at Page 1938.

Tax Map Reference No.: R510 012 000 0350 0000

5. Upon information and belief, Singleton Place Homeowners Association, Inc. ("Singleton Place HOA") and Suntrust Mortgage, Inc. have or may claim to have some interest or lien upon the Property which is the subject matter of this foreclosure by virtue of the following:
 - (a) that certain Notice and Certificate of Lien of Singleton Place HOA recorded in the Office of the Register of Deeds on August 27, 2008, in Book 42 at Page 2454;
 - (b) that certain Order of judgment to Suntrust recorded in the Beaufort County records on February 9, 2009, at judgment roll or case number 2008-CP-07-1607;
 - (c) provided however, such interest or liens are junior and subordinate to the mortgage of the Plaintiff.
6. On or about June 9, 2004, Defendant Borrower, for value received, made, executed and delivered to Plaintiff a certain promissory note wherein and whereby Defendant Borrower promised to pay Plaintiff the principal sum of One Million Three Hundred Sixty Thousand Dollars 00/100 (\$1,360,000.00) together with interest at the rate of Three and 74/100 (3.74%) percent per annum; said interest being payable in monthly installments as therein provided, with the principal, along with any unpaid interest, due in one lump sum payment on the maturity date of June 15, 2005 (the "Note"), a true and correct copy of which attached hereto as Exhibit "A".
7. Contemporaneously with the execution of the Note, and for the purposes of securing the payment thereof and any renewals thereof, Defendant Borrower, being seized of fee simple title to the Property, executed and delivered to NBSC, its successors and assigns, a mortgage

encumbering the Property (the "Mortgage"), a true and correct copy of which attached hereto as Exhibit "B", which Mortgage was duly recorded on June 23, 2004 in the Office of the ROD in Book 1976 at Page 1967.

8. The Mortgage creates a first priority lien on the Property.
9. Thereafter, on or about July 7, 2005, for the purposes of modifying the terms of the Note to revise the interest rate to Six and 1/100 (6.01%) Percent per annum and to extend the maturity date under the Note through January 7, 2007, for good and valuable consideration duly exchanged, received and acknowledged, Defendant Borrower made, executed and delivered to Plaintiff an amendatory note, a copy of which is attached hereto as Exhibit "C".
10. Thereafter, on or about January 24 2007, for the purposes of modifying the terms of the Note to revise the interest rate to Six and 7/10 (6.7%) Percent per annum and to extend the maturity date under the Note through January 24, 2010, for good and valuable consideration duly exchanged, received and acknowledged, Defendant Borrower made, executed and delivered to Plaintiff an amendatory note, a copy of which is attached hereto as Exhibit "D".
11. Upon information and belief, on or about March 24, 2009, without the knowledge or consent of the Plaintiff and in breach of the express provisions of the Mortgage, Defendant Borrower conveyed the Property to Defendant Owner by deed recorded in the Office of the ROD on April 15, 2009, in Book 2832 at Page 1938.
12. Among other things, the Note and/or Mortgage, as amended, provides that in the event of default, the Note holder may require Defendant Borrower to pay, immediately and in full, the sums due and owing under the terms of the Note and Mortgage and that the Plaintiff may recover all of its reasonable costs and expenses, to the extent permitted by applicable law. Those expenses include, but are not limited to, reasonable attorney's fees, cost of documentary evidence, abstract and title reports, the costs of sale, and all other expenses connected with the foreclosure of the Mortgage and the collection under the Note.

13. The Note further provides that a late fee of Five (5.0%) Percent of any overdue payment of principal and/or interest for such billing term for any payment not paid within ten (10) days of the due date, subject to a the maximum as therein provided.
14. The Note and/or Mortgage further provide that, upon default, the Plaintiff shall be entitled to foreclose the Mortgage through judicial process.
15. Defendant Borrower is now in default under the terms of the Note and the Mortgage in following particulars:
 - (a) By failing to make the monthly payments due and payable under the Note in accordance with the terms thereof; and
 - (b) By transferring the Property to the Defendant Owner in breach of the terms, conditions and obligations of the Mortgage.
16. The Plaintiff, as holder of said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once.
17. As of June 19, 2009, the balance of principal, interest and late charges due and owing on the Note and Mortgage is Seven Hundred Eighty-Two Thousand Six Hundred Fifty Six and 55/100 (\$782,656.55) Dollars, exclusive of the costs of this action and attorney's fees. Further, interest shall continue to accrue thereon as provided in the Note and Mortgage in the amount of One Hundred Thirty-Nine And 91/100 (\$139.91) Dollars per day.
18. The Plaintiff may be forced to make payments for real estate taxes, insurance and costs for securing the Property, which sums should be added to the Defendant Borrower overall debt by virtue of the terms of the Note and Mortgage.
19. The Plaintiff has fully performed all conditions precedent to accelerating the above stated debt and bringing this action of foreclosure.
20. Under the provisions of the South Carolina Code Section 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the subject Mortgage is perfected and the

Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default.

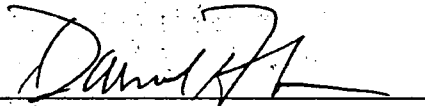
21. The Plaintiff specifically requests the Mortgage be foreclosed in accordance with applicable law, subject only to encumbrances superior to Plaintiff's priority.
22. Plaintiff does not waive and specifically requests a personal or deficiency judgment against Thaddeus F. Segars in the event that the net amount realized by Plaintiff upon the sale of the Property is insufficient to pay in full the total indebtedness to Plaintiff, including the costs of collection and attorney's fees.
23. The loan evidenced by the Note and secured by the Mortgage is neither owned, securitized or guarantied by the Federal National Mortgage Association (FNMA), commonly the Fannie Mae, or the Federal Home Loan Mortgage Corporation (FMLC) commonly the Freddie Mac, nor is the Plaintiff participating in the Home Affordable Modification Program (HMP).

WHEREFORE, Plaintiff prays this Court inquire into the matters set forth herein and render its judgment as follows:

- (a) that the amount due upon the Note and Mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with the attorney's fees and costs of this action;
- (b) that Plaintiff's Mortgage be declared a first priority, first lien upon the Property, and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, together with attorney's fees and for costs of this action;
- (c) that the Property be sold according to law and practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:

- (i) First, to the costs and expenses of the sale, including without limitation any Clerk's or Master's commission;
 - (ii) Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees, costs and expenses as aforesaid; and
 - (iii) Third, to the distribution of any surplus pursuant to Rule 71, SCRPC;
- (d) that Plaintiff be awarded a deficiency judgment against Thaddeus F. Segars in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness owed Plaintiff, including costs of collection;
- (e) For an Order directing the Sheriff of Beaufort County, South Carolina to place the successful purchaser at the foreclosure sale in possession of the Property should the same be necessary; and
- (f) for such other and further relief as may be just and proper.

NOVIT & SCARMINACH, P.A.

By: 

Daniel A. Saxon
52 New Orleans Road, Suite 400
Post Office Drawer 14
Hilton Head Island, SC 29938
843-785-5850
Attorneys for National Bank of South Carolina

July 2, 2009
Hilton Head Island, South Carolina

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION AND PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

1. The amount of this debt is stated in Paragraph 17 of the Complaint attached hereto.
2. Plaintiff, as named in the attached Summons and Complaint, is the creditor to whom the debt is owed.
3. The debt described in the Complaint attached hereto and evidenced by the copies of the Notes attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
4. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by the creditor's law firm.
6. Written requests should be addressed to Daniel A. Saxon, Esq. at Novit & Scarminach, 52 New Orleans Road, Suite 400, Post Office Drawer 14, Hilton Head Island, South Carolina 29938.
7. **This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and need not wait thirty (30) days.**

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**



8 3393450-001 CLO RECD JUN 17 2004

CLO RECD JUN 15 2004

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT

BRANCH: Bluffton

Date: June 09, 2004 Appl #: 0000031800

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 1,356,600.00

\$ 1,360,000.00 Amount given directly to you
 \$.00 Amount paid on your account
 \$.00 Amount paid to others on your behalf:
 For filing security interests
 For credit life insurance
 For credit disability insurance
 For property insurance
 Other: FLOOD FEE
 Other: TITLING FEE
 \$ 3,400.00 Prepaid Finance Charge

LOAN DISCLOSURE

\$ 1,356,600.00 Amount Financed (The amount of credit provided to me or on my behalf.)
 \$ 51,709.07 FINANCE CHARGE (The dollar amount my loan will cost me.)
 \$ 1,408,309.07 Total of Payments (Total amount I am scheduled to repay.)
 3.74% ANNUAL PERCENTAGE RATE (The cost of my loan as a yearly rate.)

ESTIMATES

The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.

VARIABLE RATE

This loan is a Variable Rate Loan based on (index)
 plus % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in more payments of the same amount, larger payments, larger amount due at maturity. The Annual Percentage Rate will not increase above % or decrease below %.
 The required Variable Rate Disclosures have been provided earlier.

DEMAND LOAN

If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.

PAYMENT SCHEDULE

My payment schedule will be:

1 Payment(s) of \$1,360,000.00 Due On June 15, 2005

12 MONTHLY Interest Payments Beginning July 15, 2004
 Interest Will Vary From \$4,681.97 To \$3,651.51

SECURITY INTEREST

I am giving you a security interest in collateral described below:

PREM LOT 2 (AKA 17 SINGLETON BEACH PLACE) SINGLETON BEACH PLACE
 HILTON HEAD, SC

PREPAYMENT

If I pay off my loan early, I may have to pay a penalty.

LATE CHARGE

If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 5.60 and a maximum of \$ 14.00
 The minimum and maximum late charge may increase as authorized by law.

ASSUMPTION

(Residential Mortgage Transaction Only) THE DEBT, SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

REVERSE SIDE

Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date	N/A	Credit Life Insured	Premium: \$	N/A	Birthdate:	N/A
Date	N/A	Insured	Premium: \$	N/A	Birthdate:	N/A
Date	N/A	Credit Disability Insured	Premium: \$	N/A	Birthdate:	N/A

PROPERTY INSURANCE

If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY

I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT

I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.

87 SINGLETON BEACH RD
 HILTON HEAD ISLAND SC 29928-5325

SIGNATURES

Borrower: *[Signature]*
 Officer Initials: *[Signature]*

Co-Borrower

Officer Number 00826

Loan Number: 0000031800

Note number: 1

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions to, parts, accessories, equipment or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

Interest since we have not disbursed any interest at closing. If this is a first mortgage real estate loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- ♦ I fail to make any payment within ten (10) days of its due date; or
- ♦ I break a promise under this Agreement or any other agreement I have with you; or
- ♦ any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- ♦ any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, it shall continue to bear interest at the rate charged during the term of this loan or the judgment rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.

State of South Carolina)

County of Beaufort County

MORTGAGE OF REAL PROPERTY

THIS MORTGAGE, made this 9TH day of JUNE, 2004

among THADDEUS P. SEGARS (hereinafter referred to as Mortgagor)
and THE NATIONAL BANK OF SOUTH CAROLINA (hereinafter referred to as Mortgagee):

WITNESSETH THAT, WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which Mortgagor has executed and delivered to Mortgagee one or more applications, obligations or agreements (Note(s)) with the original Note being in the principal sum of ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS AND Dollars (\$ 1,360,000.00)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or pursuant to Notes executed in the future, Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof, together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof, as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the principal amount of the Note or

ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS AND Dollars (\$ 1,360,000.00)
whichever is greater, plus or together with interest thereon, attorneys' fees, and court costs and to secure the performance of the undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash in hand paid to Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to Mortgagee, its successors and assigns, the following described premises located in Beaufort County, South Carolina:

See Exhibit "A" Attached

BEAUFORT COUNTY SC - ROD
BK 01876 PGS 1967-1971
FILE NUM 2004041846
06/23/2004 11:09:02 AM
REC'D BY P BAXLEY RCPT# 263411
RECORDING FEES 11.00

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining. Including but not limited to all buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not).

TO HAVE AND TO HOLD the same with all privileges and appurtenances thereunto belonging to Mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagor covenants with Mortgagee, its successors and assigns, that Mortgagor is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to the Mortgagee at the time this Mortgage is given; and that Mortgagor will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

1. **NOTE PAYMENTS.** Mortgagor shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. **TAXES.** Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a federal, state, or local tax upon Mortgage or debts secured thereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. **INSURANCE.** Mortgagor shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefore when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagor and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor, in any insurance policies then in force shall pass to the Mortgagee.

4. **REPAIRS.** Mortgagor will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. **COMPLIANCE WITH LAWS.** Mortgagor shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. **CONDEMNATION AWARD.** Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. **PAYMENTS BY MORTGAGEE.** If Mortgagor shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagor such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagor such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default hereunder.

8. **TRANSFER OF THE PROPERTY ASSUMPTION.** If all or any part of the property or an interest therein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. **MORTGAGOR'S CONTINUING OBLIGATION.** It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagor, and all indebtedness now and hereafter owed by Mortgagor to Mortgagee, and any other present or future indebtedness or liability of Mortgagor to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagor, will satisfy this mortgage whenever: (1) Mortgagor owes no indebtedness to Mortgagee, (2) Mortgagor has no liability to Mortgagee, (3) Mortgagor requests satisfaction in writing, and (4) Mortgagee has not agreed to make any further advance or advances to Mortgagor. The Mortgagor shall remain liable for full payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Mortgagor's obligation hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagor or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagor or any party assuming the obligations hereunder.

10. **WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS.** The Mortgagor does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagor, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagor agrees to and does hereby waive any and rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagor in the event the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. **DEFAULT.** Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagor.

12. **ASSIGNMENT OF RENTS, LEASES AND PROFITS.** Mortgagor hereby sets over, assigns, transfers and grants a security interest in any and all rents, leases, and profits of the said premises herein described, provided, however, that so long as no

Bankers Systems, Inc., St. Cloud, MN Form CN22-0594-3M

13. **APPOINTMENT OF RECEIVER.** Upon the event of a Default, Mortgagee shall be entitled to the appointment of a receiver of the rents, leases, and profits of the herein described property, with power to receive and recover the same, to dispossess tenants, to lease the premises, to operate and manage the premises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be necessary. The receiver, after deducting all charges and expenses attending execution of such duties as receiver, shall apply the residue of said rents, leases and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such foreclosure and sale. Mortgagee and the receiver shall be entitled to review and have access to the books and records used in the operation and maintenance of the subject property.

The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit or survey of the property described in this Mortgage, which shall be prepared by an environmental person or company acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year unless the note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any laws, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such assessment more frequently than once a year. If Mortgagor fails to pay the cost of any assessment or the cost of any remediation to the subject property to correct deficiencies highlighting in an assessment, when due, Mortgagee may pay such cost on Mortgagor's behalf and the same shall constitute principal under the Note and be secured by the subject property, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

16. **DEFINITIONS.** As used herein the terms "Mortgagor," "Mortgagee" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL CONDITION: If, however, there shall be a default in the performance of any of the covenants, terms and conditions of this Mortgage, or under the Note(s) or any advance secured hereby, all sums owing to Mortgagee hereunder or under said Note(s), regardless of maturity and without notice, shall immediately become due and payable at the option of Mortgagee, and Mortgagee may foreclose this Mortgage by Judicial Proceedings.

above written.

Gracie J. Prescott
Angela M. Felt

Thaddeus F. Segars
THADDEUS F SEGARS

(SEAL)
(SEAL)
(SEAL)
(SEAL)

0047

Book 1976/Page 1970

State of South Carolina
County of _____

TO

THE NATIONAL BANK
OF SOUTH CAROLINA

Mortgage of Real Estate

Received and properly indexed in _____

this _____ day of _____

_____ A.D. _____

and Recorded in Book _____, Page _____

_____ County, S.C.

Exhibit "A"

ALL that certain piece, parcel or lot of land shown an depicted as "Lot 2" containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension" prepared by Sea Island Land Survey, LLC Ralph O. Vanadore, SCRLS #7606 and recorded on December 15, 2003 in the Beaufort County Register of Deeds Office in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said parcel, reference is hereby made to the above-described plat of record.

This being the identical real property conveyed to the within Mortgagor by Deed of Richardson Street Partners, LLC and being recorded simultaneously herewith in the Office of the Register of Deeds for Beaufort County, South Carolina.

The within instrument was prepared in the Law Offices of Jones, Patterson, Simpson & Newton, PA, Post Office Drawer 7049, Hilton Head Island, South Carolina 29938.

(21)

NBSC
 THE NATIONAL BANK OF SOUTH CAROLINA

 83393450-3
 CLO RECD AUG 05 2005
 CLO RECD JUL 19 2005

EXHIBIT

C

BRANCH Bluffton

Simple Interest

CONSUMER LOAN NOTE/SECURITY AGREEMENT

Date: July 07, 2005

Appl #: 0000014663

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED

\$ 1,311,000.00	Amount given directly to you
\$ 1,312,000.00	Amount paid on your account 083393450-1
\$ 0.00	Amount paid to others on your behalf:
\$	For filing security interests
\$	For credit life insurance
\$	For credit disability insurance
\$	For property insurance
\$	Other: FLOOD FEE
\$	Other: TITLING FEE
\$ 1,000.00	Prepaid Finance Charge

LOAN DISCLOSURE

\$ 1,311,000.00	Amount Financed	(The amount of credit provided to me or on my behalf.)
\$ 118,416.81	FINANCE CHARGE	(The dollar amount my loan will cost me.)
\$ 1,429,416.81	Total of Payments	(Total amount I am scheduled to repay.)
6.01%	ANNUAL PERCENTAGE RATE	(The cost of my loan as a yearly rate.)

ESTIMATES

The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.

VARIABLE RATE

This loan is a Variable Rate Loan based on _____ (index) plus _____ % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in _____ more payments of the same amount, _____ larger payments, _____ larger amount due at maturity. The Annual Percentage Rate will not increase above _____ % or decrease below _____ %.

The required Variable Rate Disclosures have been provided earlier.

DEMAND LOAN

If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.

PAYMENT SCHEDULE

My payment schedule will be:

1 Payment(s) of \$1,312,000.00 Due On January 07, 2007

18 MONTHLY Interest Payments Beginning August 07, 2005
Interest Will Vary From \$6,630.10 To \$5,988.48

SECURITY INTEREST

I am giving you a security interest in collateral described below:

FIRST MORTGAGE 17 SINGLETON BEACH PLACE (LOT 2), NHI, SC

PREPAYMENT
LATE CHARGE

If I pay off my loan early, I may have to pay a penalty.

If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment, subject to a minimum of \$ 5.00 and a maximum of \$ 14.50.

The minimum and maximum late charge may increase as authorized by law.

ASSUMPTION

(Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

REVERSE SIDE

Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date N/A

Credit Life: Insured

Premium: \$ N/A

Birthdate: N/A

Date N/A

Insured

Premium: \$ N/A

Birthdate: N/A

Date N/A

Credit Disability: Insured

Premium: \$ N/A

Birthdate: N/A

PROPERTY
INSURANCE

If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY

I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT

I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.

THADELLE F. SEGARE

SIGNATURES

87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5326

Borrower: Thaddeus F. Segare

Officer: Initials

Loan Number 0083393450

Co-Borrower

Officer Number 10826

Note number 3

(CF)

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions to, parts, accessories, equipment or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

If you require immediate payment of the whole balance, you may take possession of the collateral and at your request, I will assist you by making it available. You will not be responsible for any personal property that I leave inside the collateral.

PREPAYMENT

I have the right to repay this loan in full at any time, however, you may make a fifteen dollar (\$15.00) minimum charge if I prepay the loan before fifteen dollars (\$15.00) of interest has been earned. This is a simple interest loan, and there will be no refund of interest since we have not collected any interest in advance. If this is a first mortgage real estate loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- I fail to make any payment within ten (10) days of its due date; or
- I break a promise under this Agreement or any other agreement I have with you; or
- any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, it shall continue to bear interest at the rate charged during the term of this loan or the judgement rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.

BRANCH: Bluffton

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 766,022.00

\$.00 Amount given directly to you

\$ 766,172.00 Amount paid on your account 083393450

\$.00 Amount paid to others on your behalf:

\$ For filing security interests

\$ For credit life insurance

\$ For credit disability insurance

\$ For property insurance

\$ Other: FLOOD FEE

\$ Other: TITLING FEE

\$ 150.00 Prepaid Finance Charge

LOAN DISCLOSURE	\$ 766,022.00 Amount Financed	(The amount of credit provided to me or on my behalf.)
	\$ 154,150.57 FINANCE CHARGE	(The dollar amount my loan will cost me.)
	\$ 920,172.57 Total of Payments	(Total amount I am scheduled to repay.)
	6.70% ANNUAL PERCENTAGE RATE	(The cost of my loan as a yearly rate.)
ESTIMATES	The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.	
VARIABLE RATE	This loan is a Variable Rate Loan based on (Index) plus % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in more payments of the same amount, larger payments, larger amount due at maturity. The Annual Percentage Rate will not increase above % or decrease below %. The required Variable Rate Disclosures have been provided earlier.	
DEMAND LOAN	If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.	
PAYMENT SCHEDULE	My payment schedule will be: 1 Payment(s) of \$766,172.00 Due On January 24, 2010 36 MONTHLY Interest Payments Beginning February 24, 2007 Interest Will Vary From \$4,359.84 To \$3,937.92	
SECURITY INTEREST	I am giving you a security interest in collateral described below: FRM LOT 2 (17 SINGLETON BEACH PLACE) SINGLETON BEACH, HHI, SC	
PREPAYMENT	If I pay off my loan early, I may have to pay a penalty.	
LATE CHARGE	If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 6.20 and a maximum of \$ 15.50 The minimum and maximum late charge may increase as authorized by law.	
ASSUMPTION	(Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.	
REVERSE SIDE	Additional provisions are contained on the reverse side which are made a part of my agreement by reference.	

CREDIT INSURANCE CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date: N/A	Credit Life: Insured	Premium: \$ N/A	Birthdate: N/A
Date: N/A	Insured	Premium: \$ N/A	Birthdate: N/A
Date: N/A	Credit Disability: Insured	Premium: \$ N/A	Birthdate: N/A

PROPERTY INSURANCE If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.

87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5326

SIGNATURES Borrower: *Thaddeus F. Segars* Co-Borrower: _____
Officer Initials: _____ Officer Number: 00826
Loan Number: 083393450 Note number: 3

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions to, parts, accessories, equipment or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

If you require immediate payment of the whole balance, you may take possession of the collateral and at your request, I will assist you by making it available. You will not be responsible for any personal property that I leave inside the collateral.

PREPAYMENT

I have the right to repay this loan in full at any time; however, you may make a fifteen dollar (\$15.00) minimum charge if I prepay the loan before fifteen dollars (\$15.00) of interest has been earned. This is a simple interest loan, and there will be no refund of interest since we have not collected any interest in advance. If this is a first mortgage real estate loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- ♦ I fail to make any payment within ten (10) days of its due date; or
- ♦ I break a promise under this Agreement or any other agreement I have with you; or
- ♦ any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- ♦ any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, it shall continue to bear interest at the rate charged during the term of this loan or the judgement rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KCS
INVESTMENTS, LLC; SINGLETON
PLACE HOMEOWNERS ASSOCIATION,
INC. and SUNTRUST MORTGAGE, INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-3201

AMENDED
SUMMONS AND NOTICES
Foreclosure (Non Jury)

2009 AUG 16 PM 12:07

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended and Restated Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Amended and Restated Complaint on the subscribers at the offices of Novit & Scarminach, P.A., 52 New Orleans Road, Suite 400, Post Office Drawer 14, Hilton Head Island, South Carolina, 29938, within thirty (30) days after service hereof, exclusive of the date of service, and if you fail to answer the Amended and Restated Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended and Restated Complaint.

YOU WILL ALSO PLEASE TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a "master", "special master" or "special referee" pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

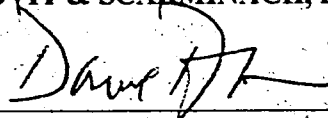
PLEASE TAKE FURTHER NOTICE that under the provisions of South Carolina Code Section 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the

N&S. 11275-131

attached Mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignments directly to Plaintiff, said Motion to be based upon the original Note and Mortgage as well as the Complaint attached hereto.

PLEASE TAKE FURTHER NOTICE that you are hereby served with the "Notice Required by the Fair Debt Collection Practices Act" which is attached hereto and incorporated herein by reference.

NOVIT & SCARMINACH, P.A.

By: 

Daniel A. Saxon

52 New Orleans Road, Suite 400

Post Office Drawer 14

Hilton Head Island, SC 29938

843-785-5850

Attorneys for National Bank of South Carolina

August 11, 2009

Hilton Head Island, South Carolina

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION AND PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

1. The amount of this debt is stated in Paragraph 17 of the Complaint attached hereto.
2. Plaintiff, as named in the attached Summons and Complaint, is the creditor to whom the debt is owed.
3. The debt described in the Complaint attached hereto and evidenced by the copies of the Notes attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
4. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by the creditor's law firm.
6. Written requests should be addressed to Daniel A. Saxon, Esq. at Novit & Scarminach, 52 New Orleans Road, Suite 400, Post Office Drawer 14, Hilton Head Island, South Carolina 29938.
7. **This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and need not wait thirty (30) days.**

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KCS
INVESTMENTS, LLC; SINGLETON
PLACE HOMEOWNERS ASSOCIATION,
INC. and SUNTRUST MORTGAGE, INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-0321

AMENDED AND RESTATED
COMPLAINT

Foreclosure (Non Jury)

2009 AUG 14 PM 12:07
CLERK OF COURT
SOUTH CAROLINA

PLAINTIFF, NATIONAL BANK OF SOUTH CAROLINA HEREIN COMPLAINS AND ALLEGES THAT:

1. The Plaintiff, National Bank of South Carolina ("NBSC") is a banking institution charter pursuant to the laws of the United States of America.
2. Upon information and belief, the Defendant Thaddeus F. Segars ("Defendant Borrower") is a resident and citizen of Beaufort County, South Carolina.
3. Upon information and belief, the Defendant KCS Investments, LLC ("Defendant Owner") is a limited liability company existing by virtue of the laws of the State of South Carolina and is the owner of record of the Property which is the subject of this action.
4. The subject of this action is real property located in Beaufort County, South Carolina and is more specifically described as follows (the "Property"):

ALL that certain piece, parcel or lot of land shown and depicted as "Lot 2", containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension: prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, SCRLS #7606 and recorded in the Beaufort County Register of Deeds Office on December 15, 2003 in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said lots, reference is hereby made to the above-described plat of record.

THIS BEING the same property conveyed to Thaddeus F. Segars by Deed of Richardson Street Partners, LLC, a South Carolina limited liability company, dated May 24, 2004 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on June 23, 2004, in Book 1976 at Page 1964, AS FURTHER conveyed to Kellie W. Segars by Deed of Thaddeus F. Segars, dated March 24, 2009 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on April 15, 2009, in Book 2832 at Page 1938.

Tax Map Reference No.: R510 012 000 0350 0000

5. Upon information and belief, Singleton Place Homeowners Association, Inc. ("Singleton Place HOA") and Suntrust Mortgage, Inc. have or may claim to have some interest or lien upon the Property which is the subject matter of this foreclosure by virtue of the following:
 - (a) that certain Notice and Certificate of Lien of Singleton Place HOA recorded in the Office of the Register of Deeds on August 27, 2008, in Book 42 at Page 2454;
 - (b) that certain Order of judgment to Suntrust recorded in the Beaufort County records on February 9, 2009, at judgment roll or case number 2008-CP-07-1607;
 - (c) provided however, such interest or liens are junior and subordinate to the mortgage of the Plaintiff.
6. On or about June 9, 2004, Defendant Borrower, for value received, made, executed and delivered to Plaintiff a certain promissory note wherein and whereby Defendant Borrower promised to pay Plaintiff the principal sum of One Million Three Hundred Sixty Thousand Dollars 00/100 (\$1,360,000.00) together with interest at the rate of Three and 74/100 (3.74%) percent per annum; said interest being payable in monthly installments as therein provided, with the principal, along with any unpaid interest, due in one lump sum payment on the maturity date of June 15, 2005 (the "Note"), a true and correct copy of which attached hereto as Exhibit "A".
7. Contemporaneously with the execution of the Note, and for the purposes of securing the payment thereof and any renewals thereof, Defendant Borrower, being seized of fee simple

title to the Property, executed and delivered to NBSC, its successors and assigns, a mortgage encumbering the Property (the "Mortgage"), a true and correct copy of which attached hereto as Exhibit "B", which Mortgage was duly recorded on June 23, 2004 in the Office of the ROD in Book 1976 at Page 1967.

8. The Mortgage creates a first priority lien on the Property.
9. Thereafter, on or about July 7, 2005, for the purposes of modifying the terms of the Note to revise the interest rate to Six and 1/100 (6.01%) Percent per annum and to extend the maturity date under the Note through January 7, 2007, for good and valuable consideration duly exchanged, received and acknowledged, Defendant Borrower made, executed and delivered to Plaintiff an amendatory note, a copy of which is attached hereto as Exhibit "C".
10. Thereafter, on or about January 24 2007, for the purposes of modifying the terms of the Note to revise the interest rate to Six and 7/10 (6.7%) Percent per annum and to extend the maturity date under the Note through January 24, 2010, for good and valuable consideration duly exchanged, received and acknowledged, Defendant Borrower made, executed and delivered to Plaintiff an amendatory note, a copy of which is attached hereto as Exhibit "D".
11. Upon information and belief, on or about March 24, 2009, without the knowledge or consent of the Plaintiff and in breach of the express provisions of the Mortgage, Defendant Borrower conveyed the Property to Kellie W. Segars by deed recorded in the Office of the ROD on April 15, 2009, in Book 2832 at Page 1938, the consideration therefor being \$10.00 and love and affection. Simultaneous therewith, Kellie W. Segars conveyed the Property to the Defendant Owner by deed recorded in the Office of the ROD in Book 2832 at Page 1945, the consideration therefor being \$10.00.
12. Among other things, the Note and/or Mortgage, as amended, provides that in the event of default, the Note holder may require Defendant Borrower to pay, immediately and in full, the sums due and owing under the terms of the Note and Mortgage and that the Plaintiff may

recover all of its reasonable costs and expenses, to the extent permitted by applicable law. Those expenses include, but are not limited to, reasonable attorney's fees, cost of documentary evidence, abstract and title reports, the costs of sale, and all other expenses connected with the foreclosure of the Mortgage and the collection under the Note.

13. The Note further provides that a late fee of Five (5.0%) Percent of any overdue payment of principal and/or interest for such billing term for any payment not paid within ten (10) days of the due date, subject to a the maximum as therein provided.

14. The Note and/or Mortgage further provide that, upon default, the Plaintiff shall be entitled to foreclose the Mortgage through judicial process.

15. Defendant Borrower is now in default under the terms of the Note and the Mortgage in following particulars:

(a) By failing to make the monthly payments due and payable under the Note in accordance with the terms thereof; and

(b) By transferring the Property in breach of the terms, conditions and obligations of the Mortgage.

16. The Plaintiff, as holder of said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once.

17. As of June 19, 2009, the balance of principal, interest and late charges due and owing on the Note and Mortgage is Seven Hundred Eighty-Two Thousand Six Hundred Fifty Six and 55/100 (\$782,656.55) Dollars, exclusive of the costs of this action and attorney's fees. Further, interest shall continue to accrue thereon as provided in the Note and Mortgage in the amount of One Hundred Thirty-Nine And 91/100 (\$139.91) Dollars per day.

18. The Plaintiff may be forced to make payments for real estate taxes, insurance and costs for securing the Property, which sums should be added to the Defendant Borrower overall debt by virtue of the terms of the Note and Mortgage.

19. The Plaintiff has fully performed all conditions precedent to accelerating the above stated debt and bringing this action of foreclosure.
20. Under the provisions of the South Carolina Code Section 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the subject Mortgage is perfected and the Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default.
21. The Plaintiff specifically requests the Mortgage be foreclosed in accordance with applicable law, subject only to encumbrances superior to Plaintiff's priority.
22. Plaintiff does not waive and specifically requests a personal or deficiency judgment against Thaddeus F. Segars in the event that the net amount realized by Plaintiff upon the sale of the Property is insufficient to pay in full the total indebtedness to Plaintiff, including the costs of collection and attorney's fees.
23. The loan evidenced by the Note and secured by the Mortgage is neither owned, securitized or guarantied by the Federal National Mortgage Association (FNMA), commonly the Fannie Mae, or the Federal Home Loan Mortgage Corporation (FMLC) commonly the Freddie Mac, nor is the Plaintiff participating in the Home Affordable Modification Program (HMP).

WHEREFORE, Plaintiff prays this Court inquire into the matters set forth herein and render its judgment as follows:

- (a) that the amount due upon the Note and Mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with the attorney's fees and costs of this action;
- (b) that Plaintiff's Mortgage be declared a first priority, first lien upon the Property, and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or

which may be or have been paid by Plaintiff, together with attorney's fees and for costs of this action;

(c) that the Property be sold according to law and practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:

(i) First, to the costs and expenses of the sale, including without limitation any Clerk's or Master's commission;

(ii) Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees, costs and expenses as aforesaid; and

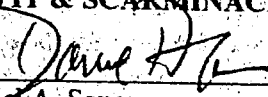
(iii) Third, to the distribution of any surplus pursuant to Rule 71, SCRPC;

(d) that Plaintiff be awarded a deficiency judgment against Thaddeus F. Segars in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness owed Plaintiff, including costs of collection;

(e) For an Order directing the Sheriff of Beaufort County, South Carolina to place the successful purchaser at the foreclosure sale in possession of the Property should the same be necessary; and

(f) for such other and further relief as may be just and proper.

NOVIT & SCARMINACH, P.A.

By: 

Daniel A. Saxon

52 New Orleans Road, Suite 400

Post Office Drawer 14

Hilton Head Island, SC 29938

843-785-5850

Attorneys for National Bank of South Carolina

Approved
July 11, 2009

Hilton Head Island, South Carolina

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION AND PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

1. The amount of this debt is stated in Paragraph 17 of the Complaint attached hereto.
2. Plaintiff, as named in the attached Summons and Complaint, is the creditor to whom the debt is owed.
3. The debt described in the Complaint attached hereto and evidenced by the copies of the Notes attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
4. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by the creditor's law firm.
6. Written requests should be addressed to Daniel A. Saxon, Esq. at Novit & Scarminach, 52 New Orleans Road, Suite 400, Post Office Drawer 14, Hilton Head Island, South Carolina 29938.
7. **This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and need not wait thirty (30) days.**

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83393450-001 OLD REV JUN 17 2004

OLD REV JUN 15 2004

EXHIBIT

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT

BRANCH: Bluffton

Date: June 09, 2004

App# 0000031800

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 1,356,600.00

\$ 1,360,000.00 Amount given directly to you

\$ 0 Amount paid on your account

\$ 0 Amount paid to others on your behalf:

For filing security interests

For credit life insurance

For credit disability insurance

For property insurance

Other: FLOOD FEE

Other: TITLING FEE

\$ 3,400.00 Prepaid Finance Charge

LOAN DISCLOSURE

\$ 1,356,600.00 Amount Financed (The amount of credit provided to me or on my behalf.)

\$ 51,709.07 FINANCE CHARGE (The dollar amount my loan will cost me.)

\$ 1,408,309.07 Total of Payments (Total amount I am scheduled to repay.)

3.74% ANNUAL PERCENTAGE RATE (The cost of my loan as a yearly rate.)

ESTIMATES

The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.

VARIABLE RATE

This loan is a Variable Rate Loan based on (Index)

plus % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in more payments of the same amount, larger payments, larger amount due at maturity. The Annual Percentage Rate will not increase above % or decrease below %.

The required Variable Rate Disclosures have been provided earlier.

DEMAND LOAN

If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.

PAYMENT SCHEDULE

My payment schedule will be:

1 Payment(s) of \$1,360,000.00 Due On June 15, 2005

12 MONTHLY Interest Payments Beginning July 15, 2004

Interest Will Vary From \$4,681.97 To \$3,651.51

SECURITY INTEREST

I am giving you a security interest in collateral described below:

PREM LOT 2 (AKA 17 SINGLETON BEACH PLACE) SINGLETON BEACH PLACE

HILTON HEAD, SC

PREPAYMENT

If I pay off my loan early, I may have to pay a penalty.

LATE CHARGE

If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 5.00 and a maximum of \$ 14.00.

The minimum and maximum late charge may increase as authorized by law.

ASSUMPTION

(Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

REVERSE SIDE

Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date <u>N/A</u>	Credit Life: Insured	Premium: \$ <u>N/A</u>	Birthdate: <u>N/A</u>
Date <u>N/A</u>	Insured	Premium: \$ <u>N/A</u>	Birthdate: <u>N/A</u>
Date <u>N/A</u>	Credit Disability: Insured	Premium: \$ <u>N/A</u>	Birthdate: <u>N/A</u>

PROPERTY INSURANCE

If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY

I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT

I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.

THADDEUS F. SEGALL

87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5326

SIGNATURES

Borrower Thaddeus F. Segall Co-Borrower _____

Officer Initials TS Office Number 00526

Loan Number: 000853450

Note Number: 1

1ST COPY - ORIGINAL 2ND COPY - FILE COPY 3RD COPY - BORROWER'S COPY 4TH COPY - CO-BORROWER'S COPY

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions to, parts, accessories, equipment or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

Interest since we have not connected any interest in this loan is a cash mortgage loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- I fail to make any payment within ten (10) days of its due date; or
- I break a promise under this Agreement or any other agreement I have with you; or
- any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, I shall continue to bear interest at the rate charged during the term of this loan or the judgement rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.

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JAN
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State of South Carolina)
County of Beaufort County

EXHIBIT

5

MORTGAGE OF REAL PROPERTY

THIS MORTGAGE, made this 9TH day of JUNE, 2004

among THADDEUS F. SARGAS (hereinafter referred to as Mortgagor)
and THE NATIONAL BANK OF SOUTH CAROLINA (hereinafter referred to as Mortgagee):

WITNESSETH THAT, WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which Mortgagor has executed and delivered to Mortgagee one or more applications, obligations or agreements (Note(s)) with the original Note being in the principal sum of ~~ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS AND~~ Dollars (\$ ~~1,360,000.00~~)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or pursuant to Notes executed in the future, Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof, together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof, as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the principal amount of the Note or

~~ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS AND~~

Dollars (\$ ~~1,360,000.00~~)

whichever is greater, plus or together with interest thereon, attorneys' fees, and court costs and to secure the performance of the undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash in hand paid to Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to Mortgagee, its successors and assigns, the following described premises located

in Beaufort County, South Carolina:

See Exhibit "A" Attached

BEAUFORT COUNTY SC - ROD
BK 01876 PGS 1867-1871
FILE NUM 2004041948
08/23/2004 11:08:02 AM
REC'D BY P BAXLEY RCPT# 253411
RECORDING FEES 11.00

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining, including but not limited to all buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, moves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not).

3734/61

Beaufort Systems, Inc. 51 Civic, MA Form EN27-0084-3M

TO HAVE AND TO HOLD with all privileges and appurtenances thereunto belong to Mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagor covenants with Mortgagee, its successors and assigns, that Mortgagor is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to the Mortgagee at the time this Mortgage is given; and that Mortgagor will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

1. **NOTE PAYMENTS.** Mortgagor shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. **TAXES.** Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a federal, state, or local tax upon Mortgage or debts secured thereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. **INSURANCE.** Mortgagor shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefore when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagor and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor, in any insurance policies then in force shall pass to the Mortgagee.

4. **REPAIRS.** Mortgagor will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. **COMPLIANCE WITH LAWS.** Mortgagor shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. **CONDEMNATION AWARD.** Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. **PAYMENTS BY MORTGAGEE.** If Mortgagor shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagor such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagor such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default hereunder.

8. **TRANSFER OF THE PROPERTY ASSUMPTION.** If all or any part of the property or an interest therein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not constituting an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. **MORTGAGOR'S CONTINUING OBLIGATION.** It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagor, and all indebtedness now and hereafter owed by Mortgagor to Mortgagee, and any other present or future indebtedness or liability of Mortgagor to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagor, will satisfy this mortgage whenever: (1) Mortgagor owes no indebtedness to Mortgagee, (2) Mortgagor has no liability to Mortgagee, (3) Mortgagor requests satisfaction in writing, and (4) Mortgagee has not agreed to make any further advance or advances to Mortgagor. The Mortgagor shall remain liable for full payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Mortgagor's obligation hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagor or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagor or any party assuming the obligations hereunder.

10. **WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS.** The Mortgagor does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagor, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagor agrees to and does hereby waive any and rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagor in the event the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. **DEFAULT.** Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagor.

12. **ASSIGNMENT OF RENTS, LEASES AND PROFITS.** Mortgagor hereby sets over, assigns, transfers and grants a security interest in any and all rents, leases, and profits of the said premises herein described, provided, however, that so long as no

STANDARD BUSINESS, INC., 54 CHASE AVE. FORT COCKER, MISSISSIPPI

0068

State of South Carolina

County of _____

TO

THE NATIONAL BANK
OF SOUTH CAROLINA

Mortgage of Real Estate

Received and properly indexed in _____

this _____ day of _____

_____ A.D. _____

and Recorded in Book _____, Page _____

_____ County, S.C.

Book 1976/ Page 1970

Book 1976/ Page 1970

Exhibit "A"

ALL that certain piece, parcel or lot of land shown an depicted as "Lot 2" containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension" prepared by Sea Island Land Survey, LLC Ralph O. Vanadore, SCRLS #7606 and recorded on December 15, 2003 in the Beaufort County Register of Deeds Office in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said parcel, reference is hereby made to the above-described plat of record.

This being the identical real property conveyed to the within Mortgagor by Deed of Richardson Street Partners, LLC and being recorded simultaneously herewith in the Office of the Register of Deeds for Beaufort County, South Carolina.

The within instrument was prepared in the Law Offices of Jones, Patterson, Simpson & Newton, PA, Post Office Drawer 7049, Hilton Head Island, South Carolina 29938.



83393450-2
CLOSED AUG 05 2005
CLOSED JUL 19 2005

EXHIBIT
C

BRANCH Bluffton

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT

Date July 07, 2005 Appl #: 0000014663

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 1,311,000.00
\$.00 Amount given directly to you
\$ 1,312,000.00 Amount paid on your account 063293450-1
\$.00 Amount paid to others on your behalf:
\$ For living security interests
\$ For credit life insurance
\$ For credit disability insurance
\$ For property insurance
\$ Other: FLOOD FEE
\$ Other: TITLING FEE
\$ 1,000.00 Prepaid Finance Charge

LOAN DISCLOSURE	\$ 1,311,000.00 Amount Financed (The amount of credit provided to me or on my behalf.) \$ 118,416.81 FINANCE CHARGE (The dollar amount my loan will cost me.) \$ 1,429,416.81 Total of Payments (Total amount I am scheduled to repay.) 6.01% ANNUAL PERCENTAGE RATE (The cost of my loan as a yearly rate.)
ESTIMATES	The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.
VARIABLE RATE	This loan is a Variable Rate Loan based on _____ (index) plus _____ % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in more payments of the same amount, larger payments, larger amount due at maturity. The Annual Percentage Rate will not increase above _____ % or decrease below _____ % The required Variable Rate Disclosures have been provided earlier.
DEMAND LOAN	If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.
PAYMENT SCHEDULE	My payment schedule will be: 1 Payment(s) of \$1,312,000.00 Due On January 07, 2007 18 MONTHLY Interest Payments Beginning August 07, 2005 Interest Will Vary From \$6,630.10 To \$5,988.48
SECURITY INTEREST	I am giving you a security interest in collateral described below: FIRST MORTGAGE 17 SINGLETON BEACH PLACE (LOT 2), HHI, SC
PREPAYMENT	If I pay off my loan early, I may have to pay a penalty.
LATE CHARGE	If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 5.80 and a maximum of \$ 14.50. The minimum and maximum late charge may increase as authorized by law.
ASSUMPTION	(Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.
REVERSE SIDE	Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE	CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.
Date <u>N/A</u>	Credit Life Insured _____ Premium \$ <u>N/A</u> Birthdate <u>N/A</u>
Date <u>N/A</u>	Insured _____ Premium \$ <u>N/A</u> Birthdate <u>N/A</u>
Date <u>N/A</u>	Credit Disability Insured _____ Premium \$ <u>N/A</u> Birthdate <u>N/A</u>
PROPERTY INSURANCE	If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.
PROMISE TO PAY	I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.
AGREEMENT	I have read and received a fully completed copy of this loan agreement and I agree to be bound by it. THADDEUS F. SECURE
SIGNATURES	BY SINGLETON BEACH RD NORTH BEACH ISLAND SC 29928-5326 Borrower <u>Thaddeus F. Secure</u> Co-Borrower _____ Other Initials _____ Officer Number <u>00826</u> Loan Number <u>000393450</u> Note number <u>3</u>

25

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions, to, parts, accessories, equipment, or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

If you require immediate payment of the whole balance, you may take possession of the collateral, and at your request, I will assist you by making it available. You will not be responsible for any personal property that I leave inside the collateral.

