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 II

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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 STEPHEN V. LINSDAY, 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 3:00 p.m.

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STEPHEN V. LINSDAY,

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

DIRECT EXAMINATION

BY MR. FINN:

Q Good afternoon, Mr. Linsday. Did I pronounce that correctly?

A Yes, Linsday.

Q Okay. Sir, my name is Tom Finn and I represent Tad Segars in a case involving the plaintiff, being NBSC Bank, and Mr. Segars, and one of the issues that has arisen in our case involves the purchase by Mr. Segars of Lot 2 at Singleton Beach and a loan that he obtained from NBSC Bank, okay?

A (Nods head in the affirmative.)

Q Sir, have you ever had your deposition taken before?

A Yes.

Q Okay. I'll just give you a few of the ground rules. I'm going to ask you questions. If you don't understand a question, ask me to repeat it or rephrase it. If you answer it, I'll assume you understood my question. If you

have a question about anything during the deposition, ask me as opposed to Mr. Saxon. It's my deposition and the rules require that you and I try to figure it out, although we often will go off the record and converse with one or the other.

Sir, for the record, can you please state your full name.

A Stephen V. Linsday.

Q Okay. And your occupation or profession?

A Appraiser of real estate.

Q Okay. And could you tell me a little bit about your educational background?

A Got through three years of college. Ended up in the military, in the Navy during Viet Nam and honorably discharged. Worked as a broker for 12 years in Ann Arbor and also did appraisals on the side up until 1984, when I moved to Hilton Head. Started appraising here in 1985 to present. The first three years, '85 to '88, I worked for another appraiser by the name of Pat Keenan, and then I've been on my own since '88.

Q Okay. What licenses or qualifications do you hold in any of the areas you mentioned?

A I'm a certified residential real estate appraiser, number 51.

Q In South Carolina?

A In South Carolina, yeah.

Q Okay. Were you licensed in Michigan?

A Yes, but they they didn't -- at that time there weren't licenses for appraisers. I held a broker's license in Ann Arbor. You could do appraisals under a broker's license there at that time.

Q All right. And you're currently -- are you self-employed now?

A Yes, uh-huh (affirmative).

Q And your company is the Linsday Company?

A Correct.

Q It's fair to say that you do real estate appraisals and consulting?

A Correct.

Q Okay. Is there any breakdown, whether it's residential or commercial, or do you do both?

A I very rarely do commercial. My license limits my commercial appraisal activity to transactional value of $250,000. Now, that's not much for commercial. So a very limited commercial; usually just a vacant lot or a small office condo. And I do very few of those, maybe one or two a year. The rest of it is all residential real estate; lots, condos and houses.

Q Okay. Have you ever been qualified as an expert in a South Carolina court relative to your work as a real estate appraiser?

A Yeah, in divorce cases. I don't recall dates or anything.

Q Okay. Is that an instance where you may have appraised a home of a couple being divorced, put a value on the home?

A Yes. And I had one recently concerning an island on Hilton Head with Tom Taylor within the last year. I did a deposition for that one.

Q Okay. On Hilton Head Island or --

A Yeah. It's one of the small islands off Jonesville Road that's out in the marsh creek called Sunset Island.

Q All right. So when you did the divorce cases, did the judge -- did you get on the witness stand to testify or did you just submit a report?

A Well, in some of them they just stipulated to my report, both sides, and I didn't have to testify. I did testify in two of them, I think. And then I did one in Washington, DC. I traveled all the way up there and did testimony. That was years ago, though. That was like 15 years ago.

Q Okay. And do you recall I called you approximately 10, 12 days ago on the telephone about attending a deposition?

A Yeah.

Q Okay. And we had -- just for the record, I want to establish we had a discussion about your fee, you charge an hourly rate --

A Uh-huh (affirmative).

Q -- to provide testimony; correct?

A Correct.

Q Okay. We had some debate as to whether you would be an expert in this case; not that you're not qualified as an expert, but I'm sure

you'll verify that you actually had done an appraisal on Lot 2; so that I wasn't calling you as an expert as much as I was calling you to testify about what you had done, all right, that being the appraisal?

A As an expert.

Q Okay. And then you referred me to Tom Taylor who, I guess, represents you on some matters?

A Uh-huh (affirmative).

Q Okay. And I just have passed you -- before this deposition I gave you a check for $300 from Kelly Segars, which was to cover your time here today so you don't go in the hole for providing deposition testimony, okay?

A Okay.

Q And Mr. Saxon may want to ask you questions about that, but I wanted to put it on the record because normally the only reason I say it, a fact witness, we don't -- typically are not paid. An expert witness obviously charges a fee. In this scenario you're, I guess, sort of both. So I reached an agreement with your attorney and that's what has

transpired.

A Okay.

Q Let me ask you this: Do appraisers of residential property in South Carolina follow any particular -- and I'll be broad -- guidelines, protocols, things of that -- is there a book? Is there anything that you, as an appraiser, use as a guideline?

A Our state licenses are tied to the Uniform Standards of Professional Appraisal Practice, which is commonly referred to, the acronym USPAP, and we're all obligated to follow the protocols that are found in USPAP; not only as to client relationships but as to reporting requirements and guidelines.

Q Okay. So would you say USPAP is a fairly comprehensive guide for the appraiser?

A Yeah.

Q And you're obligated to follow it, and it in fact sets forth what you're supposed to do?

A Correct.

Q Okay. Is USPAP a national or --

A Yeah, it's national. All the states

are required to use USPAP as their license, appraiser license form.

Q Okay. Do you -- I don't know if you said it and I missed it, but did you tell me what USPAP stood for?

A Yeah, Uniform Standards of Professional Appraisal Practice.

Q All right. As I mentioned, we're here to discuss Mr. Segars' involvement with NBSC in the purchase of Lot 2 at Singleton Beach, and this sale took place in 2004?

A Correct.

Q Okay. In our phone conversation we had another small discussion about any documents you might have, and I believe you indicated that your practices don't require you to keep anything for more than five years?

A USPAP says you have to keep things for five years, your working files, for five years and then you're free to dispose of them. I routinely, when files are over five years, I routinely shred them.

Q Okay. So it would be fair to say that as far as documentation from your office on this

appraisal, you don't have any?

A I have none.

Q Okay. And you were just following standard protocol --

A Just standard practice. I hire the shredder truck to come once a year in January.

Q So we'll just work from some documents that I've had which you might -- they might have been duplicated in your file or they might not, but. Do you recall if NBSC contacted you to perform an appraisal on Lot 2 in 2004?

A Oh yeah, that's the only way I got my work.

Q Okay. Now, just for purposes of my own knowledge, would you have been on an approved list for NBSC?

A Yeah, I assume so, yeah.

Q Okay. Do you think they had a variety of appraisers or -- you know, I'm not familiar with how appraisers work or --

A Yes.

Q -- anything like that.

A Yeah, they probably have a stable of appraisers, uh-huh (affirmative).

Q Okay. So it wouldn't have been unusual for someone at NBSC to call you to do an appraisal on something?

A Not at all unusual.

Q Okay. Is it different -- would a bank, to your knowledge, approach a loan on a lot differently with respect to an appraiser or a house, or is it the same thing?

I mean, I want to be as simple as possible. If I'm going for a loan to buy a house or I'm going for a loan to buy a lot, does the bank care or do they just simply, all right, call Linsday, he's on our approved list and either/or, it doesn't matter?

A I don't believe they would differentiate on their selection of the appraiser by whether or not the property is a residential lot or residential home. I think that would be just normal course of business. It would be maybe somewhat what you would call random. I don't think they selected me because I knew lots more than somebody else on their list, if that's what you're asking.

Q I think so. I just wanted to know. I

mean, I'm not familiar with your industry, really, so I wanted to know if there's a difference, really, simply is there a difference in anybody's approach -- well, the bank's approach in hiring an appraiser for a lot or a piece of real estate, develop a piece of real estate or is it --

A No, very same, as far as I know.

Q Would it be fair to say that you had worked for NBSC before?

A Oh yeah, for years.

Q Okay. Is it also fair to assume that you've had various banks that would have used you as an appraiser?

A Oh yeah. Yes.

Q Okay. Is that who you typically try to market yourself to or --

A I guess about 90 percent of my business load is banks for either refinance or sale. I've worked for trust departments in banks, too, for their trust work, estates, things like that. The rest is miscellaneous, people just wanting to know what market value is or a divorce case or something like that. So my practice breaks

down about 90 percent lender and 10 percent private sector.

Q Okay. So based on those statistics about 90 percent of the time the bank would be the person to phone -- the entity to phone your office and --

A Correct.

Q -- sometimes there's lawyers or miscellaneous people?

A Correct.

Q Okay. So in this instance with respect to Lot 2 and the Segars transaction, is it accurate to say that NBSC called you to ask you to do an appraisal on Lot 2 or wrote to you?

A That's my recollection. I don't have my file to verify that. That would be normal procedure.

Q Okay. I have some exhibits marked here that I took another deposition in this case earlier today. Some of them are marked and some of them aren't, but some of them might be helpful, you know, in refreshing your recollection. I'm going to show you what we've marked as Defendants' Exhibit 2, and I'll have

you take a look at that and I'll ask you if that's a...

A (Examines document.) What kind of comment do you want?

Q Does that appear to be on the face page, the front page, does that appear to be an invoice from the Linsday Company to NBSC?

A Yes.

Q Okay. Is that for an appraisal on Lot 2 Singleton Beach?

A Uh-huh (affirmative).

Q And it looks like the invoice date is June 3rd, '04, and the appraisal date was June 2nd, '04; is that accurate?

A That looks to be correct.

Q Okay. So you would have sent this invoice to the bank?

A With the appraisal, yeah.

Q With the appraisal, okay. So we know that kind of verifies what we were talking about before, that that would have been an instance where the bank, NBSC, hired you, you did an appraisal, you billed the bank for the appraisal; correct?

A Correct.

Q Let me just ask you to flip through. There's an appraisal summary on that document, it looks like, the third page in, and that indicates that it is on Lot 2, and the second box says the sale price is $1.6 million?

A Uh-huh (affirmative).

Q Something arose in the last deposition I took that indicated that appraisers no longer necessarily have the sale price or the contract information nowadays based upon some kind of change; is that accurate or is that your -- to your knowledge, is that true?

A I don't know that to be true. If we're doing an appraisal for a sale for the collateral decision that the bank makes on a sale, we're obligated to analyze the contract. And by analyze I don't mean overanalyze; I just mean that we look at the terms, we look at the sale price and we look at the parties involved. You know, we don't analyze it any further than that. As a matter of fact, the lending forms that are required by almost all the banks is called Fannie Mae Form 1004 so that the properties can

be sold to Fannie Mae later on. Now, that's not true in lots because Fannie doesn't buy lots. But right on the form, up in the beginning of the form, it states is there a current -- it asks the question of the appraiser, is there a current contract and, if so, what are the terms; are they typical for the market; they ask you questions about the current sale. So I would say in a sale situation we are informed and we get a copy, a fully executed copy of the sales agreement.

Q Okay. I don't know whether you caught onto as to why I might be interested in something like that, but if the appraiser wasn't aware of the sale price, then perhaps the appraiser is going to give a more independent view or appraisal based on his or her own knowledge as opposed to here's the contract, I need -- you know, this thing is selling for 1.6, the appraisal needs to be 1.6 or the deal is going to go in the toilet. If you have that information, then an appraiser can say, well, that's my goal; let's see what we can do to get to my goal or if you don't have it, you may come

up and just give an independent appraisal?

A Well, it is an independent appraisal. It's just that the bank is not typically knowledgeable about real estate values so what they are in essence saying to the appraiser in a collateral situation -- and I'm telling you just in a collateral situation where it's a sale, they're saying to us, the appraiser, here's this sale at $1.6 million, we want you to do an appraisal and verify if that sale is reasonable collateral. Now, having that sales contract doesn't create pressure for me to hit a certain number. It's just if that particular sale price happens to be a full market sale, appraisal practice is not that exact a science. For example, if the value range was a million five fifty to a million six fifty and I've got a contract in front of me at a million six, well, you know, it's not brain surgery, I put the value at a million six probably. But I can tell you that frequently I will appraise a property either higher or lower than what it's selling for depending on what my opinion is. I'm not pressured by having the contract.

Q Okay. I guess that was my question and you've answered that.

Is there any difference in appraising a -- do you take a different approach as an appraiser in appraising an unimproved lot and a house and I mean in general? And again you're helping to educate me on your job.

A I understand. There's three approaches to appraisals as spelled out by our textbooks and USPAP, and they are the income approach to value, the cost approach of value and the sales comparison approach to value. The appraiser, according to USPAP, must consider -- emphasis on the word consider -- all three approaches and select those approaches that are appropriate to the assignment. Now, with a house you have the cost approach, which when there are vacant lots available, the cost approach is typically a relevant approach to value because you estimate the cost of constructing improvements on the site, you estimate the site value, add the site improvements back in and you have an indication of what someone might be willing to pay for the the property under the theory of substitution

that if they had a lot next door, they could reproduce the same house next door for X amount of dollars. They're probably not going to pay you more than that for your house. So that's called the cost approach. Now, with a vacant lot that obviously is not appropriate because there is no construction on the site; it's a vacant piece of land.

The income approach, let's talk about that. The income approach is based on the theory that an investor will pay for a cash flow on a certain income property. Residential properties typically, not always but typically don't fit into that category because people don't buy them for the cash flow; they buy them for the pride of ownership. They buy them to live in or second homes or whatever. So in residential appraisals we typically don't use the income approach. There are some rare occasions where it might come into play.

And then the third is the sales comparison approach, and with vacant land that's the only one that really is relevant with vacant lots to try and ascertain the value of the

property, is to find comparable sales of similar properties, try and compare them for their attributes and market conditions and then derive a value estimate based on comparable sales. So the only approach to value that's relevant typically with vacant lots is the sales comparison approach. Was that more than you wanted to know?

Q No, that was perfect. So with a vacant lot, that's what Lot 2 was?

A Uh-huh (affirmative).

Q It would be fair to say then that you did a sales comparison?

A Correct.

Q And that's why -- I've seen some appraisals before and they all seem to have comparables in there. Does that mean I've only seen sales comparisons or could another approach on an appraisal also yield three comparables?

A No, if you see comparables in a report it's typically a sales comparison approach, and that's what that is.

Q All right. If you look at -- I guess it's page four. I'm just looking to see the

comparables that you had. It looks like all of these happened to be on Singleton Beach. So --

A Yeah, right there.

Q So that's good, right --

A Yeah.

Q -- because they're right --

A The closer you can get to the subject property, the better. The old textbook example is you work from the subject property out, and you go out as far as you need to go to get enough data to have a supported value. Now, if you have three sales like I did here, right in that subdivision, then that's probably going to be your very best comparable data to use. It would make no sense if I had these three available, for me to go across the Island to some other vacant lot and try and use that as a comparison when I have these in front of me.

Q Okay. Can you tell from looking at this what -- well, let me just try to do this and you can either confirm or tell me I'm wrong, but it looks like on the comparables one, two and three that one was sold for 1.62, two was sold for 1.475, and three was sold for 1.5335?

A Uh-huh (affirmative).

Q Okay. Does it say when the -- it looks like -- is that date underneath like on --

A It's the close date.

Q Close date? So those would have all been within a few months or in the same year, at least?

A Well, yeah, they all -- comp two was in the previous year. That's why there's a large adjustment for time.

Q The last day of the previous year, though, so it's still pretty --

A It's fairly relevant, within six months. But the market was ascending at a very rapid rate at that time so that's why the adjustment was required on that.

Q So when you do this sales comparison, that's how you valued this particular lot; I understand that so far. Do you ever consider any covenants or restrictions on the land or is that outside your scope of work or --

A It's definitely outside of the scope of work. I don't think you have -- oh yeah. If you'll look at the second to the last page, item

one under contingent and limiting conditions, it says "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."

So it would be -- in my opinion, it would be a legal matter to analyze the title, which appraisers are not. In my opinion, that would be practicing law which I don't do.

Q Okay. You wouldn't order as part of an appraisal a title search to --

A Oh, definitely not.

Q Would you ever have an awareness as to whether -- or pay attention to any restrictive covenants like in Windmill Harbour or Wexford, or something, that they have certain requirements; would those ever been included in your appraisal, any of the restrictions in there or even the fact that it is a planned unit development?

A Well, the planned unit development is a zoning issue which, of course, we do report on the form. The restrictions we -- we're not lawyers. We can't go into the covenants and interpret the covenants. If something is brought to our attention as to look out for this or investigate that, I guess we would do that, we'd investigate it and maybe ask a lawyer to tell us what the matters are. But other than that I've never done any title search; and, to my knowledge, other appraisers I've worked with over the years have never done it either.

Q Okay. You just read from a paragraph under contingent and limiting conditions. Subsection two of that talks about an appraiser has provided a sketch in the appraisal report. Is that --

A That's typically for a house.

Q Okay. And would you just sketch the footprint or --

A Yeah, you measure the square footage of a house from outside wall to outside wall. That's a standard practice and that helps you determine the square footage, which helps you

determine comparability with comparable sales. It also, if you use the cost approach, sets up the conditions under which you would estimate the reproduction cost of a house when you're doing the cost approach. So there's a lot of good reasons to do a sketch of the house.

Q And number five under that same section says "The appraiser has estimated the value of the land in the cost approach at its highest and best use."

A Uh-huh (affirmative).

Q Now, you didn't use the cost approach so does that not apply?

A Correct. That's right.

Q Okay. So some of these conditions apply and some of them don't?

A Right. It depends on -- remember when going back to the three approaches of value, it depends on which approaches are considered relevant, and obviously with a lot the cost approach is not relevant. You know, highest and best use is one of the first things that an appraiser has to consider on any kind of property, including a vacant lot. For instance,

an appraiser could not appraise our subject lot as a commercial lot. It's not feasible, it's not zoned for that, it's not possible; and so, therefore, it would be outside the law or outside my ethics to appraise it as highest and best use as a commercial. So the first thing the appraiser has to do is determine what the highest and best use of the property is. With residential subdivisions it's pretty easy. It's residential, you know, and the zoning tells us that it can only be used for residential. It's not zoned for commercial.

Q And in this instance only a single-family, right?

A Uh-huh (affirmative).

Q That's R8, or something, or R --

A Well, the R4 means 4 to the acre. So RM would be residential moderate, 4 to the acre, RM4. And a lot of these are PUDs which are called planned unit developments. And I have RM8 which means you could do 8 to the acre under the zoning that I looked up on that.

Q Okay. Attached to -- with the backdrop of the questions I already asked you, you

wouldn't necessarily either inquire about or know about restrictive covenants or requirements of a various subdivision; that's really not something that you would --

A Not unless I suspected something outside the norm, you know, or that somebody brought it to my attention. I mean, if somebody brings it to my attention that there's an anomaly, then I've got to look into it. But ordinarily, you know, I'm looking at an appraisal, I've got three sales of residential lots right there in the subject subdivision. It isn't brain surgery for me to figure out that our subject is going to be a residential vacant lot, highest and best use.

Q Okay. Attached to your appraisal is a plat; did you see that?

A I didn't see it.

Q Okay. Can you take a look and see if it's --

A Oh yeah.

Q Okay. How would -- is there a protocol or a reason -- tell me why that's attached here and how would you come by it and why, if you can

explain.

A Well, I'm trying to determine lot size. The lender who orders the appraisal, of course, would not know lot size. I'm also researching my comparable data. And so I get plats if I can -- it's not a requirement but I get it, if I can, in the Beaufort County website for plats makes it possible for us to go on the website and pull recorded plats from the website. I don't know where I derived this, but it appears to have recorded stamps on it so I probably got it from Beaufort County. Sometimes clients provide me with a plat. For instance, if it's a proposed subdivision it may not even be a recorded plat yet. And plats are subject to change; they get changed.

Q Okay. That's kind of tiny. I think I have a blowup just because I wanted to ask you a couple questions about it (brief pause).

That's really small and this is merely just to help you. I first want to establish if this looks to be the same, a blowup of the plat that you have attached to your appraisal, if you can tell.

A Well, I don't see this on here.

Q So there's some drawings on there?

A There's some differences.

Q You can ignore the one you just pointed to and it's highlighted; that's for something else.

A I frankly can't give you an opinion. I'm not a surveyor. I can't tell you if it's exactly the same. Does this date look the same? I'm not sure it does; it looks different. This looks like a 2001 and this looks like a 2003. So I think it's a different recorded document. I can't read that.

THE WITNESS: Can you read that?

MR. SAXON: If this will help.

THE WITNESS: I can't read it.

BY MR. FINN:

Q Can you compare any of the other -- let me ask you this --

A I don't know. I'm just going to say I don't know.

Q That's fine. Let me ask you some questions about the plat that was attached to your appraisal. How would it be that you would

have obtained that?

A From the Beaufort County website to recorded dates -- I mean recorded plats.

Q And it would be fair -- would it have been fair to say that you acquired that or obtained that around the time of your appraisal for use in your appraisal.

A Yes.

Q Okay. What is the significance of -- you've explained some of it and maybe that's your whole answer, but is the significance of obtaining the plat simply to characterize the dimensions of the lot?

A Well, it's to properly identify the property, which is one of the main requirements of USPAP for appraisers is to identify the subject property, and sometimes we don't have plats available, you know. We frequently will appraise properties that aren't part of a platted subdivision. Then we have to fall back on tax maps, which are notoriously inaccurate but if that's all there is, that's all there is. You know, we use whatever we can find. And sometimes people hand me a plat. If it's a

proposed subdivision and they want to know what the lots are going to be worth when they're done, I would have a proposed plat in the report. So it could come from any number of sources.

Q Okay. Let me ask you this: My understanding is that this particular section where Lot 2 is -- and I'll indicate it looks like it's Lot 1 through 10, my understanding is that was an extension or something, you know, a portion of the development that -- in other words, there was Singleton Beach Proper and then --

A I think it was referred to as extension. It was referred to as Singleton Beach Extension. That's an off-the-top-of-my-head recollection.

Q Okay. Do you recall if the comparables that --

A Oh, it's right here, Singleton Beach Place Extension. It's right on the plat.

Q Okay. When you were talking about the comparables, it looked as if those lots didn't -- the numbers didn't match up. With

this little extension here, it appears that they're from other parts of Singleton Beach; 21, 23 and 25.

A No, they're all right in that extension. Look at the lot numbers. The legals are at the end where it says 25 Singleton Beach, Lot 6, that would compare to Lot 6 on your map; you follow me?

Q Okay. So your comparables would have been included in this trip here?

A Correct.

Q Okay, that clarifies that.

MR. FINN: Mark that. We'll mark this the next one in line.

(Whereupon, Defendants' Exhibit Number 6 was marked for identification.)

BY MR. FINN:

Q Mr. Linsday, I've marked that as Defendants' Exhibit 6 and that's just so we can keep track of the various documents we're going to attach to your deposition, as well as another deposition. This is a -- looks like a portion of USPAP; does that look --

A Mine comes in a big binder so this is kind of out of context for me. I have no idea what I'm looking at here.

Q Okay. Let me ask you to turn to page one, which is the third page of that document, and I draw your attention to paragraph small E; it's about the middle of the page.

A Uh-huh (affirmative).

Q It says "Identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, note including", and then it has subtext. Does that language seem to be the type of -- the same language that you have in your USPAP that you refer to?

A I honestly don't know.

Q Okay. If you follow down to under subsection E, small E, and then Roman numeral IV, it says, including any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances and other items of a similar nature. So my question is I'm assuming this is -- it says it's

a USPAP appraisal practice 2010-'11 edition, which I don't know if it's changed since '04, but for purposes of my question, do you ever consider easements, restrictions, encumbrances, leases, covenants, contracts, declarations, special assessments in a lot approval?

A If they become known.

Q Okay. So can you give me an example of how something becomes known?

A Well, if I pulled a plat and I saw that there was a road easement on the plat, then I would be -- it would be a known issue, and then I would have that in my report that there's a driveway easement that runs down Lot 2.

Q Okay. But you wouldn't -- what about the covenants; if you know you're working in a -- doing an appraisal in an area that has restrictive covenants, like all the plantations around here, would you ever -- have you ever obtained a copy of the covenants?

A Only when I've been requested to do so. In this case I had three sales in the same section of the same subdivision that had just recently sold. There was no reason for me to

suspect that there was anything wrong with the title or the covenants as it pertained to whether or not this lot was buildable. So there were no suspicions raised; and especially because the comparable sales demonstrated to me that this was a viable subdivision that had viable building lots on it.

Q Okay. Would you ever have occasion to be familiar with the Town land management ordinance; do you ever --

A Yes.

Q Okay. And does that in part concern buffers and setbacks and property uses of property?

A Yeah, it's essentially a zoning document, and we check it for zoning, particularly.

MR. FINN: We'll mark that.

(Whereupon, Defendants' Exhibit Number 7 was marked for identification.)

MR. SAXON: Tom, are we holding all objections other than form of questions?

MR. FINN: Yeah.

MR. SAXON: Okay.

BY MR. FINN:

Q I'm showing you what I've marked as Exhibit 7. That's a portion of --

A Uh-huh (affirmative).

Q -- the land management ordinance of the Town of Hilton Head Island?

A Uh-huh (affirmative).

Q And I just have a quick -- if you look at section C, it says "Buffer Adjacent to OCRM Beachfront Baseline. The depth of the buffer adjacent to the OCRM Beachfront Baseline shall be no less than 40 feet average and 20 feet minimum depth."

Can you -- and again I'm not trying to be a wise guy. I just don't deal with this a lot so I borrow on your expertise. What does that mean to you?

A Well, all subdivisions have some setbacks, typically, from the front, back and side; so that the building envelope is actually smaller than the lot itself. So that's what this in reference to, is the setback.

Q Well, I'm not understanding the language that "baseline shall be no less than 40 feet average and 20 feet minimum depth". Can you -- I think it's referring to the OCRM -- the OCRM line is like the DHEC line --

A Right.

Q -- from which one can't encroach upon; is that accurate, or can you explain it better for the record?

A No, I think it's referred to as the baseline, and then the setbacks are based off of the baseline. But you've got to remember the baseline moves periodically, so it's kind of like hitting a moving target.

Q Okay. So the baseline is you're going to have some requirements to be set back from the baseline. It says it should be no less than 40 feet average and 20 feet -- that doesn't make sense to me, and 20 feet minimum.

A It's -- the wording is not very good.

Q It's almost like it should be shall be no less than 20 feet average and 40 feet minimum.

A Right.

Q Or --
A I'm not sure.
Q Okay.
A I will admit that's confusing the way that's worded.
Q I'm just a little confused as it can say no less than 40 feet average but a 20-foot minimum, which --
A Yeah.
Q -- indicates that it can be 20 feet, but it's saying it can be no less than 40 feet.
A I know I'm confused.
Q Okay. Have you had occasion to deal with OCRM lines and setbacks and things of that nature?
A Setbacks frequently, yeah.
Q Okay. How does that come into play in one of your appraisals at that time?
A Well, most of the plats I have, have the setbacks on them so, you know, we know -- we can tell what the building envelope looks like. You know, other than that, I don't know.
Q Okay. Did there come a time when you were informed or you became aware that there

might be a problem with the ability to build on Lot 2?

A Well, later, many years later, actually, in '08, I think it was, Tad came to me and said that he had found out that because of the baseline, that the building envelope was so small that he could only put up 1,800 -- I think it was 16- or 1,800 -- I don't have that information in front of me. And he brought me a copy of the covenants which stated, I think, there was a minimum of 22- or 2,500 square feet. So consequently that meant that because the Town would only let him build X amount of square feet and that was less than what the covenants demanded as a minimum, it made his lot unbuildable. That was his argument.

Q All right. Is there a scenario under which that can be true? I mean, is that -- did you check that out, for example?

A He came to me in an emergency situation. He was in administrative law court or, I think, in Columbia over a tax case, and my letter to him specifically stated based on the information you have given me, assuming it's

correct, it would render the lot probably unbuildable. But that -- you know, that doesn't relate to this subpoena. This subpoena is just on the 2004.

Q Right, I'm not so much interested in that as much as Mr. Segars posed you a hypothetical that if this is true and this is true, then I can only build a house of only 1,800 square feet, but then the Singleton Beach covenants say it has to be 2,500 so --

A Yeah, whatever the numbers are.

Q -- I'm stuck?

A Yeah.

Q That's a possible scenario, right?

A Correct.

Q Now, could that arise in this situation? You went out, you conducted an appraisal, you used standard procedures and protocols from USPAP and other things you've talked about. You wouldn't have all the information. You follow protocols, you follow guidelines and you say this is worth, in this case, $1.6 million?

A Based on the comparable sales I had

available to me, I thought it was worth $1.6 million.

Q Okay. And the comparable sales approach is something that you typically would do for a lot because that's the best way --

A It's the only approach available.

Q It's the only approach available for a lot?

A For a lot, that's right.

Q Okay. But you would admit that it's possible that certain restrictive covenants could be in place that you didn't see that weren't made available to you that could limit the use of the property?

A I had no reason to suspect that because I had three closed sales.

Q I'm not saying you should have suspected it.

A Okay. But I want to caveat that; the reason I didn't look further was that I had three closed sales right in the same neighborhood with essentially the same situation that had closed recently. I had reason to suspect that there were restrictions that would

render this lot unbuildable at that time. Again, it falls into the legal area where the attorney --

Q So there could possibly --

A The attorney should have made that determination, not me.

Q Right. So outside of your area of responsibility it's possible that there were restrictions that could limit what you could build on a piece of property, that you would have never known about in following standard protocol?

A Well, yeah. I guess that's correct, yeah.

Q Your testimony -- I'll just summarize what we've talked about with respect to this. You're testifying today that you followed standard appraisal procedures in doing this appraisal on Lot 2 Singleton Beach in 2004?

A That's my belief.

Q Okay. You didn't deviate or do anything different than you otherwise would do on an unimproved lot?

A Correct.

Q Okay. You didn't necessarily look for covenants, restrictions, easements or anything as an independent attempt to find them?

A That's correct because the data that I had in my research indicated that it wasn't necessary to do that.

Q That being the comparable --

A The comparable data, yeah.

Q And in fact you said that that's not normally something that you do as an appraiser?

A Could you rephrase that question?

Q Yeah. That's not something you would do in this scenario, go try to find --

A The covenants.

Q Covenants?

A No.

Q And/or some restriction that might be on it?

A Again, that falls into that limiting condition. You know, you have to understand the scenario here. I have a licensed broker with tons of experience in this market providing a sales agreement for himself and I have comparable sales that indicate that this is a

marketable property that has a building potential. I have no reason to suspect otherwise. I have no reason to go to the next level and go find the covenants to figure out if that is the case.

Q Okay. And even aside from an experienced broker and the other things you mentioned, that's not something you'd normally do anyway, right?

A That's correct; I don't go to the covenants in almost any cases unless somebody brings something up and says, hey, you need to look at the covenants for this reason, and then I'm obligated to go look at it.

Q Okay. Now, I understand what you did; we've covered that; you've testified to that. I want to ask you about Mr. Segars' approach to a hypothetical if certain conditions existed, so I want to ask you -- part of Mr. Segars' scenario that he presented to you when he was dealing with the administrative court was that essentially if the OCRM is here, okay, and then you have to have a certain setback from that, 20 feet, 40 feet, whatever it is, was his scenario

accurate to say that he said, look, if you add in the setbacks and then you look at the size of the house that I'm required to build based on the Singleton Beach restrictive covenants, I can't build a 2,500 square foot house and I think you had indicated that, well, if assuming your hypotheticals are correct, that would affect the value of the lot?

A That was the hypotheticals that were presented to me, and he presented them as hypotheticals. He brought a copy of the covenants and I think he showed me this paragraph (indicates), and then he did some calculations based on his understanding of the LMO, I believe, from the Town planning people as to how big a house he could build; and so the hypothetical was that if the Town says I can only build X number of square feet and the covenants have a minimum that are greater than that, then do I have a buildable lot. And I said under the circumstances you've presented to me as hypothetical it does not appear that it is a buildable lot under those circumstances if they're correct. But I had no time to research

whether or not they were accurate or not.?

MR. FINN: Mark that.

(Whereupon, Defendants' Exhibit Number 8 was marked for identification.)

BY MR. FINN:

Q And I think this either clarifies or supports what you just said. That's the --

A Oh, this is the 2008.

Q Right. And that is simply, I think, repeating what you just told me?

A No, I didn't the bring the file on this. You didn't request it in your subpoena.

Q That's fine; I didn't. But on that particular -- is that preamble -- the letter seems to just repeat what you've just testified to --

A Correct.

Q -- that, you know, assuming this and this, this could be correct and --

A Yeah.

Q -- that's accurate information; that's basically what you just told me?

A Yes.

Q But you again did not have everything you would have needed to verify whether that was the case or not?

A Yeah. And again I'm not qualified for a title opinion, you know, and some of this falls into the title area where an attorney needs to make these determinations, not me.

Q What would fall into the title area or the attorney-legal side of the house and what would fall into yours? What would you be --

A Determining whether or not the gross amount of square footage that he hypothetically said he could build or was limited to build was correct or not. I don't know that. I mean, I don't know the details of that. My letter assumed that his calculations were correct on that issue. And I'm not an architect. You know, an architect actually would be more qualified to tell you whether or not it fell into the guidelines of the LMO and the minimum requirements of the Town planning. Again, it's beyond the scope of what I do.

MR. FINN: Let me just take a quick break here and we'll try to wrap

this up.

(Whereupon, a short break ensued.)

BY MR. FINN:

Q I just got a few more questions and then we'll wrap it up, unless Mr. Saxon has some questions for you.

In looking at your -- Exhibit 8 is your 2008 letter, and that's the one that has the various conditions on it or the hypotheticals that Mr. Segars posed to you, and then the appraisal I think -- can you verify whether that is the same -- whether you used the same plat just for purposes of --

A No, I used the plat that was supplied by Tad.

Q Okay. So you don't know if that's the same plat that was used in your appraisal?

A I have no clue.

Q Can you tell me --

A As a matter of fact, I had heard through the years that there was a fraudulent plat that was provided by one of the developers. Now, I don't know if that's a fact or not, but I

had heard that over the years and I think it was in the newspaper to some extent that there was a fraudulent plat that was provided by one of the developers and it concerned the baseline where he had moved the baseline or something; I wasn't quite sure. So, you know, I don't have a lot of confidence. But this, I recall, was provided by Tad. As a matter of fact, that's not my handwriting; that's his.

Q Can you tell without the colored lines, can you look at the plat from your appraisal and match it up to look -- I mean, are there significant differences that cause you to think it's not or is it more than likely --

A Well, none of this stuff is on it. You know, down here, the recording information that I had on mine, you know, so.

Q All right. So you can't say whether this is --

A No. And again this wasn't part of the subpoena so I'm not prepared to discuss this because --

Q I didn't know whether you had that in the same file --

A -- I didn't study this ahead of time. It's not the same file. It was a different issue. It was a different scenario.

Q I didn't know if you had any documents whatsoever. These are just documents that I have that I've just taken the opportunity to ask you about. If you don't know about them, that's fine --

A I have them in my files, yeah, but it's unrelated to the appraisal that I did back in 2004. It just coincidentally happens to concern the same property.

Q Right. Well, when you're saying it's different, Mr. Segars approached you several years later with a different --

A Scenario.

Q -- issue, different scenario?

A Right, a different issue.

Q Right. I'm not denying that. I'm just trying to ascertain whether in his scenario he presented you the same plat that you were able to obtain from the County.

A Well, I feel a little bit ambushed because, you know, again the subpoena only

referenced the 2004 appraisal. So I didn't study this ahead of time --

Q Well, we don't even have the -- you threw out the 2004 appraisal so --

A Right. What I'm saying is I didn't have a chance to study this, and I don't have the documents on that. As I said, these are shredded. So I didn't have any chance to prepare for testimony on this.

Q Okay. I'm not trying to ambush you or catch you ill-prepared. I don't know what the answers are to a lot of these questions. If I'm asking you, can you look at that and look at that and tell me if they're, you know, basically the same plat or the same plat with exceptions, like the purple and yellow are not on that one but that's the plat I obtained and did the appraisal; and this one is so significantly different, there's something here, there's something here. I mean, I don't know. I don't look at this stuff all the time.

A Let me ask you a question. How many versions of plat are there, do you know?

Q No.

A Neither do --

Q I know of two.

A Yeah, believe it or not, I don't either. There may be more than two. So I can't -- honestly there's some stuff that's missing on this that is on this, so I don't know if they're the same.

Q All right. We talked a little bit about setbacks from whether they be the LMO or the --

A OCRM?

Q Or the OCRM, okay. Now, those, to me, would determine the size of the house that one could build on a lot. Is that ever important, the buildable use or the use of an area to build something on a lot?

A Yes, but if -- but based on the comparable data I have in front of me on the plat, I had no reason to suspect that it would be anything less than what these other ones were. The others were similar enough here to indicate to me that there wasn't a problem with that.

Q When you did your -- how did you get

your comparables?

A Through MLS and tax, through the County and MLS.

Q Okay. And they simply designated whichever lots that were in this subdivision and you were able to determine, hey, it sold in December for X amount of dollars and --

A That would be the typical method, but again I don't have my working file so I can't tell you.

Q Okay. Is there any other scenario you can envision or is it simply, you know, you look for comparables, that lot sold, that lot sold, you can probably narrow down the subdivision that you'd want on your computer or in your search and then it pops up, you know, maybe five lots; is that somewhat accurate?

A Again, I'll tell you like I did earlier today, you work from the subject out. So I would have looked probably -- again, I don't have my my file, but I probably would have looked at the subdivision first to see if I had good comparable data there. If not, I keep working out until I found something reasonable

that gave me an indication of value.

Q Okay. And so on the '04 appraisal, this appraisal here, you did your search of the subdivision and found three lots that had sold, right?

A Slam dunk.

Q And so you said, all right, what -- I guess the tax records tell you how much they sold for and MLS tells you what they sold for?

A Both. I verified both.

Q So you compare all that, verify them, compare them and now you got three comparables. That's basically what you did, too --

A Correct.

Q -- to determine a comparable on this lot?

A Correct.

Q Okay. Does USPAP require you to do anything other than that?

A I don't understand.

Q Okay. You mentioned earlier that USPAP -- and you know what I'm talking about, right?

A Uh-huh (affirmative).

Q That that basically is a guideline, I think you said --

A Right.

Q -- for conducting appraisals, and then you explained to me the various types of appraisals?

A Three approaches to value.

Q Right. Does USPAP require you as an appraiser to do anything other than or different than simply getting those comparables, which in this scenario it seems somewhat fortuitous that you were able to get three on the same street right next to each other within six months --

A Absolutely.

Q -- so your job is done?

A Absolutely.

Q And what I'm asking you is -- I understand that -- does USPAP require you or did it require you to do anything other than look at those three comparables that you were able to find?

A Don't have my working file but I always do look for other data. You know, I go beyond just the three. I wouldn't have stopped there.

Q Okay. What would you have --

A I would have looked at actives because active listings tend to tell you what the upper limit of the market is. For instance, if Lot 1 was on the market for a million four and it was identical to Lot 2, it's unlikely that somebody would pay me a million six when I could go next door and buy the -- the theory of substitution, buy the one next door for a million four. So, you know, the nightmare that appraisers want to avoid at all costs is to find out that an active listing is in the market that does not support the value estimate of your property. So I'm looking at actives, I'm looking at pending sales, I'm looking at other lots in other neighborhoods; but once I had three good solid ones right in this neighborhood, that indication is so strong that I probably wouldn't have spent a lot of time looking outside of this neighborhood because as you go outside of a neighborhood, they become less comparable because they're not the same neighborhood. So an appraiser works until he's absolutely convinced that he has found more than enough

value indications that his value estimate is correct and in this case supporting collateral decision that a bank is making on a million six sale.

Q Okay. I understand everything you've said. If there was a restriction on this particular plat which was reconfigured into ten lots and it applied to all of them but no one knew about it, your comparables would be somewhat misleading because you're basing your appraisal -- and I realize this is a hypothetical. I'm just saying you did your comparables. What if the restrictive covenant, or something, affected all these lots, which it would because they came from, you know, the same -- they reconfigured at the same time. What if --

A Well, then the three lawyers that allowed this to close that did the title work would be at fault, in my opinion.

Q That's an answer, all right. So --

A Because the only conclusion I can come from finding three closed sales that went through the title search that were closed by an

attorney, which is a requirement of the State here in this State that all sales must be closed by an attorney, I had no reason to suspect anything other than that.

Q And that helps me -- your answer helps me understand that portion of what you do, because you're getting a lot of information when you say, well, I look for comparable sales. Well, there's a lot more to it than just the -- you know, like this is one six, this is one five, this is one five-five, they're all in the same thing, here's my report. You're relying on the fact that those were closed; that someone had done a title search which you know is required to do a real estate transaction --

A That would be the assumption.

Q -- that if were there were restrictive covenants on it, it should have probably popped up, right?

A Right. That's an attorney's job.

Q All right, so you're relying on that. And --

A My work files, by the way, on a file like this, my work file would probably be that

thick, you know, 2-inch-thick file, and I produce a report of 12 pages. So the rest of that is all research. I probably spend 80 percent of my time in the research phase of the appraisal, looking at comps, looking at actives, looking at whatever I need to look at to come to a proper decision. Writing the report is probably the last 30 minutes. You know, so what you see in a report is the tip of the iceberg of what's gone on behind it.

Q Okay. And then again I'm asking you -- you're helping me understand what you do and how you do it what standards apply to appraisals; so.

This is Exhibit 6 which you've already talked about. I want to just try to clarify -- I don't think I understood what your answers were. This is a section of USPAP which you have indicated to me that when you do an appraisal -- it's one of the first thing you talked about -- you and other appraisals -- and it's a national thing and states require that you comply with this USPAP, Uniform Standards of Professional Appraisal Practice.

A Uh-huh (affirmative).

Q And a portion of that section which is on page one, page three of your document, subsection E, "identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal", it says including. But just that first sentence I'm talking about, E, what are the characteristics of the property that are relevant to the type -- now, the type, is the type referring to the cost -- or the comparable sales; is that the type of appraisal?

A No, you're trying to identify the subject property and its characteristics, and this could cover commercial, it could be income, it could be residential, it could be just about anything, but you're supposed to identify the characteristics. For instance, if it's a house, I would measure the house or if it's a proposed house, I'd have plans so I would know what the characteristics of the house are. I would go to the County and pull a plat so that I know what the characteristics of the lot are, you know, that it's a 1/4 of an acre or whatever.

Q So in this scenario with Lot 2, identifying the characteristics of Lot 2, your appraisal included a copy of a plat that you pulled --

A Uh-huh (affirmative).

Q -- around the time?

A A recorded plat.

Q Recorded plat that you pulled around the time. And you rely on that to give you the -- well, the lot has no house on it, you don't need sketches. All you can really have of a lot other than taking picture of dirt, right?

A Right. Or the view.

Q Okay.

A In this case I took a picture of the oceanfront view, if I remember right.

Q Okay. So that is what that section means about identifying the characteristics of the --

A Uh-huh (affirmative). And then under subsection item four, any known easements or restrictions, you know, again if something is known to me, then I would investigate it. But, you know, if it's not obvious, if it's not

patent versus latent, I might not know of it.

Q And that goes on. I can understand certainly no known easements; if you pulled the plat and there's not an easement or you didn't hear from an attorney you may have worked with, or something, hey, there's an easement cutting right down the middle of that thing, that wouldn't be a known easement so you wouldn't necessarily have to have that; or restriction, encumbrances, all those would be things that you may have heard from different sources, which then would be known but in this instance you weren't aware of any, right?

A Right. It becomes title issues then.

Q Okay. But it gets to covenants? Now you're --

A Covenants are title issues.

Q Well, would you or would you not be aware that almost every planned unit development around here, including Singleton Beach, would have some covenants?

A Some covenants, yeah, I guess so.

Q It just doesn't -- and this is just how you do your appraisals; and again I don't know.

But you would admit that there are covenants on Singleton Beach just like there are covenants on most of the planned unit developments, Palmetto Dunes, Wexford, Windmill Harbour, they all have covenants, right?

A I assume so.

Q Okay. It's just not your practice to pull covenants and look at them when you're doing an appraisal on a lot?

A Yes. And I would submit that it's not the practice of any appraiser to do that, that I know of.

Q All right. But you -- and I might be just playing lawyer here as far as going too far, but this language says that your appraisal should include any known easements, dah-da, dah-da, dah-da, any covenants, and you're aware there were covenants but they weren't included; and you're saying that's really not the standard practice of any appraiser around here; that's just not something that's done? And that's fine if that's your answer.

A Yeah, typically you would not pull the covenants, and I don't think any of my peers

would either.

And in our classes concerning USPAP that we are required to take every other year to renew, we are reminded frequently that the limits to which you would do due diligence is typically decided on what would your peers do, are your peers -- what are your peers doing as far as due diligence and finding certain information. And I would submit to you based on my knowledge of other appraisers and conversations with them, nobody I know of is pulling covenants and restrictions unless there's an issue that becomes patently obvious that needs to be addressed.

Q Okay. Is there any way for you to determine during the process of doing an appraisal what the actual size of the buildable area is or is that something that you just would never --

A Well, I might get into the issue if I suspected that the size was an issue, the building envelope is an issue but --

Q Yes, sir, and it could be other things, but.

A In this case I had no reason based on the data that I had in front of me to suspect that the subject lot would be unbuildable based on the comparability to the other lots.

Q Because they had sold for prices close to what this was --

A Yeah, and very recently and been closed by attorneys who did title checks. So, yeah, I mean, I had no reason to suspect that Lot 2 was any different than sales one, two and three. I had no reason to believe that they were differently. And you can see in my report I didn't make any other adjustments other than the one for time, because the one sale was six or eight months old.

Q So is there any requirement or anything that would require you to note what the usable space is -- and this may pertain to a situation where there's a dune or a marsh or something like that; is that a box that has to be checked or looked into? You don't -- as an appraiser you don't have to determine the usable space when doing an appraisal?

A No, no, we don't have to determine the

usable building envelop, not that I'm aware of.

MR. FINN: All right. I don't have any further questions. Thank you.

MR. SAXON: I have just a few.

CROSS-EXAMINATION

BY MR. SAXON:

Q Mr. Linsday, my name is Dan Saxon and I represent NBSC in this lawsuit with regard to counterclaims that have been filed against the bank by Mr. Segars. Now, I believe you testified that NBSC retained your services or the services of your company to provide the appraisal on this property which has been marked as Defendants' Exhibit 2; is that right?

A That's correct.

Q And is it true that from time to time NBSC will request your services or order that a survey be prepared -- I'm sorry, that an appraisal be prepared on various properties on Hilton Head for their evaluation in making loans?

A Yes.

Q And you don't provide appraisals to NBSC exclusively, do you?

A Oh no.

Q Is it true that you provide appraisals for other banks?

A Many others.

Q Okay. If you recall this case in particular, did NBSC -- first of all, were you an employee of NBSC?

A Oh no.

Q Did NBSC request that an appraisal be performed for a certain value? In other words, did they ask you to come up with a particular value for this property?

A No, and that would be illegal under current laws.

Q Did NBSC in this case or at any time set forth the methods with which you would perform your appraisal?

A No, just that we must follow USPAP which is the state law.

Q Okay. Did they tell you which records you were to go review for making your appraisal?

A No.

Q Do any of the other banks that you do or perform services for request you to use any

particular method other than USPAP?

A No.

Q Okay. When NBSC pays you for these -- and, I'm sorry, are you paid directly by NBSC or sometimes are you paid from a closing on a case, or does that vary?

A Yes, times directly; sometimes out of closing proceeds.

Q Okay. And does NBSC generally issue you a 1099 at the end of the year?

A Yes.

Q And that would be for cases where NBSC has paid you directly?

A Yeah, I assume so, yes.

Q Okay. And if the proceeds were through a closing attorney's office, I assume that attorney's office may give you a 1099?

A Correct.

Q Have you ever entered into an agency agreement with NBSC?

A Agency, no.

Q Has NBSC ever granted you the authority to act on their behalf or to bind them?

A No.

Q Is it a fair characterization to describe you as a vendor to NBSC?

A Yes.

Q And a vendor to the other banks?

A Yes.

Q And other individuals to whom you provide service?

A Yes. We are commonly referred to as vendors from all the banks.

MR. SAXON: All right. Thank you. That's all I have.

(Whereupon, the deposition of Stephen V. Linsday was concluded at approximately 4:30 p.m.)

CERTIFICATE

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

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE
2010-2011 EDITION

Plus

Guidance from the Appraisal Standards Board:

USPAP ADVISORY OPINIONS &
USPAP FREQUENTLY ASKED QUESTIONS (FAQ)

APPRAISAL STANDARDS BOARD
THE APPRAISAL FOUNDATION
Authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications
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December 31, 2011

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std01B_intro

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENTUSPAP 2010 - 2011
STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

Comment: STANDARD 1 is directed toward the substantive aspects of developing a credible appraisal of real property. The requirements set forth in STANDARD 1 follow the appraisal development process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.

Standards Rule 1-1
Standards Rule 1-2
Standards Rule 1-3
Standards Rule 1-4
Standards Rule 1-5
Standards Rule 1-6

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Standards Rule 1-2USPAP 2010 - 2011
Standards Rule 1-2

In developing a real property appraisal, an appraiser must:

(a) identify the client and other intended users;[note]

(b) identify the intended use of the appraiser's opinions and conclusions;[note]

Comment: An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.[note]

(c) identify the type and definition of value, and, if the value opinion to be developed is market value, ascertain whether the value is to be the most probable price:

(i) in terms of cash; or
(ii) in terms of financial arrangements equivalent to cash; or
(iii) in other precisely defined terms; and
(iv) if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data;

Comment: When developing an opinion of market value, the appraiser must also develop an opinion of reasonable exposure time linked to the value opinion.[note]

(d) identify the effective date of the appraiser's opinions and conclusions;[note]

(e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal,[note] including:

(i) its location and physical, legal, and economic attributes;
(ii) the real property interest to be valued;
(iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;
(iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and
(v) whether the subject property is a fractional interest, physical segment, or partial holding;

Comment on (i)-(v): The information used by an appraiser to identify the property characteristics must be from sources the appraiser reasonably believes are reliable.

An appraiser may use any combination of a property inspection and documents, such as a physical legal description, address, map reference, copy of a survey or map, property sketch, or photographs, to identify the relevant characteristics of the subject property.

When appraising proposed improvements, an appraiser must examine and have available for future examination, plans, specifications, or other documentation sufficient to identify the extent and character of the proposed improvements.[note]

Identification of the real property interest appraised can be based on a review of copies or summaries of title descriptions or other documents that set forth any known encumbrances.

An appraiser is not required to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding.

(f) identify any extraordinary assumptions necessary in the assignment;

Comment: An extraordinary assumption may be used in an assignment only if:

- it is required to properly develop credible opinions and conclusions;
- the appraiser has a reasonable basis for the extraordinary assumption;
- use of the extraordinary assumption results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for extraordinary assumptions.

(g) identify any hypothetical conditions necessary in the assignment; and

Comment: A hypothetical condition may be used in an assignment only if:

- use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;
- use of the hypothetical condition results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions.

(h) determine the scope of work necessary to produce credible assignment results in accordance with the SCOPE OF WORK RULE.[note]

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STANDARD 2: REAL PROPERTY APPRAISAL REPORTINGUSPAP 2010 - 2011
STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Comment: STANDARD 2 addresses the content and level of information required in a report that communicates the results of a real property appraisal.

STANDARD 2 does not dictate the form, format, or style of real property appraisal reports. The form, format, and style of a report are functions of the needs of intended users and appraisers. The substantive content of a report determines its compliance.

Standards Rule 2-1
Standards Rule 2-2
Standards Rule 2-3
Standards Rule 2-4

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Comment: The statement of the real property rights being appraised must be substantiated, as needed, by copies or summaries of title descriptions or other documents that set forth any known encumbrances.

(v) state the type and definition of value and cite the source of the definition;

Comment: Stating the definition of value also requires any comments needed to clearly indicate to intended users how the definition is being applied.[note]

When reporting an opinion of market value, state whether the opinion of value is:

- in terms of cash or of financing terms equivalent to cash, or
- based on non-market financing or financing with unusual conditions or incentives.

When an opinion of market value is not in terms of cash or based on financing terms equivalent to cash, summarize the terms of such financing and explain their contributions to or negative influence on value.

(vi) state the effective date of the appraisal and the date of the report;[note]

Comment: The effective date of the appraisal establishes the context for the value opinion, while the date of the report indicates whether the perspective of the appraiser on the market and property as of the effective date of the appraisal was prospective, current, or retrospective.

(vii) describe the scope of work used to develop the appraisal;[note]

Comment: Because intended users' reliance on an appraisal may be affected by the scope of work, the report must enable them to be properly informed and not misled. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

When any portion of the work involves significant real property appraisal assistance, the appraiser must describe the extent of that assistance. The signing appraiser must also state the name(s) of those providing the significant real property appraisal assistance in the certification, in accordance with Standards Rule 2-3.[note]

(viii) describe the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

Comment: A Self-Contained Appraisal Report must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1. The amount of detail required will vary with the significance of the information to the appraisal.

The appraiser must provide sufficient information to enable the client and intended users to understand the rationale for the opinions and conclusions, including reconciliation of the data and approaches, in accordance with Standards Rule 1-6.

When reporting an opinion of market value, a summary of the results of analyzing the subject sales, options, and listings in accordance with Standards Rule 1-5 is required.[note] If such information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the information is required. If

such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, describe the support and rationale for that opinion;

(x) clearly and conspicuously:

· state all extraordinary assumptions and hypothetical conditions; and

· state that their use might have affected the assignment results; and

(xi) include a signed certification in accordance with Standards Rule 2-3.

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

Comment: The essential difference between the Self-Contained Appraisal Report and the Summary Appraisal Report is the level of detail of presentation.

(i) state the identity of the client and any intended users, by name or type;[note]

Comment: An appraiser must use care when identifying the client to ensure a clear understanding and to avoid violations of the Confidentiality section of the ETHICS RULE. In those rare instances when the client wishes to remain anonymous, an appraiser must still document the identity of the client in the workfile but may omit the client's identity in the report.

Intended users of the report might include parties such as lenders, employees of government agencies, partners of a client, and a client's attorney and accountant.

(ii) state the intended use of the appraisal;[note]

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;[note]

Comment: The real estate involved in the appraisal can be specified, for example, by a legal description, address, map reference, copy of a survey or map, property sketch, and/or photographs or the like. The summarized information can include a property sketch and photographs in addition to written comments about the legal, physical, and economic attributes of the real estate relevant to the type and definition of value and intended use of the appraisal.

(iv) state the real property interest appraised;

Comment: The statement of the real property rights being appraised must be substantiated, as needed, by copies or summaries of title descriptions or other documents that set forth any known encumbrances.