PREPAYMENT

I have the right to repay this loan in full at any time, however, you may make a fifteen dollar (\$15.00) minimum charge if I prepay the loan before fifteen dollars (\$15.00) of interest has been earned. This is a simple interest loan, and there will be no refund of interest since we have not collected any interest in advance. If this is a first mortgage real estate loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- I fail to make any payment within ten (10) days of its due date, or
- I break a promise under this Agreement or any other agreement I have with you, or
- any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors, or
- any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, it shall continue to bear interest at the rate charged during the term of this loan or the judgement rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.



ORIGINAL

EXHIBIT

D

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT

CLOSED FEB 20 2007

BRANCH: Bluffton

Date: January 24, 2007

Appl #: 0000061374

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 766,022.00

\$.00 Amount given directly to you

\$ 766,172.00 Amount paid on your account 083393450

\$.00 Amount paid to others on your behalf:

\$ For filing security interests

\$ For credit life insurance

\$ For credit disability insurance

\$ For property insurance

\$ Other: FLOOD FEE

\$ Other: TITLING FEE

\$ 150.00 Prepaid Finance Charge

LOAN DISCLOSURE \$ 766,022.00 Amount Financed (The amount of credit provided to me or on my behalf.)

\$ 154,150.37 FINANCE CHARGE (The dollar amount my loan will cost me.)

\$ 520,172.57 Total of Payments (Total amount I am scheduled to repay.)

6.70% ANNUAL PERCENTAGE RATE (The cost of my loan as a yearly rate.)

ESTIMATES

The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.

VARIABLE RATE

This loan is a Variable Rate Loan based on _____ (Index):

plus % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in _____ larger payments, _____ larger amount due at maturity. The Annual Percentage Rate will not increase above _____ % or decrease below _____ %.

The required Variable Rate Disclosures have been provided earlier.

DEMAND LOAN

If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.

PAYMENT SCHEDULE

My payment schedule will be:

1 Payment(s) of \$766,172.00 Due On January 24, 2010

36 MONTHLY Interest Payments Beginning February 24, 2007
Interest Will Vary From \$4,359.84 To \$3,937.92

SECURITY INTEREST

I am giving you a security interest in collateral described below:

FROM LOT 2 (17 SINGLETON BEACH PLACE) SINGLETON BEACH, BRY, SC

PREPAYMENT

If I pay off my loan early, I may have to pay a penalty.

LATE CHARGE

If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 6.20 and a maximum of \$ 15.50

The minimum and maximum late charge may increase as authorized by law.

ASSUMPTION

(Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

REVERSE SIDE

Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date: N/A
Date: N/A
Date: N/A

Credit Life: Insured Premium: \$ N/A Birthdate: N/A
Insured Premium: \$ N/A Birthdate: N/A
Credit Disability: Insured Premium: \$ N/A Birthdate: N/A

PROPERTY INSURANCE

If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral as insured at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY

I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT

I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.

WITNESSES: F. S. S. S.

87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29926-5326

SIGNATURES

Borrower: Thaddeus F. S. S.

Co-Borrower: _____

Officer initials: _____

Officer Number: 00826

Loan Number: 083393450

Note number: 3

Bank of America, N.A. 51 Canal Street, New York, NY 10013-1001
1ST COPY - ORIGINAL 2ND COPY - FILE COPY 3RD COPY - BORROWER'S COPY 4TH COPY - CO-BORROWER'S COPY

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions to, parts, accessories, equipment or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

If you require immediate payment of the whole balance, you may take possession of the collateral and at your request, I will assist you by making it available. You will not be responsible for any personal property that I leave inside the collateral.

PREPAYMENT

I have the right to repay this loan in full at any time; however, you may make a fifteen dollar (\$15.00) minimum charge if I prepay the loan before fifteen dollars (\$15.00) of interest has been earned. This is a simple interest loan, and there will be no refund of interest since we have not collected any interest in advance. If this is a first mortgage real estate loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- I fail to make any payment within ten (10) days of its due date; or
- I break a promise under this Agreement or any other agreement I have with you; or
- any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- any other circumstance which indicates that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, it shall continue to bear interest at the rate charged during the term of this loan or the judgment rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF	)	
	)	CASE NO.: 2009-CP-07-03201
NATIONAL BANK OF SOUTH	)	
CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER AND COUNTERCLAIM
	)	IN RESPONSE TO PLAINTIFF'S
THADDEUS F. SEGARS; KELLIE	)	AMENDED COMPLAINT
W. SEGARS, SINGLETON PLACE	)	(Jury Trial Requested as to Counterclaims)
HOMEOWNERS ASSOCIATION,	)	
INC., and SUNTRUST	)	
MORTGAGE, INC.,	)	
	)	
Defendant,	)	

2009 SEP 28 AM 11:45
 GEORGETOWN COUNTY
 CLERK OF COURT
 GEORGETOWN, S.C.

The Defendants Thaddeus Segars and KCS Investments, LLC, answering the Complaint of Plaintiff hereby states as follows:

1. The Defendant denies each and every allegation of the Plaintiff's Complaint hereinafter not specifically admitted or qualified and demands strict proof thereof.
2. The Defendants Thaddeus Segars and KCS Investmensts, Inc., hereby admit the allegations set forth in paragraphs one, two, three, four and five of the Complaint.
3. Answering paragraph six of the Complaint Defendant admits all allegations set forth in paragraph six except that "the Note is a true and correct copy". Defendant demands the original Note be produced for inspection.
4. Answering paragraph seven of the Complaint Defendant admits all allegations set forth in paragraph six except that "the Note is a true and correct copy". Defendant demands the original Note be produced for inspection.

5. Defendant denies the allegations set forth in paragraphs eight, nine and ten until such time as the original note and mortgage are produced and inspected.

6. Answering paragraph eleven of the Complaint Defendant states that the subject property was conveyed by deed to Kellie Segars but denies the remaining allegations set forth set forth in paragraph eleven.

7. Answering paragraphs twelve, thirteen, fourteen, fifteen and its sub-parts Defendant states that he is not in possession of the original documents and does not have sufficient information to admit or deny allegations set forth in those paragraphs and, therefore, denies same and demands strict proof thereof.

8. To the extent that paragraph sixteen requires an answer Defendant denies same and demands strict proof thereof.

9. Defendant denies the allegations set forth in paragraphs seventeen, eighteen, nineteen, twenty one and twenty two and demands strict proof thereof.

10. Answering paragraph twenty of the Complaint Defendant admits the existence of a Statute but denies the applicability of said Statute in this matter.

11. Answering paragraph twenty three Defendant admits that if a valid loan exists, which Defendant denies, such loan would not be a loan under FNMA, FMLC or HMP.

**FOR A SECOND DEFENSE AND
BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)**

12. Defendant repeats and reiterates each and every defense set forth in the preceding paragraphs as if fully repeated verbatim herein.

13. Defendant asserts that the Plaintiff, in entering into a contract with Defendants had an obligation to conduct itself in good faith and fair dealing in connection with the contract and dealings with the Defendant.

14. Plaintiff in connection with this transaction hired an appraiser to conduct an appraisal of the property. The Plaintiff informed the Defendant that the prospective loan was contingent upon an appraisal confirming the property to be a certain value. The Plaintiff informed the Defendant that the appraiser the Plaintiff hired had in fact produced an appraisal valuing the property above the necessary threshold amount.

15. The Plaintiff and the Defendant later learned that, based upon OCRM lines and other set back requirements, the lot in question was unbuildable. The fact that the lot in question was unbuildable was either known to the Plaintiff, or readily known from the appraisal, to be unbuildable and, therefore, worthless. Due to the fact that neither the Defendant nor anyone else could build on the lot the value of said lot was a fraction of the appraised value. Yet the Plaintiff based upon the negligent acts of its agent the appraiser conveyed information that was false. The Plaintiff closed the loan on the transaction, which was contingent upon a certain appraised value, with either actual knowledge the appraisal was inaccurate or should have discovered the appraisal was inaccurate. The Defendants relied upon that information and as a result sustained damages as a result of purchasing and carrying the lot.

16. Plaintiff had a duty to the Defendant duty to present accurate information to the Defendant concerning all conditions associated with the lot. The Plaintiff hired an appraiser that provided information to the Plaintiff that was not accurate and such information drastically affected the actual value of the subject property. Due to the fact

that the lot in question has been deemed unbuildable, Defendant has been unable to develop or sell the property. Defendant has had to pay interest on a loan which was based upon an improper valuation of the lot in question.

17. Defendant had a right to rely on the accuracy of the information conveyed to him by the Plaintiff and its agents.

18. Defendant did in fact rely on the information provided by the Plaintiff through its agent the appraiser. The information and valuation provided by the Plaintiff and its agent was inaccurate in that the subject property could not be developed. This fact, which could have been exposed at the time of the transaction, was not made known to the Defendant. As direct and proximate result of the Plaintiff's conduct and the conduct of its agent, the appraiser, Defendant has suffered damages associated with the cost of the loan, loss of use of funds, legal fees and other damages.

19. Plaintiff's conduct and that of its agent constitutes a breach of a fiduciary duty to the Defendant. The Plaintiff's conduct also was negligent and or constitutes a negligent misrepresentation on the part of the Plaintiff.

**FOR A SECOND DEFENSE AND
BY WAY OF COUNTERCLAIM
(Breach of Fiduciary Duties)**

20. Defendant repeats and reiterates each and every defense set forth in the preceding paragraphs as if fully repeated verbatim herein.

21. Plaintiff and Defendant entered into an agreement whereby Plaintiff would extend a loan for the purchase of real property to the Defendants.

22. Plaintiff set forth certain terms and conditions under which the loan would be extended to the Defendants. One such condition was that the appraised value would be a threshold number. Plaintiff hired an appraiser to conduct an appraisal on the subject property. The appraisal indicated that the land was appraised at a figure higher than the threshold number as required under the terms set by the Plaintiff.

23. Plaintiff subsequently extended the loan to Defendants as a result of the lot being appraised at above the threshold value and conveyed this information to the Defendants. Defendants proceeded to execute the loan and purchase the property.

24. Subsequent to the loan and purchase, Defendants learned that the appraiser hired by the Plaintiff had either made a mistake,, or intentionally concealed information on the plat regarding set back lines. The omitted information indicated that the space in which to build was unable to accommodate even the smallest home allowed under the covenants governing the neighborhood. The lot was deemed unbuildable. This information which was in the Plaintiff's possession was never made known to the Defendants prior to the execution of the loan and purchase of eth property.

25. The Plaintiff had a fiduciary duty to the Defendants to convey true and accurate information regarding the loan and information contained in the appraisal. Plaintiff's failure to divulge important information concerning the appraisal constitutes a breach of fiduciary duty.

26. As a direct and proximate result of the Plaintiff's breach of fiduciary duty, Defendants have suffered damages as a result of executing the loan and subsequent purchase of the property.

**FOR A THIRD DEFENSE AND
BY WAY OF COUNTERCLAIM**
(Breach of Contract Accompanied
By a Fraudulent act)

27. Defendant repeats and reiterates each and every defense set forth in the preceding paragraphs as if fully repeated verbatim herein.

28. Plaintiff and Defendant entered into an agreement whereby Plaintiff would extend a loan for the purchase of real property to the Defendants.

29. Plaintiff set forth certain terms and conditions under which the loan would be extended to the Defendants. One such condition was that the appraised value would be more than a threshold number. Plaintiff hired an appraiser to conduct an appraisal on the subject property. The appraisal indicated that the land was appraised at a figure higher than the threshold number as required under the terms set by the Plaintiff.

30. Plaintiff subsequently extended the loan to Defendants as a result of the lot being appraised at above the threshold value and conveyed this information to the Defendants. Defendants proceeded to execute the loan and purchase the property.

31. Subsequent to the loan and purchase, Defendants learned that the appraiser hired by the Plaintiff had either made a mistake, or intentionally concealed information on the plat regarding set back lines. The omitted information indicated that the space in which to build was unable to accommodate even the smallest home allowed under the covenants governing the neighborhood. The lot was deemed unbuildable. This information which was in the Plaintiff's possession was never made known to the Defendants prior to the execution of the loan and purchase of the property.

32. The Plaintiff entered into an agreement with the defendants whereby a loan would be executed for the purchase of real property.

33. Prior to executing the loan agreement the Plaintiffs gained possession of an appraisal through their agent which significantly impacted the value of the subject property which effectively rendered the property nearly worthless.

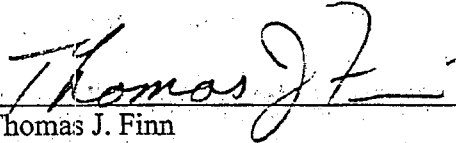
34. Despite having this information in it's possession the Plaintiff failed to disclose this information to the Defendants. Instead the Plaintiff moved forward with the loan agreement allowing the Defendant be encumbered paying a large loan on near worthless property.

35. By not disclosing the information readily available in the appraiser's file the Plaintiff committed an act of deception and fraud. This act was committed in order to insure the defendants would proceed with the execution of the loan agreement and be encumbered to pay off a loan on land the Plaintiff knew, or should have known with the exercise of due diligence, was worthless.

33. As a direct and proximate result of the Plaintiff's breach of contract as well a covenant of good faith and fair dealing , Defendants have suffered damages as a result of executing the loan and subsequent purchase of the property.

WHEREFORE, having fully answered the allegations set forth in the Plaintiff's Complaint, Defendant prays that this action be dismissed and costs and attorneys fees be awarded to Defendant. Defendant further prays that judgment be awarded on the allegations set forth in his counterclaims.

FINN LAW FIRM


Thomas J. Finn
Attorney for the Defendant
P.O. Box 6003
Hilton Head Island, South Carolina
29938
(843) 682-3555

This 24th day of September, 2009
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KCS
INVESTMENTS, LLC; SINGLETON
PLACE HOMEOWNERS ASSOCIATION,
INC. and SUNTRUST MORTGAGE, INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-3201

AMENDED AND RESTATED
ANSWER AND REPLY OF
PLAINTIFF TO COUNTERCLAIM OF
THADDEUS F. SEGARS AND KCS
INVESTMENTS, LLC

2011 FEB - 1 AM 10:31
CLERK OF COURT

TO: THADDEUS F. SEGARS, KCS INVESTMENTS, LLC AND THEIR ATTORNEY OF
RECORD THOMAS J. FINN, ESQUIRE:

Pursuant to that order by the Honorable Carmen T. Mullen, dated December 16, 2010, granting leave to amend its Reply to Defendants Counterclaims, the Plaintiff by and through its undersigned counsel does respectfully Amend and Restate its Answer and Reply to the Counterclaims of Thaddeus F. Segars and KCS Investments, LLC, and makes its Answer (specifically reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedure, and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure) and would respectfully allege and show this Honorable Court that:

FOR A FIRST DEFENSE
(Answer - As to First Counterclaim)

1. The Plaintiff denies each and every allegation of the Defendant's Answer and Counterclaim not hereinafter specifically admitted or qualified.

2. The allegations contained in paragraphs 1 through 11, being in the form of and by way of an answer to the Plaintiff's Amended Complaint, require no response from the Plaintiff; however, to the extent an answer or response is deemed to be required, the same are denied.
3. In responding to the allegation contained in paragraph 13, the Plaintiff admits that the covenant of good faith and fair dealing exists between the Plaintiff and Defendant Segars with respect to the transaction described herein.
4. In responding to the allegations contained in paragraph 14, the Plaintiff admits that it obtained and reviewed an appraisal of the subject property, for its sole use and benefit, in connection with its approval of the loan and that, based in part on the results of the appraisal, approved the loan requested by Defendant Segars. Any allegation inconsistent therewith is denied.
5. In responding to the allegations contained in paragraph 15, the Plaintiff would allege that its only knowledge concerning any OCRM line or other setback affecting the property in the manner described therein was by way of Defendant Segars. The Plaintiff lacks sufficient information for a belief as to the knowledge of Defendant. Any remaining allegations contained therein are denied.
6. The Plaintiff denies the allegations contained in paragraphs 16 through 19 and demands strict proof thereof.

(Answer – As to Second Counterclaim)

7. The allegations contained hereinabove are repeated as if fully alleged herein verbatim to the extent not inconsistent with the allegations of this defense.
8. In responding to the allegation set forth in paragraph 21, Plaintiff admits extending a loan to Defendant Segars as evidenced by the promissory note and secured by the mortgage, both as described in the Plaintiff's Complaint, but denies any remaining allegations inconsistent therewith.

9. In responding to the allegations contained in paragraph 22, Plaintiff admits that it obtained and reviewed an appraisal of the subject property, for its sole use and benefit, in connection with its approval of the loan and that, based in part on the results of the appraisal, approved the loan requested by Defendant Segars. Any allegation inconsistent therewith is denied.
10. In responding to the allegations contained in paragraph 23, Plaintiff admits that it extended the loan to Defendant Thaddeus F. Segars and not Defendant KCS Investments, LLC. Any remaining allegations therein are denied.
11. The Plaintiff denies the allegations contained in paragraphs 24, 25 and 26 and demands strict proof thereof.

(Answer – As to Third Counterclaim)

12. The allegations contained hereinabove are repeated as if fully alleged herein verbatim to the extent not inconsistent with the allegations of this defense.
13. In responding to the allegations set forth in paragraphs 28, 30 and 32, Plaintiff admits extending a loan to Defendant Segars as evidenced by the promissory note and secured by the mortgage, both as described in the Plaintiff's Complaint, but denies any remaining allegations inconsistent therewith.
14. In responding to the allegations contained in paragraphs 29 and 33, the Plaintiff admits that it obtained and reviewed an appraisal of the subject property, for its sole use and benefit, in connection with its approval of the loan and that, based in part on the results of the appraisal, approved the loan requested by Defendant Segars. Any allegation inconsistent therewith is denied.
15. The Plaintiff denies the allegations contained in paragraphs 31, 34, 35, and 33 (incorrectly stated as paragraph 33), and demands strict proof thereof.

FOR A SECOND DEFENSE
(Order of Reference / Strike of Jury Demand)

16. The allegations contained hereinabove are repeated as if fully alleged herein verbatim to the extent not inconsistent with the allegations of this defense.
17. This action involves the foreclosure of a mortgage, which being equitable in nature, is properly tried before the Master in Equity.
18. The Plaintiff believes it is entitled to an order striking the jury demand of Defendant and referring the matter to the Master in Equity for Beaufort County to make findings of fact and conclusions of law; to direct entry of final judgment in this action under Rule 53(b), S.C.R.C.P.; to hear any issuance of Supplemental Orders, Writs of Assistance and the hearing of any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code with any appeal from the final judgment entered by the Master-in-Equity shall be to the Court of Appeals.

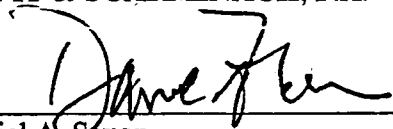
FOR A THIRD DEFENSE
(Statute of Limitations)

19. The allegations contained hereinabove are repeated as if fully alleged herein verbatim to the extent not inconsistent with the allegations of this defense.
20. The Defendant's counterclaims are barred by the applicable statutes of limitations and repose.

WHEREFORE, having fully answered the Answer and Counterclaim of the Defendants Thaddeus F. Segars and KCS Investments, LLC, the Plaintiff prays this court dismiss the said counterclaim and award to it the cost and expenses associated therewith; strike the defendants demand for jury trial; refer this matter to the Master in Equity for Beaufort County, South Carolina, and for such other and further relief as the Court deems just and proper.

SIGNATURE PAGE FOLLOWS

NOVIT & SCARMINACH, P.A.

By: 

Daniel A. Saxon
52 New Orleans Road, Suite 400
Post Office Drawer 14
Hilton Head Island, SC 29938
843-758-5850
Attorneys for Plaintiff

January 31, 2011
Hilton Head Island, South Carolina

N&S-11275-131

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH
CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; KCS
INVESTMENTS, LLC; SINGLETON
PLACE HOMEOWNERS ASSOCIATION,
INC. and SUNTRUST MORTGAGE, INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-3201

CERTIFICATE OF SERVICE BY MAIL

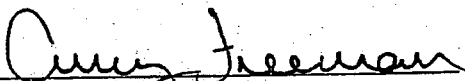
This is to certify that the undersigned has on this date; February 2, 2011 served a true and accurate copy of the following documents:

1. Amended and Restated Answer and Reply of Plaintiff to Counterclaim of Thaddeus F. Segars and KCS Investments, LLC.

upon the parties listed below by mailing a copy of the same via United States Mail, first class, postage prepaid to:

Thomas J. Finn, Esquire
FIN LAW FIRM
Post Office Box 6003
Hilton Head Island, South Carolina 29938
843-682-3555
Attorney for Defendants Thaddeus F. Segars and KCS Investments, LLC

NOVIT & SCARMINACH, P.A.

By: 

Amy Freeman, Paralegal
52 New Orleans Road, Suite 400
Post Office Drawer 14
Hilton Head Island, SC 29938
843-785-5850
Attorneys for National Bank of South Carolina

February 2, 2011
Hilton Head Island, South Carolina

N&S. 11275-131

**NOVIT &
SCARMINACH, P. A.**

Attorneys at Law

CHARLES A. SCARMINACH*
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(843) 785-5850
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+

February 2, 2011

Thomas J. Finn, Esquire
FINN LAW FIRM
Post Office Box 6003
Hilton Head Island, South Carolina 29938

RE: National Bank of South Carolina v. Thaddeus F. Segars et al.
Civil Action Number: 2009-CP-07-3201
Our file Number: 11275-131

RE: National Bank of South Carolina v. Thaddeus F. Segars et al.
Civil Action Number: 2009-CP-07-3844
Our file Number: 11275-134

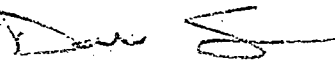
Dear Tom:

Enclosed please find a clocked copy of the Amended and Restated Answer and Reply of Plaintiff to Counterclaim of Thaddeus F. Segars and KCS Investments, LLC and the Amended and Restated Answer and Reply of Plaintiff to Counterclaim of Thaddeus F. Segars and Segars and Associates, Inc., hereby served upon you as attorney for Thaddeus F. Segars, KCS Investments, LLC, and Segars and Associates, Inc.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

NOVIT & SCARMINACH, P.A.



Daniel A. Saxon

DAS/af

**NOVIT &
SCARMINACH, P. A.**

Attorneys at Law

CHARLES A. SCARMINACH*
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ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+

Daniel A. Saxon
Email: dsaxon@ns-lawfirm.com

February 2, 2011

The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901

RE: National Bank of South Carolina v. Thaddeus F. Segars et al.
Civil Action Number: 2009-CP-07-3201
Our file Number: 11275-131

RE: National Bank of South Carolina v. Thaddeus F. Segars et al.
Civil Action Number: 2009-CP-07-3844
Our file Number: 11275-134

Dear Ms. Roseneau:

Enclosed please find an original and two (2) copies of each of the following document:

- 1) Certificate of Service by Mail (2009-CP-07-3201);
- 2) Certificate of Service by Mail (2009-CP-07-3844).

I would appreciate your filing the originals and returning the clocked copies to me.

Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

NOVIT & SCARMINACH, P.A.


Daniel A. Saxon



DAS/af

cc: Thomas J. Finn, Esquire

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IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH CAROLINA,
Plaintiff,

vs. CIVIL ACTION NUMBER
2009-CP-07-3201

THADDEUS F. SEGARS; KCS INVESTMENTS, LLC;
SINGLETON PLACE HOMEOWNERS ASSOCIATION,
INC., and SUNTRUST MORTGAGE, INC.,

Defendants.

COPY

-----/
The deposition of THADDEUS F. SEGARS, a
witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Ceil
Weser, Certified Court Reporter and Notary
Public, at the Offices of Finn Law Firm, 38 D-4
New Orleans Road, Hilton Head, South Carolina,
on the 4th day of August, 2010, commencing at or
about the hour of 1:17 p.m.

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2

APPEARANCES OF COUNSEL:

3

FOR THE PLAINTIFF:

4

5

DANIEL SAXON, ESQUIRE
Novit, Scarminach & Williams, P.A.
52 New Orleans Road
Hilton Head, South Carolina 29938
843.755.5850
dsaxon@ns-lawfirm.com

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9

FOR THE DEFENDANT THADDEUS F. SEGARS:

10

THOMAS FINN, ESQUIRE
Finn Law Firm
38 D-4 New Orleans Road
Hilton Head, South Carolina 29928
843.682.3555
finlaw@hargray.com

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I N D E X

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DOCUMENTARY EVIDENCE

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PX-1	Boundary Reconfiguration of: Singleton Beach Place Extension survey, 11/12/02	18
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1 SAXON - SEGARS (DIRECT EXAMINATION)

4

2 THADDEUS F. SEGARS,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SAXON:

7 Q Mr. Segars, we have met before but my
8 name is Dan Saxon. I am an attorney
9 representing the Synovus Bank, doing business as
10 NBSC in a foreclosure action that they have
11 brought against you and others over a lot 2,
12 Singleton Beach Place Extension. I am here to
13 take your deposition on that case, and I
14 shouldn't take too long, but what I would like
15 you to do if you would is when you have a
16 response, if you would give it as a verbal
17 response, as opposed to a shake of the head or a
18 hand gesture or something along those lines;
19 because it is difficult for the court reporter
20 to take down a shake of the head or an uh-huh or
21 an uh-uh and because it leaves her to interpret
22 what you might mean and that might not be what
23 you want it to mean.

24 A I understand.

25 Q Now, for the purposes of the

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1 SAXON - SEGARS (DIRECT EXAMINATION) 5

2 deposition, although we are talking about
3 Synovus bank, I will refer to National Bank of
4 South Carolina as NBSC, if that is all right for
5 you?

6 A Yes.

7 Q Would you state your full name, please.

8 A I go by Tad Segars. My legal name is
9 Thaddeus Fulton Segars.

10 Q And where do you live?

11 A 87 Singleton Beach Road.

12 Q And how long have you lived there?

13 A I believe it is 11 years now.

14 Q And that is on Hilton Head Island?

15 A Yes.

16 Q Is that in the Singleton Beach Place
17 Subdivision?

18 A It is the neighborhood, yes.

19 Q And what do you do for a living?

20 A I am a real estate professional. I
21 help people buy and sell real estate.

22 Q How long have you done that?

23 A Joined Dunes Marketing Group in 1986.

24 Q Now, by professional are you a real
25 estate agent or a broker?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

6

2 A I am not a broker.

3 I am an agent.

4 Q They used to have a class 1 and class 2
5 agent. I assume you are a class 2 agent.

6 Or do they not have that distinction
7 any more?

8 A I have never heard that since I have
9 been licensed.

10 Q Have you ever held a broker's license?

11 A No.

12 Q And you have held a real estate agent's
13 license since 1986?

14 A Yes.

15 Q How long have you lived on Hilton Head?

16 A Permanently since 1980.

17 Q And where are you originally from?

18 A Hartsville, South Carolina.

19 Q Have you continuously been engaged in
20 the profession of real estate sales since 1986?

21 A I have.

22 Q In this area?

23 A Yes.

24 Q Would you consider yourself an expert
25 in the field of real estate?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

7

2 A I would.

3 Q And since 1986 you have represented, I
4 assume, buyers and sellers of real estate?

5 A Yes.

6 Q Do you invest in real estate yourself?

7 A I have.

8 Q How many properties would you say in
9 the last -- we are talking 24 years, have you
10 made on your own account or invested for
11 yourself?

12 A 40, 50.

13 Q Have you ever acted as a developer of
14 real estate?

15 A Yes.

16 Q What would have been the first project
17 you acted as a developer?

18 A It is now known as Singleton Shores.

19 Q When was that?

20 A It was five lots, and it abuts the
21 Chaplin Park tennis courts.

22 Q When was that?

23 A I don't remember, Dan.

24 Q Five years, ten years, 15 years?

25 A Probably around 2003, I think.

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1 SAXON - SEGARS (DIRECT EXAMINATION)

8

2 25 and 10.

3 Q What was your role as developer? What
4 did you do on that project?

5 A I had two partners and I was the one
6 that basically managed the utilities to be
7 installed, and the road to be built and to
8 receive these Certificate of Compliance from the
9 town in order to sell the property.

10 Q So am I correct in assuming then that
11 would have been the purchase of bare land which
12 some improvement was built upon?

13 A That is correct. We purchased the
14 acreage and divided or subdivided the land and
15 put in utilities, correct.

16 Q And any other developments?

17 A Yes, one at Bradley Circle also on
18 Hilton Head. It is off of Burke's Beach Road
19 and its legal name today is Tara Bella Trace.

20 Q And did you again buy bare land and
21 develop that with homes or --

22 A No homes were built. It was just
23 purchased as the land and subdivision of lots
24 and installation of utilities.

25 Q Was that property beach front property?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

9

2 A Yes.

3 Q Any other developments?

4 A Well, that was probably my last ever in
5 my life.

6 Q Now, as a real estate professional and
7 also acting as a developer are you familiar with
8 the OCRM line?

9 A I am.

10 Q And the implications of what that
11 entails?

12 A Yes.

13 Q What is a OCRM line?

14 A First of all, I think it stands for
15 Ocean Critical Management -- anyway OCRM line,
16 it is a line that sits direct oceanfront along
17 the shores of South Carolina, and if I am not
18 mistaken it is always set on the crest of the
19 primary dune, the primary dune the highest. It
20 is a line set for protection of the sand dunes
21 and beaches.

22 Q What is the implication of the OCRM
23 line? What could you do or not do near the OCRM
24 line?

25 A Well, here on the town they have

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1 SAXON - SEGARS (DIRECT EXAMINATION)

10

2 stricter regulations than other parts, I
3 believe. But from where the OCRM line sits
4 there is a 20 foot buffer. And so within the
5 buffer through the line you are not allowed to
6 do anything whatsoever, unless you have a
7 special permit to cross into the buffer.

8 Q Would it be fair to say that no
9 vertical construction could occur on the western
10 edge of the OCRM line within 20 feet of the
11 buffer then, or did I say that wrong?

12 A Well -- well, I think we are agreeing
13 that there is no disturbance of the sea oats or
14 sand dunes. Nothing can be done within the
15 buffer zone or certainly the critical, anything
16 sealed at the critical line.

17 Q Do you own any companies that you do
18 business in other than your individual name?

19 A No. I have Tad Segars and Segars and
20 Associates. Segars and Associates is my company
21 that has been established for years, but I
22 received my commission real estate checks from
23 Byrne Corporation to Segars and Associates.

24 Q Let us talk about lot 2 at Singleton
25 Beach Extension.

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1 SAXON - SEGARS (DIRECT EXAMINATION)

11

2 When did you first become acquainted
3 with that property?

4 A 11 years from today's day, because I
5 have been in my house for 11 years. So what
6 year would that be?

7 Q I couldn't say. Let's just say 11
8 years ago.

9 A Okay.

10 Q And maybe I misspoke, did there come a
11 point where you became involved in the
12 subdivision, which became Singleton Beach Place
13 Extension?

14 A Yes.

15 Q What was -- when was that, first of
16 all?

17 A Dan, I don't want to answer it
18 incorrectly. My best guess would be 2001 or
19 2002.

20 Q And was that when, and correct me if I
21 am wrong, but in the Singleton Beach Place
22 Extension there are 11 beach front lots, is that
23 correct?

24 A I think it is ten.

25 Q I'm sorry, you are correct. It is ten.

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2 A Yeah.

3 Q That time period, 2001, is that when
4 the ten lots were created?

5 A No.

6 Q What involvement did you have then in
7 2001 with that property?

8 A I knew of three lots, oceanfront, known
9 as the Booker Coleman and Smart lots. And I
10 learned of a special permit that was granted to
11 those three lots, and with my -- basically I
12 ended up writing three contracts to purchase
13 those three lots, Tad Segars and/or assigned's
14 based on due diligence in satisfaction of the
15 permit of what it would and would not allow to
16 be done.

17 Q Did you close on that contract to
18 purchase those three lots?

19 A I assigned the contract.

20 Q To?

21 A Paul Gaughf and I think he closed in a
22 name called Richardson Street Partners.

23 Q Was there a real estate commission paid
24 by the seller of the Booker Coleman and Smart
25 lots and then to Richardson Street Partners?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

13

2 A No.

3 Dan, I represented Paul Gaughf. I
4 assigned the three contracts to Paul, and when
5 he later closed on those three lots I was paid a
6 commission as the agent.

7 Q Okay.

8 A He became the buyer. I was the agent.

9 Q Now, what did Richardson Street
10 Partners do with those three lots?

11 A He made a choice to make me throw up my
12 stomach -- no, I am sorry.

13 He opted not to use the special permit
14 granted by the state. And maybe I should
15 mention those permits.

16 Q What is the special permit?

17 A Absolutely. It was a special permit
18 granted for a home -- excuse me.

19 It was a permit that stated if the
20 seaward, most seaward dune would become the
21 primary dune, then at that point in time a home
22 could be built seaward of the OCRM critical
23 line.

24 Q Would that be a home on each of the
25 three lots or one home on all three lots, or

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1 SAXON - SEGARS (DIRECT EXAMINATION)

14

2 what was the intent there?

3 A You could build three homes on three
4 lots seaward of the line if and when the seaward
5 dune became a primary dune, and there was
6 permission granted to bring in sand and replant
7 sea oats and do whatever it took with that
8 permit.

9 Q By doing whatever it took, do you mean
10 to create a new --

11 A Correct --

12 Q -- primary dune?

13 A There was a smaller dune at the time,
14 Dan, and it just needed to become the largest
15 dune.

16 Q But Richardson Street Partners did not
17 choose to develop the property in that way,
18 correct?

19 A Correct.

20 Q What did they do with the property?

21 A They opted to go in partnership with
22 J.J. Development.

23 Q Who is the principal of J.J.
24 Development, if you know?

25 A Well, the two names affiliated with

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1 SAXON - SEGARS (DIRECT EXAMINATION)

15

2 J.J. is Ed Flynn and Jerry Suess.

3 Q Then what did the combination of
4 Richardson Street Partners and J.J. Development
5 do with the three lots?

6 A J.J. Development called a meeting on
7 the site to determine whether or not the
8 placement of the OCRM line could be moved
9 seaward to the crest of the dune.

10 Q Were you in attendance at that meeting?

11 A I was not.

12 Q Do you know what went on in that
13 meeting?

14 A I believe it is fair to say that I do.
15 Ed Iser, the head of the OCRM was on the site;
16 Charles Cousins from the town; and I believe
17 Terry Lewis from the town; Ed Flynn, the
18 principal of Sea Island Survey, Mark is his
19 name --

20 Q Uh-huh.

21 A I don't know who else was there, but
22 what you are really looking at is the Town of
23 Hilton Head, the State, the developer, and the
24 surveyor.

25 Q Okay.

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1 SAXON - SEGARS (DIRECT EXAMINATION)

16

2 A And it was his recommendation that it
3 would be in the best interest to move the
4 current location of the critical line seaward to
5 the crest of the dune versus disturbing the
6 dunes that were already there.

7 Q You said it was his recommendation,
8 whose recommendation?

9 A Ed Flynn's recommendation.

10 Q Okay.

11 Did the town and the state agree with
12 that?

13 A They did.

14 Q Okay.

15 Now, I am trying to cut a little bit
16 through this. Was it the intention -- is it
17 your understanding that J.J. Development and
18 Richardson Street Partners had determined that
19 they wanted to divide these three lots into the
20 ten individual lots, and they were looking to
21 move the critical line?

22 A From Richardson's point of view he had
23 been convinced that he had three lots that could
24 be improved in value if they moved the entire
25 line and made everything uniform, versus

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 building across the sea line; and I do agree
3 that it was better that he build -- that if the
4 line could be moved, that would have been
5 better.

6 Q Okay.

7 A So he had three lots. He was putting
8 three lots in, getting three lots out behind
9 this critical line.

10 Q Okay.

11 And J.J. Development, they were putting
12 some additional land into this partnership --

13 A Yes.

14 Q -- Or this deal?

15 A Yes.

16 Q And the idea was to divide all of the
17 partnership land and into the ten individual
18 beach front lots?

19 A That is right.

20 Q And move the OCRM line forward?

21 A Seaward, that is correct.

22 Q And did that occur?

23 A It did occur, verbally and on a
24 recorded plat in January of '03.

25 MR. SAXON: Tom, these are two

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 plats that I pulled from the RODC. I
3 think this is what we want to talk
4 about.

5 MR. FINN: All right.

6 MR. SAXON: Can you mark these for
7 me, Exhibits 1 and 2.

8 (Whereupon, Plaintiff's Exhibits
9 Numbers 1 and 2 were marked for
10 identification.)

11 BY MR. SAXON:

12 Q This is a plat that was prepared or
13 recorded in 2002 -- actually recorded in 2003?

14 A That is what I was referring to, this
15 recorded date of January of '03.

16 Q We are looking at Plaintiff's Exhibit 1
17 which is a plat that was recorded in the
18 Register of Deeds, Beaufort County plat book 91
19 at page 90.

20 What does this plat then show?

21 A It is showing the ten lots reconfigured
22 from its prior configuration, and it is showing
23 the -- it is showing where the all the parties
24 had agreed to move the baseline from where the
25 current baseline was.

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2 Q So would you agree it is a plat that
3 depicts ten individual lots on the Atlantic
4 Ocean, that also demonstrates a current beach
5 front management baseline and shows a future
6 Beach Management Act baseline?

7 A Yes, stamped and approved by the town.

8 Q Was it approved? I don't see a stamp
9 approval from the OCRM?

10 A I don't think there is one on there,
11 Dan.

12 Q Okay.

13 So based on your review of this, this
14 does not appear to have been approved by the
15 OCRM?

16 A I believe that is correct.

17 Q After this plat was recorded, what went
18 on with this property?

19 A The first time I saw this plat was
20 after Ed Flynn dropped it off at the Attorney
21 Weston Newton's office on Pope Avenue.

22 Q Approximately when was that?

23 A I am going to guess it was the day of
24 or the day after he had it recorded, because I
25 am confident Ed Flynn was quite anxious to get

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2 it done, I think.

3 Q So you are referring to on/or about
4 January 29, 2003?

5 A It is fair to say.

6 I think it is important to note that
7 Weston Newton was the closing attorney on behalf
8 of my client, Paul Gaughf/Rich Street Partners.

9 Q And that would have been the closing of
10 this purchase it would be three original lots?

11 A That is right.

12 So Weston called me and said he has got
13 the plat, come down and review it with him so
14 that we can call Paul Gaughf and discuss what he
15 had received. And so I did just that, went to
16 Weston's office and said okay, Weston, give me a
17 ruler and don't let me mess up.

18 So at that point in time it was a large
19 scale plat to scale and probably not once, but
20 twice I was familiar with what you could and
21 could not do within the building envelopes; and
22 so Weston overlooked my measurements, and we
23 agreed that a house approximately 29 feet wide
24 by -- we determined three levels over garage,
25 the length and the width, it was going to be a

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1 SAXON - SEGARS (DIRECT EXAMINATION) 21

2 house right at 4,000 square feet could be built
3 on this plat.

4 Q On which lot shown on this plat are we
5 talking about?

6 A Our client, Paul Gaughf, was purchasing
7 lots 1, 2 and 3. Those are the three lots we
8 measured.

9 Q Okay.

10 A And studied.

11 Q And you say purchased, was Paul Gaughf
12 essentially getting these three lots as part of
13 the overall partnership that created the
14 subdivision then?

15 A Yes.

16 Q And according to and you believed at
17 that time based on your conversation with Weston
18 Newton and your review of this plat, that you
19 could build a 4,000 square foot house on each of
20 lot 1, 2 and 3 shown on the plat?

21 A Yes.

22 Q Did you -- did Weston Newton represent
23 you as attorney at that meeting?

24 A I think the assignment of the contracts
25 had already taken place, so I don't think he

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 would be representing me. He would be
3 representing Paul Gaughf.

4 Q What I want to ask is if any discussion
5 was made regarding the implication of the word
6 "future" OCRM on that line.

7 MR. SAXON: And you are free to
8 object if you think that is going over
9 the line.

10 MR. FINN: Go ahead.

11 BY MR. SAXON:

12 Q Did you discuss at that meeting the
13 implication of the word "future" beside Beach
14 Front Management Act baseline that was shown on
15 this Exhibit 1?

16 A I would not at all say it was
17 discussion or ever questioned. What I thought
18 had occurred at that point in time was when this
19 was building up to this, I understood what was
20 going on and what needed to take place, and so
21 when Weston did receive this I mean, you know,
22 it is possible Ed Flynn probably called me, come
23 in and say I am taking it to Weston's office,
24 make sure we are good to go.

25 So anyway there never was a question

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 about the future baseline, honestly Dan. When I
3 saw the town stamp and I saw the recording, and
4 I knew that everybody had met in my opinion
5 there was never a doubt that what I measured and
6 Weston and I agreed to the approximate size, we
7 made the phone call to Paul Gaughf in Sumter,
8 South Carolina, that these three lots are good
9 with the ability to build approximately 4,000
10 square feet.

11 Q And the ability to a build 4,000 square
12 foot home on the property, that was important to
13 Mr. Gaughf, I assume?

14 A Absolutely.

15 Q Did Mr. Gaughf in fact take title then
16 to lots 1, 2 and 3?

17 A He did.

18 Q What was his intention? What did he
19 intend to do to dispose of those lots?

20 A Investment purposes only.

21 I became the listing agent after he
22 closed on the lots.

23 Q For all three lots?

24 A Yeah, but I don't think I ever listed
25 lot 3 because I think another realtor on the

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 island, David Carroll purchased lot 3 from Paul
3 Gaughf. I did not receive a commission on that.
4 And David Carroll and his partners later put it
5 up for resale after their purchase.

6 Q Do you happen to recall what that sales
7 price was for lot 3?

8 A What they paid Paul?

9 Q Yes.

10 A I believe it was 1.4.

11 Q 1.4 million?

12 A Yes.

13 Q Do you recall when that sale occurred?

14 A It was either in '03 or '04. I do

15 not --

16 Q So you became the listing agent for lot
17 1 and lot 2?

18 A Yes.

19 Q What was the listing price for lot 1?

20 A I don't recall.

21 Q What was the listing --

22 A I believe it might have been 2.

23 something, Dan, but it is only a guess.

24 Q And what was the listing price for lot
25 2?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 A It would be a guess as well. I can
3 tell you that I later wrote a contract and
4 closed on that lot, but I don't remember the
5 listing price.

6 Q And I want to get to that in just a
7 second.

8 A Right.

9 Q Did you consult with Mr. Gaughf as far
10 as an appropriate listing price for lots 1 and
11 lots 2?

12 A Yes.

13 Q Did you make a recommendation as to
14 what those listing prices should be?

15 A I don't recall.

16 Q In general when you represent the
17 sellers of real property do you consult with
18 them about what an appropriate listing price
19 might be?

20 A Yes.

21 Q How do you generally arrive at an
22 appropriate listing price?

23 A Comparable properties, supply and
24 demand, what other lots may be for sale, and/or
25 what other lots have sold for.

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2 Q Okay.

3 Did lot 1 ultimately sell?

4 A No.

5 Q It did not?

6 A He still owns it today.

7 Q Did lot 2 ultimately sell?

8 A Yes.

9 Q And I believe you just said you
10 purchased lot 2?

11 A That is correct.

12 MR. SAXON: Lot purchase contract.

13 (Whereupon, Plaintiff's Exhibit
14 Number 3 was marked for
15 identification.)

16 BY MR. SAXON:

17 Q Mr. Segars, I will show you what is
18 marked as Plaintiff's Exhibit 3.

19 Is that the purchase contract that you
20 wrote for that property?

21 A Yes, it is.

22 Q The purchaser is listed as BCC&S
23 Partners.

24 Who is that?

25 A I am not sure I remember.

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2 Dan, I don't remember.

3 Q All right.

4 Now, looking at the first page at the
5 bottom on the initial points it appears to me
6 that the last dating was March 15 of 2004.

7 Is that the date you entered into this
8 contract?

9 A Yes.

10 Q And there was a financing contingency,
11 is that correct?

12 A Yes.

13 Q What were the terms of the financing
14 contingency?

15 A Receiving a loan for a-million-360,000
16 by 35 days, within 35 days of the contract.

17 Q And if no commitment -- let me ask you
18 this, if a commitment was not received within 35
19 days was the financing contingency waived?

20 A Unless I would ask for an extension or
21 be granted an extension.

22 I should know the answer to that. Ask
23 it differently, please.

24 Q Bear with me one second.

25 A Maybe I can just say that I knew that I

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2 had 35 days from the date of the contract, Dan,
3 to either receive loan commitment from the bank
4 or be denied the loan from the bank.

5 Q Section 3 of this contract describes
6 the financing contingency, and it describes the
7 dates that are here that must be complied with,
8 including that 35 day date.

9 Would you look for me, please, at the
10 last sentence of section 3?

11 A Yes.

12 Q Does that indicate that if any -- that
13 if any portion of that -- why don't you read
14 that line for me, please.

15 A "If any requisite action called for by
16 this section is not taken within the time
17 periods contained in this section, the finance
18 contingency shall be deemed waived."

19 Q Does that indicate to you that if you
20 did not receive a commitment for a loan within
21 35 days then that the financing contingency
22 would be deemed waived?

23 A Yes.

24 Q Were there any other contingencies in
25 this contract?

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2 A Under item 6, other terms.

3 Q Uh-huh.

4 A Buyers have until Friday, March 12,
5 2004 for due diligence.

6 Q Did you complete your due diligence?

7 A I am sure I did.

8 Q And you didn't terminate the contract
9 based on the due diligence?

10 A Did not.

11 Q What was the closing date set forth in
12 the contract?

13 A It was called for May 31, 2004.

14 Q Under section 15 of that paragraph
15 there is a section that talks about the Beach
16 Front Management Act and the specific disclosure
17 for that, and there is a check as to whether
18 that is applicable or not applicable.

19 Was either of those checked in this
20 contract?

21 A No.

22 Q This property was ocean front property,
23 is that correct?

24 A It still is.

25 Q And it is subject to the Beach Front

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2 Management Act?

3 A Yes.

4 Q So I am assuming with this that no
5 beach front management disclosure addendum was
6 not attached to this?

7 A You know, Dan, either on lot 2 or lot
8 3, because I was involved with lot 3 as well, I
9 think on one of them it was.

10 Q Okay.

11 But as far as -- how are you involved
12 in lot 3?

13 A I was a 22 percent lot owner in lot 3.

14 Q Okay.

15 Let us come back to that in just a
16 moment.

17 A Okay.

18 Q As far as this contract goes there was
19 no addendum for the beach front management?

20 A I am not so sure that is correct.

21 Q Do you know if you have --

22 A I do believe there was an addendum
23 either for this lot or for lot 3.

24 Q What is the Beach Front Management Act
25 addendum tell a perspective purchaser?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 A I think it advises the line is located
3 in its position for protective purposes, rules
4 and regulations of South Carolina.

5 Q Is it fair to say that it advises a
6 purchaser of the implication of an OCRM line and
7 that they should have a survey performed upon
8 the property?

9 A I don't recall specifically what it
10 says about the survey, but yes, for the most
11 part you are correct.

12 Q As a result of -- and one thing, who
13 prepared this contract?

14 A I did.

15 Q Did an attorney review this contract?

16 A No.

17 Q Did you ask any advice of any attorney
18 in your preparation of this contract?

19 A Well, the advice was based on the
20 original review giving me the confidence to move
21 forward and write this contract.

22 Q And there was approximately a year
23 between you indicated reviewing this plat and
24 the time this contract was entered into?

25 A Yes.

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2 Q In connection with this contract did
3 Richardson Street Partners provide you with a
4 survey of the property?

5 A This was provided.

6 Q And we are talking about Plaintiff's
7 Exhibit --

8 A 1.

9 Q And any other documentation provided at
10 the time?

11 A Yes.

12 Q What would that have been?

13 A Documentation provided by the seller
14 was house plans for legal lot 3 for marketing
15 purposes, and I studied those house plans and
16 knowing lot 2 was larger than lot 3 it gave me
17 the confidence to move forward and pay more
18 money for lot 2 than lot 3 sold for.

19 Q I think we will have to talk about lot
20 3 then.

21 As I recall you indicated that David
22 Carroll purchased lot 3?

23 A Yes.

24 Q And you were not an agent in that
25 transaction, is that correct?

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2 A Correct.

3 Q You testified you had some ownership
4 interest in lot 3?

5 A Myself and partners purchased it from
6 David Carroll and his group, Best Realty.

7 Q Oh, later than that?

8 A Yes.

9 Q When did that purchase occur?

10 A That closing occurred in July '04, and
11 I closed in June '04 on lot 2.

12 Q Okay.

13 A So Tad Segars purchased lot 2 in June
14 of '04, and in July of '04 I was a 22 percent
15 owner for lot 3.

16 Q Who were your partners in lot 3?

17 A Steven Sirotto, Steven Carb, Ken
18 Oliver, and myself.

19 Dan, I need to clarify, I don't know if
20 it is important, but initially Ken Oliver was 11
21 percent; I was 11 percent; and Steve Carb was 11
22 percent. Shortly after the closing Ken opted
23 out and I purchased his shares.

24 Q When did you sign or enter into a
25 contract for lot 3?

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2 A I don't remember.

3 Do you have a copy?

4 Q I don't. I don't.

5 A It would have --

6 Q Would it have been before or after the
7 contract that you entered to purchase lot 2?

8 A After.

9 Q All right.

10 After you entered into a contract to
11 purchase lot 2 did you apply for financing to
12 fulfill the financing contingency?

13 A Yes.

14 Q Do you recall when you did that?

15 A I don't, but per what I agreed to it
16 was within 15 days from March 15.

17 Q Do you recall which lender you applied
18 for that financing with?

19 A Doug Matney.

20 Q Did you retain the services of an
21 attorney?

22 A Yes.

23 Q For the closing?

24 A Yes.

25 Q And who did you retain for that?

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2 A Weston Newton.

3 Q Do you recall when you retained
4 Mr. Newton for that closing?

5 A It is likely a few days after the date
6 of the seller's signature of March 15.

7 Q Did Mr. Newton send you an engagement
8 letter?

9 A I think that was routine, Dan. I don't
10 recall if I got one, but I do think it was
11 routine.

12 Q I am going to show you without
13 marking --

14 A Yes.

15 Q Is that the letter --

16 A Yes.

17 Q That letter is dated May 17, 2004.

18 Would that have been closer in time to
19 your retaining of Mr. Newton, or do you believe
20 you retained him immediately following that day?

21 A Our standard procedure within our
22 company upon full execution of a contract and
23 escrow deposit, we turn this into our office
24 manager and our office manager disburses to the
25 attorney the information.

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2 Q In preparation for that closing did you
3 obtain a survey on this property lot 2?

4 A A separate survey from what was
5 provided, no, I did not.

6 Q Did your closing attorney advise you
7 that -- strike that.

8 Why did you not obtain a survey on that
9 property?

10 A Well, first the main reason was I had
11 studied with Weston Newton the exact length and
12 width of these, of this plat; and secondarily,
13 there was an architect hired to put the
14 footprint of a home on lot 3, and so I was quite
15 comfortable and confident with the size of these
16 lots and the build ability of these two lots.

17 Q As a real estate professional do you
18 understand when purchasing a beach front
19 property the importance of ordering a survey
20 which designates the OCRM line?

21 A No, I don't agree with that. I
22 understand it is important, but we have never to
23 my knowledge none of my professional colleagues
24 order a separate survey other than the public
25 record that is provided.

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2 Q Okay.

3 Looking at the survey that is marked as
4 Exhibit 1 you have agreed that this is not --
5 does not bear the approval of the OCRM?

6 A I agree.

7 Q And it shows an existing OCRM line, and
8 it shows what is described as a future OCRM
9 line?

10 A Correct.

11 Q Did you not feel it was important to
12 confirm where the existing OCRM line was for
13 this property?

14 A Ask that one more time.

15 Q Did you not believe it was important to
16 confirm where the OCRM line was for lot 2?

17 A Yes, it was extremely important.

18 Q Did you confirm where the OCRM line was
19 for lot 2 prior to your purchase?

20 A My way of answering that, Dan, is I had
21 conferred with my attorney of where the line
22 would be; and I had also received further
23 documentation from the seller of a house, and it
24 showed the beach line, not future, and I was
25 told by the seller/developer it was done, it was

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1 SAXON - SEGARS (DIRECT EXAMINATION) 38

2 recorded; and further, prior to closing on lot 3

3 I sat with partners and the Attorney Weston

4 Newton, and my partners said we want to buy this

5 lot if we can build this house and Weston's

6 answer was well, that is what the documents say.

7 Q You said that was prior to closing on

8 lot 3?

9 A Yes.

10 Q Did that conversation also occur prior

11 to closing on lot 2?

12 A I don't recall.

13 Q Okay.

14 (Whereupon, Plaintiff's Exhibit

15 Number 4 was marked for

16 identification.)

17 BY MR. SAXON:

18 Q Mr. Segars, I am going to show you what

19 was marked as Plaintiff's Exhibit 4, which

20 appears to be a credit application that you

21 filled out for NBSC, is that correct?

22 A It is.

23 Q Can you tell me when that credit

24 application was completed?

25 A Can you give me an idea where it is?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 Q (Indicating).

3 A Yes, it is a date on here of May 18,
4 2004.

5 Q Is that the date you completed that
6 application?

7 A Dan, I am just not sure if that was the
8 date of the completion or when I first signed --
9 I think the answer is yes, but it is my name.
10 It is my Social Security, et cetera, et cetera,
11 and there is a date of May 18. I just don't
12 know if that is completion.

13 Q All right.

14 (Whereupon, Plaintiff's Exhibits
15 Numbers 5 and 6 were marked for
16 identification.)

17 BY MR. SAXON:

18 Q All right.

19 I will show you what is marked as
20 Plaintiff's Exhibit 5, and that is a document
21 which is entitled "Borrower's Preference of
22 Legal Counsel and Insurance Agent".

23 And by this will you agree that that
24 selects Weston Newton as your closing attorney?

25 A Yes.

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2 Q And it is signed by you?

3 A Yes.

4 Q And this is a document that appears to
5 have been prepared by the lender.

6 What date was that?

7 A May 18.

8 Q So that appears to have been completed
9 the same time as the application?

10 A Yes.

11 Q Or at least dated the same day?

12 A Right.

13 Q Now, did you apply for a loan with any
14 other institution on this property between the
15 date of the contract, which was March 15 of '04
16 and the date of this credit application, which
17 is a little over two months later, May -- excuse
18 me -- May 18, 2004?

19 A No, I don't think so, Dan.

20 Q Do you recall filing a credit
21 application with Mortgage Network?

22 A Maybe. I was doing a lot of business
23 with David Cole, yes.

24 Q Do you believe, if you can recall, did
25 you apply for financing with Mortgage Network

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2 prior to applying with NBSC?

3 A I don't recall for sure.

4 Q I will show you what is marked as
5 Plaintiff's Exhibit 6.

6 Have you seen this before?

7 A Yes.

8 Q Is this a commitment letter for the
9 loan on lot 2A -- I'm sorry, lot 2?

10 A I believe that is what it is, yes.

11 Q And the document was signed by you on
12 June 2 of 2004?

13 A Yes.

14 Q I also found a cover sheet for a fax
15 which was to you from a NBSC representative, and
16 it indicates and it is dated that same June 2,
17 "Please sign ASAP and we will order an appraisal
18 on that property."

19 Is that correct?

20 A That is what it says, yes.

21 Q Do you recall receiving this?

22 A I don't remember, Dan.

23 Q Now, one of the contingencies of this
24 loan commitment which is Plaintiff's Exhibit 6
25 involves an appraisal on the property, is that

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2 correct?

3 A Yes.

4 Q And what is that condition?

5 A That it appraises for the amount of

6 1,600,000 or greater.

7 Q And did the property appraise for \$1.6

8 million or greater?

9 A I later learned that there was an
10 appraisal of that amount, yes.

11 Q Do you recall when you later learned
12 that?

13 A Dan, it would -- in most of the things
14 that I would purchase and/or for clients I
15 typically would ask the banks if what the
16 appraisal amount was, but we hardly ever saw --
17 we never saw them before closing or even at
18 closing. Quite often it is after, later on; and
19 we have to request them most of the time.

20 Q Specifically, did you see the appraisal
21 or review the appraisal prior to the closing on
22 lot 2?

23 A No.

24 Q Did you ask for a copy of the appraisal
25 prior to the closing on lot 2?

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2 A I don't recall.

3 (Whereupon, Plaintiff's Exhibits
4 Numbers 7-11 was marked for
5 identification.)

6 BY MR. SAXON:

7 Q I am showing you what is marked as
8 Plaintiff's Exhibit 7, which appears to be a
9 HUD-1 settlement statement.

10 Was this the closing statement relative
11 to the closing on lot 2?

12 A Yes.

13 Q And that shows a bank loan from NBSC to
14 you for \$1,360,000?

15 A Yes.

16 Q And the purchase then occurred on June
17 9 of 2004, is that right?

18 A Yes.

19 Q Now, did you earn a commission on this
20 sale?

21 A Either a yes or I would have received a
22 credit on the price, but I am sure Dunes
23 Marketing was paid, Dan.

24 And it is showing a commission paid,
25 right?

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2 Q Yes.

3 A Yes.

4 Q Of \$64,000?

5. **A** Yes.

6 Q Did that commission -- it is shown as
7 Dunes Marketing, would all of that have gone to
8 you, or how do you all work that?

9 A It is either 50-50 or a percentage
10 depending on volume. It could have been 30, 40
11 percent, 50 percent; so it is split between
12 broker and agent.

13 Q Do you recall what it was in this case?

14 A I do not.

15 Q I will show you what is marked as
16 Plaintiff's Exhibit 8 and ask is this the
17 original promissory note with NBSC that you
18 signed for the financing and purchase of this
19 lot?

20 A Yes, I see my signature, Dan.

21 Does it say promissory note somewhere?

22 Q Well, it has a promise to pay.

23 A Okay.

24 Q My question is, is this a true and
25 accurate copy of --

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2 A I do believe so, yes.

3 Q I will hand you what is marked as
4 Plaintiff's Exhibit 9, which is entitled
5 "Mortgage of Real Estate". It describes lot A
6 and grants to NBSC a mortgage on the property to
7 secure the note that we just referenced.

8 Do you recall signing this?

9 A That is my signature, yes.

10 Q Is this a true and accurate copy of the
11 mortgage?

12 A I do believe so.

13 Dan, was this all of the pages provided
14 with this as far as you know?

15 Q As far as I know.

16 A The reason I am asking is there is a
17 legal description that became a big deal after
18 the fact, but it is not a copy of the plat.

19 Q Uh-huh.

20 A But --

21 Q I think I am coming to that.

22 A But typically, you know, it is a quick
23 sentence or two from the paralegal of what it is
24 and signed, but anyway that is fine.

25 Q This mortgage, the legal description of

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2 this mortgage references a certain piece of land
3 shown as lot 2 on a plat recorded at 96 at page
4 160.

5 Is that correct?

6 A I am sure that is what you just read.

7 Yes.

8 Q And the plat that we have been looking
9 at which is Plaintiff's Exhibit 1, that is a
10 plat recorded at 91 at page 90?

11 A Correct.

12 Q Did you learn that a subsequent plat
13 which was the plat recorded at 96 and 160 and
14 described on that mortgage was recorded of
15 record?

16 A Yes, I later learned that.

17 Q Let me show you what is marked as
18 Plaintiff's Exhibit 2, which is a survey of ten
19 lots oceanfront. And this -- the recording
20 information says that this plat was recorded at
21 book 96 at 160.

22 When did you first see this, or have
23 you seen this plat before?

24 A I have.

25 Q When did you first see this plat?

1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 A I do not recall an approximate date.

3 Q Would it have been before or after your
4 closing of lot 2?

5 A It was well after the closing of lot 2.

6 Q Now, this plat which is Plaintiff's
7 Exhibit 2, it bears the mark of the DHEC's OCRM
8 approval, is that correct?

9 A Yes.

10 Q What is the difference between this
11 plat and the original plat, which is Plaintiff's
12 Exhibit 1?

13 A A lot of things, but I think
14 specifically what you are referring to, Dan, is
15 the absence of the -- this one shows one OCRM
16 critical baseline. This one shows the future
17 and existing. So Exhibit whatever --

18 MR. FINN: Exhibit 2, yes.

19 THE WITNESS: Exhibit 2 is showing
20 one baseline only.

21 BY MR. SAXON:

22 Q Now, both plats show the existing
23 baseline, isn't that correct?

24 A That is correct.

25 Q The earlier plat shows what is

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2 described as the future base line, is that
3 correct?

4 A Yes.

5 Q And that does not appear to be approved
6 by the OCRM?

7 A Right.

8 Q The second recorded plat does not show
9 the future baseline, but is approved by the
10 OCRM, is that correct?

11 A Yes.

12 Q Do you know which plat was used for you
13 to take title to this property?

14 A I later learned that this was the
15 actual plat of record, and I took title on this
16 plat which was Exhibit 2.

17 Q Plaintiff's Exhibit 2.

18 I also noticed that there is a
19 discrepancy in the lot sizes of lot 2 between
20 the first plat and the second plat.

21 A Yeah, you are right. Yes.

22 Q Do you know anything about that, how
23 they changed?

24 A The only thing I know about changing
25 that I am aware of is that the line did not get

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2 moved as we thought it had been moved.

3 (Whereupon, Plaintiff's Exhibit
4 Number 12 was marked for
5 identification.)

6 BY MR. SAXON:

7 Q I am showing you what is now marked as
8 Plaintiff's Exhibit 12.

9 Is that the General Warranty Deed that
10 you received title to lot 2 from Richardson
11 Street Partners?

12 A I do believe so, Dan, yes.

13 Q Now, this deed, the property to which
14 you acquired is described as the property known
15 as lot 2 on the plat, which was marked as
16 Plaintiff's Exhibit 2, is that correct?

17 A That is correct.

18 Q Now, this deed also references an OCRM
19 setback and also a beach front management
20 disclosure and further describes the earlier
21 2002 deed, which is marked as Plaintiff's
22 Exhibit 1.

23 Is that correct?

24 A I might have to read it. Where should
25 I look? The first paragraph or second

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2 paragraph?

3 Q Right in here.

4 A I didn't see where it talked about the
5 first plat.

6 Q I apologize, I might be wrong.

7 A It might say that. I just didn't see
8 it.

9 Q You agree with me that this deed
10 indicates that: "The proximity and location of
11 the setback line, the baseline, and the velocity
12 zone applicable to the property are shown on a
13 plat of survey, dated December 27, 2002 prepared
14 by Sea Island Land Survey, LLC, which plat
15 depicts the disclosure information required by
16 the Act and by the Act it is defined as the
17 Beach Front Management Act. A copy of said plat
18 having been given to the grantee which is
19 acknowledged by grantees' acceptance of this
20 deed."

21 A That is what it says. I don't recall
22 seeing that plat.

23 Q Okay.

24 A When all the closing took place.

25 As a matter of fact, Dan, this

1 SAXON - SEGARS (DIRECT EXAMINATION) 51

2 language, it never would have been explained or
3 read in all honesty. I practice real estate 23
4 years, and I understand what you are doing, but
5 to read every word in every document would be
6 quite difficult.

7 Q Okay.

8 A Now I'm sorry, did it mention a
9 different plat or did it not?

10 MR. SAXON: Off the record.

11 (Whereupon, an off-the-record
12 discussion was held.)

13 BY MR. SAXON:

14 Q Mr. Segars, looking at the promissory
15 note, which we talked about a moment ago which
16 is Plaintiff's Exhibit 8, do you recall was this
17 a one-year loan?

18 A I don't recall.

19 Payment schedule, that is what it
20 appears, yes.

21 Q And this note indicated one final
22 payment due on June 15, 2009, is that correct?

23 A 2005.

24 Q I'm sorry, 2005?

25 A Yes.

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2 Q Did you pay that loan off in full on
3 June 15, 2005?

4 A I don't think so.

5 Q I am going to show you what is marked
6 as Plaintiff's Exhibit 10. It appears to be a
7 promissory note which is dated July 7, 2005.

8 Do you recall signing this note?

9 A I did sign it so --

10 Q Is this a true and accurate copy of a
11 note that you signed?

12 A I would believe so, yes.

13 Q Would you recall is this a renewal of
14 the existing loan?

15 A I would think that is what it is. That
16 is probably what it is Dan, yes.

17 Q And this note called for 18 monthly
18 payments of interest, is that correct?

19 A Yes.

20 Q And one final payment due on January 7,
21 2007, is that correct?

22 A Yes.

23 Q And did you pay this loan off in full
24 then in January of 2007?

25 A I did not.

1 Q Let me show you what is marked as
2 Plaintiff's Exhibit 11.

3 Do you recall signing this document?

4 A I would agree.

5 Q Is this a true and accurate --

6 A True and accurate statement, yes.

7 Q Do you recall renewing the loan then
8 once again?

9 A Yes, according to this.

10 Q And this promissory note calls for 36
11 monthly payments of interest followed by one
12 payment of the principal due on January 24,
13 2010, is that correct?

14 A Yes.

15 Q Now, prior to January 24, 2010 did you
16 pay this note off in full?

17 A No.

18 Q Did you default on this note?

19 A Yes.

20 Q Do you recall when that default
21 occurred?

22 A I do not, Dan.

23 Q Mr. Segars, in your Answer to the
24 foreclosure action that NBSC filed --
25

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2 A I'm sorry, Dan, can you wait a minute?

3 Q That is fine.

4 MR. SAXON: We will take a 10
5 minute break.

6 (Whereupon, a short break was
7 taken.)

8 BY MR. SAXON:

9 Q Mr. Segars, in your Answer to the
10 foreclosure action that NBSC filed you alleged
11 several counterclaims against NBSC, the first of
12 which was a claim of negligent
13 misrepresentation.

14 Can you tell me what the basis of that
15 claim is?

16 A I would say that I had asked NBSC for
17 the loan, and we were both aware that it was
18 based on an appraisal; and I later found out
19 that the appraisal was in gross error of the
20 appraisal amount based on a plat that the
21 appraiser used versus one that I never saw.

22 Q Did you ever see the appraisal that was
23 prepared on this lot 2 for NBSC?

24 A Yes.

25 Q Who prepared that appraisal?

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2 A I believe there were two, Dan. I think
3 it was appraised twice, one for purchasing and
4 one for the refinance.

5 Q Let us talk about the original when you
6 purchased that.

7 Do you recall who prepared that
8 appraisal?

9 A Was it either Charlie Gray or Joe
10 Cocola?

11 Q No.

12 A Okay. Oh, Steve Lindsay.

13 (Whereupon, Plaintiff's Exhibit
14 Number 13 was marked for
15 identification.)

16 BY MR. SAXON:

17 Q Mr. Segars, I am going to show you what
18 is marked as Plaintiff's Exhibit 13.

19 Do you recognize this?

20 A It is hard to read this one.

21 Yes, I do.

22 Q And you have seen this? You have seen
23 this appraisal before?

24 A I have, yes.

25 Q And is it your understanding that this

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2 was the appraisal that was prepared in advance
3 of your purchase of lot 2?

4 A Yes.

5 Q Can you show me in what way this
6 appraisal is in error?

7 A I don't think I can with this copy.
8 Comparable number 1, number 2, and
9 number 3 are in gross error.

10 Q In what way?

11 A In their comparable prices that people
12 paid to purchase, based on false pretense and
13 inaccurate plat representation.

14 Q What is comparable number 1? What
15 property is comparable number 1?

16 A It says legal lot 6.

17 Q Is that in the --

18 A The same 10 lots I do believe, so that
19 is why -- actually comparable lot 1 is lot 6 and
20 comparable number 2 is lot 5 and comparable
21 number 3 is lot 4; so it is my belief that those
22 are all within these ten lots.

23 Q You believe that comparable number 1, 2
24 and 3 are all lots which comprise the
25 subdivision in which lot number 2 is located?

1 A That is correct.

2 Q And if you could specifically tell me
3 how the information provided on that survey is
4 in error?
5

6 A Okay.

7 When each of these closings occurred
8 not one single buyer was aware of the baseline's
9 position, or I should say not one single buyer
10 was aware of the subsequent plat dated December
11 '03.

12 Q The survey at comparable number 1, 2
13 and 3 reflects prices paid for lots in that
14 area, is that correct?

15 A That is correct.

16 Q Were those prices that were reflected
17 on the deeds as being paid for those properties
18 as indicated by that appraisal?

19 A That is not a correct information. All
20 purchasers agreed to pay the prices based on
21 this recorded plat.

22 Q That is not my question, though.

23 A Your question was the legal reflection,
24 that is correct what you asked. The answer is
25 yes.

2 Q That survey reflects the prices that
3 other buyers paid for adjacent properties in the
4 subdivision?

5 A Yes.

6 Prayed or paid?

7 Q Paid. Did I say prayed?

8 A Yes.

9 Dan, just flipping a few pages here,
10 this just seemed quite odd to me when I finally
11 got a copy, that the one page that was of utmost
12 importance to me when I received it was covered
13 up, and I was looking to see which plat -- it is
14 the first time I believe I discovered one of the
15 appraisers had made a gross error is when I
16 received this copy.

17 Q When exactly do you believe you
18 discovered -- strike that.

19 When did you discover that you believed
20 the appraisal was in gross error?

21 A It was whatever month or year, for that
22 matter, when I had my dispute with Doug Matney
23 and requested a copy of this. So Dan, I don't
24 know really when that was. It was prior to --
25 it was just prior to default.

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2 Q Okay.

3 And that is the first that you
4 learned -- strike that.

5 When did you first learn that the OCRM
6 line shown on the -- or which was applicable to
7 lot 2 was not the OCRM line as you thought it to
8 be?

9 A I don't recall that.

10 Q Can you give me an approximate time?

11 A No, that is hard to do and I can
12 explain why.

13 As we have noted I closed in June of
14 '04 on lot 2 and we closed July on lot 3, and I
15 believe I am correct that it was July 28, '04 is
16 when the town revoked the plat.

17 Q And by revoked the plat, which plat did
18 they revoke?

19 A Well, it was 7 lot owners. I believe 7
20 lots had closed or six lots had closed. It was
21 our group. Everyone that purchased -- we
22 thought this plat was revoked, being Exhibit 1,
23 with the baseline being seaward. And we were
24 told that the reason for revocation was a
25 fraudulent document presented to the town by Ed

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2 Flynn, misplacement of the easement. There was
3 no mention whatsoever about any problem with the
4 critical line.

5 Q Okay.

6 So again, which plat are you saying had
7 been revoked? Was it Exhibit Number 1 or
8 Exhibit 2?

9 A What I am saying is what I later
10 learned was the actual plat that was revoked was
11 the plat no one even knew about until '06 or '07
12 or whenever it was it was discovered.

13 Q So what you are telling me is that you
14 later learned that the plat shown as Exhibit 2,
15 which is the later plat was revoked?

16 A Yes, I am saying what everyone paid
17 for, including me on lot 2, I agreed to pay \$1.6
18 million based on an appraisal and based on the
19 bank giving me a loan, so that I could build a
20 home on lot 2. And it was studying and review
21 with my attorney of these three lots to make
22 that decision if I would get a loan from the
23 bank.

24 And when I closed in June of '04 this
25 is the plat that I thought I was receiving, but

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2 in actuality this was the plat I received; that
3 I never saw it at closing and did not see it
4 until a couple of years later, whenever, I don't
5 know.

6 Dan, everybody was focused on the
7 revocation and what was that. I don't even know
8 to this day how we discovered it, the line
9 wasn't moved.

10 Q Now, you testified you were represented
11 by counsel in the closing?

12 A Yes.

13 Q You discussed this issue of the plat
14 with him prior to your closing on lot 2?

15 A Yes.

16 Q And you are a professional in real
17 estate --

18 A Yes.

19 Q -- Representing purchasers in sales and
20 investors for your own account?

21 A Yes.

22 Q You testified that you performed a due
23 diligence period in your purchase of lot 2?

24 A Yes.

25 Q And based upon those things you

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2 determined to go forward with the purchase of
3 lot 2?

4 A Yes.

5 Q You never saw the appraisal that Steve
6 Linsday had prepared prior to your purchase of
7 lot 2, is that correct?

8 A That is correct.

9 Q And you believe that this plat which is
10 shown here is somehow in error?

11 A Yes. But I couldn't learn it -- I
12 could not learn -- no one would know this was in
13 error based on this page.

14 Q But you didn't see or even ask to look
15 at this page prior to closing, did you?

16 A No, no.

17 MR. SAXON: And off the record.

18 (Whereupon, an off-the-record
19 discussion was held.)

20 BY MR. SAXON:

21 Q Mr. Segars, again looking at the survey
22 that is attached as Plaintiff's Exhibit 13, is
23 it your understanding that Mr. Linsday was
24 retained to perform a survey on this property?

25 A It is my understanding, yes.

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2 Q I'm sorry?

3 A Yes.

4 Q To perform a survey or an appraisal?

5 A Oh, I'm sorry.

6 An appraisal.

7 Q Do you know if Mr. Lindsay is a
8 licensed surveyor of land, or do you not know?

9 A I do not know.

10 Q And this survey -- am I correct, that
11 this survey reflects the value of the property
12 as being \$1.6 million?

13 A That is incorrect. The appraisal does.
14 Not the survey.

15 Q I apologize.

16 The appraisal shows the value of the
17 property at \$1.6 million?

18 A Yes.

19 Q Other than what you have just indicated
20 as to what you believe to be the inaccuracies of
21 comparable number 1, 2 and 3, what are the
22 other -- in what other ways is this survey
23 inaccurate?

24 A Appraisal is inaccurate.

25 Q In what way?

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2 A I too agree with you that I believe
3 this page that has the envelope --

4 Q You are referring to the page that
5 reflects the survey attached to the appraisal,
6 which has a gray rectangular block over it?

7 A Yes.

8 It is my belief that in Lindsay's
9 appraisal the plat that he used for his
10 appraisal is the same appraisal, being Exhibit 2
11 recorded in January -- excuse me, December '03,
12 the subsequent plat that we never saw.

13 Q And that is the plat, Exhibit 2, that
14 was approved by the OCRM?

15 A That is correct.

16 Q And reflects the accurate positioning
17 at that time of the OCRM line?

18 A That is correct.

19 Q And again, how is his appraisal -- you
20 indicated you believe his appraisal is
21 inaccurate?

22 A Right.

23 Q How is it inaccurate?

24 A Okay.

25 Certified appraisers quite often call

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1 us for opinions of values and vice versa; we
2 sometimes call them. But what I do know is
3 their appraisals are based on market value more
4 than anything else, and the true definition of,
5 specific definition of market value in South
6 Carolina is what a knowing buyer is willing to
7 pay and what a knowing seller is willing to sell
8 at a price that they both agree to for its
9 highest and best use. And appraisers on Hilton
10 Head Island are well aware of town's rules and
11 regulations and buffers and setbacks, and Steve
12 Lindsay looked and used as a recording a plat
13 that the seller never saw, nor the buyer never
14 saw; and he made his appraisal based on this
15 legal description.

16 And if he would have measured the
17 length and the width or the buildable area for
18 its highest and best use, he would have
19 determined that the lot was only 20 foot long
20 and 27 or 28 feet wide based on the setbacks,
21 and you cannot build a house in Singleton Beach
22 less than 2500 square feet. To put it more
23 simply, Steve Lindsay could not have measured
24 the true length on this lot and given it a 1.6
25

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2 value, because if you take your critical line on
3 this plat and your 20 foot buffer setback and
4 your street setback, that is where you get a lot
5 only 20 feet long.

6 And if he would have determined that it
7 was 20 feet long by 27 feet wide, then it would
8 be determined that it is unbuildable. If Steve
9 Linsday appraises a small commercial lot, and
10 you can build a 2000 square foot building, it is
11 obviously of less value if there is a larger lot
12 that can hold a 4,000 square foot building.

13 Appraisals are based on highest and best use and
14 what a knowing buyer and a knowing seller agree
15 to, and I did not get what I thought I paid for,
16 that is marketability and appraisals.

17 Q Now, you looked at lot 2 --

18 A Yes.

19 Q -- Prior to Mr. Linsday ever becoming
20 involved in this, is that correct?

21 A That is correct.

22 Q And you believed you could build you
23 indicated a 6,000 square foot house on that, is
24 that correct?

25 A I didn't remember 6,000, but yes --

2 Q I'm sorry, a 4,000 --

3 A Yes.

4 Q I apologize.

5 And you are a real estate professional
6 with 24 years of experience in this market?

7 A Right.

8 Q At the time 18 years of experience at
9 the time you did this transaction?

10 A Right.

11 Q And you had advice of counsel as I
12 recall in looking at that?

13 A That is correct.

14 Q And the purchasers of the other lots,
15 in fact you and your partners who purchased lot
16 3, you had the ability to look at that and you
17 felt that whatever purchase price that was I
18 assume was a fair purchase price, is that
19 correct? We are talking about lot 3.

20 A Yes, we are.

21 Dan, what the key in this particular
22 point is exactly what I am trying to explain, if
23 Steve Lindsay would have had this plat for his
24 appraisal purposes, he would be as responsible
25 as me or anyone to determine is he measuring

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2 from this lot line or is he measuring from this
3 line. That would be a responsibility he would
4 have is to measure where are the corners and
5 buildable area.

6 So all I am saying is all of the
7 studies, hours and hours and hours with
8 different prospects and everything, Dan, what I
9 want you to understand this is a done deal. It
10 is recorded. Then I see house plans. If Steve
11 Linsday would take this plat and measure from
12 this line, the seaward line, that \$1.6 million
13 would reflect a fair market value because I did
14 know or I was told I was buying based on this
15 line; so that is a knowing buyer, that I was
16 buying this plat. I was not a knowing buyer
17 buying that plat.

18 Q Getting back to this one then,
19 Mr. Linsday was not hired to perform a survey on
20 this property?

21 A That is correct. He was hired to
22 perform an appraisal.

23 Q And the interpretation or measuring of
24 the survey, would you believe is a surveyor's
25 job or an appraiser's job?

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2 A An appraiser's job, absolutely. If he
3 is going to appraise any residential lot, any
4 commercial lot it is for its highest and best
5 use, period.

6 Q And if lot 2 were deemed to be
7 unbuildable using your argument, I am not saying
8 it is, if it had been deemed to be unbuildable,
9 what would have been the highest and best use
10 for that property?

11 A I am fighting a Court of Appeals on
12 taxation on this right now.

13 Highest and best use based on this plat
14 would be if I asked Mr. Finn if he stands on
15 this lot and I say Tom, the lot is 35 feet wide
16 based on this plat that I thought I was buying,
17 it is 35 feet wide, it is my estimation that you
18 can build about 4,000 square feet; but, you know
19 what, Tom, you may or may not ever be able to
20 build on this lot because we are not sure that
21 this line will ever move or can be moved. We
22 hope it can one day. What would you be willing
23 to pay? That is what market value represents,
24 the fact that it may or may not ever move.

25 This one we were told was done. I

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2 studied it. I was told it was done, and I never
3 saw this plat before closing.

4 Q I think what I am hearing is market
5 value then is determined by what a purchaser is
6 willing to purchase for and a seller is willing
7 to sell for?

8 A No. Understanding its full extent of
9 accuracies and information provided, it is what
10 a knowing buyer and a knowing seller --

11 Q Now at the time -- are willing to pay
12 and willing to sell for?

13 A That is right.

14 Q I didn't mean to complete your thought
15 there, I apologize.

16 A That is okay.

17 Q You made an offer of \$1.6 million to
18 purchase lot 2?

19 A Yes.

20 Q And you made that based upon a plat
21 which indicated or correctly depicted the
22 current OCRM line, is that correct?

23 A Yes.

24 Q And depicted what is described as a
25 future OCRM line?

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1 A That is correct.

2 Q Is that correct?

3 A That is correct.

4 Q A second plat was recorded, which is
5 Exhibit 2, and was recorded before you put that
6 offer in of record to be reviewed, which
7 depicted the original OCRM line as where it is
8 and also does not depict that future OCRM line,
9 is that correct?
10

11 A That is correct.

12 Q And that second plat, Exhibit 2 was
13 marked as approved by OCRM, is that correct?

14 A That is correct.

15 Q Notwithstanding that recorded plat, you
16 made an offer of \$1.6 million to purchase the
17 property?

18 A Right.

19 Q And entered into a contract for it?

20 A Right.

21 Q And did your contract have any
22 contingencies with regard to the buildable size
23 of the lot?

24 A No.

25 Q Did it have any contingencies with

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2 regard to termination based on your review of a
3 survey?

4 A No.

5 Q Did it have any contingencies based
6 upon a movement of the existing OCRM line?

7 A No, my contract that I signed was based
8 on a contingency for financing and the financing
9 documents specifically stated based on an
10 appraisal of \$1.6 million or more, and I am here
11 today saying that Steve Lindsay was one of
12 several appraisers that grossly erred on
13 appraising those lots.

14 Q Now, you first according to --

15 A Excuse me, Dan.

16 Q I'm sorry?

17 A If a certified appraiser is sitting
18 standing on that lot with us, the same thing, if
19 he knows that it may or may not be built on, if
20 he knows it is 20 foot long and you cannot
21 build, there is no way in the world he would
22 have appraised it for 1.6. It is impossible.
23 It is impossible.

24 Q Okay.

25 A Okay.

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2 Q Okay.

3 Now, in the prior exhibits we have
4 determined that you made an application for this
5 loan more than 35 days after your contingency to
6 terminate based on financing had expired, is
7 that correct?

8 A I think you are correct. We talked
9 about it earlier, yes.

10 Q If you had been unable to secure
11 financing for this property you had no -- your
12 contract provided for no contingency that would
13 have allowed you to terminate, is that correct?

14 A That is correct.

15 Q And you would have been obligated to
16 purchase that property for \$1.6 million
17 regardless, is that correct?

18 A That is correct.

19 Q Now, your answer goes on to indicate
20 that you relied upon the information provided by
21 the plaintiff through its agent, the appraiser.

22 Did you in fact rely upon the
23 information?

24 A Well, if -- as I have stated earlier in
25 this deposition, Dan, it has been standard

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2 practice typically before closing out of
3 curiosity I would generally ask: What did the
4 house appraise for, what did the lot appraise
5 for, what did the subject property appraise for?

6 And so it is only my guess that that would have
7 been what I would ask as well: Did it appraise
8 for less, did it appraise for the contract
9 price, did it appraise for more? And

10 typically -- or excuse me, 9 out of 10 we are
11 always appraising for contract price, and so I
12 feel as though I couldn't swear, but I feel very
13 confident that I would have asked Doug Matney
14 what it appraised for prior to closing.

15 Q My question is really one with regard
16 to reliance?

17 A Right.

18 Q You entered into a contract for \$1.6
19 million?

20 A Correct.

21 Q You discussed your purchase of that
22 property with your attorney?

23 A Yes.

24 Q You performed your own due diligence in
25 preparation for that purchase?

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2 A Yes.

3 Q You waited until after your financing
4 contingency had expired to apply for the loan
5 which NBSC ultimately granted to you?

6 A Okay.

7 Q Is that a yes?

8 A Yes.

9 Q You did not see a copy of the appraisal
10 or review the appraisal prior to closing, is
11 that correct?

12 A That is correct.

13 Q My question is how could you have
14 relied upon that appraisal in determining
15 whether to purchase the property or not?

16 A Because I said as I closed on many
17 properties it was my reliance was what I was
18 paying for worth the value, because if Steve
19 Lindsay would have performed his duty correct he
20 would have determined the lot to be unbuildable.
21 And if he was correct in performing his duty to
22 the bank he would have determined it
23 unbuildable, and at that point in time it would
24 be a great question what someone willing to pay
25 for a lot that you can't build on and you may or

1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 may not ever build on.

3 So if he would have done his job,
4 performed it correctly without any errors and
5 determined just that, it is my opinion it might
6 be a 30 or \$50,000 value, the same thing it has
7 been tax assessed for years and years.

8 Even if he would have appraised it for
9 600,000, Dan, or a million and I am paying a
10 million-six, nobody in their right mind would
11 want to buy it if it doesn't appraise for
12 something close to the right price.

13 Q What would you have done if the
14 appraisal had not been \$1.6 million and you had
15 not received the loan from NBSC?

16 A I would never have closed on the lot.

17 Q Well, you had contractually obligated
18 yourself to close on the lot at that time?

19 A I think contractually, yes, and then
20 there would have been just arguments regarding
21 on misrepresentation I guess, Dan.

22 Q All right.

23 You have indicated that you don't
24 believe the appraiser did his job.

25 Do you believe you did your job?

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2 A Absolutely, 100 percent above and
3 beyond, Dan. I studied for two years -- two
4 years of a huge amount of time on whether or not
5 it was a wise decision to move forward and
6 purchase that lot for me and my family.

7 Q Yet you continued to close in the face
8 of a recorded plat --

9 A That is right.

10 Q -- Which showed the true nature of the
11 OCRM line?

12 A That is right.

13 Q Which you claim you did not believe to
14 be the case at the time of the closing?

15 A That is correct. Dan, it is not
16 standard practice of one single realtor on this
17 island to either go to the Beaufort County
18 Courthouse or check on record if it is the plat
19 at the date of closing. Absolutely never in any
20 of our career are we having to follow up. It is
21 not our duty to follow up on representation of
22 recorded plats.

23 Q Do you believe your attorney did his
24 job representing you in the closing?

25 A I do not.

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2 Q Have you filed any sort of an action
3 against the appraiser Steve Lindsay?

4 A I believe I was told I could not,
5 because I did not hire him. NBSC Bank is the
6 client for Steve Lindsay so --

7 Q And you have alleged that an agency
8 relationship exists between NBSC and Steve
9 Lindsay.

10 What do you rely upon to make that
11 assertion?

12 A Just what I have learned ever since
13 this has been going on.

14 Q You are a real estate salesperson?

15 A Yes.

16 Q In that capacity which you have held
17 for 26 years you act as an agent for many
18 people, purchasers and sellers?

19 A Yes.

20 Q Are you familiar with the law of agency
21 in our state?

22 A Yes. I can't quote it as good as
23 marketability, but yes.

24 Q What do you believe the definition of
25 an agent is in our state?

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2 A To perform duties with -- I don't know.
3 Can you help me out please, Dan?

4 Q Well, I ask the questions.

5 A All right, agency. Agency is a
6 relationship between two parties where one might
7 ask the other to perform a duty, and it is a
8 duty expected to be relied upon as accurate and
9 in the most ethical and moral ways I guess.

10 Q Do you have any documentation or can
11 you provide any testimony that indicates that
12 NBSC had granted to the appraiser the right to
13 act as an agent for NBSC?

14 A I don't know.

15 Q Well, my question is do you have any
16 documentation or do you have any testimony that
17 would indicate that NBSC had granted an agency
18 to Mr. Lindsay?

19 A It would only be a guess, Dan. It is
20 not a yes or no answer. I do believe that I
21 have something of that nature, but again I don't
22 want to testify to something I am not a hundred
23 percent sure of.

24 Q Can you describe what you might have
25 then that would provide that?

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2 A Well, what I said earlier was, you
3 know, through six years of burden with this, it
4 is just the things that I have learned of whose
5 duties are what, and after my default with NBSC
6 on this lot based on my meeting with Doug Matney
7 and the appraisal in gross error, from that
8 point forward is where I just did further study
9 on a relationship between the bank and the
10 appraiser.

11 Q Mr. Segars, when you represent the
12 purchaser or seller typically they will enter
13 into an agreement with you, is that correct?

14 A Yes.

15 Q And that agreement grants -- typically
16 that agreement would grant you an agency
17 relationship with that party, is that correct?

18 A Yes.

19 Q It is an appointment, is that a fair
20 statement?

21 A I think so.

22 Q An appointment as agent?

23 A Yes.

24 Q Anyone that provides services to you,
25 you don't believe that they are an agent of

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2 yours, do you? In other words, if you hire a
3 subcontractor do you believe that that person
4 becomes an agent?

5 A That is two different things, Dan.
6 There is obviously real estate agency, and all I
7 know is that the bank hired a professional, a
8 certified appraiser for a job. Can I sit here
9 today and tell you that it is an agency
10 relationship and testify to it, no. I would
11 think that it is.

12 Q Okay.

13 A Dan, all I said earlier was I know that
14 I did rely -- I could not buy that lot, I was
15 relying on a loan. If I did not get the loan, I
16 could not buy the lot; and that loan was based
17 on an appraisal of a price I was willing to pay.

18 Q Okay.

19 Do you believe that Steve Lindsay
20 intentionally misrepresented the value of this
21 property?

22 A Probably not. Of course not. The
23 answer is no.

24 Q Do you believe that NBSC or Doug Matney
25 with NBSC intentionally misrepresented the value

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2 of this property to you?

3 A No, but I think they erred as well.

4 Q My question is simply --

5 A I'm sorry.

6 Q Do you believe they intentionally
7 misrepresented that?

8 A No.

9 Q How did NBSC err as well?

10 A Again, recent study. I learned that
11 typically what happens is the appraiser comes
12 in, the appraisal is reviewed by a committee,
13 and a committee makes a decision whether to
14 extend the loan or not.

15 Q Bear with me one second.

16 Now Mr. Segars, did there come a time
17 when you transferred and conveyed this property,
18 being lot 2 to a Kelly Segars?

19 A Yes, I think it transferred -- or yes,
20 I do think it officially did get transferred.

21 Q And Kelly Segars is your wife, is that
22 correct?

23 A Yes, that is correct.

24 Q And why did you transfer this property
25 to your wife?

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2 A Advice received.