(v) state the type and definition of value and cite the source of the definition;

Comment: Stating the definition of value also requires any comments needed to clearly indicate to the intended users how the definition is being applied.[note]

When reporting an opinion of market value, state whether the opinion of value

is:

. in terms of cash or of financing terms equivalent to cash, or
. based on non-market financing or financing with unusual conditions or incentives.

When an opinion of market value is not in terms of cash or based on financing terms equivalent to cash, summarize the terms of such financing and explain their contributions to or negative influence on value.

(vi) state the effective date of the appraisal and the date of the report;[note]

Comment: The effective date of the appraisal establishes the context for the value opinion, while the date of the report indicates whether the perspective of the appraiser on the market and property as of the effective date of the appraisal was prospective, current, or retrospective.

(vii) summarize the scope of work used to develop the appraisal;[note]

Comment: Because intended users' reliance on an appraisal may be affected by the scope of work, the report must enable them to be properly informed and not misled. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

When any portion of the work involves significant real property appraisal assistance, the appraiser must summarize the extent of that assistance. The signing appraiser must also state the name(s) of those providing the significant real property appraisal assistance in the certification, in accordance with Standards Rule 2-3.[note]

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

Comment: A Summary Appraisal Report must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1. The amount of detail required will vary with the significance of the information to the appraisal.

The appraiser must provide sufficient information to enable the client and intended users to understand the rationale for the opinions and conclusions, including reconciliation of the data and approaches, in accordance with Standards Rule 1-6.

When reporting an opinion of market value, a summary of the results of analyzing the subject sales, options, and listings in accordance with Standards Rule 1-5 is required.[note] If such information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;

(x) clearly and conspicuously:

. state all extraordinary assumptions and hypothetical conditions and
. state that their use might have affected the assignment results;

and

(xi) include a signed certification in accordance with Standards Rule 2-3.

(c) The content of a Restricted Use Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(i) state the identity of the client, by name or type;[note] and state a prominent use restriction that limits use of the report to the client and warns that the appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile;

Comment: An appraiser must use care when identifying the client to ensure a clear understanding and to avoid violations of the Confidentiality section of the ETHICS RULE. In those rare instances when the client wishes to remain anonymous, an appraiser must still document the identity of the client in the workfile but may omit the client's identity in the report.

The Restricted Use Appraisal Report is for client use only. Before entering into an agreement, the appraiser should establish with the client the situations where this type of report is to be used and should ensure that the client understands the restricted utility of the Restricted Use Appraisal Report.

(ii) state the intended use of the appraisal;[note]

Comment: The intended use of the appraisal must be consistent with the limitation on use of the Restricted Use Appraisal Report option in this Standards Rule (i.e., client use only).

(iii) state information sufficient to identify the real estate involved in the appraisal;[note]

Comment: The real estate involved in the appraisal can be specified, for example, by a legal description, address, map reference, copy of a survey or map, property sketch, and/or photographs or the like.

(iv) state the real property interest appraised;

(v) state the type of value, and cite the source of its definition;[note]

(vi) state the effective date of the appraisal and the date of the report;[note]

Comment: The effective date of the appraisal establishes the context for the value opinion, while the date of the report indicates whether the perspective of the appraiser on the market and property as of the effective date of the appraisal was prospective, current, or retrospective.

(vii) state the scope of work used to develop the appraisal;[note]

Comment: Because the client's reliance on an appraisal may be affected by the scope of work, the report must enable them to be properly informed and not misled. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

When any portion of the work involves significant real property appraisal assistance, the appraiser must state the extent of that assistance. The signing appraiser must also state the name(s) of those providing the significant real property appraisal assistance in the certification, in accordance with Standards Rule 2-3.[note]

(viii) state the appraisal methods and techniques employed, state the value opinion(s) and conclusion(s) reached, and reference the workfile; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

Comment: An appraiser must maintain a specific, coherent workfile in support of a Restricted Use Appraisal Report. The contents of the workfile must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1 and for the appraiser to produce a Summary Appraisal Report.

When reporting an opinion of market value, a summary of the results of analyzing the subject sales, options, and listings in accordance with Standards Rule 1-5 is required. If such information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, state that opinion;

(x) clearly and conspicuously:
- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results; and

(xi) include a signed certification in accordance with Standards Rule 2-3.

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(Town) LMO - Town witness said we could build but did not acknowledge singleton covenants would exhibit

Proposed Use	Adjacent Use			
	Single Family (Exterior Boundary)	Multifamily, Recreational	Institutional, Commercial	Industrial, Warehouse
[*NOTE: Single family subdivision exterior boundary only] For all minor subdivisions and Abbreviated Development Plan Review (ADPR) applications, the entire single family exterior boundary buffer may be reduced by 50% in area. The buffer area shall not be reduced to less than 5 feet wide at any point along the common property line. The total boundary buffer area shall not be required to exceed 20% of the original parcel. For properties located in the CCW, DCW, and SMU zoning districts, the adjacent use buffer requirement may be reduced in accordance with Section 16-5-402C.				

(Revised 9/5/06—Ordinance 2006-19)

NOTE: if within a PUD see Section 16-5-904 for restrictions.

(Revised 2/7/06—Ordinance 2006-02; Revised 3/6/07—Ordinance 2007-05)

B. **Adjacent Street Buffers.** Buffers are required along all streets. In addition to the required distance from the table below, the buffer shall contain appropriate plant material to soften the visual impact of development from the street.

DEFENDANT'S EXHIBIT

1-19-11

Proposed Use		Major Arterial	Minor Arterial	All Other Streets
All Uses	Average	60 feet	30 feet	—
	Minimum	50 feet	25 feet	20 feet
For properties located in the CCW, DCW, and SMU zoning districts, the adjacent street buffer requirement may be reduced in accordance with Section 16-5-402D.				

(Revised 3/6/07—Ordinance 2007-05)

C. **Buffer Adjacent to OCRM Beachfront Baseline.** The depth of the buffer adjacent to the OCRM Beachfront Baseline shall be no less than 40 feet average and 20 feet minimum depth.

1. The minimum OCRM buffer shall be measured from the OCRM Baseline.

2. Average buffer is determined by quantifying the distance to the OCRM Baseline for each 10 linear foot increment of impervious surface, pervious paved surface or structure, summing these, and dividing by the number of increments measured. Quantification of each increment of buffer shall be approved by the Administrator.

PETITIONER'S EXHIBIT 6 3/9/11 16170367

PENGAD 800-631-6989

0446

3. Prohibited Activities. The following activities are specifically prohibited in the buffer area:
   a. removal, excavation or disturbance of the soil, except for minimal disturbance associated with the installation of native trees and plants as approved by the Administrator where the buffer needs to be re-established;
   b. dumping or filling with any materials;
   c. any non-native vegetation;
   d. placement of structures (except for permitted crossings), and pervious or impervious surfaces; and
   e. removal or destruction of trees, plants, grasses, or vines, however the Administrator may approve selective pruning of the buffer for the purpose of providing views.
4. The area of the OCRM buffer may be landscaped and maintained as approved by the Administrator if desired.
5. Limited clearing or underbrushing for pathways may be permitted in the buffer in accordance with an approved mitigation plan.

D. **Wetland Buffer.** For the application of buffers from regulated wetlands, refer to Chapter 6, Article II.

(Revised 10/5/99—Ordinance 1999-29; Revised 1/25/00—Ordinance 2000-03; Revised 2/3/09—Ordinance 2009-02)

Sec. 16-5-807. Specific Buffer Requirements

A. **Buffers in Zero Lot Line Subdivisions.** Subdivisions developed with zero lot lines shall not be subject to the requirements of this Article for internal lot lines. However, the perimeter of the subdivision shall be subject to buffers required in this Article.

B. **Buffer for Loading, Service and Utility Areas.** For all loading, service, and utility areas for commercial, industrial and institutional developments, the required buffer adjacent to these areas shall be as required in Sec. 16-5-806 plus 20 feet, except where the existing or zoned adjoining use is commercial or industrial. In addition, these buffer areas shall provide structural elements as required in Sec. 16-5-805.

Use	Tidal Wetland	Freshwater Wetland
Multifamily Residential/Nonresidential Impervious Paved Surfaces	50 feet average 25 feet minimum	40 feet average 20 feet minimum
Multifamily Residential/Nonresidential Pervious Paved Surfaces	35 feet average 15 feet minimum	35 feet average 10 feet minimum
Multifamily Residential/Nonresidential Structures	40 feet average 20 feet minimum	35 feet average 20 feet minimum
Single Family Dwelling including accessory structures and impervious or pervious paved surfaces.	20 feet	—
Lagoons and Stormwater Retention/Detention Areas	—	20 feet minimum

2. For vacant property an undisturbed wetland buffer shall be maintained equal to that required for impervious paved surfaces.

3. The minimum wetland buffer shall be measured from the wetland boundary as determined by the survey required by Sec. 16-3-502. Lagoons and stormwater retention/detention areas shall be measured from the wetland boundary to the top of the bank of the lagoon or stormwater retention/detention area.

4. Average buffer is determined by quantifying the distance to the wetland for each 10 linear foot increment of impervious surface, pervious paved surface or structure, summing these, and dividing by the number of increments measured. Quantification of each increment of buffer shall be approved by the Administrator.

C. **Prohibited Activities.** The following activities are specifically prohibited in the buffer area:

1. removal, excavation or disturbance of the soil, except for minimal disturbance associated with the installation of native trees and plants as approved by the Administrator where the buffer needs to be re-established;

2. dumping or filling with any materials;

3. grassed lawns and gardens;

4. placement of structures, and pervious or impervious surfaces except for permitted crossings; and

5. removal or destruction of trees, plants, grasses, or vines, however the Administrator may approve selective pruning of the buffer for the purpose of providing views into the wetland.

LINSDAY COMPANY

REAL ESTATE APPRAISAL & CONSULTING SERVICES

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HILTON HEAD ISLAND, SC 29938

(843) 785-4444

FAX: (843) 842-8795

EMAIL: slinsday@sc.twcbc.com

DEFENDANT'S EXHIBIT 8 1-19-11 CR

October 30, 2008

Mr. Tad Segars
87 Singleton Beach
Hilton Head Island, SC 29928
Via Email: Tad@tadsegars.com

RE: Lots 2 and 3, Singleton Beach Place Extension Subdivision

Dear Mr. Segars:

I have examined the plat that you had sent to me of the above-mentioned subdivision. Based upon our telephone conversation this afternoon, you have requested that I render some opinions concerning the values of the properties in question. Namely your two lots in this Subdivision noted above.

You have made some assertions concerning this subject subdivision, its covenants and certain building restrictions imposed by the State of South Carolina OCRM offices and also by the Town of Hilton Head Island. You have stated that under the current covenants running with the land, no residence can be built with less than 2,500 square feet of living area. You have also stated that the OCRM beach baseline noted on the attached plat and the Town of Hilton Head Island's setback restrictions, the maximum residence that could be constructed is approximately 1,800 square feet of living area, which does not meet the minimum requirements of the covenants that run with the land. Therefore, it is your opinion that your lots are unbuildable, at this time under these circumstances.

Based upon these special assumptions and limiting conditions, which I have not yet verified, your individual Lots 2 and 3 appear to be unbuildable. In that case, those lots would have little or no value, in my opinion. As a practical matter of fact, they both present the owner with some liability of ownership in that case, because of property taxes etc.

The attached subdivision plat that you sent also reflects a "proposed OCRM baseline" which would move the old OCRM baseline seaward by approximately 30 feet, according to my conversation with you on this matter. If the OCRM baseline eventually were moved to the new seaward baseline and new construction of at least 2,500 square were permitted on your properties, the values of these ocean front sites would become very significant. You have asserted that values, in that event, would approach $2,000,000. Without a significant amount of additional research and work, I cannot verify that level of value, under these assumptions. However, based upon extensive past research and experience, I can easily opine that the value would be well in excess of $1,000,000 per lot, if these assumptions are correct and verified.

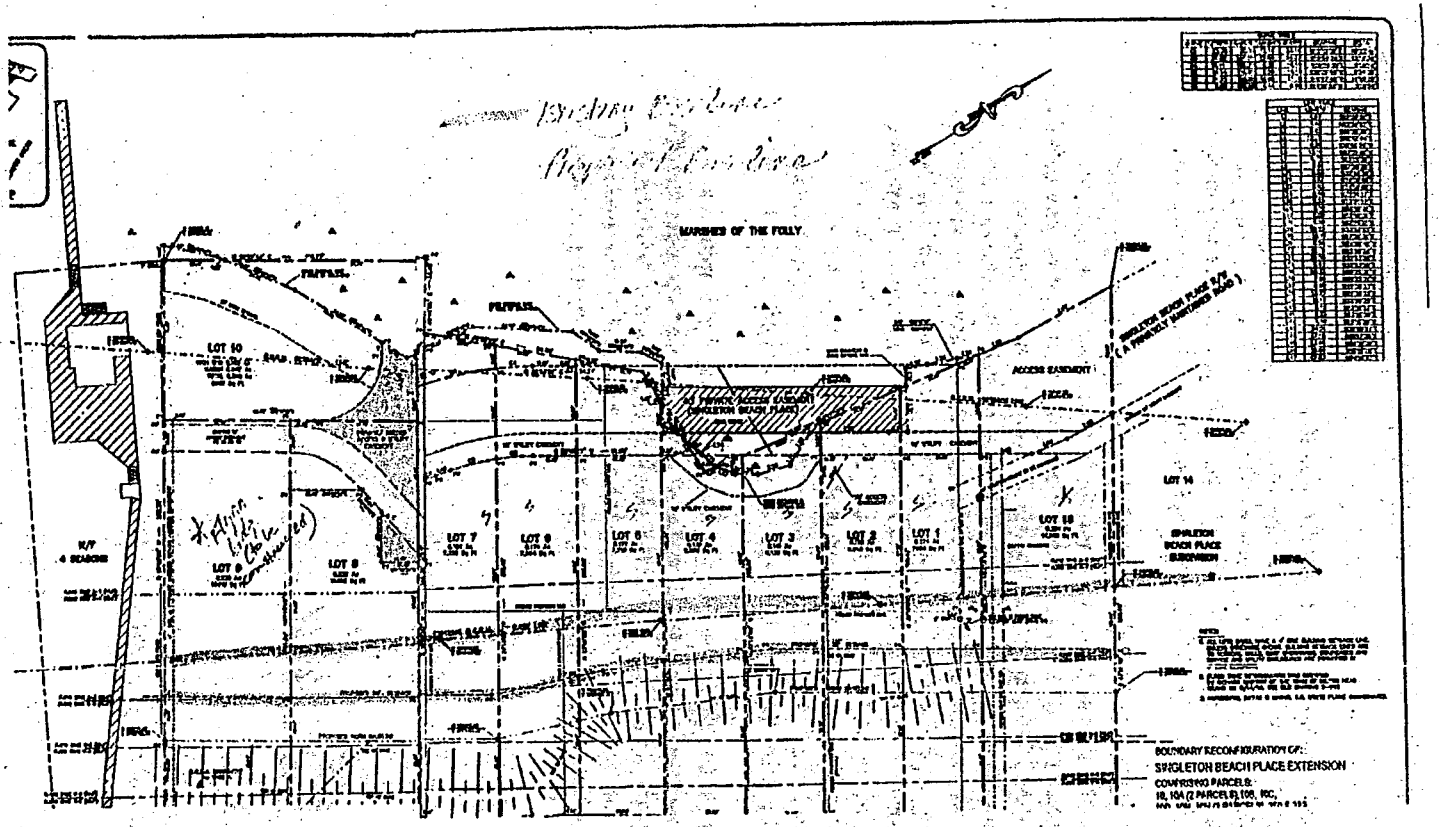
I am sorry that I cannot be more specific than the above opinions. However, license law and good common sense dictate that more specific value opinions would require a very significant amount of additional work and verification of the facts in the case. I have also attached my certification pages and copies of my resume and license, for your review.

Sincerely,

S. V. Linsday

Stephen V. Linsday

State Certified Residential Real Estate Appraiser #CR 51
C:appraisaldocs/segarsltr.doc


MARSHES OF THE FOLLY
LOT 10
LOT 14
LOT 15
LOT 7
LOT 6
LOT 5
LOT 4
LOT 3
LOT 2
LOT 1
LOT 9
LOT 8
ACCESS EASEMENT
SINGLETON BEACH PLACE EXTENSION
BOUNDARY RECONFIGURATION OF:
SINGLETON BEACH PLACE EXTENSION
COMPRISING PARCELS:

File No.

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 or warranties, 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.

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 of the 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.

Please see attached letter for special assumptions and limiting conditions.

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: Lots 2 and 3, Singleton Beach Place Extension Subdivision

APPRAISER:

Signature: S. V. Linsday

Name: S. V. Linsday, #CR 51

Date Signed: 10/30/08

State Certification #: #CR 51

or State License #: N/A

State: South Carolina

Expiration Date of Certification or License: 06/30/2010

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

Qualifications - Stephen V. Linsday

State Licensing Information

State Certified Residential Real Estate Appraiser # CR-51 for the State of South Carolina.

Business Affiliations and Experience

Senior Appraiser/ Owner, Linsday Company. Real Estate Appraisal and Consulting Services. Specializing in residential real estate appraisal reporting.

Formal Education

Macomb County Community College
St. Clair County Community College
Central Michigan University
University of Michigan

Romeo High School, Romeo, Michigan- Diploma 1966

Military Service

U. S. Navy- Honorable Discharge

Real Estate And Appraisal Education

May 1972 - Graduate Real Estate Institute Course I, Univ. of Michigan.
July 1972 - Graduate Real Estate Institute Course II, Univ. of Michigan.
January 1973 - Graduate Real Estate Institute Course III, Univ. of Michigan.
February 1973 - Received professional designation of Graduate Real Estate Institute, G.R.I.
October 1973 - Real Estate Law Course, Univ. of Michigan.
March 1974 - Real Estate Financing Course, Univ. of Michigan.
April 1975 - Real Estate Appraisal Fundamentals Course, Univ. of Michigan.
June 1975 - Received professional designation of R.A.M. from the Michigan Association of Realtors.
Sept. 1975 - June 1976 - (2 Semesters) Instructor for: Real Estate Practices Course at Cleary Business College, Ypsilanti, Michigan.
August 1979 - Real Estate Appraisal Seminar, University of Michigan.
February 1985 - An Introduction to Appraising Real Property, The Society of Real Estate Appraisers, Chicago, Illinois.
June 1986 - Applied Residential Property Valuation, Course 102, The Society of Real Estate appraisers, Chicago, Illinois.
September 1987 - Passed Course 8-1, Real Estate Appraisal Principles, The American Institute of Real Estate Appraisers, Chicago, Illinois.
December 1987 - Passed Course 8-3, Standards of Professional Practice, The American Institute of Real Estate Appraisers, Chicago, Illinois.
February 1989 - Professional Practice and the Society of Real Estate Appraisers Seminar, The Society of Real Estate Appraisers, Chicago, Illinois.
March 1989 - Passed Course 8-2, Residential Valuation, The American Institute of Real Estate Appraisers, Chicago, Illinois.
October 1992 - Standards of Professional Practice, Parts A&B, Appraisal Institute ,Chicago Illinois.
September 1993 - C1: Introduction to Income Property Appraisal, The Citadel, The Military College of South Carolina, Charleston, SC.
July 1994 - The New South Carolina Agency Disclosure Form, South Carolina Association of Realtors, Columbia, SC.
July 1994 - Understanding Limited Appraisals & Appraisal Reporting Options, General Appraisal Institute Seminar, Chicago, Illinois
May 1995 - Federal and State Law Update Seminar- Realtor Education Foundation of South Carolina, Hilton Head Island, SC.
February 1996 - Legal and Legislative Update, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
February 1996 - Risk Reduction through Agency and Property Disclosure, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
June 1997 - Core and More Course, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
March 1998 - Standards of Professional Practice (L-3), J T & T Seminars, Columbia, SC. 15 Hours
June 1999 - Discounted Cash Flow Analysis, J T & T Seminars, Columbia, SC. 10 Hours
June 2000 - Core and More Course, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
June 2000 - Standards of Professional Practice (L-3), The Citadel, The Military College of South Carolina Charleston, SC.
April 2001 - Law Update, #CEC 105005, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
April 2001 - Measure Up, #CEE 133001, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
June 2001 - Bugs, Mold & Rot, #CEE 044002, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
June 2002 – Appraising Condos #02-CE-106, The Citadel, The Military College of South Carolina, Charleston, SC.
April 2003 – National USPAP Update Course, # 33-CE-NSU, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
April 2003 – Housework Homework, # 70-CE-143, Hilton Head Area Assoc. of Realtors School, Hilton Head Island,SC.
June 2004 - Fair Housing Seminar, #CEC134003, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.

Qualifications – Stephen V. Linsday

June 2004 – National USPAP Update Course, #33 CEN SU, Hilton Head Island Assoc. of Realtors School, Hilton Head Island, SC.
June 2004 - There is More to Appraising than USPAP-Update, #33 CEN 123, Hilton Head Assoc. of Realtors School, Hilton Head Island, SC.
June 2005 - Property Inspection for the Appraisers, #33-CD-119, L. Wendell Hahn & Associates, Columbia, SC.
June 2005 – The New Fannie Mae Forms Course, #33-CD-124, L. Wendell Hahn & Associates, Columbia, SC
June 2006 – Agency Changes in SC, #CEC050028, Hilton head Area Association of Realtors, Hilton Head Island SC
June 2006 – Six Critical Problems For Appraisers, #33 – CE-125, Wendell Hahn & Associates, Hilton Head Island, SC
June 2006 – USPAP 7 Hour Update 2006, #33-CE-NSU, Wendell Hahn & Associates, Hilton Head Island, SC
June 2007 – Residential Case Studies, #33-CE-126, Wendell Hahn & Associates, Hilton Head Island, SC
June 2007 - USPAP 7 Hour Update 2007, #33-CE-NSU, Wendell Hahn & Associates, Hilton Head Island, SC
June 2008 - Appraising in Declining Markets, #33-CE-127, Wendell Hahn & Associates, Hilton Head Is, SC
June 2008 - USPAP 7 HOUR UPDATE 2008, #33-CE-NSU, Wendell Hahn & Associates, Hilton Head Is, SC

Professional Memberships

National Association of Realtors, Chicago, Illinois -1972 through 2006 and Member of the Appraisal Section of the National Association of Realtors from inception to 2006. Member of the Silver Service Club in 2000 for more than 25 years of commitment and dedication as a Realtor.

S.C. Association of Realtors, Columbia, South Carolina - 1984 through 2006.

Hilton Head Island Association of Realtors, Hilton Head Island, South Carolina - 1984 through 2006; elected President for 1994, Vice President for 1993, Secretary for 1992, elected to Board of Directors in 1991. Chairman of the Professional Standards Committee for 1985, 1989, 1990, 1997, 1998, 1999, 2000 and 2001. Chairman of the Grievance Committee for 1986, 1987 and 1988.

Named "Realtor of the Year" in 2000.

Hilton Head Island Multiple Listing Service - 1988 through present; elected to Board of Trustees 1991; elected Treasurer of the Board of Trustees for 1992, 1993 and 1994, elected Secretary for 1999, 2000, 2001, 2002, 2003 and 2004.

Ann Arbor Board of Realtors, Ann Arbor, Michigan - 1972 through 1984. Served as Chairman of several committees, elected Secretary of the Association for 1982.

Michigan Association of Realtors, Lansing, Michigan - 1972-1984.

Background Summary

Senior Appraiser/ Owner, Linsday Company, Real Estate Appraisal and Consulting Services
P. O. Box 6164, Hilton Head Island, South Carolina 29938 - August 19,1988 through present.

Appraiser , Keenan and Associates, Hilton Head Island, South Carolina - 1985 through August 18, 1988.

Project Sales Manager, Sea Pines Real Estate Company, Hilton Head Island, South Carolina - 1984 through 1985

Co-Owner/Broker/Appraiser, Craven-Linsday Co., Realtors, Ann Arbor, Michigan - 1980 through 1984.

Co-Owner/Broker/Appraiser, Linsday-Hahn Co., Realtors, Ann Arbor, Michigan - 1978 through 1980.

Owner/Broker/Appraiser, S.V. Linsday Co., Realtors, Ann Arbor , Michigan - 1976 through 1978.

Real Estate Broker, Caldwell & Reinhart Co., Realtors, Ann Arbor, Michigan - 1972 through 1976.

Signature S. V. Linsday Date July 7, 2008
Stephen V. Linsday, CR #51

South Carolina
Real Estate Appraisers Board
STEPHEN V. LINSDAY

Is hereby entitled to practice as a
Certified Residential Real Estate Appraiser

CR 51

License Number:

06082516

EXPIRES
OFFICE COPY

State Of South Carolina

Real Estate Appraisers Board

STEPHEN V. LINSDAY

CR 51

Having Satisfied The Qualifications Of The South Carolina Real Estate Appraisers Board And Having Complied With The Requirements Prescribed By Law, Is Hereby Entitled To Practice As A

State Certified Residential Real Estate Appraiser

In Witness Whereof The South Carolina Real Estate Appraisers Board By Virtue Of The Authority Vested In It By Chapter 60, Title 40 Code Of Laws Of South Carolina Has Caused This Document To Be Issued With Its Seal Imprinted Hereon.

Real Estate Commissioner

Director, Licensing and Certification

Property of South Carolina Real Estate Appraisers Board

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-07-03201

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

Defendants.
----------/

NATIONAL BANK OF SOUTH CAROLINA,

Plaintiff,

vs. CIVIL ACTION NUMBER
2009-CP-07-3844

THADDEUS F. SEGARS; SEGARS AND ASSOCIATES, INC.; BEACH FIRST NATIONAL BANK; and BURKES BEACH PROPERTY OWNERS ASSOCIATION,

Defendants.
----------/

The Motion For Summary Judgement Hearing, in the above-entitled cause, taken before the Honorable Judge Marvin H. Dukes, III, Master-in-Equity, taken by Ceil Weser, Certified Court Reporter and Notary Public, at the Beaufort County Courthouse, 102 Ribaut Road, Beaufort, South Carolina, on the 14th day of March, 2013, commencing at or about the hour of 1:50 p.m.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

DANIEL SAXON, ESQUIRE
Novit, Scarminach & Williams, P.A.
52 New Orleans Road
Hilton Head, South Carolina 29938
843-785-2090

FOR THE DEFENDANTS THADDEUS F. SEGARS; KELLIE W. SEGARS:

THOMAS FINN, ESQUIRE
Finn Law Firm
38 D-4 New Orleans Road
Post Office Box 6003
Hilton Head, South Carolina 29928
843-682-3555

ALSO PRESENT:

Thaddeus F. Segars

- - -

I N D E X

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THE COURT: Good afternoon. We are here in case 09-CP-07-3201, which is National Bank of South Carolina versus Segars, and we are also here in National Bank of South Carolina versus Segars case 09-CP-07-3844. We have two Plaintiff's Motion's for Summary Judgment, and I understand a Defendant's Motion For Summary Judgment as well.

We spoke for a minute before we got on the record. I understand that the Plaintiff is going to proceed in a consolidated manner with his two Motion's for Summary Judgment, and then we will hear from the Defendant.

So is that right?

MR. SAXON: Yes.

THE COURT: Mr. Saxon, you are first.

MR. SAXON: Thank you, sir.

Judge, as we discussed earlier this case results from two Southbrook foreclosure actions against two pieces

of property. The relevant -- the cases were bifurcated, and the two foreclosures went through to final sale. And what remains are counterclaims that Mr. Segars had filed and the Defendants had filed in both cases. But as I understand the facts of the counterclaims result from one set of circumstances and that involves the appraisal that was initially done on lot 2, Singleton Beach Extension, which was one of the mortgaged properties.

Just for some background on that in March 15 of 2004 Mr. Segars entered into a contract to acquire lot 2, Singleton Beach Place subdivision, and that is located on Hilton Head as part of a 10 subdivision lot. The lots are quite small and they are beach front. The contract price was $1.6 million. The contract specified a 30-day due diligence period for Mr. Segars to perform his due diligence, and if it

was unacceptable to him to terminate the contract prior to March 12, 2004.

In addition to being the purchaser, Mr. Segars had prior been the listing agent for this property. He had listed the property for sale by the owners. And he had decided to acquire it himself, and he retained Weston Newton with Jones Simpson Newton as a closing agent for them. The contract presumably had a financing contingency, but it had a due diligence period for a 30-day period.

Now, on May 18 of 2004 Mr. Segars applied for a loan to finance that purchase with National Bank of South Carolina or NBSC, who is the Plaintiff in this case. Mr. Segars admits that at the time of the application, both the financing contingency and the due diligence period had expired to terminate that contract.

On June 2, 2004 Mr. Segars executed a commitment letter for a loan

and one of the contingencies in the commitment letter to make the loan was a satisfactory appraisal on the property, that the property appraised at $1.6 million or greater, which was the purchase price. Mr. Segars admits by deposition that he believes that the contingency for the appraisal was for the benefit of the Plaintiff in evaluating the loan.

Steve Linsday of the Linsday Company who is an independent, licensed South Carolina appraiser performed that appraisal, and the appraisal was in the amount of $1.6 million. Thereafter on June 9, 2004 NBSC made the loan in the amount of $1.36 million to finance the purchase of the property, and shortly thereafter the property was closed.

Mr. Segars' counterclaim appears to be that the appraiser erred in his evaluation of the property based on an applicable OCRM baseline and the other setback requirements, and that the true

value of that property was a fraction of what the appraisal actually indicated. He contends that by transmitting the appraised value of the property to him from NBSC, that that amounts either to a negligent misrepresentation by NBSC or intentional concealment to induce him to accept the loan and borrow the money.

Now, I think it is important to understand the baseline requirement, to give a little background on what we have.

Tom, these are the two surveys that are in question.

These surveys are exhibits to Mr. Segars's deposition.

And Judge, this is a survey or two surveys of the actual subdivision at Singleton Beach, and we are referring to lot 2 in there. Now, the important thing about these plats is that this was the first to be recorded, and it

was recorded January 20 of 2003. And that plat, although this one is a little difficult to read, shows an existing OCRM line and a future OCRM line. This was recorded January 20, of 2003, and it is not stamped as approved by the OCRM. But again, it shows the present OCRM line and the proposed future OCRM line.

Mr. Segars testified because he was the listing agent or to be the listing agent for lot 2, that he looked at this plat with his attorney Mr. Newton and that they measured what type of size of house could be located on these lots. Lot 2 and 3 were particularly important to him, and they confirmed that a substantially -- a house of substantial size could be placed on that lot 2 and 3. That was important because obviously the value of the property needed to support a sufficiently large house in Mr. Segars' mind, and I believe there was also a

plan for a house to go on lot 2 and possibly lot 3.

Now, 11 months after this plat was recorded, this plat was recorded. Plat number 2 that you are reviewing is approved by the OCRM and it is stamped. And a noticeable difference, a relevant difference between those two plats is that the future OCRM line is missing.

And the existing OCRM line remains shown where it was. Mr. Segars's contention is that he bought this property, lot 2, with the understanding that the OCRM line would be where the future OCRM line as he knew it would be. Not where the existing OCRM line would be. And that affected the size of the house that Mr. Segars could put on lot 2, because the OCRM line is further inward than what had been proposed.

Again, this plat -- both of these plats were recorded in 2003. Mr. Segars entered the contract to buy the

property in 2004. Presumably a title search was prepared. It was certainly of record, both of these issues and Mr. Segars and/or his attorney was free to review those.

Mr. Segars contends that the appraiser Mr. Linsday in this case had he done a proper appraisal of the property, he would have reviewed these plats together with the private covenants of the Singleton Beach subdivision, and this was a part of a larger subdivision and would have determined that the minimum size requirements under the private covenants could not be supported by the OCRM line not being moved, and that he would not have appraised the land at 1.6 million. But a substantially lesser amount; and he alleges that he relied upon that appraisal in making his decisions to purchase the property.

Now, Mr. Segars has testified that he is a licensed real estate agent and

he has been involved in the real estate profession as an investor, as a developer and a sales person for many years. It is his profession. He testified that he was familiar with the existence of the OCRM, and the OCRM lines and the setbacks and what they mean to property development.

Prior to entering into the contract to purchase his property Mr. Segars had been acquainted with this property since 2001. He had initially entered a contract then to buy one or more of the lots before the subdivision of smaller lots had occurred, and he assigned that contract to another, I believe Richardson Street Partners who partnered with -- let me find the name for you, J.J. Development, merged their lands together and subdivided into these much smaller lots. And representing Richardson Street Partners as I said he testified that he and Mr. Newton had sat down with the ruler and

they had looked. Clearly it was important to them, and clearly they understood the importance of that OCRM line.

Now, at some point after the purchase of the property Mr. Segars became acquainted that there was a problem with the OCRM line. Initially, and it is not particularly relevant, but the town had recorded a document indicating that they had revoked one of these plats, and some discussion or action between their various attorneys involved that revocation. The revocation had nothing to do with the OCRM line. It was another matter. In any event, that appears to have been eventually resolved.

Additionally, J.J. Partners had filed an action, an administrative law action to have the OCRM line moved to a more seaward location. And Mr. Segars eventually became involved in that lawsuit. Now, my first basis of my

Motion For Summary Judgment is on the statute of limitations. In this case Mr. Segars has alleged negligent misrepresentation by NBSC for breach of the fiduciary duties by NBSC and a breach of contract accompanied by a fraudulent act by NBSC. Now, all of these causes are governed by our three year statute of limitations. Now, determining a statute of limitations of the bar, as we know generally cause of action accrues at the moment the breach of the duty occurs. But under the discovery rule there is a tolling of that statute until the person knows or by exercise of reasonable diligence should know that a cause of action has occurred. And the statute starts to run immediately upon discovery of those facts that would have led him to the knowledge if pursued with diligence of what he was looking at.

Now, in this case Judge, these documents were recorded with the office

of ROD, and therefore Mr. Segars had constructive knowledge of this at the moment he entered into the contract to purchase this piece of property. The vesting deed by which he took title to this property identified this plat, which did not show the future OCRM line. So at that point he was -- I would argue on actual notice that the OCRM line was not where he believed it was located. Segars testified that he didn't necessarily in all honesty look at that deed as he -- I believe his testimony was in all honesty I don't know that I looked at that deed. But still it was a deed to him and he is under notice that he needs to look at those documents.

Now, this issue involves as Mr. Segars has pled it the inability to construct a home either at all or of the proper size to support a valuation of $1.6 million for this lot. And that the basis for his inability to build

the home of the sufficient size is that the OCRM line is not where he had initially thought it would be i.e. the future OCRM line. So the moment that Mr. Segars became aware that the OCRM line was not where he in fact thought it was, is when he was on notice that that appraisal may be wrong, because I can't build the house that I wanted to build on that property of the sufficient size that I wanted. The question becomes when did that occur.

Now, I believe it occurred the moment he entered the contract by constructive notice. I believe it occurred under constructive notice the moment he acquired the deed to the property that referenced the plat without the future OCRM line. However, at the latest it would have occurred when Mr. Segars joined the administrative law action seeking to move the OCRM line.

THE COURT: When was that?

MR. SAXON: That was on March, and I have attached the Motion to Intervene to my Memorandum -- that was in March 16 of 2005, and that is a letter from Cotton Harness to Judge Matthews with the Administrative Law Court, with the Motion to Intervene on behalf of Thaddeus Segars and others.

Now, Mr. Segars brought his claims by way of counterclaim initially in August of 2009 and by Amended Answer to NBSC's Amended Complaint in September of 2009. I think clearly the statute tolled March 15 of 2008, which was over a year earlier.

Now, beyond that NBSC is entitled to summary judgment on this issue by way of collateral estoppel. This isn't the first time the Court has heard these issues. Mr. Segars sued -- bear with me, Judge -- Mr. Segars sued the seller of the property, Richardson Street Partners and others in a civil action in 2008, and in that case he

alleged fraudulent misrepresentation, among other claims, on the very same issue of the location of the OCRM line. That case was filed August 4, 2008, but it wasn't properly served until January 31, 2009. And in hearing the Defendant's motion or in granting the motion -- Defendant's Motion for Summary Judgement the Court specifically found here: The Plaintiff admits in his Complaint that he was put on notice that a claim might exist when he discovered the existence of the corrected plat. Plaintiff alleges by Complaint in late 2005 he learned of the corrected plat recorded December 15, 2003, and as a result the residence that was represented in the architectural drawings provided to him by the seller at closing for construction on that house could not be constructed on lot 2. But pursuant to that plat only a 2000 square foot residence could be constructed.

Specifically quoting: "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 the Plaintiff knew of his alleged claims in late 2005, and thus all causes of action are barred by the applicable statue of limitations."

Now, Judge, in that case Mr. Segars brought the case against the seller over the very same issue. Collateral estoppel is available to NBSC because as I understand it so long as the party being charged was given a full and fair opportunity to litigate his action, he's charged with them.

Beyond that, in 2009 Mr. Segars sued Jones Patterson Simpson Newton and Mr. Newton as closing attorney again alleging professional negligence by that law firm. The basis of that claim is that his attorney failed to advise him prior to closing that the OCRM baseline had not been moved seaward or

failed to provide or disclose to him with the existence of the approved survey which revealed the OCRM line -- that the OCRM baseline had not been moved.

In granting Mr. Newton's Motion For Summary Judgment the Court found that based on the records of the ALJ proceeding where Mr. Cotton and Mr. Harness had intervened and by Mr. Segars' own deposition testimony it is clear that by March of 2005 at the latest he had actual knowledge of Newton's alleged advice regarding the enforceability of the future baseline, that that was wrong, and accordingly should have been a claim -- that a claim against Mr. Newton might then exist.

Furthermore, Mr. Segars asserts that he did not actually see the 2003 plat until 2006. It is clear that he was on constructive knowledge of the plat and its contents in October of

2004 due to his participation as a party in the plat revocation suit, which is the very subject of which is the 2003 plat. So in that case Judge Mullen found that at least by March of 2005 Mr. Segars knew that the baseline had not been moved and that he had a claim against Mr. Newton, if he believed he did. And that case was dismissed under the statute of limitations being tolled.

Now, in addition to these two and this is included in my Memorandum, Mr. Segars has filed on three separate occasions causes of action or lawsuits against Fidelity National Title Company. The first two of those cases were dismissed. The third one came up on a Motion to Dismiss, but apparently was argued more as a summary judgment. The Order is not clear. But what the Order says in that case, again Judge Mullen, found that the statute of limitations for an action against

Fidelity had been tolled. In that case she specifically found that Mr. Segars was on notice, constructive notice at the time the deed was recorded, that he had a cause of action and that he failed to bring it within the three-year period.

Mr. Segars again had sued his closing attorney, the seller of the property, Fidelity National and NBSC. He has never sued Steve Linsday, who he contends performed a negligent appraisal. So in this case under my first argument, Judge, the statute of limitations ran at least by March 15 of 2008, and these claims weren't filed as counterclaims until the summer of 2009.

And I believe all of the claims should be dismissed based on the tolling and statute of limitations.

THE COURT: I am happy to hear from you on that issue.

MR. FINN: Sure, Judge.

On this particular issue it is

very important to understand that Mr. Segars discovered -- he did not have the appraisal until 2009. He had requested it from the bank, they eventually provided it to him, and on that appraisal that is the first time that Mr. Segars learned that plat number 2 was the plat used by Mr. Linsday in conducting the appraisal. And so just with respect to the statute of limitations argument, this is as Dan correctly stated we have a claim for negligent misrepresentation, breach of contract, accompanied by a fraudulent act, and breach of fiduciary duties against the bank as a result of this appraisal.

I can sort of backtrack and go through my argument from the beginning, Judge.

THE COURT: Sure.

MR. FINN: I am not disputing the litigation that has gone on. I was not the attorney of record in any of those

cases, but I would say the one distinction of fact with respect to the statute of limitations argument is that Mr. Segars did not have the appraisal until 2009, and that is I think would be the argument against all the statute of limitations issues that Dan had raised.

But I would like to go through my argument which I think will touch on some of those particular issues.

If I may, Judge?

THE COURT: So you are going to go into your summary judgment or is that --

MR. FINN: Well, no --

THE COURT: Or do you have more on the --

MR. FINN: -- it is all tied in. With respect to the summary judgment, Judge, it is a very distinct action we have against NBSC as a result of the appraiser's negligence, and they hired the appraiser. So we did not know on

the discovery rule, we did not know of the -- we did not know the contents of the appraisal, other than the appraisal came back with $1.6 million, which was the condition the bank had to lend the money to Mr. Segars. They went forth, they said -- the bank basically said, Tad, the appraisal came back at 1.6. We are going through our financing contingency -- or not even a financing contingency, the value contingency or the appraised value is 1.6 has been met, and therefore we will loan you 1.36 million to purchase lot 2.

They went forward with the closing subsequently. I don't know whether it was the result of this other litigation or what, but Mr. Segars obtained a copy of the appraisal, and the appraisal was based upon plat number 2, which had the original OCRM line, and therefore had certain -- in addition with other restrictive covenants on the lot, the appraisal was wrong. We have an

expert, and we will get to that; but our expert basically reviewed the appraisal done by Mr. Linsday and his -- there is no evidence to refute our expert's testimony. And that expert reviewed it and said look, based on the information that Mr. Linsday had available to him at the time that he did the appraisal on lot 2, he deviated from the standard of care. He testified that USPAP was the standard of care, the Uniform Standards of Professional Appraisers, and that he had the information available; and if he reviewed it in accordance with the normal standard of care for an appraiser in South Carolina, he would have known that the lot was essentially unbuildable. Because we have the Town of Hilton Head setbacks of I think roughly 20 feet. We have the OCRM line, the original OCRM line, which I think it bears --

Judge, I have had this case for a

long time. It really has taken me a while to wrap my head around it, but the Singleton Beach Place covenants, restrictions require that a house be 2500 square feet. The lots are small, so the houses have to be built up. And some of this will fall into place, but in answering I guess the question on the table about the statute of limitations is we are saying the appraisal was negligent. Mr. Segars did not know the contents of the appraisal until 2009, and we shortly thereafter brought our claims against them -- our counterclaims against NBSC within the three year statute of limitations.

I think it bears discussion this -- the plat that had the future baseline -- I don't know if the Judge has ever had one of these cases come before him. The developers basically spoke with the Town of Hilton Head, said this is what we are going to do on

this property. The developer created a plat and said look, here is going to be the future OCRM baseline. The OCRM didn't approve that, but that is what the developers were using to -- they recorded it, and they used it to sell the lots basically as a marketing tool. So when any buyer, potential buyer came they would say oh, the setback line is going to be there. You will be able to build a house.

The problem was when Mr. Linsday did his appraisal that plat was not taken into consideration by Mr. Linsday at all. He didn't look at the future OCRM baseline which would have provided more land and the ability to build a house in compliance with the regulations of the community. The plat he looked at was the one that had the old OCRM line, which had a very limited plot of dirt, which lot 2 could not be built upon, and our expert testifies that it really only affected -- well it

affected the ability of how big the house could be, and therefore if you take the restrictive covenants of 2500 square feet and the amount of land it couldn't have been built upon, and therefore the appraisal of 1.6 was wrong. And he valued it, he said there is no comparable's to look at because you don't have a lot with similar covenants and restrictions and setbacks and everything, so he said the only thing I can go by is the appraised value by the tax office and the treasurer's office and that was $70,000. So --

THE COURT: But -- and again we are a little off topic and skipping around a little bit --

MR. FINN: Yeah.

THE COURT: -- of the way this works.

So I guess my concern is there was multiple litigation over this issue with the line that dates back to --

MR. FINN: No doubt.

THE COURT: -- to '05 or whatever the date was.

MR. FINN: Right.

THE COURT: So certainly these issues were in place as far back as '05 what this line was.

MR. FINN: They were.

THE COURT: I guess I am not understanding why the appraisal was not -- the appraisal wasn't really an issue. I mean everyone knew what the value in the appraisal was at the time of the closing, and then there became a --

MR. FINN: That is very important, Judge -- knew the value that was set forth in the appraisal, but not --

THE COURT: Well, the opinion, I mean which is an appraisal. That was the opinion. And of course, you know, conventional thinking, and again I am happy to be told I am wrong on this because case law comes out all the

time, is the appraisal is for the protection of the bank to make sure they are making a good loan. Not necessarily an assurance to the buyer that the property is worth that. I mean it is really for the bank's benefit, not the buyer.

And of course if I understood this correctly, the contract had already been made. I mean there was already an obligation to purchase this property and the due diligence period and run. You know, if this bank had said no, there still would have been an obligation to purchase this property at the 1.6. I think I heard that correctly. Is that -- is that --

But I guess I am trying to figure out why this wasn't an issue back then. And what prevented the Defendants from getting any of this information, if anything. I mean was there --

MR. FINN: Judge, it simply arose when my clients learned of the contents

of the appraisal. That what the specific instruments or documents that were used when Mr. Linsday -- we have to really take a snapshot of the appraisal and what the appraiser did and what he looked at, and had he looked at -- and when it was discovered that he was looking at the plat that had the original OCRM line, what we are arguing is that he had all the tools available to him at that time, and we have expert testimony to support this, to say that the lot is unbuildable and therefore it is not worth 1.6. He did not do that. He said the lot was worth 1.6 and Mr. Segars relied on that and went forward with the transaction.

THE COURT: No, I get that part.

MR. FINN: Okay.

THE COURT: But then shortly thereafter it sounds like, from what I am hearing, there was a problem and that problem affected the value, and -- or a problem was discovered. I don't

know that -- and that problem clearly affected the value in such a way that litigation ensued. So the moment that the problem arose that resulted in litigation that clearly affected the value, I guess that is my concern why at that point a reasonable person wasn't on notice, wait a minute now, the value isn't 1.6. It is something else. Why on earth did someone say it was 1.6. I mean that is sort of my concern.

MR. FINN: I think that we would have to concede, Judge, with the issue with the OCRM line was an issue, and it was known and it was litigated.

What I am saying is and what we are arguing is that we didn't know what the appraisal said until we got a copy of the appraisal, and that wasn't until 2009. And in looking at that we realized that he should have known way back when in 2004 when he did the appraisal, he should have alerted us to

that.

Now, the OCRM line had -- that issue was kicking about almost from the beginning, because the developer had here is going to be the future OCRM line. That was filed. It wasn't approved by the OCRM, but it was filed. The folks that were interested in purchasing the property had it and said oh, that is where the future is going to be. The developers are telling them this, which really as far as I am concerned doesn't count, but until we actually knew that the developer used the plat in his appraisal that restricted the size of the lot, that he should have basically just waived his red flag, Judge, and said hey; bank, this is not worth $1.6 million, because according to the plat that I studied you can't build on it.

And so while we knew of the issue, Judge, we did not know what the appraisal, the appraiser had used. It

seems logical to assume that the appraiser had used the plat with the extended OCRM line, but that really wasn't -- that really wasn't what he relied on. He relied on the one that said hey, this is restricted, but he didn't put the pieces together and say that you can't build on it.

THE COURT: But almost immediately it was apparent that the number that was paid for the property was wrong. That was I guess what I was getting at. Maybe I didn't express it well. But I mean that is what caused the litigation, right? I mean suddenly we can't build on this lot. We need to sue OCRM and sue whoever. I mean we have got a problem with this lot. I mean leading to it sounds like multiple litigation.

That is the part I guess I am trying to figure out, was why someone wasn't on notice immediately that wow, maybe we paid too much for this under

the circumstances. And again --

MR. FINN: I think any of the -- even our expert appraiser, Judge, says that some of these issues could be resolved and it happens all the time. What our argument is that we are looking at what the appraiser did at the time with the information available to him and he was wrong. Subsequently the OCRM line was moved and the lots were able to be or presumably now are able to be developed, okay? Which I looked at that when I was thinking about this argument, well, that is kind of a no harm, no foul, they can be built now. Well, that is not --

THE COURT: Too late.

MR. FINN: My argument, Judge, is what that appraiser did at that time and he screwed up. Absolutely no doubt about it. There is no evidence from the other side, there is no expert witness -- my expert looked at it and said that appraiser was negligent. The

lot is worth $70,000 when he did the appraisal. The starting point for us to know that with the clock ticking is when we got a hold of the appraisal. With all this other litigation I am not sure exactly why Mr. Segars at that time went and asked for it, but it was 2009. He said I have got to go look at the appraisal and see what that guy actually did. And when he did, the appraisal couldn't have come out at 1.6. And what we are saying is if you did the appraisal right and the guy comes back and says it is worth $70,000, like our expert Mr. Outlaw said when he looked at everything that Linsday looked at, this sale would not have gone through. And the bank wouldn't couldn't have lent the money obviously. They weren't going to loan him 1.36 if the appraisal comes back at $70,000.

THE COURT: What do you mean the sale wouldn't have gone through?

MR. FINN: Well, I think there would have been an argument to make that the appraisal is way out of whack with what we have here. I mean if I was advising Mr. Segars at the time I would have said, yeah, I wouldn't close on that, you know. You can get in a lawsuit, but you are not closing on a lot that has got that drastic difference between the appraised value and the real value.

MR. SAXON: Judge, assuming for the purposes of this argument that everything that Mr. Segars alleges with respect to the appraisal is true, which we don't, but you assuming it is true, it still doesn't affect the issue of the statute of limitations, because the issue becomes under discovery rule not when Mr. Segars knew with absolute certainty that there was a case, but when a reasonable man should have been put on notice, that following a due diligence he would have discovered

this, and in this case the entire issue of the value rests on the location of the OCRM line and the ability to construct a house of a particular size. I assume the house that was drawn to be put on this property at the time Mr. Segars bought it, and as I recall it was something around 4500 or 4800 square feet, and I believe the moment that Mr. Segars knew that the OCRM line had not been -- was not where he thought it was at the time he bought the property, he was on notice that I can't build the size of house that I want on that, and therefore the value could not have been accurate.

Certainly if he could not build a house at all on it, that the value could not have been accurate. Mr. Segars is an experienced real estate professional. I mean he understands what we are looking at.

MR. FINN: Judge, the issue as to -- I know we each have a different

point of view on this, but -- the issue of when Mr. Segars or any reasonable person knew or should have known is an issue of fact that we would present testimony on. I mean whether the OCRM line triggers a reasonable person, I mean it is summary judgment obviously, so if it could differ and argue that it does, that we did not know the contents of the appraisal until 2009. And when we did we realized that -- that --

THE COURT: Of course it was available to him.

MR. FINN: Well, but would it have been reasonable to think that the appraisal was that far off? I mean we were aware of the issues with the OCRM line, but we were not aware of what mistakes Mr. Linsday had made.

MR. SEGARS: Can I say something?

THE COURT: Well, and I'm sorry, you can't really say anything at this point.

But I mean it was known at the

time of the closing that the appraisal -- the closing was contingent or the loan was contingent upon a 1.6 appraisal. So I think it is probably a matter of undisputed fact that it was known at the time of the closing that the appraisal had come in at 1.6.

MR. FINN: Absolutely.

THE COURT: And then it was known -- and I can't remember the dates -- but almost immediately that what was assumed to be available to the purchased property or available for building on the purchase property was not going to be available. That it was completely different. I mean it led to litigation. And so the valuation -- I just can't even imagine that it could be argued -- that there wasn't a reasonable person wouldn't be put on notice that the valuation was somewhat different than what they had believed it to be.

I mean is that -- you all are even

arguing the valuation was different --

MR. FINN: Right.

THE COURT: I mean that was the subject of the lawsuit.

MR. SAXON: Judge, it might be appropriate for us to mark these two plats. I apologize I didn't do it, but we have referred to them so much.

THE COURT: Let us do that. It is a good idea.

(Whereupon, Plaintiff's Exhibit Numbers 1 and 2 were marked for identification.)

MR. SAXON: Plaintiff's Exhibit Number 1 is a plat of Singleton Beach Place Extension, which was recorded in January of 2003. And it reflects what we have referred to as the plat which describes the future OCRM line.

Exhibit Number 2 is the survey we have referred to, which was recorded in December of 2003, and it is what we have referred to as the plat, which does not describe the future OCRM line.

MR. FINN: Judge, I will jump in and just say --

THE COURT: Sure.

MR. FINN: Judge, we did not know what plat Mr. Linsday had used. There were two plats filed. Dan has talked about this. For all we knew with respect to the appraisal, the appraiser Mr. Linsday used the first plat, which had the future OCRM line after the closing. So therefore, just with respect to the appraisal, Judge, we didn't know he made a mistake. We didn't -- there has always been an issue with the OCRM line, but until Mr. Segars saw that, wait, this guy used the actual plat that showed the original OCRM line, not the future one, so in just his actions as an appraiser, Judge, you kind of have to for purposes of this argument and the case law in this is instructive to the Court, you have to look at what did this appraiser do. I think if you look at -- and I

understand the argument with the statute of limitations, and I am expressing that as to our contention quite frankly is until Mr. Segars -- there is an issue with the OCRM line -- I don't -- our position is that that doesn't necessarily to us indicate that Mr. Segars knew that the appraiser had messed up. For all Mr. Segars knew, that the appraiser was looking at the plat with the future OCRM line. They knew it was an issue, that it either hopefully would be resolved, because there had been discussions with -- originally the Town of Hilton Head approved it. Apparently they didn't get approved from OCRM, but that was really not this huge issue that was out there.

But for purposes of this, of our causes of action, if you are looking at the statute of limitations of when that starts, there is no reason for Mr. Segars to go and get a copy of the

appraisal. They were aware that there was some kind of dispute over the OCRM line, but he was unaware that Mr. Linsday did not act within the standard of care for an appraiser when he did the appraisal, because there was two for him to look at. Let us say, Judge, there is two plats there. One is the future OCRM line. If he looked at that, then Linsday's position is defensible. If he looks at the other one, then he should have said, well, this is wrong.

THE COURT: Well, and the part I am trying to figure out is whether or not that even matters, is again, you all correct me if I am wrong, because I am trying to make sure I am understanding the undisputed facts, there was a contract with a due diligence period. The due diligence period expired, therefore obligating Mr. Segars or the corporation, whoever it was, to purchase this property, whether or not

this bank lent him any money.

And then this bank agreed to loan the money. That purchase requirement, that buyer's requirement, that it sounds like the contingencies had already expired, so I don't see how he can rely on this bank then lending him the money after the due diligence period as a representation that the property is worth that much, since he was already obligated when they loaned him the money to purchase it for that much. That is the part I am maybe missing and maybe you all can explain it to me. Maybe it is more complicated than that but --

MR. FINN: Judge, let me go just back and address -- the reason this came to light in 2009 was because the Segars were current on their payments up until that point, and through the process of trying to get more favorable refinancing with the bank this issue arose, and said all right, let us look

at the appraisal. So that is what has been explained to me. So that is another factor in the statute argument.