3 Q Okay.

4 Was there any consideration for that
5 transfer?

6 A I don't recall.

7 Q My question is did she pay you anything
8 for it?

9 A I don't recall. And if she would have
10 it wouldn't have been much, but I don't recall.

11 Q I will show you without marking that,
12 does that refresh your recollection?

13 A Yes.

14 Q What consideration do you believe she
15 paid you for that property?

16 A I think it is \$10.

17 Q And did Kelly Segars then subsequently
18 transfer that property to KCS Investments, LLC?

19 A I believe that is correct, Dan.

20 Q And do you have any idea what the
21 reason for that transfer was?

22 A Advice received.

23 Q Is that advice of counsel?

24 A Actually, it was part counsel and
25 someone else. I don't recall who.

2 Q I don't want to ask any questions about
3 advice of counsel.

4 KCS Investments, LLC, is that a company
5 owned solely by your wife?

6 A It could be my wife and daughter.

7 MR. SAXON: I think that is all I
8 have.

9 CROSS-EXAMINATION

10 BY MR. FINN:

11 Q I am looking at Exhibit 13 to your
12 deposition.

13 Have you seen this document at the top,
14 just for reference purposes, appraisal review
15 form for loans greater than 250,000 or greater?

16 A I don't recall if I have ever seen that
17 one. I mean I wouldn't deny it if you told me I
18 did, but I don't recall specifically.

19 Q Is there anything on there that
20 indicates that the document is referencing your
21 lot 2 at Singleton Beach, the purchase you made?

22 A Yes.

23 Q Does this have under FDIC IA
24 calculations, does it indicate the loan amount
25 and description of the transaction?

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2 A It does. It is a loan amount of
3 1-million-360 and a value of 1.6 estimated value
4 of the land.

5 Q What is the transaction loan to value
6 percentage, what does that mean?

7 A Well, that typically banks will require
8 10, 20, 30 percent, whatever the percentage
9 might be from a buyer to put down an equity to
10 purchase based on certain markets and buyer
11 ability I guess.

12 Q Okay.

13 And this indicates that the appraiser's
14 firm is the Linsday Company?

15 A Yes.

16 Q And the appraiser is S. Linsday, is
17 that Steve Linsday?

18 A Yes.

19 Q So this is summary of the appraisal,
20 total value appraised was \$1.6 million?

21 A Yes.

22 Q The loan amount is 1,360,000?

23 A Yes.

24 Q Let me show you the second-to-last page
25 of that.

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2 A That looks to be a bank form.

3 Q Does that indicate -- who is this memo
4 from?

5 A Steve Linsday.

6 Q Who is it to?

7 A NBSC.

8 Q What does it appear to be?

9 A It appears to be an invoice with an
10 amount due of \$300.

11 Q Does it indicate for what?

12 A It indicates it was for the appraisal
13 of lot 2 Singleton Beach.

14 Q And then there is some handwriting on
15 there, what does it say?

16 A It says: Okay to pay. And initials on
17 June 4, '04.

18 Q Did you hire Steve Linsday or Linsday
19 Company to do an appraisal on lot 2?

20 A I did not.

21 Q Are you aware of whether the bank did?
22 By the bank I mean NBSC?

23 A Yes, the Bank NBSC hired Steve Linsday.

24 Q The bank hired the appraiser?

25 A Yes.

1 Q You indicated in direct questioning
2 from Mr. Saxon that you hadn't seen a hard copy
3 of the appraisal prior to the closing on this
4 particular property?
5

6 A Correct.

7 Q You were aware of how much -- as a
8 matter of fact there was a contingency that you
9 obtain a certain amount.

10 Was there a contingency, a financing
11 contingency in the contract of sale?

12 A Yes.

13 Q And what was the contingency?

14 A Based on a certain loan amount.

15 Q Was there a contingency based on the
16 appraised value as well? I mean I want to break
17 it down into two different things if I can.

18 Is there a loan amount and an appraised
19 value?

20 A Yes.

21 Q So there is two things.

22 What was the contingency on the
23 appraised value?

24 A The contingency on the actual purchase
25 of sale contract?

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2 Q Yes.

3 A It was based on the appraisal of 1.6,
4 and it was based on the loan amount of
5 a-million-360.

6 Q And the appraisal report indicates a
7 loan amount of 1-million-360 and a final
8 estimation of value of the land at 1.6, correct?

9 A Yes.

10 Q Getting back to my question, you didn't
11 receive a hard copy of that appraisal, correct?

12 A No, I did not. Tom, I think maybe you
13 were asking on our contract -- on my contract to
14 purchase I had agreed to pay 1.6, but I was only
15 asking the bank for a loan amount --

16 Q Right.

17 A -- Of a-million-360.

18 Now, if Mr. Lindsay would have
19 appraised it for a-million-360 I would not have
20 moved forward.

21 Q Right.

22 Mr. Saxon had asked you that if you
23 hadn't seen it, how could you rely on the
24 appraisal?

25 A Right.

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2 Q Were you made aware at any time that
3 the value, appraised value of the property prior
4 to closing was 1.6?

5 A Yes, and I did the same thing when we
6 purchased legal lot 3 as well.

7 Q But with respect to lot 2 you knew by
8 virtue of the fact that the bank is sending over
9 a check to the closing, and you knew how much
10 you were paying, correct?

11 A Yes.

12 Q Would that have happened had not the
13 appraised value been 1.6 million?

14 A No.

15 Q It is impossible for that to happen,
16 that transaction to close on these numbers, the
17 1-million-6 and the 1-million-360 had not the
18 appraisal been for 1.6?

19 A That is correct.

20 Q You had talked in your analysis and on
21 direct examination about the, I guess, the fair
22 market value? You remember that discussion?

23 A Yes.

24 Q And you had mentioned I think the
25 highest and best use, is that a real estate term

2 you recognize?

3 A It is.

4 Q We will look at page 4 of Exhibit 13,
5 and there is a lot of information I want to draw
6 your attention to.

7 Right about where my finger is is zone
8 classification, and then it has highest and best
9 use.

10 What did Mr. Lindsay of the Lindsay
11 Company indicate that the highest and best use
12 for lot 2 Singleton Beach was in his appraisal?

13 A Well, it is zoned residential.

14 Q If you follow that over does he
15 indicate what the highest and best use is?

16 A Well, yes, the intention of the entire
17 development was to subdivide the lots and for
18 the lots to be sold and for homes to be built on
19 the lots, and it states here improved with a
20 single-family dwelling.

21 Q So his appraisal actually indicates
22 that that would be the best use for the lot at
23 the time of his appraisal?

24 A That is what it is stating, yes.

25 Q To construct a single-family dwelling?

2 A The highest and best use to build a
3 home, yes.

4 Q So despite the fact that you did not
5 see a hard copy of the appraisal, the fact that
6 you closed is an indication that you relied upon
7 the appraisal?

8 MR. SAXON: Object to the form.

9 THE WITNESS: 100 percent.

10 BY MR. FINN:

11 Q The appraisal apparently had a plat
12 attached to it, is that a fair statement?

13 A Yes.

14 Q The plat is partially obstructed by
15 some kind of document or something. I don't
16 know what that is but --

17 You had the opportunity to look at the
18 appraisal sometime after the transaction was
19 closed, correct?

20 A Yes. I don't know if I received it six
21 months after the closing or just when default;
22 but yes, I did review the appraisal after the
23 closing.

24 Q What if anything did you learn from the
25 appraisal?

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2 A At that point in time when I studied
3 the appraisal is when I recognized that the
4 appraisal was based on the subsequent plat, not
5 the plat that people were willing to pay money
6 for.

7 Q So when you did what we will call your
8 due diligence --

9 A Yes.

10 Q -- The plat that was available to
11 you --

12 A Right!

13 Q -- Was not the plat that was attached
14 to the appraisal?

15 A That is correct.

16 Q And explain if you could for me the
17 differences between the two plats. And which
18 one was attached and which one wasn't?

19 A Well, Exhibit 1 is the plat that was
20 recorded in January of '03. This is the plat
21 that I reviewed with Counsel. House plans were
22 provided, the seller provided -- as a matter of
23 fact, I don't want to make a statement of
24 inaccuracy, but there is a strong likelihood of
25 when I went to apply for the loan that this plat

2 was reviewed with Doug Matney. But neither here
3 nor there, based on this plat --

4 Q You are talking about Exhibit 1?

5 A Exhibit 1. In purchasing lot 2 I could
6 build a home of approximately 4,000 square feet.
7 And at that point in time the market value based
8 on this plat I felt it was worth 1.6.

9 Q Now, how does Exhibit 2 come into play?

10 A Well, Exhibit 2 came into play
11 specifically because the developer had recorded
12 a fraudulent document and was forced to have a
13 plat redone and re-recorded.

14 Q And that plat was recorded prior to the
15 closing?

16 A That is correct.

17 Q But you were not aware of that plat?

18 A I was not.

19 Q What is the significance of Exhibit
20 Number 2 with respect to lot 2 Singleton Beach?

21 A It has the OCRM critical line in a
22 location that prohibits the building of a home
23 based on the length of the lot.

24 Q And Exhibit 2 appears to be what Steve
25 Lindsay had available to him when he did his

2 appraisal?

3 A It does appear so, and if he would have
4 used Exhibit 1 he would be in error for the
5 bank, because this was not the plat of recording
6 the day of closing.

7 Q Right.

8 A So he did his job in the fact that he
9 had the correct plat.

10 Q The latest plat prior to closing?

11 A The latest plat, but he failed at his
12 job because he did not measure the length to
13 determine that it was of -- as a matter of fact
14 I have a statement from Steve Lindsay to
15 Beaufort County stating that if the line is in
16 this place it is not only of little value, but
17 maybe a liability.

18 Q All right.

19 The Exhibit Number 2 which was attached
20 to the appraisal, which was available to Steve
21 Lindsay who was hired by the bank, indicates
22 that the restrictions on the various lots are
23 such that it is unbuildable, is that a true
24 statement?

25 A That is a true statement.

1 FINN - SEGARS (CROSS-EXAMINATION)

95

2 MR. SAXON: Off the record.

3 (Whereupon, an off-the-record
4 discussion was held.)

5 BY MR. FINN:

6 Q When did the issue arise as to what
7 could be built on lot 2 or what couldn't be
8 built arise?

9 A I don't recall what date that would
10 have been, Tom.

11 Q At some point did you learn that there
12 were -- that there was some issue with respect
13 to lot 2? Do you know when that was?

14 A Yes, two weeks after closing the plat
15 was revoked by the Town of Hilton Head Island
16 which restricted building. The plat was revoked
17 up until September of '06 based on an inaccurate
18 easement.

19 But sometime leading up to September
20 '06 also there was a discovery that the baseline
21 had not been moved, which would also prohibit
22 building.

23 Q Okay.

24 MR. FINN: That is all I am going
25 to ask right now.

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1 SAXON - SEGARS (REDIRECT EXAMINATION)

96

2 MR. SAXON: Off the record.

3 (Whereupon, an off-the-record
4 discussion was held.)

5 REDIRECT EXAMINATION

6 BY MR. SAXON:

7 Q Mr. Segars, your attorney asked you
8 some questions about contingencies of this
9 contract, and one of the things that I believe I
10 heard you testify is that a contingency was that
11 the property appraise at \$1.6 million and that
12 you obtain a loan for \$1,360,000.

13 Is that your understanding of the
14 contract?

15 A That could be inaccurate if that is
16 what I said. My understanding of the contract
17 was it was based on me receiving a loan of this
18 dollar amount being a-million-360.

19 Q There was no contingency in this
20 contract that the property appraise at 1.6
21 million, is that correct?

22 A Not in this contract, that is correct.
23 It was part of a condition of the loan from the
24 bank, but not part of this contract.

25 Q Then looking now at Plaintiff's Exhibit

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2 6, which is that loan commitment?

3 A Yes.

4 Q This loan commitment contains a variety
5 of requirements for the bank to agree to loan
6 this money. I think we have gone over this
7 before. One of those is an appraisal, and it
8 indicates subject to an appraisal acceptable to
9 the bank the amount of \$1.6 million or greater,
10 is that correct?

11 A Yes.

12 Q And you understand this is a
13 requirement that the bank placed in its
14 commitment to secure its promissory note to you
15 on the property?

16 A I'm sorry?

17 Q Let me rephrase that.

18 A Okay.

19 Q Did you believe that that contingency
20 was for your benefit or for the bank's benefit?

21 A I would answer the bank.

22 Q And at the time that this loan was made
23 you were an existing customer with the bank, is
24 that correct?

25 A Yes.

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2 Q You had a number of loans with the
3 bank, is that correct?

4 A That is correct.

5 Q And you were paying on time on all of
6 those loans?

7 A Yes.

8 Q Looking back at Plaintiff's Exhibit 13,
9 which is the appraisal on the property, does
10 that appraisal indicate anywhere therein that
11 you can build a 4,000 square foot house on this
12 property?

13 A I don't think so.

14 Q Comparables number 1, 2 and 3 which are
15 shown on this, are any of those properties
16 improved?

17 A No.

18 Q So they are shown as being the value --
19 according to this appraisal the value of each of
20 those properties --

21 A Uh-huh.

22 Q -- At the time of sale, unimproved, and
23 that was the amount as reflected and we assume
24 is what a third party purchaser was willing to
25 pay a seller for these properties?

2 A That is not accurate, because those
3 were not knowing buyers of the plat we received.

4 Q I understand your position.

5 My question is these are the amounts
6 that were paid by third parties --

7 A Yes, that is correct.

8 Q -- To sellers on properties directly in
9 the same subdivision as lot 2?

10 A Yes.

11 Q One thing I just want to make sure I
12 understand, you testified on redirect that the
13 developer was forced to re-record a fraudulent
14 document?

15 A No.

16 Q Okay.

17 A If I am correct on what I learned, Dan,
18 when the future baseline plat, Exhibit 1 was
19 recorded, it was sometime after this date prior
20 to the recording of Exhibit 2, a subsequent
21 plat, is when the town discovered a fraudulent
22 document erasing the location of the easement.

23 Q Okay.

24 A So sometime after January '03 the town
25 makes discovery of a fraudulent document, and

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2 based on their discovery of the fraud I
3 understand he spent the night in jail, and they
4 required him to record a subsequent plat, being
5 Exhibit 2.

6 Q All right.

7 A And basically it was denying what they
8 had previously agreed to, being the seaward
9 movement of the baseline to the crest of the
10 dunes. The town had agreed and then they
11 withdrew their agreement and forced the
12 recording of the second plat.

13 Q And I think you testified subsequent to
14 that, that the town filed a document which
15 purported to revoke its approval of the plat
16 marked as Plaintiff's Exhibit 2, is that
17 correct?

18 A You know what, this is the plat they
19 revoked, I believe, because that was the plat of
20 record. That is correct. We thought it was
21 this plat, but that is the plat that was
22 revoked.

23 Q But that revocation document which was
24 recorded occurred after the closing of lot 2?

25 A Yes.

1 SAXON - SEGARS (REDIRECT EXAMINATION)

101

2 Q One more thing, this is a follow-up on
3 the question your attorney asked.

4 As I recall his question was in essence
5 that from the face of this plat Mr. Lindsay
6 could have determined that this lot was
7 unbuildable, and I believe your answer was yes?

8 A Yes.

9 Q How could he have determined from the
10 face of this document that that lot was
11 unbuildable?

12 A I don't think this particular
13 document --

14 MR. FINN: Exhibit 2.

15 THE WITNESS: Exhibit 2 could be
16 used to determine the true accuracy
17 because of the scale. And so any
18 appraiser appraising market value for
19 highest and best use would need to have
20 accurate information to determine the
21 value; and so if this is a photocopy,
22 Dan, this would not be reliable at all.
23 He would have to have a full plat true
24 to scale.

25 BY MR. SAXON:

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2 Q Do you know if he had a full plat true
3 to scale?

4 A I have no idea.

5 Q My follow-up question then is, this
6 plat does not demonstrate that lot number 2 is
7 unbuildable, does it?

8 A Well, yes, it does.

9 If anyone were to use this and use his
10 scale, which would be inaccurate, it would still
11 prove that this lot would be unbuildable.

12 Q The actual -- are you telling me that
13 you believe this scale is inaccurate?

14 A Based on the reduction of the plat.

15 Q Assume that there was an unreduced
16 version of the plat?

17 A Yes.

18 Q From that unreduced version of this
19 Exhibit 2 the face of the plat itself does not
20 demonstrate that lot 2 is an unbuildable lot,
21 does it?

22 A Yes, it does, because all appraisers
23 are aware of critical lines, buffers, and
24 setbacks.

25 Q Okay.

1 A Now, if you are asking me does it
2 visually say unbuildable, unbuildable, the
3 answer is no. But all I am saying is whether
4 any commercial lot or any residential lot,
5 highest and best use, number 1, is the easiest
6 thing; but secondly a lot down here, lot 8 or
7 lot 9, if they have more acreage and can hold a
8 7,000 square foot home, where lot 2 can hold a
9 4,000, then the land value would be appraised
10 more down here.

11 Q I'm sorry, is it your position that the
12 covenants of Singleton Beach prevent a building
13 on lot 2? Just without the covenants in place
14 lot 2 could be built upon? It wouldn't hold a
15 4,000 square foot house, but it could be built
16 upon, is that correct?

17 A Whether the home were a thousand or
18 1500 square feet, I believe the town would
19 likely give a permit to build a home. But you
20 are correct that the covenants that govern and
21 rule the land prohibit anything less than 2500
22 square feet.

23 Q And this plat doesn't demonstrate the
24 covenants themselves or provide for those
25

2 buffers or those minimum square foot
3 requirements?

4 A It does not.

5 Q You know what those minimum square foot
6 requirements are?

7 A Yes.

8 Q Your primary residence where you have
9 lived --

10 A Yes.

11 Q -- is subject to those very same
12 covenants?

13 A Yes.

14 Q Is the extension property, that being
15 lots 1 through ten shown on this plat, is that
16 subject to the original covenants, Singleton
17 Beach covenants, or is that a supplemental set
18 of covenants?

19 A I believe it was a supplemental.

20 Q Does the same square footage exceptions
21 apply to the extensions?

22 A I do think so.

23 Q All right.

24 Now, I want to get back to this issue
25 of when you knew or discovered, for lack of a

1 SAXON - SEGARS (REDIRECT EXAMINATION)

105

2 better word, that there was a problem with
3 constructing a 4,000 foot house on this
4 property.

5 Did there come a time when Ed Flynn
6 made an application before an administrative
7 court to have the OCRM line moved?

8 A I think so.

9 Q Do you recall when that was?

10 A I don't.

11 Q Before he filed that administrative law
12 case did he make an application to have the OCRM
13 line moved?

14 A I don't know specifically.

15 Q Did any of the owners that you are
16 aware of of lot 1 through ten make an
17 application to have the OCRM lot line moved
18 following your closing of lot 2?

19 A I don't know specifically. I may have
20 even started or made the -- but I don't recall
21 specifically, Dan, a yes or no answer. I don't
22 know.

23 Q Is it true that you essentially
24 retained Cotton Harness in March of 2005 to
25 intervene on an existing administrative law case

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2 to have the OCRM line reset?

3 A I was one of the owners that did agree
4 to hire Cotton Harness. I don't recall the
5 dates.

6 Q If you have previously testified that
7 that would have been in March of 2005, do you
8 believe that would be accurate?

9 A I would not argue that, if that is what
10 I have testified to.

11 Q So at some point following closing and
12 possibly as early as March of 2005 you were
13 aware that you had a problem with building on
14 this property?

15 A That is a fair statement.

16 Q Has the OCRM line since been moved?

17 A Yes.

18 Q Where is it now located?

19 A Dan, I think it is actually maybe close
20 to a foot further seaward than we originally
21 agreed to. It is right within inches away. It
22 is very close.

23 Q When was that approval to move that
24 OCRM line granted?

25 A November '09.

2 Q Well, I don't want to state the
3 obvious, but I am going to.

4 In 2004 when you purchased lot 2 we
5 were in your opinion as an expert in the real
6 estate profession, we were nearly at the height
7 of the market values for Hilton Head Island,
8 would you agree with that?

9 A That is a fair statement.

10 Q And after that time because of the
11 economic recession at least nationwide real
12 estate values have dropped considerably in our
13 area?

14 A Yes.

15 Q And beach front property has been hit
16 harder, more hard, less hard than others? What
17 would your opinion be?

18 A I don't -- I couldn't answer with
19 confidence. As bad. Equal to. I --

20 MR. SAXON: That is all I have.

21 MR. FINN: I don't have anything
22 else.

23 (Whereupon, the deposition of
24 Thaddeus F. Segars was concluded
25 at approximately 4:02 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Ceil Weser, CSR and Notary

Public in and for the above county and state, do

hereby certify that the foregoing testimony was

taken before me at the time and place

herein before set forth; that the witness was by

me first duly sworn to testify to the truth, the

whole truth, and nothing but the truth, that

thereupon the foregoing testimony was later

reduced by computer transcription; and I certify

that this is a true and correct transcript of my

stenographic notes so taken.

I further certify that I am not of

counsel to either party, nor interested in the

event of this cause.

Ceil Weser, CCR

Notary Public

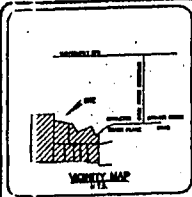
Beaufort, South Carolina

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

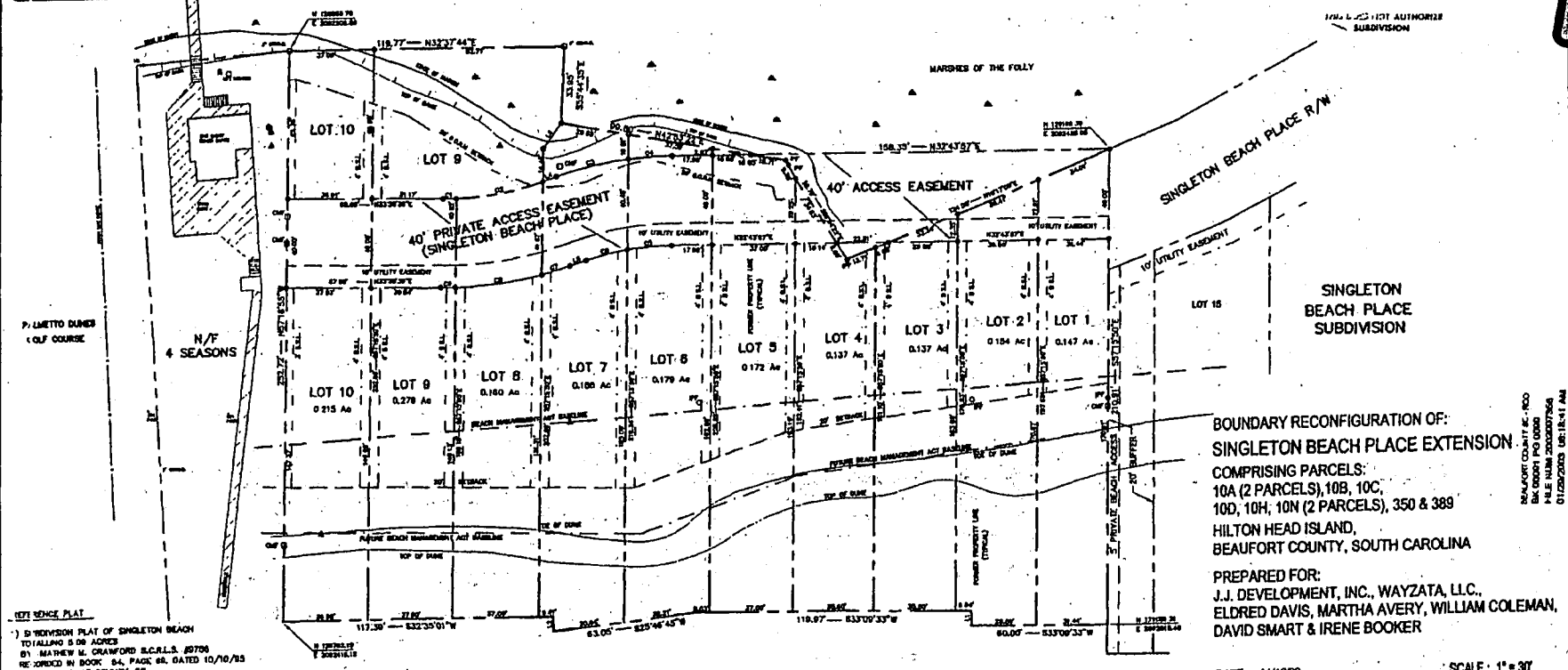
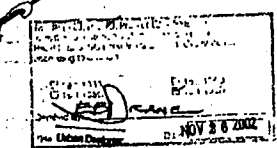
HILTON HEAD - BEAUFORT - SAVANNAH

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LINE	LENGTH	BEARING
1	118.77	N32°37'44"E
2	118.77	N32°37'44"E
3	118.77	N32°37'44"E
4	118.77	N32°37'44"E

LINE	LENGTH	BEARING	AREA
1	118.77	N32°37'44"E	0.100
2	118.77	N32°37'44"E	0.100
3	118.77	N32°37'44"E	0.100
4	118.77	N32°37'44"E	0.100



NOT REVENUE PLAT
 1) S. TREVISON PLAT OF SINGLETON BEACH
 TOTALING 5.00 ACRES
 BY: MATTHEW M. CRAWFORD S.C.L.S. #9708
 RECORDED IN BOOK 84, PAGE 68, DATED 10/10/85
 IN: 2. BEAUFORT COUNTY, SC

PROPERTY AREA = 1.765 AC.
 DISTRICT: R510, - MAP: 12, PARCEL: VARIOUS
 THIS PROPERTY LIES IN F.E.M.A.
 COMMUNITY #: 450250
 PARCEL #: 0014 D
 DATE: 9/29/88
 FLOOD ZONE: VARIOUS

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

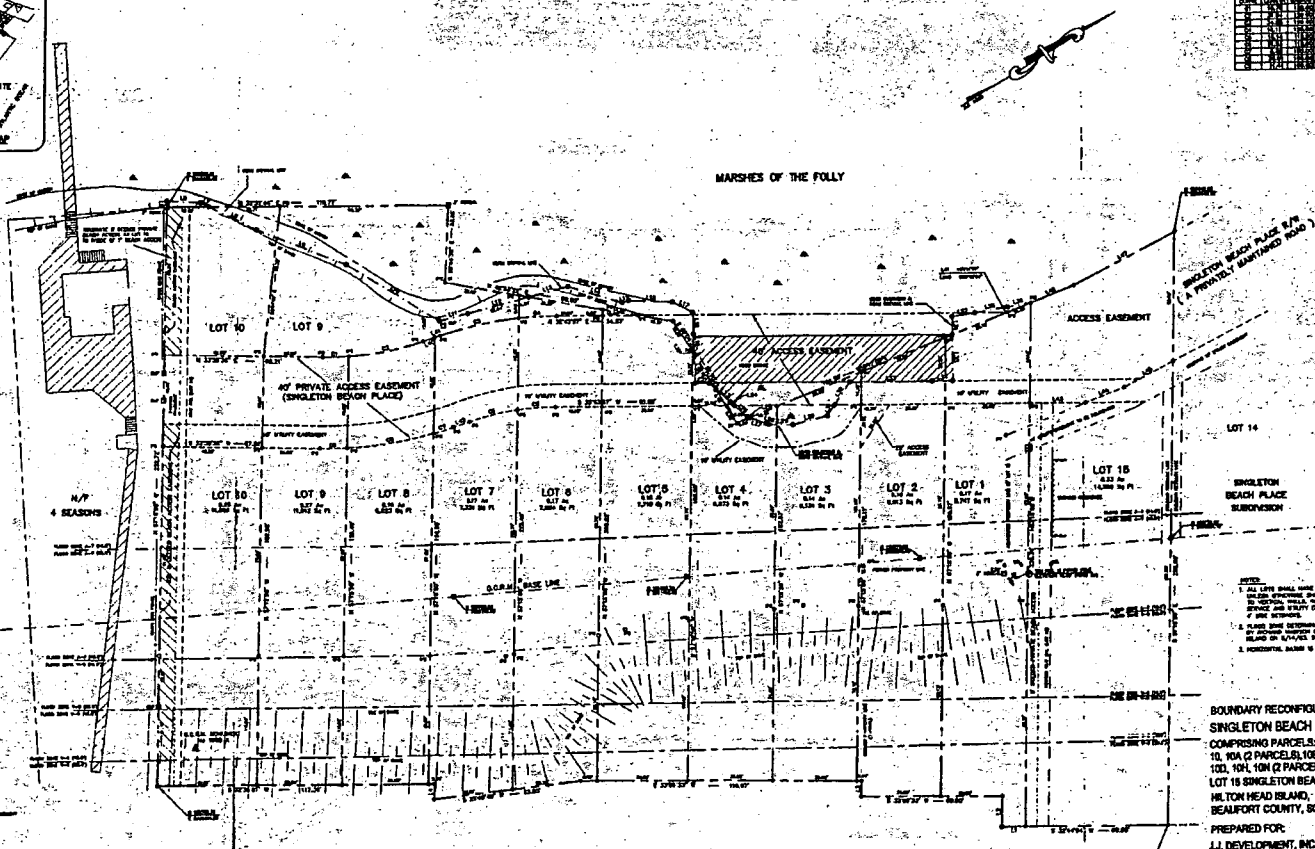


BOUNDARY RECONFIGURATION OF:
 SINGLETON BEACH PLACE EXTENSION
 COMPRISING PARCELS:
 10A (2 PARCELS), 10B, 10C,
 10D, 10H, 10N (2 PARCELS), 350 & 389
 HILTON HEAD ISLAND,
 BEAUFORT COUNTY, SOUTH CAROLINA
 PREPARED FOR:
 J.J. DEVELOPMENT, INC., WAYZATA, LLC,
 ELDRED DAVIS, MARTHA AVERY, WILLIAM COLEMAN,
 DAVID SMART & IRENE BOOKER

DATE: 11/12/02 SCALE: 1" = 30'
 Sea Island Land Survey, LLC.
 P.O. Box 21568, Hilton Head Island, SC 29925 Tel: (843) 681-3248
 4-D Mathews Court, Hilton Head Island, SC 29926 Fax: (843) 689-3871
 FILE No: 02351 DWG No.: 3-809F
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9/1/90



NAME	LAST	FIRST	MIDDLE	DATE OF BIRTH	PLACE OF BIRTH	EDUCATION	RELIGION	POLITICAL PARTY	STATUS
1	WILLIAM	JOHN	WILLIAM	1910	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
2	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
3	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
4	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
5	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
6	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
7	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
8	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
9	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED
10	JOHN	JOHN	JOHN	1915	NEW YORK	COLLEGE	PROTESTANT	DEMOCRAT	RETIRED

LINE	TIME	NAME	ADDRESS
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3	102	JOHN	102
4	103	JOHN	103
5	104	JOHN	104
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112	211	JOHN	211
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115	214	JOHN	214
116	2		

1. ALL LETTERS SHALL HAVE A 4" SIDE BURNING STRICH LINE. BURNING EXTENSIVE BURNING. BURNING STRICH LINE ARE TO VERTICAL, HORIZONTAL, AND DIAGONAL. STRICH LINE AND SERVICE AND IF ANY ENCLOSURES ARE PERMITTED BY 4" SIDE BURNING.
2. PLANT SIDE DETERMINATION AND COPIED BY DETERMINATION OF THE YEAR OF PLANT HEAD BEARS ON 8-1/2" X 11" SIDE BURNING 3-10-13
3. DETERMINATION OF THE YEAR OF PLANT HEAD BEARS ON 8-1/2" X 11" SIDE BURNING 3-10-13

BOUNDARY RECONFIGURATION OF:
SINGLETON BEACH PLACE EXTENSION
COMPRISING PARCELS:
10, 10A (2 PARCELS), 10B, 10C,
10D, 10H, 10N (2 PARCELS), 300 & 309
LOT 15 SINGLETON BEACH PLACE,
HILTON HEAD ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:
J.J. DEVELOPMENT, INC., WAYZATA LIMITED PARTNERSHIP
AND RICHARDSON STREET PARTNERS, LLC.

DATE: 12/24/49

See Island Land Survey, LLC.
P.O. Box 21988, Hilton Head Island, SC 29925 Tel (843) 681-3346
400 Mainland Court, Hilton Head Island, SC 29928 Fax (843) 686-3271

FILE NO: 63-10000

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1

6. *Chlorophyll a* and *Chlorophyll b* contents were determined by the method of Lichtenthaler and Sponholz (1980).

Journal of Management Education 30(6)

Journal of Management Education 30(6)p.789-804

...and the other is the fact that the system is not yet fully developed. The system is still in the process of being developed, and it is not yet clear what the final outcome will be. The system is still in the process of being developed, and it is not yet clear what the final outcome will be.

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POINTIFF'S
EXHIBIT

09/1/96

LOT. CONTRACT.

775.001
5538.008

FROM : DUNES MARKETING GROUP

FRX NO. : 8438424185

Mar. 15 2004 10:53AM P1

Post Office Box 21316
Hilton Head Island
South Carolina 29925

DUNES MARKETING GROUP

(843) 842-1111
(800) 259-5103
Fax Number (843) 842-4781

CONTRACT OF SALE - OFFER AND ACCEPTANCE

B.C.C. + S. partners S.C. Lic. Agents
("Purchaser")

whose address is: _____

Hereby agrees to purchase from:

Richardson Street Partners
("Seller")

whose address is: _____

1. **PROPERTY DESCRIPTION.** Seller hereby agrees to sell all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in South Carolina and being described as follows:

Legal: Lot 2a Singleton Beach Estates

Mailing: _____ (the "Property")

2. **PURCHASE PRICE.** The total Purchase Price for the Property is \$ 1,600,000
to be paid by Purchaser as follows:

a.	Earnest Money deposited herewith ("Deposit")	\$ <u>10,000</u>
b.	Additional Deposit to be paid by <u>3/31/04</u>	\$ <u>15,000</u>
c.	A First Mortgage for at least _____ years	\$ <u>1,360,000</u>
d.	at prevailing interest rates and terms	\$ <u>215,000</u>
	Balance in cash at Closing	

3. **FINANCING CONTINGENCY.** If referred to in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing referenced above from a lender customarily making such loans in Beaufort County and the surrounding area. Purchaser shall use best efforts to obtain such a loan and shall supply the prospective lender(s) with all requisite information. The timing of this financing contingency is as follows:

- Purchaser's loan application must be submitted within 15 days.
- Purchaser shall obtain a comfort letter from the lender within 25 days.
- Purchaser shall obtain a loan commitment within 35 days.

All time periods run from the date of this Contract. The "comfort letter" is to be in a form customarily used by lenders in Beaufort County.

If Purchaser's bona fide application does not result in a commitment within the above time frame, Purchaser shall have the affirmative obligation of notifying Seller or Seller's agent in writing that the financing contingency has not been satisfied and that the Purchaser has elected to terminate this Contract for failure to obtain financing. Such notice must be received by Seller or Seller's agent not later than five (5) days after the financing contingency expiration date. Upon receipt of notice and execution of any required release forms, the Listing Agency (or other Escrow Agent holding the funds) shall return to the Purchaser any sums heretofore paid as earnest money, and upon such payment, this Contract shall have no force and effect and neither party hereto shall have any rights against the other hereunder. Notwithstanding the right to cure time period contained in Section 3, the parties acknowledge and agree that time is of the essence with respect to all time periods contained within this Section 3. No right to cure shall apply to the periods contained in this Section 3. If any requisite action called for by this Section is not taken within the time periods contained in this Section, the financing contingency shall be deemed waived.

WITNESSES: Initials: PURCHASER 77 DATE 3-15-04 SELLER 77 DATE 3-15-04 (Page 1)

FROM : DUNES MARKETING GROUP

FAX NO. : 8439424185

Mar. 15 2004 18:54PM P2

4. **FURNISHINGS, SYSTEMS.** The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property and all plumbing and other equipment, and shall additionally include without limitation the following:

☐ Refrigerator ☐ Freezer ☐ Washer ☐ Dryer ☐ Stove/Oven ☐ Microwave ☐ Cook Top
☐ Dishwasher ☐ Ceiling Fans ☐ Irrigation System ☐ Pool Equipment ☐ Septic System ☐ Furnished
☐ Other _____

If sold furnished, all furniture & furnishings is included unless specifically excepted by an attached list of excluded items. All appliances, heating, air conditioning, electrical and plumbing systems and fireplace shall be in good working order subject to reasonable wear and tear, which does not adversely affect the normal and regular use thereof. Further, the structure shall be reasonably sound and the roof free of leaks at time of Closing.

5. **WOOD INFESTATION REPORT.** Seller agrees to provide at its expense at Closing an "Official South Carolina Wood Infestation Report (CI-100)" in which no infestation or damage is reported or if there is damage observed, that it is insufficient to recommend repair. Such report must be dated within 45 days of the Closing and shall be provided to Purchaser's closing attorney not less than seven (7) days prior to closing. If infestation or sufficient damage is observed, Seller shall cause same to be repaired prior to closing or permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the cost of such repair.

6. **OTHER TERMS.** Other terms and conditions of this Contract are:

Buyers have until 5/13/04 to close due diligence.

7. **DATE OF CLOSING.** The closing of this Contract shall take place on or before May 31, 2004 (the "Closing") at the office of Purchaser's attorney or other offices stipulated by Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing. Seller and Purchaser 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.

8. **CONDITION OF PROPERTY.** Purchaser has viewed the premises and, subject to the terms set forth in Section 4, Section 5 or Section 10, is purchasing the Property in its present condition "as is," except for:

The parties understand that "as is" means that the property is being conveyed in the condition in which it is presently found subject to the aforementioned sections. Purchaser shall be permitted to have an inspection of the property performed to insure that all heating, air-conditioning, electrical and plumbing systems, fireplace, and appliances are in good working order and that the home is structurally sound and free from leaks in accordance with the requirements of Section 4. At Closing, the Property shall be delivered in the same condition as existing at the time of this Contract except for those required improvements or agreed upon repairs. The Selling Agent recommends that Purchaser obtain an inspection.

9. **DEPOSITS/DEFAULT.** All money deposited by Purchaser hereunder shall be applied toward the Purchase Price at Closing. Upon the failure of either party to comply with the terms hereof within the stipulated time, and after receipt of notice of said default with a ten (10) day right to cure, it is understood and agreed by and between the parties hereto that either party may proceed with all rights and remedies at law or in equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. The parties agree that the Escrow Agent shall not disburse the Deposit until Seller and Purchaser have executed a release form authorizing the disbursement or until a court of competent jurisdiction has directed a disbursement. In the event of a forfeiture of the Deposit, it shall be divided equally between Seller and the Listing Agency; provided, however, that the amount to be received by the Listing Agency shall not exceed the amount of the commission it would have earned had this sale been completed. In the event of any litigation commenced because of a default hereunder, the prevailing parties in such litigation shall be entitled to recover attorney fees and court costs from the non-prevailing parties.

1004-01

Printed Name: _____

7d

3-15-04

Seller: _____

Date: _____

(Page 2)

FROM : DUNES MARKETING GROUP

FAX NO. : 8439424195

Mar. 15 2004 10:55AM P3

The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its attorney fees, cost disbursements, and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims and demands arising out of this transaction relating to the holding of the Deposit. In the event of a dispute between the Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the Deposit into the Clerk of Court's Office, pending resolution of the disposition of said funds, and Escrow Agent shall bear no further responsibility for said Deposit. The Purchaser hereby acknowledges that the Deposit shall be held in escrow by the Escrow Agent. Wesley Newton

10. **RISK OF LOSS AND DAMAGE.** In case the Property is wholly or partially damaged by fire, storm or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or terminate this Contract and receive back all money deposited hereunder. In the event the Property is damaged by the Purchaser, or by any person upon the Property on the Purchaser's behalf (i.e. - inspector), such damage shall be repaired by Purchaser.

11. **PRORATIONS; CLOSING COSTS; ASSESSMENTS.** All expenses of ownership (and rents, if any) shall be prorated to the date of Closing. Purchaser is responsible for any applicable real estate transfer fees. Seller shall be responsible for the South Carolina deed-recording fee required by SC Code §12-24-10. Purchaser shall be responsible for County recording fees for the deed and any mortgage. Purchaser shall pay the cost of securing a title examination, title insurance, and a survey (except a Beach Protection Act survey, which is the responsibility of Seller); each party shall pay its own attorney's fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any regular or property owner association special assessment approved by its Board of Directors or similar body prior to closing; provided, however, a special assessment to cover insurance premiums, whenever assessed prior to closing, shall be prorated based on ownership over the period covered by the premium.

12. **BROKER DISCLAIMER.** Seller and Purchaser agree that the Selling Agency & Listing Agency are acting only as real estate agents in this transaction and as such have no responsibility for and make no oral or written representations concerning the condition of the premises, terms of the sale or title to the Property, nor are they responsible or accountable for payment of the Purchase Price or for any other funds, except the Deposit. Neither Agency guarantees payment of any check received as deposit money hereunder. Seller and Purchaser acknowledge that the Agencies: (1) give no guaranty or warranty of any kind, express or implied, as to the physical condition of the Property; (2) give no warranty, express or implied, as to the merchantability or fitness for a particular purpose regarding the Property; (3) give no guaranty or warranty concerning any inspection or report concerning the Property or the accuracy of any published square footage of the Property; (4) give no guarantees or warranties regarding any rental income or other economic benefit of the Property to Purchaser; (5) give no guarantees or warranties regarding any regular or property owner association special assessments which may apply to the Property; and (6) are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure Statement.

13. **TITLE.** Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments. If an owner's title binder can be issued by an ALTA title insurance company in standard rates with standard exceptions for the Beaufort County area, title shall be deemed to be marketable. Purchaser acknowledges that Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. If the Property is a condominium or subject to covenants or restrictions, Purchaser shall have the obligation to verify all regular and property owner regular or special assessments.

14. **NON-RESIDENT TAX WITHHOLDING.** Seller shall comply with the provisions of South Carolina Code §12-9-310 and U.S. Internal Revenue Code §1445 (21 amended) regarding withholding requirements for sellers who are not South Carolina or U.S. residents.

WITNESSES:

SIGNED: PURCHASER

DATE: 3-11-04

SIGNED:

DATE:

(Page 3)

FROM : DUNES MARKETING GROUP

FAX NO. : 6438424185

Mar, 15 2004 10:55AM P4

15. STATUTORY AND OTHER ADDENDA.

- a. The South Carolina Real Estate Agency Disclosure form is attached hereto and incorporated herein.
- b. The Beach Management Act is ☐ is not ☐ applicable to this Contract; if applicable, attached hereto and incorporated herein is the requisite Beach Management Act Disclosure Addendum.
- c. The Purchaser has ☐ has not ☐ reviewed a South Carolina Property Condition Disclosure Statement.
- d. The South Carolina Vacation Rental Act does ☐ does not ☐ apply to this transaction.
- e. This Contract applies ☐ does not apply ☐ to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint Contingency Addendum and the Lead Based Paint Disclosure, both of which are attached hereto and incorporated herein.
- f. Flood Insurance is required ☐ is not required ☐ for any federally insured mortgage on the Property.
- g. An Inspection Report Addendum is ☐ is not ☐ attached to this Contract and incorporated herein by reference.
- h. Also attached hereto and incorporated herein are the following Addenda:

16. MISCELLANEOUS. The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Contract may be executed in counterparts, each of which shall be deemed to be an original. The parties agree that any offer, counteroffer, and/or acceptance may be communicated by the use of facsimile (FAX) and that 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 originals were present on the documents in the handwriting of each party. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right granted hereunder or to insist upon strict compliance with any obligation specified herein, and no practice at variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that: (i) the persons executing this Contract are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing and the undersigned individuals agree that the principals of the purchasing entity will personally endorse any financing described above if required by the lender. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns. This Contract may not be assigned by Purchaser without Seller's written consent. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.

witness:

Initials: Purchaser

Date 3-4-04

Seller

Date

3-15-04

(Page 4)

FROM : DUNES MARKETING GROUP

FAX NO. : 8438424185

Mar. 15 2004 10:56AM PS

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. PURCHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth beneath their respective signatures. The latter date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

WITNESSES:

Purchaser

Date

Purchaser

Date

Seller

Date

Seller

Date

Listing Agent:

Selling Agent:

Company:

Company: DUNES MARKETING GROUP, a
Division of The Byrne Corporation

(The foregoing form may be used only by members in good standing of the Hilton Head Area Association of REALTORS®.)

Revised 7/28/03

*Seller agrees to pay Dunes Mkt. 4% comm
of sales price.*

_____ This is the unmodified Hilton Head Area Association of REALTORS® recommended contract form.

_____ This form has been modified from that recommended by the Hilton Head Area Association of REALTORS®.

(Initials)

Initials

Purchaser

Date

2/1/04

Seller

Date

2/1/04

(Page 5)

CREDIT APPLICATION

Application Number: 0000031800

IMPORTANT APPLICANT INFORMATION: Federal law requires financial institutions to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information. The information you provide is protected by our privacy policy and federal law.

TYPE OF CREDIT REQUESTED

- IMPORTANT: Check (✓) the appropriate boxes below and complete the applicable sections.
- ☒ SECURED ☒ INDIVIDUAL CREDIT - relying solely on my income or assets
- ☐ UNSECURED ☐ INDIVIDUAL CREDIT - relying on my income or assets as well as income or assets from other sources
- ☐ JOINT CREDIT - We intend to apply for joint credit. (Initials)

DATE 5/18/04 CLASS NO. _____

ACCOUNT NO. 0001234567

APPROVED ☐ BY _____

DECLINED ☐ BY _____

AMOUNT REQUESTED \$ 1360000.00 FOR HOW LONG 12 MONTHS PAYMENT DATE DESIRED 07/15/2004 WANT TO REPAY ☒ MONTHLY ☐

PROCEEDS OF LOAN TO BE USED FOR: PURCHASE SINGLETON BEACH LOT

SECTION A - INDIVIDUAL APPLICANT INFORMATION

NAME (Last, First, Middle)
THADDEUS F SEGARS

BIRTHDATE 01/01/1964 TELEPHONE NO. 843-842-1111 DRIVER'S LICENSE NO. _____ SOCIAL SECURITY NO. _____ NO. DEPENDENTS _____ AGES OF DEPENDENTS _____

ADDRESS (Street, City, State & Zip) _____, SC 29928-5326 COUNTY BEAUFORT Do you ☐ own or ☐ rent? 0* - HOW LONG yrs-mos

PREVIOUS ADDRESS (Street, City, State & Zip) (Complete if less than 3 years at present address) _____ COUNTY _____ Did you ☐ own or ☐ rent? 0* - HOW LONG yrs-mos

EMPLOYER (Company Name & Address)
SEGARS & ASSOCIATES HOW LONG yrs-mos 0*

BUSINESS PHONE Ext. _____ POSITION OR TITLE SELF-EMPLOYED SALARY PER MONTH GROSS: \$. *0 NET: \$ _____

PREVIOUS EMPLOYER (Company Name & Address) _____ HOW LONG yrs-mos _____

NAME AND ADDRESS OF NEAREST RELATIVE NOT LIVING WITH YOU _____ RELATIONSHIP _____ TEL. _____

Alimony, 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 obligation.

Alimony, child support, separate maintenance received under: ☐ Court Order ☐ Written Agreement ☐ Oral Understanding

SOURCES OF OTHER INCOME _____ \$. *0

PLAINTIFF'S EXHIBIT

SECTION B - JOINT APPLICANT OR OTHER PARTY INFORMATION

Complete only if: for joint credit, for individual credit relying on income or assets from other sources, or applicant is married and resides in a community property state.

NAME (Last, First, Middle) _____

BIRTHDATE _____ TELEPHONE NO. _____ DRIVER'S LICENSE NO. _____ SOCIAL SECURITY NO. _____ NO. DEPENDENTS _____ AGES OF DEPENDENTS _____

RELATIONSHIP TO APPLICANT (If Any) _____ PRESENT ADDRESS (Street, City, State & Zip) _____ HOW LONG yrs-mos _____

EMPLOYER (Company Name & Address) _____ HOW LONG yrs-mos _____

BUSINESS PHONE Ext. _____ POSITION OR TITLE _____ SALARY PER MONTH GROSS: \$ _____ NET: \$ _____

PREVIOUS EMPLOYER (Company Name & Address) _____ HOW LONG yrs-mos _____

Alimony, 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 obligation.

Alimony, child support, separate maintenance received under: ☐ Court Order ☐ Written Agreement ☐ Oral Understanding

SOURCES OF OTHER INCOME _____ AMOUNT PER MONTH \$ _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off? ☒ No ☐ Yes (Explain) _____

Has Joint Applicant or Other Party ever received credit from us? ☐ No ☐ Yes - When? _____

SECTION C - MARITAL STATUS

Complete only if: for joint credit, for individual credit relying on income or assets from other sources, or applicant is married and resides in a community property state.

on property located in such a state as a basis for repayment of the credit requested.

APPLICANT ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

OTHER PARTY ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

CREDIT APPLICATION

Application Number: 0000011800

IMPORTANT APPLICANT INFORMATION: Federal law requires financial institutions to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information, the information you provide is protected by our privacy policy and federal law.

TYPE OF CREDIT REQUESTED

IMPORTANT: Check (✓) the appropriate boxes below and complete the applicable sections.
☒ SECURED ☒ INDIVIDUAL CREDIT - relying solely on my income or assets
☐ UNSECURED ☐ INDIVIDUAL CREDIT - relying on my income or assets as well as income or assets from other sources
☐ JOINT CREDIT - We intend to apply for joint credit. (Initials) _____

FOR CREDITOR USE
 DATE 5/18/04 CLASS NO. _____
 ACCOUNT NO. 000011800
 APPROVED ☒ BY [Signature]
 DECLINED ☐ BY _____

AMOUNT REQUESTED \$ 1360000.00	FOR HOW LONG 12 MONTHS	PAYMENT DATE DESIRED 07/15/2004	WANT TO REPAY ☒ MONTHLY ☐ _____	PROCEEDS OF LOAN TO BE USED FOR: PURCHASE SINGLETON BEACH LOT

SECTION A - INDIVIDUAL APPLICANT INFORMATION

NAME (Last, First, Middle)
THADDEUS F SEGARS

BIRTHDATE 01/01/1964	TELEPHONE NO. 843-842-1111	DRIVER'S LICENSE NO. SC 29928-5326	SOCIAL SECURITY NO. BEAUFORT	NO. DEPENDENTS 0	AGES OF DEPENDENTS 0

ADDRESS (Street, City, State & Zip)
BEAUFORT

PREVIOUS ADDRESS (Street, City, State & Zip) (Complete if less than 3 years at present address)
BEAUFORT

EMPLOYER (Company Name & Address)
SEGARS & ASSOCIATES

BUSINESS PHONE 843-842-1111	Ext. 1	POSITION OR TITLE SELF-EMPLOYED	SALARY PER MONTH GROSS: \$.00 NET: \$.00

PREVIOUS EMPLOYER (Company Name & Address)
BEAUFORT

NAME AND ADDRESS OF NEAREST RELATIVE NOT LIVING WITH YOU
BEAUFORT

RELATIONSHIP
BEAUFORT

TELEPHONE NO. (Include Area Code)
BEAUFORT

Alimony, 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 obligation.

Alimony, child support, separate maintenance received under: ☐ Court Order ☐ Written Agreement ☐ Oral Understanding

SOURCES OF OTHER INCOME

AMOUNT PER MONTH
\$.00

Is any income listed in this Section likely to be reduced before the credit request is paid off?
☒ No ☐ Yes (Explain)

Have you previously received credit from us?
☒ No ☐ Yes - When?

SECTION B - JOINT APPLICANT OR OTHER PARTY INFORMATION

Complete only if: for joint credit; for individual credit relying on income or assets from other sources; or applicant is married and resides in a community property state.

NAME (Last, First, Middle)
BEAUFORT

BIRTHDATE BEAUFORT	TELEPHONE NO. BEAUFORT	DRIVER'S LICENSE NO. BEAUFORT	SOCIAL SECURITY NO. BEAUFORT	NO. DEPENDENTS BEAUFORT	AGES OF DEPENDENTS BEAUFORT

RELATIONSHIP TO APPLICANT (If Any)
BEAUFORT

PRESENT ADDRESS (Street, City, State & Zip)
BEAUFORT

EMPLOYER (Company Name & Address)
BEAUFORT

BUSINESS PHONE BEAUFORT	Ext. BEAUFORT	POSITION OR TITLE BEAUFORT	SALARY PER MONTH GROSS: \$ BEAUFORT NET: \$ BEAUFORT

PREVIOUS EMPLOYER (Company Name & Address)
BEAUFORT

Alimony, 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 obligation.

Alimony, child support, separate maintenance received under: ☐ Court Order ☐ Written Agreement ☐ Oral Understanding

SOURCES OF OTHER INCOME
BEAUFORT

AMOUNT PER MONTH
\$

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ No ☐ Yes (Explain)

Has Joint Applicant or Other Party ever received credit from us?
☐ No ☐ Yes - When?

SECTION C - MARITAL STATUS

Complete only if: for joint credit; for individual credit relying on income or assets from other sources; or applicant is married and resides in a community property state.

APPLICANT ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
OTHER PARTY ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

THADDEUS F SEGARS
87 SINGLETON BEACH RD
HILTON HEAD ISLAND, SC 29928-5326
BORROWER'S NAME AND ADDRESS
"You" and "We" includes each borrower above,
jointly and severally.

National Bank of South Carolina
3 Belfair Village Drive
Bluffton, SC 29910
LENDER'S NAME AND ADDRESS
"Lender" includes the lender, its successor and assigns.

Date Mailed or Delivered _____
Date Application is Received or Prepared 05/18/2004
Date Returned to Lender _____
Reference Number 0083393450 1
App # 8888811888

BORROWER'S PREFERENCE AS TO LEGAL COUNSEL AND INSURANCE AGENT

This form is to be completed and returned to the lender as part of your loan application.

Under South Carolina law, you have the right to request the use of any qualified legal counsel to represent you in all matters relating to the closing of this loan, and the use of any qualified insurance agent to furnish any required insurance in connection with the mortgage.

The types of insurance required in a transaction of this nature are: Hazard and/or Flood

☒ You have been informed by the lender that flood insurance may be required in connection with this transaction, and that you have the right to select an insurance agent to provide any required flood insurance. The lender has not yet determined whether flood insurance will be required. If it is determined that flood insurance is required in connection with this mortgage transaction, the lender will send you written notice along with a form for documenting your preference for insurance agent.

If you have preferences as to the use of a particular attorney or insurance agent, complete the appropriate section (a) below. If you do not have a preference as to the use of a particular attorney or insurance agent, the lender will provide you with a list of qualified attorneys and insurance agents from which you can choose. Indicate your choice(s) in sections (b).

ATTORNEY

We have been informed by the lender that we have a right to select legal counsel to represent us in all matters of this transaction relating to the closing of the loan.

(a) We select:

WESTON KENTON

(b) Having been informed of this right, and having no preference, we asked for assistance from the lender and were referred to a list of acceptable attorneys. From that list we select:

INSURANCE AGENT

We have been informed by the lender that we have a right to select an insurance agent to furnish the required insurance in connection with this mortgage transaction.

(a) We select:

(b) Having been informed of this right, and having no preference, we asked for assistance from the lender and were referred to a list of acceptable insurance agents. From that list we select:

CHANGE IN PREFERENCE: You may change your attorney or insurance agent preference by notifying the lender in writing of your new preference. You must sign and date any change of preference notice. Failure to provide the Lender with your preference information in a timely manner may result in a delay in your closing.

We have executed this document and we acknowledge receipt of a copy of this document on _____

Thad Segars
Borrower's Signature

5/18/04
(Date)

Borrower's Signature

(Date)

Borrower's Signature

(Date)

Borrower's Signature

(Date)

**PLAINTIFF'S
EXHIBIT**



May 28, 2004

Mr. Tad Segars

Hilton Head Island, SC 29928

Re: Singleton Beach Lot #2-A

Dear Tad:

I am pleased to inform you that your application for a mortgage loan to purchase a Singleton Beach lot has been approved for \$1,360,000 subject to the terms and conditions listed below:

Borrower:	Thaddeus F. Segars
Loan Amount:	\$1,360,000
Use of Proceeds:	Purchase Singleton Beach lot #2-A
Rate:	3.50% fixed
Term/Payments:	Interest only payable monthly or quarterly (please circle one) with the balance due in one year
Origination Fee:	\$3,400 (.25%)
Prepayment Penalty:	None
Security:	First real estate mortgage on lot #2-A Singleton Beach Estates, Hilton Head Island, Beaufort County, SC
Appraisal:	Subject to an appraisal acceptable to the Bank in the amount of \$1,600,000 or greater
Insurance:	Lender's title insurance i/a/o \$1,360,000
Costs:	Borrowers will pay all attorney fees, recording fees, appraisal fees, insurance premiums and other expenses incident to the loan



Other Documents:

You will be requested to execute such other documents and instruments necessary for a transaction of this nature as requested by legal counsel for the Lender

Closing:

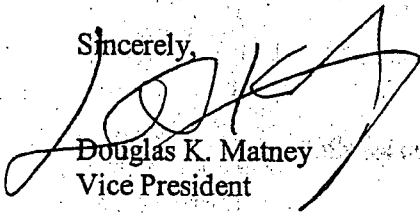
Loan must be closed on or before June 25, 2004

Normally, the monthly payments (if you chose monthly) are scheduled to begin one month from the date of the note. If you would like the payments due on a particular day of the month, please indicate below:

We would like our payments due on the _____ day of each month.

Thank you for this opportunity to be of service. I look forward to a continued long and mutually beneficial relationship. Please call me at 706-31110 with any questions or if you need any additional assistance. I can also be reached via e-mail at dougmatney@nationalbanksc.com.

Sincerely,



Douglas K. Matney
Vice President

This commitment will expire in ten (10) days if it has not been accepted, acknowledged and returned by the applicant by that time.

I hereby agree to the terms and conditions set forth in this Mortgage Loan Commitment.

Thaddeus F. Segars

Date

Other Documents:

You will be requested to execute such other documents and instruments necessary for a transaction of this nature as requested by legal counsel for the Lender

Closing:

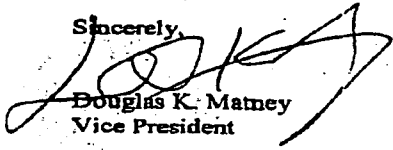
Loan must be closed on or before June 25, 2004

Normally, the monthly payments (if you chose monthly) are scheduled to begin one month from the date of the note. If you would like the payments due on a particular day of the month, please indicate below:

We would like our payments due on the 15 day of each month.

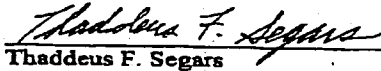
Thank you for this opportunity to be of service. I look forward to a continued long and mutually beneficial relationship. Please call me at 706-310 with any questions or if you need any additional assistance. I can also be reached via e-mail at dougmatney@nationalbanksc.com.

Sincerely,


Douglas K. Matney
Vice President

This commitment will expire in ten (10) days if it has not been accepted, acknowledged and returned by the applicant by that time.

I hereby agree to the terms and conditions set forth in this Mortgage Loan Commitment.


Thaddeus F. Segars

6-2-04
Date

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0756
 CONNECTION TEL 7858225
 CONNECTION ID
 ST. TIME 06/02 08:45
 USAGE T 01'01
 PGS. SENT 3
 RESULT OK

Douglas K. Matney
National Bank of South Carolina
3 Belfair Village Drive
Bluffton, SC 29910



Phone (843) 706-3110
Fax (843) 706-3114
Dougmatney@nationalbanksc.com

Fax

Our Customer Covenant: We pledge to serve every customer with the highest levels of sincerity, fairness, courtesy, respect and gratitude, delivered with unparalleled responsiveness, expertise, efficiency and accuracy. We are in business to create lasting relationships, and we will treat our customers like we want to be treated. We will offer the finest personal service and products delivered by caring team members who take 100% responsibility for meeting the needs of each customer.

To: Tad Segars	From: Douglas Matney
Fax: 785-8225	Pages: 3 with cover
Phone:	Date: 6/2/2004
Re: Singleton Beach Lot #2A	CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

Tad,

Please sign and return ASAP. I'll then order the appraisal and coordinate closing with Weston.

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE C. JAN: 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS. 6. FILE NUMBER: SEGARS, T 775.061 7. LOAN NUMBER: 1.0 398 (SEGARS, T 775.061.PFDVS) 8. MORTGAGE INS CASE NUMBER:	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent items marked "[POC]" were paid outside the closing; they are shown here for informational purposes and are not included in the settlement statement.			
D. NAME AND ADDRESS OF BORROWER: Thaddeus F. Segars		E. NAME AND ADDRESS OF SELLER: Richardson Street Partners, LLC 1650 Appaloosa Drive Sumter, SC 29154	
G. PROPERTY LOCATION: Lot 2 Singletr. Beach Hilton Head Island, SC 29925 Beaufort County, South Carolina		F. NAME AND ADDRESS OF SELLER: The National Bank of South Carolina 3 Belfair Village Drive Bluffton, South Carolina 29910	
H. SETTLEMENT AGENT: 57-0778577 Jones, Patterson, Simpson & Newton, P.A. PLACE OF SETTLEMENT 11 Arley Way, Suite 202 Bluffton, SC 29910		I. SETTLEMENT DATE: June 9, 2004	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price	1,600,000.00	401. Contract Sales Price	1,600,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)	11,711.00	403.	
104.		404.	
105.		405.	
<i>Adjustments For Items Paid By Seller in advance</i>		<i>Adjustments For Items Paid By Seller in advance</i>	
106. P R Taxes to		406. P R Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	1,611,711.00	420. GROSS AMOUNT DUE TO SELLER	1,600,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	10,000.00	501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)	1,360,000.00	502. Settlement Charges to Seller (Line 1400)	70,950.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506.	
207.		507. (Deposit disb. as proceeds)	
208.		508.	
209.		509.	
<i>Adjustments For Items Unpaid By Seller</i>		<i>Adjustments For Items Unpaid By Seller</i>	
210. P R Taxes to		510. P R Taxes to	
211. County Taxes to		511. County Taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517. County Taxes 1/1-6/9/04/Escrow to Jones, Patterson	4,079.21
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	1,370,000.00	520. TOTAL REDUCTION AMOUNT DUE SELLER	75,029.21
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120)	1,611,711.00	601. Gross Amount Due To Seller (Line 420)	1,600,000.00
302. Less Amount Paid By/For Borrower (Line 220)	(1,370,000.00)	602. Less Reductions Due Seller (Line 520)	(75,029.21)
303. CASH (X FROM) (TO) BORROWER	241,711.00	603. CASH (X TO) (FROM) SELLER	1,524,970.79

By signing page 2 of this statement, the signatories acknowledge receipt of a completed copy of page 1 of this two page statement.
 Subsidize Form 1099-S.

SELLER'S TAX ID SOLICITATION: THE INFORMATION IN BLOCKS E, G, H, I AND ON LINES 401, 406, 407 AND 408 IS IMPORTANT TAX INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A NEGLIGENCE PENALTY OR OTHER SANCTION MAY BE IMPOSED ON YOU IF THIS ITEM IS REQUIRED TO BE REPORTED AND THE IRS DETERMINES THAT IT HAS NOT BEEN REPORTED. YOU ARE REQUIRED BY LAW TO PROVIDE THE SETTLEMENT AGENT WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER. IF YOU DO NOT PROVIDE THE SETTLEMENT AGENT WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER, YOU MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IMPOSED BY LAW.

For sales or exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the Internal Revenue Service and must furnish this statement to you. To determine if you have to report the sale or exchange of your main home on your tax return, see the 2004 Schedule D (Form 1040) Instructions. If the real estate was not your main home, report the transaction on Form 4797, Sales of Business Property, Form 6252, Installment Sale Income, and/or Schedule D (Form 1040), Capital Gains and Losses. You may have to recapture (pay back) all or part of a Federal mortgage subsidy if all the following apply: a) You received a loan provided from the proceeds of a qualified mortgage bond or you received a mortgage credit certificate; b) Your original mortgage loan was provided after 1990; and c) You sold or disposed of your home at a gain during the first 9 years after you received the Federal mortgage subsidy. This will increase your tax. See Form 8528, Recapture of Federal Mortgage Subsidy, and Pub. 523, Selling Your Home.

If you have already paid the real estate tax for the period that includes the sale date, subtract the amounts on Lines 406, 407 & 408 from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the "Other income" line of Form 1040. For more information, see Pub. 523.

For more information on the new Reduction Act Notice, see the 2004 Instructions for Forms 1099, 1098, 5498, and W-32.
 Department of the Treasury - Internal Revenue Service

Under PENALTIES FOR PERJURY, I CERTIFY THAT THE NUMBER SHOWN BELOW ON THIS STATEMENT IS MY CORRECT TAXPAYER IDENTIFICATION NUMBER.

Seller's Signature
 Text/DSSN: 249-62-6355

Seller's Signature
 Text/DSSN:

Seller's Signature
 Text/DSSN:

Seller's Signature
 Text/DSSN:

L. SETTLEMENT CHARGES

700. TOTAL COMMISSION Based on Price		\$ 1,600,000.00 @ 4.0000 %	64,000.00		
<i>Division of Commission (line 700) as Follows:</i>					
701. \$ 64,000.00	to Dunes Marketing Group			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
702. \$	to				
703. \$	Commission Paid at Settlement				64,000.00
704. \$	to				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	0.2500 % to NBSC			3,400.00	
802. Loan Discount	% to				
803. Appraisal Fee	to NBSC			300.00	
804. Credit Report	to				
805. Tax Service Fee	to				
806. Flood Certification Fee	to				
807. Underwriting Fee	to				
808.					
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From 06/09/04 to 07/01/04 @ \$	/day (22 days %)				
902. Mortgage Insurance Premium for	months to				
903. Hazard Insurance Premium for	1.0 years to				
904. Flood Insurance	1.0 years				
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. P R Taxes	months @ \$	per month			
1004. County Taxes	months @ \$	per month			
1005. Assessments	months @ \$	per month			
1006. Flood Insurance	months @ \$	per month			
1007.	months @ \$	per month			
1008.	months @ \$	per month			
1100. TITLE CHARGES					
1101. Settlement or Closing Fee	to				
1102. Abstract or Title Search	to Sea Island Abstract & Title Co.			125.00	
1103. Title Update/Post Recording	to Sea Island Abstract & Title Co.			75.00	
1104. Title Insurance Binder	to Jones, Patterson, Simpson & Newton, P.A.			75.00	
1105. Document Preparation	to				
1106. POA Closing Processing Fee	to Jones, Patterson, Simpson & Newton, P.A.				
1107. Attorney's Fees	to Jones, Patterson, Simpson & Newton, P.A.			1,000.00	
<i>(includes above item numbers:</i>					
1108. Title Insurance	to Hilton Head Island/Bluffton Title Agency			2,700.00	
<i>(includes above item numbers:</i>					
1109. Lender's Coverage	\$ 1,360,000.00	75.00			
1110. Owner's Coverage	\$ 1,600,000.00	2,625.00			
1111. Seller's Attorney Fee & Costs	to Jones, Patterson, Simpson & Newton, P.A.				1,000.00
1112. Fed Ex/Courier/Misc. Charges	to Jones, Patterson, Simpson & Newton, P.A.			15.00	30.00
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording Fees: Deed \$ 10.00; Mortgage \$ 11.00; Releases \$				21.00	
1202. City/County Tax/Stamp: HHI Transfer Tax	4,000.00; Mortgage			4,000.00	
1203. State Tax/Stamp: Deed	5,920.00; Mortgage				5,920.00
1204. Record Waiver	Beaufort Register of Deeds				
1205. Record Power of Attorney					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to				
1302. Pest Inspection	to				
1303.					
1304.					
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)				11,711.00	70,950.00

Certified to be a true copy.

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT.

Borrower

Thaddeus F. Segars

Seller

Richardson Street Partners, LLC

BY

Its:

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION.

Jones, Patterson, Simpson & Newton, P.A.
Settlement Agent

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON VIOLATION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

PAID FROM		PAID TO	
BORROWER'S FUNDS AT SETTLEMENT		SETTLER'S FUNDS AT SETTLEMENT	
701. Commission (line 700) as follows: 701. \$ 64,000.00 to Jones Marketing Group 702. \$ 0.00 to 703. Commission Paid at Settlement 704. \$ 0.00 to			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801. Loan Discount	to NBSC		
802. Appraisal Fee	to NBSC		3,400.00
803. Credit Report	to		
804. Tax Service Fee	to		300.00
805. Flood Certification Fee	to		
806. Underwriting Fee	to		
807.			
808.			
809.			
810.			
811.			
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest From 06/09/04 to 07/01/04 @ \$	day (22 days) %		
902. Mortgage Insurance Premium for months to			
903. Hazard Insurance Premium for 1.0 years to			
904. Flood Insurance	1.0 years		
905.			
1000. RESERVES DEPOSITED WITH LENDER			
1001. Hazard Insurance	months @ \$	per month	
1002. Mortgage Insurance	months @ \$	per month	
1003. P R Taxes	months @ \$	per month	
1004. County Taxes	months @ \$	per month	
1005. Assessments	months @ \$	per month	
1006. Flood Insurance	months @ \$	per month	
1007.	months @ \$	per month	
1008.	months @ \$	per month	
1100. TITLE CHARGES			
1101. Settlement or Closing Fee	to		
1102. Abstract or Title Search	to Sea Island Abstract & Title Co.		
1103. Title Update/Post Recording	to Sea Island Abstract & Title Co.		
1104. Title Insurance Binder	to Jones, Patterson, Simpson & Newton, P.A.		125.00
1105. Document Preparation	to		75.00
1106. PCA Closing Processing Fee	to Jones, Patterson, Simpson & Newton, P.A.		75.00
1107. Attorney's Fees	to Jones, Patterson, Simpson & Newton, P.A.		
(Includes above item numbers:)			
1108. Title Insurance	to Wilson Head Island/Beacon Title Agency		1,000.00
(Includes above item numbers:)			
1109. Lender's Coverage	\$ 1,360,000.00		5,700.00
1110. Owner's Coverage	\$ 1,600,000.00		75.00
1111. Seller's Attorney Fee & Costs	to Jones, Patterson, Simpson & Newton, P.A.	2,625.00	
1112. Fed EdCover/Misc. Charges	to Jones, Patterson, Simpson & Newton, P.A.		1,500.00
1113.			30.00
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording Fee: Deed \$ 10.00; Mortgage \$ 11.00; Releases \$			
1202. City/County Tax/Stamp: HHV Transfer Tax	4,000.00; Mortgage		21.00
1203. State Tax/Stamp: Deed	5,820.00; Mortgage		4,000.00
1204. Record Waiver	Beaufort Registrar of Deeds		5,820.00
1205. Record Power of Attorney			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Runway	to		
1302. Pest Inspection	to		
1303.			
1304.			
1305.			
TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 602, Section K)			11,711.00
			70,550.00

I, the undersigned, hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein. I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT.

Borrower: Thaddeus F. Segura

Seller: Richardson Street Properties, LLC

By: [Signature]

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND DISBURSED OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION.

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE, SECTION 1001 & SECTION 1010.

1800000.00/000000.00/000000.00



8 3393450-001 CLORE JUN 17 2004
CLORE JUN 15 2004



BRANCH: Bluffton

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT

Date: June 09, 2004 Appl #: 0000031800

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 1,356,600.00
\$ 1,356,000.00 Amount given directly to you
\$ 0 Amount paid on your account
\$ 0 Amount paid to others on your behalf:
For filing security interests
For credit life insurance
For credit disability insurance
For property insurance
Other: FLOOD FEE
Other: TITLING FEE
\$ 3,400.00 Prepaid Finance Charge

LOAN DISCLOSURE \$ 1,356,600.00 Amount Financed (The amount of credit provided to me or on my behalf.)
\$ 51,709.07 FINANCE CHARGE (The dollar amount my loan will cost me.)
\$ 1,408,309.07 Total of Payments (Total amount I am scheduled to repay.)
3.74% ANNUAL PERCENTAGE RATE (The cost of my loan as a yearly rate.)

ESTIMATES The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.

VARIABLE RATE This loan is a Variable Rate Loan based on (Index)
plus % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in more payments of the same amount, larger payments, larger amount due at maturity. The Annual Percentage Rate will not increase above % or decrease below %.
The required Variable Rate Disclosures have been provided earlier.

DEMAND LOAN If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.

PAYMENT SCHEDULE My payment schedule will be:
1 Payment(s) of \$1,356,000.00 Due On June 15, 2005

12 MONTHLY Interest Payments Beginning July 15, 2004
Interest Will Vary From \$4,681.97 To \$3,651.51

SECURITY INTEREST I am giving you a security interest in collateral described below:
PREM LOT 2 (AKA 17 SINGLETON BEACH PLACE) SINGLETON BEACH PLACE
HILTON HEAD, SC

PREPAYMENT If I pay off my loan early, I may have to pay a penalty.
LATE CHARGE If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 5.60 and a maximum of \$ 14.00.
The minimum and maximum late charge may increase as authorized by law.

ASSUMPTION (Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

REVERSE SIDE Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date N/A Credit Life Insured Premium: \$ N/A Birthdate: N/A
Date N/A Insured Premium: \$ N/A Birthdate: N/A
Date N/A Credit Disability Insured Premium: \$ N/A Birthdate: N/A

PROPERTY INSURANCE If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.
WITNESSES & SIGNATURE

87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5325

SIGNATURES

Borrower: *[Signature]*

C. Borrower

Loan Number: 0003893450

Officer Number: 00026

Note number: 1

SECURITY INTEREST

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

interest since we have not completed any interest in any other. It shall be a 10% monthly rate. If the estate loan, any origination fee charged will not be refunded.

DEFAULT

- I fail to make any payment within ten (10) days of its due date; or
- I break a promise under this Agreement or any other agreement I have with you; or
- any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

VARIABLE RATE LOAN EXAMPLE

**INTEREST CONTINUES ON
THE UNPAID BALANCE**

ATTORNEY'S FEES

DELAY IN ENFORCEMENT

LEGAL QUESTIONS

Any legal questions in this agreement will be decided by South Carolina law.

5 PB
11 JPS
6/8/04

State of South Carolina)
County of Beaufort County

MORTGAGE OF REAL PROPERTY



THIS MORTGAGE, made this 9TH day of JUNE, 2004,
among THADDEUS F. SARGAS (hereinafter referred to as Mortgagor)
and THE NATIONAL BANK OF SOUTH CAROLINA (hereinafter referred to as Mortgagee):

WITNESSETH THAT, WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which Mortgagor has executed
and delivered to Mortgagee one or more applications, obligations or agreements (Note(s)) with the original Note being in the
principal sum of ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS AND Dollars (\$ 1,360,000.00)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by
Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or pursuant to Notes executed in the future,
Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof,
together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future
advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof,
as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however
that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the
principal amount of the Note or

ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS AND Dollars (\$ 1,360,000.00)
whichever is greater, plus or together with interest thereon, attorneys' fees, and court costs and to secure the performance of the
undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said
Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash in hand paid to
Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to
Mortgagee, its successors and assigns, the following described premises located
in Beaufort County, South Carolina:

See Exhibit "A" Attached

BEAUFORT COUNTY SC - ROD
BK 01976 PGS 1967-1971
FILE NUM 2004041946
06/23/2004 11:08:02 AM
REC'D BY P BAXLEY RCPT# 253411
RECORDING FEES 11.00

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise
incident or appertaining, including but not limited to all buildings, improvements, fixtures, or appurtenances now or hereafter
erected thereon, including all apparatus, equipment, fixtures, or articles, whether in single units or centrally controlled, used to
supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any
screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be
a part of said real estate whether physically attached thereto or not).

TO HAVE AND TO HOLD same with all privileges and appurtenances thereunto belong to Mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagor covenants with Mortgagee, its successors and assigns, that Mortgagor is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to the Mortgagee at the time this Mortgage is given; and that Mortgagor will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

1. **NOTE PAYMENTS.** Mortgagor shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. **TAXES.** Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a federal, state, or local tax upon Mortgage or debts secured thereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. **INSURANCE.** Mortgagor shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefore when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagor and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor, in any insurance policies then in force shall pass to the Mortgagee.

4. **REPAIRS.** Mortgagor will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. **COMPLIANCE WITH LAWS.** Mortgagor shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. **CONDEMNATION AWARD.** Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. **PAYMENTS BY MORTGAGEE.** If Mortgagor shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagor such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagor such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default hereunder.

8. **TRANSFER OF THE PROPERTY ASSUMPTION.** If all or any part of the property or an interest therein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. **MORTGAGOR'S CONTINUING OBLIGATION.** It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagor, and all indebtedness now and hereafter owed by Mortgagor to Mortgagee, and any other present or future indebtedness or liability of Mortgagor to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagor, will satisfy this mortgage whenever: (1) Mortgagor owes no indebtedness to Mortgagee, (2) Mortgagor has no liability to Mortgagee, (3) Mortgagor requests satisfaction in writing, and (4) Mortgagee has not agreed to make any further advance or advances to Mortgagor. The Mortgagor shall remain liable for full payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Mortgagor's obligation hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagor or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagor or any party assuming the obligations hereunder.

10. **WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS.** The Mortgagor does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagor, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagor agrees to and does hereby waive any and rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagor in the event the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. **DEFAULT.** Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagor.

12. **ASSIGNMENT OF DEBTS, LEASES AND PROFITS.** Mortgagor hereby sells over, assigns, transfers and grants a continuing interest in any and all debts, leases, and profits of the said premises herein mentioned, provided, however, that so long as no

Bankers Systems, Inc., St. Cloud, MN Form CN22-0684-3M

Default has occurred, Mortgagor shall be entitled to collect and retain all such rents, leases and profits. In the event of Default, all rents, leases and profits shall be payable and delivered to Mortgagee and Mortgagor hereby authorizes Mortgagee to notify any and all tenants of this assignment and that all payments of rents, leases and profits should be made directly to Mortgagee.

13. APPOINTMENT OF RECEIVER. Upon the event of a Default, Mortgagee shall be entitled to the appointment of a receiver of the rents, leases, and profits of the herein described property, with power to receive and recover the same, to dispossess tenants, to lease the premises, to operate and manage the premises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be necessary. The receiver, after deducting all charges and expenses attending execution of such duties as receiver, shall apply the residue of said rents, leases and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such foreclosure and sale. Mortgagee and the receiver shall be entitled to review and have access to the books and records used in the operation and maintenance of the subject property.

14. ENVIRONMENTAL MATTERS. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse Mortgagee with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Mortgagee at any time and from time to time by reason or arising out of any violation of any federal, state or local health, safety, or environmental laws, ordinances, and regulations, requiring the removal of, or otherwise regulating the maintenance, storage, transportation or disposal of any hazardous substance or any other toxic substances, asbestos, contaminants, petroleum products, or radioactive materials. The provisions of this paragraph shall survive the satisfaction or release of this Mortgage and the satisfaction of the Note(s) and shall continue thereafter in full force and effect.

The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit or survey of the property described in this Mortgage, which shall be prepared by an environmental person or company acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year unless the note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any laws, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such assessment more frequently than once a year. If Mortgagor fails to pay the cost of any assessment or the cost of any remediation to the subject property to correct deficiencies highlighting in an assessment, when due, Mortgagee may pay such cost on Mortgagor's behalf and the same shall constitute principal under the Note and be secured by the subject property, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

15. APPRAISAL. Mortgagor shall pay when due the cost of providing to Mortgagee, at its request, from time to time, a then-current appraisal if the market value of the property prepared by an appraiser acceptable to Mortgagee, in its sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every two (2) years, unless Mortgagee is required by any law, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such appraisal more frequently than every two (2) years. If Mortgagor fails to pay such costs when due, Mortgagee may pay such costs on Mortgagor's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

16. DEFINITIONS. As used herein the terms "Mortgagor," "Mortgagee" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

AND IT IS AGREED by and between the parties that in the case of foreclosure of this Mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor a sum as attorney's fees as set out in said Note(s) which shall be secured by this Mortgage, and shall be included in judgment of foreclosure.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL CONDITION: If, however, there shall be a default in the performance of any of the covenants, terms and conditions of this Mortgage, or under the Note(s) or any advance secured hereby, all sums owing to Mortgagee hereunder or under said Note(s), regardless of maturity and without notice, shall immediately become due and payable at the option of Mortgagee, and Mortgagee may foreclose this Mortgage by Judicial Proceedings.

IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor the day and year first above written.

Gracie J. Prescott (SEAL)
Thaddeus F. Segars (SEAL)
Angela M. Fulkert (SEAL)
_____ (SEAL)

State of South Carolina)

PROBATE

County of Beaufort County)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within-named THADDEUS F. SEGARS sign, seal, and as Angela M. Fulkert his act and deed, deliver the within-written Mortgage of Real Property; and, that (s)he with Angela M. Fulkert witnessed the execution thereof.

SWORN to before me this 9th day of June, 2004

Angela M. Fulkert (L.S.) Gracie J. Prescott
Notary Public for South Carolina

WITNESSES

State of South Carolina

County of _____

TO

THE NATIONAL BANK
OF SOUTH CAROLINA

Mortgage of Real Estate

Received and properly indexed in _____

this _____ day of _____

A.D. _____

and Recorded in Book _____, Page _____

_____ County, S.C.

Exhibit "A"

ALL that certain piece, parcel or lot of land shown an depicted as "Lot 2" containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension" prepared by Sea Island Land Survey, LLC Ralph O. Vanadore, SCRLS #7606 and recorded on December 15, 2003 in the Beaufort County Register of Deeds Office in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said parcel, reference is hereby made to the above-described plat of record.

This being the identical real property conveyed to the within Mortgagor by Deed of Richardson Street Partners, LLC and being recorded simultaneously herewith in the Office of the Register of Deeds for Beaufort County, South Carolina.

The within instrument was prepared in the Law Offices of Jones, Patterson, Simpson & Newton, PA, Post Office Drawer 7049, Hilton Head Island, South Carolina 29938.



83393450-3
CLO RECD AUG 05 2005
CLO RECD JUL 19 2005

PLAINTIFF'S
EXHIBIT
10

BRANCH Bluffton

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT
Date: July 07, 2005 Appl #: 0000014663

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 1,311,000.00
\$.00 Amount given directly to you
\$ 1,312,000.00 Amount paid on your account 83393450-3
\$.00 Amount paid to others on your behalf:
For living security interests
For credit life insurance
For credit disability insurance
For property insurance
Other: FLOOD FEE
Other: TITLING FEE
\$ 1,000.00 Prepaid Finance Charge

LOAN DISCLOSURE	\$ 1,311,000.00 Amount Financed (The amount of credit provided to me or on my behalf.) \$ 118,416.81 FINANCE CHARGE (The dollar amount my loan will cost me.) \$ 1,429,416.81 Total of Payments (Total amount I am scheduled to repay.) 6.01% ANNUAL PERCENTAGE RATE (The cost of my loan as a yearly rate.)
ESTIMATES	The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.
VARIABLE RATE	This loan is a Variable Rate Loan based on _____ (Index) plus _____ % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in more payments of the same amount, larger payments, larger amount due at maturity. The Annual Percentage Rate will not increase above _____ % or decrease below _____ % The required Variable Rate Disclosures have been provided earlier.
DEMAND LOAN	If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.
PAYMENT SCHEDULE	My payment schedule will be: 1 Payment(s) of \$1,312,000.00 Due On January 07, 2007 18 MONTHLY Interest Payments Beginning August 07, 2005 Interest Will Vary From \$6,630.10 To \$5,988.48
SECURITY INTEREST	I am giving you a security interest in collateral described below: FIRST MORTGAGE 17 SINGLETON BEACH PLACE (LOT 2), RHI, SC
PREPAYMENT LATE CHARGE	If I pay off my loan early, I may have to pay a penalty. If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 5.00 and a maximum of \$ 14.50 The minimum and maximum late charge may increase as authorized by law.
ASSUMPTION	(Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.
REVERSE SIDE	Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date: N/A	Credit Life: Insured	Premium: \$ N/A	Birthdate: N/A
Date: N/A	Insured	Premium: \$ N/A	Birthdate: N/A
Date: N/A	Credit Disability: Insured	Premium: \$ N/A	Birthdate: N/A

PROPERTY INSURANCE

If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY

I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT

I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.
TWADDEUS F. SECARS

17 SINGLETON BEACH PL
HILTON HEAD ISLAND SC 29928-5124

SIGNATURES

Borrower: TWADDEUS F. SECARS
Officer Initials: [Signature]

Co-borrower: _____

Loan Number: 0093393450

Officer Number: 00826

Note number: 3

(8)

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions to, parts, accessories, equipment or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

If you require immediate payment of the whole balance, you may take possession of the collateral and at your request, I will assist you by making it available. You will not be responsible for any personal property that I leave inside the collateral.

PREPAYMENT

I have the right to repay this loan in full at any time, however, you may make a fifteen dollar (\$15.00) minimum charge if I prepay the loan before fifteen dollars (\$15.00) of interest has been earned. This is a simple interest loan, and there will be no refund of interest since we have not collected any interest in advance. If this is a first mortgage real estate loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- I fail to make any payment within ten (10) days of its due date; or
- I break a promise under this Agreement or any other agreement I have with you; or
- any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, it shall continue to bear interest at the rate charged during the term of this loan or the judgement rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.

CLD-RECD FEB 20 2007

**PLAINTIFF'S
EXHIBIT**

BRANCH: Bluffton

Date: January 24, 2007

Appl #: 0000001374

By signing this loan agreement, I am entering into a contract with The National Bank of South Carolina. I and any co-borrower signing below agree to be bound by the terms and conditions of this loan agreement and will be responsible for repaying this loan in full.

ITEMIZATION OF AMOUNT FINANCED \$ 766,022.00

\$.00 Amount given directly to you

\$ 766,172.00 Amount paid on your account 083393450

\$.00 Amount paid to others on your behalf:

For filing security interests

For credit life insurance

For credit disability insurance

For property insurance

Other: FLOOD FEE

Other: TITLING FEE

\$ 150.00 Prepaid Finance Charge

LOAN DISCLOSURE

\$ 766,022.00 Amount Financed (The amount of credit provided to me or on my behalf.)

\$ 154,150.57 FINANCE CHARGE (The dollar amount my loan will cost me.)

\$ 920,172.57 Total of Payments (Total amount I am scheduled to repay.)

6.70% ANNUAL PERCENTAGE RATE (The cost of my loan as a yearly rate.)

ESTIMATES

The amounts shown as the Finance Charge and the Total of Payments above are estimates. These amounts have been computed on the assumption that all payments will be received on the scheduled due dates. Since this is a simple interest loan, early payments will decrease these amounts, but late payments will increase them. The amount of any decrease or increase will be reflected in the amount of the final payment or total number of payments at the option of the bank.

VARIABLE RATE

This loan is a Variable Rate Loan based on (Index)

plus % Your Annual Percentage Rate may vary with changes in the rate index. Any increase will result in more payments of the same amount, larger payments, larger amount due at maturity. The Annual Percentage Rate will not increase above % or decrease below %.

The required Variable Rate Disclosures have been provided earlier.

DEMAND-LOAN

If this loan is payable on demand, all disclosures are based on an assumed maturity of one year.

PAYMENT SCHEDULE

My payment schedule will be:

1 Payment(s) of \$766,172.00 Due On January 24, 2010

36 MONTHLY Interest Payments Beginning February 24, 2007

Interest Will Vary From \$4,359.84 To \$3,937.92

SECURITY INTEREST

I am giving you a security interest in collateral described below:

FROM LOT 2 (17 SINGLETON BEACH PLACE) SINGLETON BEACH, HHI, SC

PREPAYMENT

If I pay off my loan early, I may have to pay a penalty.

LATE CHARGE

If I am more than ten (10) days late on any payment, you will charge me a late charge of five percent (5%) of the amount of the payment subject to a minimum of \$ 6.20 and a maximum of \$ 15.50.

The minimum and maximum late charge may increase as authorized by law.

ASSUMPTION

(Residential Mortgage Transaction Only) THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

REVERSE SIDE

Additional provisions are contained on the reverse side which are made a part of my agreement by reference.

CREDIT INSURANCE

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COSTS.

Date: N/A Credit Life: Insured Premium: \$ N/A Birthdate: N/A

Date: N/A Insured Premium: \$ N/A Birthdate: N/A

Date: N/A Credit Disability: Insured Premium: \$ N/A Birthdate: N/A

PROPERTY INSURANCE

If collateral is given to secure this loan, I agree to have property insurance payable to you with a deductible no greater than \$250 to cover loss or damage of the collateral maintained at all times. I or another party who owns the collateral can choose to purchase the insurance from any company acceptable to you. If I do not maintain this insurance, then I understand you may, but are not obligated to purchase similar insurance and add the premium to my loan balance.

PROMISE TO PAY

I promise to pay to your order the Amount Financed together with a Finance Charge on the unpaid balance of the Amount Financed at the Annual Percentage Rate stated above as provided in the Payment Schedule until fully paid. Payments will be applied first to the accrued and unpaid Finance Charge and the remainder, if any, to the unpaid balance of the Amount Financed.

AGREEMENT

I have read and received a fully completed copy of this loan agreement and I agree to be bound by it.

THADDEUS F. BEARS

87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5326

SIGNATURES

Borrower: Thaddeus F. Bears

Co-Borrower: _____

Loan Number: 083393450

Note number: 3

ADDITIONAL TERMS AND PROVISIONS

SECURITY INTEREST

As security for this loan, I give you a security interest in all the collateral listed in the Security Section Loan Disclosure together with any additions to, parts, accessories, equipment or proceeds from this collateral, any insurance proceeds, and returned unearned insurance premiums in connection with this loan.

This security interest also covers my other loans with you and loans you may make to me in the future. I guarantee to you that I own this collateral and that I have not given anyone else a security interest in it. I agree that I will not sell the collateral or remove it from South Carolina except for temporary periods in its normal use. I also agree to pay all taxes against the collateral, keep it insured, keep it in good repair, and allow you to inspect it.

If my principal dwelling secures existing debt with you, it will not secure this loan unless my principal dwelling is specifically listed as collateral in this loan agreement.

If you require immediate payment of the whole balance, you may take possession of the collateral and at your request, I will assist you by making it available. You will not be responsible for any personal property that I leave inside the collateral.