I think that certainly, Judge, and let's say that the appraisal -- certainly Mr. Segars relied on the fact that the appraisal came in at 1.6, as did the bank. There is testimony to that. Obviously if there was a problem and the appraisal came back and said no, it is not worth that, the transaction would not have gone through, and there is case law that a -- first of all, in many contracts if you look at -- my argument is getting all --

THE COURT: And I am sorry --

MR. FINN: I am trying to go back and forth.

THE COURT: Yeah.

MR. FINN: When any contract is written -- I am not aware of any contract -- and if the buyer and seller reach an agreement and then they say

okay, there is a financing contingency. So the contract, that is really kind of an academic argument. The contract is done and, yes, you have to go through the contingencies -- have run, but that is just the way the process works. And there is cases that say or at least a case that says absolutely, that the purchaser has a right to rely on the appraisal, especially if the bank hires the appraiser. And I have read case from all over the country on this, Judge, and they are very few and far between, but the ones that fit the fact pattern that we have here say that yes, it is reasonable to think that Mr. Segars relied on the appraisal.

If they came back and said look, this is a Sea Turtle nesting site protected federally and you are never going to be able to build on it, and you are the lawyer, Judge, what are you going to advise your client? Go ahead, you have got to go through with the

purchase, you signed a contract for 1.6, so you get this worthless plot of land, that is not going to happen.

THE COURT: Well, I don't necessarily disagree with you, but considering the lawyer met -- assuming the contingency time had run, including the financing contingency time, including all contingency times, you would probably tell your client if you don't close. You will get sued for specific performance or for damages, I mean that, you know --

And so I don't know what the circumstances were here. I just had brought that up as a question, because --

MR. FINN: Well, but the fact remains, Judge, that the bank hired an appraiser, the appraiser sets forth 1.6, and it was not worth $1.6 million. So don't know what advice -- I would probably tell my client to take your chances with the specific performance

lawsuit because right now you are buying a dog for $1.6 million.

THE COURT: I think in hindsight I'd probably -- we could advise that.

MR. SAXON: And we wouldn't all be sitting here --

THE COURT: Yeah.

MR. FINN: But here is the whole point, Judge, we didn't know.

THE COURT: Yeah.

MR. FINN: That is the entire point of this, we did not know until they were negotiating with the bank to say, you know, let us get some more favorable -- and you have to look at the bank's position too. The bank is loaning $1.36 million. It is 6.1 percent. They want it to go through.

THE COURT: Oh, sure. That is why they hired --

MR. FINN: In 2004 that is what they were doing.

THE COURT: Yeah, I know.

And the question is when is a

reasonable person on notice that there is a problem that would cause them to further investigate. And I don't know I mean --

MR. FINN: Judge, is it a problem or is -- and I have had a thousand of these with construction cases primarily -- it is when they reasonably knew or should have known that they had a cause of action. And in this particular very small instance it is a cause of action against NBSC as a result of the conduct of the appraiser that they hired.

So I don't know that we could until we saw the appraisal. Is it an issue as to whether Mr. Segars should march down to the bank in '05 or '06 and demanded a copy of the appraisal, maybe that -- yeah, I think at best, Judge, that is an issue of fact of what is reasonable on Mr. Segars' part. He knows there is an issue, but until he actually -- that is when it was brought

to my attention and that is why Mr. Segars --

THE COURT: And I will look at it, and obviously my concern in all of this is, is that moment, the moment that the owner realizes the property isn't worth 1.6 or a reasonable person would believe that the property is not worth 1.6, and yet here is this appraisal for 1.6. Because I would think at that moment a reasonable person would say well, if it is not 1.6, why on earth did Mr. Linsday say it was worth 1.6. There must be -- you know, there is a disparity between what it is worth and what this person said it was worth.

MR. FINN: And Judge, I think one of the practical aspects of this is that OCRM line issue was out there, and as a practical matter I don't feel like that -- that line is not -- I think it is moot. Sometimes the OCRM will move it -- I don't do that type of work all the time -- but it is not something

that you would -- it wasn't as concrete, like absolutely this is not --

THE COURT: Oh, sure --

MR. FINN: And I think that is ultimately proven by the fact that it was moved.

THE COURT: Yeah.

MR. FINN: So but you can't really look at that, Judge. For purposes of my argument I think you are looking at a no harm, no foul type of thing. Someone could say, Judge, well, that OCRM line was moved and those lots are now buildable, right, so what are we doing here? You can't do that for purposes of this argument, Judge. My argument is that the bank made a loan mistakenly, based upon the information that they misrepresented, the appraised price, and their appraiser had made a mistake, and my client relied on it and he encumbered himself to the tune of $1.36 million and that information was

incorrect.

Now, the fact that -- does the fact that the baseline subsequently moved and people can build on it, does that matter as a matter of law to what the appraiser did on behalf of the bank, and my answer is I don't think it does. I don't think that takes away his negligence, the fact that some -- because we are looking at should the closing go through? Should Mr. Segars have purchased the lot, and based on the information that the bank provided him he said okay, let us go forward. But the information was incorrect, and that is -- I don't think Dan or his clients can question that the information is inaccurate.

MR. SAXON: Judge, we have gone far afield of my initial summary judgment.

THE COURT: Yes, I think we have sort of gotten into this a little bit.

MR. SAXON: We did.

If we are going into that, that is

fine. I just want to make it clear that I disagree with almost everything that Mr. Finn has said up until this point.

THE COURT: All right.

MR. SAXON: And maybe it is better if we do --

THE COURT: Well, why don't we let you finish on your statute of limitations issue. Unless you didn't have any more and then you launch into --

MR. SAXON: With regard to the statute of limitations, it is pretty much what it is, Judge. And it is our position that Mr. Segars --

MR. FINN: Judge, if you would look at the issue, let's say we know there is a problem, would a reasonable person -- why wouldn't a reasonable person investigate the appraisal, or just go to that. And in fact Mr. Segars -- I don't know if he stumbled across it, but it occurred to him that

was something when he was talking with the bank and refinancing negotiations to let us take a look at what we actually have here. So he ordered the appraisal.

In all the litigation Dan pointed out, Cotton Harness who was a very esteemed land use lawyer, none of those people said let us go look at the appraisal. I mean when we talk about a standard of a reasonable person and what Mr. Segars knew or should have known, Weston Newton also an excellent attorney, none of these people said let us go look at the appraisal. It was really by chance that this appraisal issue was discovered, and which is the very narrow focus of my position on this case is the appraisal.

THE COURT: Okay. And I think I understand your point but --

MR. SAXON: And Judge, just to reiterate, the standard of care under the discovery rule is when a set of

facts or circumstances becomes known to a person that through reasonable diligence he can discover his cause of action.

In this case the sole issue on the appraisal and the error that is alleged on the appraisal results from the OCRM line, because that is what prevents a larger property from being built on that, in connection with the private covenants and restrictions that are on the property. At the time the OCRM line was discovered as not being where they thought it would, thereby reducing the building envelope of that property, notice occurred that I have got a problem with potentially my closing attorney who advised me, with potentially the appraisal that was done on the property, with potentially the title insurance company, and whoever else that may be there. Mr. Segars brought those claims against everyone except the surveyor, the appraiser.

But he brought all of those claims after three years beyond March 15, 2004.

And this court has already found three separate times that the discovery of this came at the latest March 15 of 2005, and that is beyond that statute of limitations. I believe it is unreasonable to assume that Mr. Segars literally had to have a copy of the appraisal to put him on notice that it was in error. Because regardless of which survey -- of which survey was used, be it Exhibit 1 or Exhibit 2, it has no effect on the value that was placed at the time that the appraisal came through.

I mean Mr. Segars' argument is that Mr. -- the appraiser Mr. Linsday had used the appraisal which showed the existing OCRM line, not the one that showed the future OCRM line. Well, that actually makes it worse in a way. If Mr. Linsday had used the one using

the future OCRM line, then he was valuing the property based on a larger building envelope. In this case Mr. Segars indicates that the survey he used showed the actual OCRM line. They both do, but had used the one which did not show the future OCRM line. That shows a reduced building footprint.

MR. FINN: Judge, on that particular issue, if he used the one with the future OCRM line it would have been understandable. The value -- he would have -- he would have been looking at something that he could have said is worth 1.6 million, because you could actually build on it.

The whole problem was he looked at the one that had the limitations with the original OCRM line, and he still said it was worth 1.6, that is the crux of the issue. But nevertheless Mr. Segars did not know which one he looked at, nor would -- all that litigation and no one really thought to, you know,

they are looking at Fidelity Title Insurance, looking at malpractice case cancel lawyers. No one said this all stems from the -- you better go check the appraisal. That is the starting point, which goes to the reasonableness of -- and when he discovered it --

THE COURT: Well, that is Mr. Saxon's point.

MR. FINN: Well, I mean I would say that is not just -- you know, obviously the rule is whether Mr. Segars knew or should have known, but Mr. Segars is represent by various lawyers in various lawsuits and the issue never came up. So quite frankly he discovered it when he was talking to Mattney (phonetic) and he said, let me see the appraisal.

MR. SAXON: And Judge, just --

MR. FINN: I can't change when Mr. Segars saw the appraisal, Judge.

THE COURT: I know. I know.

MR. FINN: He saw it when he saw it and that became something else to let's

take a look at this.

MR. SAXON: And Judge, just for clarification, both plats showed the OCRM line in the same location. The OCRM line is clearly indicated in the same location on both plats.

THE COURT: No, no, I get it --

MR. SAXON: It is just that one plat has a future OCRM line.

THE COURT: If you use the current OCRM line and you use the covenants and you use the restrictions, then you can't build a house using the existing. I mean I get all that. I get how on earth did he come up with -- but I think I can take as a matter of law, even though I am not finding this, but that there was a problem with the appraisal.

The question is when should a reasonable person have known about that problem. I don't know, but I mean I think for purposes of this motion certainly I can assume and it sounds

like you have got an expert affidavit that says he got it wrong. So but I don't know if it matters if he did it wrong or not. I think we can assume for purposes of this motion that he did it wrong, even though I am not going to say that as a matter of law or fact but --

So anyway, okay, I think I understand enough to at least understand enough to read this at some point and try to figure it out on that issue. So if you have your next -- whatever your next issue might be.

MR. SAXON: Yes, sir, Judge.

My next issue involves the alleged negligent misrepresentation. A negligent misrepresentation in South Carolina has several elements. One, Plaintiff has to prove that a false representation was made. That the Plaintiff have an interest in making that statement. That a duty of. And this is an important one -- that a duty

of care was owed in communicating truthful information and a breach of that duty and justifiable reliance by the Defendants on the representation and a proximate causation of a loss.

Now, there is no dispute that the final estimate of this appraisal was $1.6 million. That was the face value of the appraisal. Mr. Segars testified that he never reviewed or saw the appraisal prior to the closing of the property. Further, he could not recall if the Plaintiff, if NBSC, and Doug Mattney was the agent for NBSC, the employee for NBSC who is handling this loan, and who Mr. Segars would have been speaking to, he couldn't recall if Mr. Mattney had ever advised him of the amount of the appraisal, other than to say that in his practice he would typically inquire as to the amount of the appraisal, and he thinks he did this in this case. Specifically, and I am quoting, Mr. Segars testified: "I

would generally ask what did the house appraise for. What did the lot appraise for. What did the subject property appraise for. Did it appraise for less. Did it appraise for the contract price. Did it appraise for more. And so I feel as if I couldn't swear, but I feel very confident that I would have asked Doug Mattney what it appraised for prior to the closing."

So accordingly, Mr. Segars at best can testify that it was his practice to ask that question, and he feels, though he can not swear to it, that he asked for the amount of the appraisal and that Mr. Mattney would have advised him what the property appraised for. Now that is very important with regard to the first element of a negligent misrepresentation, that a false representation was made.

Now, our Court has looked at a case. Our Court has looked at the issue of what constitutes a false

representation, Judge. In a negligent misrepresentation claim that is very important, the substance of what the representation was. Now here Mr. Segars apparently testified that he believes he asked Mr. Mattney what did the appraisal show. What did the property appraise for. And Mr. Mattney told him presumably this is what the property appraised for. Mr. Segars didn't ask him what is the property worth, and Mr. Mattney didn't tell him this is what the property is worth. He told him what the property appraised for.

Now, that issue has come up before in a negligent misrepresentation case with respect to professionals. And the question arises with respect to a professional is -- when I tell you what -- and I am paraphrasing -- but when I tell you what my records show, am I simply telling you what the records show or am I opining as to the

truthfulness of those records. For example in that case in particular, an accounting firm was hired to audit a set of books, and they prepared a report on that set of books. Their work was in error. It was negligently done. And the fraudulent misrepresentation claim came about saying you misrepresented. You made a false claim. You said this is what your records show, and that is not what was accurate. And the Court looked at it and said in a professional standpoint when a professional is giving an opinion, no, what his record shows, what his report shows is his opinion as to the truth of that. That doesn't dovetail into this situation.

Mr. Linsday, who is an independent real estate appraiser, may have been found guilty of a negligent misrepresentation if in fact his opinion was negligently performed and his report was the result of negligent

work. But NBSC is not in the profession of appraising properties. They don't opine as to whether a property is worth X or Y. And what Mr. Mattney did was simply represent to Mr. Segars this is what the appraisal was. There was no misrepresentation by NBSC. There was a truthful representation. This is what the appraisal showed.

Now, assuming just for the purposes of this motion that the appraisal was in error, which we deny, but assuming that it was, Mr. Segars was not -- did not have a right to rely on the representation that was made, and there are several places on this and I know Tom and I are going to disagree a bit, but under the Quail case, and I am looking now at Quail Hill, LLC versus County of Richmond, that was a case of negligent misrepresentation and it was an extreme case. It was a real estate developer who went to the Zoning Department for

Richland County because he wanted to develop a manufactured homes subdivision. And the website for Richland County said if you have questions ask our zoning coordinator in our Zoning Department, and he went in and he did. And the zoning coordinator indicated yes, that is zoned appropriately for what you want to do. The property was subdivided and sales were made for manufactured housing. The tax records for property taxes showed the zoning as an RU zoning which would allow manufactured homes.

In fact, the zoning was not correct. The zoning map showed the appropriate zoning, which was urban, which would not have allowed manufactured homes. Negligent misrepresentation case came as against the Zoning Department and the county. And in that case the Supreme Court said there was no right to rely because the records, the zoning map was freely

available. It was a public document that you may go look at, and that you are not entitled to rely on a representation made to you when the truth of the matter is clearly available to you in the public records. Now with that I am only referring to the OCRM line. That was clearly available to Mr. Segars in the public record. And so I would argue that a duty to rely just simply wasn't there, as far as if a misrepresentation was made.

In addition, there must be an actual reliance on the appraisal, and in this case we have been back and forth and I don't want to continue that. But in this case Mr. Segars had been acquainted with this property since 2002, long before he purchased it. He had looked at the plat in question with his attorney and had sat down with a ruler and measured what could be built on that property.

Whether that was wrong or not is not really the substance of what I am arguing. But he had looked at that issue. He entered into a contract which he wrote to buy that property at a value that he had said of $1.6 million. He had a 30-day due diligence which he testified that he performed his due diligence. It had a financing contingency that he testified had expired at the time he applied for this loan.

The appraisal was done, the loan was approved and very shortly thereafter the loan closed. I can't fathom how Mr. Segars relied on that appraisal in reaching his decision to buy this property, but he testifies he did. And from a summary judgment standpoint I think it is a difficult road to get over with that. But I think based on that testimony and based on his actions it is difficult to imagine a scenario where he actually

relied on the survey, which he testified I never saw. I didn't see it.

THE COURT: The appraisal you mean?

MR. SAXON: The appraisal I mean. I'm sorry, your Honor.

THE COURT: That is all right. I think I knew what you meant.

MR. SAXON: Now, the step that I am having a problem getting over with this claim is a negligence on the part, alleged negligence on the part of an appraiser and imputing that onto the lender. Mr. Linsday is not a party to this case. Mr. Segars has never sued him over this issue. He sued the bank and he alleges that the bank is an agent of the bank and case law just doesn't support that, your Honor.

Mr. Segars attempts to bring that in in two ways: Breach of a fiduciary duty by the lender to him and the negligent misrepresentation. Now, those two dovetail together, the agency

issue between Mr. Linsday and the bank and a fiduciary duty that is owed to Mr. Segars. There simply is no fiduciary duty. Our courts have held in Burwell and a line of cases going back to that the traditional relationship between a lender and its customer is debtor/creditor and that no fiduciary relationship exists between them. And there is case law that indicates that the bank has no duty to look out for its customer based on that relationship, even if they know that a bad decision is being made. There is no requirement to bring that to their attention.

The only way that a fiduciary duty comes in the traditional debtor/creditor relationship or banking relationship is when the bank offers separate services, and the bank undertakes to advise its customer based on separate services. And the traditional route that we see that is

in investment cases, where a bank might have a brokerage agent, a brokerage firm, and invest money for its folks, and advise them that this is a good investment. Then in that case the bank may obligate itself to a duty, a fiduciary duty to its client in that case.

We don't have this here. This was a case where Mr. Segars applied for a loan, an independent appraisal was acquired. The bank relied upon the appraisal and loaned the money to Mr. Segars.

Now, in Mr. Linsday's testimony by deposition he testified that -- and I would like to pull it because it is important -- Mr. Linsday testified that he performs appraisals for NBSC and many other banks. That he does not perform appraisals exclusively for NBSC. He testified that he is not an employee of NBSC and never has been. He testified that NBSC does not direct

the manner in which he performs his work. That he is bound by the USPAP rules and state law to perform his appraisals. He indicated that if the bank attempted to tell him how to perform his appraisal, that that would be illegal and they couldn't do that.

He testified that occasionally for his appraisals the banks will pay him directly or occasionally he is paid out of the closing, if a closing occurs. I don't know what happened in this case, but I don't think it matters.

And he testified that NBSC, along with his other clients typically issue him a 1099 at the end of the year and that shows that the relationship between NBSC and Mr. Linsday is that of vendor, customer and vendor. Mr. Linsday is a vendor for NBSC and his other banks. He is an independently licensed appraiser who does appraisals when he is called upon to do them.

And the footing or the status of a customer vendor simply doesn't give rise to an agency relationship. An agency relationship would be more that of employer/employee, and that would require the bank to direct the manner in which Mr. Linsday performs his appraisals. And we just do not have that here. He testified that is not the case and no one else has testified to the contrary with regard to this particular action.

Now, we move into the issues a little bit more specifically and that is involving appraisers. South Carolina, as Mr. Finn had indicated, has never addressed the issue of whether -- of appraiser liability, and that is an issue around the country. Most states have not addressed it. But the states that have addressed it come down in two lines of reasoning and they fall generally into this category. When an appraiser is performing an

appraisal for a bank is he liable for that appraisal to third parties, such as the borrower or the buyer or the subsequent bank who may be acquiring the debt. The states are split on that. Some states say yes, absolutely. California and some of the other states, Vermont for example as well, says no. When an independent appraiser performs an appraisal for use in a bank, that appraisal is for the use of the bank. There is no privity and it does not flow.

South Carolina, while our courts haven't directly addressed that, our federal court did, and this was a case that -- and I did not cite it in my brief. I apologize. I found this just responding to go Mr. Finn's brief. But it is a case out of the Fourth Circuit Court of Appeals. It is Private Mortgage Investment Services versus Hotel and Club Associates, and in that case the Court had to attempt to reason

what the Supreme Court would view on that. And in that case the federal court was convinced or in their mind that third-party liability would run. In other words, an appraiser who is performing an appraisal for a bank to use has duties to other people. He has duties potentially to the borrower or anyone who is foreseeable, who might be using that appraisal to rely on. And Judge, I don't dispute that. I believe that is how our court would rule. But that is not what we have here.

What we have here is a claim by Mr. Segars against NBSC. Not a claim against Mr. Segars against Mr. Linsday, who he alleges was the negligent party. Is there a claim against Mr. Linsday? According to this case potentially yes, if he was a third party who was entitled to rely on that appraisal.

Now, the other cases that we find are cases where an appraiser is an employee of a bank, and does that run

to the benefit of third parties. And again those cases come, the seminal case I think was quoted in Mr. Finn's Knauss case. It is a case out of Iowa. The other cases mostly cite it as the Nyer case out of California, and that is because they take two different positions.

The Nyer case out of California says that even if the bank's employee performed the appraisal and the appraisal was for the purposes of evaluating a loan, there is no liability there. The third party cannot claim liability under that.

And the Iowa case, which is cited in Mr. Finn's Knauss case, takes the opposite position. It says if the bank's employee prepared the appraisal, then the borrower or third party is entitled to rely on that appraisal, because that is a separate service that the bank has provided. Because in the Iowa case, and I will cite it, that is

Larsen versus U.S. Savings and Loan Association of Des Moines, and that is the 1981 Iowa case, and in that case the bank looked at it from a standpoint of are those additional services that are being provided by the bank that takes them out of the context of the traditional debtor/creditor; and in that scenario Iowa takes the position that they do.

Judge, Mr. Finn relies on Mr. Segars has presented the Knauss case out of South Carolina. I would point out to you that the Knauss case specifically discussed was whether First Federal supplied the appraisers, the appraisal, was it supplied by First Federal. And that case cited the Larsen case out of Iowa for the position that they took, but I would remind the Court that in both the Knauss case and the Iowa case which Mr. Segars cites, those are cases where the bank did not hire an independent

appraiser to do the appraisals.

Okay, in one case, the Iowa case, the bank's employee prepared the appraisal. And in the other case it was not clear. We know who prepared the appraisal. We just don't know how it arrived at that case.

And so I am not going to dispute that Mr. Segars may have a cause of action or had a cause of action against Mr. Linsday if he believes the appraisal was wrong. But I don't think he can impute it to the bank under either negligent misrepresentation or under the theory of a breach of a fiduciary duty. There simply was no fiduciary duty. There was no misrepresentation or false statement made. And even if it was there was no right to rely on that.

And I think that is where this case has been. It is a case against NBSC as opposed to a case against Mr. Linsday, if he believes the

appraisal was incorrect.

And this will not take but a moment, the last part of my summary judgment involves the claim of breach of contract accompanied by a fraudulent act. Judge, I think we all know the elements of that cause of action. In this case a loan was made. In this case whether that constitutes a contract or not is really not of any substance.

Mr. Segars testified that he did not believe that Mr. Mattney or Mr. Linsday intended to defraud him. He believes a mistake was made and without that fraudulent element coming in, that cause of action can't stand. And by Mr. Segars' own testimony he believes that a mistake was made.

And I think I have talked long enough.

THE COURT: All right, thank you.

I am happy to hear from you. If anybody needs a break first? We will

take five minutes.

(Whereupon, a short break was taken.)

THE COURT: Mr. Finn?

MR. FINN: Judge, I am going to try to whittle this down a little bit. As you know it has been represented we brought claims for negligent misrepresentation and breach of fiduciary duties, and breach of contract accompanied by a fraudulent act, and at this point we would withdraw the third defense and counterclaim of the breach of contract accompanied by a fraudulent act. I still think that the other two would remain, namely the negligent misrepresentation.

Judge, the beginning of our analysis starts with a case that we have sent to you, and that is the First Federal Savings Bank versus Knauss. That was a case out of Hilton Head.

THE COURT: Spell the Knauss one?

MR. FINN: K-n-a-u-s-s. And the issue there was whether a negligent appraisal could be successfully put forth as a defense to a foreclosure action. And the Court in Knauss they said -- I don't even know if I am pronouncing that right -- but in Knauss they said that that particular case didn't support a claim for negligent appraisal.

But what the Court did, and I think it is important is they basically set forth what the criteria would be, and they did that by saying well, did Mr. Knauss rely on the appraisal. And let me give you the facts of the case a little bit, Judge. There were a couple of investors, they were looking at a commercial piece of property on Hilton Head. They went to the bank for a loan. One of the partners went to an appraiser and hired the appraiser and said hey, do an appraisal on this piece of property, but include -- make it so

that -- assume the infrastructure is already done. This is kind of in the eighties, I guess back in the day on Hilton Head I guess is how they did it. Assume the roads are in and the sewers and everything and then do an appraisal.

Well, eventually what happened is the loan was given and the bank foreclosed, and Mr. Knauss alleged the negligent appraisal as a defense to the foreclosure action. And so the Court had to look at this criteria, and one of the things they looked at was reliance. Did Mr. Knauss rely on -- in other words, they said well, you don't have it here. For there to be a cause of action or a counterclaim for a negligent appraisal, you would have to reliance and they outlined this. And in that case they said Knauss -- the testimony was that Mr. Knauss said he didn't rely on that, he relied on his years of experience as a real estate

investor. And so right off the bat he didn't rely on that.

In this particular case Mr. Segars testified that he did rely on it, and at least for purposes of argument I think Mr. Saxon has conceded at least that there is testimony to that effect for purposes of reviewing the reliance issue in summary judgment.

Secondly, they said in that case, well, you allege that it was a negligent appraisal, yet there was no evidence submitted to the Court to support that the actual appraisal itself was negligent. In this case, Judge, we have provided you with a deposition transcript of a man named Dennis Outlaw. Mr. Outlaw is a certified appraiser. He teaches appraisal at I believe it was a community college. Where he is from is from South Carolina, I forget the town.

But we took his deposition and he prepared a report. We provided you

with his deposition transcript and his report. And the highlights of Mr. Outlaw's testimony are that Mr. Outlaw testifies that all appraisers in South Carolina must file a USPAP, a Uniform Standards for Professional Appraisers Practice. None of Mr. Outlaw's testimony is challenged with another expert in this case at all up to this point.

So USPAP is the standard. Mr. Outlaw testified that Mr. Linsday in performing his appraisal on at least three instances did not follow USPAP. That he should have -- I will generalize, Judge -- that he should have noted the covenants -- or he should have reviewed the covenants and restrictions of the neighborhood as to the size of the house. He should have noted on the appraisal an easement which affected the buildable land. I mean there was a driveway that would have affected the buildable area of lot

2.

He testified that certainly with respect to the OCRM line, the one that the appraiser reviewed, that that would limit the building area of the lot. And essentially Mr. Outlaw testified that to a reasonable degree of certainty most probably as an appraiser that Mr. Linsday deviated from the standard of care and was in fact negligent. That is all in his testimony, and it is not refuted by anybody, any other witness, Judge. So.

I am just going to move on with respect to that particular issue. That the Knauss court said well, you didn't prove that the appraisal was negligent. Here it is not even challenged that the appraisal was negligent. It is a fact for purposes of this argument.

So we look at reliance. Reliance is conceded, and certainly at the very least the testimony of Mr. Segars is that he relied on it.

Oh, in Knauss the other issue was well, who ordered the appraisal. And in this case obviously the bank ordered it. NBSC ordered the appraisal. In Knauss the guy's business partner, one of the potential purchasers, his business partner ordered the appraisal and therefore the bank had nothing to do with it. So out of this case where someone is making a pretty valiant effort to raise this as a defense, the facts are horrible. But the Court has to go through and say -- in other words, Judge, when you read the case and it struck me is that they are saying you would have to have reliance. You would have to have the bank hire the appraisal. You would have to show in court that the appraisal was negligent for this to even be a defense. Well, we have all that in this particular case. But that is as far as the courts in South Carolina have gone with respect to this issue,

limited as to whether the negligent appraisal can be a defense to a foreclosure action.

Dan talked about some of the cases, but one of the cases cited that was relied upon by the borrowers in the Knauss case was the Larsen, it is an Iowa case, Judge. Larsen versus United Federal Savings and Loan. In that case the bank -- it was a bank employee that made the -- that conducted the appraisal and came back, and the facts of that case briefly, Judge, were that a couple was looking to purchase a home some years ago because I think the appraisal came back at $45,000. They were looking to purchase a home. The bank's appraiser who was an employee of the bank went out and conducted the appraisal and came back and said yeah, it is $45,000.

When the couple moved into the home they realized that the home had serious structural and construction

deficiencies, and they raised it at this point to the bank. They brought experts in and basically it was deemed a fact that hey, this house has problems and that the appraisal -- had somebody first of all recognized the problems and raised the issues of the problems and put a cost to repair on the problems, that basically this house was not worth $45,000. It was worth about 20 to $25,000. And in that case, Judge, the Court held that the bank was liable in the same type of situation for the negligent appraisal.

Now, the only difference, and I can't change the facts, I just have to point them out to the Court, the only difference was that in that case the appraiser was an employee of the bank. I don't think, and I understand Dan's position, but I don't feel that the fact that the bank hiring Mr. Linsday and using his appraisal to confirm the value of this lot is any different from

the bank having an employee. I don't necessarily think that that is another service that the bank was offering. I think Dan was pretty much trying to bootstrap that argument in.

If the bank had the sole discretion of hiring Mr. Linsday and they do, and Mr. Linsday commits negligence and they pass it on through a negligent misrepresentation the information they receive from Mr. Linsday, as they did, that they are just as liable.

So if you read the Larsen case, the only difference is it was a bank employee versus somebody the bank hired. And I don't see how that takes it out, how that changes the argument significantly.

THE COURT: And I guess the distinction, and maybe you can touch on this, because this is the part I guess I am struggling with, and I will read all of these cases, this was not their

agent I think admittedly. It was a third party, somebody, not their vendor.

MR. FINN: Yes, sir. He was an approved appraiser, pre-approved appraiser for the bank.

THE COURT: Right, but essentially I mean he was an independent contractor, though.

MR. FINN: Agreed.

THE COURT: And so the bank wasn't making a representation as to value. The bank was relating the appraisal to your client, right? Relaying that knowledge or that representation.

MR. FINN: Judge, I think the way that we view that particular issue is that the bank has stated, and Mr. Mattney, I have portions of his testimony that I will read. He is from the bank. They say we will loan you 1.36 if it comes back at 1.6. They hire an appraiser. The guy says it is worth 1.6.

THE COURT: It is funny that way. That used to work a long time ago.

MR. FINN: Well, that's -- I think, Judge, knowing what we all know now, that is how they did it. And that even why this is more intriguing, you know. I don't know what the evidence if we went to trial on this will be, but certainly those were the wild west days of lending money. But nevertheless the bank conveyed that we will not -- essentially they are saying we won't give you a loan unless it comes back at 1.6. If it comes back at 1.6, we will lend you 1.36. Okay. Guess what, it is good to go. We can close.

Well, I think that conveys the bank conveying to Mr. Segars that -- something that was untrue. That it is not worth 1.6, but they represented based on their information, and they might have defenses and they can bring Linsday in and do whatever they want; but the fact is they relayed that

information to Mr. Segars.

Judge, if we just assumed for a second the opposite was true. What if what Mr. Outlaw says about the property, what if that was relayed to the bank by Mr. Linsday. If he went out and he said you can't pitch a tent on this, why do you guys want to buy this? Now, you might be encumbered by your contract that you jumped the gun and signed it if you did. But it is worth -- Dennis Outlaw's testimony -- that it is worth $70,000. Well, that can't be. Well, that is what the tax assessor appraised it as.

And quite frankly he could not do a comparable because the lot was so unique as to all the others and the encumbrances and the OCRM line affected this one more so, that he said there is no comparable's on this. So could you put a value on it? I will put what the tax assessor did, and he says in his testimony, Dennis Outlaw, $70,000.

Now, if he came back and told the bank that is my appraisal, it is worth 70,000. Does anybody really think that that bank is going to then go forward and lend Mr. Segars $1.36 million to purchase the lot. I think the reasonable conclusion is that they would not have.

So when he comes back and says it is worth 1.6 and the bank says it is worth 1.6, Tad, let us move forward, that is when the transaction went through, and that is the crux of this case. No one would believe that if it were an accurate appraisal, if he took Outlaw's appraisal back in 2004, and you use that one, that transaction is not going through.

But when we talk about the relationship between the bank and Mr. Segars, this is just a quick series of questions that I think, Judge, I want you to consider and since it is the evidence I want to present.

"Okay, so we know that in summary NBSC hired Linsday, you agree with that?" This is me questioning Mr. Mattney.

"Yes.

"Okay.

"Mr. Linsday was on the approved list of appraisers for NBSC, correct?

"Yes.

"Mr. Linsday went out at the request of the bank and did an appraisal, correct?

"Yes.

"Okay.

"The bank informed Mr. Segars that it would lend him 1.36 million if among other things the appraisal came back at 1.6 or greater?

"Yes.

"The appraiser that the bank hired Mr. Linsday of the Linsday Company in fact came back and said that the lot was worth 1.6?

"Yes.

"Okay.

"The bank believed what Mr. Linsday had stated in his appraisal report, correct?

"Yes.

"The bank gave Mr. Segars the loan for $1.6 million?

Yes."

Now, Judge, I think that goes a long way to establishing, you know, our claim for negligent misrepresentation. This is Mattney here saying everything I just covered. It seems to me that the bank is representing that it is worth 1.6 based on the guy they hired, Linsday. And, you know, there is more to Mr. -- you have this as well, Mr. Mattney's testimony, but that sort of highlights the issues that may be raised with respect to him.

So Judge, there is no case on point in South Carolina. Dan is right. It looks like the Courts who have addressed it may appear to be split.

But our Court if you look at Knauss in conjunction -- the way the Court reasoned in Knauss, they said basically you don't have this, but if you did have reliance -- if you did have a negligent appraisal, if you did have the bank being responsible for the appraisal, if you had all that, then you might have a claim for a negligent appraisal to be used as a counterclaim and a defense to a foreclosure. Which is just one of those situations, Judge, that we have in South Carolina which just happened, it just has not been fully addressed. Maybe this would be the first one.

But Judge this is -- I have submitted my brief to you. It is under here.

THE COURT: And I will look at it.

MR. FINN: And it has all the exhibits. I just want to briefly go through the exhibits that we put on, just to familiarize Court. Judge in

Exhibit 1 is the appraisal -- I'm sorry, it is the plat that was basically circulated by the developers, Ed Flynn and Mr. Jerry Suess were the developers under the name J&J Development. Ed Flynn basically was putting forth this plat. It was recorded. It is not stamped approved by OCRM, but it was recorded and it was given to -- and it is approved by the Town of Hilton Head back in 2002. And you can see obviously it is lots 1 through 10 and the one we are dealing with is obviously 2, Judge.

And it has on this one the future Beach Management Act baseline. Now, this is -- simply as a matter of record, this is why, you know, if you are selling these lots, which the developers were trying to do, that is going to get moved, is essentially what they were saying. And that is what Mr. Segars when he first learned about these lots was informed, that that is

going to be the future baseline. The town had approved it and, you know, I don't know -- I don't know whether a reasonable person would go beyond looking at this, for example, in taking into light our previous discussions; but this was what was put out there by the developers.

The second document I put in there, Judge, is simply the Declaration of Covenants and Conditions, which were a matter of record as of 1995. This was Singleton Beach, the whole community, Judge, is basically one of those older tracts of land that part of it is on the beach and then there is kind of a main road leading up to it. And they developed it, it is obviously expensive homes back there. And this Singleton Beach Place was an additional undeveloped tract in the Singleton Beach area. So that is why these restrictions go back. It covers the entire area.

And one of the things that the restrictions it says in here, Judge, is that no house shall be smaller than 2500 square feet. So obviously you have to build a home larger than 2500 square feet, which comes into play in our argument because we are talking about the buildable footprint, that you need to build a house in excess of 2500 feet. The next thing, Exhibit 3, is this was another, I guess, tool that the developers used, Judge. These are a set of plans that they had drawn up, and it is for a home -- now, this is on lot 3, Judge, which it appears from my research that it is not significantly different in any appreciable way than lot 2. But it was merely a tool the developer created to show, hey, you can build, this is the style of the house. And this is the size of the house. And the size of the house is 3983 square feet -- heated square feet and that is on page 3 of that document, Judge --

I'm sorry -- 4.

And this is also dated November of 2003. This is what the developers were putting forward and that is prior to the plat B, being the subsequent plat. This is what all the folks that were looking, were interested, including Mr. Segars, would have had at their disposal based upon the representations by the developer.

I think this touches on the reliance, although I think with Mr. Segars' testimony and the testimony of Mr. Mattney that that appears to be sufficient evidence to show that Mr. Segars relied on it. But this was May 28. This is Exhibit 4, May 28 of '04, just noting that the -- under appraisal, subject to an appraisal acceptable to the bank in the amount of 1.6 or greater. This is the bank informing Mr. Segars: Your application for a mortgage loan to purchase a Singleton Beach lot has been approved

at 1.36 subject to terms and conditions below. It seems to me a given, Judge, that unless that appraisal came back, they are not lending the money; and I think that is what exactly that document stands for.

Exhibit 5, Judge, is Mr. Linsday's appraisal. This is just all confirming facts that I have submitted to you as facts and these documents bear out everything I have said with respect to the documents and the appraisal. There is the 1.6 final estimated value, Mr. Linsday did that.

The next exhibit is Exhibit 6, that is the second plat. That is plat B, Judge, and that shows -- that is a blowup of the plat that Mr. Linsday used in doing his appraisal. Attached to his appraisal is a smaller copy that is actually part of the appraisal report. I blew up and attached it for the Court's convenience the actual plat that he relied on, which showed the

original OCRM line not -- he didn't -- in other words, he didn't rely -- and this is somewhat important, Judge, he wasn't looking at that plat that said future baseline. He is looking at the one, that if you just looked at it, and then I don't know if you or I could do this, but what this case comes down to is if he looked at that and he did the calculations, which Dennis Outlaw goes into great detail in his deposition testimony as to what Mr. Linsday should have done, he should have looked at the covenants and restrictions. He should have literally -- I didn't know this, Judge -- but he should have measured the square foot of the lot and then taken into consideration the setbacks and the easements, if there were any, and the OCRM line. And when you do all that our guy was basically -- what was he looking at? He is way off. And that is what Dennis testifies about.

Exhibit 7, your Honor, is the

settlement statement. I put that in there to obviously show that the loan was closed. That NBSC was the lender. They did in fact lend $1.36 million. The closing contract price was 1.6. And I guess I will touch on, since we are talking about the price, that I don't think it matters, Judge, that the contingency ran. I think that -- the financing contingency ran. I think that the bank wasn't going to lend that money unless that appraisal came in at 1.6. So the fact that -- I wouldn't doubt that Mr. Segars wouldn't have been able to extend that 30 days if he needed to, so I don't think that financing contingency means really anything of consequence in this particular case.

Judge, this is interesting, on Exhibit 8 when Mr. Segars had learned that -- about the appraisal, Mr. Segars called Mr. Linsday and requested that he look at the information that Mr.

Segars believed to be true. This was generated as a result of -- Judge, I stand corrected. This was before Mr. Segars did get the appraisal, because as you can see this date is October 30, 2008. We didn't get the appraisal until 2009. But what Mr. Segars is requesting of Mr. Linsday is if he would look at the baseline and see if that would in any way affect the value of the property. He was at this point trying to renegotiate with Mr. Mattney at NBSC for a lower rate, and this was one of the things -- but in any event, Mr. Linsday's letter basically says well, if the thing that you proposed to me on the phone are true, Tad, then the lot would be worth significantly less than what it was appraised for. And it could be a liability to some. So that was Mr. Linsday's opinion having been presented with certain assumptions, if you will, and that was his own hand and his own letter in response to Mr.

Segars.

But for purposes of summary judgment, your Honor, it appears that South Carolina based on the Knauss case would recognize under a certain factual scenario that a negligent appraisal can be used as a defense to a foreclosure. It doesn't go that far, but it is certainly sets up the things that would be needed, I think. And in this case we have all those. We know that the bank hired Mr. Linsday. We know that Mr. Linsday did an appraisal. We know that it came back at 1.6. Mr. Segars relied on that. That he at least testifies to that, and that might be an issue of contention; but that testimony does exist and we have Mr. -- you have been provided Mr. Segars' testimony.

We know that the loan went through after the bank informed Mr. Segars that the appraisal came back at 1.6. Whether the appraisal was negligent or not has not been contested for purposes

of this hearing, and up to this point in the case there has been no evidence that the appraisal by Linsday was not the result of him deviating from the standard of care, USPAP, which is again by all testimony agrees that USPAP is the standard of care that should have been followed by an appraiser at this time in South Carolina.

We have the loan going through and ultimately we have the damage obviously of losing the value of the lot, the lot and the foreclosure. Had the appraisal been correct and NBSC conveyed accurate information, the closing wouldn't have gone through. It would have protected the bank and it would have protected Mr. Segars, although the bank had an interest in making the loan at the time because they obviously were going to make significant interest on it and had dealt with Mr. Segars as a real estate developer in the past or real estate speculator.

So the only difference, Judge, and I trust that the Court will read the Larsen case, the only difference between Larsen and the present case, Judge, is that the appraiser in that case was an employee of the bank. And I don't think that that falls into Mr. Saxon's argument that the bank offering other services like, you know, we are going to invest your $100,000, we have a whole wealth management branch like at Bank of America. That is not what they are doing. They are just saying that we have an in-house appraiser, which is no different in my mind than hiring Mr. Linsday, who is one of a handful of independent appraisers working in the Beaufort County area. So Judge, that is my argument, basically covers my defense to Dan's motion for summary judgment.

But also we would move for summary judgment, but obviously with the standard needed to grant summary

judgment, that there is not a mere scintilla of evidence showing that there is not any facts in dispute. I think we certainly with respect to the negligent misrepresentation and breach of fiduciary duty counterclaims, I think that not only have we shown that, but the testimony establishes, Judge, if I have made a list of everything I need to establish and I went down the testimony, which I have tried to do in my argument, I think I have checked off all the things I need to to not only prevail against a summary motion judgment against us, but to prevail on our summary judgment motion.

THE COURT: So just so I am keeping track here, the third cause of action is withdrawn?

MR. FINN: Yes, your Honor.

THE COURT: What about the fiduciary duty issue? You may have mentioned that and I may have missed it, but --

MR. FINN: Well, now I didn't really touch on that, Judge, other than to say that the bank in dealing with -- making -- I think they have -- well, I could be proven wrong, but I think they would have a fiduciary duty to deal with their borrower in a manner that is --

THE COURT: I am a little bit familiar with the case law that was mentioned where it basically says it is not a fiduciary duty.

I mean is there anything out there in opposition?

MR. FINN: I don't have anything in opposition to that. So --

So just then -- so with regard to the fiduciary duty and the breach of contract accompanied by fraudulent act, I think we can remove those. So we can voluntarily dismiss those.

THE COURT: And the part I am struggling with -- but the misrepresentation, when a -- the

misrepresentation is in paragraph 14: The Plaintiffs informed the Defendant the prospective loan was contingent upon an appraisal confirming the property to be a certain value. Okay, true enough.

The Plaintiff informed the Defendant the appraiser hired in fact produced an appraisal valuing the property above the necessary threshold amount. Well, was that the necessary threshold amount? But I think you all can both agree that happened, right?

MR. FINN: I can.

THE COURT: The question was, was the representation negligent? The representation might have been -- was it a misrepresentation? The representation itself was accurate, wasn't it? I mean that is the part I guess I am trying to get my head around. The representation was we are not closing unless an appraiser comes up with a number.

MR. FINN: Yes.

THE COURT: The appraiser came up with a number. They represented the appraiser has come up with a number and it is the same number. So they truthfully represented what happened.

MR. FINN: But they were also responsible for hiring that appraiser who actually was obviously providing improper, incorrect, inaccurate information, and they conveyed that information.

In other words, if they are going to -- Judge, it is pretty simple for me. If they are going to loan me $1.6 million and they say it is worth $1.6 million, and we ultimately, however we discover, find out that it is not, that is a misrepresentation or at least I get to argue to a jury to say, you know, what do you think.

THE COURT: And I mean that is the part I am struggling with. I mean it is --

MR. FINN: So would they be able to get off Scott free, your Honor, if -- I think if it was worth $1.6 million, then they would be fine. But the fact that we have proven at least in this early stage of the case that it was inaccurate information I don't think -- well, do they just get to walk from that? I mean they represented that was true, and they encouraged or induced Mr. Segars to trust them and believe that. When I am borrowing $1.36 million I am going to get my money's worth, because you said it is true.

THE COURT: Well, I mean I guess my question is, did they represent it was true or did they represent the blank was filled in with 1.6 million? I mean that is sort of the difference. But don't worry, I am going to read all of this, but that is the part I am trying to figure out.

The representation was at least as I understand it from this Complaint,

what everybody is saying we are not closing, we are not loaning you our $1.36 million or whatever it is until the blank is filled in where a certified appraiser says it is worth -- an appraiser to our satisfaction says it is worth 1.6. I mean that is what the bank represented.

And then the further representation was in fact an appraiser has stated that this property is worth 1.6. I mean that is the balance of the representations.

MR. FINN: That is correct, Judge. I mean I can't -- whether -- I guess that is the issue.

THE COURT: So that is the part I am trying to figure out, whether or not that falls into the negligent misrepresentation category, if the representation is we hired an appraiser and he said it was worth this. That is an accurate representation as far as I can tell the undisputed facts. In

fact, everyone unfortunately was relying on a fill in the blank number that --

MR. FINN: Well, but that is their guy. I mean I think, Judge, I would request to be able to on that particular issue maybe dig at that a little bit and submit you something because --

THE COURT: It will take me a few days to read through this anyway, so I am happy to let you all follow up with however you want.

MR. FINN: Because that really appears to be -- you know, that is the bank's guy. They were responsible for hiring him, for vetting him, for doing all that. Because they could have had somebody else --

THE COURT: They didn't even have to have it. That was the thing.

MR. FINN: But Judge, I do know there is a law that says if you go forward --

THE COURT: If you jump into a situation, but I don't know if that is this situation.

I mean the bank hires an appraiser to protect themselves. Not as a double-check on a developer's ability to value property. I mean that --

MR. FINN: Well, with the Larsen court judge, that was their own guy. So obviously that is why they did it -- and that court found --

MR. SAXON: Can I chime in?

THE COURT: Sure.

You have been quiet over there for a while.

MR. SAXON: I try.

I can't quite get to the point Mr. Finn is at with the Knauss case. I will read just a little bit from it, because I think it is very important. "Knauss relies on the authority of Larsen v. United Federal Savings Bank of Des Moines." The Iowa case. In Larsen the home purchaser sued United

Federal in negligence, alleging they paid an excessive price for a home based on a negligent appraisal performed by an employee of United Federal. There was evidence that the purchasers paid a fee to United Federal for that appraisal and relied upon the results of that appraisal. United Federal notified Larsen that the appraisal was okay. They completed the loan, they purchased the home. "As to the duty of element of the negligence claim, the Iowa Supreme Court conferred the concept of negligence under the restatement of torts, and the Court determined that the Larsen's were within a group of people who were entitled to rely. The Court refused to accept United Federal's argument that its role as the lender should be separated from its role as the employee played as to the appraisal."

They didn't quote the entire Knauss case. They selected what

they -- of the entire Larsen case. The Knauss court picked what they thought was important, and in two locations they said an "employee" of the lender. And then when they applied those facts to this case very specifically they said the facts of this case do not establish a negligent misrepresentation or a negligent appraisal by First Federal. The evidence indicates that the appraisals were performed by an outside appraisal, not an employee of First Federal, as was in the case with Larsen. That is key. The employee of the bank is one of master servant. The master is always responsible for the acts of his servant, generally speaking. That is not the case with the situation of contract or subcontractor per se or vendor, customer vendor. That is an independent relationship, and you just can't bootstrap that up by saying, well, the bank selected him. He was

one of many appraisers that the bank selected.

Mr. Linsday did work for this bank and many other banks. He was not an employee, and he certainly wasn't the agent of that bank in a situation that would impute liability. Now, reading just a little bit more in that Knauss case because I think that is important, Mr. Finn indicated that Knauss admitted he didn't rely on the survey. I don't think that is exactly what I read into this. What I read into this is apparently Mr. Knauss' associate did obtain the survey in question. And then the other was no expert testimony that the survey was ever negligently performed. But the reasoning goes on to say: "Further, although Knauss testified that he relied upon the appraisals, he also testified that he probably did not see the appraisals before entering into the loans. There is some evidence that Knauss did not

rely on the appraisals. Specifically Knauss characterized himself as an experienced investor and a seasoned loan applicant. He also purchased several pieces of property on Hilton Head prior to entering into the transaction." And it goes on from there.

What we show here, and maybe this is just semantics or bad drafting, but the holding said: "We agree with the trial court's conclusion that Knauss failed to prove, one, that First Federal supplied the appraisals; that he relied upon the appraisals; and three, that the appraisals were negligently performed." That is the only wiggle room that I even see in this case is that one sentence where it says that First Federal supplied the appraisals. What does that mean? That is the Court's holding. But in reaching that conclusion what the Court looked at was an employee. In the

Larsen case liability was found in part because, or primarily because the appraiser was the employee of the lender. And the lender tried to use the argument that said no, you separate us. Ordinarily there is no duty. It is a creditor/debtor relationship. We should separate these things out. And the Court said no, we are not going to separate those things out, because he is your employee.

And then in the Knauss case looking on, the first thing the Court found is evidence that indicates the appraisals were performed by an outside appraiser. Not an employee of First Federal. And I think that is key. I mean Mr. Finn indicated he doesn't see the difference between it. I think that is the whole issue. That is the issue of the duty that is outstanding.

MR. FINN: Judge, can I jump in before -- I'm sorry, Dan. I don't want to lose my thought.

THE COURT: Sure, go ahead.

MR. FINN: The Court does say that it was performed by an outside employee, but the facts of the Knauss case which really kind of took it out of the realistic realm was that the business partner hired an outside appraiser. Not the bank. In this case obviously NBSC hired Linsday.

And just as a side note on the settlement statement they charged an appraisal fee to Mr. Segars, the bank did of $300. So they actually made him pay for the report. But another thought occurred to me, Judge, whether that appraisal was wrong or not, I think once the bank undertook to rely on that and then convey that information to Segars, that that is another step in the direction of a negligent misrepresentation.

The only significance of the Knauss case is that they kind of set forth -- in the absence of the case

really they are saying yeah, you have to have reliance. You have to have -- the bank has to hire the appraiser. The appraisal has to be negligent. They had none of it. It was just sort of a grasp at straws I think in that --

MR. SAXON: And Judge, let me jump in, because nowhere in that case does it say the bank has to hire the appraiser. Nowhere in that case.

MR. FINN: No, if I meant to insinuate that, I didn't mean to, Judge.

In this case I know that the bank did hire the appraiser and that is a fact.

MR. SAXON: No question about that. What I am saying is that the Knauss case doesn't indicate that the bank has to hire the appraiser. They don't say that at all.

MR. FINN: No, I don't think they have to hire an appraiser. But I think once they select an appraiser out of

all the qualified appraisers that they -- I don't know what their vetting process was or what they did, but once they hire an appraiser and they get the appraisal back and they rely on that appraisal and then moreover convey that that information contained in the appraisal, critical information as to the value of the property to my client, that they are making a misrepresentation, and that is on them. Not on Linsday. You know, shame on them. They could have verified that. I don't know what -- we have no evidence as to what they did with respect to did they review it, did they have in-house people who double-checked. I don't know anything about that.

But they took Linsday's information. It was wrong. That is not disputed here.

MR. SAXON: I have not admitted that at all.

MR. FINN: I will submit that there is no evidence presented that the appraisal was not incorrect.

MR. SAXON: Other than Mr. Linsday's own deposition testimony.

THE COURT: Well, I guess I am still --

MR. FINN: Basically I am trying to move, Judge, if a professional negligence -- I had another expert come in and review, critique, and provide testimony that Linsday was wrong; and there is not any other expert out there that has been brought in to say that my guy was -- what he says is inaccurate.

MR. SAXON: But this isn't --

MR. FINN: Linsday can't testify as to himself that he wasn't negligent. I mean he can, but it won't outweigh the experts.

THE COURT: And I guess I just wonder if this isn't better characterized, and I am not saying it lives or dies based on that or not, but

it is more of a negligence action than a negligent misrepresentation action. Because even if you look in the Complaint, that what is asserted to be the misrepresentation is that the appraiser the Plaintiff hired had in fact produced an appraisal valuing the property above the necessary threshold amount. And I think everybody would agree that happened, and that wasn't -- that is not a misrepresentation. That is a representation of a fact. The appraiser produced an appraisal valuing the property at whatever. I mean that is not a misrepresentation. That is a dead on accurate representation. So --

MR. FINN: Well, Judge, if there is a -- I would move to amend under Rule 15 to assert a negligence cause of action, if that more accurately portrays the factual scenario that we presented here.

THE COURT: Well, that is sort of outside of what we are all talking

about. So I don't even know if we get there but --

And then the question becomes is it negligent to -- I don't know -- we get back into the master/servant thing I suppose -- so I don't know.

MR. FINN: Judge, just so I can look at some of this stuff, is the Court concerned with the distinction between an independent contractor and an employee for -- is that something that --

THE COURT: Well, I guess I need to read the Knauss case or however you pronounce it. And whatever else you have given me before I would have any more questions. But yeah, I think that might make a difference. I think I am concerned about the -- as I have stated on the misrepresentation issue -- as to whether or not there was a misrepresentation. If the representation was we got an appraisal that says it is worth this, I mean i

don't think there is any evidence there was a misrepresentation. That was what was represented. The item that was represented to exist might have been faulty, but the item existed.

MR. FINN: Well, there is no change in that, there.

THE COURT: And so I don't know.

It sounds like you were focusing on the negligence/negligent misrepresentation type of claim, and the fiduciary duty issue and the fraud issues are not something I need to concern myself with.

MR. FINN: Correct, your Honor.

THE COURT: So -- and you may have more to say, so don't worry I am not cutting you all off. Is ten days enough time to get me back anything you would want to concentrate on by way of just a follow-up? It doesn't have to be in brief form. It could be by way of letter or anything. And any of these cases that you all want me to

read that aren't attached here, you can just pdf them to me. I don't need paper this thick. I mean if you all can send me that?

But would that be enough time? Ten days?

MR. FINN: That is fine with me, Judge.

THE COURT: If not, if you got something coming up next week, make it two weeks, three weeks. I just somewhere to put it on the calendar.

MR. SAXON: I am back in the office after an absence due to a death, so I am really backed up.

THE COURT: Whatever time you need, Dan. What do you need?

MR. SAXON: Can we do three weeks?

THE COURT: Absolutely. Again, I just have to have a place to put a check mark. So three weeks is fine, absolutely. If you need more time than that, let us know and we will just make it the same for everybody.

MR. SAXON: Okay.

You want us just to submit any additional brief or cases we have? You don't want proposed orders I am assuming?

THE COURT: Not yet, if you would.

If you wouldn't mind just in case I manage to forget this, in whatever you send me remind me that we basically got the two issues, which are the statute of limitations issue and the negligent misrepresentation issue.

And again, the Knauss case and any other associated cases, you know. And you all just come up with a day between yourselves, when the appropriate day is about three weeks out there and just send me the same stuff at the same time, so I will remember if you would.

MR. FINN: Okay.

THE COURT: And I don't need any paper. It can all be electronic. And I will take a look at it.

MR. SAXON: I had a ton of things

to leave you, but I am going to take them with me send it back to you in pdf form.