PREPAYMENT

I have the right to repay this loan in full at any time; however, you may make a fifteen dollar (\$15.00) minimum charge if I prepay the loan before fifteen dollars (\$15.00) of interest has been earned. This is a simple interest loan, and there will be no refund of interest since we have not collected any interest in advance. If this is a first mortgage real estate loan, any origination fee charged will not be refunded.

DEFAULT

I am in default and you may require me to pay the whole balance of this loan immediately if:

- I fail to make any payment within ten (10) days of its due date; or
- I break a promise under this Agreement or any other agreement I have with you; or
- any insolvency proceeding including but not limited to a petition filed under the Federal Bankruptcy Act, State Court Receivership, or an assignment for the benefit of creditors; or
- any other circumstances which indicate that the prospect of payment, performance, or realization of collateral is significantly impaired.

You will give me any notices required by law before you require me to pay the whole balance of this loan. Upon default, you will have the right to offset the amount owed by me on this loan against any checking, savings, or other deposit account I have with you.

VARIABLE RATE LOAN EXAMPLE

If my loan is for \$10,000, and there is a .5% increase in the Annual Percentage Rate for a period of 6 months, it will result in a \$25.00 increase in the amount due at maturity.

INTEREST CONTINUES ON THE UNPAID BALANCE

If I do not repay this loan in full on the date the final payment is due, it shall continue to bear interest at the rate charged during the term of this loan or the judgement rate, whichever is greater.

ATTORNEY'S FEES

If you hire an attorney to help collect this loan, I agree to pay the court costs and reasonable attorney's fees up to fifteen percent (15%) of the unpaid balance.

DELAY IN ENFORCEMENT

You can delay enforcing any of your rights without losing them.

LEGAL QUESTIONS

I hereby warrant that I am not nor have I ever been involved with activities relating to illegal drug trafficking and that the property obtained with these loan proceeds will not be used for any illegal purposes, including but not limited to, any acts that may give rise to a violation of state or federal laws concerning illegal drug trafficking.

Any legal questions in this agreement will be decided by South Carolina law.

3/10 PB
JBN
6/8/01



BEAUFORT COUNTY SC - ROD
BK 01976 PGS 1964-1966
FILE NUM 2004041945
06/23/2004 11:09:02 AM
REC'D BY P BAXLEY RCPT# 253411
RECORDING FEES 10.00
County Tax 1,760.00
State Tax 4,160.00
Transfer Tax 4,000.00

RECORDED
2004 Jul -16 08:45 AM
Sharon O. Bunn
BEAUFORT COUNTY AUDITOR

CHANGE DMP Record 7/15/2004 11:36:16 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	012	000	0350	0000	00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, **RICHARDSON STREET PARTNERS, LLC**, a South Carolina limited liability company ("Grantor"), in the State aforesaid and in consideration of the sum of One Million Six Hundred Thousand and 00/100 (\$1,600,000.00) Dollars paid to It in hand at and before the sealing of these presents by **Thaddens F. Segars** (the "Grantee"), having an address of 87 Singleton Beach Road, Hilton Head Island, South Carolina 29928, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, His Heirs and Assigns forever, in fee simple, the following described real property, to-wit:

ALL that certain piece, parcel and lot of land shown and depicted as "Lot 2", containing 0.16 acres, more or less, in the Singleton Beach Place Extension area of Hilton Head Island, South Carolina, depicted on that plat of survey entitled "Boundary Reconfiguration of Singleton Beach Place Extension" prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, SCRLS #7606 and recorded in the Beaufort County Register of Deeds Office on December 15, 2003 in Plat Book 96 at Page 160. For a more particular description as to the courses, metes, bounds and distances of said lots, reference is hereby made to the above-described plat of record.

Tax Map No. R510-012-000-010D-0000

JBN/100

The property which is the subject of this Deed is located, in whole or Part, seaward of the Setback Line as established by the South Carolina Coastal Council and S.C. Code Sections 48-39-270 through 360, as amended effective June 25, 1990 ("Beach Protection Act" or "the Act"). As required by Section 48-39-330 of the Act, the following information concerning the location and circumstances of the Property is hereby disclosed:

The proximity and location of the Setback Line, the Base Line and the Velocity Zone applicable to the Property are as shown on that certain plat of survey dated December 27, 2002, prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, South Carolina Registered Land Surveyor No. 7606, bearing job number 3-926 which plat depicts the disclosure information required by the Act, a copy of said plat having been given to the Grantee, which is acknowledged by Grantee's acceptance of this deed. The seaward corners of habitable structures upon the Property, if any and to the most recently published annual erosion rate made available at that time by the South Carolina Coastal Council are also depicted upon such plat. Reference must be made to the Act itself regarding the significance of these lines and disclosures, as well as the potential for movement and relocation of the lines from that plat forward in the future.

This being a portion of the properties conveyed to the within Grantor by Deed of Wayzata Limited Partnership, and being recorded in the ROD Office for Beaufort County, South Carolina, in Deed Book 1887 at Page 2258.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, His heirs and assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, as herein above provided, against the Grantor and the Grantor's heirs or successors and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this
24th day of May in the year of our Lord two thousand four.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

2) Karen Suggs
Witness

RICHARDSON STREET PARTNERS, LLC

By: [Signature]
Paul Gaughf
Its: Managing Member

3) Bala Aulut
Notary Public

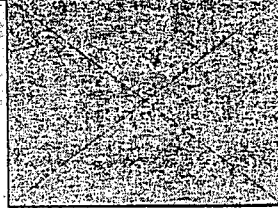
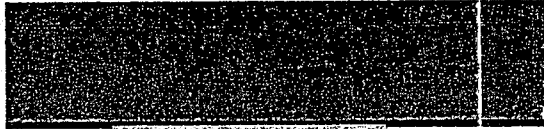
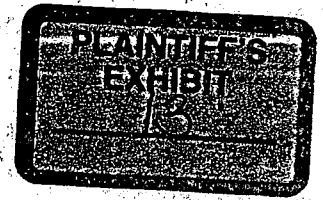
STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the
within GRANTOR, personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

WITNESS MY HAND AND SEAL this the 24th day of May, 2004.

Bala Aulut
Notary Public for: South Carolina
My Commission Expires: 11/12/2006



Property address:
27 Western Beach Road
Bliss Road Island, NC 28520

Prepared For:
Bliss Road Island
Bliss Road Island, NC 28520

Prepared As Of:
04/22/04

Prepared By:
S. V. Witter, PhD
Bliss Road Island
Bliss Road Island, NC 28520
919-753-0000

File No 040243

APPRAISAL SUMMARY

SUBJECT INFORMATION	Subject Address	17 Singleton Beach Place
	Legal Description	Lot 2, Singleton Beach Place Extension Subdivision
	City	Hilton Head Island
	County	Beaufort
	State	SC
	Zip Code	29928
	Census Tract	45013.110
SALES RECORD	Map Reference	510 012 009 0100
	Sales Price	\$ 1,600,000
CLIENT	Date of Sale	Present
	Borrower	Ted Segars
DESCRIPTION OF IMPROVEMENTS	Lender/Client	NBSC / Synovus
	Size (Square Feet)	
	Price per Square Foot	\$ 0.00000
	Location	Good
	Age	
	Condition	
	Total Rooms	
	Bedrooms	
APPRAISER	Baths	
	Appraiser	S. V. Lindsay, #CR 51
VALUE	Date of Appraised Value	06/02/04
	Final Estimate of Value	\$ 1,600,000

File No. 040243

SUMMARY REPORT
LAND APPRAISAL REPORT

Broker: Ted Segars		Circle T Lot: 45013.110		Map Reference: 510 012 000 010D	
Property Address: 17 Singleton Beach Place		County: Beaufort		State: SC	
City: Hilton Head Island		Zip Code: 29928			
Legal Description: Lot 7, Singleton Beach Place Extension Subdivision					
Sale Price: \$1,600,000	Dated Sale: Present	Loan Term: N/A	Property Rights Appraised: ☒ Fee ☐ Leasehold ☐ Co-Minus PUD		
Actual Real Estate Taxes: Unknown	(or) Loan charges to be paid by seller: N/A	Other sales considerations: N/A			
Lender/Client: NBSC / Synovus		Address: 3 Belfair Village, Bluffton, SC 29910			
Occupant: Vacant Site	Appraiser: S. V. Lindsay, #CR 51	Instructions to Appraiser: Estimate Market Value			

Location: ☐ Urban ☒ Suburban ☐ Rural	Employment Stability: ☐ Good ☒ Avg. ☐ Fair ☐ Poor
Built Up: ☐ Over 75% ☒ 25% to 75% ☐ Under 25%	Conversion to Employment: ☐ ☒ ☐ ☐
Growth Rate: ☐ Rapid ☒ Stable ☐ Slow	Conversion to Shopping: ☐ ☒ ☐ ☐
Property Values: ☐ Increasing ☒ Stable ☐ Declining	Conversion to Schools: ☐ ☒ ☐ ☐
Demand/Supply: ☐ Shortage ☒ In Balance ☐ Over Supply	Adequacy of Public Transportation: ☐ ☒ ☐ ☐
Marketing Time: ☐ Under 3 Mos. ☒ 3-6 Mos. ☐ Over 6 Mos.	Recreational Facilities: ☐ ☒ ☐ ☐
Present Land Use: ☐ 50 % 1 Family ☐ 2-4 Family ☐ 40 % Apts ☐ 10 % Condo ☐ 10 % Commercial	Adequacy of Utilities: ☐ ☒ ☐ ☐
Change in Present Land Use: ☒ Not Likely ☐ Likely (*)	Property Compatibility: ☐ ☒ ☐ ☐
Predominant Occupancy: ☒ Owner ☐ Tenant ☐ 5 % Vacant	Police and Fire Protection: ☐ ☒ ☐ ☐
Single Family Price Range: \$ 150,000 to \$ 1,600,000	General Appearance of Properties: ☐ ☒ ☐ ☐
Single Family Age: New vs. to 25 yrs. Predominant Age: 7 yrs. vs.	Appeal to Market: ☐ ☒ ☐ ☐

Comments including those factors favorable or unfavorable affecting marketability (eg. public parks, schools, view roads):

The subject subdivision is a small, beachfront enclave located mid island comprised of 57 single family sites with a community swimming pool amenity. The subject subdivision appeals to the high end primary and second home market because of the ocean front location and good central island location for shopping and employment centers.

Dimensions: 6,913 SF, Irregular in Shape - See Attached Plat

Zoning Classification: RMB: Moderate Density Zone

Highest and Best Use: ☐ Present Use ☒ Other (specify) Improved with a single family dwelling

Electricity: ☒ Public ☐ Other (Describe)

Gas: ☒ Public ☐ Other (Describe)

Water: ☒ Public ☐ Other (Describe)

San Sewer: ☒ Public ☐ Other (Describe)

Underground Elec. & Tel.: ☒ ☐

Comments (favorable or unfavorable including any apparent adverse elements, encroachments or other adverse conditions):

The subject site is a larger than typical residential patio site with no tree coverage and a market premium ocean front, marsh and tidal creek view amenity. A driveway access easement runs along the rear of the property. Please see attached plat for information on that easement. No other apparent adverse encroachments, encroachments or special assessments were observed.

The undersigned has reviewed the most recent sales of properties most similar and comparable to subject and has considered those in adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior or inferior to the subject property, a plus (+) or minus (-) adjustment is made to the indicated value of subject. If a significant item in the comparable is inferior to or superior to the subject property, a plus (+) or minus (-) adjustment is made to the indicated value of subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	17 Singleton Beach Place, Lot 2	25 Singleton Beach Place, Lot 6	23 Singleton Beach Place, Lot 5	21 Singleton Beach Place, Lot 4
Address	Hilton Head Island, SC 29928	Singleton Beach Area	Singleton Beach Area	Singleton Beach Area
Proximity to Subject	Within 4 Doors	Within 4 Doors	Within 3 Doors	Within 2 Doors
Sales Price	\$ 1,600,000	\$ 1,600,000	\$ 1,475,000	\$ 1,533,500
Price / Sales	\$ 1,600,000	\$ 1,600,000	\$ 1,475,000	\$ 1,533,500
Data Source	Inspection	County Records	MLS & County Records	MLS & County Records
Date of Sale	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Time Adjustment	Present	03/26/04	12/31/03	03/10/04
Location	Good	Good	Good	Good
Site View	.16 Acre	.17 Acre	.18 Acre	.14 Acre
View	Ocean Front	Ocean Front	Ocean Front	Ocean Front
Sales or Financing				
Concessions	Conventional	Conventional	Conventional	Conventional
Net of Total	A	0	125,000	0
Indicated Value of Subject	\$ 1,600,000	\$ 1,600,000	\$ 1,600,000	\$ 1,533,500

Comments on Market Data: All 3 sales represent the most recent relevant sales data available in the subject's small subdivision. A time adjustment was applied to Sale 2 because of a very rapid rate of appreciation on ocean front property values. Currently, there is only 1 site listed for sale in the 5/0, Lot 1, 15 Singleton Beach Extension is listed for \$2,195,000. Broker reports Lot 3 is under contract for 1.8 Million.

Comments and Conditions of Appraisal: The appraisal is made subject to the Certification, Contingent & Limiting Conditions addendum attached hereto, and the Definition of Market Value as stated in the attached FHLBC Form #439. Appraisal assumes the installation of the infrastructure and road for access to the subject site.

Final Reconciliation: The Direct Sales Comparison Approach is the most reliable indicator of typical buyers and sellers market actions. It is the most relevant approach to current market value.

ESTIMATE THE MARKET VALUE AS DEFINED OF SUBJECT PROPERTY AS OF 06/02/04 to be \$ 1,600,000

Appraiser(s): S. V. Lindsay, #CR 51

Review Appraiser (if applicable):

Certification/License #: State Certified Residential Real Estate Appraiser #CR 51

Did Not Physically Inspect Property: ☐ ☒

File No 040243

MULTI-PURPOSE SUPPLEMENTAL ADDENDUM
FOR FEDERALLY RELATED TRANSACTIONS (FIRREA)

File No 040243

Borrower/Client	Tad Segars				
Property Address	17 Singleton Beach Place				
City	Hilton Head Island	County	Beaufort	State	SC
Zip Code	29928				
Lender	NBSC / Synovus				

This Multi-Purpose Supplemental Addendum for Federally Related Transactions was designed to provide the appraiser with a convenient way to comply with current appraisal standards and requirements of the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency (OCC), the Office of Thrift Supervision (OTS), the Resolution Trust Corporation (RTC) and the Federal Reserve.

This Multi-Purpose Supplemental Addendum is for use with any appraisal. Only those statements which have been checked by the appraiser also apply to the property being appraised.

■ PURPOSE & FUNCTION OF APPRAISAL

The purpose of the appraisal is to estimate the market value of the subject property as defined herein. The function of the appraisal is to assist the above-named Lender in evaluating the subject property for lending purposes. This is a Federally related transaction.

■ EXTENT OF APPRAISAL PROCESS

☒ The appraisal is based on the information gathered by the appraiser from public records, other identified sources, inspection of the subject property and neighborhood, and selection of comparable sales within the subject market area. The original source of the comparables is shown in the Data Source section of the market grid along with the source of confirmation, if available. The original source is presented first. The sources and data are considered reliable. When conflicting information was provided, the source deemed most reliable has been used. Data believed to be unreliable was not included in the report nor used as a basis for the value conclusion.

☐ The Reproduction Cost is based on _____
supplemented by the appraiser's knowledge of the local market.

☐ Physical depreciation is based on the estimated effective age of the subject property. Functional and/or external depreciation, if present, is specifically addressed in the appraisal report or other addenda. In estimating the site value, the appraiser has relied on personal knowledge of the local market. This knowledge is based on prior and/or current analysis of site sales and/or abstraction of site values from sales of improved properties.

☒ The subject property is located in an area of primarily owner-occupied single family residences and the Income Approach is not considered to be meaningful. For this reason, the Income Approach was not used.

☐ The Estimated Market Rent and Gross Rent Multiplier utilized in the Income Approach are based on the appraiser's knowledge of the subject market area. The rental knowledge is based on prior and/or current rental rate surveys of residential properties. The Gross Rent Multiplier is based on prior and/or current analysis of prices and market rates for residential properties.

☐ For income producing properties, actual rents, vacancies and expenses have been reported and analyzed. They have been used to project future rents, vacancies and expenses.

■ SUBJECT PROPERTY OFFERING INFORMATION

According to The Hilton Head Island Multiple Listing Service records, _____ the subject property.

☐ has not been offered for sale in the past _____ months or _____ years.

☐ is currently offered for sale for \$ _____.

☒ was offered for sale within the past 36 months or 3 years.

☒ Offering information was considered in the final reconciliation of value.

☐ Offering information was not considered in the final reconciliation of value.

☐ Offering information was not available. The reasons for unavailability and the steps taken by the appraiser are explained later in this addendum.

■ SALES HISTORY OF SUBJECT PROPERTY

According to Beaufort County Records and Hilton Head Multiple Listing Service, _____ the subject property.

☒ has not transferred in the past 36 months or 3 years.

☐ has transferred in the past _____ months or _____ years.

☐ All prior sales which have occurred in the past _____ months or _____ years are listed below and reconciled to the appraised value, either in the body of the report or in the addenda.

Date	Sale Price	Document #	Seller	Buyer

■ FEMA FLOOD HAZARD DATA

☒ The subject property is not located in a FEMA Special Flood Hazard Area.

☐ The subject property is located in a FEMA Special Flood Hazard Area.

Zone	FEMA Map Panel #	Map Date	Name of Community
V	450250 0014D	09/29/86	Beaufort - Hilton Head Island

☐ The community does not participate in the National Flood Insurance Program.

☒ The community does participate in the National Flood Insurance Program.

☒ It is covered by a regular program.

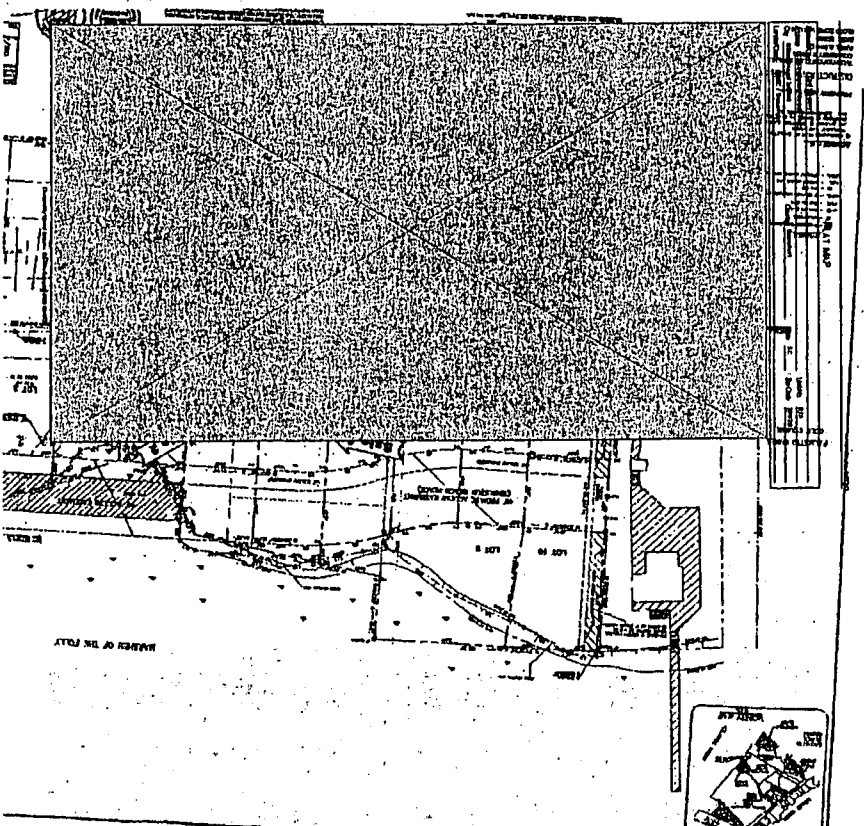
☐ It is covered by an emergency program.

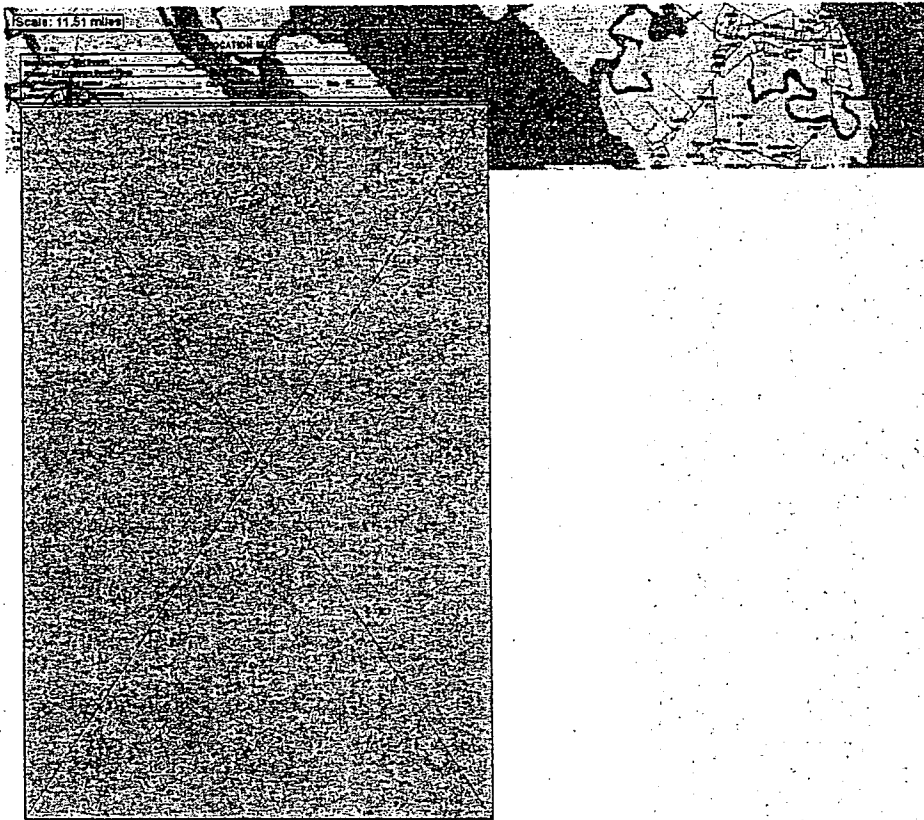
040243-0001 This form is for use with the 1995 Uniform Appraisal Procedure (UAP) and the 1995 Uniform Appraisal Report (UAR).

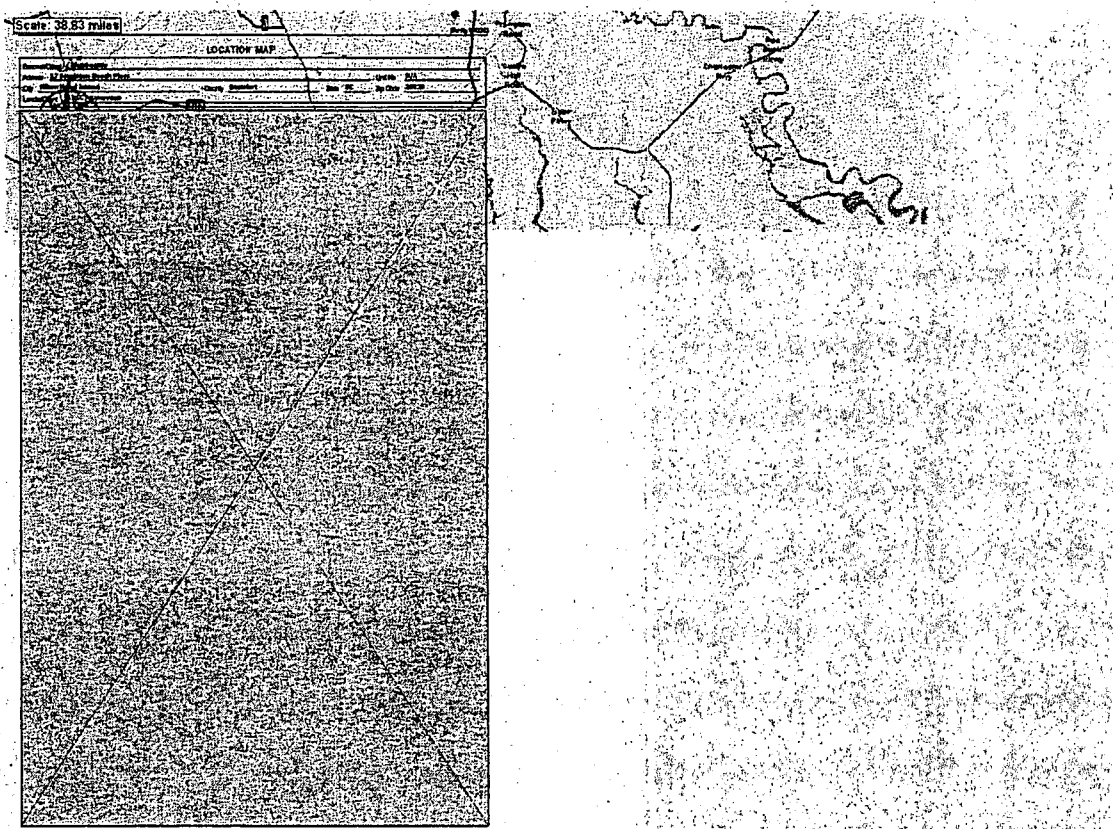
File No. 040243

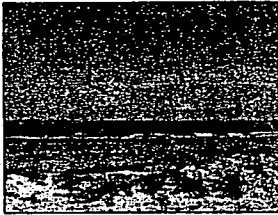
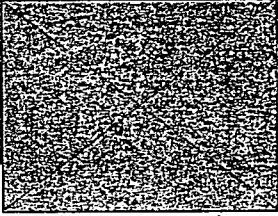
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CURRENT SALES CONTRACT			
☐	The subject property is currently not under contract.		
☐	The contract and/or escrow instructions were not available for review. The unavailability of the contract is explained later in the addenda section.		
☒	The contract and/or escrow instructions were reviewed. The following summarizes the contract:		
	Contract Date	Amendment Date	Contract Price
	03/15/04	None	1,600,000
	Seller: B.C.C. & S Partners		
☒	The contract indicated that personal property was not included in the sale.		
☐	The contract indicated that personal property was included. It consisted of _____ Estimated contributory value is \$ _____		
☒	Personal property was not included in the final value estimate.		
☐	Personal property was included in the final value estimate.		
☐	The contract indicated no financing concessions or other incentives.		
☐	The contract indicated the following concessions or incentives: _____		
☐	If concessions or incentives exist, the comparable sales were checked for similar concessions and appropriate adjustments were made, if applicable, so that the final value conclusion is in compliance with the Market Value defined herein.		
MARKET OVERVIEW			
Include an extended discussion of market conditions and trends.			
3 months is considered a reasonable marketing period for the subject property based on Hilton Head Island MLS records.			
ADDITIONAL CERTIFICATION			
The Appraiser certifies and agrees that:			
(1)	Their analyses, opinions and conclusions were developed, and this report was prepared, in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP), and in accordance with the regulations developed by the Lender's Federal Regulatory Agencies, required by FRREA, except that the Department's Provisions of the USPAP do not apply.		
(2)	Their compensation is not contingent upon the reporting of predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.		
(3)	This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.		
ADDITIONAL (ENVIRONMENTAL) LIMITING CONDITIONS			
The value estimated is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.			
ADDITIONAL COMMENTS			
APPRAISER'S SIGNATURE & LICENSE/CERTIFICATION			
Appraiser's Signature	<i>S.V. Wesley</i>	Effective Date	06/02/04
Appraiser's Name (print)	S.V. Wesley, #CR 51	Date Prepared	05/03/04
State	SC	Phone #	(843) 785-4444
	☐ License ☒ Certification #	Tax ID #	57-0873805
	#CR 51		
CO-SIGNING APPRAISER'S CERTIFICATION			
☐	The co-signing appraiser has personally inspected the subject property, both inside and out, and has made an exterior inspection of all comparable sales listed in the report. The report was prepared by the appraiser under direct supervision of the co-signing appraiser. The co-signing appraiser accepts responsibility for the contents of the report, including the value conclusions and the limiting conditions, and confirms that the certifications apply fully to the co-signing appraiser.		
☐	The co-signing appraiser has not personally inspected the interior of the subject property and		
☐	has not inspected the exterior of the subject property and all comparable sales listed in the report.		
☐	has inspected the exterior of the subject property and all comparable sales listed in the report.		
☐	The report was prepared by the appraiser under direct supervision of the co-signing appraiser. The co-signing appraiser accepts responsibility for the contents of the report, including the value conclusions and the limiting conditions, and confirms that the certifications apply fully to the co-signing appraiser with the exception of the certification regarding physical inspections. The above describes the level of inspection performed by the co-signing appraiser.		
☐	The co-signing appraiser's level of inspection, involvement in the appraisal process, and certification are covered elsewhere in the addenda section of this appraisal.		
CO-SIGNING APPRAISER'S SIGNATURE & LICENSE/CERTIFICATION			
Appraiser's Signature	_____	Effective Date	_____
Appraiser's Name (print)	_____	Phone #	() _____
State	_____	Tax ID #	_____
	☐ License ☐ Certification #	_____	

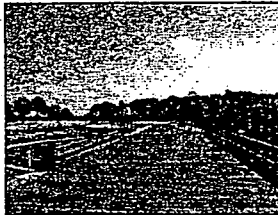






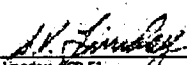


Bar View



Bar View

File No 040243

SUPPLEMENTAL INFORMATION AND APPRAISER'S CERTIFICATION	
TYPE OF APPRAISAL AND TYPE OF APPRAISAL REPORT	
This is a <u>Complete</u> appraisal.	This is a <u>Summary</u> appraisal report.
IDENTIFICATION OF CLIENT(S)	
The client(s) for whom this appraisal is made is (are): <u>NBSC / Synovus</u>	
INTENDED USES AND USERS OF THE APPRAISAL	
The intended use(s) of the appraiser's opinions and conclusions is (are): <u>Mortgage Financing.</u>	
The intended use(s) of the appraiser's opinions and conclusions is (are): <u>The Lender.</u>	
REASONABLE EXPOSURE TIME	
In my opinion the reasonable exposure time linked to the value opinion is: <u>3 to 6 months.</u>	
SUPPORT FOR HIGHEST AND BEST USE CONCLUSIONS	
The following additional information is supplied to support the highest and best use conclusions: <u>None.</u>	
ADDITIONAL CERTIFICATION	
Additionally I (we) certify that, to the best of my (our) 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 (or the specified) present or prospective interest in the property that is the subject of this report, and no (or the specified) 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 of 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. - the appraiser(s) ☒ have ☐ have not made a personal inspection of the property that is the subject of this report. - the supervisory appraiser(s) ☐ have ☐ have not made a personal inspection of the property that is the subject of this report.	
SCOPE OF WORK	
The amount and type of information researched and the analysis applied in this assignment conforms with the expectations of participants in this market for the same or similar appraisal services and is what the appraiser's peers actions would be in performing the same or a similar assignment in compliance with the Uniform Standards of Professional Practice except as noted below: 	
 S. V. Lindsay, #CR 51 Appraiser 06/03/04 Date signed	Supervisory Appraiser (only if required) Date signed

This form was revised pursuant to Uniform Standards of Professional Appraisal Practice, 10/01/03, 9/04/07

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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, 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 each acting in what he considers his own best interest; (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; 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.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer, consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia, except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

File No 040243

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APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated, in the appraisal report, only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or other present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report, therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: 17 Singleton Beach Place, Hilton Head Island, SC 29928

APPRAISER:

Signature: *S. V. Unslady*
 Name: S. V. Unslady, SCR 51
 Date Signed: 06/03/04
 State Certification #: CR 51
 or State License #: N/A
 State: SC
 Expiration Date of Certification or License: 06-30-2004

SUPERVISORY APPRAISER (only if required):

Signature: _____
 Name: _____
 Date Signed: _____
 State Certification #: _____
 or State License #: _____
 State: _____
 Expiration Date of Certification or License: _____
☐ Did ☐ Did Not Inspect Property

APPRAISAL REVIEW FORM for loans \$250,000 or greater

Federal Regulations require that all appraisals be reviewed and NBSC Policy requires that they be reviewed by the Relationship Manager and the Appraisal Review function of Credit Administration. If any questions are answered NO, the appraisal is to be rejected or a request (in writing) for the correction(s) is(are) to be provided to the appraiser and the appropriate response is to be received and reviewed from the appraiser. Please attach a separate sheet to explain any comments you might have relative to this report which do not necessarily require corrections.

Name of Project/Property:

Singleton beach

Street Address:

17 Singleton beach Pl.
lot 2 Singleton beach Place

Name of Borrower/Ownership:

Tad Segars

City/State:

HHI, SC

Type of Appraisal:

Complete ☒Limited ☐

Reporting Option:

Self-contained ☐Summary ☒Restricted ☐

Appraiser's Firm:

Lindsayco

Appraiser:

Licensed #:

Certified #:

CR 57

Is the appraiser on the NBSC Approved List?

Yes ☒No ☐

Was the appraiser engaged by NBSC?

Yes ☒No* ☐

* If no, was the appraiser engaged by another financial institution?

Yes ☐No** ☐

by which financial institution?:

** IF NO, APPRAISAL IS NOT ACCEPTABLE

Compliance Data

Yes

No

(to be completed by lender or Regional Reviewer)

Does the appraisal conform to generally accepted standards as evidenced by USPAP? (Validate that the Appraiser included the Appraisal Compliance Checklist, if not, the appraisal is not to be accepted) and the appraisal is in compliance with the FIRREA guidelines and policy guidelines?

Is the report written?

Does the report contain sufficient analysis to support the decision to engage in the transaction?

Does the appraisal analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units?

Appraisal Review Analysis

Yes

No

(to be completed by Real Estate Appraisal Reviewer - Credit Administration/Risk Management)

Does the appraiser provide adequate information to support the Cost Approach to value? If not, what value is determined to be supported by the information presented? \$

Does the appraiser provide adequate information to support the Income Approach to value? If not, then what value is determined to be supported by the information presented? \$

Does the appraiser provide adequate information to support the Market Approach to value? If not, then what value is determined to be supported by the information presented? \$

Reason(s) for Non-Acceptance of Appraisal**FDICIA Calculations**

(Loan amount and FDICIA Guideline % to be completed by lender/Regional Reviewer, remainder by Real Estate Appraisal Reviewer)

FDICIA Loan - to - Value Guidelines

Loan Category

LTV Limits

Raw Land

65

Land Development

75

Construction:

Com'l, multi-family¹ & other non-residential

80

1 - to - 4 family residential

85

Improved property

85

ner-occupied 1-4 family & ne equity

90²**Loan Transaction**Loan Amount: \$ 1360000

3

Final Estimation of Value: Land

\$ 1600000Priority Lien(s) Outstandings \$ 0

Building \$

Transaction Loan-to-Value

85 %

Total Value

\$ 1600000Exception to Guidelines? Yes ☐No ☒

Signature

Date

Relationship Manager: [Signature]Appraisal Reviewer: [Signature]LTV Exception Approval: [Signature]¹ Multifamily construction includes condominiums and cooperatives ² Any loan with a loan-to-value that is equal or exceeds 90% requires credit enhancements³ If the loan request is a junior mortgage position, indicate the prior lien debt(s) in order to properly calculate the Transaction Loan - to - Value ratio

File# 040243

INVOICE

FROM: Lindsay Company S. V. Lindsay, #CR 51 22 New Orleans Road, Suite 4 Hilton Head Island, SC 29928				FILE NUMBER: 040243	
TO: NBSC / Synovus Attention: Jerri Witten 3 Belfair Village Bluffton, SC 29910					
Invoice Date	Appraisal Date	Client Case Number	Appraisal Office Tax ID Number	Appraisal Office Phone Number	
06/03/04	06/02/04		57-0873805	843-765-4444	
Purchaser/Borrower: Tad Segars					
Property Address: 17 Singleton Beach Place Unit No: N/A					
City: Hilton Head Island Subdivision:					
County: Beaufort State: SC Zip Code: 29928					
Legal Description: Lot 2, Singleton Beach Place Extension Subdivision					
Appraisal Fee Amount: \$ 300.00					
Mail or Handling Fee: \$					
Additional Charge No. 1: \$					
Additional Charge No. 2: \$					
Additional Charge No. 3: \$					
Sales Tax: % \$					
Total Amount of Invoice: \$ 300.00					
Comments: Please make check payable to the LINSDAY COMPANY. Thank you.					
_____ _____ _____ _____ _____					
Invoice Date	Appraisal Date	Client Case Number	Appraiser's File Number	Client's Phone Number	
06/03/04	06/02/04		040243	843-706-3113	
FROM: NBSC / Synovus Attention: Jerri Witten 3 Belfair Village Bluffton, SC 29910				AMOUNT DUE: \$ 300.00	
TO: Lindsay Company S. V. Lindsay, #CR 51 22 New Orleans Road, Suite 4 Hilton Head Island, SC 29928				AMOUNT ENCLOSED: \$	
TERMS - Balance due upon receipt of invoice. Please return this portion with your payment. Thank you!					

Designed by United Systems Software Company (800) 650-6727

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH CAROLINA,
Plaintiff,

vs.

CIVIL ACTION NUMBER
09-CP-07-3201

THADDEUS F. SEGARS; KCS INVESTMENTS, LLC;
SINGLETON PLACE HOMEOWNERS ASSOCIATION,
INC. and SUNTRUST MORTGAGE, INC.

Defendants.

-----/

COPY

The deposition of TAD SEGARS, a witness
in the above-entitled cause, taken pursuant to
Notice and agreement, before Cathy M. Knoettner,
Certified Court Reporter and Notary Public, at
the Law Offices of Novit & Scarminach, P.A.,
Jade Building, 52 New Orleans Road, Suite 400,
Hilton Head Island, South Carolina, on the 19th
day of January, 2011, commencing at or about the
hour of 10:05 a.m.

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HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

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APPEARANCES OF COUNSEL:

3

FOR THE PLAINTIFF:

4

DANIEL A. SAXON, ESQUIRE
Novit & Scarminach, P.A.
52 New Orleans Road, Suite 400
Hilton Head, South Carolina 29928
843.785.5850
dsaxon@ns-lawfirm.com

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FOR THE DEFENDANTS:

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THOMAS J. FINN, ESQUIRE
Finn Law Firm, P.C.
38 New Orleans Road, Unit D
Hilton Head, South Carolina 29928
843.682.3555
finlaw@hargray.com

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I N D E X

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PAGE

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DIRECT EXAMINATION:

22

By Mr. Saxon ----- 3

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CERTIFICATE ----- 73

25

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1 SAXON - SEGARS (DIRECT EXAMINATION)

3

2 TAD SEGARS,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SAXON:

7 Q Good morning, Mr. Segars. I'm Dan
8 Saxon with the firm of Novit & Scarminach and I
9 represent the plaintiff National Bank of South
10 Carolina in this matter. Now, you've had your
11 deposition taken before, haven't you?

12 A Yes.

13 Q In fact, I've taken it before?

14 A Yes.

15 Q And you know that the court reporter is
16 going to take down the things that we say here
17 and therefore it's important that you give an
18 audible answer of yes, no or however that may
19 come as opposed to shaking your head or making
20 some sort of gesture, because that would require
21 the court reporter to interpret what you're
22 meaning and that might not be what you want her
23 to do.

24 A I understand.

25 Q Okay. Now, in this case you had filed

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1 SAXON - SEGARS (DIRECT EXAMINATION)

4

2 one or more counterclaims against National Bank
3 of South Carolina -- and we'll call that NBSC
4 because it's easier to say -- is that right?

5 A Correct.

6 Q Today I want to ask you some questions
7 about those counterclaims. Now, first, will you
8 state your name, please, for the record.

9 A Tad Segars.

10 Q And what is your address?

11 A 87 Singleton Beach Road, Hilton Head
12 Island, South Carolina, 29928.

13 Q Now, when we last took your deposition,
14 you had testified as to your experience and your
15 educational background.

16 A Yes.

17 Q Has anything changed since then?

18 A More experience.

19 Q A little bit more experience?

20 A That's right.

21 Q All right. But everything you
22 testified to in that prior deposition is pretty
23 much the same with just a little bit more
24 experience?

25 A To my knowledge.

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1 SAXON - SEGARS (DIRECT EXAMINATION)

5

2 Q Okay. Mr. Segars, this lawsuit
3 involves a piece of property that's generally
4 described as Lot 4-A Seaside Subdivision; is
5 that right?

6 A Correct.

7 Q Okay. And who owns that lot?

8 A Currently it's owned by NBSC. Excuse
9 me, I guess the deed may not have transferred
10 yet, but it was foreclosed on January 2nd. But
11 maybe more specifically, Dan, I don't know if
12 that was Segars & Associates or Tad Segars; it
13 was one or the other.

14 Q Okay. My records show Segars &
15 Associates, Incorporated.

16 A That's probably correct.

17 Q Okay. Who are the shareholders of
18 Segars & Associates, Incorporated?

19 A If it's not only me, it would be me and
20 my wife, Kelly Segars.

21 Q Do you know if she's a shareholder or
22 you don't know?

23 A I'm sorry, I don't, Dan. I should but
24 I don't remember.

25 Q Okay. What does that company do?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

6

2 A Currently the company is serving as a
3 corporation for myself to work as a real estate
4 professional.

5 Q Other than this property, Lot 4-A, does
6 Segars & Associates, Inc. own any real estate?

7 A Yes. I would be unable to list which
8 ones are owned, Dan, by Segars & Associates or
9 Tad Segars or KCCS or whatever the other
10 properties are held in.

11 Q And it owns some properties, other
12 properties, you just can't recall which ones
13 they are; is that a fair statement?

14 A That is fair, yes.

15 Q When did Segars & Associates acquire
16 Lot 4-A?

17 A It would be my estimation 1995.

18 Q I'm going to show you a deed and ask if
19 that refreshes your recollection on that.

20 A (Examines document.) Lot 4-A, it's a
21 deed, sum of \$10. I don't understand the \$10.
22 That was not the purchase price when I bought
23 it.

24 Q Is that the deed, though?

25 A It appears to be so.

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1 SAXON - SEGARS (DIRECT EXAMINATION)

7

2 Q The deed that conveyed the property to
3 Segars & Associates?

4 A Yes.

5 Q And who is the seller?

6 A Okay, conveyed by I.C. Gillespie.

7 Q And that deed shows a purchase price of
8 \$10, but that was not the purchase price; is
9 that correct?

10 A It's not correct, Dan. I will let you
11 know last night I discovered that I borrowed
12 money from C & S Bank at the time to make the
13 purchase.

14 Q Do you recall what the purchase price
15 was?

16 A I believe it was 38,000.

17 Q And just to confirm for the record,
18 that deed conveyed the property on October 19,
19 1995; is that correct?

20 A Yes.

21 Q Now, you indicate that -- I believe you
22 said C & S Bank loaned you the money to purchase
23 that lot?

24 A That's my recollection, yes.

25 Q Do you recall if they loaned you that

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1 SAXON - SEGARS (DIRECT EXAMINATION)

8

2 money at the time of the purchase or subsequent
3 to the purchase?

4 A Just in some review of the files
5 yesterday it wasn't clear in my quick glance,
6 but it may very well have been subsequent, Dan.

7 Q I'm going to show you a mortgage that I
8 found of record from NationsBank that grants a
9 mortgage on that property.

10 A Yes, I see it.

11 Q And the base amount of that mortgage is
12 \$40,000; is that correct?

13 A Yes.

14 Q Is that the loan you're speaking of?

15 A Yes.

16 Q That mortgage appears to be dated
17 December 1, 1995; is that correct?

18 A Yes.

19 Q All right. So at some point during or
20 immediately after the purchase then, NationsBank
21 loaned you \$40,000 on that property?

22 A Yes.

23 Q Okay. Did you have a survey of that
24 property performed at the time you bought it or
25 prior to the time you bought it?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

9

2 A I cannot recall.

3 Q Did you pay that NationsBank loan in
4 full?

5 A I did.

6 Q Do you recall when that was?

7 A Not exactly, but I don't think it was
8 -- I don't recall.

9 Q Okay. In the records from the Register
10 of Deeds for Beaufort County, I found a
11 satisfaction of that mortgage and ask if that
12 would refresh your recollection.

13 A I do believe this is correct. It was
14 not that long after the loan, a couple years.

15 Q All right. After that loan was paid in
16 full, did there come a time when you applied for
17 and received a loan from NBSC which was secured
18 by a mortgage on that property?

19 A Yes, I think it was a number of years
20 later. Repeat your question, please.

21 Q Did there come a time when you borrowed
22 or received a loan from NBSC secured by a
23 mortgage on that property?

24 A Yes.

25 Q When was that, if you recall?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

10

2 A It's on this paper; correct?

3 Q And I'm showing you a mortgage that I
4 found on Beaufort County's ROD, which is a
5 mortgage on that property to NBSC Bank, and that
6 mortgage is dated 19 August, 2002, in the face
7 amount of \$300,000; is that right?

8 A That seems to be correct.

9 Q So in 2002 you borrowed \$300,000 from
10 NBSC?

11 A That's correct; yes.

12 Q Okay. What was that money used for?

13 A Dan, to my recollection, it might have
14 been recommended by Mr. Matney to set up an
15 equity line for the money to be used for real
16 estate transactions or business purposes.

17 Q Do you recall how Mr. Matney would have
18 come to suggest that loan to you?

19 A I don't. Someone else may have
20 mentioned setting up similar loans versus having
21 to go through the loan process on smaller priced
22 properties that I may have been dealing with.

23 Q So then -- and correct me if I'm wrong;
24 that loan was established for you to have access
25 to cash for investment purposes and other real

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1 SAXON - SEGARS (DIRECT EXAMINATION)

11

2 estate?

3 A I think that's fair to say.

4 Q Okay. Did you draw down all of that
5 line of credit?

6 A I do believe so.

7 Q Now, did there come a time when you
8 requested that that line of credit be increased?

9 A Yes.

10 Q I'm going to show you a mortgage that
11 again I found on the Register of Deeds website.
12 When did you request that line to be increased?

13 A According to this document, it shows
14 August 15, 2005, so I would agree that's likely
15 the time.

16 Q Okay. So is it fair to say that you
17 requested an increase to \$500,000 and that that
18 was granted and a mortgage was granted on this
19 property August 15, 2005 in the amount of
20 \$500,000?

21 A Yes.

22 Q Okay. Again, those funds were used for
23 the same or similar purpose?

24 A It could have changed due to cash flow
25 purposes with other things going on, other

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2 transactions.

3 Q Can you explain that a little bit more
4 then?

5 A Sure. I do not recall, Dan, when the
6 increase was requested, whether it was -- at
7 that point in time it was solely due to real
8 estate transactions -- it was 2005; correct?

9 Q Yes, you testified that was 2005.

10 A Yes. Well, that time frame is one year
11 after Lot 2 Singleton Beach, which NBSC has
12 handled, had litigation upon it and so I think
13 it was a -- I don't think; I know it was a
14 combination of cash flow needs, as well as
15 likelihood of some other business investments.

16 Q Okay. What was the litigation on Lot 2
17 then one year after that?

18 A Well, July 28th, '04 -- I believe I'm
19 accurate of that date -- is when the Town of
20 Hilton Head Island per court order revoked the
21 Singleton extension plat.

22 Q So the litigation you're speaking about
23 involved Lot 2 Singleton Beach?

24 A Yes.

25 Q And you incurred certain expenses

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1 SAXON - SEGARS (DIRECT EXAMINATION)

13

2 associated with that litigation?

3 A Certainly.

4 Q Okay. So your testimony is the
5 increase in part was to help defray the cost of
6 the litigation on Lot 2 Singleton Beach?

7 A It's a guess. I cannot recall
8 specifically.

9 Q Okay. Let's talk about that a little
10 bit. The Town, you indicated, revoked a plat on
11 Lot 2 Singleton Beach and litigation followed
12 that. Tell me about the litigation. What type
13 of litigation was that?

14 A The revocation was due to a fraudulent
15 document submitted by the developer regarding
16 improper placement of the easement. Title
17 insurance, Fidelity Title hired Attorney Jim
18 Berl to represent myself and others to cure the
19 problem and get the plat reinstated.

20 Q Did you make a claim against the title
21 policy on that property then?

22 A Yes.

23 Q Okay. Do you recall the title
24 insurance company?

25 A I believe it was Fidelity at the time.

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1 SAXON - SEGARS (DIRECT EXAMINATION) 14

2 Q Fidelity? When was that claim made?

3 A It would only be an estimate. The plat
4 was revoked in July. It would be my estimate
5 September or October.

6 Q September or October of what year?

7 A '04. A couple of months after
8 revocation.

9 Q And did Mr. Berl successfully solve the
10 problem of the revoked plat?

11 A No.

12 Q Did the title company then compensate
13 you for any loss that you may have suffered as a
14 result of that?

15 A No.

16 Q What was the ultimate disposition of
17 that title insurance claim?

18 A Could you ask it a different way,
19 please.

20 Q I guess in simple terms I'm asking what
21 did the title insurance company do. Did they
22 deny coverage?

23 A They were hired at that point in time,
24 to my understanding -- if I'm explaining it
25 correctly, Dan -- to cure the problem that

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1. SAXON - SEGARS (DIRECT EXAMINATION)

15

2. caused the revocation, which was the fraudulent
3. document, to correct the easement.

4. Q In other words, Fidelity hired Jim Berl
5. to do that?

6. A That's correct.

7. Q And Jim Berl, you testified, was
8. unsuccessful in solving that problem?

9. A No, sir, that's not correct. That's
10. not correct.

11. Q Okay. Did Jim Berl solve the problem
12. of the revoked plat?

13. A He solved the problem correcting the
14. easement issue in agreement with the Town of
15. Hilton Head to get the plat reinstated, and that
16. was September '06.

17. Q Okay. Just so I understand this, the
18. revoked plat or the revocation of the plat was
19. taken care of in September of '06?

20. A Yes.

21. Q And then did that solve your problem
22. with regard to Lot 2 Singleton Beach?

23. A No.

24. Q What other problem did you have with
25. Lot 2 Singleton Beach?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

16

2 A From the date of closing, it was later
3 discovered that the lot was unbuildable.

4 Q And is that resulting from the
5 positioning of the OCRM line that we've
6 discussed in your other deposition?

7 A That's correct.

8 Q Did you make a claim again Fidelity
9 under -- let me rephrase that.

10 Did you purchase a policy of title
11 insurance on Lot 2 at the time of purchase?

12 A Yes.

13 Q Okay. And did Fidelity issue or insure
14 that property?

15 A Yes.

16 Q Okay. Did you make a claim against
17 that policy against Fidelity with regard to the
18 OCRM line on the lot?

19 A Yes.

20 Q When did you make that claim?

21 A I cannot recall.

22 Q Was that claim made at the same time
23 you made the claim -- the previous claim with
24 regard to the plat being revoked?

25 A No.

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1 SAXON - SEGARS (DIRECT EXAMINATION)

17

2 Q So it was a separate claim?

3 A Yes.

4 Q Did you retain an attorney to represent
5 you in that claim against Fidelity?

6 A Yes.

7 Q Who was that attorney?

8 A Mike Mogil.

9 Q And what was the result of that claim
10 against Fidelity?

11 A They denied my claim.

12 Q Did you pursue that matter further as
13 to Fidelity?

14 A It's still being pursued.

15 Q Is Mike Mogil representing you in that
16 matter?

17 A No, not really.

18 Q Okay. Do you have an attorney
19 currently representing you in that matter?

20 A If it would be anybody at this point in
21 time, it would be Mike.

22 Q Okay. Was a lawsuit ever filed against
23 Fidelity with regard to the OCRM line?

24 A Yes.

25 Q Do you recall when that lawsuit was

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1 SAXON - SEGARS (DIRECT EXAMINATION)

18

2 filed?

3 A I do not.

4 Q Do you have copies of the pleadings of
5 that lawsuit?

6 A Most likely or certainly Mike Mogil
7 would.

8 Q Okay. So if I were to ask you, you
9 could get the copies of the pleadings and get
10 them to your attorney so he could get those to
11 me?

12 A Certainly.

13 Q I would appreciate it if you would do
14 that.

15 A Okay.

16 Q Okay. Have you taken any other action
17 -- have you taken any other legal action with
18 regard to the OCRM line on Lot 2?

19 A Yes.

20 Q What other action have you taken?

21 A Legal malpractice.

22 Q Okay. And just to cut through that,
23 would that be your closing attorney --

24 A Yes.

25 Q -- when you purchased Lot 2?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

19

2 A Yes.

3 Q And you filed a lawsuit against him
4 alleging legal malpractice?

5 A Yes.

6 Q Okay. Is that action still pending?

7 A No.

8 Q Were you successful in that action?

9 A I was not.

10 Q Okay. Just to clarify that, that was
11 the case of Thaddeus Segars versus Jones,
12 Patterson, Simpson & Newton, P.A. and William
13 Weston Jones Newton; is that correct?

14 A It is.

15 Q Okay. Other than that action, have you
16 taken any other legal action with regard to the
17 OCRM line on Lot 2?

18 A Could you offer some information that
19 could help me?

20 Q Sure. Did there come a time when you
21 retained the services of Cotton Harness?

22 A Yes.

23 Q And Cotton Harness is an attorney --
24 he's passed away at this time, but he was an
25 attorney in the state; is that correct?

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2 A Yes.

3 Q Okay. How did you come to retain the
4 services of Mr. Harness?

5 A The developer had --

6 Q And the developer is? I'm sorry to
7 interrupt you.

8 A It was known as JJ Development, which I
9 believe consisted of Ed Flynn and Jerry Sease;
10 and the partner was known as Richardson Street
11 Partners and that is Paul Gaughf, G-A-U-G-H-F.

12 Q And before I interrupted you, you were
13 saying that the developer had.

14 A The two partnerships I just mentioned
15 hired the services of Cotton Harness.

16 Q Okay.

17 A And we as owners of -- the owners
18 signed up as a group to be represented by Cotton
19 Harness.

20 Q Tell me about that case; what relief
21 were you seeking in that case?

22 A There was a plat first recorded in
23 January '03, whereas the developer was
24 successful in getting agreement from the Town of
25 Hilton Head Island and the State representing

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1 SAXON - SEGARS (DIRECT EXAMINATION)

21

2 the OCRM baseline for the OCRM baseline to move
3 about 40 feet seaward to the crest of the dune
4 in a reconfiguration of the ten parcels.

5 Q Okay. And again I believe you
6 testified about that in your prior deposition.
7 Your contingent is that the plat recorded
8 contained a current OCRM line and a future OCRM
9 line; is that correct?

10 A That is correct.

11 Q Okay. And the developer and your
12 representation by Mr. Harness was an attempt to
13 have that OCRM line moved seaward?

14 A Yes.

15 Q Okay. Do you recall when you retained
16 Mr. Harnass or when you joined in that lawsuit?

17 A It's my belief it was sometime in '05.

18 Q Do you recall the date in '05 when you
19 would have retained Mr. Harnass?

20 A I do not.

21 Q Do you have the records, the pleadings,
22 the various litigation filings that Mr. Harness
23 prepared on your behalf in that case?

24 A I do not think I have those.

25 Q Okay. Now in the case of yourself,

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2 Segars versus Weston Jones, the malpractice
3 action we spoke of, did you give a -- did you
4 provide a deposition in that case?

5 A I would certainly think that I did.

6 Q Okay. Do you have a copy of that
7 deposition?

8 A I don't think so.

9 Q Okay. Would it refresh your
10 recollection -- well, strike that.

11 Do you recall in that deposition in the
12 matter against Mr. Newton giving deposition
13 testimony indicating that Mr. Harness had filed
14 a motion to intervene on your behalf on March
15 16, 2005?

16 A I would not argue that. That's very
17 likely correct. I do know that we all signed
18 for his representation.

19 Q Okay. But you don't recall if you have
20 a copy of your deposition in that case?

21 A I don't, Dan.

22 Q Do you recall where that case where
23 Cotton Harness represented you, where was that
24 case pending?

25 A Well, I recall going to Columbia one

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1 SAXON - SEGARS (DIRECT EXAMINATION) 23

2 time with Cotton Harness and Paul Gaughf of
3 Richardson Street Partners before the -- I think
4 it was the administrative law judge, Carolyn
5 Matthews.

6 Q Okay. So is it fair to say did the
7 developer and the owner sue South Carolina -- I
8 guess it would be DHEC over the OCRM line?

9 A I don't think that's correct.

10 Q Okay. Do you recall what that case
11 would have been? What I'm asking for is the
12 parties and where it may have been pending.

13 A To my recollection and understanding,
14 from the very beginning of the discussion to
15 move the OCRM baseline seaward and
16 reconfiguration, the developers -- excuse me,
17 probably just Ed Flynn, JJ, several
18 representatives from the Town of Hilton Head
19 Island, and I do believe Ed Eiser who's the head
20 of DHEC, I was told that they all stood on the
21 site and agreed for the OCRM line to move
22 seaward. And after that agreement is when Sea
23 Island Land Survey was hired to perform the plat
24 that I referred to as recorded in January '03,
25 and that plat was, to my understanding, handled

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2 by -- picked up by Ed Flynn from Sea Island,
3 taken straight to the Town to get their stamp
4 yes, this is what the Town agreed to; and then I
5 believe he went to Beaufort, had it recorded and
6 then possibly the same day or the next day is
7 when he delivered it to Weston Newton, the
8 attorney.

9 Q Okay. Getting back to Lot 4-A, which
10 we are to testify on today, now did there come a
11 time when you asked NBSC to increase the line of
12 credit which was securing -- secured by the
13 mortgage on Lot 4-A?

14 A I do believe so.

15 Q Now, I have pulled a mortgage from the
16 ROD's website and it's dated 23 May of 2007.
17 Does that appear to be the mortgage that would
18 have resulted from that request for an increased
19 line of credit?

20 A I do think so.

21 Q All right. What were the --
22 essentially the credit line then was refinanced
23 from 500,000 to \$1 million?

24 A Yes.

25 Q What was the extra money then used for?

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2 A It is my belief that that money at that
3 point in time was used most likely for cash flow
4 reasons. Specifically I know from my wife who
5 handled all of our accounts and checking and
6 payments, specifically I know that most often it
7 was used to pay NBSC Bank for Lot 2 Singleton
8 Beach.

9 Q Okay. Your counterclaim in this action
10 against NBSC, let me ask you to describe it.
11 What is your claim against NBSC with regard to
12 Lot 4-A?

13 A I don't have specific answers for you
14 on that, Dan.

15 Q Let me ask it a little bit more
16 pointedly then. Your counterclaim alleges that
17 NBSC informed you that the prospective loan was
18 contingent upon appraisal of the property
19 confirming to be a certain value; and that goes
20 on to say that you, or Segars & Associates,
21 later learned that based upon the OCRM lines and
22 other setbacks, the lot in question was
23 unbuildable. Is that your contention?

24 A Read it again, please. Or may I read
25 it?

2 Q Yes, please.

3 A (Examines document.) Okay. Now ask
4 the question, please.

5 Q Is it your contention then that -- take
6 it one at a time. Is it your contention that
7 Lot 4-A is unbuildable based upon an OCRM line
8 and another setback requirement?

9 A Lot 4-A was buildable.

10 Q Does Lot 4-A have -- is it an
11 oceanfront lot?

12 A Yes.

13 Q Is there a home on it?

14 A No.

15 Q It's a vacant lot?

16 A Yes.

17 Q Is there an OCRM line which runs
18 through Lot 4-A?

19 A Not to my knowledge does it run through
20 it. It's at the ocean side of the property.

21 Q Okay. Is the placement of the OCRM
22 line or -- strike that.

23 Does the placement of the OCRM line
24 impact the buildability of Lot 4-A?

25 A No.

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 Q Okay. Your counterclaim goes on to say
3 that defendant -- and that would be you and/or
4 Segars & Associates -- has been unable to
5 develop or sell the property due to the fact
6 that the lot in question has been deemed
7 unbuildable. Is that true?

8 A That paragraph would be referring to
9 Lot 2-A.

10 Q Okay. And that really is, I guess,
11 what I'm trying to get to. Maybe I should have
12 took a shorter way to get there. Your
13 counterclaims in this case which is seeking a
14 foreclosure on Lot 4-A, do those counterclaims,
15 are they alleged against appraisals that were
16 done on Lot 4-A or are those counterclaims
17 referring to the same counterclaims that you
18 made in the foreclosure case seeking foreclosure
19 of Lot 2 Singleton Beach?

20 A Dan, the claims of the OCRM placement
21 of the line, as well as buildability were not
22 for Lot 4-A; those claims were against Lot 2-A.

23 Q Okay. Do you dispute the accuracy of
24 the appraisal that was prepared for NBSC on Lot
25 4-A in its evaluation of the loans that were

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2 made to you on Lot 4-A?

3 A Was there more than one appraisal or
4 just one?

5 Q I believe there were several appraisals
6 done on that property.

7 A Well, let me make it easy. I do not --
8 well, of course, I disagree a little bit but not
9 enough for a lawsuit.

10 Q Mr. Segars, I only have a couple more
11 questions. In the Beaufort County ROD office I
12 found what was then a pending case of Town of
13 Hilton Head versus Segars & Associates and Tad
14 Segars which appears to involve the construction
15 of a walkway from Lot 4-A over, I assume, to the
16 beach; is that correct?

17 A Yes.

18 Q What's the status of that lawsuit?

19 A It's a great question for Gregg Alford.
20 Sadly, as we discussed earlier, Cotton Harness
21 has passed away and he had represented me for a
22 couple of years regarding the walkway. So I do
23 not have any idea what the status is of that.

24 MR. FINN: What's the name of that
25 case, Dan?

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1 SAXON - SEGARS (DIRECT EXAMINATION)

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2 MR. SAXON: That case is -- well,
3 it's Case Number 2007-CP-07-1037, and
4 it's Town of Hilton Head v. Segars &
5 Associates and Tad Segars. I'll make
6 you a copy of it. All I have is the
7 complaint.

8 BY MR. SAXON:

9 Q That case sought an injunction
10 requiring you to move the boardwalk over what's
11 described as the Town's property and restore
12 that Town's property to its natural state. Have
13 you done any of that? Is the boardwalk still
14 where the boardwalk has been?

15 A Correct; there's been nothing done.
16 Dan, if it would benefit you and the bank, I'll
17 let you know that a professional is hired to get
18 the permit for construction. You may be aware
19 of a long laundry list of protocol and the State
20 may or may not offer a permit. Well, every step
21 was taken and the Town signed as to the
22 agreement for the boardwalk to be built. They
23 did not protest. The permit was issued, had it
24 extended a few times, and before my deadline ran
25 out we had the boardwalk built; and after its

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Thank you

(Whereupon, the deposition of
Tad Segars was concluded at
approximately 10:55 a.m.)

0274

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Cathy M. Knoettner, Certified Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that there upon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Cathy M. Knoettner, CCR

Notary Public

Beaufort, South Carolina

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH CAROLINA,
Plaintiff,

vs. CIVIL ACTION NUMBER
2009-CP-07-3201

THADDEUS F. SEGARS, KCS INVESTMENTS, LLC;
SINGLETON PLACE HOMEOWNERS ASSOCIATION, INC.
and SUNTRUST MORTGAGE, INC.,
Defendants.

COPY

-----/
The deposition of DENNIS OUTLAW, a
witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Ceil
Weser, Certified Court Reporter and Notary
Public, at the Law Offices of Finn Law Firm, 38
D-4, New Orleans Road, Hilton Head, South
Carolina, on the 20th day of June, 2012,
commencing at or about the hour of 11:21 a.m.

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1
2 APPEARANCES OF COUNSEL:

3 FOR THE PLAINTIFF:

4 DANIEL SAXON, ESQUIRE
5 Novit, Scarminach & Williams, P.A.
6 52 New Orleans Road
7 Hilton Head, South Carolina 29938
8 843-785-5850

9 FOR THE DEFENDANTS:

10 THOMAS FINN, ESQUIRE
11 Finn Law Firm
12 38 D-4 New Orleans Road
13 Post Office Box 6003
14 Hilton Head, South Carolina 29928
15 843-682-3555

16 ALSO PRESENT:

17 Tad Segars
18 Amanda Griswold

19 I N D E X

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DOCUMENTARY EVIDENCE

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DX-1	Mr. Outlaw's report	50
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REPORTER'S NOTE: Defendant's Exhibit Number One
was retained by counsel.

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1 FINN - OUTLAW (DIRECT EXAMINATION)

4

2 DENNIS OUTLAW,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FINN:

7 Q Good morning, Mr. Outlaw, as you know
8 my name is Tom Finn and I represent Tad Segars
9 and the other Plaintiffs in this matter, and we
10 have met and spoken before, correct?

11 A Yes, sir.

12 Q Let me ask you a few background
13 questions.

14 First, can you please state your full
15 name for the record.

16 A Dennis Wayne Outlaw.

17 Q And Mr. Outlaw, where do you reside?

18 A I reside in Kershaw County
19 approximately 25 miles north of Camden, South
20 Carolina.

21 Q And tell me a little bit about your
22 educational background.

23 A I went to McBee High School, graduated
24 with a diploma.

25 And in this personal field I actually

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2 hold four state licenses at the present time. I
3 am a licensed contractor. I am a
4 broker-in-charge, a certified general appraiser,
5 and a licensed home inspector.

6 Q And how do you make your living? How
7 are you employed?

8 A I am self-employed. The basis of most
9 of my income is in home inspections and
10 appraisals.

11 I am not actively engaged in sales or
12 building at the present time.

13 Q And what type of training did you
14 undergo to obtain your appraisal license?

15 A I went through the mandatory licensing
16 classes back when I took it in 1992. We had
17 three different sections L1, L2, and L3; and
18 then afterwards I went to classes for certified
19 residential. And afterwards I went to classes
20 for certified general, and I have to update my
21 license every two years now with the Continuing
22 Ed of 14 hours per year.

23 Q And do you hold the highest type of
24 appraisal license that is available?

25 A Yes, sir, there is a designation MIA.

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2 I am not an MIA, but as far as what the licenses
3 you can hold as a certified general.

4 Q And are you affiliated or belong to any
5 professional associations relative to the
6 appraisal business?

7 A Well, I am not associated with any
8 independent organizations, no, sir. USPAP
9 standards sets the regulatory guidelines that I
10 must use.

11 Q What is USPAP?

12 A That is the Uniform Standards of
13 Professional Appraisal Practice.

14 Q Is that a national organization?

15 A Yes, sir.

16 Q You said they set the standards for --

17 A The appraisal industry.

18 Q -- The conduct of appraisers?

19 A Yes, sir.

20 Q So would you have to follow USPAP when
21 you are doing an appraisal in South Carolina?

22 A Yes, sir, you follow USPAP anywhere in
23 the nation. You can depart from their
24 regulations, but you should note when you depart
25 that you departed.

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2 Q Have you ever been asked to be an
3 expert witness in your capacity as an appraiser?

4 A Yes, sir.

5 Q Can you tell me about how many times?

6 A No, sir. I have been asked to be an
7 expert witness on home inspections and
8 appraisals on multiple times. I really -- it
9 would just be a stab in the dark. It is
10 probably less than 30.

11 Q Have you ever testified in court?

12 A Yes, sir.

13 Q And in the capacity as an appraiser?

14 A Yes, sir.

15 Q Have you ever taught any classes or
16 created any classes?

17 A Yes, sir. I am an approved instructor
18 for the State of South Carolina. I work with
19 Chip Brown in the Real Estate School of South
20 Carolina for I would guess 12 years, in that
21 range and during that time I helped them design
22 and actually designed a couple of my own
23 courses.

24 Q How were you contacted regarding this
25 case?

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2 A Mr. Tad Segars called me, I don't
3 remember the exact time. I know it has been in
4 excess of a year I would think, and we had a
5 discussion on the phone in which he asked me if
6 I would possibly entertain an idea of reviewing
7 an appraisal for him and giving him an appraised
8 value of a lot retroactive to 2004.

9 Q Did you eventually undertake to take
10 that task?

11 A Yes, sir, I agreed to undertake the
12 assignment and eventually came down and met Mr.
13 Segars, and we discussed all the relative
14 matters.

15 Q What were you asked to do once you met
16 and came down to Hilton Head?

17 A I was actually asked to review an
18 appraisal report and to give my opinion on
19 whether the value was an accurate value at the
20 time it was rendered.

21 Q Did you obtain a copy of that
22 appraisal?

23 A Yes, sir.

24 Q Do you recall -- well, first of all
25 what property was that appraisal for?

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2 A It was a small lot at 17 Singleton
3 Beach Place in Hilton Head, South Carolina.

4 Q Where was the lot located?

5 A It was on oceanfront.

6 Q What did you do next with respect to
7 fulfilling the task that you were assigned?

8 A I actually started gathering
9 information, and I contacted Mr. Segars
10 occasionally to inquire about receiving
11 documentation on different areas.

12 I am not from this area, and so I
13 needed guidance as to where to go to get certain
14 items. So I started gathering information. I
15 actually came down to the lot three, if not four
16 times before it was all said and done.

17 Q Okay.

18 Did you review the appraisal that you
19 were asked to review?

20 A Yes, sir. I reviewed that appraisal
21 immediately.

22 Q Tell me about that appraisal.

23 It was obviously for that property?

24 A Yes, sir.

25 Q When was that appraisal done?

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2 A If I am not mistaken it was June 2,
3 2004. Yes, sir.

4 Q Are you able to ascertain who the
5 appraiser for that was?

6 A The appraiser listed on the report is
7 S.V. Lindsay.

8 Q So you reviewed that appraisal?

9 A Yes, sir.

10 Q What did you do next in examining these
11 issues?

12 A I actually started going through the
13 appraisal one item at a time trying to determine
14 if there were issues that restricted the use of
15 this property. In discussion with Mr. Segars he
16 had concerns about the actual use of the
17 property, and as I started going through it I
18 started finding that there were issues with this
19 property that were very restrictive; and it did
20 have a detrimental effect on the actual value of
21 the property.

22 Q Does USPAP require you to look at or to
23 examine certain documents, or what does USPAP
24 require an appraiser to do in conducting an
25 appraisal?

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2 A USPAP requires that you either be
3 knowledgeable of the area or that you review the
4 items on the area, and you are to report
5 anything that would be associated with a
6 particular parcel that would be either good or
7 bad for the value; but you are responsible for
8 knowing any restrictive covenants, easements,
9 things of that nature that would affect the
10 value on the property.

11 Q Did you look for these particular
12 items?

13 A Yes, sir, because I am not from the
14 area and I tried to pull everything I possibly
15 could; and I was able to ascertain the
16 information I desired.

17 Q Can you tell me what sort of items you
18 would have pulled to review to make an accurate
19 assessment?

20 A I was given a plat up front when the
21 initial meeting with Mr. Segars occurred, and
22 also had the plat that was on the original
23 appraisal. I actually wanted a larger plat, so
24 I could read it more accurately and so that was
25 one of the first things I did was get a larger

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2 plat. And then I got a copy of the restrictive
3 covenants --

4 Q What are they?

5 A -- For the subdivision.

6 Q What would they be? Just describe them
7 in general?

8 A They are very particular on the island
9 itself. It was very interesting and educational
10 for me to read these particular restrictive
11 covenants, but they set a lot of covenants that
12 are not common of where I am from, and so I was
13 very interested in reading them.

14 But they have specific setbacks,
15 specific designs, specific square footages; and
16 so they are very restrictive as to what can and
17 cannot be built on a parcel of land in this
18 area.

19 Q Given that this was an oceanfront
20 property, was there any particular issues
21 particular to being an oceanfront property that
22 would require you to look at anything?

23 A Yes, sir. The ocean setback line was
24 an item of interest, and it is clearly labeled
25 on several plats. It is clearly labeled. I am

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2 not going to tell you how accurate it was on
3 either/or any of the plats, but the ocean line
4 setback is clearly labeled, and it is an issue
5 that must be regarded because it does impose a
6 restriction on the property as well.

7 Q Is that what is referred to as the OCRM
8 line?

9 A Yes, sir.

10 Q So you looked at the initial appraisal,
11 you ordered a plat, you looked at the
12 restrictive covenants of the residential
13 community Singleton Beach?

14 A Yes.

15 Q And you addressed or looked at any
16 restrictions relative to it being an oceanfront
17 property, correct?

18 A Yes, sir.

19 Q Did you do or request anything else?
20 Any other information?

21 A I am sure I did. I researched previous
22 sales. I was actually in touch with the county
23 services, public services for any of this and I
24 researched any sales during that time.

25 But as I got deeper into the review it

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2 was determined I could find no actual sales for
3 the property as it was at that particular time.

4 Q Was this 10 undeveloped lots at the
5 time of the initial appraisal? Or tell me what
6 was it?

7 A The subdivision to my knowledge was a
8 new subdivision, and it was broken up into lots
9 shown on the plat, I believe it was 10 at the
10 initial time. And when I came down it was at
11 least one building in the process of being
12 constructed on the property, and I don't recall
13 if there was any other buildings on it at the
14 time or not.

15 Q I'm sorry, it didn't register, but did
16 you say something about comparable's?

17 A Yes, sir, I tried to find comparable's
18 for what my review was coming up with a
19 determination; and I could not find any
20 comparable's which I felt were relevant to the
21 subject.

22 Q You mentioned it was obviously an
23 oceanfront parcel.

24 What surrounds the parcel?

25 A Each side of the parcel is a

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2 single-family lot. The front of the parcel as I
3 call it is actually oceanfront with a dune, and
4 the back of the parcel is a paved street and
5 wetlands behind the paved street.

6 Q Is there a causeway or some kind of
7 bridge to actually get to this parcel?

8 A There is a gated -- there is a private
9 gate going to the parcel, but the bulkhead
10 bridge is actually not on this parcel. It is
11 right beside it.

12 Q Did you request that a survey be
13 performed?

14 A I actually requested that a surveyor
15 come out and stake off the actual size of the
16 lot that could be used for building purposes,
17 because my research was showing that the lot was
18 not large enough to put a single-family
19 dwelling.

20 Q What did you find that led you to think
21 that?

22 A We had a setback line coming from the
23 ocean that came inward from the adjoining lots,
24 and it restricted the subject lot just a little
25 bit more than the lots to the right side. But

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2 there is also an easement that had some issues
3 with the restrictive covenants that is coming in
4 off the street, whereas the bulkhead bridge next
5 to the subject disallows for road frontage for
6 lot number 3, so lot number 3 is accessed by
7 driving across lot number 2.

8 Q What else did you find?

9 A I found that the restrictive covenants,
10 the wording on them was that the road
11 right-of-way had a 10-foot easement on it for
12 utilities, and the easement beside the road
13 right-of-way was a 20 foot right-of-way easement
14 going to lot number 3. And then the restrictive
15 covenants actually said that you cannot build
16 any improvements within 10-foot of a
17 right-of-way easement, so we are looking at a
18 potential loss of 40 feet from the front of that
19 lot or from the street of the lot and that
20 completely -- let us say it was very destructive
21 toward the aspect of constructing a
22 single-family dwelling that would meet the
23 current restrictions.

24 Q Did the Singleton Beach community have
25 restrictions on what size home could be built?

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2 A Yes, sir. If I am not mistaken it was
3 a total of 2500 square feet. You had
4 restrictions on the height and restrictions on
5 the parking on the bottom, and the first floor
6 had to have a minimum of a thousand square feet.
7 When the surveyor flagged the lots, and I have
8 marked off 40 feet from the road as per the
9 restrictive covenants I was only looking at
10 approximately 10-foot on the right-hand side for
11 a potential house and it would not meet the
12 requirements.

13 Q So between the restrictive covenants
14 and the various setbacks, easements, and other
15 restrictions the footprint was not big enough to
16 sustain the house?

17 A No, sir, from my calculations the
18 actual buildable area was not accessible to meet
19 the restrictions.

20 Q Did that fact in your opinion have an
21 effect on the value of such property?

22 A Yes, sir.

23 Q And explain that to me.

24 A It is adverse. The appraisal was noted
25 as highest and best use, was improved with a

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2 single-family dwelling, but the restrictive
3 covenants would not allow a single-family
4 dwelling, so the highest and best use was wrong
5 on the appraisal report and thus the appraisal
6 was void.

7 Q Highest and best use seems pretty
8 straightforward to me, but in the appraisal
9 world what is that? Is that something that the
10 appraisal --

11 A In the appraisal industry location is
12 the single-most important factor to value. But
13 highest and best use is a factor of location.
14 Without highest and best use location is
15 worthless. You have to have a proper highest
16 and best use to have value.

17 Q You reviewed the Linsday appraisal I
18 will call it just to identify it, when you
19 reviewed that what was the highest and best use?
20 What did Mr. Linsday say about the highest and
21 best use?

22 A He has got that the highest and best
23 use is other, and then he has got out to the
24 side improved with a single-family dwelling.

25 Q Could the lot at that time of the

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2 Linsday appraisal have been used for its highest
3 and best use, that is a single-family home?

4 A Could it have been? As far as the dirt
5 on the lot?

6 Q Right.

7 A There is probably enough dirt there,
8 but the restrictive covenants, legally no.

9 Q And so that fact would affect the
10 value?

11 A Yes, sir.

12 Q In considering this did you form an
13 opinion as to what the highest and best use is
14 for at that time for that particular parcel?

15 A In my review I have on it that I really
16 cannot tell you what highest and best use is as
17 of that date, because it is zoned for a
18 residential building, but the restrictions would
19 not let you obstruct a residential building. So
20 I really cannot tell you what highest and best
21 use. In my opinion it would have been to
22 possibly combine it with an adjoining lot just
23 to add square footage to the other lot.

24 Q Okay.

25 Were you able to place a value on the

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2 lot based upon those or did you even try?

3 A Actually I tried, but I could not find
4 any comparable's that were single-family
5 residential zoned that were restricted against
6 building a dwelling on, and there were no sales
7 that I could find during that time period or
8 even now that I could actually say would be
9 comparable to the subject. So the value I
10 actually placed on the report would have been
11 the tax assessed value of 70,000 the year
12 before.

13 Q Do you know who ordered the Lindsay
14 appraisal? Were you ever able to ascertain that
15 from any of the documents you reviewed?

16 A I don't know who ordered it. The
17 client was listed as NBSC.

18 Q So would that typically mean that the
19 bank would have requested the appraisal?

20 A Generally, yes, sir.

21 Q Did Mr. Lindsay have the information
22 that you had available to him back when he did
23 his appraisal?

24 A I assume so. I really can't say. That
25 was seven years prior, but the restrictive

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2 covenants should have been recorded at the
3 public records office prior to the subdivision
4 actually being approved.

5 Q Did you learn that there were different
6 plats for this particular lot at any time?

7 A Yes, sir. Mr. Segars informed me that
8 there was two different plats showing two
9 different baseline setbacks.

10 Q Did you verify that?

11 A Yes, I had a copy of each; but the plat
12 that I actually worked off of was the plat that
13 was on the original appraisal. The other plat
14 really had no bearing as to what my work was.

15 Q So you used the same plat that Mr.
16 Lindsay did?

17 A Yes, sir.

18 Q And so any information that was on the
19 plat that you examined would have also been on
20 the plat that Mr. Lindsay used in performing his
21 appraisal?

22 A Yes, sir.

23 Q And so when you talked about the
24 setbacks and the restrictions that were set
25 forth on the plat, they were easily identifiable

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2 back when the first appraisal was done?

3 A Yes, sir, they are actually on his
4 appraisal.

5 Q What, if anything, did you find that
6 you may take exception with in the first
7 appraisal?

8 A Define "take exception with".

9 Q Did you find any, for lack of a better
10 word mistakes?

11 A Yes, sir, in the first appraisal in my
12 opinion is very misleading as to what the actual
13 value was worth.

14 Q Can you tell me why or what in that
15 appraisal?

16 A Well, the highest and best use not
17 being available for a single-family dwelling is
18 by far the most important factor. And that
19 comes from the easement, the ocean line setback
20 and the restrictive covenants.

21 But even his comparable's, I would have
22 made adjustments against lot number 6 for
23 certain, because even if this lot been approved
24 for a single-family dwelling there is an
25 easement that causes loss of land use on the

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2 subject and the subject is smaller than lot 6,
3 definitely not near as long, so I would have
4 made an adjustment on that regardless.

5 And but the items on the appraisal, he
6 also noted that it was not in a flood zone. My
7 program showed that it actually is in a flood
8 zone.

9 He said that --

10 Q Would that make any sense that an
11 oceanfront property would not be a flood zone
12 based on what you know about properties?

13 A Well, I thought all oceanfront
14 properties are in a flood zone, but that is
15 nothing I have ever verified.

16 Q Would it make sense?

17 A Right, you can't build on ground level
18 to my knowledge on oceanfront because of that
19 reason.

20 MR. SAXON: Excuse me one minute.

21 We are treating this as a discovery
22 deposition? We are withholding
23 objections?

24 MR. FINN: Yes, that is fine.

25 MR. SAXON: Okay.

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2 THE WITNESS: A couple of the
3 items that I noted on the appraisal on
4 the certification, it says that he has
5 taken into consideration any factors
6 that had an impact on value, and I
7 didn't see where he had anything on the
8 report about the small available
9 building, actual size available to the
10 land to build a house.

11 And on it he says that he
12 performed this in conformity with the
13 USPAP standards of practice. There is
14 actually at least two that he didn't
15 meet the standards on.

16 Q Tell me what those are.

17 A Standards 1-2 in E. It says:
18 Appraiser identify characteristics of the
19 property that are relevant to the type and
20 definition of value.

21 And market value as stated in the
22 appraisal report is: The probable price which a
23 property should bring in a competitive and open
24 market under all conditions requisite to a fair
25 sale. The buyer and seller each acting

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1 prudently and knowledgeably. So as far as fair
2 market value, market value, neither the lender
3 nor the purchaser were knowledgeable of the
4 items that I had mentioned here because they
5 weren't on the report.
6

7 But it says: Including any known
8 easements or restrictions, encumbrances, leases,
9 reservations, covenants, contracts,
10 declarations, special assessments, or
11 ordinances. And there were several items
12 involved with this particular lot that needed to
13 be addressed on the appraisal. Whether they
14 could have been resolved or not is not really
15 the issue. It is just that they were not on the
16 appraisal and they should have been.

17 Q So the driveway easement, for example,
18 for the adjacent lot, at some point somebody
19 may, the property owners could have said hey,
20 you give me this easement and I will give you an
21 easement. In other words, they could have
22 negotiated something that would have made that
23 easement --

24 A Anything is possible as long as it is
25 legal and both parties agree, then you could do

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2 it.

3 But under these particular lots you
4 have to get approval from the county to make any
5 changes whatsoever, and so it would have had to
6 have been approved by the county. I am not
7 saying it could or could not have been.

8 Q Right.

9 A I am just saying it is an item that
10 should have been on the report.

11 Q So at the time the report was done the
12 easements and restrictions --

13 A The easements were restrictive to the
14 subject use and it was not listed as such on the
15 report.

16 Q Were the restrictive covenants for the
17 Singleton Beach Homeowner's Association or
18 community, the Singleton Beach community, were
19 they listed in the report, any restrictions?

20 A I did not see them in the original
21 report.

22 Q Is there anything else that --

23 A Well, USPAP standards 1-3 in B: To
24 develop an opinion of highest and best use the
25 real estate appraiser must analyze the relevant

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2 legal, fiscal and economic factors to the extent
3 necessary to support the appraiser's highest and
4 best use. And I don't feel like he analyzed it
5 enough to actually ascertain highest and best
6 use.

7 Q So in this report the appraisal was
8 passed onto the bank, I would assume, right?

9 A I would assume so. That is something I
10 really can't answer. It is too long ago.

11 Q Did you see any other issues as you --

12 A There is several issues involved with
13 the appraisal. Highest and best use definition
14 was not met as far as the USPAP standards and
15 thus --

16 Q What is the standard, Mr. Outlaw?

17 A Its full requirements to highest and
18 best use, it has to be legally possible,
19 physically possible, financially feasible, and
20 maximally productive. And with the information
21 I gathered it was definitely not financial
22 feasible, and it actually wasn't legally
23 possible by the restrictive covenants.

24 Q How do you explain the financially
25 feasible aspects of that if you could?

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1 FINN - OUTLAW (DIRECT EXAMINATION)

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2 A Any knowledgeable individual that was
3 looking to purchase this lot that knew the
4 issues with the ocean line setback and the
5 easement and the restrictive covenants as far as
6 their building requirements, any knowledgeable
7 person would not ascertain a value in the
8 \$1,600,000 mark.

9 Q And in line with that you did not --
10 you were not able to put a dollar value
11 appraisal on this property based on --

12 A No, sir. I really do not have any
13 supporting information whatsoever to put a
14 dollar amount value on this, other than to say
15 it would be much inferior to what the original
16 appraisal indicated.

17 Q And this area is zoned how?

18 A Zone RM -- I have to look at my report.
19 I know it is residential, but I am not sure of
20 the exact classification.

21 Q That is really what I was after.

22 This is not a commercial?

23 A No, sir, it is strictly residential.

24 Q So it would be single-family?

25 A Yes, sir.

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2 Q And you indicated that USPAP is really
3 the standard by which all appraisers must
4 comply?

5 A Yes, sir.

6 Q And that is a national standard?

7 A Yes, sir.

8 Q And is there any difference between an
9 appraiser -- how an appraiser can conduct an
10 appraisal in Camden or Beaufort County, or is it
11 all the same?

12 A Not as far as the USPAP standards, no,
13 sir.

14 Q Do you have an opinion to a reasonable
15 degree of professional certainty as to whether
16 Mr. Lindsay complied with the USPAP standards in
17 performing this first appraisal that you have
18 been discussing here today?

19 MR. SAXON: Object to foundation.

20 BY MR. FINN:

21 Q You can answer.

22 A Okay.

23 In my opinion the report that I
24 reviewed does not meet the USPAP standards.

25 Q And you have discussed the various

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1 FINN - OUTLAW (DIRECT EXAMINATION)

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2 deviations?

3 A Yes, sir.

4 Q I just want to be careful to -- can you
5 just recap in what ways, just summary, how those
6 standards were deviated from by looking at the
7 appraisal?

8 A The standards 1-2 in E, he did not
9 fully inform the clients of the easement
10 restrictions or the ordinances involved with
11 this particular lot.

12 And standard 1-3 in B, when he
13 developed his highest and best use of real
14 estate he didn't analyze the relevant legal and
15 physical factors necessary to ascertain the
16 highest and best use opinion.

17 Q And to a reasonable degree of
18 professional certainty in the appraisal
19 community most probably, did those deviations
20 from the USPAP standards affect the accuracy of
21 the appraisal that Mr. Lindsay did?

22 MR. SAXON: Objection to form and
23 foundation.

24 BY MR. FINN:

25 Q You can answer.

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2 A In my professional opinion the
3 appraisal was very misleading because of the
4 items that were missed on it and it truly
5 indicates a value that is not relevant to the
6 subject.

7 Q Okay.

8 Can you just describe for me what the
9 fair market value is in the appraisal sense?

10 A Fair market value is clearly listed in
11 the limited editions of most all land
12 appraisals, and as stated earlier it is the most
13 probable price which a property should bring in
14 a competitive and open market under the
15 conditions requisite to the fair sale, the buyer
16 and seller, each acting prudently,
17 knowledgeably, and assuming the price is not
18 affected by undue stimulus. It goes on and on,
19 but that is the main definition right there,
20 both the buyer and seller have to act with full
21 knowledge.

22 Q Just in general, what is the reason why
23 a buyer or a seller would hire an appraiser?

24 A Appraisers are hired by a buyer or
25 seller for different reasons. A seller would

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1 FINN - OUTLAW (DIRECT EXAMINATION)

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2 hire an appraiser generally to come up with a
3 reasonable value that he could sell the property
4 for. A buyer would generally have an appraiser
5 go out and appraise the property so that he
6 could acquire a loan to purchase the property or
7 to either pay cash or either one.

8 Q Would a buyer also perhaps want an
9 appraiser to find out some of the things that
10 you have discovered, such as restrictive
11 covenants and things?

12 A Yes, sir. Buyers and sellers in the
13 general public overall relies on appraisers to
14 come up with any items that affects the overall
15 value of the property, both the physical
16 condition, the legal involvements, any
17 restrictions, anything that would be adverse or
18 advantageous to the value the general public for
19 the most part assumes that an appraiser would
20 find it.

21 Q When an appraiser is hired by a bank
22 generally speaking, and if you know what the
23 practice is, would the appraiser be provided a
24 copy of the real estate sales contract?

25 A It is mandatory today or standards

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2 today that you receive a copy of the contract.

3 I won't -- I can't say for certain that it was

4 in 2004, but under normal conditions the

5 appraiser knows what the sales price is even if

6 he doesn't have a copy of the contract. That is

7 one of the questions we generally ask.

8 Q Do appraisers know that loans are

9 subject to a certain price, generally speaking?

10 A Yes, sir.

11 Q Is there a standard as to hires the

12 appraiser for a lot loan or a home loan, whether

13 it be the bank or the buyer?

14 A Those standards have changed. I can't

15 remember the exact year it changed, but at the

16 present time a disinterested third party,

17 neither the lender, the loan officer or the

18 buyer can hire the appraiser. A disinterested

19 third party has to hire the appraiser today.

20 At that time in 2004 I am fairly

21 certain either the buyer or the lender could

22 hire the appraiser, and depending on which bank

23 you went to would determine who hired the

24 appraiser.

25 Q In this instance does the size of this

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1 FINN - OUTLAW (DIRECT EXAMINATION)

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2 particular lot affect the value?

3 A Yes, sir. In almost any instance the
4 size of the lot would affect value.

5 Q Is that just because of the different
6 options one has based upon the size?

7 A Usable land. It is based on oceanfront
8 properties. Certain lots have more value by
9 front footage on a street. Certain lots have
10 more value by front footage on water, and
11 design, shape, all that has a lot to do with it.