THE COURT: That would be great.

I don't know if you want to do that as well?

MR. FINN: I can do, Judge.

Unless --

THE COURT: Is that your only copy? Because what I can do is just put it in the case file.

MR. FINN: I would like to have that in the case file. I have a copy.

THE COURT: I will give it back to you then to file, because it has to go through the whole nightmare scanning system. So we can do it that way. Where did these come from?

MR. FINN: I think those are the deposition transcripts and the report of Outlaw.

THE COURT: Those need to be filed.

MR. FINN: We filed them, Judge.

MR. SAXON: And I think I had the

other Tad Segars' deposition. But when I looked again I think you had filed it. So I think you have filed all the depositions.

MR. FINN: If that is an issue, we talked about it, and I consented to having you file that.

THE COURT: These are the files. But as you all know it might be months before they actually make it in here. I have to scan it and do all that stuff first.

Anything else for the record?

MR. FINN: Nothing from the defense, your Honor.

MR. SAXON: Nothing from me, your Honor.

THE COURT: That concludes the record.

(Whereupon, the hearing was concluded at 4:17 p.m.)

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

State of South Carolina)
)
County of Beaufort)

Court of Common Pleas

No.: 2009-CP-07-03844 and
2009-CP-07-3201

National Bank of South Carolina

Plaintiff,

vs.

Thaddeus F. Segars; Seagers and Associates, Inc.; Beach First National Bank, Inc., and Burkes Beach Property Owners Association, Inc.,

Defendants,

HEARING

COPY

May 14, 2014

Hearing reported by Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina; said hearing held before the Honorable Marvin H. Dukes, III, Beaufort County Master in Equity and Special Circuit Court Judge in accordance with the South Carolina Rules of Civil Procedure, at the Beaufort County Courthouse, 102 Ribaut Road, Room 212, Beaufort, South Carolina, on March 14, 2014, at 11:05 a.m.

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Exhibits:	Marked at Page
(None were proffered.)	

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This hearing is taken in accordance with the South Carolina Rules of Civil Procedure.

JUDGE DUKES: Good morning. We are here in Case 09-CP-07-03201. This is National Bank of South Carolina versus Segars, et. al. This is a motion to reconsideration filed by the Defendant on a summary judgment order previously filed February 14th, 2014. And, again, this is Defendant's motion for reconsideration of the dismissal of Defendant Segars counterclaims. So I'm happy to hear from you.

MR. FINN: Thank you, Your Honor. Just a little background if I might. This action was originally brought as a foreclosure action by N.B.S.C. The Defendant responded with a counterclaim. There are actually two related cases which I provided the court reporter with both captions. So you had tandem orders, basically. If Dan disagrees that I've mischaracterized that in some way he can surely correct that, but it's the same order.

Judge, you might recall that this case was going on for quite some time. We were able to mediate it. Then we came back and argued our motions. The court allowed us to submit additional

materials along the way. It was actually running for quite some time, which we did.

Judge, I have two or two and a half arguments that I think are relevant to --

JUDGE DUKES: Rarely get half an argument.

MR. FINN: Well, I've heard my arguments described as less than half, but --

JUDGE DUKES: Not by me.

MR. FINN: The first relates to the primary order which you have in front of you, Your Honor. The court dismissed the Defendant's counterclaims primarily on the basis that the statute of limitations had run. The information that was put before the court was that Mr. Segars either knew or should have known that he had a cause of action against the bank.

Really you might recall, Judge, that the bank hired an appraiser. The appraiser went out and did an appraisal. Sometime later Mr. Segars discovered that the appraisal was what he believed mistaken, what we claimed was -- contained negligent misrepresentations.

The primary thrust of the Plaintiff's argument on the statute of limitations was that when

the lot closed, you will recall this involved a lot down on Singleton Beach on Hilton Head. When the lot closed shortly thereafter it came to light that there were some issues relating to the O.C.R.M. line.

And out of that some litigation was spawned. There was an action, Mr. Segars and I believe maybe some of his associates brought -- retained Cott & Harness to bring -- either bring administrative law judge action basically again to correct or look into this issue of the O.C.R.M. line.

In addition, Mr. Segars brought a claim against the law firm that represented him in the closing because essentially the O.C.R.M., the gist of that was that it restricted what could be built on the property. And there was a third action brought against the title company.

And essentially the Plaintiff's argument on the statute of limitations -- and all of this happened between 2003 and 2005, Your Honor. This action was brought by the bank to foreclose in 2009. So all of those actions happened well before, you know, the 2009 action being brought and our subsequent counterclaim.

And so that is really the gist of the statute of limitations argument. And, Your Honor, what we would ask the court to reconsider on that particular position is our counterclaim is an action against the bank for the actions of their agent. Essentially the appraiser went out, put together his materials, and basically said that the lot was worth $1.6 million.

Once there was an issue with the O.C.R.M. line and this other litigation that I just described, Mr. Segars was represented by a number of different attorneys. And what we need to get at is is it reasonable for Mr. Segars to have known or should he have known that the bank's agent made an error in some way or that the bank in any way did anything wrong.

Mr. Segars had a long-standing relationship with the bank. They had loaned him millions of dollars for various real estate transactions. And it's our position that that is a pretty big jump to say that there is something wrong with the O.C.R.M. line, but the bank did something wrong.

Now, what eventually happened was Mr. Segars was sued by the bank for allegedly being in

default on the loan. Summary judgment on that foreclosure action was granted by this court, but once the lawsuit was filed, the foreclosure action was filed, Mr. Segars looked into the bank documents. He said, well, I want to see the note. I want to see things related to the closing.

And in that matter the bank provided him with an appraisal with all the attachments. And what Mr. Segars discovered after this suit was filed in 2009 was that the appraiser had in his possession and, in fact, used the particular plat that no one thought he used that contained various restrictions.

So what essentially our position was, the appraiser had all the tools and paperwork available to let him know that there was a problem with the lot. Now, knowing that your real estate closing attorney or the title company might have had something to do or have some liability when you find out there is something wrong with the O.C.R.M. line, it seems to us that that is a tremendous jump to basically say that the folks that loaned me the money are somehow at fault.

And that is essentially what the court has ruled is that we, Mr. Segars, should have known when the issue with the O.C.R.M. line came up that the

bank was somehow at fault. And in point of fact, we did not know or could not have known because he did not review the appraisal materials and the materials that the appraiser had in front of him and actually used to say this lot is worth 1.6 which later it was learned that it wouldn't be worth 1.6 because of the restrictions.

So we just simply don't think that a reasonable person would have thought or should have known to sue his bank when issues arise. Sue the title company? Yeah. Sue the lawyer who did the closing? Perhaps. Again, pursue administrative law remedies regarding the O.C.R.M. line? Absolutely. But to just turn around and say, guy who loaned me the money for this lot, I think you are at fault.

So that is kind of the backdrop. And that is the first position that we think that the court should reconsider.

This second issue that we want to raise, Judge, involves -- I submitted a letter January 13th of 2014 prior to the court ruling on this. And then Mr. Saxon submitted his response to my letter. And in those -- basically the only things that we raised which had not previously been argued, Your Honor, is this issue that Mike and I actually discussed which

is why Mr. Mogil has joined me. He has done a fair amount of research on this.

But the issue is does a compulsory -- does the statute of limitations run on a compulsory counterclaim? And I'll tell you now, Judge, in South Carolina that particular issue has not been ruled on. I can tell you that other states have ruled on it through case law as well as created statutes. Georgia has a statute that essentially says compulsory counterclaims can't run on -- a statute of limitations cannot run on a compulsory counterclaim.

After looking into this with Mike's assistance, I obviously thought it was important to put it before the court. And I certainly think it was important that Dan had an opportunity to respond to it, but the first thing as my research indicates, Your Honor, is that is this a compulsory counterclaim? And a compulsory counterclaim, as I understand it, is one that arises out of the same transaction or occurrence as the underlying lawsuit.

Well, we know that the bank has sued Mr. Segars to hold him -- in a foreclosure action to hold him in default on a loan. Our counterclaim is that the bank erred and through their agent was

negligent in the same transaction, so the loan.

We believe that that makes it a compulsory counterclaim. And we believe that the issues -- that that basically tolls the statute of limitations and just my letter contains some information in there, but essentially is I think the courts that have ruled on it in different states, Your Honor, say, well, if the bank is bringing an action and that is basically not stale, then how could a compulsory counterclaim be stale? In other words, it's a fairness ruling that, you know, if they are bringing an action against us, and that is deemed to be within proper time limit, then a counterclaim filed within the proper period for a responsive pleading is also just as valid.

That is -- the hardest point, Judge, is I can't point to a case in South Carolina because it simply hasn't been ruled upon. There is some information in my letter brief that will basically provide the court information on that. There is other --

JUDGE DUKES: So, I mean, under your theory at the end of a 30-year mortgage if a borrower stopped making the payments then you are saying any claims from the inception of that loan

would be tolled as far as all the way for 30 years, I mean 29 years or something? I mean --

MR. FINN: Judge, I saw no restrictions that would make your scenario untrue. I mean, I think that, yes, it's not barred based on what we've researched that if they have a right to bring the action, we have a right to bring a counterclaim so long as it's a compulsory counterclaim which I think there is no way that this is not given that they both relate to the loan being the single transaction.

In addition, Judge, there is other law that I cite in my letter brief that indicates that while some states have not ruled on this compulsory counterclaim issue, the statute of limitations being tolled on a compulsory counterclaim, that one can always bring a counterclaim for recoupment.

In other words, they are saying that you can bring your counterclaim. It can't be a sword, but they certainly -- the example I was playing to my client and to Mike, as I understood it, was that if Mr. Segars has a claim that he lost a million dollars in this transaction as a result of the bank's agent's action and therefore the bank, that he couldn't get a judgment against them for a

million dollars, but he certainly could get a setoff for any amounts that the bank are claiming against him.

JUDGE DUKES: You are talking about like an affirmative defense or something there, right?

MR. FINN: Yes, sir. Yes, sir. But he wouldn't -- that old expression, it's not -- can't be used as a sword, but as a shield. So that is the half argument, Judge. I probably should have called it my third argument, but there is -- I cite that as what is known as a counterclaim for recoupment. In most states, according to my research, and the Supreme Court in a case called Boll has said that is absolutely the law.

JUDGE DUKES: I mean, this order dealt not with any affirmative defenses, but with counterclaims. Is that -- am I right on that?

MR. FINN: Well, Judge, I'm glad you said that. I don't -- Judge, I think that the ruling does not mention anything about the statute of limitations either being tolled or not being tolled on a counterclaim -- on a compulsory counterclaim. So I'm not sure that the court considered it or didn't feel it had to consider this

argument, but that was one of the primary reasons for asking the court to reconsider.

JUDGE DUKES: But I guess I was getting back to I don't know if there were any affirmative defenses, but this particular order doesn't address striking any affirmative defenses I don't think.

MR. FINN: No, Judge. We did not have any affirmative defenses as I recall. I think we had three causes of action for negligent misrepresentation. I think we might have dispensed with the other two and might have only been left with negligent misrepresentation in the end.

JUDGE DUKES: Okay. All right. I'm sorry. I didn't mean to interrupt. Go ahead.

MR. FINN: I think --

JUDGE DUKES: Is that all two and a half?

MR. FINN: Well, I'm going to call that three, Judge. The recoupment would be the third argument.

JUDGE DUKES: All right. All right, Happy to hear from --

MR. FINN: Judge, and I would also -- I apologize. This was an interesting issue that

really -- I feel it was interesting that came up when Mike and I were discussing it. I wanted to put it before the court, but, you know, I do think it has legs in that if the court would allow or desire us to more thoroughly brief it, I felt my first notion was I need to get this before Judge Dukes so that he's aware that this argument is out there and we would like to pursue it. So --

JUDGE DUKES: Okay. Thank you for the offer. Who is going to do this one?

MR. SAXON: Judge, I'm going to take those -- the two and a half or three backwards. With the recoupment claim and the affirmative defense claim there were no affirmative defenses pled in this. This was pled as counterclaims that came up. And what remains is the negligent misrepresentation as I recall.

Now, Mr. Finn cites the Boll case from the U.S. Supreme Court for his premise that the recoupment is something that the statute does not toll. In fact, the Boll case was a tax case that involved a business which had paid income taxes and the death of the business owner which involved an estate tax that was generated.

Essentially -- and Ms. Cerrati briefed

that for you and you have a copy of it, but essentially that case involved the tax authority, the I.R.S., double dipping. They were taking and charging income tax and collecting it and they were charging an estate tax after the death of the decedent. And after the statute had tolled to recoup they went back and made a claim to come back.

And that was heard in District Court. And the District Court held that there was an -- it was an overpayment of the estate tax. That it was either/or, but not both. And, I'm sorry, the trial court held.

And that came before the District Court on a statute of limitations argument and ultimately before the Supreme Court. The Supreme Court held, look, this is a case where the government physically has taken the money. Okay. We have double dipped on this. And we admit that we've double dipped on it, but because the statute tolled we are not going to allow them to go back and recoup.

And that holding was somewhat limited. It said the U.S. Government as we held cannot as a claim against an innocent party hold his money which is gone into its treasury by means of fraud of their agent. And that is the U.S. versus some state bank.

So the facts of that case are just completely different. That was a case where the I.R.S. physically held Boll's money. They had taken it twice.

And the Supreme Court looked at that and said, no. Where we acknowledge that -- the United States can't hold a man's money. In this case we don't even have a claim or Mr. Segars' claim is not that the bank is holding his money somehow. He has alleged that he was damaged as a result of a negligent appraisal which should now be imputed against the bank.

So it's not an issue of recoupment of money that is being held. That is going to dovetail into the second argument on the nature of the claim itself, the counterclaim. And Mr. Finn styled that and is conceding that almost to be a compulsory counterclaim. We don't concede that it is a compulsory counterclaim at all.

In this transaction Mr. Finn asked the bank in 2004 or '05 to loan him money.

MR. FINN: Segars.

MR. SAXON: I'm sorry. Mr. Segars.

MR. FINN: I've asked them, too.

MR. SAXON: In connection with the

evaluation of that loan an appraisal was performed. Mr. Segars alleges that that appraisal was negligent. The loan was made and accepted. Years passed where Mr. Segars paid on the loan, but in 2009 he defaulted on the payment obligations. And the default of the payment obligations of the loan gave rise to the foreclosure action of collecting that.

Mr. Segars could have brought his claims as he styled them at any time after the loan was made. It was styled as an independent claim and probably should have been a claim against the appraiser frankly who he alleged was negligent.

So I don't see it as a compulsory counterclaim at all, but rather a permissive counterclaim. And in that regard some of the authority that has been cited is a little bit different.

Excuse me. Jennie, this comes from?

MS. CERRATI: This is Westlaw's website, their text section.

MR. SAXON: Mr. Segars' letter to you indicates in his second paragraph, that when a plaintiff files a counterclaim most courts hold the statute of limitations ceases to run on any

counterclaims, permissive or compulsory, that the defendant later imposes in a responsive pleading.

I don't believe that is our law in South Carolina. And I don't believe that is a correct statement of the law overall. I believe the authority is that some states or there is some authority to the effect that a compulsory counterclaim may be maintained, but it's clear that a permissive counterclaim cannot. And the reason is the staleness argument.

Most states will not hold that a permissive counterclaim exceeds the statute of limitations unless the counterclaim has not run at the time the plaintiff files his action. And I hope I'm saying that as clearly as possible. In this case, Mr. Segars' counterclaim we believe ran at its very latest in March of 2008. And that was a little over a year before N.B.S.C. filed its action on the foreclosure.

As to Mr. Finn's first argument on the copy of appraisal. We talked about that or we argued that a bit, Judge, during our initial hearing on this. And granted, that has been at least a year ago. As a little bit of background, this property -- two appraisals -- I'm sorry. Two

surveys were done, subdivision surveys for this subdivision area and for this property.

The initial survey that was done showed the O.C.R.M. line. And it had a line that said future O.C.R.M. line. That survey was not stamped approved by O.C.R.M. and it's recorded in Beaufort County records.

About a year or 18 months later the developer of the property recorded a new subdivision survey. And the difference is that now the line marked future O.C.R.M. line is gone. It's just not there. That plat is stamped approved by the O.C.R.M. and it's recorded in the Beaufort County records.

Both of those subdivision plats were of record before Mr. Segars entered into the contract to buy the property. They were both of record when the loan was made and when it was closed. And as a matter of fact, as I recall the vesting deed to the property referenced the survey which did not have the marking of future O.C.R.M. line.

Now, there was some testimony from Mr. Segars that he and his attorney, that it was very important to him as to where that O.C.R.M. line is because that would dictate how large a house he

could build on this property. The property is encumbered by private land use covenants from, well, CC&Rs which have a provision. And Mr. Segars felt that it was very important that the O.C.R.M. line actually be where future O.C.R.M. line marking was so that he could build a house of the substantial size that he needed to re-sell and recoup his investment that he intended to put on this property.

After the closing -- let me back up a little bit. When the contract was entered into the contract contained a 30-day due diligence provision with an automatic out. It contained a financing contingency if financing couldn't be obtained he could term the contract.

At the time that he applied for the loan in May of 2004 or '05 the financing contingency had expired under the contract. The due diligence provision had expired under the contract. The appraisal was done and performed only days before the closing of this occurred.

And Mr. Segars testified that -- well, he testified that he could not recall if he ever saw the appraisal or asked for the appraisal, that normally his practice was just to ask the banker what did the property appraise for. And Mr. Segars

closed on that transaction.

Thereafter the discovery was made that the plat, which was the approved plat by O.C.R.M., did not have the moved O.C.R.M. line to the seaward location the way Mr. Segars had assumed it had been. And that is the issue on the discrepancy of the plat as it would be attached to the appraisal.

Now, both plats are the same. They show the O.C.R.M. line. That didn't change. The only marking is that one says future O.C.R.M. line. That is not the O.C.R.M. line. That is what somebody has placed that maybe in the future we might want to see this put there. And before O.C.R.M -- or I would assume before O.C.R.M. would approve that they made them remove that line.

And so it really doesn't matter which plat the appraiser referenced in making the appraisal for the purposes of this argument because the O.C.R.M. line never moved. It was always the same. And our argument is and it was in this case and it was the same argument that was looked at by Your Honor and by Judge Mullen in the three other cases on this issue that has come before the court, and that was it became clear to the parties, to Mr. Segars that the O.C.R.M. line had not been moved shortly after

the closing. And that Mr. Segars' own argument is that the failure of the O.C.R.M. line to be seaward as to where he wanted it prevented him from building on this property a house sufficient to support the investment.

In fact, I believe his position is that it would have prevented building on this property at all. And at the time he knew that that O.C.R.M. line had not been moved, then he should have recalled back his discussions with his attorney where they pulled out a ruler and measured the plat to look at the size of the house that could be built. And he should have known that maybe there is a problem with the appraisal if, in fact, he thought that was the case.

And the latest that the three other cases that this court has looked at has deemed that he knew or should have known that he had a problem, March 15th of 2005. And our position is that the statute of limitations begins to run at least at that point and would terminate in three years.

MS. CERRATI: And we have the three orders if Your Honor would like to see them in which the issue was previously addressed regarding statute of limitations.

JUDGE DUKES: All right.

MR. SAXON: Judge, there were three cases actually in this. As Mr. Finn said, Mr. Segars sued the title insurance company. He sued his closing attorney, but he also sued the parties who sold the property to him. And I believe the basis of that claim was that they had showed him a building design for the house and it could not be built based on the O.C.R.M. line. And that case was also dismissed based on the tolling of the statute of limitations.

JUDGE DUKES: All right. Anything else?

MR. SAXON: That is all from me, Your Honor.

MR. FINN: Judge, the statute of limitations begins to run when the wrongful conduct is discovered. If your lawyer closes and says the O.C.R.M. line is here, you know I might have an action against my lawyer. The same with the title company when you make a claim and they are denying any coverage on that, you know you have an action against them.

Mr. Segars having not seen the appraisal, but having been told by Doug Matney at the bank that

the appraisal came in at 1.6 proceeded with the transaction. He simply discovered the wrongful conduct of the bank via the appraiser years later. That is the discovery of the wrongful conduct, not --

JUDGE DUKES: But, I mean, isn't the discovery rule more like knew or through the exercise of due diligence should have known?

MR. FINN: Absolutely, Judge.

JUDGE DUKES: But not when you actually discovery it?

MR. FINN: That is the fine line, Judge. You don't have to have the full-blown understanding of your case to know you have a claim, but if the court looks at our specific claim against the bank, we simply are arguing that it's not a reasonable conclusion that if there is some problem with the O.C.R.M. line, that the folks who loaned you the money -- what reason would we have to think that the bank had anything -- had done anything untoward or actionable? That is the crux of our argument on the statute of limitations, Judge, is that we just don't think that a reasonable person, even a person with experience in real estate matters like Mr. Segars.

And in our discussions we've made note that there was at least three different attorneys involved in this, none of whom said, hey, we've got to go after the bank. It's simply -- it's not -- it's unreasonable to think that someone in Mr. Segars' position who borrowed money from the bank and had done so before would know or think that he had a claim against the bank. What did the bank do wrong?

At that time when you know there is a problem with the O.C.R.M. line, what did the bank do wrong? It simply wasn't discovered. The wrongful conduct was not discovered until Mr. Segars had seen that appraisal and realized that the appraiser had used the plat which showed every restriction that would relate to these other problems.

And so it a true discovery rule issue. There was a lot of folks looking at this, Judge, to do due diligence. There was lawyers. And no one ever look to the bank. You know, it's the issue of when it runs. Is it reasonable that they would look to the bank and think the bank did anything wrong. And I just don't think you make that jump, Judge. And that is what the court has done. I think it's the discovery rule tolls the statute of limitations.

And it's the discovery of the wrongful conduct.

Now, there are others who certainly had liability. And they were pursued, but the bank was not because quite frankly there was nothing to pursue on.

JUDGE DUKES: Well, I mean, it sounds like almost immediately after the closing it became apparent that this property was not what your client believed it was.

MR. FINN: I would concede that, Judge.

JUDGE DUKES: And therefore I guess it's certainly not a leap to say that he believed he had paid too much for it under the circumstances. And the bank had loaned him more than it was probably worth. I mean, I think that is what we are talking about here, right?

MR. FINN: Right.

JUDGE DUKES: And so at that point is it not incumbent upon a plaintiff that very day to collect those -- all documents associated with the closing? I mean, that is the part I don't get. I mean none of these -- these were documents available immediately back in the day of the closing?

MR. FINN: I think my position, Judge

is that there was -- I wouldn't think that someone in Mr. Segars' position would think that the bank had any liability for loaning the money. It just -- I don't make that jump.

JUDGE DUKES: And actually we don't even get to that point in this motion. I mean it might not.

MR. FINN: Right. That's right.

JUDGE DUKES: I mean, this is about -- this is about statute of limitations. You know there is a bigger issue if -- but anyway, that is -- all right. Anything else? Anything from any of you?

MR. FINN: We will just ask the court to consider the other arguments that we made about the compulsory permissive claims and recoupment.

JUDGE DUKES: Okay. Anything at all from anybody then?

MR. FINN: And, Judge, if we could have an opportunity to brief those -- just those issues, the compulsory counterclaim issue which we believe tolls the statute on the counterclaim.

JUDGE DUKES: What are you all's thoughts?

MR. SAXON: Well, Judge, if we are

going to brief that issue then we would want to have time to respond to it. I think we briefed this case for a year.

JUDGE DUKES: I think so, too. You all were -- it wouldn't surprise me if you all are doing some better briefs to more important people than I am up in Columbia or somewhere at some point, but as far as I'm concerned I think that this -- these orders probably need to stand. And, you know, again you all may be heading on with this thing which is fine. And -- but to the extent that these orders state that the statute of limitations ran and my understanding of the discovery rule, I feel pretty certain on these. So I don't think that I'm going to put out burden of sending me a brief. I can certainly do a simple Form 4 if you would like on these. I don't know if you need an extensive order affirming these or denying the motion to reconsider.

MR. MOGIL: Judge, Form 4 is just what the clerk of court's office sends out? It's just a simple one page that says decision rendered, right?

JUDGE DUKES: Exactly. Well, sort of. I mean, you know, it's the form that is

required with all the orders, but I can make the form say motion denied. It's pretty simple.

MR. SAXON: Judge, would the court consider me submitting an order which at least addresses the compulsory counterclaim issue? Very simple, but just saying whatever the court wants, but I think it's important to have that the court rule on that.

JUDGE DUKES: Well, I mean you've got it on the record for all purposes. I don't know if it needs to be in the order. I mean, because essentially I'm just going to deny the motion, but -- and I don't want to put you to a burden that is sort of unnecessary. So again I can just do a --

MR. MOGIL: Form 4 will be fine, Judge.

JUDGE DUKES: -- order on both of them. So actually two cases because we had one on the roster, but it's really two. Let me make sure I've got both of them. I've got -- there is 09-3201. And that was the only one I had.

MR. SAXON: Okay. This is the other case. I'm going to give this entire thing to you. And that was just another property that was in foreclosure, but Mr. Segars had alleged basically

the same counterclaims on.

JUDGE DUKES: Let me make sure I've got both case numbers because I may have to do two Form 4s. So the first one is 3844 is that right, or one of them is 3844 and the other one then would be 09-3201?

MR. SAXON: 3201, yes, sir.

JUDGE DUKES: And both of those were filed the same day; 2/27/14, is that right or were they file at different times?

MR. SAXON: The order or --

JUDGE DUKES: The motion to reconsider.

MR. SAXON: They were filed at the same time.

JUDGE DUKES: Okay.

MR. FINN: I think it was one motion filed --

JUDGE DUKES: -- filed them both. Okay. That is -- all right. Thank you so much.

(Whereupon, the hearing was concluded at 11:39 a.m.)

Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Bank of South Carolina vs. Segars, et al, on the 14th day of May, 2014: and that the foregoing 31 pages constitute a true and correct transcription of the said hearing.

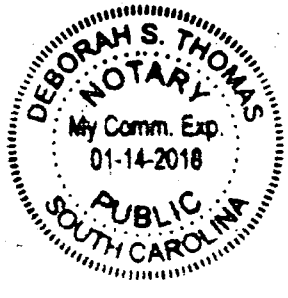
I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Thomas J. Finn, Esquire, Finn Law Group, P.C. 38 New Orleans Road, Suite D4, Hilton Head Island, South Carolina.

In witness whereof I set my hand and seal this 12th day of August, 2014.

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

My Commission
expires 1/4/18



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

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

NATIONAL BANK OF SOUTH CAROLINA,

Plaintiff,

v.

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

Defendants.

NOTICE OF MOTION AND MOTION FOR AN ORDER OF REFERENCE

JEAN H. TOOLE
BEAUFORT COUNTY, S.C.
CLERK OF COURT
2009 NOV 12 AM 10:58

TO: THOMAS J. FINN, ESQUIRE, AS ATTORNEY OF RECORD FOR DEFENDANTS THADDEUS F. SEGARS AND KCS INVESTMENTS, LLC; AND

TO: BRYSON M. GEER ESQUIRE, AS ATTORNEY OF RECORD FOR DEFENDANT SUNTRUST MORTGAGE, INC.

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the undersigned, as counsel for the Plaintiff, hereby serves notice, while reserving all rights under other motions herein or subsequently filed, that Plaintiff will, within ten (10) days hence or as soon thereafter as may be heard, move the court for an order of reference, referring this matter to the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, who shall have the authority to make findings of fact and conclusions of law; to direct entry of final judgment in this action under Rule 53(b), of the South Carolina Rules of Civil Procedure; 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 and to enter a final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate

N&S: 11275-131

Court Rules. The Plaintiff will base its Motion on Rule 71 of the South Carolina Rules of Civil Procedure, the pleadings together with all exhibits, and any memoranda in support hereof and any affidavits as may be presented.

Respectfully submitted,

NOVIT & SCARMINACH, P.A.

By: _____

Daniel A. Saxon
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Post Office Drawer 14
Hilton Head Island, SC 29938
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Attorneys for Plaintiff

November 11, 2009
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

J.J. Development Corp. Petitioner, vs. South Carolina Department of Health and Environmental Control Respondent.	Docket No. 04-ALJ-07-0304-CC **MOTION TO INTERVENE**

The below-listed property owners hereby move before this Court allowing them to intervene in the above entitled contested case filed by J.J. Development Corp. involving a baseline appeal filed and served on September 1, 2004.

This request is made because the real parties in interest in this matter are as follows:

Lot #1	Richardson Street Partners, LLC
Lot #2	Thaddeus Segars
Lot #3	Frederick Cerrato, Steven Cerrato, Kenneth Oliver, Thaddeus Segars
Lot #4	Lot 4 Singleton Beach, LLC
Lot #5	Patrick Donnelly-Rockview
Lot #6	Richard and Robin Greco
Lot #7	Snowgoose Developers, LLC
Lot #8	Wayzata Limited Partnership
Lot #9	Wayzata Limited Partnership
Lot #10	Wayzata Limited Partnership

J.J. Development, acting as agent for each of these lot owners, was the developer of the subdivision at Singleton Beach, Hilton Head Island, South Carolina. It filed all development plans and made formal requests to SCDHEC/OCRM to move the baseline.

Consistent with Rule 20, R.A.L.C., the party movants all own lots affected by movement of the baseline seaward of where it is currently located and where SCDHEC/OCRM has agreed

FILED
MAR 16 2005
SC ADMIN. LAW COURT

Exhibit N

to move it. The parties have standing and meet the grounds for intervention in that:

1. Each lot owner is adversely affected by the position taken by DHEC/OCRM and the Town of Hilton Head Island. Movement of the line allows for highest and best use of their land and failure to move the line materially affects use, enjoyment and value of these lots.

2. The lot owners' interest cannot be met by J.J. Development Corp. inasmuch as it has agency, not ownership, interest in the lots in question.

3. The lot owners' intervention will not prolong the proceedings.

   A. No discovery has occurred.

   B. The majority of the lot owners are represented by C.C. Harness, III.

   C. This appeal is in the early stages of motions.

   Further, there is no prejudice in allowing parties with direct interest to intervene.

The parties hereto adopt all pleadings, Pre-Hearing Statements, Motions and Briefs heretofore submitted by J.J. Development Corp. and will submit such affidavits, evidence or laws as shall be deemed necessary to argue this Motion.

Respectfully Submitted,

C.C. Harness, III
Law Offices of C.C. Harness, III
325 Coleman Boulevard
Mt. Pleasant, South Caroline 29464
(843) 856 2627
Attorney for lots 1,2 and 5-10

Terry A. Finger by CCH

Terry A. Finger, Esq.
Finger & Andrews PA
P.O. Box 24005
Hilton Head Island, SC 29925-4004
(843) 681-7000
Attorney for Lots 3 and 4

March 16, 2005

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT NATIONAL BANK OF SOUTH CAROLINA, Plaintiff, v. THADDEUS F. SEGARS; SEGARS AND ASSOCIATES, INC.; BEACH FIRST NATIONAL BANK; and BURKES BEACH PROPERTY OWNERS ASSOCIATION Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2009-CP-07-3844 NOTICE OF MOTION AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TO: Thomas J. Finn, Attorney for Thaddeus F. Segars and Segars and Associates, Inc.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned counsel, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order for Summary Judgment in favor of the Plaintiff with respect to Defendant's Counterclaims on the grounds that there is no genuine issue of material fact as to the question of liability, and the Plaintiff should prevail as a matter of law.

This motion shall be based on the pleadings and discovery in this case, such argument of counsel as the Court may deem proper, and any other and further law as is then and there applicable. Specifically, but without limitation, the counterclaims alleged in this case are substantially the same claims alleged by this defendant in civil action number 2009-CP-07-3201, pending in this Court and do not relate to property which is the subject of this action (Segars Depo., p.27, ll.20-25, and p.28, ll.3-9). The Plaintiff incorporates herein by reference Plaintiff's Memorandum in Support of Motion for Summary Judgment filed in case number 2009-CP-07-3201, and requests that its motions for summary in the two cased be heard simultaneously.

Respectfully submitted,

NOVIT & SCARMINACH, P.A.

By: _____

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June 15, 2012
Hilton Head Island, South Carolina

OF SOUTH CAROLINA

NTY OF BEAUFORT

TIONAL BANK OF SOUTH AROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; SEGARS AND ASSOCIATES, INC.; BEACH FIRST NATIONAL BANK; and BURKES BEACH PROPERTY OWNERS ASSOCIATION

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-07-03844

CERTIFICATE OF MAILING

The undersigned hereby certifies that he/she mailed a copy of the Notice of Motion and Plaintiff's Motion for Summary Judgment with any Exhibits and Certificate of Mailing to the party listed below this June 15th, 2012, as follows:

Thomas J. Finn, Esquire
FINN LAW FIRM
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Attorney for Defendant(s) Thaddeus F. Segars and KCS Investments, LLC

NOVIT & SCARMINACH, P.A.

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June 15th, 2012
Hilton Head Island, South Carolina

N&S: 11275-134

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-07-03201 PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

TO: Thomas J. Finn, Attorney for the above-named Defendants, Thaddeus F. Segars and KCS Investments, LLC
Bryson M. Geer, Attorney for the above-named Defendant, Suntrust Mortgage, Inc.

The Plaintiff herein respectfully submits this Memorandum in Support of its Motion for Summary Judgment on the counterclaims of Defendants Segars and KCS Investments, LLC.

STATEMENT OF CASE

This action was commenced by the filing and service of the Plaintiff's Lis Pendens, Summons and Complaint on July 6, 2009, and Amended Summons and Complaint on August 14, 2009. The Complaint seeks foreclosure of a mortgage on certain real property located in Beaufort County, South Carolina, resulting from the default by Defendant Segars ("Segars") under a loan made by Plaintiff to Segars. KCS Investments, LLC ("KCS") is a defendant by virtue of its current ownership of the property.

Defendants Segars and KCS filed an Answer and Counterclaims on or about August 18, 2009, as amended on September 24, 2009, alleging, as counterclaims against the Plaintiff, (i) negligent misrepresentation, (ii) breach of fiduciary duties, and (iii) breach of contract

N&S: 11275-131

accompanied by a fraudulent act. The counterclaims stem from an appraisal prepared for use by the Plaintiff in evaluating the loan made to Segars as hereinafter described.

By Order dated December 16, 2010, the Honorable Carmen T. Mullen granted Plaintiff summary judgment on its cause(s) of action and referred the foreclosure action to the Master in Equity while reserving the counterclaims of the Defendants for further hearing.

STATEMENT OF RELEVANT FACTS

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, South Carolina. The Property is part of a ten (10) lot subdivision known as Singleton Beach Place Extension (the "Subdivision"). The contract specified a purchase price of $1,600,000.00, and contained a financing contingency whereby should Segars fail to obtain financing within thirty (35) days of the Contract, he may terminate; but provided that should he fail take action as required by the terms thereof, the contingency would be deemed waived. Additionally, the contract was contingent upon a due diligence review of the Property and purchase by Segars on or prior to March 12, 2004. Segars completed his due diligence review of the property without termination of the contract; presumably prior to March 12, 2004 (Segars Depo., p. 29, ll.2-10). In addition to being the purchaser, Segars was the listing agent for the Property and drafted the contract himself. Segars retained Wm. Weston Newton, Esquire, to represent him in the closing of the purchase.

On or about May 18, 2004, Segars applied for a loan to finance the purchase from the Plaintiff (Ex.4, Segars Depo., p.38, l.22). At the time of the application, the financing contingency of the Contract had expired (Segars Depo., p. 75, l.8). On June 2, 2004, Segars executed a commitment letter for a loan from Plaintiff (Ex.6, Segars Depo., p.41, l.13) which, among other contingencies, was subject to an appraisal of the Property acceptable to Plaintiff in the amount of $1,600,000 or greater. The contingency of the appraisal was for the sole benefit of the Plaintiff (Segars Depo, p.97, l.21). The Plaintiff obtained an appraisal of the Property from S.V. Lindsay of

the Lindsay Company, an independent appraiser licensed by the State of South Carolina, who estimated the value of the Property to be $1,600,000.00 (the "Appraisal").

On or about June 9, 2004, Plaintiff made a loan to Segars in principal amount of $1,360,000.00 as financing for the purchase of the Property. The loan was secured by a first priority mortgage on the Property. Thereafter, the loan was renewed and/or modified on two occasions to extend the maturity date.

The gist of Segars' counterclaims is that the appraiser erred in his valuation of the Property in that, based upon the applicable OCRM baseline[1] and other set back requirements, the true value of the Property was a fraction of the estimate given in the Appraisal and the price Segars had agreed to pay for the Property. Further, that by transmitting the results of the Appraisal to Segars, either expressly or by implication, amounts to either a negligent misrepresentation by Plaintiff or an intentional concealment made to induce Segars to accept the loan and borrow money from the Plaintiff.

Segars does not contend that the Appraisal contains inaccurate information with regard to the three (3) recent property sales within the Subdivision which were used as comparables (Segars Depo., p.57, l.15), but rather, that the purchasers of those comparable properties were not "knowing buyers", as they lacked knowledge of the location of the OCRM baseline (Segars Depo., p.57, l.15), and that the appraiser should have known this based upon the then existing OCRM baseline, the applicable building restrictions, and the applicable private covenants and restrictions.[2]

[1] The OCRM baseline is established by the Office of Ocean and Coastal Resource Management pursuant to the Coastal Zone Management Act, S.C. Code § 48-39-280, generally prohibiting construction seaward of the line.

[2] Segars contends that the private covenants applicable to Singleton Beach prevent construction on the Property. Segars is an eleven (11) year resident of the Singleton Beach community and his residence is subject to these same private covenants. Thus, at that time of the purchase, Segars was acquainted with the covenant restrictions having constructive, if not actual notice of the provisions thereof.

By way of relevant background:

Segars is a licensed real estate agent and has been involved in the real estate profession on Hilton Head Island since 1986, as an agent for both purchasers and sellers of real property. During that time he has invested in approximately forty (40) or more properties for his own account, and has acted as a developer of property including beach front property development (Segars Depo., p. 1.22 – p. 9, l.5). Segars was familiar with the existence of the Office of Ocean and Coastal Resource Management and the implication of the OCRM baseline placement as it relates to oceanfront properties and the construction thereon (Segars Depo., p.9, l.13 – p.10, l.16).

Prior to the purchase, Segars was well acquainted with the Property. In 2001 he entered into a contract to purchase three (3) ocean front lots which would eventually be combined with other properties to create the Subdivision. Rather than close on the purchase in 2001, Segars assigned his contract to Richardson Street Partners who closed and took title (Segars Depo., p.12, l.13 – l.22). Richardson Street Partners later partnered with J.J. Development to develop the Subdivision with the intention of having the then existing OCRM baseline moved forward to increase the buildable area for each of the ten (10) lots. Segars testified that Ed Flynn, owner of J.J. Development, advised him that the Office of Ocean and Coastal Resource Management and the Town of Hilton Head Island had agreed to the relocation of the OCRM baseline seaward on the existing line. A survey of the Subdivision was prepared on November 12, 2002, and recorded on January 29, 2003, which depicts two reference lines, one labeled "Beach Management Act Baseline" and the other labeled "Future Beach Management Act Baseline" (the "First Survey"). The survey does not bear the approval of the OCRM. (Ex.1, Segars Depo., p.14, l.21 – p.20, l.5). Segars reviewed the survey with Mr. Newton shortly after the recording thereof. At the time Mr. Newton was acting as attorney for Richardson Street Partners and Segars was acting as its real

estate list agent. Segars' primary concern was that a house of four thousand (4,000) square foot could be constructed on the Property[3].

Thereafter, Segars, as listing agent, offered the Property for sale at a listing price of approximately Two Million ($2,000,000.00) Dollars. While Segars does not recall if he assisted in arriving at the listing price, he testified that it is his practice to consult and advise his clients as to an appropriate listing price. (Segars Depo., p.25, l.2 – 20).

On or about December 4, 2003, a new survey was prepared for J.J. Partners and Richardson Street Partners which survey was recorded on December 15, 2003 in Plat Book 96 at Page 160 (the "Approved Survey"). The Approved Survey was similar to the First Survey with the relevant difference being that line marked "Future Beach Management Act Baseline" had been removed, and that this survey was approved by DHEC-OCRM. Accordingly, the Approved Survey did not relocate the OCRM baseline.

Segar's contract to purchase the Property was made approximately fifteen months after recording of the Approved Survey. As indicated above, Segars then performed his due diligence review and applied for the loan from the Plaintiff. The application for the loan occurred after the completion of his due diligence, after the expiration of his financing contingency, and after retaining Mr. Newton to represent him in the purchase. The appraisal in question was prepared on June 2, 2004 (Ex.13, Segars Depo.), seven (7) days prior to the closing, and Segars testified that he did not review the appraisal prior closing (Segars Depo., p.62, l.8).

was it provided

The deed of Richardson Street Partners conveying the Property to Segars specifically referenced the Approved Survey in the legal description and made no reference of the First Survey. Further, the deed specifically referenced the location of the OCRM baseline as being depicted on a plat prepared by Sea Island Land Survey, LLC being job number 3-926, and Segar's

[3] Segar's testimony is that he and Mr. Newton reviewed the survey with respect to Lots 1, 2 and 3, as these were the lots Richardson Street Partners would be receiving and placing for resale. The lots were contiguous and subject to the same building restrictions, thus the buildable envelop would be similar for each.

acknowledgement of the said plat by acceptance of the deed. Despite the language of the deed, Segars testified that he never read it nor did he have the language explained to him (Ex.12, Segars Depo., p.50, l.21 – p.51, l.6).

On or about March 26, 2009, Segars commenced a civil action against Mr. Newton and his firm, Jones, Patterson, Simpson & Newton, P.A., alleging legal malpractice. Segars Complaint in that suit alleges, in part, that "Newton advised plaintiff that based upon the Future Baseline reflected on the 2002 Plat [the First Survey], a home of the minimum size specified by the plaintiff [4,000 square feet] could be built on Lot 2 [the Property herein]" and further, that "Based on Newton's professional advice, plaintiff decided to proceed with his purchase of Lot 2" [emphasis added]. Additionally, in 2008, Segars filed an action alleging claims resulting from the same OCRM baseline matter against Richardson Street Partners and Fidelity National Title Insurance Company. Segars made no allegation against the Plaintiff or the appraiser in either suit and Segars has never made a claim against the appraiser.

ARGUMENT

In determining whether summary judgment is proper, the Court must view all evidence in the light most favorable to the non-moving party. 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).

A. The Plaintiff is Entitled to Summary Judgment on the Defendants' Counterclaims as those Claims are Barred by the Statute of Limitations.

Defendants assert, as counterclaims: (i) negligent misrepresentation, (ii) breach of fiduciary duties, and (iii) breach of contract accompanied by a fraudulent act, all of which are based on the appraisal of the Property used by the Plaintiff in evaluating the loan. These causes are governed by a three year statute of limitation. See, S.C. Code Ann. § 15-3-530 (1) and (7) (which provides for a three year limitation period on contract claims) and S.C. Code Ann. § 15-3-530 (5) (which provides for a three year limitation on tort claims).

In determining whether the statute of limitations bars the causes of action, the Court must first determine when the cause of action arose. Generally, a cause of action accrues under the South Carolina law at the moment a breach of duty occurs. Grooms v. Medical Soc'y of S.C., 289 S.C. 399, 380 S.E.2d 855 (Ct.App.1989). 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). See, also S.C. Code Ann. § 15-3-535. The statute starts to run upon the discovery of such facts, as would have led to the knowledge thereof if pursued with reasonable diligence. Id, Barr. 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).

Segars' alleges that after taking the loan, he "later learned" that, based upon the OCRM baselines and other set back requirements, the Property was unbuildable and thus "worthless". (Answer and Counterclaim, para. 15). Segars' claims that he purchased the Property under the

belief that the "Future Beach Management Act Base Line" on the First Survey, was in fact, the OCRM line at the time of purchase. This would have allowed a greater building envelope on the Property. In fact, the OCRM baseline had not been moved at the time of purchase and the building envelope was smaller than expected. Segars testified, in essence, that the smaller building envelope would not permit construction of a house of at least 2,500 square feet, and this was the minimum size restriction under the applicable private use covenants.

For the purposes of this motion, the question becomes the time period during which Segars learned of facts which would have put him on notice of the true location of the OCRM baseline. Segars become aware of problems with the Approved Plat shortly after closing on the purchase of the Property. Segars testified that two (2) weeks after the closing on the Property, the Town of Hilton Head Island (the "Town") revoked the Approved Plat based on an inaccurate easement. (Segars Depo., p.95, ll.14-18). Fidelity Title Insurance Company retained an attorney to represent Segars and other lot owners within the Subdivision to cure matters related to plat revocation by the Town in September or October of 2004. (Segars Second Deposition, January 19, 2011 "Segars Depo. 2nd", p.13, ll.9-19, p.14, ll2-8). Segars testified that the plat revocation did not concern the OCRM baseline (Segars Depo. 2nd, p.15, l.23). Segars testified that he, along with a group of other owners retained the services of "Cotton" Harness in an administrative law case regarding the movement of the OCRM baseline. Although Segars could not recall the date, he believes he retained Mr. Harness and joined the administrative court case "sometime in '05". That case sought to have the OCRM baseline move from the existing location further seaward. (Segars Depo. 2nd, pp. 19-21). On March 16, 2005, C.C. Harness, III, Esquire, filed a Motion to Intervene on behalf of the ten (10) Subdivision Lot owners, including Segars, in case number 04-ALJ-07-0304-CC, then pending in the Administrative Law Court of the State of South Carolina (the "ALC Case"). (see, Exhibit "A", hereto). The motion specifically alleges that, "Each lot owner is adversely affected by the position taken by DHEC/OCRM and the Town of Hilton Head Island. Movement

of the line allows for [the] highest and best use of their land and failure to move the line materially affects [the] use, enjoyment and values of these lots." Accordingly, there can be no dispute that Segars learned of the true location of the OCRM baseline at least by March 16, 2005, more than three (3) years after asserting the Counterclaims against the Plaintiff.

The issue of Segars' discovery of the true location of the OCRM baseline has been litigated and determined with finality by this Court in the two (2) separate cases mentioned above. The doctrine of collateral estoppel bars Segars from asserting a position contrary thereto. Under the doctrine of collateral estoppel, when an issue has been actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action whether on the same or a different claim. Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224 (2008). The doctrine of collateral estoppel may be asserted defensively by one who was neither a party to nor in privity with a party to the previous action. The issue is whether the party adversely affected had a full and fair opportunity to litigate the issue in the prior action. Graham v. State Farm Fire and Casualty Insurance Co., 277 S.C. 389, 287 S.E.2d 495 (1982).

In the case of Thaddeus F. Segars v. Richardson Street Partners, LLC, et al., civil action number 2008-CP-07-2791, Segars alleged, among other claims, fraudulent misrepresentation against Richardson Street Partners, LLC and J. Paul Gaughf based upon the very same issue of the location of the OCRM baseline on the Property. Segar's complaint in that case was filed on August 4, 2008, but not served until January 31, 2009. The Court granted these defendants motion for summary judgment finding the claim(s) to be barred by the statute of limitations. Specifically, the Court found:

> "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 drawings 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.'" "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."

Thus, Segars is estopped from asserting that he did not learn of the true position of the OCRM baseline until after "late in 2005".

In the case of Thaddeus Segars v. Jones, Patterson, Simpson & Newton, P.A., et al. ("JPSN"), civil action number 2009-CP-07-381, Segars alleged a claim of negligence against the attorney and law firm representing him in the closing of purchase of the Property. The basis of Segar's claim is that his attorney failed to advise him, prior to closing, that the OCRM baseline had not been moved seaward and/or failed to provide to him or disclose the existence of the Approved Survey which revealed that the OCRM baseline had not been moved. Specifically, Segars alleged the defendants to be negligent as in the following manner: (i) in advising Segars that he could rely on the Future Baseline shown on the First Survey; (ii) in advising Segars that the OCRM line had been moved when in fact it was never relocated; and (iii) in failing to advise and recommend that Segars make the relocation of the OCRM line a condition of the closing. In granting JPSN's motion for summary judgment based on the expiration of the statute of limitations, the Court found that,

"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 advised 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 [the Approved Plat] until late in 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 the which was the 2003 plat." Thus, Segars is estopped from asserting that he did not learn of the true position of the OCRM baseline until after March 2005.

The doctrine of Collateral Estoppel is available to the Plaintiff to prevent Segars' assertion that he learned of the true location of the OCRM baseline either: (i) after "late in 2005"; or (ii) after March 2005, as this issue has been previously tried in this Court to finality where Segars had a full and fair opportunity to litigate the issue. The timing of Segars' discovery of the true location of the OCRM baseline was the determining issue in both cases.

B. The Plaintiff is Entitled to Summary Judgment on the Defendants' First Counterclaim as the Defendants Cannot Demonstrate that Plaintiff Made any False Representation Regarding the Appraisal and the Defendants Were Not Entitled to Reliance as a Matter of Law.

The substance of the Defendants' First Counterclaim, Negligent Misrepresentation, is: (1) that Plaintiff obtained an appraisal of the subject Property; (2) that Plaintiff advised Segars that the appraisal valued the Property above the necessary threshold (presumably as set forth in the loan commitment); (3) that the appraiser erred in his valuation estimate; (4) that Plaintiff either knew the appraisal was inaccurate or should have discovered the same; and (5) that Plaintiff's approving the loan in question amounted to a misrepresentation of the true value of the Property.

Assuming that the appraisal in question was prepared in error, which is denied, the Defendants claim must fail because they cannot demonstrate any false representation by the Plaintiff. To prove a claim for negligent misrepresentation, the Defendants must establish that: (1) Plaintiff made a false representation to them; (2) the Plaintiff had a pecuniary interest in making the statement; (3) the Plaintiff owed a duty of care to see that he communicated truthful information to Defendants; (4) a breach of this duty by failing to exercise due care; (5) justifiable reliance by Defendants on the representation; and (6) a pecuniary loss resulted to the Defendants as

a proximate cause of the representation. Quail Hill, LLC v. County of Richland, South Carolina, 387 S.C. 223, 692 S.E.2d 499 (2010). There is no dispute that the final estimate of value as described by the appraisal amounted to $1,600,000. Segars testified that he never reviewed or saw the appraisal prior to the closing of the purchase (Segars Depo., p. 62, ll.5-8). Further, he could not recall if the Plaintiff ever advised him of the amount of the appraisal other than to say that it was his practice to inquire prior to closing as to amount of the appraisal and that he believes that was done in this case. Specifically, Segars stated:

> "I would generally ask: What did the house appraise for, what did the lot appraise for, what did the subject property appraise for? Did it appraise for less, did it appraise for the contract price, did it appraise for more...and so I feel as though I couldn't swear, but I feel very confident that I would have asked Doug Matney what it appraised for prior to closing" [emphasis added]. (Segars Depo., p. 74, ll.24-14).

Accordingly, at best, Segars can testify that he recalls the Plaintiff advising him as to the appraised value of the Property in response to his request. As there is no dispute as to the amount set forth in the appraisal, the Defendants cannot demonstrate that Plaintiff made a false representation to them, but rather, that Plaintiff advised Segars as to what the Property did in fact appraise for.

The Defendants attempt to use this cause of action to convince the Court that an error in the valuation of the Property by the appraiser should be imputed onto the Plaintiff, and that, by relaying the appraised value to Segars, Plaintiff made a false statement. Assuming the appraiser incorrectly valued the Property and that the appraiser's acts or omissions may be imputed onto the Plaintiff, both of which are denied, the Defendants' claim must fail because Segars could not justifiably rely on the valuation based on the errors alleged. There is no liability for casual statements, representations as to matter of law, or matters which the claimant could ascertain on his own in the exercise of due diligence. Id. Quail.

In Quail, the plaintiff, a real estate developer, retained a licensed real estate broker to represent its interest in the purchase of 72.5 acre parcel for development as a manufactured-home subdivision. The agent met with the Richland County Subdivision Coordinator who advised that the applicable zoning would allow for the intended use. The property was purchased and during the development phase, the plaintiff learned that the zoning advice had been erroneous. In the resulting action against the Richland County for negligent misrepresentation, the Supreme Court found the claim to be controlled by the question of whether the plaintiff could have justifiably relied on the representation of the County staff. As a review of the Official Richland County Zoning Map by Quail or its agent would have revealed the true zoning classification, the Court reasoned that the alleged reliance could not be justified.

Here, the Defendants allege that the appraiser erred in failing to consider the impact of the then existing OCRM baseline and the affect thereof on the potential construction on the Property. There is no question that the Approved Plat, which was recorded in the Beaufort County records prior to Defendants' contracting to purchase the Property, depicted the accurate location of the OCRM baseline upon the Property. As such, the location of the OCRM baseline was easily discoverable by Defendants through the exercise of their own due diligence.

Furthermore, the deed by which Defendants acquired the Property from Richardson Street Partners, LLC referenced the Approved Plat which depicted the existing OCRM baseline; however, Segars testified that "...[the] language, it never would have been explained or read in all honesty." (Segars Depo., p. 51, ll.2-3, also, Ex.12). In determining the issue of justifiable reliance in the context of a negligent misrepresentation claim, our Courts have consistently held that "while issues of reliance are ordinarily resolved by the finder of fact, there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter." Id. Quail. See also, McLaughlin v. Williams, 379 S.C. 451, 665 S.E.2d 667 (Ct.App.2008), quoting, Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 419 S.E.2d 795 (Ct.App.1994). Thus, Segars had access to the true location of

the OCRM baseline prior to closing by a simple review of the Beaufort County records and the legal description contained in the deed by which Defendants acquired title to the Property.

Accordingly, the First Counterclaim must fail because the Defendants cannot show a false representation made by the Plaintiff or, in the alternative, justifiable reliance thereon as a matter of law.

C. The Plaintiff is Entitled to Summary Judgment on the Defendants' Second Counterclaim as no Fiduciary Relationship Exists Between the Parties as a Matter of Law.

The Defendants' second counterclaim stems from an alleged fiduciary duty Plaintiff owed to Defendants to convey true and accurate information regarding the loan and information contained in the appraisal. This claim must fail because no confidential relationship existed between Plaintiff and Defendants and thus no fiduciary duty was owed.

A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one reposing confidence. O'Shea v. Lesser, 308 S.C. 10, 416 S.E.2d 629 (1992). Generally, a fiduciary relationship cannot be established by the unilateral action of one party; but rather, the other party must have actually accepted or induced the confidence placed in him. Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477 (Ct.App.1997).

South Carolina has consistently held that the normal relationship between a bank and its customer is one of creditor-debtor and is not fiduciary in nature. Burwell v. South Carolina National Bank, 288 S.C. 34, 340 S.E.2d 786 (1986); Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E.2d 116 (Ct.App.1976); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003). A bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of service the bank offers [emphasis added], Id. Burwell. However, no fiduciary relationship

exists between a bank and its depositor when the bank is unaware of any special trust reposed in it. Id. Burwell, see also, Steele v. Victory Savings Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct.App.1988).