12 Q Based upon your assessment of the first
13 appraisal would it be reasonable for somebody to
14 purchase that lot at that time for \$1.6 million?

15 A No, sir.

16 Q Why not?

17 A In my professional opinion it wasn't
18 worth anything near \$1.6 million.

19 Q And was that because why?

20 A Because of the information that I read
21 involving the restrictions and the covenants in
22 the area. The fact that you can't build a house
23 on it pretty much destroys the value of the lot
24 totally.

25 Q Okay.

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2 MR. FINN: Dan, I would like to
3 take a break and just talk to Tad a
4 minute.

5 MR. SAXON: Okay.

6 (Whereupon, a short break was
7 taken.)

8 BY MR. FINN:

9 Q Mr. Outlaw, I thank you for your time.
10 I don't have any further questions. Answer any
11 questions Mr. Saxon may have for you.

12 CROSS-EXAMINATION

13 BY MR. SAXON:

14 Q Mr. Outlaw, my name is Dan Saxon, and I
15 am an attorney here on the Island and I
16 represent the National Bank of South Carolina as
17 it relates to certain counterclaims that Mr.
18 Segars' company and the other Defendants in this
19 action have filed against NBSC, which I may just
20 say the bank hereinafter because I generally get
21 tired of talking.

22 Normally when we attorneys take
23 depositions we sit down at the beginning and we
24 write up a little list of questions or at least
25 an outline to follow through, and I have done

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2 that. However, Mr. Finn has covered a great
3 deal of those questions already, but rather than
4 switch and forth I will start at the beginning
5 and try to walk through. But if the questions
6 become a little disjointed or they don't fit
7 together, that is why. And if you don't
8 understand any of the things I ask you, please
9 ask me to stop and rephrase the question or ask
10 it in a way or explain it in some way so that
11 you can understand it, all right?

12 A Yes, sir.

13 Q Now, you have testified as to all your
14 qualifications and your education and what you
15 do. And I have read your curriculum vitae which
16 was attached to a field report or an appraisal
17 that you had prepared. I believe that would be
18 called a review appraisal under USPAP, is that
19 right?

20 A Yes, sir.

21 Q Where do you primarily perform
22 appraisals?

23 A The midlands of South Carolina.

24 Q Do you perform appraisals on Hilton
25 Head Island?

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1 SAXON - OUTLAW (CROSS-EXAMINATION)

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2 A Not before this one, no, sir.

3 Q Beaufort County?

4 A I don't know if I did any in Beaufort
5 County or not, now that I can answer. I have
6 been to Beaufort on several occasions, but I
7 can't remember if I did appraisals or just
8 inspections.

9 Q All right.

10 In the midlands of South Carolina where
11 you ordinarily perform appraisals, is there a
12 substantial number or a number of subdivisions
13 that are subject to covenants, easements, and
14 restrictions that have Homeowner's Associations?

15 A Yes, sir.

16 Q Now, you testified that the covenants,
17 easements and restrictions that affect this
18 property were different from what you were used
19 to seeing, is that right?

20 A They are stronger, yes, sir.

21 Q In what ways are they different? How
22 do they differ from what you would be used to
23 seeing?

24 A They are very specific about items that
25 generally are not associated with the

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2 subdivisions up where I am at.

3 Q Okay.

4 A They get into detail of how many square
5 feet has to be on each level, how many cars can
6 be parked in the yard, things of that nature.
7 They are just stronger restrictions.

8 Q Do you have any reason to believe that
9 the covenants, easements and restrictions that
10 affected this subject property are in any way
11 different from the usual covenants, easements
12 and restrictions that are on other similar
13 properties on Hilton Head Island?

14 A I have not read any other covenants and
15 restrictions. From what I have seen as far as
16 the values on the island during my studies my
17 opinion would be that these restrictive
18 covenants are stronger or tighter than what a
19 normal house on the island would be.

20 Q Another house in a planned unit
21 development on Hilton Head Island?

22 A Yes, sir.

23 Q Now, you had testified as to precisely
24 what USPAP is and thank you, that clarified it a
25 bit for me.

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2 Now, has USPAP been adopted by the
3 South Carolina Code Section, do you know?

4 A I am not sure what the question is.

5 Q Has the South Carolina legislature
6 adopted USPAP as the standard for appraisers to
7 use within the State of South Carolina?

8 A I don't even know if they have that
9 choice.

10 Q Okay.

11 A We are federally regulated under USPAP,
12 so as far as my knowledge of individual states
13 to what I have read in USPAP criteria is they
14 can tighten restrictions, but the USPAP are the
15 minimum restrictions that all appraisers must
16 follow.

17 Q And where I was going with that
18 long-winded question is, we agree that USPAP is
19 the standard that appraisers must adhere to?

20 A Yes, sir.

21 Q Mr. Finn asked you why clients would
22 obtain appraisals and you had testified that
23 occasionally they obtain or they obtain
24 appraisals to obtain a bank loan, I believe, or
25 that they obtain appraisals even if they are

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2 paying cash.

3 In your experience do more people
4 obtain appraisals or banks obtain appraisals in
5 connection with a financing of the purchase of
6 property than would an owner pay in cash?

7 A Absolutely, yes, sir.

8 Q Is that a substantially greater amount?

9 A In my experience it has been.

10 Q And do you know why it is important for
11 a lender to have or obtain an appraisal prior to
12 a financing of a loan to purchase property?

13 A To protect their assets.

14 Q But would that be to protect their
15 interest in the collateral?

16 A Yes, sir. They are subject to
17 stockholders and different entities are involved
18 and their federally regulated, so I am almost a
19 hundred percent certain that they are required
20 to have an appraisal on most transactions of
21 this nature.

22 Q So in other words it is important to
23 the lender to have that appraisal?

24 A Yes, sir.

25 Q And it is important that they have

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1 SAXON - OUTLAW (CROSS-EXAMINATION)

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2 accurate information on the appraisal?

3 A Yes, sir, it should be. One of the
4 reasons are standards were changed and have
5 gotten tighter over the past few years as the
6 aggressive lending was extremely heavy in the
7 mid-2000's, and so unfortunately a lot of the --
8 I don't want to just say lenders -- mortgagors,
9 a lot of people with ordering appraisals that
10 were actually being paid a fee for the loans
11 were not really interested in accuracy. They
12 were just interested in making the loan.

13 Q Okay.

14 A That is what has changed our industry
15 over the past few years.

16 Q Now, you opened the door there that I
17 am going to have to follow up on.

18 Since you are familiar with that
19 process that had occurred with the banks, do you
20 know and do you believe that that process was a
21 result of lenders or loan brokers making
22 residential loans for resale in the third-party
23 loan market?

24 A I would assume so.

25 Q Would you agree that a bank making a

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1 SAXON - OUTLAW (CROSS-EXAMINATION)

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2 loan which they did not intend to sell or did
3 not sell would be much more interested in having
4 the true value of their collateral to protect
5 their assets in the loan?

6 A Not necessarily.

7 Q How do you explain that?

8 A Because the interest on a high end loan
9 is very lucrative to a bank and depending on who
10 the loan officer was and whether they were being
11 paid a commission on the sale would dictate
12 that, and then again it depends on how the bank
13 perceives a loan officer's work and production
14 on whether or not he was making loans. Banks
15 are very aggressive at going after loans at
16 certain times, and I can't say that whether it
17 was being sold on a third party or not would be
18 affected by the individual making the loan.

19 Q Now, when you receive a request or an
20 order by a client for the purposes of preparing
21 an appraisal in connection with a real estate
22 purchase loan, does the lender or does any other
23 party direct your work?

24 A They try to at times, absolutely.

25 Q Explain that for me.

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2 A A lot of times they will let you know
3 up front that it has to appraise for a certain
4 amount or the loan won't go. They will tell you
5 to try to get it there. AMC's in today's
6 industry are very bad about that. There is a
7 lot of rules and regulations now that weren't in
8 place in 2004 because of that. And yes, sir, it
9 could affect an individual again. Who orders
10 the appraisal can really have an effect on what
11 is being told to the appraiser. And if it is a
12 good client and the appraiser has been doing a
13 lot of work for them in the recent past, and it
14 is part of their economic stability to use and
15 do appraisals for that particular lender, it can
16 put pressure on an appraiser; and I would be a
17 liar if I said anything different.

18 So in particular for some of those
19 reasons is why I do no appraisals for AMC's now.

20 Q What is AMC?

21 A That is the Appraisal Management
22 Company.

23 Q In your practice do you ever allow
24 anyone to direct your work? In other words --

25 A No, sir.

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2 Q -- how you will do your work?

3 Does the USPAP standard allow anyone to
4 direct how an appraiser will perform his work?

5 A No, sir, they are very strict against
6 it. But as stated in the real world it does
7 occur, and we would all be foolish to think that
8 it doesn't.

9 Q When that occurs those appraisals would
10 be in your opinion in violation of USPAP?

11 A Yes, sir.

12 Q Do you have any reason to believe that
13 in this particular case and in the appraisal
14 that you reviewed which we referred to as the
15 Linsday appraisal, that NBSC exhibited or
16 exerted any pressure on Mr. Linsday in the
17 preparation of his appraisal?

18 A There is no way I could have an opinion
19 of that.

20 Q All right.

21 Do you have any reason to believe that
22 Mr. Segars in any way exerted any pressure on
23 Mr. Linsday with respect to how he would prepare
24 that report?

25 A Again, there is no way I could have an

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2 opinion on that.

3 Q Okay. This is out of order, but it is
4 on my mind.

5 Mr. Finn asked you and you testified
6 that you when preparing an appraisal will have a
7 copy of the purchase contract oftentimes or will
8 at least know what the contract is for, the
9 purchase price was for, is that correct?

10 A Yes, sir. You must have -- USPAP
11 standards require that you know what the
12 appraisal is for. And back in 2004 we were not
13 required to have a copy of the contract.

14 On today's forms you actually have to
15 put the contract information on the forms, so
16 even back in 2004 it was commonplace to know
17 what the contract was, and there is good and bad
18 in that. You know again, it goes back to the
19 integrity of each individual appraiser and the
20 loan officer involved.

21 Q Do you use the contract value or
22 proposed purchase price or purchase price, and
23 do you give that any weight when you prepare an
24 appraisal?

25 A You can, yes, sir, if everybody is

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2 acting prudently and knowledgeably. But one of
3 the main items is that you are going to have a
4 range when all the adjustments are finalized on
5 the market approach, you should have a value
6 range and you should have a value range. If it
7 is an improvement involved you will have a cost
8 approach, but on a vacant lot you will have a
9 range. That contract, if it doesn't fall within
10 that range, then I wouldn't give it enough
11 weight to push it up to the contract price.

12 Q Now, when you receive a request or an
13 order to prepare an appraisal, do you order and
14 review a title abstract on the property, the
15 subject property?

16 A No, sir.

17 I do research periodically. I will
18 research the property myself the deeds.

19 Q The deeds into the party?

20 A The deeds of the last purchase. USPAP
21 requires that we put a history now of the last
22 three years of the property, and so even if you
23 have not had a transaction in the past three
24 years it is always good to go back to find out
25 when the last transaction was, and how much it

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2 sold for. That is called the history of the
3 property.

4 Q And then can I infer that it is not
5 industry standard for an appraiser to order and
6 review a title abstract in the preparation of an
7 appraisal?

8 A No, sir, we generally do not order an
9 abstract and titles for an appraisal.

10 Q And when you do your research is that
11 limited to reviewing deeds that are going into
12 to give you that history of title and plats that
13 you may --

14 A It depends on the property. Generally
15 speaking if there is no red flags associated
16 with the property on a deed, you will not
17 research it further. But when you got easements
18 involved, that generally takes you a step
19 further.

20 Q Were there any red flags on the Lindsay
21 appraisal that would have caused you to look
22 further? That caused you to look further?

23 A On his appraisal?

24 Q Uh-huh.

25 A Is that before I did my research or

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2 after I did my research?

3 Q Let me put it this way.

4 Assume that in 2006 you received a
5 title order to perform an appraisal on this
6 property, and you would have -- tell me what you
7 would have looked at at that time to begin your
8 appraisal?

9 A I would have inspected the property to
10 start with.

11 Q Okay.

12 A I would have read the deed,
13 restrictions, covenants, the deed itself, and I
14 would have received a copy of the plat. I would
15 have studied the plat and with this particular
16 parcel I would have did basically what I did
17 with this review. I would have tried to
18 ascertain if the highest and best use was as per
19 zoning and did it meet the four factors that
20 were required.

21 Q Now, I want to make sure I understand.

22 You said I would have reviewed the deed
23 covenants, the deed.

24 Would you have reviewed the deed?

25 A I would have read the deed, and I also

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2 would have read the deed restrictions on that
3 subdivision if I were not familiar with them.

4 Q You are talking about then the
5 covenants, easements and restrictions and
6 provisions for membership in the --

7 A That subdivision, yes, sir.

8 Q -- Singleton Place.

9 A (Nods) and with that particular lot I
10 would have also had studied the wetlands because
11 it was so close to wetlands.

12 Q Now, I probably know enough about USPAP
13 to be just a little bit either dangerous or
14 stupid, one of the two.

15 A That is two of us.

16 Q But does USPAP set out certain approved
17 approaches to performing a real estate
18 appraisal?

19 A Yes, sir. There is three approaches
20 that are generally used: The cost approach, the
21 market approach, and the income approach.

22 Q Do you know which approach was used by
23 Mr. Lindsay in the preparation of his original
24 appraisal?

25 A He used a typical market approach, but

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2 it is also called sales comparison approach.

3 Q Which approach did you use?

4 A I used the market approach as well, a
5 sales comparison.

6 Q So you believe that was the appropriate
7 approach to take in evaluating this property?

8 A Yes, sir.

9 MR. SAXON: Off the record.

10 (Whereupon, an off-the-record
11 discussion was held.)

12 BY MR. SAXON:

13 Q Now, Mr. Outlaw, in connection with
14 your review of this property did you prepare an
15 appraisal review report?

16 A Yes, sir.

17 Q And I have received a copy of that
18 report, which I am going to show to you.

19 Is that a copy of the review appraisal
20 report that you prepared?

21 A Yes, sir.

22 (Whereupon, Plaintiff's Exhibit
23 Number 1 was marked for
24 identification.)

25 MR. FINN: I am going to ask that

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1 this be marked as Exhibit 1 and I guess
2 that would be NBSC Exhibit 1, and we
3 will provide a clean copy to the court
4 reporter after the fact, and we can
5 make reference to it.

6 I am looking at page 1 of 4 of
7 your report, which is now Exhibit A and
8 I just want to run through and ask you
9 a few questions on this.

10 Under item number 1, the question
11 is, is the information in the subject
12 section complete and accurate use
13 indicated? No.

14 And you indicated that the highest
15 and best use on the report is
16 inaccurate, which you have already
17 testified to.

18 A Yes, sir.

19 Q You opined that in your opinion the
20 highest and best use would have been for the
21 owner of lot 1 to purchase that lot?

22 A I have explained further on in the
23 report about that. And in my explanations and
24 the comments it was the only thing I could
25

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2 actually find was feasible, if that would be
3 allowed.

4 Q We will talk about that in just a
5 little bit.

6 You also indicate that the subject on
7 the reviewed report as being in a flood zone,
8 whereas the original appraiser indicated it was
9 not in a flood zone.

10 Do you believe that had any effect on
11 the appraisal or the estimation of value?

12 A No, sir, that is also explained in my
13 report, that it was considered an error, but it
14 should not have an effect on it.

15 Q Okay.

16 Item number 9 on page 1 of your report
17 is the sale or transfer history recorded for the
18 subject property on each of the comparable sales
19 complete and accurate? You checked no.

20 And you indicated that the sales
21 transfer history was not on the vacant lot forms
22 in 2004. The form appears to be a normal form
23 and was filled out in the normal manner. I
24 don't understand. What does that mean?

25 A Back in 2004 we did not have to put the

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2 sales history of comparable's, but today's forms
3 we do. And it was a question on the review, so
4 I had to answer it, but it did have an effect on
5 value. It is just that it is something that has
6 been added to the appraisal industry since the
7 time of the original appraisal.

8 Q And that would not have been a
9 deviation from the USPAP provisions?

10 A No, sir.

11 Q Now, the last question on page 1 is:
12 In the opinion -- is the opinion of market value
13 in the appraisal review accurate as of the
14 effective date of the report? And again you
15 checked no. And that requires you to complete
16 Section 2, which becomes page 2 of your report.

17 Now under the three comparable boxes or
18 grids for you to perform for market analysis you
19 have nothing.

20 A Yes, sir, that is explained in there.

21 Q And you indicate that no similar sales
22 are available?

23 A No, sir, I could not find any.

24 Q And that is of 2006, is that correct?

25 A 2004 is when the appraisal --

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2 Q I'm sorry, 2004?

3 A Yes, sir.

4 Q You are going to have to flesh that out
5 a little bit for.

6 What do you mean you could not find any
7 comparable sales as of 2004?

8 A The subject is a property zone
9 residential building for a single-family
10 residence, but the restrictive covenants and the
11 easements and setback ocean lines cannot be met
12 as they stood in 2004, so the only comparable
13 lot sales that could be used for a subject would
14 be a lot that was zoned residential, but could
15 not be used to put a house on.

16 Q Okay.

17 Now, back in 2004 would lot 6 at
18 Singleton Beach Place be a comparable?

19 A No, sir.

20 Q Was it not a piece of property which
21 was zoned as residential?

22 A It was.

23 Q Could a house be built on lot 6?

24 A From what I measured and looked at on
25 lot 6, I think it could.

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2 Q Would lot 5 have been a comparable in
3 2004?

4 A No, sir.

5 Q And again, that was a single-family
6 that was a -- excuse me, that was a residential
7 zoned lot.

8 Q Could a house have been built on that
9 property which complied with the covenants?

10 A From what I read it could have.

11 Q And finally, why was lot 4 then not a
12 comparable?

13 A For exactly the same reason.

14 MR. SAXON: This -- and I have
15 extra copies -- this is the plat which
16 was attached to Mr. Outlaw's -- as an
17 exhibit to Mr. Outlaw's.

18 Q Mr. Outlaw this I have pulled as an
19 exhibit to your review appraisal report.

20 Do you recognize this?

21 A Yes, sir.

22 Q Is this a blowup of the subdivision
23 plat that you have testified to throughout this
24 deposition?

25 A I think it is, yes, sir.

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2 MR. SAXON: Let us mark this as

3 Exhibit 2.

4 (Whereupon, Plaintiff's Exhibit

5 Number 2 was marked for

6 identification.)

7 BY MR. SAXON:

8 Q I am looking at the blowup of the

9 subdivision plat, which is now Exhibit 2.

10 Now, looking at lot 4, the setback or

11 the OCRM baseline is similarly situated as to

12 lot 2, am I incorrect with that statement?

13 A Yes, sir.

14 Q How does it differ?

15 A Can you not see the angle that it is

16 running?

17 Q I do, but do you know how much is the

18 difference? In other words, how many square

19 footage is removed from lot 2 that would be in

20 lot 4?

21 A That I don't know, but lot 4 has a

22 house sitting on it and that had some bearing on

23 whether or not I thought lot 4 could have a

24 house built on it, because there was actually

25 one sitting on it at the time of the inspection.

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2 Q Was lot 4 the house that was under
3 construction when you visited it?

4 A Yes, sir.

5 Q So that was a house currently being
6 built?

7 A Right.

8 Q If you will look at this survey
9 directly in front of lot 4 it appears to be a
10 10-foot utility easement which delves pretty
11 deeply into the rear, and by that I mean the
12 road section of lot 4, isn't that correct?

13 A Yes, sir.

14 Q Is it your belief that a home could
15 have been built within that 10-foot utility
16 easement?

17 A I don't know. I did not do all the
18 full research on lot 4 as I did on lot 2.

19 Q Uh-huh.

20 A So the utility easement does not take
21 in the additional 30 feet that was involved in
22 lot 2 so they could access lot 3.

23 Lot 4 did not appear to have the access
24 easement, because you had road frontage. So
25 this would actually put an additional 30 feet

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2 for lot 4 that lot 2 did not have.

3 Q Now, within your report at one point
4 you referenced that in 2009 the OCRM baseline
5 was moved?

6 A Yes, sir.

7 Q Is that correct?

8 A Yes, sir.

9 Q What can you tell me about that?

10 A To this day I don't know how they moved
11 it oceanward when the oceans are supposed to
12 be --

13 Q Encroaching?

14 A Yeah, right. But they did. All I can
15 tell you is that they actually moved oceanward
16 instead of inward.

17 Q Okay.

18 So at some point in 2009 then your
19 testimony is it is your understanding that the
20 OCRM line was moved toward the ocean?

21 A Yes, sir.

22 Q Which would have increased the
23 buildable footprint on each of the properties
24 within this subdivision?

25 A Yes, sir.

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2 Q Do you believe that lot 4, the lot 4
3 home which was under construction when you
4 visited last year was being built within the
5 envelope of the 2004 setback OCRM line or with
6 the new adjusted OCRM setback line?

7 A I do not know. I just know that lot 4
8 had more buildable square footage than lot 2 at
9 the time of the inspection.

10 Q Can you tell me how much more buildable
11 square footage was on the lot 4 as was on lot 2?

12 A It looks like going toward the street
13 there was an additional 30 feet and that made a
14 big difference. If lot 2 would have had the
15 additional 30 feet, my opinion is it very likely
16 could have met the requirements. It is the
17 unknown factor about this driveway easement that
18 really was the whole ball and chain as far as
19 what should have been on that report that wasn't
20 on the report.

21 Q And by that you are referring to what
22 is shown on Exhibit 2 as a 20-foot access
23 easement which is in the corner of lot 2?

24 A Yes, sir.

25 Q Explain to me then, I believe I

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2 understand it, but I would like for you to
3 explain to me how this easement affects this
4 property?

5 A Okay. You have a 20-foot easement
6 coming off this line. This line actually is a
7 10-foot utility easement, so now we are 30 feet
8 from the bulkhead.

9 Q Show me where the bulkhead is located.

10 A This is the bulkhead right there. So
11 we are coming off a 10-foot utility easement.
12 There is actually an electrical utility, a
13 little --

14 Q A box?

15 A -- a box there.

16 So we actually come off 20 feet more
17 from the 10-foot utility easement for the
18 driveway easement, because the driveway easement
19 is 20 foot.

20 Q 20 foot from the corner of lot 2?

21 A From this line right here, from this
22 line to that line. It would come out an
23 additional 20 feet, and then the deed
24 restrictions say that you cannot build any
25 improvements within 10-foot of a right-of-way

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2 easement.

3 So now we have to come out an
4 additional 10-foot, so now we are 40 foot from
5 the bulkhead bridge. And when I measured out 40
6 feet from the bulkhead bridge to the corner of
7 where the surveys were I only had 10 feet from
8 this line out here, approximately 10 feet.

9 Q You may or may not know this, is it
10 your understanding that when an easement is
11 shown as being reserved on a plat, that the
12 easement reserved is solely limited to that
13 portion of the land within the easement area
14 as shown on the plat?

15 A Repeat that one more time.

16 Q When an easement, a reserved easement
17 is shown on a plat, do you know or can you
18 testify as to whether the easemented or servient
19 property is limited solely to that property
20 within the designated easement area?

21 A Yes, sir.

22 Q In other words, this shows a 20-foot
23 access easement in the rear corner of lot 2?

24 A Yes, sir.

25 Q No other owner could exert ownership by

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2 way of an easement over any area outside of that
3 triangle, is that correct?

4 A No other owner could, but any
5 restrictive covenants can add to the
6 restrictions and that is exactly what the
7 restrictive covenants did. They added an
8 additional 10 foot. It may or may not have been
9 an issue. The point is it was not on the
10 appraisal.

11 Q Okay.

12 A And that is what the whole situation
13 is, is that information is what should have been
14 on the appraisal.

15 Q Looking at the actual Segars -- I'm
16 sorry, the actual Linsday appraisal, I am
17 looking at the summary report, and I am under
18 the section highlighted site, and I will point
19 it out to you because it is right here.

20 A Okay.

21 Q Does Mr. Linsday not indicate that a
22 driveway access easement runs along the rear of
23 the property?

24 A He does.

25 Q Does that not then make note of the

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2 easement that we are talking about?

3 A He makes note of the easement, but he
4 does not make note of the additional 10-foot of
5 the restrictions, and he has got right behind
6 that no other apparent adverse easements,
7 encroachments, or special assessments were
8 observed. That is a special assessment that
9 restricts the use of the land, absolutely.

10 Q Okay.

11 Do you know if Mr. Segars ever
12 approached -- strike that.

13 You have reviewed the covenants,
14 easements and restrictions that affect this
15 property, is that correct?

16 A Yes, sir.

17 Q And is the declarant under those
18 covenants, easements and restrictions, a company
19 called J.J. Properties, Incorporated?

20 A I would have to reread it, I believe it
21 was something similar to that, if that is not
22 exactly what it was.

23 Q J.J. Development, Incorporated?

24 A Yes, sir.

25 Q Do you or did your review of this

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2 property reveal that at one time J.J.
3 Development, Incorporated owned all of these ten
4 lots?

5 A Yes, sir.

6 Q And that company who was the declarant
7 under the covenants then subdivided this
8 property into ten lots?

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q And the covenants would allow the
13 declarant J.J., we will say, to broad
14 architectural review powers? In other words,
15 powers to approve what might be placed on a
16 property, is that right?

17 A I can't remember. It is very possible.

18 Q It also granted to J.J. or the
19 declarant the right or ability to amend those
20 covenants under certain circumstances, isn't
21 that correct?

22 A Yes, sir.

23 Q Do you know if Mr. Segars ever
24 approached the declarant J.J. Development to
25 request a variance as to this 10-foot buffer

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2 that you speak about?

3 A No, sir, and that is irrelevant to what
4 I was doing.

5 All I am saying is it wasn't on the
6 appraisal. It should have been on the
7 appraisal. It does affect value. We are
8 talking about unknown factors and that is not an
9 issue. The issue is that that stuff should have
10 been on the appraisal and it was not.

11 Q And it is your belief then that not
12 only should the note of the 20-foot access
13 easement have been on the appraisal, that the
14 appraiser should have also noted a 10-foot
15 setback as it relates to that?

16 A Yes, sir. He should have referred to
17 the deed restrictive covenants and when that
18 was -- when that was calculated as to the
19 distance from the bulkhead, I feel like any
20 knowledgeable appraiser would have immediately
21 saw that there was going to be an issue with the
22 size of the lot available for building.

23 Q Okay.

24 Now, to reach that conclusion you are
25 yourself making the legal assumption that what

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2 is marked as a 20-foot access easement is
3 actually a right-of-way that the developer or
4 declarant intended to be subjected to the
5 10-foot right-of-way, is that right?

6 A That is an easement that was recorded
7 and it is actually on the plat, so that is
8 exactly what I went by.

9 Q My question is the covenants, easements
10 and restrictions reserve a 10-foot setback
11 adjacent to right-of-way within the subdivision,
12 is that right?

13 A Yes, sir.

14 Q And this property does have a
15 right-of-way which is shown on Exhibit 2, the
16 plat, as a 40-foot private access easement, and
17 that is a road that runs the entire length of
18 lots -- well, we know lots 2 through 10 on the
19 rear side of the property, is that right?

20 A Yes, sir.

21 Q But lot number 2 has an additional
22 little easement or a 20-foot easement in its
23 corner that benefits lot 3 as you have
24 discussed?

25 A Yes, sir.

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Q My question is, you are making the assumption in your testimony that the 10-foot setback from right-of-way applies not only to this private access easement or the roadway, but also to this 20-foot access easement that is on lot 2?

A As worded, yes, sir. As worded in the covenants it strictly says right-of-way easement, and that is a right-of-way easement.

Now, that is something that could have easily have been resolved under normal conditions, but again that is not the point. The point is it was not on the appraisal --

Q I understand.

A -- And that is the whole issue here.

Q All right, moving back to our discussions on comparable's lot 3 shown on this plat is adjacent to lot 2.

Would that have been a comparable to use?

A Lot 3 had some issues as well, and I feel like that lot 3 would have been a comparable lot had the person purchasing the lot had full knowledge of the issues that is on my

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2 report.

3 But I am not sure that the purchaser of
4 lot 3 had full knowledge.

5 Q But as an appraiser in 2004 when you
6 were evaluating comparable's for this property,
7 how would you make the assumption that a
8 comparable owner may not have knowledge of an
9 event that is occurring?

10 A You call them and ask them.

11 Q Is that normal that you do that?

12 A Absolutely. If you don't know
13 information, you find it. That is what -- an
14 appraisal is an information-gathering process.

15 Q Okay.

16 A And yes, sir, if something is important
17 to a lot you have to go out and find it; and
18 unfortunately we fail in that a lot. But
19 absolutely.

20 Q And then finally lot 1, is that a
21 comparable?

22 A Lot 1, I think you can build on from
23 what I measured the lot out, because again it
24 doesn't have the -- this easement accompanied
25 with the ocean line setback was the issue. And

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2 like I said I think possibly it could have been
3 resolved. But whether or not it could have been
4 resolved is an unknown factor.

5 Q So in essence lot 2 was unique?

6 A Yes, sir.

7 Q It was a pariah?

8 A It is the only one that has got the
9 driveway easement that restricts the use of the
10 land.

11 Q And it is the only property then in
12 your opinion within that subdivision, which due
13 to the OCRM setback lines, combined with the
14 20-foot access easement and the limitation on
15 square footage of construction rendered that lot
16 unbuildable?

17 A Number 3 may or may not have been.
18 That I have not fully determined on number 3. I
19 have looked at lot number 3. I have not
20 performed a full review on lot number 3, but lot
21 3 it may or may not have been; but again if lot
22 3 sold, then the first thing I would have wanted
23 to know is were they aware of this situation.

24 Q So in your review opinion you are
25 unable to locate any comparable's whatsoever?

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2 A No, sir, not going back that far and
3 trying to find a lot that was zoned residential,
4 but you couldn't build a house on it.

5 Q So then what did you value this
6 property as as of 2006?

7 A 2004?

8 Q 2004?

9 A I put the value at 70,000 because the
10 taxes were there, but as explained in my review
11 I do not have any supporting evidence to render
12 a value on that property. And if I was asked to
13 perform an appraisal on it that is what I would
14 actually tell the client, is that I can not
15 support any value on this property until certain
16 issues are resolved. Now, you can give a value
17 subject to, but this report was not subject to.

18 Q Doesn't USPAP require you -- strike
19 that.

20 Your estimation of value in this case
21 is \$70,000. I understand your qualifications --
22 your conditions on that, but my question really
23 is does USPAP not require you when performing a
24 review appraisal to provide an estimation of
25 value when you prepare that review appraisal?

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2 A Absolutely, and that is clearly laid
3 out in this report, and you are allowed to
4 depart from USPAP standards as long as you make
5 note that you departed from it.

6 Q So you have departed -- by departing
7 from USPAP requirements, then this field review
8 report or this review appraisal report was not
9 prepared in accordance with USPAP standards?

10 A Yes, it was. That is USPAP standards.

11 Q USPAP standards will allow you to
12 deviate from their standards?

13 A Yes, sir. All you have to do is tell
14 why. You can actually do an appraisal on a
15 commercial property without the income approach.
16 You just have to tell them that you didn't do
17 the income approach.

18 Q And on the bottom at page 4 where you
19 indicate the reviewer's opinion of market value?
20 \$5. You covered that in your comments that that
21 was not what you believed the value of the
22 property was, is that right?

23 A Yes, sir.

24 Q So you used the market approach, but
25 you actually could find no market data to

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1 support any valuation of this property?

2 A Yes, sir.

3 Q Is that fair?

4 A Yes.

5 Q Have you ever had that happen to you
6 before? In preparing a --

7 A I think I have had that to happen maybe
8 once. The one thing that I could support is
9 that the property was not worth the value that
10 was listed on Mr. Lindsay's report. I could
11 verify that by the actual sales that were
12 comparable sales for a lot that could have a
13 house constructed on it.

14 Q Now, I just want to confirm, when you
15 made a site visit of this property -- and when
16 was that?

17 A I made several site visits to the
18 property last year.

19 Q So in 2011?

20 A Yes, sir.

21 Q How many houses were built on these 10
22 lots when you were there?

23 A Oh, gosh, I think lot number 4 was the
24 only one that had a house on it; but I won't
25

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2 swear to it.

3 Q So number 4 you believe had a house
4 that was under --

5 A Under construction, yes, sir. It was
6 basically dried in and had the foundation and
7 all the framing had been completed.

8 Q Okay.

9 Now, you have testified to this already
10 I think actually twice, but I am more of a list
11 maker and what I would like to know is to give
12 me a list or tell me how Mr. Lindsay's report
13 deviated from USPAP standards in 2004? Every
14 way in which you are prepared to testify?

15 A Okay, these are the issues that I have
16 with the report. And again, a couple of them or
17 at least one of them doesn't affect value.

18 Q I understand.

19 A But in doing the review you have to
20 list what you find.

21 Q I understand.

22 A USPAP standards 1-2 in E, the appraiser
23 must identify the characteristics of the
24 property that are relevant to the type and
25 definition of value and intended use of the

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2 appraisal, including any known easements,
3 restrictions, encumbrances, leases,
4 reservations, covenants, contracts,
5 declarations, special assessments, ordinances,
6 or other items of a similar nature.

7 Mr. Lindsay did not go into detail and
8 did not inform the client of the issues
9 involving the setback restrictions around the
10 driveway easement and that there was a
11 probability that a single-family dwelling could
12 not be constructed on the site.

13 Q One at a time.

14 A Okay.

15 Q The first thing was the failure to
16 advise with regard to the setbacks around the
17 driveway easement?

18 A Yes, sir.

19 Q Now, item number 2, the setbacks?

20 A Well, it is a ladder effect is what it
21 is.

22 Q Okay.

23 A That with these particular setbacks he
24 did not inform the client that there was a
25 probability that a dwelling could not be

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2 constructed on the property under current legal
3 restrictions.

4 Q And by that you are referring to the
5 private covenants, easements and restrictions
6 upon the property?

7 A Yes, sir, and the overall size of what
8 is called a footprint where you could actually
9 build a house.

10 Q Which limited the minimum square
11 footage to 2,500 or minimally 1,000 on the first
12 floor?

13 A Right, plus you have other items as
14 well. Well, you have to be able to park two
15 vehicles in the yard. With the driveway
16 easement that is going to lot number 3 you would
17 have difficulty parking two vehicles there and
18 being able to turn them around. But like I said
19 it is a ladder effect.

20 The other standard is USPAP standard
21 1-3 in B: To develop an opinion of highest and
22 best use of the real estate, an appraiser must
23 analyze the relevant legal, physical, and
24 economic factors to the extent necessary to
25 support the appraiser's highest and best use

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1 conditions. That is the main item concerning
2 this house, -- I mean this property -- is the
3 highest and best use was missed, because under
4 at the present time under current deed
5 restrictions and covenants highest and best use
6 could not be for a single-family residence,
7 because you could not legally build on it. The
8 four elements of highest and best use we talked
9 about earlier. The requirements for highest and
10 best use, is it legally possible, physically
11 possible, financially feasible, and maximally
12 productive. The site did not meet those four
13 requirements.

14 Q Did it not meet all four requirements?

15 A No, sir, it did not.

16 Q None of the four requirements?

17 A Oh, physically possible, absolutely.

18 You could physically go out and build a house on
19 it, but it wouldn't be legal.

20 Q I was under the impression that where
21 it deviated was that you believed it was legally
22 impossible?

23 A It is legally impossible and it is
24 financially unfeasible, and according to the
25

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2 deed restrictions and covenants it would not be
3 the maximum use for the property, because it
4 would be illegal.

5 On the report we discussed that he has
6 checked on here the property rights appraised
7 were appraised to estimate market value, and
8 that is up here in the top, and market value can
9 only be true fair market value if all parties
10 are knowledgeable of all the relevant materials
11 and facts that affect the value on the property.
12 And they were not made knowledgeable of these
13 facts.

14 Highest and best use, he has as
15 improved with a single-family dwelling, and we
16 know now after review that this is not feasible
17 to do it because it is illegal according to the
18 deed restrictions.

19 Q Which covers the highest and best use,
20 which you believe he has deviated from?

21 A Yes, sir.

22 On page number 5 of his report he has
23 got checked the appraisal was based on the
24 information gathered by the appraiser from
25 public records, other identified sources,

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2 inspection of the subject property and
3 neighborhood, and selection of comparable sales
4 within the subject market area.

5 I go back to the comparable's used were
6 not comparable sales to use for the subject
7 because of the fact that in my personal opinion
8 they were superior. They did not have the small
9 footprint for building a house that the subject
10 has. And the flood zone issue, we talked about
11 that, really I cannot see what that would have
12 an effect on the subject at all.

13 Page 12, exposure time, he has got
14 three to six months, but in my opinion the
15 reasonable exposure time linked to the value,
16 and the value is totally absurd from my
17 reasoning and the information I have so, you
18 know, I have no clue how long it would take to
19 move this property in its present condition at
20 that time. And this is just certification
21 stuff. It says down below that: Additional
22 certification, my analysis, opinions, and
23 conclusions were developed and this report has
24 been prepared in conformity with the USPAP
25 standards. Which it has not been.

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2 And on page 13, number 6, limited
3 conditions: The appraiser has noted in the
4 appraisal report any adverse conditions. And he
5 has not noted all the adverse conditions.

6 Page 14, number 2, I have taken into
7 consideration the factors that have an impact on
8 value and development of the estimate of market
9 value. He did not do that. He did not fully
10 research the items that should have been
11 researched for that. That is page 14, number 2.

12 Again number 7, he certifies he has
13 performed the appraisal to conform to the USPAP
14 standards.

15 Number 8, the second line: I further
16 certify that I have noted any apparent or known
17 adverse conditions. And the adverse condition
18 is definitely very apparent on the plat.

19 Q Just following up on that, apparent on
20 the plat is the 20-foot access easement which --

21 A You got a 10-foot easement and a
22 20-foot easement, so you are coming off the
23 bulkhead 30 feet, and any knowledgeable
24 appraiser would know that. And when you read
25 the deed restrictions you got a possible

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2 additional 10-foot. And like I said whether or
3 not it could have been resolved is not the
4 issue, the issue is it was not on the report.

5 Q I understand.

6 This is a question because I honestly
7 do not know the answer. Under the Lindsay
8 report on page 13 and I note also in your report
9 one of the contingent and limiting conditions
10 indicates that the appraiser will not be
11 responsible for matters of a legal nature that
12 affect either the property being appraised or
13 the title to it.

14 How do you justify your opinion that
15 the appraisal reviews the legal covenants,
16 conditions and restrictions on the property to
17 this limiting factor that the appraiser is not
18 responsible for matters of a legal nature that
19 affect the property?

20 A Because that is neglect and that
21 statement doesn't cover neglect and that has
22 been proven in court. I can't tell you the
23 cases, but neglect is something that they can
24 hold you responsible for.

25 Q So then it is your opinion that Mr.

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2 Linsday was negligent in preparing this report?

3 A Yes, sir.

4 Q Is that correct?

5 A Yes, sir. I didn't want to say that,
6 but if you are asking I am going to tell you the
7 truth.

8 Q I am going to ask it.

9 It is your opinion that Mr. Linsday
10 deviated from the standard of care -- let me
11 rephrase that.

12 Is it your opinion that Mr. Linsday
13 deviated from the standard of care required
14 under USPAP?

15 A Yes, sir.

16 Q Is it your opinion that Mr. Linsday
17 deviated from the standard of care of appraisers
18 in the State of South Carolina in preparing this
19 appraisal?

20 A Say that one more time.

21 Q Is it your opinion that Mr. Linsday
22 deviated from the standard of care that
23 appraisers utilized in the State of South
24 Carolina in preparing appraisals?

25 A That could go either way. It depends

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2 on the appraiser and that is irrelevant.

3 Regardless of what appraisers do you got

4 standards by USPAP to follow, and it doesn't

5 matter what the format is by other appraisers,

6 that is irrelevant.

7 Q The standard of care in the State of
8 South Carolina is USPAP?

9 A Yes, sir.

10 Q Are you familiar with the standard of
11 care that appraisers in this area of Hilton Head
12 Island use? In other words, are you familiar
13 with all of the practices that they use in
14 preparing an appraisal?

15 A No, sir. And again, they should be
16 using the care that is outlined by USPAP.

17 And a lot of times care goes back to
18 the time frame in which an appraiser has been
19 doing appraisals. Unfortunately, we all become
20 complacent in our own geographical area, and I
21 am guilty as anybody of that. And when we do
22 appraisals in properties that we are very
23 familiar with, the geographical location and
24 neighborhoods, we have a tendency not to check
25 things that we should check at times.

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2 Q Okay.

3 I am looking at your report on the
4 comments section, page 2, and your report
5 indicates that while the opinion of value
6 differs from the original appraisal report, it
7 is by no means an indicator that the original
8 appraiser did not perform his duties?

9 A Yes, sir. The standard of review on
10 appraisals if you listen to certain instructors
11 and some of them are USPAP instructors, if you
12 read certain criteria tells you that you are
13 supposed to actually refer to the appraiser, and
14 I disagree with that analogy.

15 I performed a review on the appraisal
16 and not on the appraiser, and I prefer not to
17 even talk about the appraiser. In this
18 deposition we have talked about the appraiser a
19 lot. I don't like that at all. I don't know
20 the man I wasn't in his shoes at the time. So I
21 am telling you what is on the report. What is
22 not on the report, what should have been on the
23 report.

24 But as far as the appraiser himself, I
25 prefer to leave anything personal out of it, and

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2 that is strictly my personal opinion. Again
3 USPAP, some of the stuff you read will tell you
4 to actually comment on what the appraiser did,
5 and I do not like that term and that is the
6 reason that comment is there.

7 Q Well, unfortunately in this case you
8 are being asked to testify as to your opinion of
9 certain things that the appraiser did or did not
10 do?

11 A Actually, I was asked to review an
12 appraisal report. And so I like to keep it
13 strictly about the report. Like I said you can
14 use the terminology appraiser or appraisal, I
15 prefer appraisal.

16 Q From my standpoint I again have to ask
17 this question, do you believe that Mr. Lindsay
18 was negligent in performing his duties in
19 preparing the appraisal in 2004, which is the
20 subject of this litigation?

21 A I think he was negligent in the fact
22 that he missed something very important.

23 Q Okay.

24 A I do not think it was intentional.

25 Q Okay.

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2 A But I think it was very affective on
3 the report. And again I don't like to talk
4 about Mr. Lindsay. I don't know Mr. Lindsay,
5 and I didn't want to have anything to do, to say
6 about him; but you went directly to that spot.

7 Q Well, in our situation we have no
8 choice. That is the issue.

9 A Okay.

10 Q And again, it is your opinion that Mr.
11 Lindsay deviated from the standard of care
12 imputed upon real estate appraisers in the State
13 of South Carolina in preparing his appraisal in
14 2004?

15 A He deviated from USPAP standards, yes,
16 sir.

17 Q All right.
18 But you do not believe that Mr. Lindsay
19 intentionally misrepresented the value of this
20 property?

21 A I don't think he intentionally did it.
22 I just think he did not apply the normal
23 standards of due diligence that should have been
24 applied to this lot.

25 My personal opinion is he became

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2 complacent because he had did other lots, he had
3 three sales right beside it; and he did not take
4 into consideration that there was a difference
5 between lot number 2 versus lot 4, 5 and 6. And
6 that is just strictly an opinion.

7 MR. SAXON: Tom, I think I am
8 finished. Let us take five minutes.

9 (Whereupon, a short break was
10 taken.)

11 BY MR. SAXON:

12 Q Mr. Outlaw, prior to Tad Segars
13 contacting you to perform this review appraisal,
14 were you acquainted with Mr. Segars?

15 A No, sir.

16 Q That is all I have. Thank you very
17 much for answering my questions and your time.

18 I don't know if Tom has any more for
19 you or not.

20 REDIRECT EXAMINATION

21 BY MR. FINN:

22 Q Just a point of clarification on it,
23 you had talked about there was a house dried-in,
24 I think you used that expression which I know
25 what that means on I think you said it was lot

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1 4, could it have been lot 5? You know, where
2 the house was?

3 A It could have been. I thought it was
4 lot 4, but I will not the swear to exactly which
5 lot it was.

6 Q Does that matter to your testimony here
7 today?

8 A No, sir.

9 Q How many appraisals would you say you
10 have done in your roughly 20-year career as an
11 appraiser?

12 A Oh, I have no idea.

13 Q Is it in the hundreds or the thousands?

14 A It would be in the thousands.

15 Q Okay.

16 A I am not fast. I will be honest with
17 you about that.

18 Q I think that is all I have, Mr. Outlaw.
19 I appreciate your time here today.

20 (Whereupon, the deposition of
21 Dennis Outlaw was concluded at
22 approximately 1:20 p.m.)
23

24
25

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Ceil Weser, CSR and Notary

Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Ceil Weser, CCR

Notary Public

Beaufort, South Carolina

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