To prove the existence of a fiduciary relationship between Plaintiff and Segars, Defendants, at a minimum, must allege and demonstrate that Plaintiff undertook to advice Segars as part of a service that the bank offers. Defendants did not allege such advice nor did Segars testify that any such advice was given. Segars testimony in that regard was simply, that he probably asked Doug Matney what the Property appraised for, and Mr. Matney provided that information to him. Accordingly, the Plaintiff did not at any time undertake to advise Segars as part of a service Plaintiff offers.

D. The Plaintiff is Entitled Summary Judgment on the Defendants' Third Counterclaim Because the Defendants do not contend Fraudulent Intent.

The Plaintiff is entitled to Summary Judgment on the Defendant's Third Counterclaim, breach of contract accompanied by a fraudulent act, because the Defendant does not contend the Plaintiff had any fraudulent intent. To prevail on this claim, the Defendants must prove three elements: (i) a breach of contract; (ii) fraudulent intent relating to the breaching of the contract; and (iii) a fraudulent act accompanying the breach. Lister v. NationalBank of Delaware, N.A., 329 S.C. 133, 494 S.E.2d 449 (Ct.App.1997). The essential element in this cause of action involves both fraudulent intent and a fraudulent action which accompanies a contract breach.

In essence, the Defendants allege that: (1) the appraiser either made a mistake or intentionally concealed information regarding the OCRM baseline; (2) that the concealed information indicated that a home could not be constructed on the Property; and that the Plaintiff committed an act of deception and fraud by not disclosing the concealed information to Segars with the intent of inducing Segars to take a large loan to purchase near worthless property.

Segars testified that he did not believe the appraiser, Stephen Linsday, or the Plaintiff, through its employee, Doug Matney, intentionally misrepresented the value of the Property.

Rather, he testified that he believes an error was made. (Segars Depo., p. 81, ll.19-25, p. 82, ll.2-8). As such, the essential element to this cause of action does not exist and Plaintiff is entitled to Summary Judgment as to this claim.

CONCLUSION

The Defendant's counterclaims are all based on the appraisal of the Property prepared for the Plaintiff prior to the loan approval. In essence, the Defendants allege the appraiser erred in failing to recognize that the then existing OCRM baseline, when read in connection with the applicable private covenants upon the Property would not permit the construction of a residence, or that the appraiser, together with the Plaintiff, intentionally concealed the fact from Segars in order to induce him to borrow money.

The evidence clearly shows that Segars knew, as of March 16, 2005, when he moved to intervene in the administrative law court matter, that the OCRM baseline had not been relocated as he had thought. At the same time, he knew that a house could not be built on the Property if the old OCRM baseline controlled. As such, Segars knew or should have known that he believed the appraisal to be in error at that time. Nevertheless, the claim was not made until the summer of 2009, and then, against the Plaintiff lender, rather than the appraiser. Therefore, the Court should grant summary judgment to Plaintiff on the Defendants' counterclaims since Defendants commenced this action more than three years after they knew or should have known that the claim might exist.

In the alternative, the Court should grant summary judgment to Plaintiff on the Defendants' first counterclaim because the Defendants are unable to show that Plaintiff made a false representation. Additionally, Defendants are not entitled to rely on OCRM baseline location as implied by the appraisal because the true location of the OCRM baseline was easily discoverable

prior to the purchase by a simple review of the public records or by a review of the legal description of the deed by which Defendants acquired title to the Property.

Additionally, the Court should grant summary judgment to the Plaintiff on Defendants' second counterclaim because the Defendants are unable to show that a confidential relationship between Plaintiff and Defendant exist(s)(ed) that would give rise to a fiduciary duty.

Finally, the Court should grant summary judgment to the Plaintiff on the Defendants' third counterclaim because Segars has testified that he does not believe the Plaintiff or the appraiser intentionally misrepresented the value of the Property, and accordingly, in the event there was any breach of contract, which is denied, no fraudulent intent can be shown to have existed in such breach.

The Plaintiff prays this Court grant its Motion for Summary Judgment on all counterclaims and award to it the costs and expenses associated with defending the same including its reasonable attorney's fees.

Respectfully submitted,

NOVIT & SCARMINACH, P.A.

By: _____

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June 15, 2012
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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 FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2009-CP-07-03201 PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

TO: Thomas Justin Finn, Esquire, Attorney for the above named Defendants, Thaddeus F. Segars and KCS Investments, LLC,

The Plaintiff herein respectfully submits this Supplemental Memorandum in Support of its Motion for Summary Judgment on the counterclaims of Defendants Segars and KCS Investments, LLC.

Introduction

The facts were laid out with specificity in Plaintiff's original Memorandum of Law in Support of its' Motion for Summary Judgment. A hearing on the merits was conducted with both sides advocating thoroughly on behalf of their client. As this is a supplemental brief requested by the Court, we will limit the arguments and issues to those matters that the Court was inclined to review additional information on. A brief recapture of the facts at issue are that Defendant Segars ("Segars") is seeking to have this Court not only adopt for the first time in South Carolina, a 'negligent appraisal defense' to a deficiency judgment following foreclosure, but to convert the

N&S: 11275-131

shield into a sword and contort the defense into an affirmative counterclaim seeking damages based thereon.

The negligent appraisal defense aside, the more paramount issue is the expiration of the Statute of Limitations, which precludes any such counterclaims.

Statute of Limitations Precludes Plaintiff's Counterclaims

Under the 'discovery rule' 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. Department of Transportation 344 S.C. 115, 123, 542 S.E. 2d 736, 740 (Ct. App. 2001) See also, S.C. Code Ann. § 15-3-535. Segars has filed lawsuits against everyone involved in the purchase and sale of this property except Stephen V. Linsday, the appraiser. All of these lawsuits, which have been adjudicated: against his attorney (Civil Action No. 09-CP-07-00381); against the title company and the sellers (Civil Action No. 2008-CP-07-2791); and against the Title Company individually (Civil Action No. 2011-CP-07-00931), have been dismissed based on the expiration of the Statute of Limitations.

In Civil Action No. 2008-CP-07-2791, your Honor held on May 5, 2009 "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" [Order Granting Defendants Richardson Street Partners, LLC and J. Paul Gaughf's Motion to Dismiss, filed May 20, 2009, Honorable Marvin H. Dukes, III, p. 4] Plaintiff's causes of action in that action included fraudulent and negligent misrepresentation based on the square footage of the house that could be built on Lot 2. [Order, May 20, 2009, Dukes, p. 3] This is same knowledge of the corrective plat

that would put him on notice that a house could not be built larger than approximately 2,000 square feet, would put him on notice that the land was 'unbuildable' due to the existing Covenants requiring homes over 2,500 square feet and that the land may not be worth what the 2004 appraisal stated.

In the lawsuit Segars filed against his attorney, the Court found that Seagers, "was on constructive notice of the [corrective] 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." [Order Granting Summary Judgment to Defendants, Civil Action No. 09-CP-07-00381, filed July 2, 2010, Honorable Carmen T. Mullen, p. 4-5]

Lastly, Seagers filed an action (Civil Action No. 2011-CP-07- 0931) against his Title Company, Fidelity National Title Insurance Co., for breach of contract among other claims based on the fact that on June 23, 2004, Fidelity issued a policy in the amount of $1,600,00.00 on Lot 2 and then failed to cover Segar's damages when he later placed a claim because the land was 'unbuildable'. This Court held, "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." [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]. Similarly in the herein action, at the time of Segars' purchase of the subject property, not only was corrective plat was recorded and part of the public record, it was the plat listed on the General Warranty Deed conveying the property to Segars, which was also filed with the Beaufort County Register of Deeds on June 23, 2004.

In three separate actions all centered on the same issue: the knowledge of the land being 'unbuildable' and the existence of the corrective plat, the Court found that there were several instances that Seagers was put on ample notice and that the statute of limitations began to toll at or before March 16, 2005 at the latest. Therefore, under res judicata the same knowledge and charge of due diligence must be applied to Sagers in this action, that his knowledge of the corrective plat together with the Singleton Place Covenants amounts to constructive notice that the land may not be buildable and therefore that the value of the land may not be $1,600,000.00. It is actually the very same argument that Segars himself alleges against Mr. Linsday, that he should have known the lot was unbuildable based on the review of the plat and the existence of the Covenants and Restrictions. (Deposition of Thaddeus F. Segars, August 4, 2010, p. 64-68) Mr. Segars cannot make the argument that it should have amounted to notice for Mr. Linsday and not himself, an experienced real estate professional and investor. Segars admits that he himself had responsibility in ascertaining the appropriate purchase price in his deposition when he states, "Steve Linsday would have had this [corrective] plat for his appraisal purposes, he would have been as responsible as me." [emphasis added] (Segars Depo., p. 67, ll.14-25) When Segars actually knew of the existence of the corrective plat or the building envelope restrictions is not the standard for the Statute of Limitation to begin tolling, it is whether the party should have known through the exercise of reasonable diligence. Bayle 344 S.C. 115, 123, 542 S.E. 2d 736, 740. Given the record notice, and discovery of the corrective plat and building envelope limits in 2005, Segars had enough information that reasonable diligence would have put him on notice to any potential claim against Plaintiff and/or the appraiser in 2005. Therefore, Plaintiff's Motion for Summary Judgment should be granted as to all counterclaims alleged by Segars against Plaintiff, based upon the tolling of the Statute of Limitations.

As a Matter of Law, Defendant Segars Cannot Establish the Elements of his First Counterclaim, Negligent Misrepresentation

Segars' first counter claim against Plaintiff is for negligent misrepresentation. To establish liability for negligent misrepresentation, Segars must show that: (1) the Plaintiff made a false representation to Segars, (2) the Plaintiff had a pecuniary interest in making the representation, (3) the Plaintiff owed a duty of care to see that he communicated truthful information to the plaintiff, (4) the Plaintiff breached that duty by failing to exercise due care, (5) the Segars justifiably relied on the representation, and (6) that Segars suffered a pecuniary loss as the proximate result of his reliance upon the representation. Sauner v. Pub. Serv. Auth. of S. Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003); Quail Hill, LLC v. County of Richland, South Carolina 387 S.C. 223 692 S.E.2d 499 (2010).

Even in a light most favorable to Segars, the strongest position he has stated in deposition testimony is that he ***probably*** asked Doug Matney what the lot appraised for prior to closing. (Segars Depo., p. 75, ll. 1-14). He admits that he "couldn't swear" that he did (Segars Depo. p. 75, l.12). He cannot with certainty say that any representation was made. Even assuming that he did inquire as to what the property appraised for, a response by the Plaintiff as to what the property appraised for would be an accurate and truthful statement of fact. It is an undisputed fact that Mr. Linsday listed the amount of $1,600,000.00 as the appraised value of the subject property on his 2004 appraisal. In the event that Plaintiff did answer Segars' questions as to what the property appraised for (which is still unproven), the recitation of what was listed on the appraisal was a truthful statement of what was listed on the appraisal. There was no false statement; therefore Segars cannot meet the burden of the first element of negligent misrepresentation.

In Schnellmann v. Roettger, 368 S.C. 17 at 21, 627 S.E.2d 742 (Ct.App. 2006), with respect to a claim for negligent misrepresentation, the Court held that, "There can be no liability for casual

statements, representations as to matters of law, or matters which plaintiff could ascertain on his own exercise of due diligence." [*Citing:* Robertson v. First Union National Bank, 350 S.C. 339, 565 S.E.2d 309 (Ct.App. 2002)]. The Court held that the Schnellmanss claim that they relied on square footage on the MLS listing, despite having an inspection clause in their contract and despite a summary appraisal conducted prior to closing, which listed the lesser square footage but that was not reviewed by the Shnellmanns, was "unreasonable as a matter of law".

In a remarkably similar case, Robertson v. First Union National Bank, 350 S.C. 339, 565 S.E.2d 309 (Ct.App. 2002), the mortgagors sued the lending bank and appraiser, claiming that they were harmed by entering into a mortgage agreement with a bank secured by property with an over-estimated appraisal value. The Court granted the Defendants' motions for summary judgment on the claims for fraud, conspiracy, negligent representation and unfair trade practices, stating that the mortgagor's, "lack of reliance was glaringly absent" because "[t]he purchase price for the commercial property was already agreed upon before the [mortgagor] approached Bank for a loan." Id. at 348. The Court went on to hold that mortgagor's,

> "negligent misrepresentation claim fails because they have failed to prove reliance on the 1993 appraisal. It is undisputed that the parties agreed to a contract price without seeing an appraisal....Furthermore, we do not read Bank's commitment letter written before the appraisal was made as anything other than a promise to finance"

Not only did Segars enter into a contract price without seeing the appraisal, he let his financing contingency and due diligence period expire before applying for a loan. He was contractually committed to purchase the property for $1,600,000.00 at the time he applied for the loan regardless of the appraisal. As a matter of law, he could not have relied upon it.

It remains Plaintiff's position that it did not owe any duties to Segars, but even if there was a duty owed, Segars must show that the Plaintiff breached that duty by failing to exercise ***due care.*** Plaintiff has not cited any precedent and cannot show that a Bank should take any additional steps other than hiring a reputable neutral third-party appraiser to conduct an appraisal of a subject

property for the Bank for the purpose of extending a loan or line of credit. For the foregoing reasons, Plaintiff's Motion for Summary Judgment on Segar's counterclaim for negligent misrepresentation should be granted.

As a Matter of Law, Defendant Segars Cannot Establish the Existence of a Fiduciary Relationship with Plaintiff Necessary to his Second Counterclaim, Breach of Fiduciary Duty

South Carolina has consistently held that the normal relationship between a bank and its customer is one of creditor-debtor and is not fiduciary in nature. Burwell v. South Carolina National Bank, 288 S.C. 34, 340 S.E.2d 786 (1986); Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E.2d 116 (Ct.App.1976); Regions Bank v. Schumauch, 354 S.C. 648, 582 S.E. 2d 432 (Ct.App.2003). A bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of service the bank offers [emphasis added], Id. Burwell. However, no duty exists between bank and its depositor when the bank is unaware of any special trust reposed in it. Id. Burwell, see also, Steele v. Victory Savings Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct.App.1988).

Segars has tried to rely on First Federal Savings Bank v. Donald R. Knauss 296 S.C. 136, 370 S.E.2d 906 (Ct.App.1988), a case that is over twenty years old and relies heavily, if not exclusively on a case from Iowa, Larsen v. United Federal Savings and Loan Association of Des Moines 300 N.W.2d 281, in which Court concluded that Bank was held to have owed a duty to homeowners in a residential real estate loan transaction when the bank's own employee performed the appraisal on the property and the borrower was designated "borrower/client" on the appraisal itself. It is of utmost importance to first recognize that the appraiser was an undisputed employee of the bank not an independent appraiser. Secondly, that this duty is used in a defense and not a proactive cause of action. Finally, First Federal v. Knauss only contemplates the holding and reasoning of Larsen, and does not adopt a 'negligent appraisal defense' as a valid South Carolina defense. Knauss, 296 S.C. 136 at 139. To date, the 'negligent appraisal' has not been held by a South Carolina Court as valid defense, nor even contemplated at as cause of action.

Even if the Court were inclined to entertain the theory of the negligent appraisal defense, under these set of facts, Segars cannot establish the elements required. Knauss held that under the facts of their case, the mortgagor did not meet the criteria set forth in Larsen because "The evidence indicates the appraisals were performed by an outside appraiser, not an employee of [the bank] as was the case in *Larsen*." Knauss, 296 S.C. 136 at 141 The Court also held that because,

> "Knauss testified he probably did not see the appraisals before entering into the loans. There is therefore some evidence that he did not rely on the appraisals."
>
> Id. at 141

Lastly, in Larsen, the Court held that the Larsens "awaited the appraisal" prior to closing their sale. 300 N.W.2d 281, at 284.

In the facts of the herein action, (1) an independent third party appraiser performed the appraisal, not the Plaintiff or any agent thereof (also discussed further herein below); (2) Segars testified that he cannot even swear that he asked about the status of the appraisal prior to closing (Segars Depo. p. 73, ll.19-25, p. 74, ll.1-14) and affirmatively states that he did not actually see the appraisal prior to closing (Segars Depo., p. 75, ll.9-12); and importantly (3) both the due diligence clause and financing contingency of Segars' contract had expired prior to the appraisal, therefore, Segars was contractually bound to purchase the subject property for $1,600,000.00 regardless of his ability to obtain financing or the amount of any appraisal thereafter.

The facts of this case are more akin to those of the Robertson case in which the Court of Appeals held most recently in 2002, that there could not be any reliance by the purchaser on an alleged over-valued appraisal because "it was undisputed that the parties agreed to a contract price without seeing an appraisal" and that the appraiser "had no duty to Appellants." Robertson v. First Union National Bank, 350 S.C. 339, at 350, 565 S.E.2d 309. The Court went on to hold, "we do not read Bank's commitment letter written before the appraisal was made as anything other than a promise to finance." Id. at 350 The Court found that, "Bank had property appraised for **its own**

benefit." Id. at 351. The Court stated as follows, "we can think of no logical reason why Bank would make it a practice to intentionally make loans for an amount in excess of the collateral's value and risk substantial losses in the event of default." Id. at 351. The Robertson Court did not reference or Knauss or Larsen in making its determination. However, Robertson was decided nearly twenty (20) years after Knauss and clearly stands for the proposition that a lender owes no duty to the borrower solely with respect to the appraisal prepared for the lender's consideration in evaluation of a loan. Finding otherwise, as Segars suggests, would make any lender a defacto insurer to any appraisal used in evaluation of a loan.

Defendant Segars Cannot show that the Appraiser was an Agent of the Plaintiff

Although Segars has not affirmatively pled that an agency relationship existed between the Plaintiff and the appraiser, his allegations appear to conclude that the appraiser was negligent in performance of the appraisal, and this negligence is imputed on the Plaintiff through the concept of agency. "The decisive test in determining whether the relation of master and servant exists is whether the purported master has the right or power to direct and control the servant in the performance of his work and in the manner in which the work is to be done." Jamison v. Morris, 385 S.C. 215, 221-22, 684 S.E.2d 168, 171 (2009) [*Citing:* Watkins v. Mobil Oil Corp., 291 S.C. 62, 65–66, 352 S.E.2d 284, 286 (Ct.App.1986)., *Citing:* Keitz v. National Paving & Contracting Co., 214 Md. 479, 134 A.2d 296 (1957); see Fernander v. Thigpen, 278 S.C. 140, 144, 293 S.E.2d 424, 426 (1982) ("The test to determine agency is whether or not the purported principal has the *right to control* the conduct of his alleged agent.") (Emphasis theirs); Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969) ("The general test applied is ... whether there exists the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment."); DeBerry v. Coker Freight Lines, 234 S.C. 304, 307–08, 108 S.E.2d 114, 116 (1959) ("The right or power of control retained by the person for whom the work is being done is

uniformly regarded as the essential criterion for determining whether the workman is an employee....")].

Here, Plaintiff had no authority or control over when, where or how Mr. Linsday performed his work. Segars even admits in his deposition testimony that, "NBSC Bank is the client for Steve Linsday." (Segars Depo. p. 78, ll.5-6). It is incongruous for Segars to allege Mr. Linsday is the agent of the Plaintiff and at the same time that the Plaintiff is a client of Mr. Linsday's.

"In an actual agency case, the question is not whether the purported principal could have exercised control over its agent, but whether it did so." Jamison v. Morris, 385 S.C. 215, 222, 684 S.E.2d 168, 171 (2009). Defendant has not shown any facts, and none are in existence, that would tend to show that Plaintiff actually exercised control over Mr. Linsday. Therefore, based on the foregoing there is no agency relationship between Mr. Linsday and Plaintiff and any negligence on the part of Mr. Linsday, the existence of which has been denied, cannot be imputed to Plaintiff, nor can it be boot strapped to try to use a negligent appraisal defense or cause of action.

Conclusion

Segar's claims are clearly barred by the Statute of Limitations, which has been established in three separate actions where this Court has ruled Segars was put on notice that he should have known of the building constraints of his land by no later than March 16, 2005. This fact has been established by the Court and is res judicata and dispositive in the herein action.

Beyond the statute of limitations, as a matter of law, Segars cannot show that he meets the elements for any of his causes of action against the Plaintiff. Therefore, Plaintiff prays this Court grant its Motion for Summary Judgment on all counterclaims and award to it the costs and expenses associated with defending the same including its reasonable attorneys' fees.

Respectfully submitted,

NOVIT & SCARMINACH, P.A.

By: _____

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December 12, 2013
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 09-CP-07-03201
NATIONAL BANK OF SOUTH) CAROLINA,)) Plaintiff,)) Vs.) THADDEUS F. SEGARS;) KCS INVESTMENTS, LLC;) SINGLETON PLACE) HOMEOWNERS ASSOCIATION,) INC., and SUNTRUST) MORTGAGE, INC.)) Defendants.)	NOTICE OF MOTION AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

TO: DAN SAXON, ATTORNEY FOR PLAINTIFF, NATIONAL BANK SOUTH CAROLINA

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through its undersigned counsel, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order for Summary Judgment in favor of the Defendant with respect to Plaintiff's claims on the grounds that there is no genuine issue of material fact as to the question of liability, and the Defendant should prevail as a matter of law.

This Motion shall be based on the pleadings and discovery in this case, such argument of counsel as the Court may deem proper, and any other and further law as is in this case are substantially the same claims alleged by this Plaintiff in Civil Action Number: 2009-CP-07-03201.

FINN LAW FIRM

BY: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she mailed a copy of the Notice of Motion and Defendant's Motion for Summary Judgment with any Exhibits and Certificates of Mailing to the Plaintiff listed below this August 16th, 2012, as follows:

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_____
Carmen Williams

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT NATIONAL BANK OF SOUTH CAROLINA, Plaintiff, vs. THADDEUS F. SEGARS; KELLIE W. SEGARS, SINGLETON PLACE HOMEOWNERS ASSOCIATION, INC., and SUNTRUST MORTGAGE INC., Defendants.	)	IN THE COURT OF COMMON PLEAS IN THE FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-07-03201 DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINITIFF'S MOTION FOR SUMMARY JUDGMENT

SUMMARY OF FACTS

This matter involves a loan given by NBSC to Tad Segars for the purchase of lot 2 in the Singleton Beach subdivision named Singleton Beach Place. Mr. Segars entered into a contract to purchase lot 2 from the developers of Singleton Beach Place. The developers had furnished a plat showing a "future OCRM Baseline" The developer's Plat showed a "Future OCRM Baseline" approximately 30 feet seaward of the original OCRM baseline. The developers, JJ Development and Ed Flynn, used this plat to market the lots in the subdivision. The Plat was approved by the Town of Hilton Head Island and recorded with the Register of Deeds. Attached hereto as Exhibit (1) is a copy of that plat. In addition to the Plat, a Declaration of Covenants, Conditions And Restrictions For Singleton Place were also on file in the County Courthouse. Attached hereto as Exhibit (2) is a copy of the referenced Covenants and Restrictions. In an effort to market the lots

in the subdivision, the Developers also had a set of plans made. The plans were prepared using lot 3, the lot immediately adjacent to lot 2. There is, and was, no appreciable difference between lot 2 and lot 3. The plans depicted various elevations of a home as well as the footprint of a 3983 square foot home superimposed on a plat showing lot 3. Attached hereto as Exhibit (3) is a copy of the plans.

The contract for Sale had, among other things, contained a financing contingency that Segars would be given financing of $1,360,000.00. Mr. Segars applied for a $1.36 million loan from NBSC to purchase lot 2 Singleton Beach Place. NBSC hired the Linsday Company to conduct an appraisal of Lot 2. Linsday prepared an appraisal for NBSC valuing the property at $1.600,000.00. Doug Matney with NBSC informed Mr. Segars that NBSC will make the loan as he was in possession of a favorable appraisal report by the Linsday Company. Mr. Segars obtained a loan from NBSC for $1.6000,000.00 and purchased lot 2. In 2009 Segars obtains a copy of the Linsday appraisal and learns that the plat used by Linsday for the appraisal depicted where the original OCRM Baseline was. Based upon the OCRM Baseline, the Covenants and Restrictions already on the property, the Town of Hilton Head setbacks it would be impossible to build on lot 2. Since lot 2 was unbuildable with the aforementioned restrictions, its value could not be $1,600,000.00. In fact, unless the lot was buildable it was of little or no value. According to Mr. Segars expert, Dennis Outlaw, the Linsday Company had everything at its disposal to prepare an accurate appraisal. If Linsday had complied with USPAP the appraisal in question would have revealed that at the time the lot was unbuildable and, as such, of little or no value. Had Linsday not been negligent and the appraisal was accurate Mr. Segars would not have borrowed $1,360,000.00 to

purchase the lot. In fact, NBSC would not have legally been able to lend that sum of money.

In May 2004 Mr. Segars applied for a loan with NBSC to purchase lot 2. On May 28, 2004 NBSC notified Mr. Segars that the loan had been approved subject to an "appraisal acceptable to the Bank in the amount of $1,600,000 or greater." Attached hereto as Exhibit (4) is notification from Doug Matney of NBSC to Mr. Segars. NBSC hired Stephen Linsday of the Linsday Company to prepare an appraisal of lot 2. On June 2, 2004 the Linsday Company issued the appraisal to Matney/NBSC indicating a final estimate of value to be $1,600,000.00. Attached to and incorporated into the appraisal was a copy of the plat recorded December 4, 2003. Attached hereto as Exhibit (5) is a copy of the Linsday appraisal. Attached hereto as Exhibit (6) is a copy of the Plat used by Stephen Linsday in conducting his appraisal. Mr. Segars was thereafter informed by Doug Matney of NBSC that the appraisal came in at $1.600,000.00 and NBSC approved the loan as that condition was met. On June 6, 2004 Tad Segars purchased lot 2 for $1.6 million with a loan from NBSC of $1,360,000.00 million. The settlement statement also indicates that NBSC charged Mr. Segars $300.00 for the appraisal NBSC obtained from the Linsday Company. Attached hereto as Exhibit (7) is a copy of the Settlement Statement.

In approximately April of 2009 Mr. Segars obtained a copy of the Linsday appraisal which had attached a Plat showing the OCRM Baseline 30 landward of feet from the toe of the dune. Mr. Segars requested that Stephen Linsday review the plat, restrictive covenants, OCRM baseline and Town of Hilton Head Island setback requirements. Based upon the Plat used by Linsday for the appraisal as well as other

recorded covenants and restrictions primarily the OCRM baseline and Town of Hilton Head Island set back restrictions, lot 3 was unbuildable and, therefore, not worth $1.6 million. Attached hereto as Exhibit (8) is a copy of the opinion letter Stephen Linsday provided to Mr. Segars relative to lots 2 and 3.

PROCEDURAL HISTORY

Plaintiff filed a Lis Pendens and Summons and Complaint on July 6, 2009 and its Amended Lis Pendens, Amended Summons and Amended Complaint on August 14, 2009. Plaintiff brought this foreclosure action and sought a deficiency judgment. Subsequent to the closing Thaddeus Segars conveyed his interest in lot 2 to KCS Investments, LLC who was made a codefendant in this action. Defendants filed and Answer and Counterclaim in response to Plaintiff's original and Amended Pleadings. Defendants counterclaimed alleging causes of action against NBSC for negligent misrepresentation, breach of fiduciary duties and breach of contract accompanied by fraudulent intent. The Court granted Plaintiff's motion for summary judgment on it's foreclosure action and reserved hearing on Defendants Counterclaims. Plaintiff and Defendants have filed cross motions for summary judgment.

LEGAL ARGUMENT

Mr. Segars applied for a loan with Plaintiff NBSC to purchase lot 2 Singleton Place. NBSC informed Mr. Segars that he was approved for the loan conditioned on a favorable appraisal report establishing a value on the property of at least $1.600,000.00. NBSC hired the Linsday Company to perform the appraisal on lot 2. The Linsday appraisal was prepared and provided to NBSC. NBSC employee Doug Matney reviewed the appraisal and informed Mr. Segars that NBSC would extend the loan to Segars

because the Linsday appraisal valued the property at $1.6 million. Mr. Segars entered into a loan agreement with NBSC whereby he borrowed $1.36 million dollars at an interest rate of 3.74 % per annum. The note was subsequently modified on July 7,2005 to increase the interest rate to 6.1 % per annum and further modified on January 24, 2007 to amend the interest rate to 6.7% per annum. Subsequent to the amendments to the mortgage Mr. Segars began to experience difficulty in making payments on lot 2 and contacted NBSC in an effort to refinance the loan under more favorable terms. NBSC denied Mr. Segars request and the loan ultimately fell into default. NBSC brought this action to foreclose on lot 2. In reviewing documents relevant to this litigation as well as related matters, Mr. Segars reviewed the appraisal done by the Linsday Company for NBSC on lot 2. Based upon the plat used by Linsday for the appraisal, the OCRM baseline, the Town of Hilton Head Island set back lines and various restrictive covenants, lot 2 was unbuildable, therefore, of little or no value. Defendants contend that the Linsday Company was negligent in preparation of the appraisal prepared at the request of NBSC. Furthermore, NBSC was negligent in representing to Mr. Segars that lot 2 was worth 1.6 million dollars. Mr. Segars, nor any other reasonable person, would have paid 1.6 million dollars for a lot that at the time of purchase was not buildable and, therefore, of little or no value.

South Carolina Courts have not specifically addressed whether a lending institution could be liable to a purchaser for providing false information to a prospective purchaser. The South Carolina Court of Appeals did, however examine a case which may shed light on this issue. In First Federal Savings Bank vs. Knauss, 296 SC 136, 370 SE2d 906 (SC.App.1988) the South Carolina Court of appeals declined to recognize a

"negligent appraisal" defense in a mortgage foreclosure action but only because the facts of that case did not support such a defense. In Knauss the Defendant and his business partner had plans to develop a parcel of property. An appraiser was hired by a business associate and instructed to appraise the properties under an assumption improvements would be made. There was no evidence that the bank gave this instruction. Additionally, there was no expert testimony establishing the appraisal was negligently performed by the independent appraiser. Finally there was some evidence that Knauss did not rely on the appraisals. The Court of Appeals concluded, therefore, that Knauss failed to prove (1) First Federal supplied the appraisals; (2) he relied upon the appraisals in deciding to purchase the lots; and (3) the appraisals were negligently performed. If we examine the reasons the Knauss court declined to recognize a "negligent appraisal" defense to a foreclosure action their decision is reasonable and correct. Although the Court did not accept the "negligent appraisal" in Knauss it provided guidance to future courts examining the issue. The Knauss court inquired as to who procured the appraisal; Did the purchaser rely on the appraisal; were the appraisals performed in a negligent manner. In Knauss the court concluded that the bank did not procure the appraisals , the defendant's business partner did. Knauss testified himself he did not rely on the appraisals in deciding whether to purchase the property. Finally, there was no evidence submitted in the Knauss case that the appraisals were performed in a negligent manner. The Courts ruling in Knauss suggests that if the evidence in the case was different the Court would recognize a "negligent appraisal" defense. In the present case NBSC hired Linsday to conduct the appraisal. Mr. Segars certainly relied on the appraisal as the agreement he made to borrow money from NBSC was conditioned on the appraisal

valuing the property at 1.6 million dollars. Only when NBSC informed Segars that the property was worth 1.6 million did Segars purchase the property. Unlike the lack of evidence in Knauss that the appraisals were done in a negligent manner, the Defendant in the present case procured an expert appraiser who has provided testimony that the appraiser hired by NBSC was negligent. If this Court applies the rational of the Kanauss Court to the facts of the present case it is clear a defense based upon a "negligent appraisal" should be recognized.

While South Carolina has not had the opportunity to outright recognize a defense to a foreclosure action other Sates have. In Larsen v. United Federal Savings and Loan Association of Des Moines, 300 N.W.2d 281 (Iowa, 1981), the Supreme Court of Iowa did in fact affirm a trial court ruling which held the bank liable for a negligent appraisal conducted by a United Federal employee. In Larsen the bank's appraiser failed to recognize various deficiencies at the subject premises and improperly valued the residence. The Larsen's relied on eth appraiser's valuation, borrowed money from the bank and purchased the residence. After moving into the home and discovering numerous serious construction deficiencies the Larsen's brought suit against United Federal because they had sustained economic damage as a result of the Bank's faulty appraisal. The Larsen Court ultimately ruled based upon lay and expert testimony that the appraisal was performed in a negligent manner. The Court also ruled that the Larsens paid a fee to United for the the appraisal and relied on same in deciding to purchase the property. Like the present case, the Larsen's claim against UFS is grounded on a theory of negligence: that UFS negligently supplied misinformation to them concerning the results of the appraisal, which induced them to complete the purchase of the property. UFS

asserted it had no duty to the Larsens with respect to the appraisal. "As to the duty element, the Court of the negligence claim, the Iowa Supreme Court referred to the concept of negligent misrepresentation in the Restatement(Second) of Torts Section 552 (1977). The court determined the Larsens were within the group of people who would be expected to receive and rely on the information." *Larsen v. United Federal Savings and Loan Association of Des Moines,* 300 N.W.2d 281 at 285.

CONCLUSION

The Defendant Segars has presented evidence in the form of lay and expert testimony of the following: Mr. Segars sought to borrow money for NBSC for the purchase of Lot 2 Singleton Place. NBSC agreed to loan the money conditioned on an appraisal valuing the property at 1.6 million dollars. NBSC hired the Linsday Group to prepare and appraisal of lot 2. The Linsday Company prepared an appraisal of lot 2 and valued lot 2 at 1.6 million dollars. Doug Matney, an NBSC employee conveyed to Mr. Segars that the Linsday appraisal valued lot 2 at $1.6 million dollars. Mr. Segars relied on the representation by Doug Matney, borrowed the money and purchased lot 2. Subsequent to the purchase evidence came to light that based upon the OCRM baseline, Town of Hilton Head Island setbacks and various covenants and restrictions lot 2 was unbuildable. Mr. Segars expert witness Denis Outlaw provided testimony in his deposition that supports the proposition that the Linsday appraisal was performed in a negligent manner.

Based upon the foregoing, and viewing the evidence in a light most favorable to the non moving party NBSC' s motion for Summary Judgment should be denied. For the same reasons defendants' Motion for Summary Judgment should be granted.

FINN LAW FIRM, P.C.

By: _____

Thomas J. Finn
Attorney for the Defendants
P.O. Box 6003
Hilton Head Island, S.C.
29938
Phone (843)682-3555
Fax (843) 682-3558
Email finlaw@hargray.com

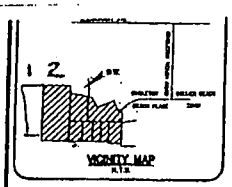
This 13th day of March, 2013
Hilton Head island, South Carolina

0670

Exh. F

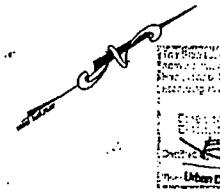
Future Baseline

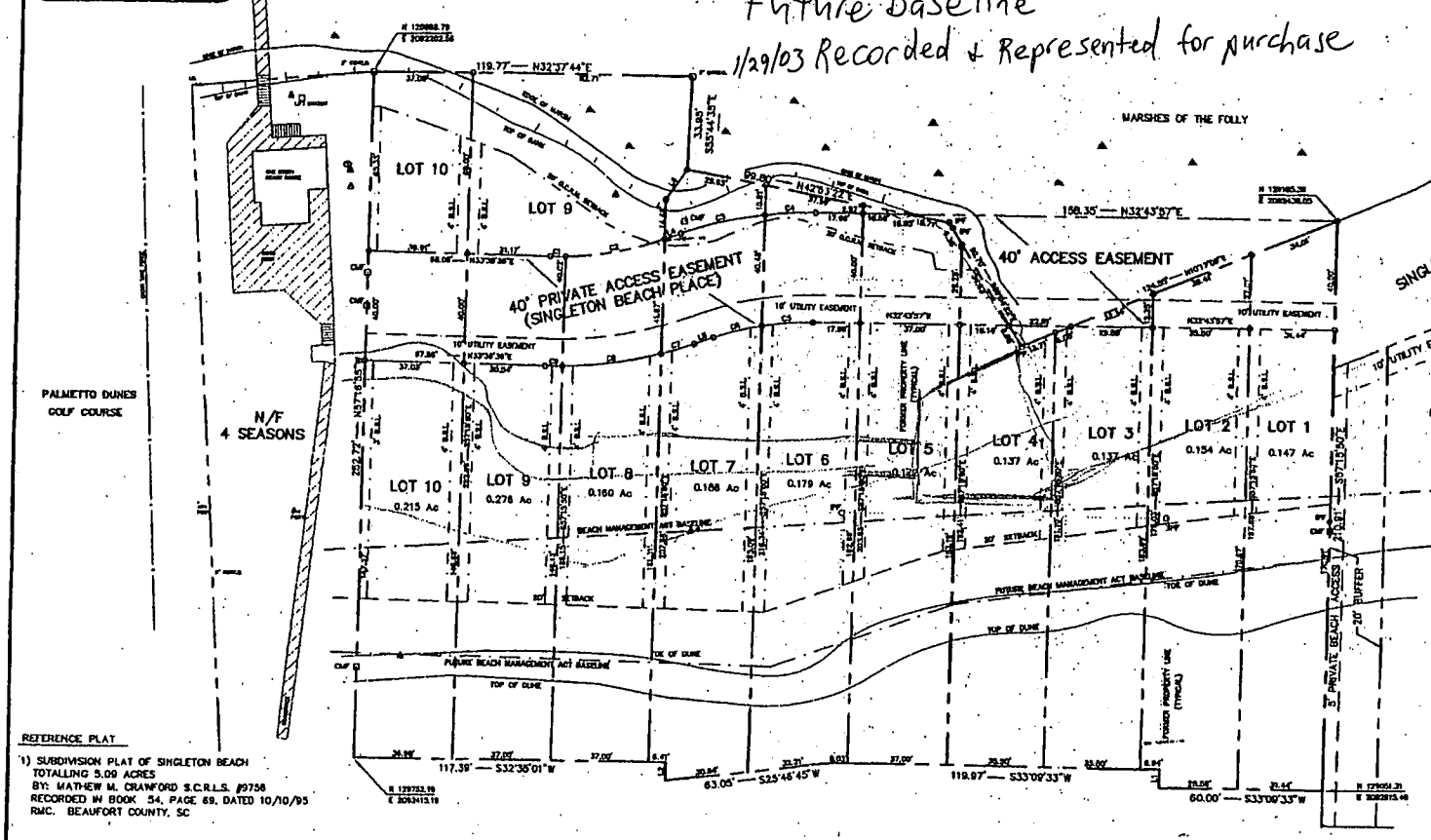
1/29/03 Recorded & Represented for Purchase



LINE	LENGTH	BEARING
L1	6.72	S57°45'30"E
L2	9.81	S37°05'28"E
L3	6.40	N12°45'18"E
L4	7.10	S51°10'06"E
L5	13.53	S22°07'03"E

CURVE	LENGTH	RADIUS	CHORD	TANGENT	CHORD BRG	DELTA
C1	6.63	150.00'	6.63	3.32	N30°18'00"E	2°31'50"
C2	37.84	150.00'	37.74	19.01	N37°47'26"E	14°27'00"
C3	21.99	150.00'	21.97	11.01	N51°42'26"E	8°24'00"
C4	18.97	150.00'	18.95	9.50	N59°50'47"E	7°14'56"
C5	18.11	150.00'	18.09	9.06	N67°49'13"E	6°55'03"
C6	14.55	150.00'	14.53	7.28	N74°52'05"E	5°33'26"
C7	12.97	150.00'	12.97	6.49	N80°50'27"E	4°57'35"
C8	36.95	150.00'	36.87	18.56	N87°26'47"E	14°06'58"
C9	8.97	150.00'	8.97	4.49	N93°23'46"E	3°25'30"





Recorded 1/29/03

BEAUFORT COUNTY SC - ROD
BK 01911 PG 0046
FILE NUM 2003007356
01/29/2003 08:18:41 AM
RECORDING FEE $10.00

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'

GRAPHIC SCALE
30 0 60

REFERENCE PLAT
1) SUBDIVISION PLAT OF SINGLETON BEACH
TOTALLING 5.09 ACRES
BY: MATHEW M. CRAWFORD S.C.R.L.S. #9756
RECORDED IN BOOK 54, PAGE 69, DATED 10/10/95
RMC, BEAUFORT COUNTY, SC

PROPERTY AREA = 1.765 Ac.

DISTRICT: R510 , MAP: 12 , PARCEL: VARIOUS

THIS PROPERTY LIES IN F.E.M.A.
COMMUNITY #: 450250
PANEL #: 0014 D
DATE: 9/28/86
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

SOUTH CAROLINA SEA ISLAND LAND SURVEY No.C02180

SOUTH CAROLINA REGISTERED LAND SURVEYOR 2003

SIS 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

STATE OF SOUTH CAROLINA)
) DECLARATION
) OF COVENANTS, CONDITIONS,
COUNTY OF BEAUFORT) AND RESTRICTIONS FOR
SINGLETON PLACE

This Declaration of Covenants, Conditions and Restrictions for SINGLETON PLACE is made this 30th day of August, 1995 by JJ Development, Inc., a South Carolina corporation, its successors and assigns (the "Declarant").

WHEREAS, Declarant is the owner of that certain tract of land located in Beaufort County, South Carolina, and being more particularly described on the attached EXHIBIT "A" (the "Property"), and the Declarant desires to subject the Property to provisions of this Declaration.

WHEREAS, it is the intent of the Declarant to construct and develop a single-family residential subdivision within the Property, and it is the further intent of the Declarant to provide for a method of administration and maintenance of the Property; and

WHEREAS, as provided in Article III herein, the Declarant has retained and reserved the right to submit to the provision of this Declaration any and all portions of the real property being more particularly described on the attached Exhibit "B";

NOW, THEREFORE, for the purpose of enhancing and protecting the value, attractiveness and desirability of the Property, the Declarant hereby declares that the Property and each part thereof shall be held, sold, devised and conveyed subject to the following easements, covenants, conditions and restrictions which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in said Property or any part thereof, the heirs, executors, administrators, successors and assigns and shall inure to the benefit of each Owner (as defined herein) thereof.

ARTICLE I
DEFINITIONS

The following words and terms when used in this Declaration shall have the following meaning:

1. "Additional Property" shall mean and refer to the real property described on Exhibit "B" and all improvements thereon.

2. "Association" shall mean and refer to SINGLETON PLACE HOMEOWNERS ASSOCIATION, INC., a South Carolina non-profit corporation, its successors and assigns.

Section 8. Storage Receptacles. No fuel tanks or similar storage receptacals may be exposed to view, and may be installed only within the main dwelling house, within an accessory building, within a screened area, or buried underground.

Section 9. Excavation. No Owner shall excavate or extract earth from his Lot or Dwelling for any business purpose. No elevation changes shall be permitted on any Lot or Dwelling without prior written approval of the Declarant, its successors, or assigns .

Section 10. Easements. A 10 foot wide easement for the installation and maintenance of utilities and drainage is hereby reserved over and along all Lot or Dwelling lines adjacent to rights of way.

Section 11. Hunting and Fishing. No hunting of any kind will be permitted on the Property. Fishing may be allowed in accordance with rules to be established by the Association.

Section 12. Use of Common Property Limited. The Association shall establish such reasonable rules as may be necessary or desirable to regulate the permissible uses of the Common Property for the enjoyment and safety of the Owners.

Section 13. Docks. No Owner shall be allowed to construct a dock, pier or similar structure from any point on his Lot or Dwelling without prior approval from the Association or Declarant.

Section 14. Architectural Standards and Plans Approval.

a. No building, fence, wall, swimming pool, tennis court, or other structure shall be erected, placed, or altered on any Lot or Dwelling until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking area) and construction schedule have been approved in writing by the Declarant or its assigns. Refusal of approval of plans, locations or specifications may be based upon any reasonable ground which is consistent with the objectives of this Declaration, including, but not limited to: aesthetic considerations; the harmony and scale, bulk, coverage, function and density of use; the effect of the structure or plans on neighboring properties; the view of the structure or Property from public or private roads; the placement of buffer zones, fences, shrubbery, trees, vegetation, berms, and parking spaces; and the desirability of preserving significant trees or other unique vegetation. The architectural review process shall not be conducted in an arbitrary and capricious fashion by, for example, applying substantially different standards than those typically applied to submissions during the same period of time; nonetheless, any approval of a plan which, when built, is not considered desirable for future construction shall not be considered as a precedent requiring approval of similar plans on subsequent submissions. No alterations to the exterior appearance of any building or structure shall be made without like approval. One (1) copy of all plans and related data shall be furnished Declarant or its assigns for its records.

b. No plans shall be approved unless the proposed residence shall have a minimum square footage of 2,500 square feet enclosed dwelling area, exclusive of open porches and garages, terraces, decks, but including screen porches if the roof of such porch forms an integral part of the roof line of the main dwelling or if on the ground floor of a two-story structure. The first floor of living space shall contain a minimum of 1,000 square feet of enclosed dwelling space.

c. No plans shall be approved which does not provide for off the street parking spaces for two (2) automobiles.

d. All fencing erected on Lots or Dwellings exposed to view shall not exceed four (4') feet in height and shall first be approved by Declarant or its assigns.

e. If Declarant or its assigns shall fail to approve or disapprove the plans and specifications within thirty (30) days after receipt of a written request therefor, then such approval shall not be required; provided, however, that no building, fence or other structure shall be erected which violates any of the covenants herein contained.

f. The exterior of all homes and other structures must be completed within nine (9) months after the date of the construction of the same shall have commenced, except where such construction completion is impossible or would result in hardship to the Owner or builder due to strikes, fires, national emergency or natural calamity, in which event the time may be extended by Declarant or its assigns.

g. Exterior finish of all homes must be must be stucco or similar material approved by the Declarant or assigns.

Section 15. Transfer of Architectural Review and Plans Approval. Upon the sale of more than fifty (50%) percent of the Lots or Dwellings, Declarant may, by filing a Supplementary Declaration with the Register of Mesne Conveyance for Beaufort County, South Carolina, transfer the above-described architectural review and plans approval authority to a permanent Review Board which, subject to the covenants and conditions stated in the aforesaid Supplementary Declaration, shall be under the control of the Association.

Section 16. Siting/Setback. To assure that residences within Singleton Place will be located so that the maximum privacy, both visual and acoustical, view and breeze will be available to each residence, and that the topography of each property will be taken into consideration along with other aesthetic and environmental considerations, Declarant shall have the right to control and to decide the precise site and location of any structure within the Property. Notwithstanding the foregoing, there shall be a minimum four (4') foot side yard set back on both sides of the Lot. The purpose of the four (4') foot setback is to provide a minimum of eight (8') feet spacing between residences. Declarant reserves the right to allow minimal variations of this setback should site conditions require such variations so long as the spacing between the residences is eight (8') feet. The setback area on each side of the Lot shall be subject to the easements referenced in Section 18.

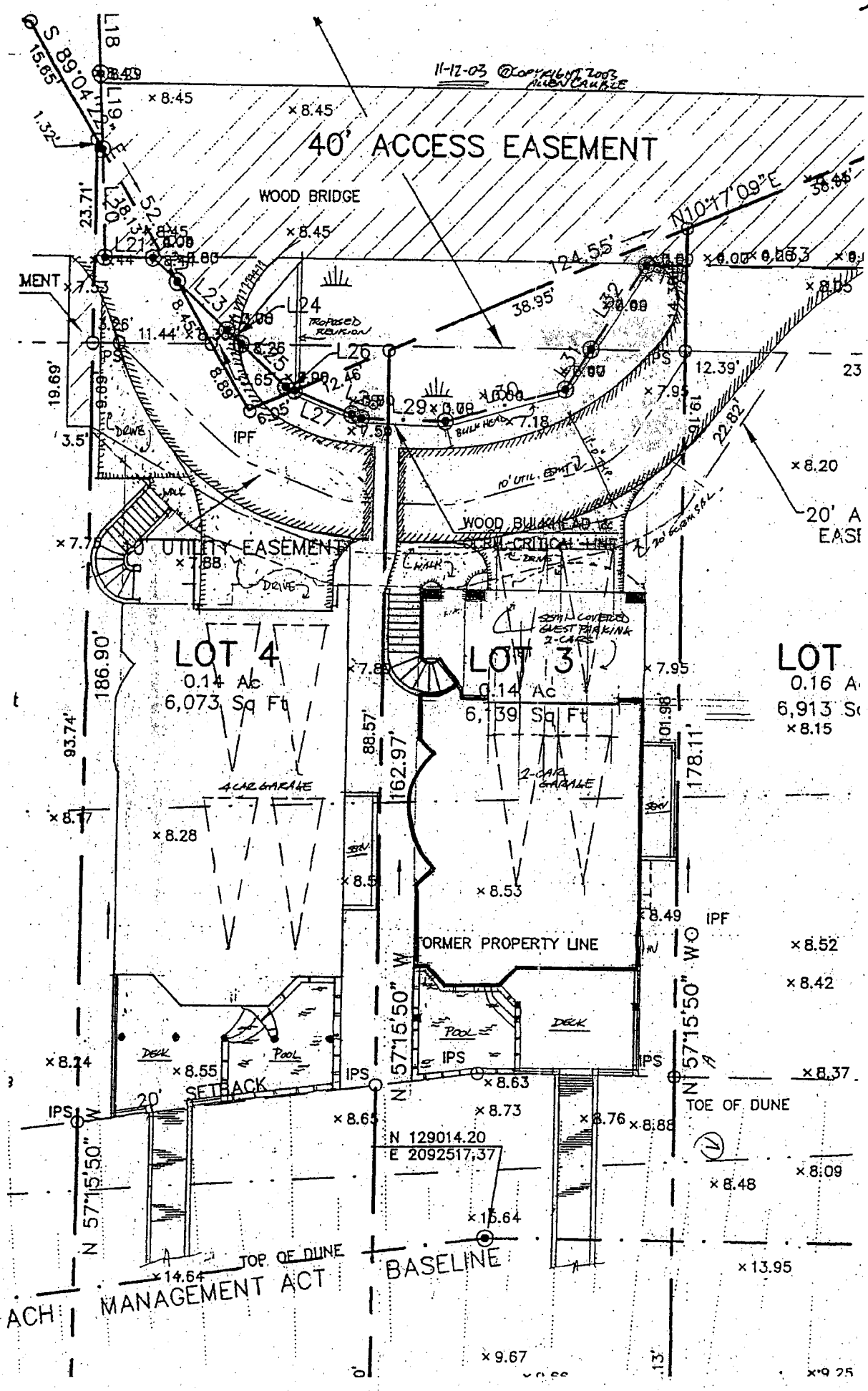
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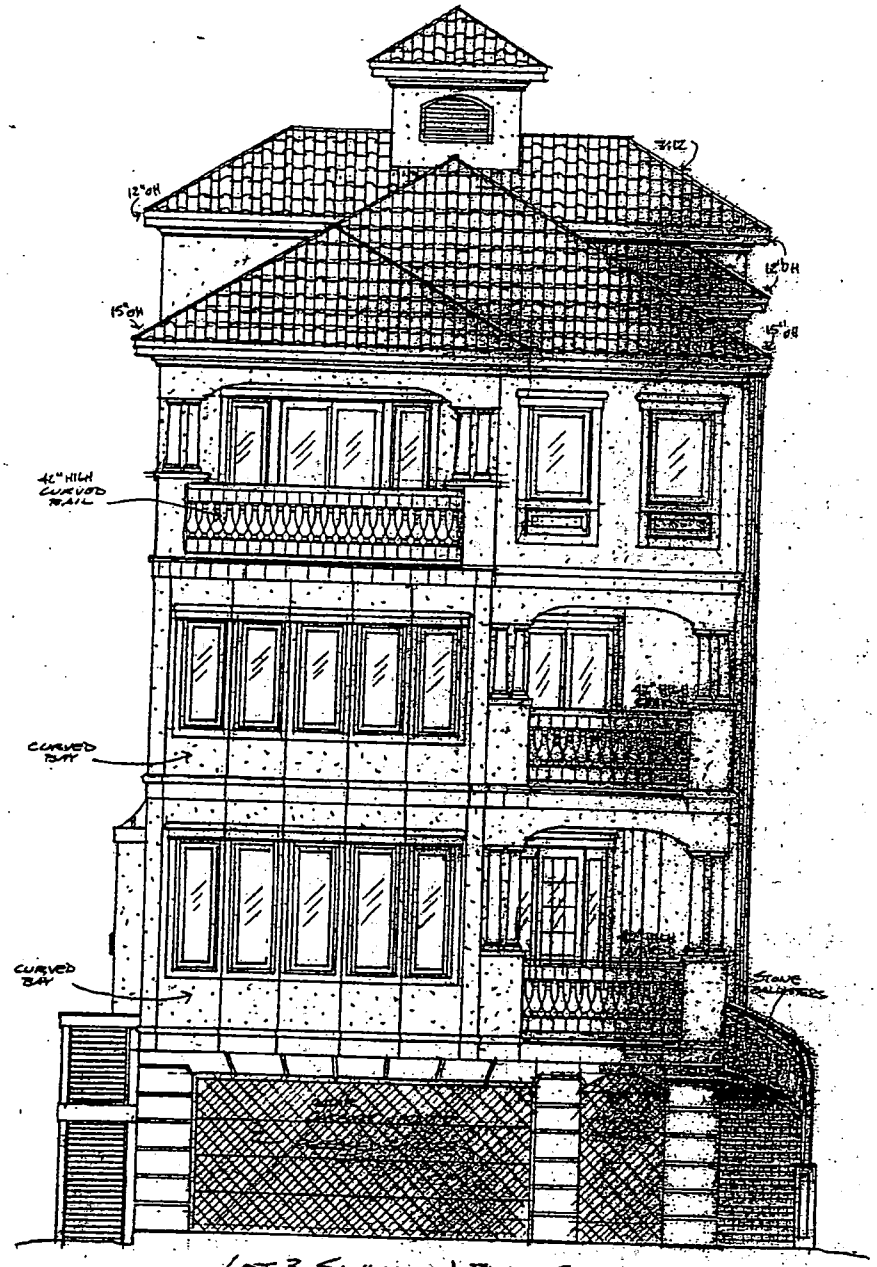
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JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.

95 SEP -7 AM 10:09

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FOLDER#

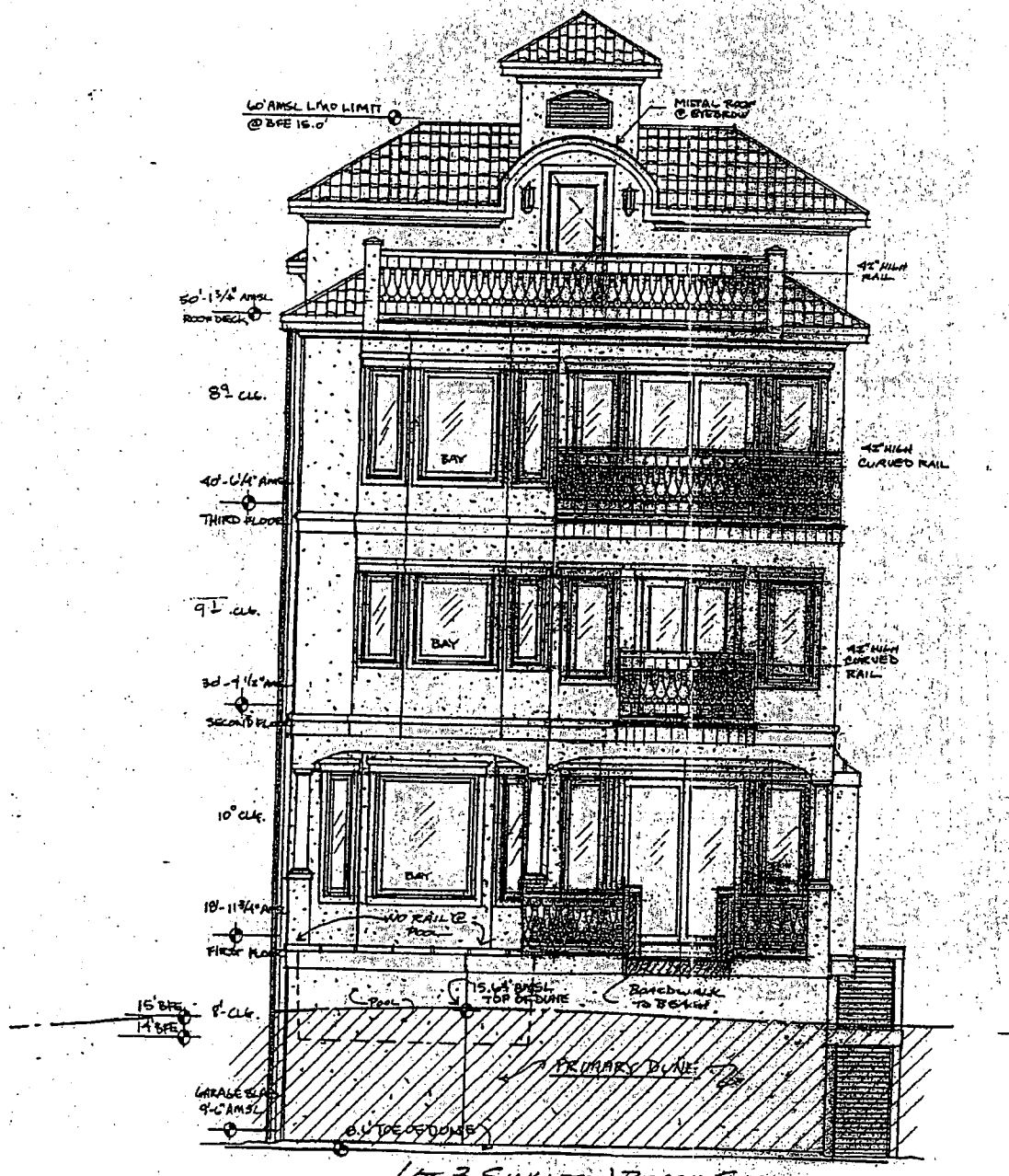
754


11-12-03 ©COPYRIGHT 2003 ALBERT CAMPBELL
40' ACCESS EASEMENT
WOOD BRIDGE
PROPOSED REVISION
20' UTILITY EASEMENT
10' UTIL. ESMT.
WOOD BULKHEAD
SCRM-CRITICAL LINE
20' SCRM SETBACK
SEMI-COVERED GUEST PARKING 2-CARS
LOT 4
0.14 Ac
6,073 Sq Ft
LOT 3
0.14 Ac
6,139 Sq Ft
LOT
0.16 A
6,913 S
4 CAR GARAGE
2-CAR GARAGE
FORMER PROPERTY LINE
DECK
POOL
IPS
IPF
SETBACK
20'
TOE OF DUNE
TOP OF DUNE
BASELINE
MANAGEMENT ACT
N 129014.20
E 2092517.37
S 89°04'15" W
15.65'
1.32'
23.71'
38.13'
N10°17'09"E
38.95'
124.55'
186.90'
93.74'
88.57'
162.97'
178.11'
19.69'
3.5'
11.44'
12.39'
22.82'
N 57°15'50" W
N 57°15'50" W
× 8.45
× 8.20
× 7.95
× 8.15
× 8.52
× 8.42
× 8.37
× 8.09
× 8.48
× 8.53
× 8.49
× 8.55
× 8.63
× 8.73
× 8.76
× 8.88
× 8.65
× 8.74
× 8.17
× 8.28
× 7.88
× 7.18
× 7.59
× 15.64
× 14.64
× 13.95
× 9.67



LOT 3 SINGLETON BEACH ESTATES
FRONT ELEVATION - MARSH SIDE
11-13-03 ©COPYRIGHT 2003 ALLEN C. HUGLE
ALL RIGHTS RESERVED

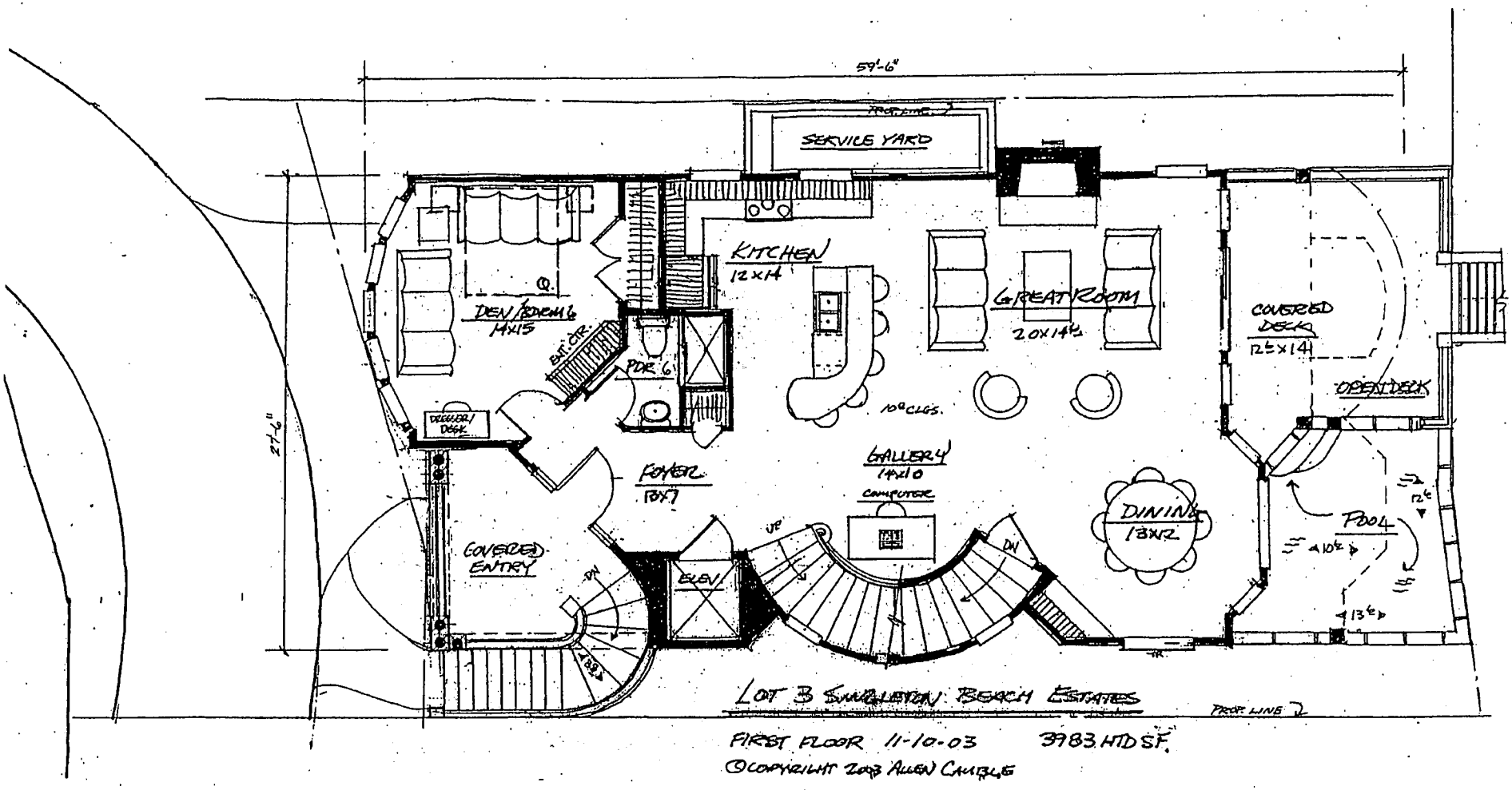
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LOT 3 SINGLETON BEACH ESTATES

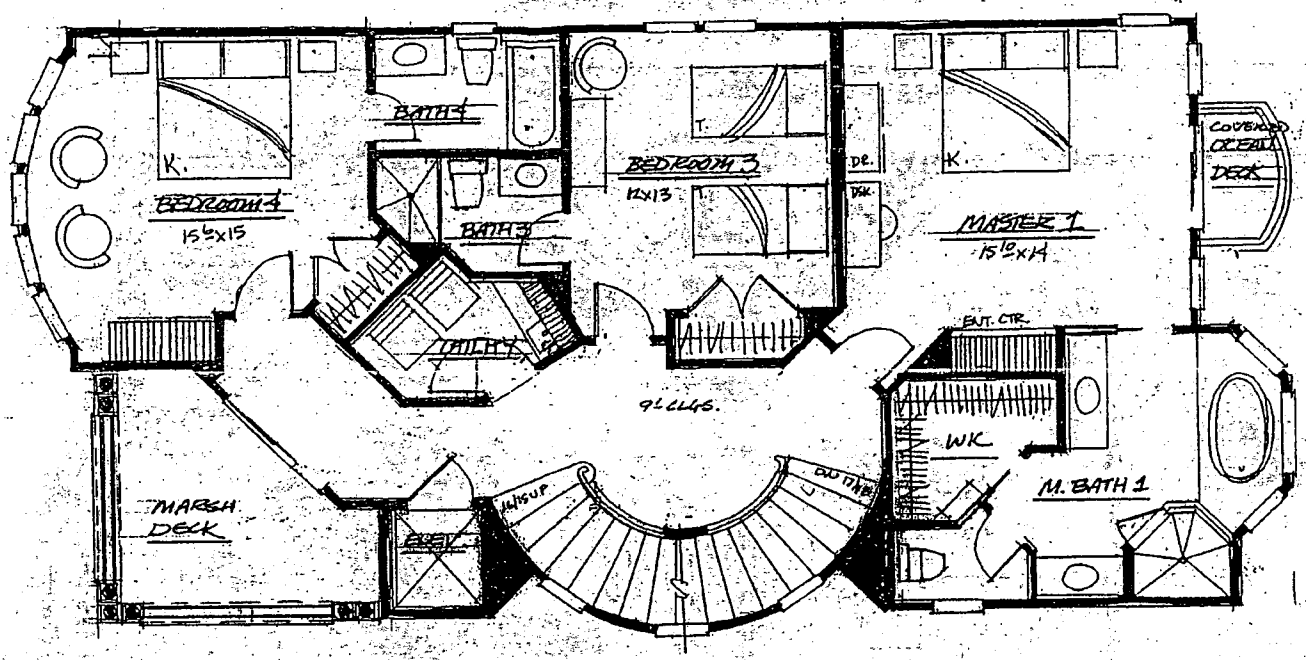
OCEAN-REAR ELEVATION

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FIRST FLOOR 11-10-03 3983 HTD S.F.

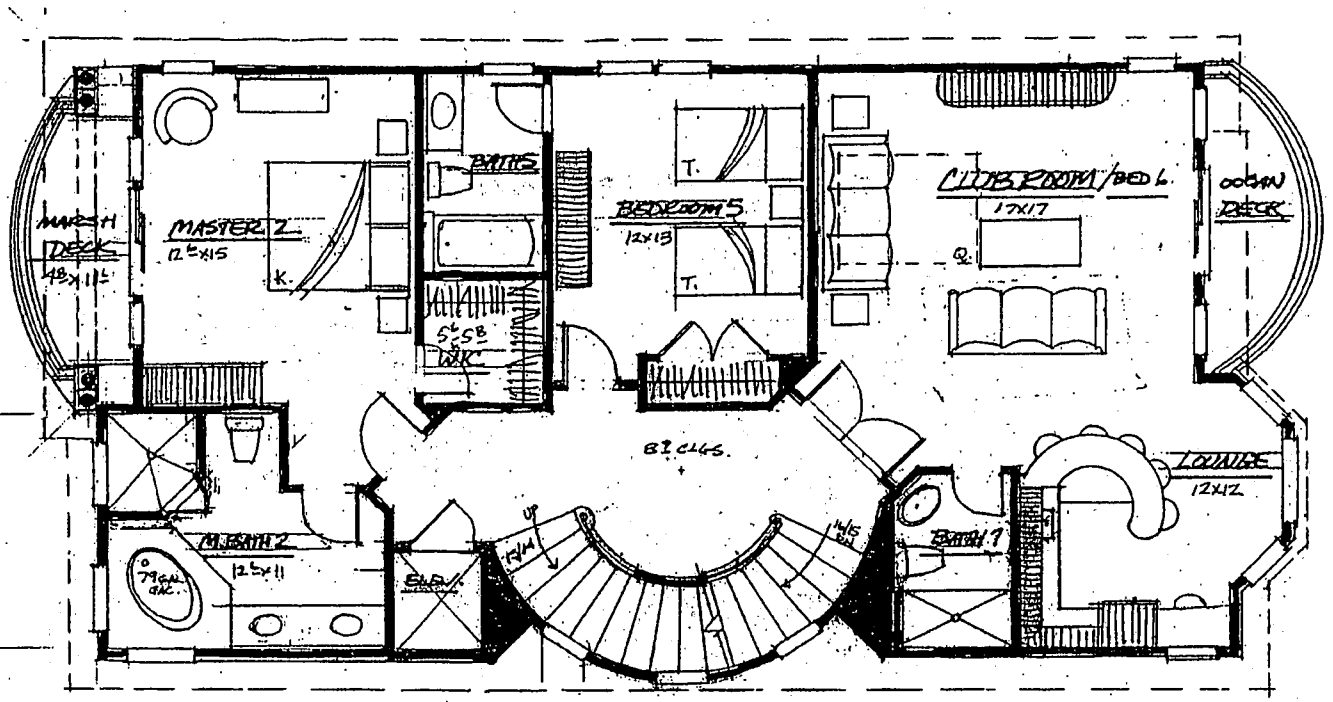
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LOT 3 SUMMERSTON BEACH ESTATES

SECOND FLOOR 1570-SF

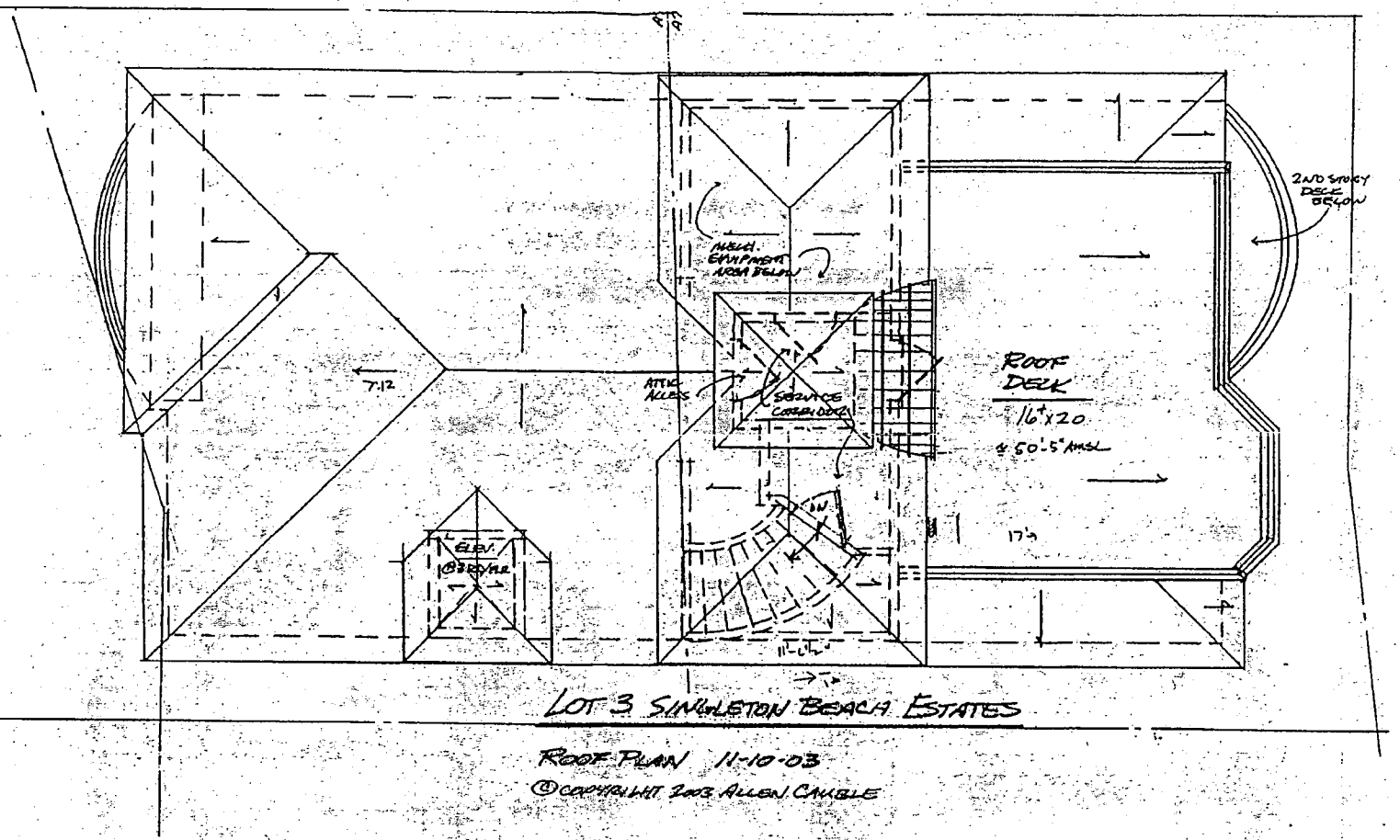
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LOT 3 SWALLTON BEACH ESTATES

THIRD FLOOR 11-10-03

©COPYRIGHT 2003 ALLEN CHUBB



LOT 3 SINGLETON BEACH ESTATES

ROOF PLAN 11-10-03

©COPYRIGHT 2003 ALLEN CAUBLE



LOT 3 SINGLETON BEACH ESTATES.
LEFT ELEVATION

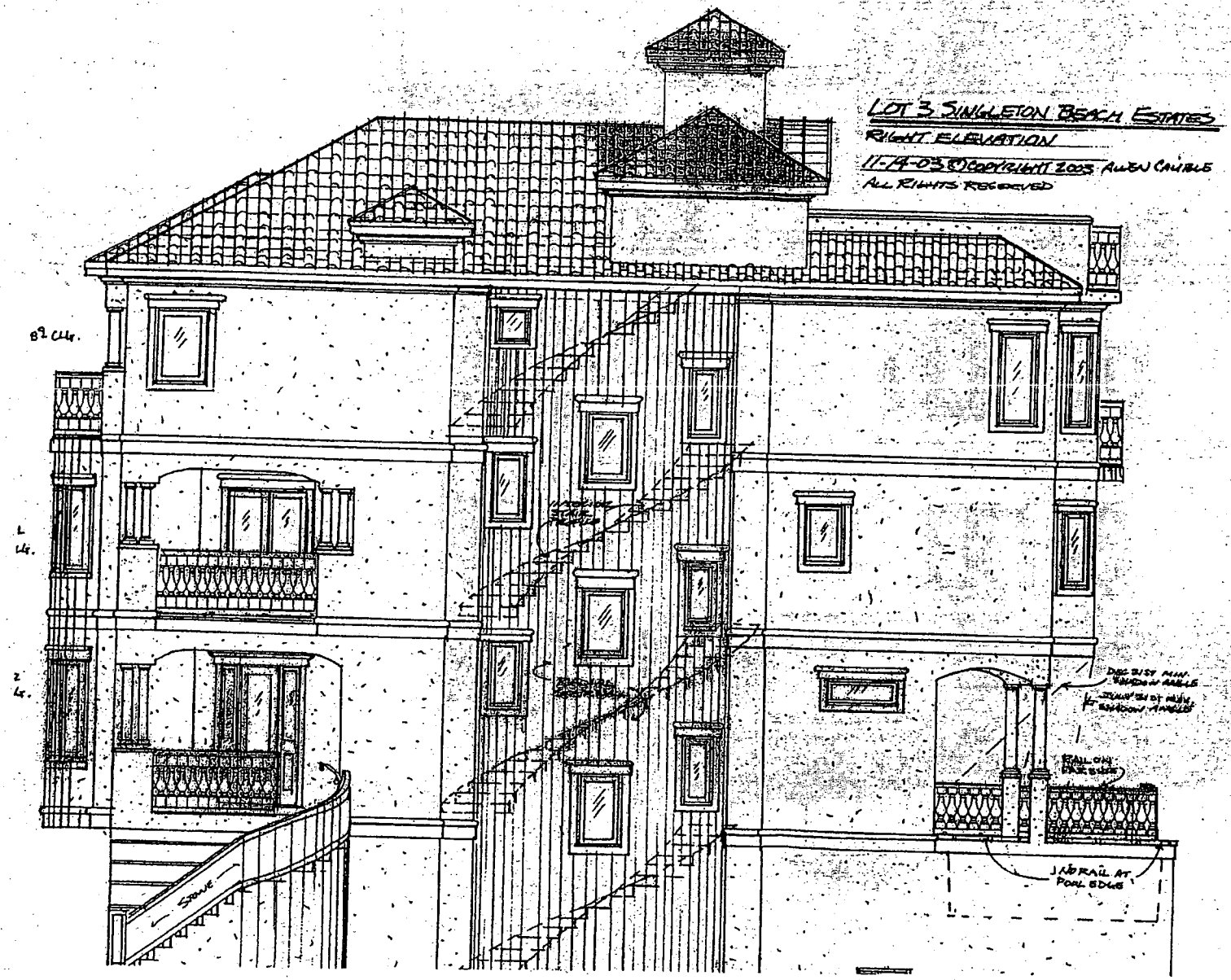
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ALL RIGHTS RESERVED

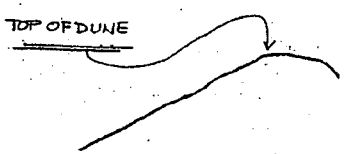
TOP OF DUNE

LOT 3 SINGLETON BEACH ESTATES

RIGHT ELEVATION

11-14-03 © COPYRIGHT 2003 ALLEN CAUBLE
ALL RIGHTS RECEIVED





faxed 6-2-04

(6)

NBSC
The National Bank of South Carolina
MEMBER FDIC

May 28, 2004

Mr. Tad Segars
87 Singleton Beach Road
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

c) 816-0473

3 Belfair Village Drive / Bluffton, South Carolina 29910 / (843) 706-3113
www.NationalBankSC.com
A MEMBER OF THE SYNOVUS FINANCIAL CORP. FAMILY OF COMPANIES

1

Lot 3a Design Mtn Cond. Section Olivers
Front grade + 1/2 = 4.5
Only two likely a 1/2 ft.
mike Kristoff

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 706-323-1210 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 — Thaddeus F. Segars

6-2-04 — Date

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:	Doug Matney
Fax:	785-8225	Pages:	3 with cover
Phone:		Date:	6/27/2004
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.

Thanks,

Doug

(13)

INVOICE

FROM	FILE NUMBER
Linsday Company S. V. Linsday, #CR 51 22 New Orleans Road, Suite 4 Hilton Head Island, SC 29928 Billed to NBSC	040243

TO
NBSC / Synovous Attention: Jerri Witten 3 Belfair Village Bluffton, SC 29910 NBSC hired Linsday

Invoice Date	Appraisal Date	Loan Number	Case Number	Tax ID Number	Contact Phone
06/03/04	06/02/04			57-0873805	843-785-4444

PROPERTY INFORMATION

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

INVOICE INFORMATION

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.

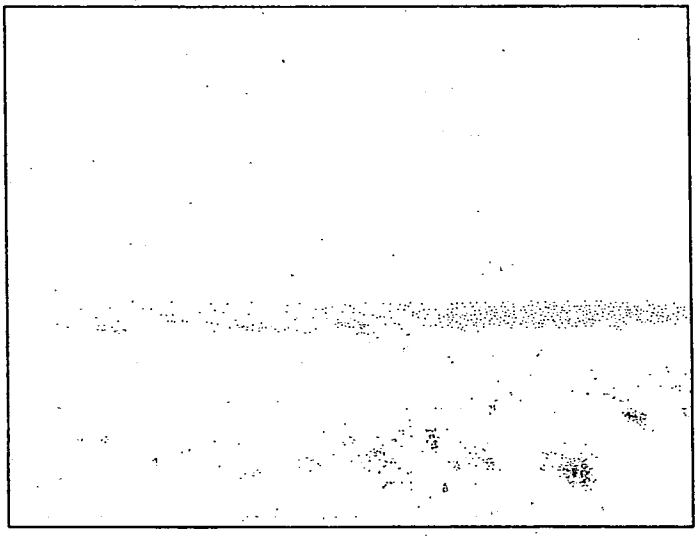
Invoice Date	Appraisal Date	Loan Number	Case Number	File Number	Client's Phone
06/03/04	06/02/04			040243	843-706-3113

FROM	AMOUNT DUE
NBSC / Synovous Attention: Jerri Witten 3 Belfair Village Bluffton, SC 29910	$ 300.00

TO	AMOUNT ENCLOSED
Linsday Company S. V. Linsday, #CR 51 22 New Orleans Road, Suite 4 Hilton Head Island, SC 29928	$

TERMS - Balance due upon receipt of invoice. Please return this portion with your payment. Thank you!

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

Prepared For:
NBSC / Synovous
3 Belfair Village
Bluffton, SC 29910

Prepared As Of:
06/02/04

Prepared By:
S. V. Linsday, #CR 51
Linsday Company
22 New Orleans Road, Suite 4
Hilton Head Island, SC 29928
Phone: 843-785-4444 Fax: 843-842-8795

APPRAISAL SUMMARY

SUBJECT INFORMATION

Subject Address: 17 Singleton Beach Place Unit #:
Legal Description: Lot 2, Singleton Beach Place Extension Subdivision
City: Hilton Head Island
County: Beaufort
State: SC
Zip Code: 29928
Census Tract: 45013.110
Map Reference: 510 012 000 010D

PRICE / DATE

Sales Price: $ 1,600,000
Date of Sale: Present

CLIENT

Borrower: Tad Segars
Lender/Client: NBSC / Synovous

DESCRIPTION OF IMPROVEMENTS

Size (Square Feet):
Price per Square Foot: $ 0.00000
Location: Good
Age:
Condition:
Total Rooms:
Bedrooms:
Baths:

APPRAISER(S)

Appraiser: S. V. Linsday, #CR 51
Supervisory Appraiser:

Opinion Letter

VALUE / DATE

Final Estimate of Value: $ $1,600,000 "Little if no value, in fact could be a liability" - Steve Linsday
Date of Appraised Value: 06/02/04

See Addendum 1

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SUMMARY REPORT

LAND APPRAISAL REPORT

File Re. 040243

IDENTIFICATION

Borrower Tad Segars Census Tract 45013.110 Map Reference 510 012 000 010D
Property Address 17 Singleton Beach Place
City Hilton Head Island County Beaufort State SC Zip Code 29928
Legal Description Lot 2, Singleton Beach Place Extension Subdivision
Sale Price $ $1,600,000 Date of Sale Present Loan Term N/A yrs. Property Rights Appraised ☒ Fee ☐ Leasehold ☒ De Minimus PUD
Actual Real Estate Taxes $ Unknown (yr) Loan charges to be paid by seller $ N/A Other sales concessions N/A
Lender/Client NRSC / Synovous Address 3 Belfair Village, Bluffton, SC 29910
Occupant Vacant Site Appraiser S. V. Linsday, #CR 51 Instructions to Appraiser Estimate Market Value

NEIGHBORHOOD

Location		☐ Urban	☒ Suburban	☐ Rural		Good	Avg	Fair	Poor
Built Up		☐ Over 75%	☒ 25% to 75%	☐ Under 25%	Employment Stability	☐	☒	☐	☐
Growth Rate	☐ Fully Developed	☐ Rapid	☒ Steady	☐ Slow	Convenience to Employment	☐	☒	☐	☐
Property Values		☒ Increasing	☐ Stable	☐ Declining	Convenience to Shopping	☐	☐	☒	☐
Demand/Supply		☒ Shortage	☐ In Balance	☐ Over Supply	Convenience to Schools	☐	☒	☐	☐
Marketing Time		☐ Under 3 Mos	☒ 3-6 Mos	☐ Over 6 Mos.	Adequacy of Public Transportation	☐	☒	☐	☐
					Recreational Facilities	☒	☐	☐	☐
					Adequacy of Utilities	☐	☒	☐	☐
					Property Compatibility	☒	☐	☐	☐
					Protection from Detrimental Conditions	☐	☒	☐	☐
					Police and Fire Protection	☐	☒	☐	☐
					General Appearance of Properties	☒	☐	☐	☐
					Appeal to Market	☒	☐	☐	☐

Present Land Use 50 % 1 Family ___ % 2-4 Family ___ % Apts. 40 % Condo 10 % Commercial ___ % Industrial ___ % Vacant ___ % Recreational
Change in Present Land Use ☒ Not Likely ☐ Likely(*) ☐ Taking Place (*) (*) From ___ To ___
Predominant Occupancy ☒ Owner ☐ Tenant 5 % Vacant
Single Family Price Range $ 150000 to $ 1600000 Predominant Value $ 250000
Single Family Age New yrs. to 25 yrs. Predominant Age 7 yrs

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise) Singleton Beach Subdivision and Extension area 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.

Not sandbox — 2 Homes

SITE

Dimensions 6,913 SF, Irregular In Shape - See Attached Plat = .16 Acre Sq. Ft. or Acres ☐ Corner Lot
Zoning Classification RM8: Moderate Density Zone — for home! Present Improvements ☒ Do ☐ Do not conform to zoning regulations
Highest and Best Use ☐ Present Use ☒ Other (specify) Improved with a single family dwelling

	Public	Other (Describe)
Electricity	☒	
Gas	☐	
Water	☒	
San. Sewer	☒	
	☒	Underground Elec. & Tel

OFF SITE IMPROVEMENTS
Street Access ☐ Public ☒ Private
Surface Macadam
Maintenance ☐ Public ☒ Private
☐ Storm Sewer ☐ Curb/Gutter
☐ Sidewalk ☐ Street Lights

Topo Predominately Level
Size Large Patio Size
Shape Irregular
View Ocean Front and Marsh View and Tidal Creek Views
Drainage Unknown/Appears Adequate
Is the property located on a HUD Identified Special Flood Hazard Area? ☐ Yes ☒ No

Comments (favorable or unfavorable including any apparent adverse easements, 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 easements, encroachments or special assessments were observed.

MARKET DATA ANALYSIS

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar 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 to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
	17 Singleton Beach Place,Lot2	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 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 and Time Adjustment	DESCRIPTION: Present	DESCRIPTION: 03/26/04	+(-)$ Adjustment	DESCRIPTION: 12/31/03	+(-)$ Adjustment: 125,000	DESCRIPTION: 03/10/04	+(-)$ Adjustment
Location	Good	Good		Good		Good	
Site/View	.16 Acre	.17 Acre		.18 Acre		.14 Acre	
View	Ocean Front	Ocean Front		Ocean Front		Ocean Front	
		Wrong		Wrong		Wrong	
Sales or Financing Concessions		Conventional		Conventional		Conventional	
Net Adj. (Total)		☒ Plus ☐ Minus $	0	☒ Plus ☐ Minus $	125000	☒ Plus ☐ Minus $	0
Indicated Value of Subject		G: 0.00% N: 0.00% $	1600000	G: 8.47% N: 8.47% $	1600000	G: 0.00% N: 0.00% $	1533500

Comments on Market Data All 3 sales represent the most recent relevant sales data available in the subject's coast 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 S/D, Lot 1, 15 Singleton Beach Extension is listed for $2,195,000. Broker reports Lot 3 is under contract for 1.8 Million.

RECONCILIATION

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 FHLMC 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.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF 06/02/04 to be $ $1,600,000

ZERO

Appraiser(s) S. V. Linsday, #CR 51 Review Appraiser (If applicable) ___
Certification/License # State Certified Residential Real Estate Appraiser #CR 51 ☐ Did ☐ Did Not Physically Inspect Property

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 / Synovous

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 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

correct plat of record

☒ 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 Homes 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	Sales 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

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File No. 040243

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	Seller
03/15/04	None	1,600,000	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 comparables 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

3 months is considered a reasonable marketing period for the subject property based on Hilton Head Island MLS records.

_____

ADDITIONAL CERTIFICATION

USPAP

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 Agency as required by FIRREA, except that the Departure 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 _____ Effective Date 06/02/04 Date Prepared 06/03/04

Appraiser's Name (print) S. V. Lindsay, #CR 51 Phone # (843) 785-4444

State SC ☐ License ☒ Certification # #CR 51 Tax ID # 57-0873805

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 _____ Date Prepared _____

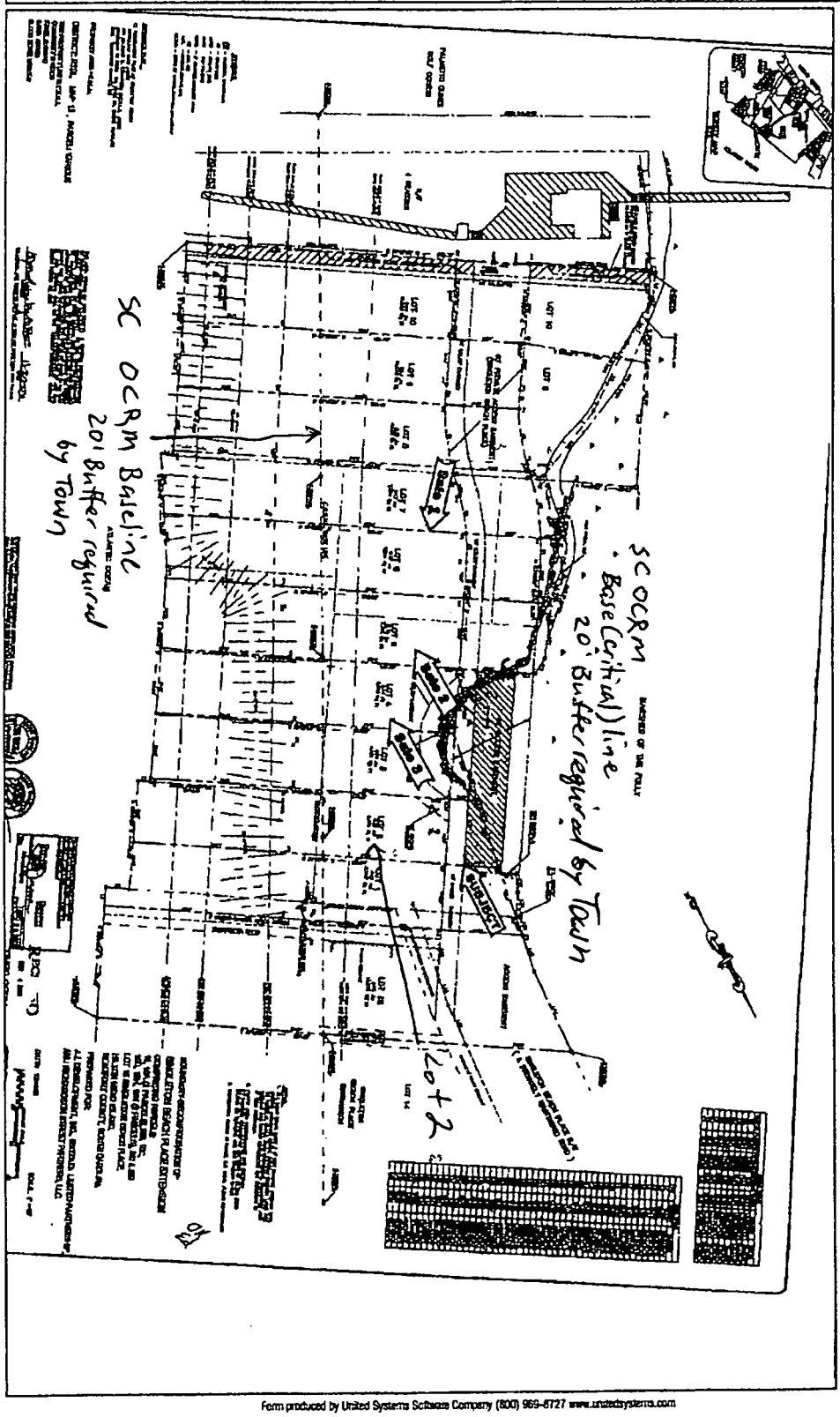
Appraiser's Name (print) _____ Phone # (____) _____

State _____ ☐ License ☐ Certification # _____ Tax ID # _____

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PLAT MAP

Borrower/Client Tad Segars
Address 17 Singleton Beach Place Unit No N/A
City Hilton Head Island County Beaufort State SC Zip Code 29928
Lender/Client NBSC / Synovous



Form produced by United Systems Software Company (800) 969-8727 www.unitedsystems.com

LOCATION MAP

Borrower/Client Tad Segars
Address 17 Singleton Beach Place Unit No N/A
City Hilton Head Island County Beaufort State SC Zip Code 29928
Lender/Client NBSC / Synovous

Scale 1.01 miles

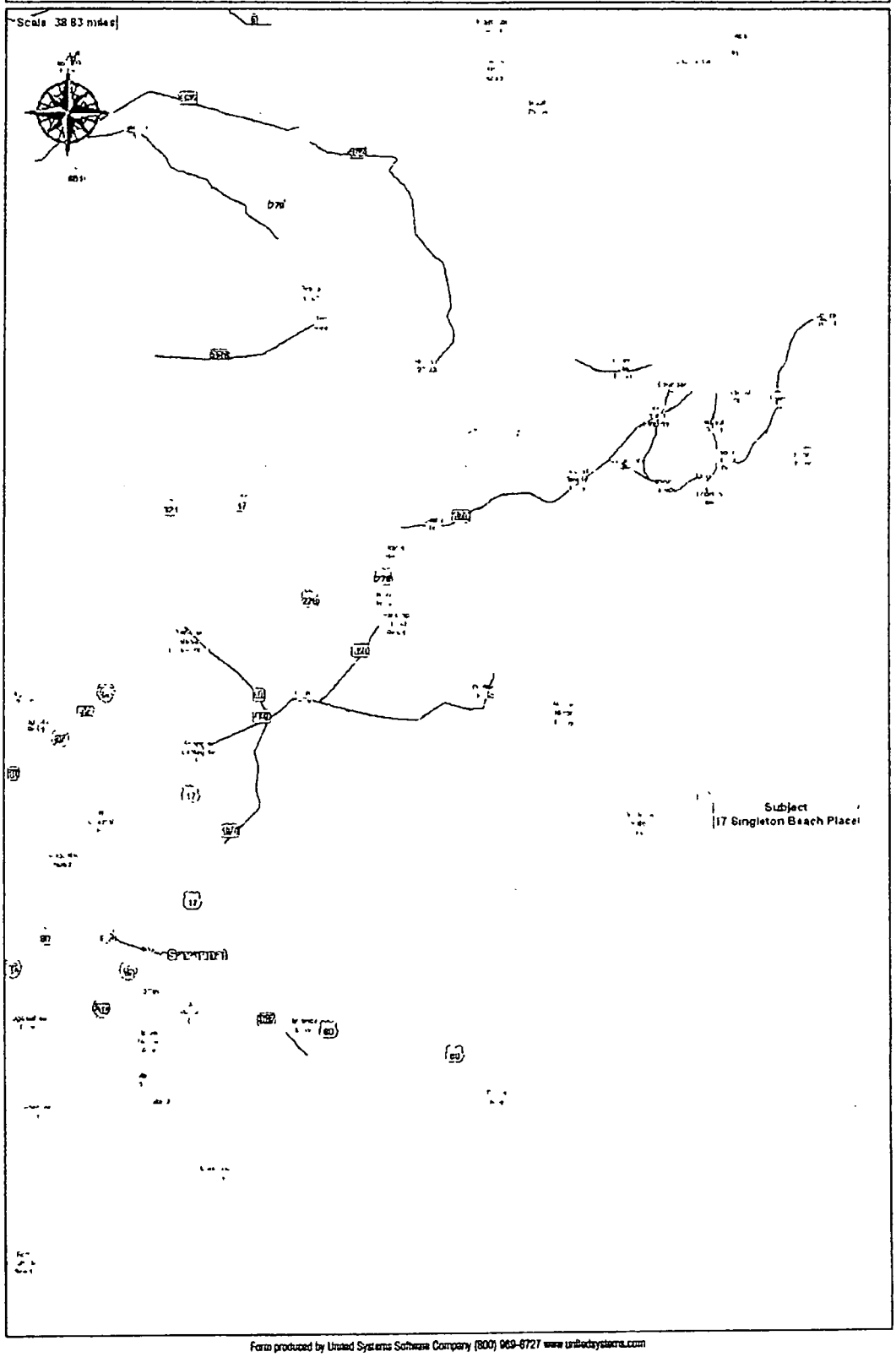


Subject
17 Singleton Beach Place

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LOCATION MAP

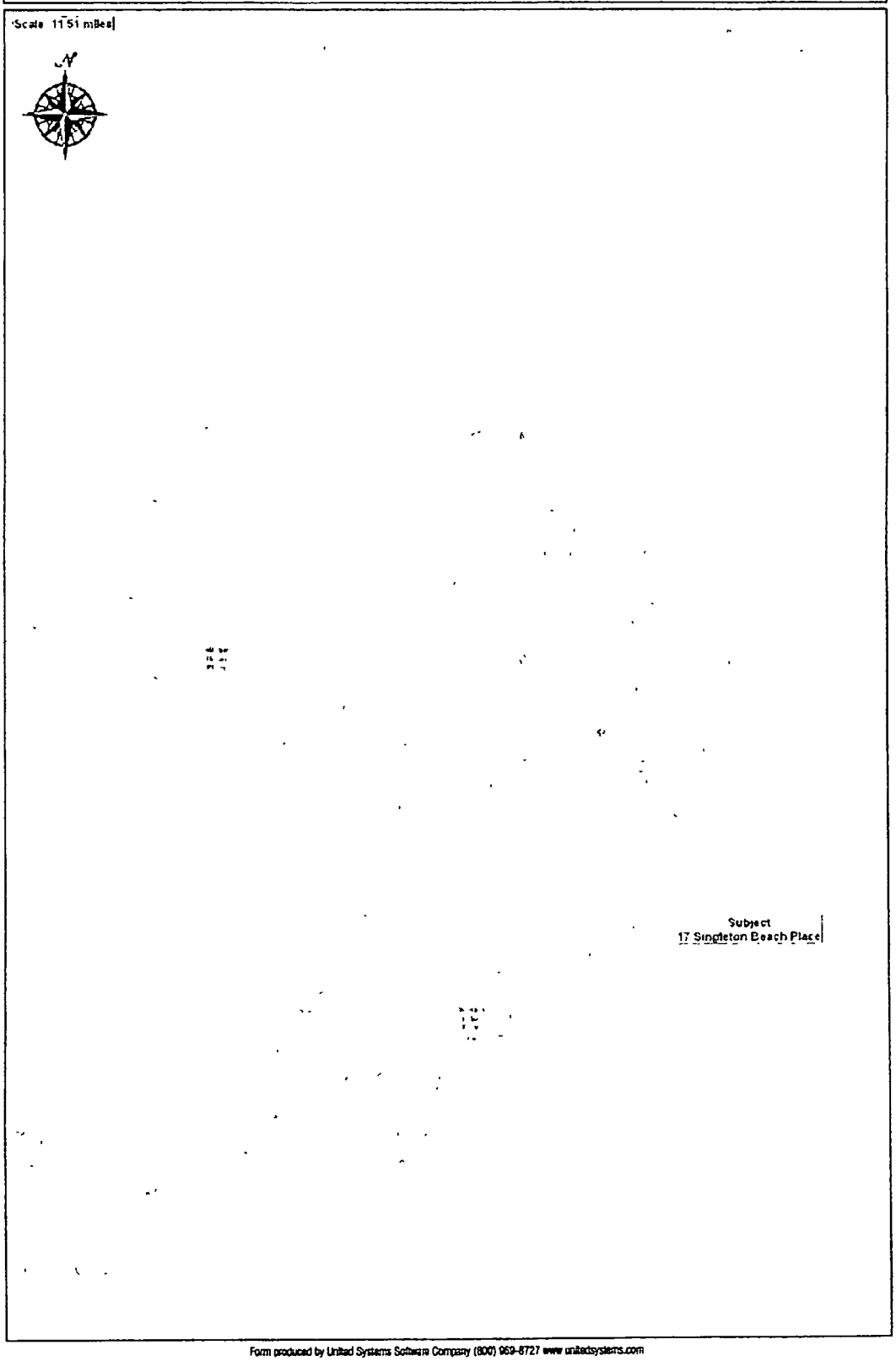
Borrower/Client Ted Segars
Address 17 Singleton Beach Place Unit No N/A
City Hilton Head Island County Beaufort State SC Zip Code 29928
Lender/Client NBSC / Synovous



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LOCATION MAP

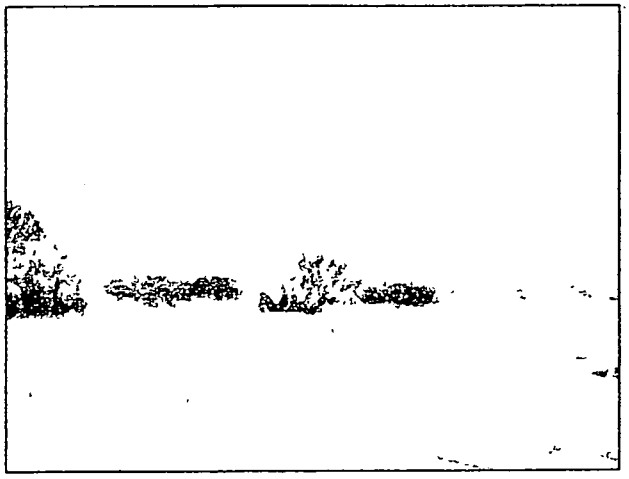
Borrower/Client Tad Segars
Address 17 Singleton Beach Place Unit No N/A
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Lender/Client NBSC / Synovous



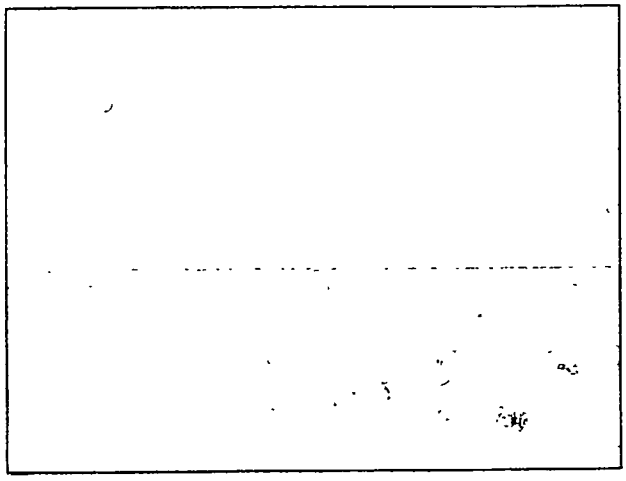
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SUBJECT PHOTOGRAPH ADDENDUM

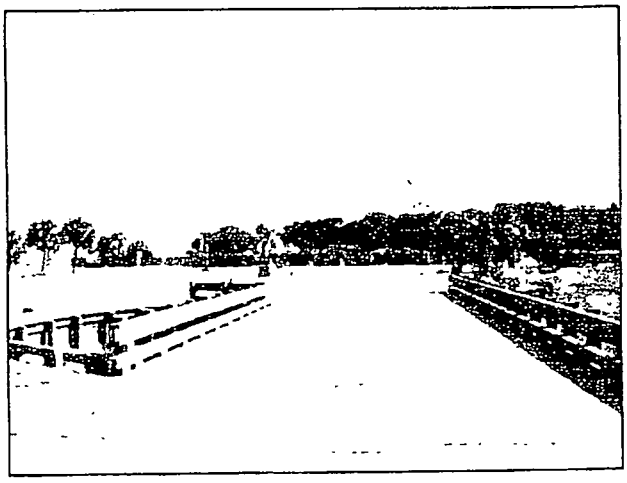
Borrower/Client	Ted Segars				
Address	17 Singleton Beach Place			Unit No	N/A
City	Hilton Head Island	County	Beaufort	State SC	Zip Code 29928
Lender/Client	NBSC / Synovous				



Front View



Rear View



Street View

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SUPPLEMENTAL INFORMATION AND APPRAISER'S CERTIFICATION

TYPE OF APPRAISAL AND TYPE OF APPRAISAL REPORT

This is a Complete appraisal. This is a Summary appraisal report.

IDENTIFICATION OF CLIENT(S)

The client(s) for whom this appraisal is made is (are):

NBSC / Synovous

INTENDED USES AND USERS OF THE APPRAISAL

The intended use(s) of the appraiser's opinions and conclusions is (are):

Mortgage Financing.

The intended use(s) of the appraiser's opinions and conclusions is (are):

The Lender.

REASONABLE EXPOSURE TIME

In my opinion the reasonable exposure time linked to the value opinion is:

3 to 6 months.

SUPPORT FOR HIGHEST AND BEST USE CONCLUSIONS

The following additional information is supplied to support the highest and best use conclusions:

None.

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.

Highest + Best use zoned R-8 House

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. Linsday, #CR 51
Appraiser

06/03/04
Date signed

Supervisory Appraiser (only if required)

Date signed

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SUBJECT

The subject does not have any prior sales within 3years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #1

Comparable #1 sold for $1,050,000 on 11/22/2002, this is the only transaction within 3 years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #2

Comparable #2 sold for $1,100,000 on 08/03/2001, and sold for $875,000 on 10/27/1999 all are within the 3 years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #3

Comparable #3 sold for $925,000 on 11/10/2000, this is the only transaction within 3 years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #4

Comparable #4 sold for $700,000 on 11/27/2002, this is the only transaction within 3 years of the effective date of this appraisal report (effective date---12/31/2002).

(11)

LINSDAY COMPANY

REAL ESTATE APPRAISAL & CONSULTING SERVICES

P. O. BOX 6164

HILTON HEAD ISLAND, SC 29938

(843) 785-4444

FAX: (843) 842-8795

EMAIL: slinsday@sc.twcbc.com

October 30, 2008

Mr. Tad Segars
87 Singleton Beach
Hilton Head Island, SC 29928
Via Email: Tad@tadsegars.com

RE: Lots 2 and 3, Singleton Beach Place Extension Subdivision

Dear Mr. Segars:

I have examined the plat that you had sent to me of the above-mentioned subdivision. Based upon our telephone conversation this afternoon, you have requested that I render some opinions concerning the values of the properties in question. Namely your two lots in this Subdivision noted above.

You have made some assertions concerning this subject subdivision, its covenants and certain building restrictions imposed by the State of South Carolina OCRM offices and also by the Town of Hilton Head Island. You have stated that under the current covenants running with the land, no residence can be built with less than 2,500 square feet of living area. You have also stated that the OCRM beach baseline noted on the attached plat and the Town of Hilton Head Island's setback restrictions, the maximum residence that could be constructed is approximately 1,800 square feet of living area, which does not meet the minimum requirements of the covenants that run with the land. Therefore, it is your opinion that your lots are unbuildable, at this time under these circumstances.

Based upon these special assumptions and limiting conditions, which I have not yet verified, your individual Lots 2 and 3 appear to be unbuildable. In that case, those lots would have little or no value, in my opinion. As a practical matter of fact, they both present the owner with some liability of ownership in that case, because of property taxes etc.

The attached subdivision plat that you sent also reflects a "proposed OCRM baseline" which would move the old OCRM baseline seaward by approximately 30 feet, according to my conversation with you on this matter. If the OCRM baseline eventually were moved to the new seaward baseline and new construction of at least 2,500 square were permitted on your properties, the values of these ocean front sites would become very significant. You have asserted that values, in that event, would approach $2,000,000. Without a significant amount of additional research and work, I cannot verify that level of value, under these assumptions. However, based upon extensive past research and experience, I can easily opine that the value would be well in excess of $1,000,000 per lot, if these assumptions are correct and verified.

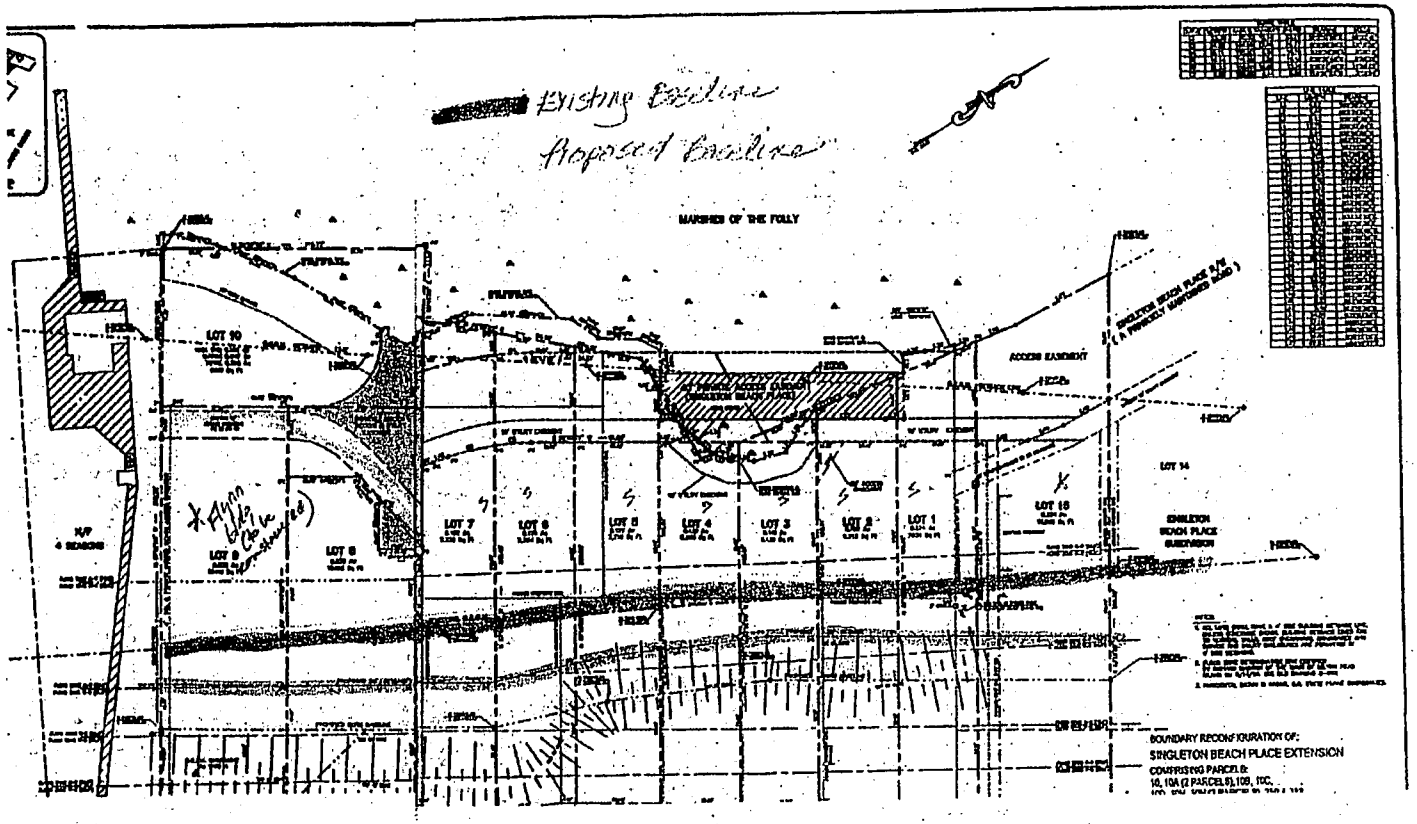
I am sorry that I cannot be more specific than the above opinions. However, license law and good common sense dictate that more specific value opinions would require a very significant amount of additional work and verification of the facts in the case. I have also attached my certification pages and copies of my resume and license, for your review.

Sincerely,

S. V. Linsday

Stephen V. Linsday

State Certified Residential Real Estate Appraiser #CR 51
C:appraisaldocs/segarsltr.doc


Existing Baseline
Proposed Baseline
MARSHES OF THE FOLLY
LOT 10
LOT 7
LOT 6
LOT 5
LOT 4
LOT 3
LOT 2
LOT 1
LOT 16
LOT 14
ACCESS EASEMENT
SINGLETON BEACH PLACE EXTENSION
BOUNDARY RECONFIGURATION OF:
SINGLETON BEACH PLACE EXTENSION

File No.

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 or warranties, 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.

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 of the 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.

Please see attached letter for special assumptions and limiting conditions.

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: Lots 2 and 3, Singleton Beach Place Extension Subdivision

APPRAISER:

Signature: S. V. Linsday

Name: S. V. Linsday, #CR 51

Date Signed: 10/30/08

State Certification #: #CR 51

or State License #: N/A

State: South Carolina

Expiration Date of Certification or License: 06/30/2010

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

Qualifications - Stephen V. Linsday

State Licensing Information

State Certified Residential Real Estate Appraiser # CR-51 for the State of South Carolina.

Business Affiliations and Experience

Senior Appraiser/ Owner, Linsday Company, Real Estate Appraisal and Consulting Services.
Specializing in residential real estate appraisal reporting.

Formal Education

Macomb County Community College
St. Clair County Community College
Central Michigan University
University of Michigan

Romeo High School, Romeo, Michigan- Diploma 1966

Military Service

U. S. Navy- Honorable Discharge

Real Estate And Appraisal Education

May 1972 - Graduate Real Estate Institute Course I, Univ. of Michigan.
July 1972 - Graduate Real Estate Institute Course II, Univ. of Michigan.
January 1973 - Graduate Real Estate Institute Course III, Univ. of Michigan.
February 1973 - Received professional designation of Graduate Real Estate Institute, G.R.I.
October 1973 - Real Estate Law Course, Univ. of Michigan.
March 1974 - Real Estate Financing Course, Univ. of Michigan.
April 1975 - Real Estate Appraisal Fundamentals Course, Univ. of Michigan.
June 1975 - Received professional designation of R.A.M. from the Michigan Association of Realtors.
Sept. 1975 - June 1976 - (2 Semesters) Instructor for: Real Estate Practices Course at Cleary Business College, Ypsilanti, Michigan.
August 1979 - Real Estate Appraisal Seminar, University of Michigan.
February 1986 - An Introduction to Appraising Real Property, The Society of Real Estate Appraisers, Chicago, Illinois.
June 1986 - Applied Residential Property Valuation, Course 102, The Society of Real Estate Appraisers, Chicago, Illinois.
September 1987 - Passed Course 8-1, Real Estate Appraisal Principles, The American Institute of Real Estate Appraisers, Chicago, Illinois.
December 1987 - Passed Course 8-3, Standards of Professional Practice, The American Institute of Real Estate Appraisers, Chicago, Illinois.
February 1988 - Professional Practice and the Society of Real Estate Appraisers Seminar, The Society of Real Estate Appraisers, Chicago, Illinois.
March 1989 - Passed Course 8-2, Residential Valuation, The American Institute of Real Estate Appraisers, Chicago, Illinois.
October 1992 - Standards of Professional Practice, Parts A&B, Appraisal Institute ,Chicago Illinois.
September 1993 - C1: Introduction to Income Property Appraisal, The Citadel, The Military College of South Carolina, Charleston, SC.
July 1994 - The New South Carolina Agency Disclosure Form, South Carolina Association of Realtors, Columbia, SC.
July 1994 - Understanding Limited Appraisals & Appraisal Reporting Options, General Appraisal Institute Seminar, Chicago, Illinois
May 1995 - Federal and State Law Update Seminar- Realtor Education Foundation of South Carolina, Hilton Head Island, SC.
February 1996 - Legal and Legislative Update, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
February 1998 - Risk Reduction through Agency and Property Disclosure, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
June 1997 - Core and More Course, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
March 1998 - Standards of Professional Practice (L-3), J T & T Seminars, Columbia, SC. 15 Hours
June 1999 - Discounted Cash Flow Analysis, J T & T Seminars, Columbia, SC. 10 Hours
June 2000 - Core and More Course, Hilton Head Island Association Real Estate School, Hilton Head Island, SC.
June 2000 - Standards of Professional Practice (L-3), The Citadel, The Military College of South Carolina Charleston, SC.
April 2001 - Law Update, #CEC 105005, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
April 2001 - Measure Up, #CEE 133801, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
June 2001 - Bugs, Mold & Rot, #CEE 044002, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
June 2002 – Appraising Condos #02-CE-106, The Citadel, The Military College of South Carolina, Charleston, SC.
April 2003 – National USPAP Update Course, # 33-CE-NSU, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.
April 2003 – Housework Homework, # 70-CE-143, Hilton Head Area Assoc. of Realtors School, Hilton Head Island,SC.
June 2004 - Fair Housing Seminar, #CEC134003, Hilton Head Area Assoc. of Realtors School, Hilton Head Island, SC.

Qualifications – Stephen V. Linsday

June 2004 – National USPAP Update Course, #33 CEN SU, Hilton Head Island Assoc. of Realtors School, Hilton Head Island, SC.
June 2004 - There is More to Appraising than USPAP-Update, #33 CEN 123, Hilton Head Assoc. of Realtors School, Hilton Head Island, SC.
June 2005 - Property Inspection for the Appraisers, #33-CD-119, L. Wendell Hahn & Associates, Columbia, SC.
June 2005 – The New Fannie Mae Forms Course, #33-CD-124, L. Wendell Hahn & Associates, Columbia, SC
June 2006 – Agency Changes in SC, #CEC050028, Hilton head Area Association of Realtors, Hilton Head Island SC
June 2006 – Six Critical Problems For Appraisers, #33 – CE-125, Wendell Hahn & Associates, Hilton Head Island, SC
June 2006 – USPAP 7 Hour Update 2006, #33-CE-NSU, Wendell Hahn & Associates, Hilton Head Island, SC
June 2007 – Residential Case Studies, #33-CE-126, Wendell Hahn & Associates, Hilton Head Island, SC
June 2007 - USPAP 7 Hour Update 2007, #33-CE-NSU, Wendell Hahn & Associates, Hilton Head Island, SC
June 2008 - Appraising in Declining Markets, #33-CE-127, Wendell Hahn & Associates, Hilton Head Is, SC
June 2008 - USPAP 7 HOUR UPDATE 2008, #33-CE-NSU, Wendell Hahn & Associates, Hilton Head Is, SC

Professional Memberships

National Association of Realtors, Chicago, Illinois -1972 through 2006 and Member of the Appraisal Section of the National Association of Realtors from inception to 2006. Member of the Silver Service Club in 2000 for more than 25 years of commitment and dedication as a Realtor.

S.C. Association of Realtors, Columbia, South Carolina - 1984 through 2006.

Hilton Head Island Association of Realtors, Hilton Head Island, South Carolina - 1984 through 2006; elected President for 1994, Vice President for 1993, Secretary for 1992, elected to Board of Directors in 1991. Chairman of the Professional Standards Committee for 1985, 1989, 1990, 1997, 1998, 1999, 2000 and 2001. Chairman of the Grievance Committee for 1986, 1987 and 1988.

Named "Realtor of the Year" in 2000.

Hilton Head Island Multiple Listing Service - 1988 through present; elected to Board of Trustees 1991; elected Treasurer of the Board of Trustees for 1992, 1993 and 1994, elected Secretary for 1999, 2000, 2001, 2002, 2003 and 2004.

Ann Arbor Board of Realtors, Ann Arbor, Michigan - 1972 through 1984. Served as Chairman of several committees, elected Secretary of the Association for 1982.

Michigan Association of Realtors, Lansing, Michigan - 1972-1984.

Background Summary

Senior Appraiser/ Owner, Linsday Company, Real Estate Appraisal and Consulting Services P. O. Box 6164, Hilton Head Island, South Carolina 29938 - August 19,1988 through present.

Appraiser , Keenan and Associates, Hilton Head Island, South Carolina - 1985 through August 18, 1988.

Project Sales Manager, Sea Pines Real Estate Company, Hilton Head Island, South Carolina - 1984 through 1985

Co-Owner/Broker/Appraiser, Craven-Linsday Co., Realtors, Ann Arbor, Michigan - 1980 through 1984.

Co-Owner/Broker/Appraiser, Linsday-Hahn Co., Realtors, Ann Arbor, Michigan - 1978 through 1980.

Owner/Broker/Appraiser, S.V. Linsday Co., Realtors, Ann Arbor , Michigan - 1976 through 1978.

Real Estate Broker, Caldwell & Reinhart Co., Realtors, Ann Arbor, Michigan - 1972 through 1976.

Signature S. V. Linsday Date July 7, 2008
Stephen V. Linsday, CR #51

South Carolina
Real Estate Appraisers Board
STEPHEN V. LINSDAY
is hereby entitled to practice as a
Certified Residential Real Estate Appraiser
CR 51
License Number:
EXPIRES
OFFICE COPY

State Of South Carolina

Real Estate Appraisers Board

STEPHEN V. LINSDAY

CR 51

Having Satisfied The Qualifications Of The South Carolina Real Estate Appraisers Board And Having Complied With The Requirements Prescribed By Law, Is Hereby Entitled To Practice As A

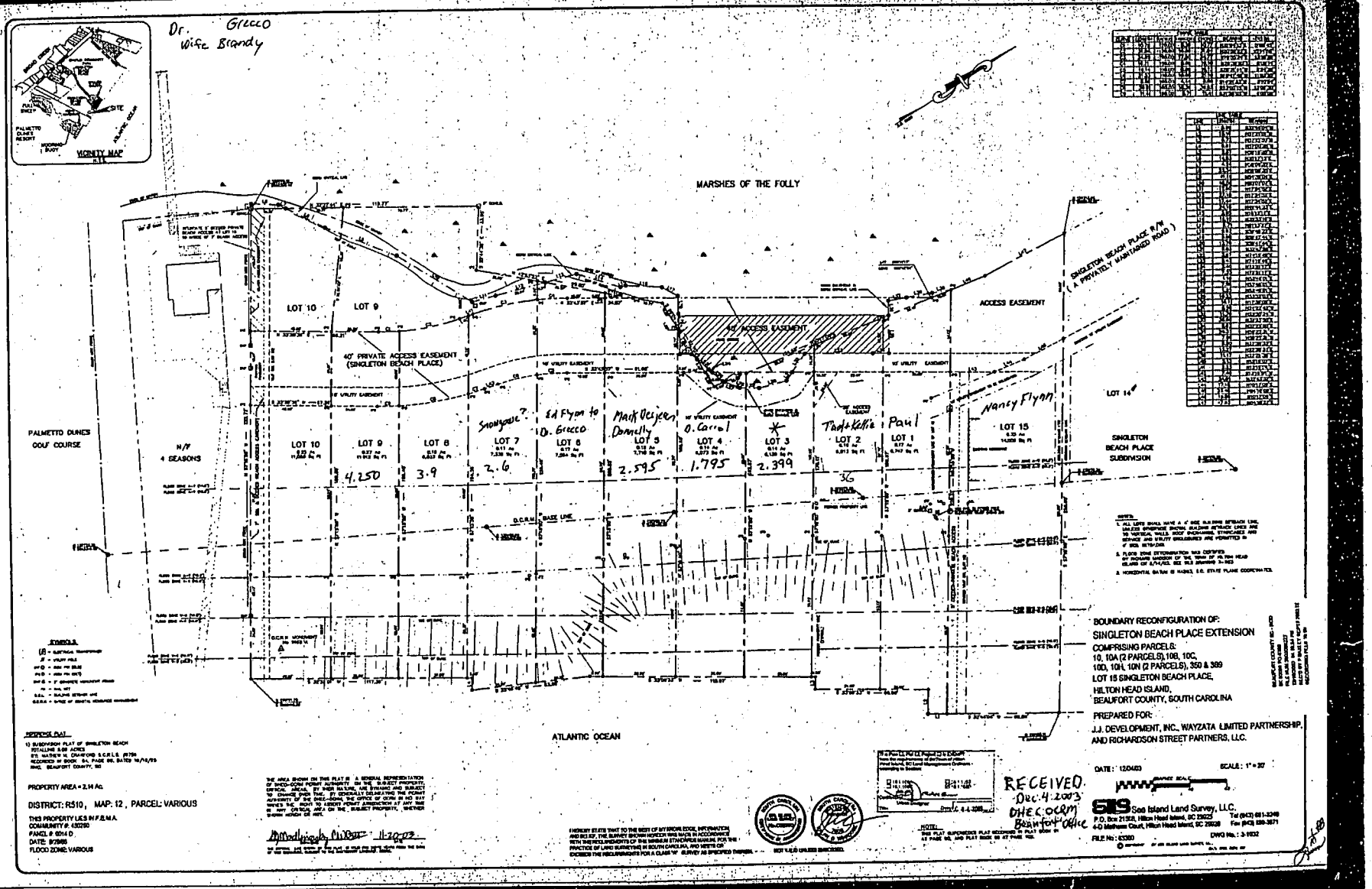
State Certified Residential Real Estate Appraiser

In Witness Whereof The South Carolina Real Estate Appraisers Board By Virtue Of The Authority Vested In It By Chapter 60, Title 40 Code Of Laws Of South Carolina Has Caused This Document To Be Issued With Its Seal Imprinted Hereon.

Real Estate Commissioner

Director, Licensing and Certification

Property of South Carolina Real Estate Appraisers Board


Dr. Grecco
Wife Brandy
VICINITY MAP
MARSHES OF THE FOLLY
SINGLETON BEACH PLACE R/W
(A PRIVATELY MAINTAINED ROAD)
ACCESS EASEMENT
40' ACCESS EASEMENT
40' PRIVATE ACCESS EASEMENT
(SINGLETON BEACH PLACE)
LOT 10
LOT 9
LOT 8
LOT 7
LOT 6
LOT 5
LOT 4
LOT 3
LOT 2
LOT 1
LOT 14
LOT 15
PALMETTO DUNES
GOLF COURSE
H/P
4 SEASONS
SINGLETON
BEACH PLACE
SUBDIVISION
Snowgoose ?
Ed Flynn to
D. Grecco
Mark Oeijen
Donnelly
O. Carroll
Tad+Kellie
Paul
Nancy Flynn
4.250
3.9
2.6
2.595
1.795
2.399
36
BASE LINE
ATLANTIC OCEAN
BOUNDARY RECONFIGURATION OF:
SINGLETON BEACH PLACE EXTENSION
COMPRISING PARCELS:
10, 10A (2 PARCELS), 10B, 10C,
10D, 10H, 10N (2 PARCELS), 350 & 399
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: 12/04/03
SCALE: 1" = 30'
PROPERTY AREA = 2.14 Ac.
DISTRICT: R510, MAP: 12, PARCEL: VARIOUS
THIS PROPERTY LIES IN F.E.M.A.
COMMUNITY #: 450250
PANEL #: 0014 D
DATE: 9/29/86
FLOOD ZONE: VARIOUS
RECEIVED
Dec. 4. 2003
DHEC-OCRM
Beaufort Office
Sea Island Land Survey, LLC.
P.O. Box 21522, Hilton Head Island, SC 29925
4-D Malhame Court, Hilton Head Island, SC 29926
Tel (843) 681-3248
Fax (843) 686-3671
FILE No.: 03080
DWG No.: 3-1932

22X

A.

OMB NO. 2502-0265

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

SETTLEMENT STATEMENT

B. TYPE OF LOAN:
1. [ ] FHA 2. [ ] FmHA 3. [X] CONV. UNINS. 4. [ ] VA 5. [ ] CONV. INS.

6. FILE NUMBER: SEGARS, T-775.061
7. LOAN NUMBER:
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 are shown. Items marked "[POC]" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

1.0 3/98 (SEGARS, T 775.061.PFD/SEGARS, T 775.061/20)

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
Thaddeus F. Segars 87 Singleton Beach Road Hilton Head Island, SC 29926	Richardson Street Partners, LLC 1650 Appaloosa Drive Sumter, SC 29154	The National Bank of South Carolina 3 Belfair Village Drive Bluffton, South Carolina 29910

G. PROPERTY LOCATION:	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:
Lot 2 Singleton Beach Hilton Head Island, SC 29926 Beaufort County, South Carolina		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.	
Adjustments For Items Paid By Seller in advance		*Adjustments For Items Paid By Seller in advance*	
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.	
Adjustments For Items Unpaid By Seller		*Adjustments For Items Unpaid By Seller*	
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.

Substitute 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 797, Sales of Business Property, Form 8252, 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 8828, 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 Paperwork Reduction Act Notice, see the 2004 Instructions for Forms 1099, 1099, 5498, and W-G2.

Department of the Treasury - Internal Revenue Service

UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE NUMBER SHOWN BELOW ON THIS STATEMENT IS MY CORRECT TAXPAYER IDENTIFICATION NUMBER.

Seller's Signature	Seller's Signature	Seller's Signature	Seller's Signature
TaxID/SSN: 249-82-8355	TaxID/SSN:	TaxID/SSN:	TaxID/SSN:

L. SETTLEMENT CHARGES

		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price	$ 1,600,000.00 @ 4.0000 % 64,000.00		
Division of Commission (line 700) as Follows:			
701. $ 64,000.00 to Dunes Marketing Group			
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	
(includes above item numbers:			
1108. Title Insurance	to Hilton Head Island/Bluffton Title Agency	2,700.00	
(includes above item numbers:			
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/Stamps: HHI Transfer Tax	4,000.00; Mortgage	4,000.00	
1203. State Tax/Stamps: 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

ertified to be a true copy.

he undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.
HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND CCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY HAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT.

Borrower Thaddeus F. Segars
Thaddeus F. Segars

Seller Richardson Street Partners, LLC

BY:_____
Its:_____

O THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE UNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS RANSACTION.

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

ARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON ONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
701. $ 64,000.00	to Dunes Marketing Group		
702. $	to		
703. Commission Paid at Settlement			64,000.00
704.			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN	to		
801. Loan Origination Fee 0.2500 %	to NBSC		
802. Loan Discount %	to		
803. Appraisal Fee	to NBSC	5,400.00	
804. Credit Report	to		
805. Tax Service Fee	to	300.00	
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.		
1103. Title Update/Post Recording	to Sea Island Abstract & Title Co.	125.00	
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1105. Document Preparation	to Jones, Patterson, Simpson & Newton, P.A.	75.00	
1106. POA Closing Processing Fee	to Jones, Patterson, Simpson & Newton, P.A.		
1107. Attorney's Fees (includes above item numbers:	to Hilton Head Island/Bluffton Title Agency	1,000.00	
1108. Title Insurance (includes above item numbers:	$ 1,360,000.00	2,700.00	
1109. Lender's Coverage	$ 1,800,000.00 75.00		
1110. Owner's Coverage	to Jones, Patterson, Simpson & Newton, P.A. 2,625.00		
1111. Seller's Attorney Fee & Costs	to Jones, Patterson, Simpson & Newton, P.A.		
1112. Fed Ex/Courier/Misc. Charges			1,000.00
1113.		15.00	30.00
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording Fees: Deed $ 10.00; Mortgage $ 11.00; Releases $		21.00	
1202. City/County Tax/Stamps: HHI Transfer Tax 4,000.00; Mortgage		4,000.00	
1203. State Tax/Stamps: 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		
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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:

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 CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

(SEGARS, T 775 001 / SEGARS, T 775.001 / 1H)

Jun 11 04 08:50a Historic Hills (803)489-9807 p.3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	CASE NO.: 2009-CP-07-03201
NATIONAL BANK OF SOUTH)	
CAROLINA,)	
)	
Plaintiff,)	DEFENDANTS' SUPPLEMENTAL
)	BREIF IN SUPPORT OF THEIR MOTION
vs.)	FOR SUMMARY JUDGMENT AND IN
)	OPPOSITION TO PLAINITIFF'S
)	MOTION FOR SUMMARY JUDGMENT
THADDEUS F. SEGARS; KELLIE)	
W. SEGARS, SINGLETON PLACE)	
HOMEOWNERS ASSOCIATION,)	
INC., and SUNTRUST MORTGAGE)	
INC.,)	
)	
Defendants.)	
)	

Defendant Thaddeus F. Segars previously filed a Brief in Support of their motion for summary judgment and in opposition to Plaintiff's motion for summary judgment. The parties argued their cross motions for summary judgment but the Court agreed to allow the parties to mediate the case prior to ruling on the motions. The parties mediated the case on but were not able to settle at mediation. With the Court's indulgence the parties continued to negotiate but again were not able to settle the matter. Prior to adjourning the hearing on the cross motions for summary judgment the Court granted Thaddeus Segars the opportunity to submit an additional Brief in opposition to plaintiff's argument that the Statute of Limitations are a time bar to Segars' counter claims in this case.

Defendants have asserted three counterclaims; (1) negligent misrepresentation, (2) breach of fiduciary duties and (3) breach of contract accompanied by fraudulent act

all based upon the appraisal procured by the Plaintiff NBSC and subsequent actionsof the Plaintiff. Generally, a cause of action accrues at the moment a breach of duty occurs. *Grooms vs. Medical Soc'y of S.C.* 289 S.C. 399 380 S.E. 2d 855 (Ct. App. 1989). 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 *vs. City of Rock Hill* 330 S.C. 640,500S.E. 157 (Ct.App.1998). The statute starts to run upon the discovery of such facts as would have led to the knowledge thereof if pursued with reasonable diligence. 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).

Plaintiff states in their brief facts upon which they rely to support their motion for summary judgment based upon the statute of limitations. They state that shortly after the closing on the property the Town of Hilton Head revoked the approved plat. Fidelity Title Insurance Company retained an attorney to represent Segars and other lot owners to cure the plat revocation by the Town in September or October of 2004. In addition Plaintiff points out that Segars and others retained the services of Cotton Harness and joined the administrative law case regarding the movement of the OCRM baseline sometime in 2005. It is upon these facts that Plaintiff claims Segars was aware of a potential cause of action as he was aware of a problem with the OCRM baseline. **Segars claims in the present case did not arise out of a knowledge of the placement of the OCRM baseline but the negligence of the appraiser discovered in 2009 well after the closing on the lot. (emphasis added)**

The Plaintiff's argument on the statute of limitations is based upon a faulty premise. The Plaintiff submits that the question as to when the statute of limitations began to run relates to the time period during which Segars learned of the facts which would have put him on notice of the true location of the OCRM baseline. The counterclaims against the bank, based in part on the actions of their appraisal agent, are not based upon the issues of the location of the OCRM line. Clearly Segars knew there was an issue with the location of the OCRM line in 2005. **What Segars did not know and, in fact had no way of knowing, was which plat the bank's appraiser used in preparing the appraisal that valued the subject lot at $1.6 million. (emphasis added)** If the bank's appraiser used the plat which showed the future OCRM baseline the lot would have been sufficient size to build a home which would have complied with the covenants and restrictions of the neighborhood. If, in preparing the appraisal, the appraiser used the plat which did not show the future OCRM baseline it would have, or should have been readily apparent that the lot was unbuildable taking into consideration the covenants and restrictions of the

neighborhood. Segars assumed the appraiser used the plat showing the future baseline. Only after the Plaintiff instituted the present action did Segars request a copy of the appraisal report from the bank. When Segars looked at the appraisal report for the first time he learned that the appraiser used the plat which did not have the future OCRM baseline but the original OCRM baseline which limited the size of the home one could build. Therefore the appraiser had the information showing the lot was unbuildable. Therefore the "discovery" which gives rise to Segars counterclaims is not whether there were issues with the OCRM baseline but when Segars discovered that the appraiser used

the original plat. Segars only received the appraisal report after this suit was commenced and alleged the counterclaims within three months thereafter certainly well within three years of. Prior to that it was represented to Segars that the appraisal report valued the property at $1.6 million dollars. In addition, as Plaintiff has pointed out, the appraisal was undertaken by the bank for their protection. It is also clear that Segars was charged for the appraisal, relied on the valuation set by the appraisal and had a right under South Carolina law to rely on the appraisal.

Plaintiff also argues that two other cases filed by Segars which were dismissed because the statute of limitations should support a similar outcome in this case. Both those cases are distinguishable from the present case. Plaintiff states that the case *Thaddeus Segars v. Richardson Street Partners, LLC* to support its statute of limitations argument. Plaintiff, however, makes the same mistaken argument by asserting that *Richardson* and the present case are " upon the very same issue of the location of the OCRM baseline on the property." In *Richardson* Segars' claims were based on the discovery of a "corrective plat" in 2005. In that instance Segars did not file his claims within three years of the discovery of the "corrective plat" and, therefore, his claims were time barred by the applicable statute of limitations. **In the present case Segars claims are not based upon knowing of an issue with the OCRM baseline, but based upon the discovery of which plat the bank's appraiser used in preparing the appraisal. (emphasis added)**

Plaintiff makes the same incorrect argument using the case of *Thaddeus Segars v. Jones, Patterson, Simpson & Newton, PA, et al.* This was an action brought against Segars closing attorneys alleging that they failed to advise Segars prior to the closing that

that the OCRM baseline had not been moved. This too is quite different from the present case. The negligent act in the *Jones* case occurred prior to or at the closing. Segars discovered the issue with the OCRM baseline at least by the time the ALC proceeding in Maarch 2005 but failed to bring suit within three years of discovery of the attorneys' alleged negligence. Since both Richardson and Newton involved the OCRM baseline issue, and it was clear when Segars was aware of the issue based upon the ALC proceeding, it was clear the statute of limitations had run in those cases.

S.C. Code § 15-3-535 sates that all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have know that he had a cause of action statute starts to run upon the discovery of such facts, as would have led to the knowledge thereof if pursued with reasonable diligence. The question in this instance becomes when did Segars know or reasonably should have known that he had a cause of action against the Plaintiff? The answer is that **Segars could only have known of a potential claim against the Plaintiff when came into possession of the appraisal report not when an issue of the OCRM baseline was raised. (emphasis added)** Segars did not know, nor should he have known, what plat the appraiser used in preparing the appraisal. The Plaintiff bank had nothing to do with the placement of the OCRM baseline and thus would not have drawn scrutiny from Segars, or apparently nay of his attorneys. In addition, Segars was represented by several attorneys regarding the baseline issues none of whom thought, or suggested to Segars, that the Plaintiff bank was in any way liable. Is it reasonable to think that Segars should have known of a potential claim against the Plaintiff because of issues with the OCRM baseline when at least three separate attorneys never thought he did or advised

Segars he may have a claim. However, when Segars saw the appraisal and realized that the appraiser used the plat which showed the original OCRM baseline he had reason to question the appraisal and consequently the Plaintiff.

Based upon the foregoing, and viewing the evidence in a light most favorable to the non moving party NBSC' s motion for Summary Judgment on the basis that Segars claims are time should be denied.

FINN LAW FIRM, P.C.

By: _____

Thomas J. Finn
Attorney for the Defendants
P.O. Box 6003
Hilton Head Island, S.C.
29938
Phone (843)682-3555
Fax (843) 682-3558
Email finlaw@hargray.com

This 13th day of March, 2013
Hilton Head island, South Carolina

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS) IN THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF	)
NATIONAL BANK OF SOUTH CAROLINA,	)CASE NO.: 2009-CP-07-03201)CASE NO.: 2009-CP-07 03844
Plaintiff,	)
vs.	)
THADDEUS F. SEGARS; SEGARS AND ASSOCIATES, INC., BEACH FIRST NATIONAL BANK: BURKES BEACH PROPERTY OWNERS ASSOCIATION,	) NOTICE OF MOTION AND MOTION TO RECONSIDER
Defendant,	)

14 FEB 27 PM 4:19

TO: DANIEL A. SAXON, ESQUIRE, ATTORNEY FOR NATIONAL BANK OF SOUTH CAROLINA .

PLEASE TAKE NOTICE THAT Defendant Thaddeus F. Segars will move before this Court within ten days pursuant to SCRCP 59 (e) to request the Court reconsider its Orders January 22, 2014 and filed February 7th and February 11th respectively. Attached hereto are the two Orders from the above captioned cases Defendant Segars requests the Court reconsider.

FINN LAW FIRM

Thomas J. Finn
Attorney for the Defendant,

P.O. Box 6003
Hilton Head Island, South Carolina
29938
(843) 682-3555

This 25th day of February, 2014
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 FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2009-CP-07-03201 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 statue 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.

N&S 11275-131

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 retain 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 Gaughf'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 16, 2014

Honorable Marvin H. Dukes, III
Special Circuit Court Judge

N&S 11275-131

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; SEAGERS AND ASSOCIATES, INC.; BEACH FIRST NATIONAL BANK, INC. AND BURKES BEACH PROPERTY OWNERS ASSOCIATION, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-03844

CERTIFICATE OF SERVICE BY MAIL

This is to certify that I, Jennie S. Cerrati, attorney for Plaintiff National Bank of South Carolina, have this day caused to be served upon the person(s) named below the Order on Plaintiff's Motion for Summary Judgment in this matter by placing copies of the same in the United States Mail, First Class, with proper postage affixed addressed as follows:

Thomas Justin Finn, Esquire
FINN LAW FIRM, P.C.
Post Office Box 6003
Hilton Head Island, South Carolina 29938
Attorney for,

Dated this 14th day of February, 2014.

Jennie S. Cerrati, Esquire
NOVIT & SCARMINACH, P.A.
Post Office Drawer 14
Hilton Head Island, South Carolina 29938
(843) 785-5850
(843) 785-2090 (facsimile)

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
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-03201

CERTIFICATE OF SERVICE BY MAIL

FILED
2014 FEB 27 PM 4:19

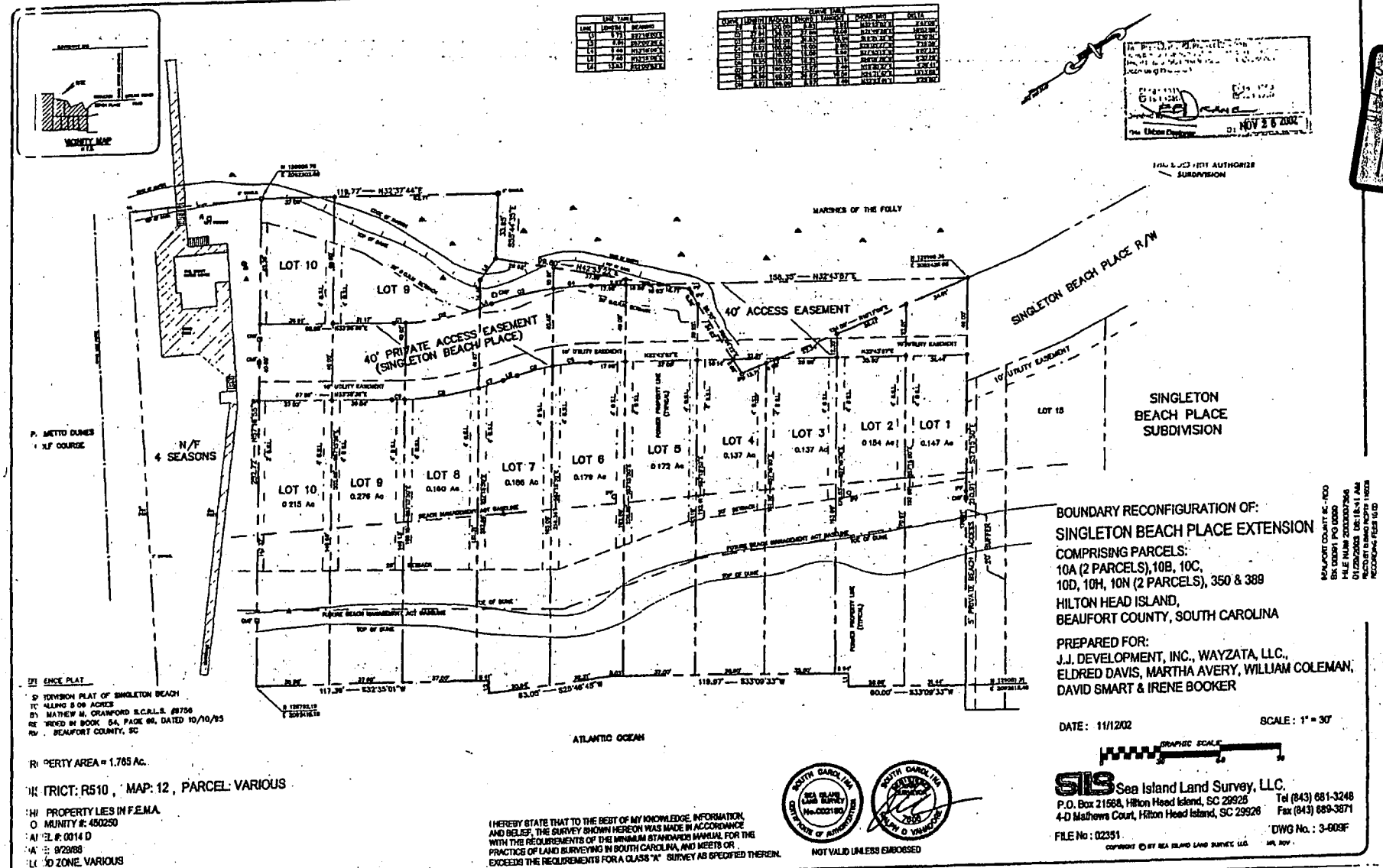
This is to certify that I, Jennie S. Cerrati, attorney for Plaintiff National Bank of South Carolina, have this day caused to be served upon the person(s) named below the Order on Plaintiff's Motion for Summary Judgment in this matter by placing copies of the same in the United States Mail, First Class, with proper postage affixed addressed as follows:

Thomas Justin Finn, Esquire
FINN LAW FIRM, P.C.
Post Office Box 6003
Hilton Head Island, South Carolina 29938
Attorney for,

Dated this 14th day of February, 2014.

Jennie S. Cerrati, Esquire
NOVIT & SCARMINACH, P.A.
Post Office Drawer 14
Hilton Head Island, South Carolina 29938
(843) 785-5850
(843) 785-2090 (facsimile)

N&S: 11275-131



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'

PROPERTY AREA = 1.765 Ac.

DISTRICT: R510 , MAP: 12 , PARCEL: VARIOUS

THE PROPERTY LIES IN F.E.M.A.
COMMUNITY #: 450250
PANEL #: 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.

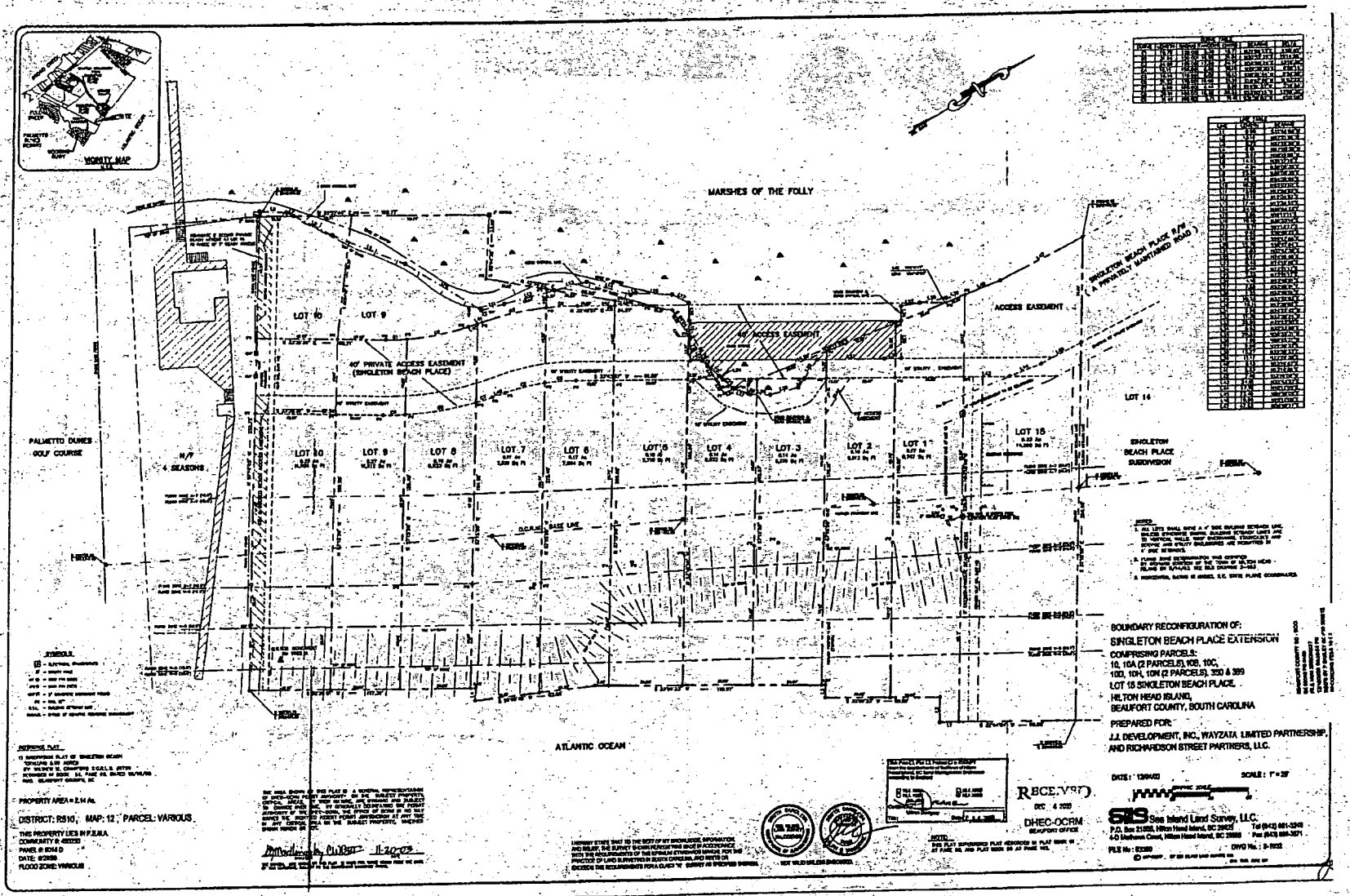
NOT VALID UNLESS EMBOSSED

SIS 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. : 3-609F

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0728



PLAINTIFF'S EXHIBIT 8

96/160

0729

LOT. CONTRACT.

775.061
5538.008

PLAINTIFF'S EXHIBIT

Post Office Box 21526
Hilton Head Island
South Carolina 29925

DUNES MARKETING GROUP

(843) 842-1111
(800) 258-5202
Fax Number (843) 842-4788

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")	$ 10,000
b.	Additional Deposit to be paid by 3/31/04	$ 15,000
c.	A First Mortgage for at least _____ years at prevailing interest rates and terms	$ 1,360,000
d.	Balance in cash at Closing	$ 215,000

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:

a. Purchaser's loan application must be submitted within 15 days.
b. Purchaser shall obtain a comfort letter from the lender within 25 days.
c. 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 9, 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.

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 fireplaces 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 (CL-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 costs of such repair.

6. OTHER TERMS. Other terms and conditions of this Contract are:
Buyers have until Fri. 3/12/04 for due diligence.

7. DATE OF CLOSING. The closing of this Contract shall take place on or before May 31, 2004, 20__ (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.

_____ Date 3/15/04

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. Weston 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 attorneys' fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any regime 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 guaranties or warranties regarding any rental income or other economic benefit of the Property to Purchaser; (5) give no guaranties or warranties regarding any regime 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 at 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 regime 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 (as amended) regarding withholding requirements for sellers who are not South Carolina or U.S. residents.

Purchaser _____ Date _____ Seller _____ Date 2.15.04

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.

Initials: Purchaser _____ Date 3-15-04 Seller _____ Date 3-15-04

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 later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

B. C. C. + S by Tad Segars Sclic. Agent
Purchaser

3-12-04
Date

Purchaser

Date

WITNESSES:

Seller

3-15-04
Date

Seller

Date

Listing Agent: Tad Segars Company:

Selling Agent: Tad Segars 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: Purchaser TB Date 3/4/04 Seller [illegible] Date 3/15/04 (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.

- [X] SECURED
- [ ] UNSECURED
- [X] INDIVIDUAL CREDIT - relying solely on my income or assets
- [ ] 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 5/13/04 CLASS NO. _____
ACCOUNT NO. [illegible]
APPROVED [X] BY [illegible]
DECLINED [ ] BY _____

AMOUNT REQUESTED	FOR HOW LONG	PAYMENT DATE DESIRED	WANT TO REPAY	PROCEEDS OF LOAN TO BE USED FOR:
$ 1360000.00	12 MONTHS	07/15/2004	[X] MONTHLY [ ]	PURCHASE SINGLETON BEACH LOT

SECTION A - INDIVIDUAL APPLICANT INFORMATION

NAME (Last, First, Middle)
THADDEUS F SEGARS

BIRTHDATE	TELEPHONE NO.	DRIVER'S LICENSE NO.	SOCIAL SECURITY NO.	NO. DEPENDENTS	AGES OF DEPENDENTS
01/01/1964	843-842-1111		249-15-6379		

ADDRESS (Street, City, State & Zip) | COUNTY | Do you [ ] own or [ ] rent? | HOW LONG yrs-mos
87 SINGLETON BEACH RD ; HILTON HEAD ISLAND, SC 29928-5326 | BEAUFORT | | 0*-

PREVIOUS ADDRESS (Street, City, State & Zip) (Complete if less than 3 years at present address) | COUNTY | Did you [ ] own or [ ] rent? | HOW LONG yrs-mos

EMPLOYER (Company Name & Address) | HOW LONG yrs-mos
SEGARS & ASSOCIATES ; ; , - | 0*-

BUSINESS PHONE	Ext.	POSITION OR TITLE	SALARY PER MONTH
843-842-1111		SELF-EMPLOYED	GROSS: $.*0 NET: $

PREVIOUS EMPLOYER (Company Name & Address) | HOW LONG yrs-mos

NAME AND ADDRESS OF NEAREST RELATIVE NOT LIVING WITH YOU | RELATIONSHIP | TEL

; PLAINTIFF'S EXHIBIT 4

mony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for re

Alimony, child support, separate maintenance received under: [ ] Court Order [ ] Written Agreement [ ] Oral Understanding

SOURCES OF OTHER INCOME | AMOUNT PER MONTH
$.*0

Is any income listed in this Section likely to be reduced before the credit request is paid off?
[X] No [ ] Yes (Explain)

Have you previously received credit from us?
[X] 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)

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 or secured credit, or applicant resides in a community property state or is relying 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)

Expert™ © 1986 Bankers Systems, Inc., St. Cloud, MN Form UCA-6/30/2003

0735

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.

- [x] SECURED
- [ ] UNSECURED
- [x] INDIVIDUAL CREDIT - relying solely on my income or assets
- [ ] 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. 0000000000

APPROVED [x] BY _____

DECLINED [ ] BY _____

AMOUNT REQUESTED	FOR HOW LONG	PAYMENT DATE DESIRED	WANT TO REPAY	PROCEEDS OF LOAN TO BE USED FOR:
$ 1360000.00	12 MONTHS	07/15/2004	[x] MONTHLY [ ]	PURCHASE SINGLETON BEACH LOT

SECTION A - INDIVIDUAL APPLICANT INFORMATION

NAME (Last, First, Middle)
THADDEUS F SEGARS

BIRTHDATE	TELEPHONE NO.	DRIVER'S LICENSE NO.	SOCIAL SECURITY NO.	NO. DEPENDENTS	AGES OF DEPENDENTS
01/01/1964	843-842-1111		249-15-6379		

ADDRESS (Street, City, State & Zip): 87 SINGLETON BEACH RD ; HILTON HEAD ISLAND, SC 29928-5326
COUNTY: BEAUFORT
Do you [ ] own or [ ] rent? HOW LONG yrs-mos: 0*-

PREVIOUS ADDRESS (Street, City, State & Zip) (Complete if less than 3 years at present address)
COUNTY:
Did you [ ] own or [ ] rent? HOW LONG yrs-mos:

EMPLOYER (Company Name & Address): SEGARS & ASSOCIATES ; ; , -
HOW LONG yrs-mos: 0*-

BUSINESS PHONE	Ext.	POSITION OR TITLE	SALARY PER MONTH
843-842-1111		SELF-EMPLOYED	GROSS: $.*0 NET: $

PREVIOUS EMPLOYER (Company Name & Address)
HOW LONG yrs-mos:

NAME AND ADDRESS OF NEAREST RELATIVE NOT LIVING WITH YOU | RELATIONSHIP | TELEPHONE NO. (Include Area Code)
;

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
$.*0

Is any income listed in this Section likely to be reduced before the credit request is paid off?
[x] No [ ] Yes (Explain)

Have you previously received credit from us?
[x] 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)

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 or secured credit, or applicant resides in a community property state or is relying 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)

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0736

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 Appli: 0886821488

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 NEWTON

(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 _____ Date

Thad Segars 5/18/04
Borrower's Signature (Date)

Borrower's Signature (Date)

Borrower's Signature (Date)

Borrower's Signature (Date)

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PLAINTIFF'S EXHIBIT 5

3/10 PB JBSN 6/81



BEAUFORT COUNTY SC - ROD
BK 01976 PGS 1964-1966
FILE NUM 2004041945
08/23/2004 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
BEAUFORT COUNTY AUDITOR

CHANGE DMP Record 7/16/2004 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 **Thaddeus 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

JBSN/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) Witness

RICHARDSON STREET PARTNERS, LLC

By: Paul Gaughf
Its: Managing Member

3) Notary Public

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF SUMTER)

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.

Notary Public for: South Carolina
My Commission Expires: 11/12/2006

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:	Doug Matney
Fax:	785-8225	Pages:	3 with cover
Phone:		Date:	6/27/2004
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.

Thanks,

Doug

6-2-04

NBSC
The National Bank of South Carolina
MEMBER FDIC

DEFENDANT'S EXHIBIT
1 CR

May 28, 2004

Mr. Tad Segars
87 Singleton Beach Road
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

c) 816-0473

3 Belfair Village Drive / Bluffton, South Carolina 29910 / (843) 706-3113
www.NationalBankSC.com
A MEMBER OF THE SYNOVUS FINANCIAL CORP. FAMILY OF COMPANIES

1

a Jeff Davis Cabbage Co. Owners,
First Home 1/2 : 4.5
Cary Lee Villa 1/2 pt.
4M

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 706-3[illegible]10 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 — Thaddeus F. Segars

6-2-04 — Date

(13)

INVOICE

FROM

Linsday Company
S. V. Linsday, #CR 51
22 New Orleans Road, Suite 4
Hilton Head Island, SC 29928

Billed to NBSC

FILE NUMBER
040243

TO

NBSC / Synovous
Attention: Jerri Witten
3 Belfair Village
Bluffton, SC 29910

NBSC hired Linsday

Invoice Date	Appraisal Date	Loan Number	Case Number	Tax ID Number	Contact Phone
06/03/04	06/02/04			57-0873805	843-785-4444

PROPERTY INFORMATION

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

INVOICE INFORMATION

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	Loan Number	Case Number	File Number	Client's Phone
06/03/04	06/02/04			040243	843-706-3113

FROM

NBSC / Synovous
Attention: Jerri Witten
3 Belfair Village
Bluffton, SC 29910

AMOUNT DUE
$ 300.00

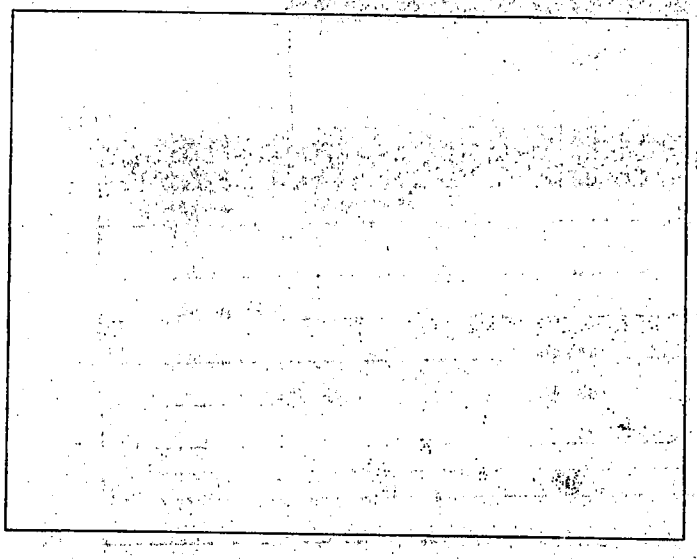
TO

Linsday Company
S. V. Linsday, #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!

Form produced by United Systems Software Company (800) 969-8727 www.unitedsystems.com



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

Prepared For:
NBSC / Synovous
3 Belfair Village
Bluffton, SC 29910

Prepared As Of:
06/02/04

Prepared By:
S. V. Linsday, #CR 51
Linsday Company
22 New Orleans Road, Suite 4
Hilton Head Island, SC 29928
Phone: 843-785-4444 Fax: 843-842-8795

APPRAISAL SUMMARY

SUBJECT INFORMATION

Subject Address: 17 Singleton Beach Place Unit #:
Legal Description: Lot 2, Singleton Beach Place Extension Subdivision
City: Hilton Head Island
County: Beaufort
State: SC
Zip Code: 29928
Census Tract: 45013.110
Map Reference: 510 012 000 010D

PRICE / DATE

Sales Price: $ 1,600,000
Date of Sale: Present

CLIENT

Borrower: Tad Segars
Lender/Client: NBSC / Synovous

DESCRIPTION OF IMPROVEMENTS

Size (Square Feet):
Price per Square Foot: $ 0.00000
Location: Good
Age:
Condition:
Total Rooms:
Bedrooms:
Baths:

APPRAISER(S)

Appraiser: S. V. Linsday, #CR 51
Supervisory Appraiser:

Opinion Letter

VALUE / DATE

Final Estimate of Value: $ $1,600,000 "Little if no value, in fact could be a liability" - Steve Linsday
Date of Appraised Value: 06/02/04

See Addendum 1

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SUMMARY REPORT

LAND APPRAISAL REPORT

File No. 040243

IDENTIFICATION

Borrower Tad Segars | Census Tract 45013.110 | Map Reference 510 012 000 010D

Property Address 17 Singleton Beach Place

City Hilton Head Island | County Beaufort | State SC | Zip Code 29928

Legal Description Lot 2, Singleton Beach Place Extension Subdivision

Sale Price $ $1,600,000 | Date of Sale Present | Loan Term N/A yrs. | Property Rights Appraised ☒ Fee ☐ Leasehold ☒ De Minimus PUD

Actual Real Estate Taxes $ Unknown (yr.) | Loan charges to be paid by seller $ N/A | Other sales concessions N/A

Lender/Client NBSC / Synovous | Address 3 Belfair Village, Bluffton, SC 29910

Occupant Vacant Site | Appraiser S. V. Linsday, #CR 51 | Instructions to Appraiser Estimate Market Value

NEIGHBORHOOD

Location	☐ Urban	☒ Suburban	☐ Rural
Built Up	☐ Over 75%	☒ 25% to 75%	☐ Under 25%
Growth Rate	☐ Fully Developed ☐ Rapid	☒ Steady	☐ Slow
Property Values	☒ Increasing	☐ Stable	☐ Declining
Demand/Supply	☒ Shortage	☐ In Balance	☐ Over Supply
Marketing Time	☐ Under 3 Mos.	☒ 3-6 Mos.	☐ Over 6 Mos.

Present Land Use 50 % 1 Family ___ % 2-4 Family ___ % Apts. 40 % Condo 10 % Commercial ___ % Industrial ___ % Vacant ___ % Recreational

Change in Present Land Use ☒ Not Likely ☐ Likely(*) ☐ Taking Place (*) (*) From ___ To ___

Predominant Occupancy ☒ Owner ☐ Tenant 5 % Vacant

Single Family Price Range $ 150000 to $ 1600000 | Predominant Value $ 250000

Single Family Age New yrs. to 25 yrs. | Predominant Age 7 yrs.

	Good	Avg.	Fair	Poor
Employment Stability	☐	☒	☐	☐
Convenience to Employment	☐	☒	☐	☐
Convenience to Shopping	☐	☐	☒	☐
Convenience to Schools	☐	☒	☐	☐
Adequacy of Public Transportation	☐	☒	☐	☐
Recreational Facilities	☒	☐	☐	☐
Adequacy of Utilities	☐	☒	☐	☐
Property Compatibility	☒	☐	☐	☐
Protection from Detrimental Conditions	☐	☒	☐	☐
Police and Fire Protection	☐	☒	☐	☐
General Appearance of Properties	☒	☐	☐	☐
Appeal to Market	☒	☐	☐	☐

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise) Singleton Beach Subdivision and Extension area 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.

Not sandbox — Homes

SITE

Dimensions 6,913 SF, Irregular In Shape - See Attached Plat = .16 Acre Sq. Ft. or Acres ☐ Corner Lot

Zoning Classification RM8: Moderate Density Zone - for home? Present Improvements ☒ Do ☐ Do not conform to zoning regulations

Highest and Best Use ☐ Present Use ☒ Other (specify) Improved with a single family dwelling

	Public	Other (Describe)
Electricity	☒	
Gas	☐	
Water	☒	
San. Sewer	☒	
	☒ Underground Elec. & Tel.	

OFF SITE IMPROVEMENTS

Street Access ☐ Public ☒ Private

Surface Macadam

Maintenance ☐ Public ☒ Private

☐ Storm Sewer ☐ Curb/Gutter

☐ Sidewalk ☐ Street Lights

Topo Predominately Level

Size Large Patio Size

Shape Irregular

View Ocean Front and Marsh View and Tidal Creek Views

Drainage Unknown/Appears Adequate

Is the property located in a HUD Identified Special Flood Hazard Area? ☐ Yes ☒ No

Comments (favorable or unfavorable including any apparent adverse easements, 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 easements, encroachments or special assessments were observed.

MARKET DATA ANALYSIS

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar 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 to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
Address	17 Singleton Beach Place, Lot2 Hilton Head Island, SC 29928	25 Singleton Beach Place, Lot 6 Singleton Beach Area		23 Singleton Beach Place, Lot 5 Singleton Beach Area		21 Singleton Beach Place, Lot 4 Singleton Beach Area	
Proximity to Subject		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 and Time Adjustment	DESCRIPTION Present	DESCRIPTION 03/26/04	+(-)$ Adjustment	DESCRIPTION 12/31/03	+(-)$ Adjustment 125,000	DESCRIPTION 03/10/04	+(-)$ Adjustment
Location	Good	Good		Good		Good	
Site/View	.16 Acre	.17 Acre		.18 Acre		.14 Acre	
View	Ocean Front	Ocean Front		Ocean Front		Ocean Front	
		wrong		wrong		wrong	
Sales or Financing Concessions		Conventional		Conventional		Conventional	
Net Adj. (Total)		☒ Plus ☐ Minus $	0	☒ Plus ☐ Minus $	125000	☒ Plus ☐ Minus $	0
Indicated Value of Subject		G: 0.00% N: 0.00% $	1600000	G: 8.47% N: 8.47% $	1600000	G: 0.00% N: 0.00% $	1533500

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 S/D, Lot 1, 15 Singleton Beach Extension is listed for $2,195,000. Broker reports Lot 3 is under contract for 1.8 Million.

RECONCILIATION

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 FHLMC 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.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF 06/02/04 to be $ $1,600,000

7.9.04

Appraiser(s) S. V. Linsday, #CR 51 Review Appraiser (if applicable) ___

Certification/License # State Certified Residential Real Estate Appraiser #CR 51 ☐ Did ☐ Did Not Physically Inspect Property

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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 / Synovous

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 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

correct plat of record

☒ 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 (Homes) 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	Sales 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.

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File No. 040243

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	Seller
03/15/04	None	1,600,000	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 comparables 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 explanation of current 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

USPAP

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 Agency as required by FIRREA, except that the Departure 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 _____ Effective Date 06/02/04 Date Prepared 06/03/04

Appraiser's Name (print) S. V. Linsday, #CR 51 Phone # (843) 785-4444

State SC ☐ License ☒ Certification # #CR 51 Tax ID # 57-0873805

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 _____ Date Prepared _____

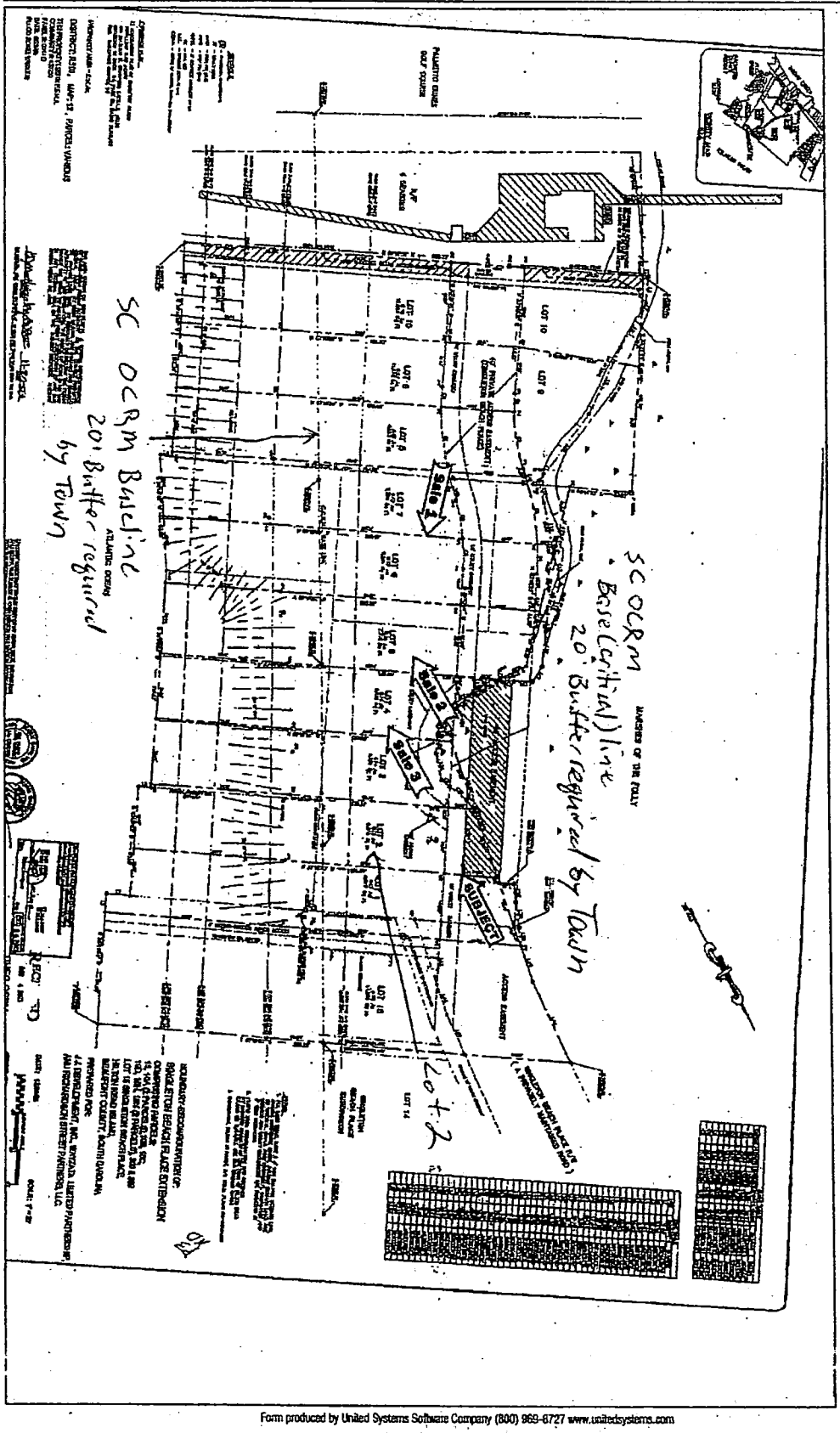
Appraiser's Name (print) _____ Phone # ( ) _____

State _____ ☐ License ☐ Certification # _____ Tax ID # _____

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PLAT MAP

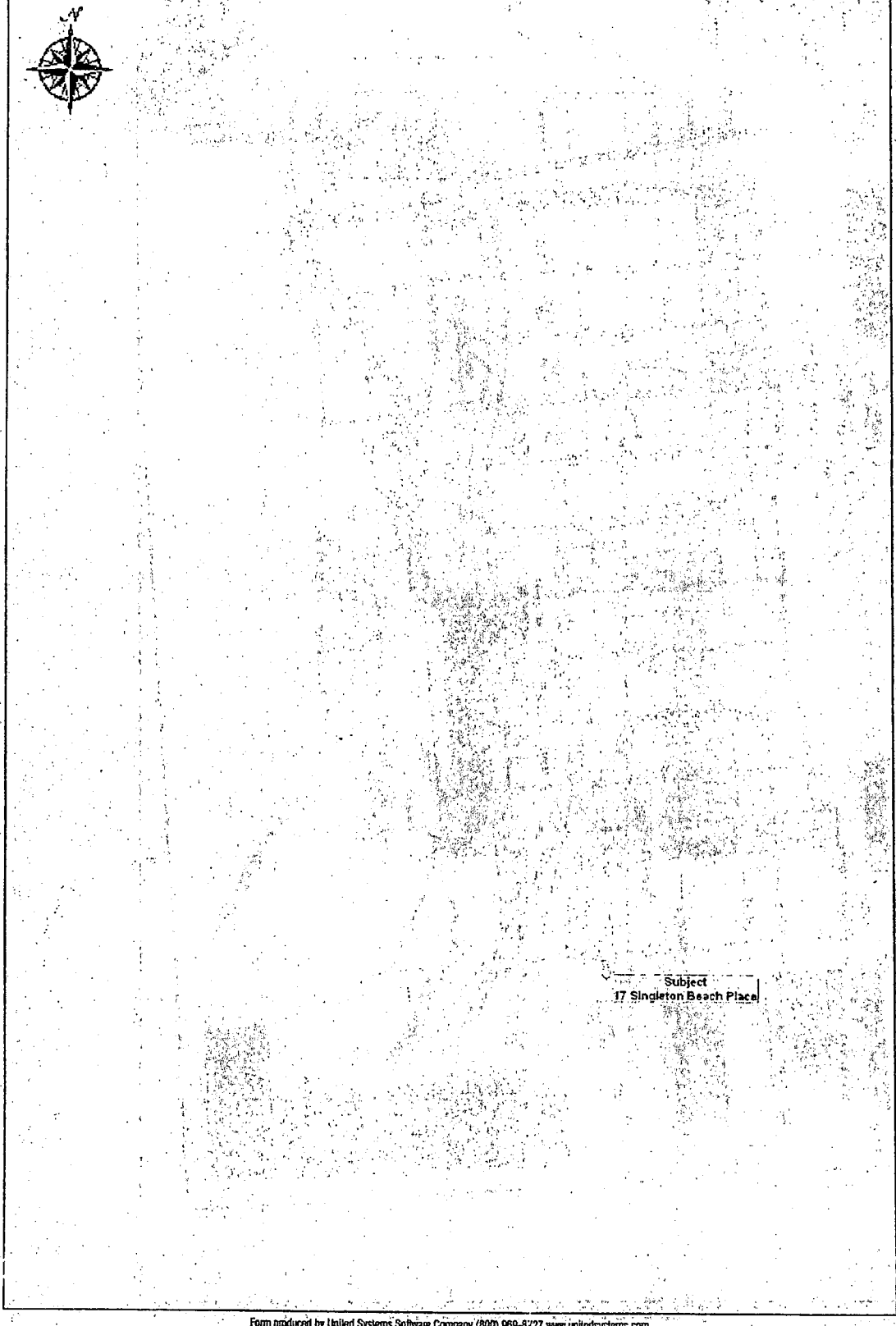
Borrower/Client Tad Segars
Address 17 Singleton Beach Place Unit No. N/A
City Hilton Head Island County Beaufort State SC Zip Code 29928
Lender/Client NBSC / Synovous



LOCATION MAP

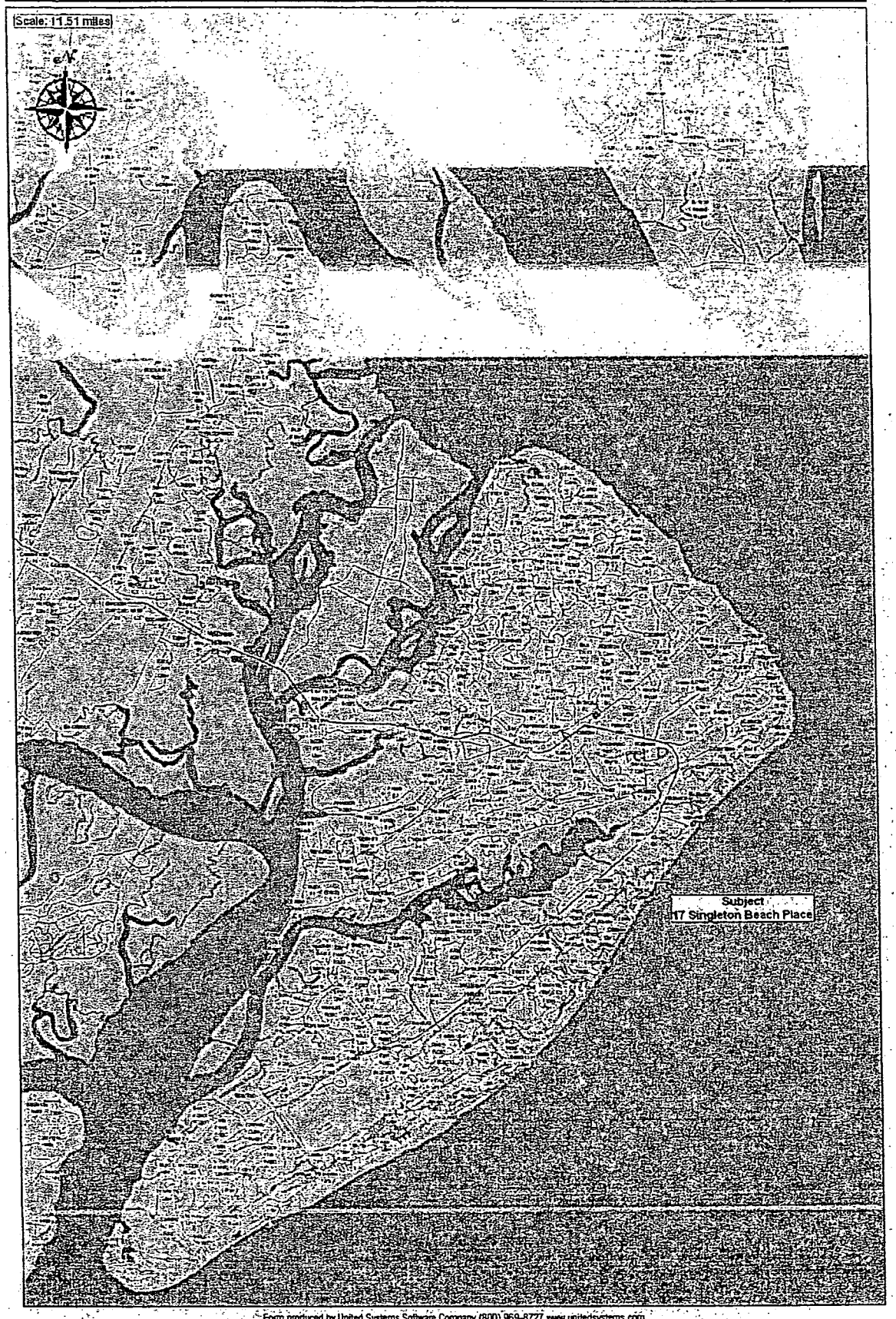
Borrower/Client **Tad Segars**
Address **17 Singleton Beach Place** Unit No. **N/A**
City **Hilton Head Island** County **Beaufort** State **SC** Zip Code **29928**
Lender/Client **NBSC / Synovous**

Scale: 1.01 miles



LOCATION MAP

Borrower/Client **Tad Segars**
Address **17 Singleton Beach Place** Unit No. **N/A**
City **Hilton Head Island** County **Beaufort** State **SC** Zip Code **29928**
Lender/Client **NBSC / Synovous**

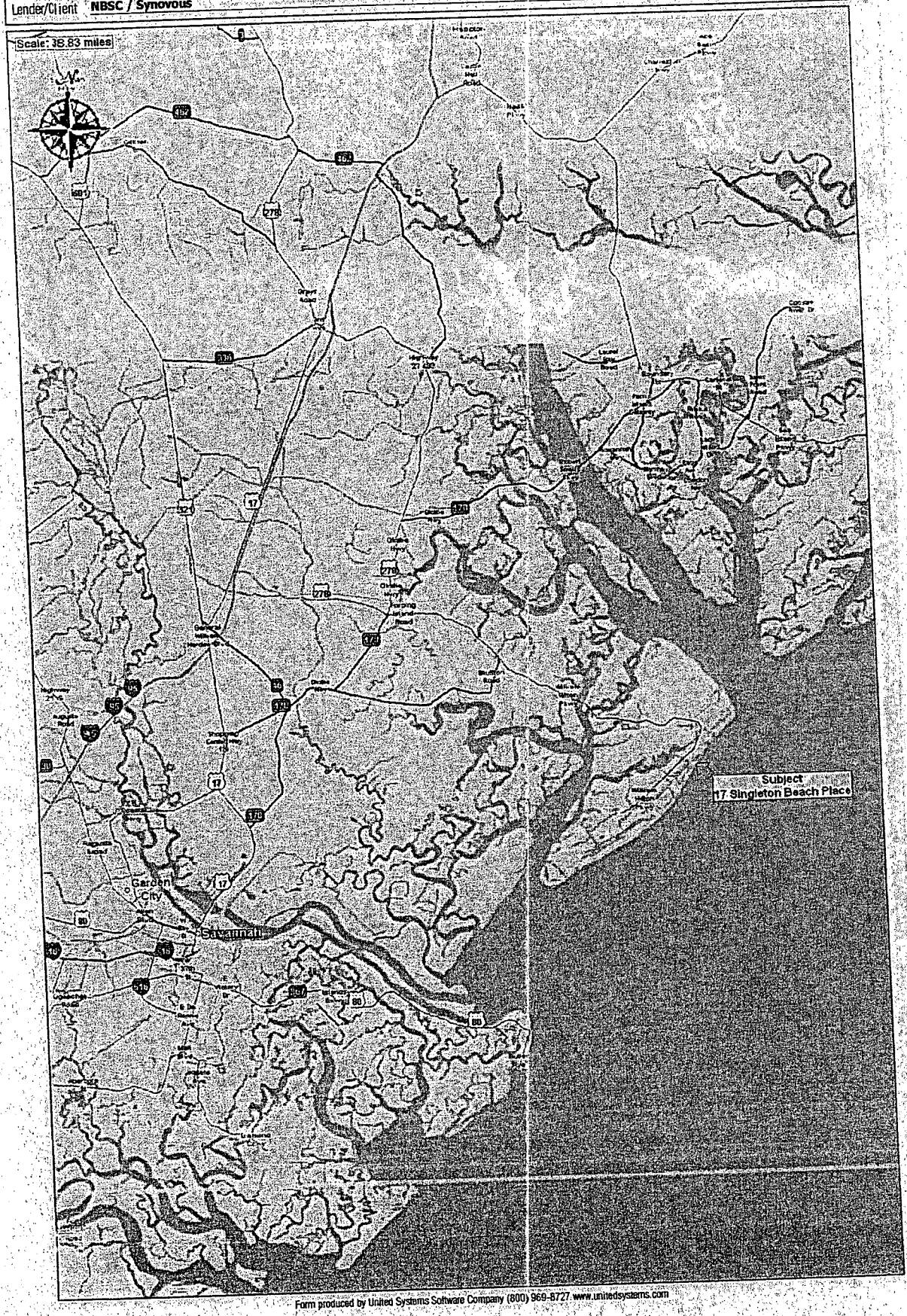


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Linsday Company

LOCATION MAP

Borrower/Client Tad Segars
Address 17 Singleton Beach Place Unit No. N/A
City Hilton Head Island County Beaufort State SC Zip Code 29928
Lender/Client NBSC / Synovous

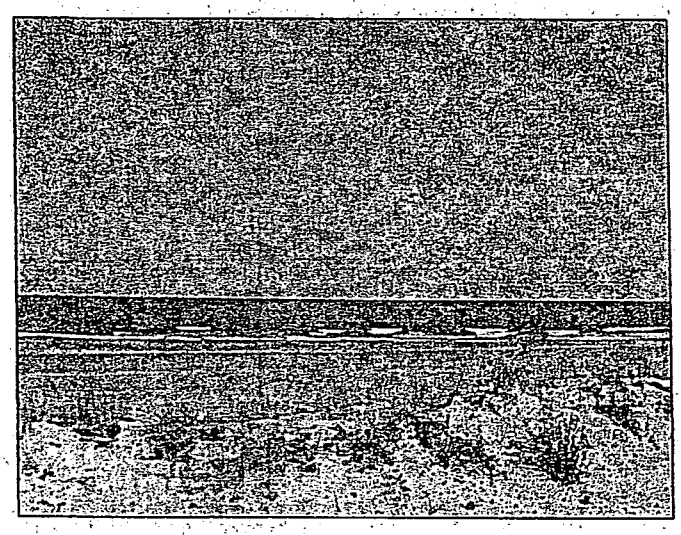


SUBJECT PHOTOGRAPH ADDENDUM

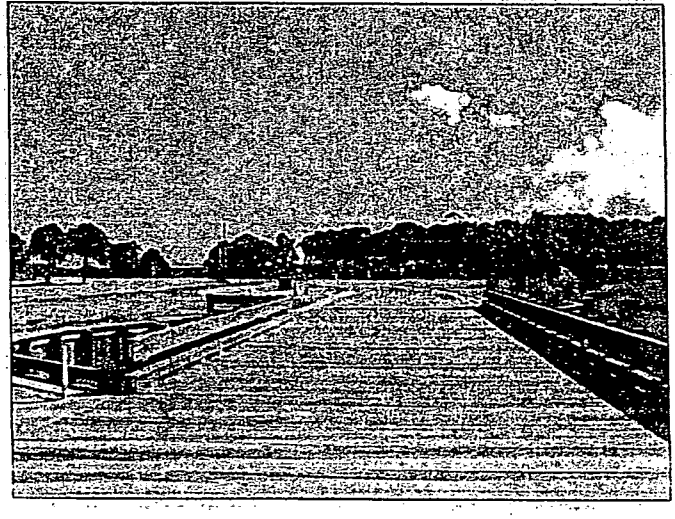
Borrower/Client Tad Segars
Address 17 Singleton Beach Place Unit No. N/A
City Hilton Head Island County Beaufort State SC Zip Code 29928
Lender/Client NBSC / Synovous



Front View



Rear View



Street View

SUPPLEMENTAL INFORMATION AND APPRAISER'S CERTIFICATION

TYPE OF APPRAISAL AND TYPE OF APPRAISAL REPORT

This is a **Complete** appraisal. This is a **Summary** appraisal report.

IDENTIFICATION OF CLIENT(S)

The client(s) for whom this appraisal is made is (are):

NBSC / Synovous

INTENDED USES AND USERS OF THE APPRAISAL

The intended use(s) of the appraiser's opinions and conclusions is (are):

Mortgage Financing.

The intended use(s) of the appraiser's opinions and conclusions is (are):

The Lender.

REASONABLE EXPOSURE TIME

In my opinion the reasonable exposure time linked to the value opinion is:

3 to 6 months.

SUPPORT FOR HIGHEST AND BEST USE CONCLUSIONS

The following additional information is supplied to support the highest and best use conclusions:

None.

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.

Highest + Best use
zoned R-8
House

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. Linsday, #CR 51
Appraiser

06/03/04
Date signed

Supervisory Appraiser (only if required)

Date signed

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SUBJECT

The subject does not have any prior sales within 3years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #1

Comparable #1 sold for $1,050,000 on 11/22/2002, this is the only transaction within 3 years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #2

Comparable #2 sold for $1,100,000 on 08/03/2001, and sold for $875,000 on 10/27/1999 all are within the 3 years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #3

Comparable #3 sold for $925,000 on 11/10/2000, this is the only transaction within 3 years of the effective date of this appraisal report (effective date---12/31/2002).

COMPARABLE #4

Comparable #4 sold for $700,000 on 11/27/2002, this is the only transaction within 3 years of the effective date of this appraisal report (effective date---12/31/2002).

PLAINTIFF'S EXHIBIT 8

8 3393450-001 OLD RECD JUN 17 2004

OLD RECD JUN 15 2004

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA

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 $ 5.50 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.

THADDEUS F SEGARS
87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5325

SIGNATURES
Borrower Thaddeus F Segars Co-Borrower _____
Officer Initials BRN Officer Number 00826
Loan Number: 0093893450 Note number: 1

Bankers Systems, Inc., St. Cloud, MN Form CN4 - 1093 - SM 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 collected any interest in advance. If this is a real 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.

5 PB
11
JTSN
108

PLAINTIFF'S EXHIBIT 9

State of South Carolina)

County of Beaufort County

MORTGAGE OF REAL PROPERT

THIS MORTGAGE, made this 9TH day of JUNE, 2004, among THADDEUS F SEGERS (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)

ZERO CENTS

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)

ZERO CENTS

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 11:09:02 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).

JTSN/1/01

TO HAVE AND TO HOL : same with all privileges and appurtenances thereunto belon 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 Mortgage 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

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, know 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.

Tracie L Prescott _____ Thaddeus F. Segars (SEAL)
THADDEUS F SEGARS

Angela M Fulkert _____ _____ (SEAL)

_____ _____ (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 ~~his~~ 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.) Tracie L Prescott

Notary Public for South Carolina

My Commission Expires: 7/23/13

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

Book1976/Page1970

Bankers Systems, Inc., St. Cloud, MN Form DM23-0594-3M

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.

File No.: SEGARS, T 775.061

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.

5 PB
11
JPSN
028

State of South Carolina)

County of Beaufort County

MORTGAGE OF REAL PROPERT

PLAINTIFF'S EXHIBIT 9

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** **ZERO CENTS** 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 **ZERO CENTS** 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
RECD 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).

JPSN/1/01

Bankers Systems, Inc., St. Cloud, MN Form CM22-0604-SM

TO HAVE AND TO HOL same with all privileges and appurtenances thereunto belon 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 Mortgage 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

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, know 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.

Tracie L Prescott _____ Thaddeus F. Segars (SEAL)
THADDEUS F SEGARS

Angela M Fulkert _____ _____ (SEAL)

_____ _____ (SEAL)

_____ _____ (SEAL)

State of South Carolina)

County of Beaufort County)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within-named THADDEUS F SEGARS, sign, seal, and as ~~their~~ 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.) Tracie L Prescott
Notary Public for South Carolina

My Commission Expires: 7/29/09

Bankers Systems, Inc., St. Cloud, MN Form CM22-0594-3M

Book1976/Page1970

Bankers Systems, Inc., St. Cloud, MN Form CM22-0694-3M

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.

File No.: SEGARS, T 775.061

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

PLAINTIFF'S EXHIBIT 10

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT

BRANCH Bluffton 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 ~~083393450-1~~
.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), 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 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 SEGARS

8TH SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5126

SIGNATURES

Borrower Thaddeus F Segars THADDEUS F SEGARS Co-borrower

Officer Initials DV Officer Number 00826

Loan Number 0083393450 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.

PLAINTIFF'S EXHIBIT 11

(1)

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA

ORIGINAL

CLO RECD FEB 20 2007

Simple Interest
CONSUMER LOAN NOTE/SECURITY AGREEMENT

Date: January 24, 2007 Appl #: 0000001374

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:
FREM 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 SEGARS
87 SINGLETON BEACH RD
HILTON HEAD ISLAND SC 29928-5326

SIGNATURES

Borrower Thaddeus F. Segars THADDEUS F SEGARS
Officer Initials KM
Loan Number: 083393450

Co-Borrower _____
Officer Initials 00826
Note number: 3

Bankers Systems, Inc., St. Cloud, MN Form CNA - 1093 - 8/4 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 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.

FINN LAW FIRM, PC

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Also Licensed in GA & CT

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December 13, 2013

VIA-ELECTRONIC & US-MAIL

The Honorable Marvin H. Dukes, III
Master-In-Equity
Post Office Drawer 1228
Beaufort, S.C. 29901
mdukes@bcgov.net
hmcleod@bcgov.net

RE: NATIONAL BANK OF SOUTH CAROLINA, vs. THADDEUS F. SEGARS
CASE: 09-3844 & 09-3201

Dear Judge Dukes:

Enclosed please find Defendant, Segars' Supplemental Brief In Support of Motion for Summary Judgment.

If you have any questions or comments, please do not hesitate to contact the office. Thank you.

Sincerely,

Thomas J. Finn

TJF: caw
Enclosures

cc: Via-Electronic Mail Only
Dan Saxon, Esquire, dsaxon@ns-lawfirm.com

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	CASE NO.: 2009-CP-07-03201
NATIONAL BANK OF SOUTH)	
CAROLINA,)	
)	
Plaintiff,)	DEFENDANTS' SUPPLEMENTAL
)	BREIF IN SUPPORT OF THEIR MOTION
vs.)	FOR SUMMARY JUDGMENT AND IN
)	OPPOSITION TO PLAINITIFF'S
)	MOTION FOR SUMMARY JUDGMENT
THADDEUS F. SEGARS; KELLIE)	
W. SEGARS, SINGLETON PLACE)	
HOMEOWNERS ASSOCIATION,)	
INC., and SUNTRUST MORTGAGE)	
INC.,)	
)	
Defendants.)	

Defendant Thaddeus F. Segars previously filed a Brief in Support of their motion for summary judgment and in opposition to Plaintiff's motion for summary judgment. The parties argued their cross motions for summary judgment but the Court agreed to allow the parties to mediate the case prior to ruling on the motions. The parties mediated the case on but were not able to settle at mediation. With the Court's indulgence the parties continued to negotiate but again were not able to settle the matter. Prior to adjourning the hearing on the cross motions for summary judgment the Court granted Thaddeus Segars the opportunity to submit an additional Brief in opposition to plaintiff's argument that the Statute of Limitations are a time bar to Segars' counter claims in this case.

Defendants have asserted three counterclaims; (1) negligent misrepresentation, (2) breach of fiduciary duties and (3) breach of contract accompanied by fraudulent act

all based upon the appraisal procured by the Plaintiff NBSC and subsequent actionsof the Plaintiff. Generally, a cause of action accrues at the moment a breach of duty occurs. *Grooms vs. Medical Soc'y of S.C.* 289 S.C. 399 380 S.E. 2d 855 (Ct. App. 1989). 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 *vs. City of Rock Hill* 330 S.C. 640,500S.E. 157 (Ct.App.1998). The statute starts to run upon the discovery of such facts as would have led to the knowledge thereof if pursued with reasonable diligence. 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).

Plaintiff states in their brief facts upon which they rely to support their motion for summary judgment based upon the statute of limitations. They state that shortly after the closing on the property the Town of Hilton Head revoked the approved plat. Fidelity Title Insurance Company retained an attorney to represent Segars and other lot owners to cure the plat revocation by the Town in September or October of 2004. In addition Plaintiff points out that Segars and others retained the services of Cotton Harness and joined the administrative law case regarding the movement of the OCRM baseline sometime in 2005. It is upon these facts that Plaintiff claims Segars was aware of a potential cause of action as he was aware of a problem with the OCRM baseline. **Segars claims in the present case did not arise out of a knowledge of the placement of the OCRM baseline but the negligence of the appraiser discovered in 2009 well after the closing on the lot. (emphasis added)**

The Plaintiff's argument on the statute of limitations is based upon a faulty premise. The Plaintiff submits that the question as to when the statute of limitations began to run relates to the time period during which Segars learned of the facts which would have put him on notice of the true location of the OCRM baseline. The counterclaims against the bank, based in part on the actions of their appraisal agent, are not based upon the issues of the location of the OCRM line. Clearly Segars knew there was an issue with the location of the OCRM line in 2005. **What Segars did not know and, in fact had no way of knowing, was which plat the bank's appraiser used in preparing the appraisal that valued the subject lot at $1.6 million. (emphasis added)** If the bank's appraiser used the plat which showed the future OCRM baseline the lot would have been sufficient size to build a home which would have complied with the covenants and restrictions of the neighborhood. If, in preparing the appraisal, the appraiser used the plat which did not show the future OCRM baseline it would have, or should have been readily apparent that the lot was unbuildable taking into consideration the covenants and restrictions of the neighborhood. Segars assumed the appraiser used the plat showing the future baseline. Only after the Plaintiff instituted the present action did Segars request a copy of the appraisal report from the bank. When Segars looked at the appraisal report for the first time he learned that the appraiser used the plat which did not have the future OCRM baseline but the original OCRM baseline which limited the size of the home one could build. Therefore the appraiser had the information showing the lot was unbuildable. Therefore the "discovery" which gives rise to Segars counterclaims is not whether there were issues with the OCRM baseline but when Segars discovered that the appraiser used

the original plat. Segars only received the appraisal report after this suit was commenced and alleged the counterclaims within three months thereafter certainly well within three years of. Prior to that it was represented to Segars that the appraisal report valued the property at $1.6 million dollars. In addition, as Plaintiff has pointed out, the appraisal was undertaken by the bank for their protection. It is also clear that Segars was charged for the appraisal, relied on the valuation set by the appraisal and had a right under South Carolina law to rely on the appraisal.

Plaintiff also argues that two other cases filed by Segars which were dismissed because the statute of limitations should support a similar outcome in this case. Both those cases are distinguishable from the present case. Plaintiff states that the case *Thaddeus Segars v. Richardson Street Partners, LLC* to support its statute of limitations argument. Plaintiff, however, makes the same mistaken argument by asserting that *Richardson* and the present case are " upon the very same issue of the location of the OCRM baseline on the property." In *Richardson* Segars' claims were based on the discovery of a "corrective plat" in 2005. In that instance Segars did not file his claims within three years of the discovery of the "corrective plat" and, therefore, his claims were time barred by the applicable statute of limitations. **In the present case Segars claims are not based upon knowing of an issue with the OCRM baseline, but based upon the discovery of which plat the bank's appraiser used in preparing the appraisal. (emphasis added)**

Plaintiff makes the same incorrect argument using the case of *Thaddeus Segars v. Jones, Patterson, Simpson & Newton, PA, et al.* This was an action brought against Segars closing attorneys alleging that they failed to advise Segars prior to the closing that

that the OCRM baseline had not been moved. This too is quite different from the present case. The negligent act in the *Jones* case occurred prior to or at the closing. Segars discovered the issue with the OCRM baseline at least by the time the ALC proceeding in Maarch 2005 but failed to bring suit within three years of discovery of the attorneys' alleged negligence. Since both Richardson and Newton involved the OCRM baseline issue, and it was clear when Segars was aware of the issue based upon the ALC proceeding, it was clear the statute of limitations had run in those cases.

S.C. Code § 15-3-535 sates that all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have know that he had a cause of action statute starts to run upon the discovery of such facts, as would have led to the knowledge thereof if pursued with reasonable diligence. The question in this instance becomes when did Segars know or reasonably should have known that he had a cause of action against the Plaintiff? The answer is that **Segars could only have known of a potential claim against the Plaintiff when came into possession of the appraisal report not when an issue of the OCRM baseline was raised. (emphasis added)** Segars did not know, nor should he have known, what plat the appraiser used in preparing the appraisal. The Plaintiff bank had nothing to do with the placement of the OCRM baseline and thus would not have drawn scrutiny from Segars, or apparently nay of his attorneys. In addition, Segars was represented by several attorneys regarding the baseline issues none of whom thought, or suggested to Segars, that the Plaintiff bank was in any way liable. Is it reasonable to think that Segars should have known of a potential claim against the Plaintiff because of issues with the OCRM baseline when at least three separate attorneys never thought he did or advised

Segars he may have a claim. However, when Segars saw the appraisal and realized that the appraiser used the plat which showed the original OCRM baseline he had reason to question the appraisal and consequently the Plaintiff.

Based upon the foregoing, and viewing the evidence in a light most favorable to the non moving party NBSC' s motion for Summary Judgment on the basis that Segars claims are time should be denied.

FINN LAW FIRM, P.C.

By: _____

Thomas J. Finn
Attorney for the Defendants
P.O. Box 6003
Hilton Head Island, S.C.
29938
Phone (843)682-3555
Fax (843) 682-3558
Email finlaw@hargray.com

This 13th day of March, 2013
Hilton Head island, South Carolina

LINSDAY COMPANY

REAL ESTATE APPRAISAL & CONSULTING SERVICES

P. O. BOX 6164

HILTON HEAD ISLAND, SC 29938

(843) 785-4444

FAX: (843) 842-8795

EMAIL: slinsday@sc.twcbc.com

DEFENDANT'S EXHIBIT

8

1-19-11 CR

October 30, 2008

Mr. Tad Segars
87 Singleton Beach
Hilton Head Island, SC 29928
Via Email: Tad@tadsegars.com

RE: Lots 2 and 3, Singleton Beach Place Extension Subdivision

Dear Mr. Segars:

I have examined the plat that you had sent to me of the above-mentioned subdivision. Based upon our telephone conversation this afternoon, you have requested that I render some opinions concerning the values of the properties in question. Namely your two lots in this Subdivision noted above.

You have made some assertions concerning this subject subdivision, its covenants and certain building restrictions imposed by the State of South Carolina OCRM offices and also by the Town of Hilton Head Island. You have stated that under the current covenants running with the land, no residence can be built with less than 2,500 square feet of living area. You have also stated that the OCRM beach baseline noted on the attached plat and the Town of Hilton Head Island's setback restrictions, the maximum residence that could be constructed is approximately 1,800 square feet of living area, which does not meet the minimum requirements of the covenants that run with the land. Therefore, it is your opinion that your lots are unbuildable, at this time under these circumstances.

Based upon these special assumptions and limiting conditions, which I have not yet verified, your individual Lots 2 and 3 appear to be unbuildable. In that case, those lots would have little or no value, in my opinion. As a practical matter of fact, they both present the owner with some liability of ownership in that case, because of property taxes etc.

The attached subdivision plat that you sent also reflects a "proposed OCRM baseline" which would move the old OCRM baseline seaward by approximately 30 feet, according to my conversation with you on this matter. If the OCRM baseline eventually were moved to the new seaward baseline and new construction of at least 2,500 square were permitted on your properties, the values of these ocean front sites would become very significant. You have asserted that values, in that event, would approach $2,000,000. Without a significant amount of additional research and work, I cannot verify that level of value, under these assumptions. However, based upon extensive past research and experience, I can easily opine that the value would be well in excess of $1,000,000 per lot, if these assumptions are correct and verified.

I am sorry that I cannot be more specific than the above opinions. However, license law and good common sense dictate that more specific value opinions would require a very significant amount of additional work and verification of the facts in the case. I have also attached my certification pages and copies of my resume and license, for your review.

Sincerely,

S. V. Linsday

Stephen V. Linsday

State Certified Residential Real Estate Appraiser #CR 51
C:appraisaldocs/segarsltr.doc

January 13, 2014

Honorable Marvin H. Dukes III
P.O. Drawer 1228
Beaufort County, S.C. 29901

Re: NBSC vs. Thaddeus Segars
Case Number: 2009-CP-07-03201

Dear Judge Dukes:

I am in receipt of your email dated to Dan Saxon requesting the he draft a proposed Order granting summary judgment to NBSC on the basis that the statute of limitations has run on Mr. Segars counterclaims. I have not yet received Dan's proposed order but felt I would be remiss if I didn't draw the Court's attention to some relevant material prior to any order being signed.

When a Plaintiff files a claim against the Defendant, most courts hold that the statute of limitations ceases to run on any counterclaims, permissive or compulsory, that the defendant later imposes in the responsive pleading. The rationale is that the courts do not want to force the defendant to rush to file an answer simply because the statutory period is about to expire. The situation complicates, however, when the plaintiff commences the action after the statute of limitations on the counterclaim has already run. The majority rule appears to be that compulsory counterclaims may be maintained in such a situation. In some states, specific statutes provide that the defendant's claim for money damages (ie Georgia, New York and California) even though barred when the Plaintiff's suit was filed, may be asserted as an offset to any damages awarded to the Plaintiff. For example, please see OCGA Section 9-3-97. That statute extends the statute of limitations for counterclaims "so as to allow parties, up to and including the last day upon which the answer or defensive pleadings should have been filed... provided that the final date allowed by such limitations for commencement of such actions shall not have expired prior to the filing of the main action."

In addition, the Supreme Court has held that a defendant may raise a claim by recoupment even when the claim, if brought, independently, would be barred by the applicable statute of limitations unless Congress has clearly and expressly provided otherwise. The Wright, Miller Kane approach, tolling the statute of limitations, is almost entirely premised on the lack of prejudice to the plaintiff and the prevention of delaying

weak claims until the statute has almost run. The latter concern is neutralized by counterclaims in the form of recoupment; claims that arise out of the Same transaction or occurrence, but are defensive in nature and seek no affirmative relief. *See Bull v. United States,* 295 U.S. 247, 262, 55 S.Ct. 695, 700-701, 79 L.Ed 1421 (1935) (holding that a counterclaim for recoupment is never barred by the statute of limitations so long as the main action itself is timely"). Therefore, any weak claim brought late in the limitations period will nevertheless have to overcome the claim for recoupment. See also eg Meriano AZADA and Carmen Azada v. Roger CARSON, 252 F.Supp. 988 (U.S.D Hawaii, 1966) ("Statues of limitations are statutes of repose - they are designed to bar stale claims. Where as in this case, the counterclaim arises from the same incident as the complaint, the counterclaim is no more stale than the complaint.")

The dissent in Murray v. Mansheim, 779 N.W. 2d 739 (SD2010) is instructive and seems to follow the majority rule of appellate courts that have opined on this subject. "The very purposes of statutes of limitations do not require the position the majority embraces. The majority correctly observes that "Statutes of limitation are in place to prevent the prosecution of stale claims and to punish litigants who sleep on their rights." *Moore, 1999 SD 152, 25, 603 N.W. 2d at 521 (citations omitted).* However, a compulsory counterclaim is one that "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." SDCL 15-6-13(a). Because they arise from the same incident, the compulsory counterclaim is no staler than the initial action. The "necessarily close relationship between the timely claim and untimely claim should insure that the latter is not 'stale' in the sense of evidence and witnesses no longer being available." 6 Wtright Miller & Kane, Section 1419 at 152-153. The evidence and witnesses are as accessable for adjudicating the compulsory counterclaim as they are for the initial action. *Id.* " Simple justice dictates that if the plaintiffs are given an opportunity to present a claim for relief based upon a [transaction or occurrence], the defendant should not be prevented from doing so." *Armstrong, 469 S.W.2d at 343.*

Segars counterclaims against Plaintiff are claims for recoupment of losses suffered as a result of the same contract and default that NBSC sued him over. He is seeking recovery of amounts lost as a direct result of plaintiff's foreclosure action. Under Bull, and the rational of the other cases cited herein which address the subject, Segars Counterclaims, are not stale and were timely filed as a first responsive pleading to the lawsuit herein. Defendant therefore, requests that the Court consider these factors prior to granting summary judgment in favor to the Plaintiff.

Sincerely,

Thomas J. Finn

cc. Daniel Saxon, Esquire

NOVIT & SCARMINACH, P. A.

Attorneys at Law

CHARLES A. SCARMINACH*
DANIEL A. SAXON
CATHERINE A. SCARMINACH**
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ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+
ALSO MEMBER TENNESSEE BAR**
ALSO MEMBER CALIFORNIA BAR++

Jennie S. Cerrati
Email: jcerrati@ns-lawfirm.com

January 15, 2014

Via US Mail and
Email To: mdukes@bcgov.net

The Honorable Marvin H. Dukes, III
MASTER IN EQUITY
Post Office Drawer 1228
Beaufort, South Carolina 29901

RE: Synovus Bank, formerly National Bank of South Carolina v. Thaddeus F. Segars, et al.
Case Number: 2009-CP-07-3201

Dear Judge Dukes:

This correspondence is written in response to Mr. Finn's correspondence to you dated January 13, 2014. We formally object to the Court considering additional briefs submitted without request or permission from the Court. Mr. Finn had every opportunity to make these arguments either at the initial hearing on these matters or in the Supplemental Briefs submitted to the Court (at the Court's request) in December 2013. Such communications are improper and any arguments, facts or law should not be considered and should not be made part of the Court record.

If the Court is not going to consider or allow Mr. Finn's correspondence dated January 13, 2014, you need not read the remainder of this correspondence as it addresses the assertions made therein. If the Court is going to consider Mr. Finn's correspondence, please allow the remainder of this correspondence to serve as a reply to the same.

First and foremost, none of the authority cited by Mr. Finn is mandatory or binding in South Carolina. The binding authority of South Carolina is Madden v. Madden 2 Mill Const. 35, 9 S.C.L. 350 (1818), which held that "after a debt is once barred by the statute, it is extinct, unless taken out of it by some act or acknowledgement of the debtor."

Mr. Finn's reference to Georgia Code Section 9-3-97, which extends the statute of limitations, "so as to allow parties, up to and including the last day upon which the answer or defensive pleading should have been filed. . . provided that the final date allowed by such limitation for commencement of such action ***shall not have expired*** prior to the filing of the main action." [Emphasis Added] In the facts of this case, the statue of limitations for Mr. Segars' claims expired before Plaintiff filed the foreclosure action.

I may be mistaken, but it appears that much of the language Mr. Finn uses in the second paragraph of his correspondence is taken from a westlaw reference book/website. A copy of the relevant language is enclosed for your reference. The text of the reference material does not state that the "majority rule appears to be that compulsory counterclaims may be maintained in such situation." It actually states as follows:

> "there is ***some*** authority to the effect that compulsory counterclaims may be maintained, ***it is clear that permissive counterclaims cannot.*** In some states, special statutes provide the defendant's claim for money damages, even though barred when the plaintiff's suit was filed, may be asserted as an offset to any damages awarded the Plaintiff, but ***affirmative relief is not allowed.***" [Emphasis Added].

Mr. Segars claims were not compulsory as they did not arise out of the same transaction and occurrence as the Bank's foreclosure action. Mr. Segar's filed counterclaims alleging Negligent Misrepresentation, Breach of Fiduciary Duties, and Breach of Contract Accompanied by a Fraudulent Act (any liability related thereto having been explicitly denied by Plaintiff). The transaction or occurrence by which Mr. Segars bases his claims was the Plaintiff loaning him money based on an appraisal that he contends is inaccurate. He further alleges that he justifiable relied on the appraisal's estimated value. The occurrence which prompted the Bank's foreclosure was the **default on the loan** many years later. Therefore Mr. Segars' counterclaims would be permissive and not allowed even under Mr. Finn's theory.

The next reference by Mr. Finn, was to the United States Supreme Court Case, Bull v United States 295 U.S. 247 (1935). The issue in Bull was that the Internal Revenue Commissioner essentially 'double dipped' in subjecting the business profits earned after the decedent's death to both an Estate Tax and Income Tax. The decedent's estate paid the inflated estate tax amount and then later objected to the income tax assessment, stating that it was either subject to the estate tax or income tax, but not both, and sought an offset or recoupment for the overpayment of estate tax. The Court of Claims held that it was properly subject to income tax and not estate tax, but since the time had expired to file an action for restitution, that claim for recoupment was barred. The Supreme Court held otherwise, stating as follows:

> "had the government instituted an action at law, the defense [recoupment/overpayment] would have been good. The United States, we have held, cannot, as against the claim of an innocent party, hold his money which has gone into its treasury by means of the fraud of their agent. United States v. State Bank 96 U.S. 30, 24 L.Ed. 647. While here the money was taken through mistake without any element of fraud, the unjust retention is immoral and amounts in law to a fraud on the taxpayer's rights. What was said in the State Bank case applies with equal force to this situation."
> Bull v. U.S. 295 U.S. 247 at 261 (1935)

The facts of Bull are entirely separate and distinguishable from the facts of the herein action. Additionally, Bull only allowed for the recoupment of admittedly wrongfully retained

funds of a taxpayer by the United States and has no applicability to a private matter with unfounded and unproven amounts to recoup.

In Azada v. Carson, 252 F. Supp 988 (USD, Hawaii, 1966), the Court referenced the authority that held "where defendant's claim, asserted in a set-off or counterclaim, was an ***existing debt*** not barred by the statute of limitations at the time plaintiff's action was begun, it will be a valid set-off or counterclaim, although the statutory period may have elapsed before the filing of the answer setting it up, provided, under some of the statutes, the counterclaim arose out of the same transaction as gave rise to the main action." Id. At 989 [Emphasis Added]. There are two elements cited by jurisdictions allowing set-off and counterclaims after the elapsed statute of limitations: (1) that the statute of limitations had not expired when the Plaintiff's action was commenced and/or (2) that the counterclaims arose out of the same transaction as gave rise to the main action. Neither of these elements is present in the facts of this case.

As stated above, the transaction and occurrence of which Mr. Segars' counterclaims arose, is the Plaintiff lending him money based on an alleged inaccurate appraisal, which allegedly caused him to rely upon the appraisal and purchase the property. The occurrence which triggered the Bank's foreclosure against Mr. Segars is based on a breach of contract/default on a loan. Mr. Segars does not allege in any of his counterclaims that the Bank's foreclosure was the basis for his claims, only that it was solely the initial lending of the money based on the appraisal and his alleged reliance thereon.

Further, the statute of limitations on Mr. Segars' claims had expired prior to the commencement of Plaintiff's action. The Court has already held that Mr. Segars should have known through reasonable diligence that the property may not be worth $1,600,000 as the appraisal, plats, setbacks and existing OCRM line were all of public record and certainly that Mr. Segars knew or should have known by March 16, 2005, when he intervened in the Administrative Law Court hearing, when he was admittedly aware of the plats, setbacks and existing OCRM line. Under these facts, the statue of limitations would have expired in 2008 and Plaintiff's action was filed in 2009.

I decline to address the citation of Murray v. Mansheim 779 N.W. 2d 379 (S.D. 2010), in that Mr. Finn outwardly admits that it was the dissenting opinion and not even authority in South Dakota.

The Motion for Summary Judgment has been argued, briefed, re-briefed and discussed ad nauseam. We renew our objection to any consideration of Mr. Finn's correspondence dated January 13, 2014, and request that the Court consider and enter the proposed Order on Plaintiff's Motion for Summary Judgment which will be submitted under separate today.

Please contact me if there is any additional information that you would like us to provide. In the meantime, I remain,

Very truly yours,

NOVIT & SCARMINACH, P.A.

Jennie S. Cerrati

Enclosures
JSC/yt
cc: Thomas J. Finn, Esquire
Daniel A. Saxon, Esquire
Client

subject to jurisdiction if the counterclaim were an original action. The conclusion may not be the same, however, when the counterclaim is asserted by someone not originally sued by the plaintiff, such as an intervenor. The law is unsettled on the point.

4. Pleading Counterclaims. [§7.2400]

A party asserting a counterclaim, whether compulsory or permissive, is obliged to satisfy all of the pleading rules applicable to the statement of a claim [see **§5.4000-§5.4342; §5.7000-§5.7210**]. Since a counterclaim normally is included in a responsive pleading, it should be labeled as a counterclaim in order to distinguish it from the pleader's defenses to the original action. Moreover, a plaintiff need respond to a defendant's counterclaim only when the latter is labeled as such. Most procedural systems give the trial judge discretion to ignore any mislabeling or non-labeling of the counterclaim [see **§5.7200**]. A counterclaim is subject to the same challenges as is any other claim for relief. [Challenges to pleadings are discussed in **§5.8000-§5.8422**.]

a. Counterclaim in a Reply. [§7.2410]

If the defendant's answer contains a counterclaim to which the plaintiff himself has a counterclaim — usually a compulsory counterclaim — the latter's counterclaim may be asserted in a reply. Perhaps the better practice is for the plaintiff to amend the original complaint to assert the claim, assuming, of course, that there is an independent subject matter jurisdiction basis for it.

5. Effect of a Counterclaim on the Statute of Limitations. [§7.2500]

When the plaintiff files a claim against the defendant, most courts hold that the statute of limitations ceases to run on any counterclaims, permissive or compulsory, that the defendant later imposes in the responsive pleading. The rationale is that the courts do not want to force the defendant to rush to file an answer simply because the statutory period is about to expire. The situation is quite different, however, when the plaintiff commences the action after the statute of limitations on the counterclaim already has run. Although there is some authority to the effect that compulsory counterclaims may be maintained in such a situation, it is clear that permissive counterclaims cannot. In some states, special statutes provide that the defendant's claim for money damages, even though barred when the plaintiff's suit was filed, may be asserted as an offset to any damages awarded the plaintiff, but affirmative relief is not allowed. In addition, the Supreme Court has held that a defendant may raise a claim by recoupment even when the claim, if brought independently, would be barred by the applicable statute of limitations, unless Congress has clearly and expressly provided otherwise.

6. Jury Trial. [§7.2600]

The fact that a claim is asserted by way of counterclaim does not affect the right to trial by jury. As is discussed in the material on jury trial [see **§13.4000-§13.4500**], it now is clear in the federal courts and in a number of states that asserting a legal counterclaim to an equitable claim does not result in a waiver of the counterclaimant's

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SCARMINACH, P. A.

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ALSO MEMBER CALIFORNIA BAR++

Jennie S. Cerrati
Email: jcerrati@ns-lawfirm.com

January 15, 2014

Via US Mail and
Email To: mdukes@bcgov.net

The Honorable Marvin H. Dukes, III
MASTER IN EQUITY
Post Office Drawer 1228
Beaufort, South Carolina 29901

RE: Synovus Bank, formerly National Bank of South Carolina v. Thaddeus F. Segars, et al.
Case Numbers: 2009-CP-07-3201 and 2009-CP-07-03844

Dear Judge Dukes:

Enclosed please find proposed Orders on Plaintiff's respective Motions for Summary Judgment in the above referenced cases. As you will recall, Plaintiff had Motions for Summary Judgment in both cases scheduled on March 14, 2013. At the time of the hearing the parties agreed that the counterclaims alleged in both cases arose from the same facts and were, in fact, the same counterclaims alleged in both suits.

By copy of this correspondence, I am submitting the proposed Orders to Mr. Finn and hereby notifying him of my correspondence with the Court. Please contact me if there is any additional information that you would like us to provide. In the meantime, I remain,

Very truly yours,

NOVIT & SCARMINACH, P.A.

Jennie S. Cerrati

Enclosures
JSC/yt
cc: Thomas J. Finn, Esquire
Daniel A. Saxon, Esquire
Client

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

NATIONAL BANK OF SOUTH CAROLINA,

Plaintiff,

v.

THADDEUS F. SEGARS; SEGARS AND ASSOCIATES, INC.; BEACH FIRST NATIONAL BANK; BURKES BEACH PROPERTY OWNERS ASSOCIATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-03844

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 Segars and Associates, Inc. (hereinafter "Defendants"). Appearing at the hearing was counsel for the Plaintiff, Daniel A. Saxon, counsel for the Defendant, Thomas J. Finn, and the Defendant Thaddeus F. Segars. At the hearing, the parties agreed and advised the Court that the counterclaims alleged in this case arose from the same facts and were, in fact, the same claims alleged against Plaintiff by Defendant Segars in Civil Action No. 2009-CP-07-0320, also pending in this Court and subject to Plaintiff's pending Motion for Summary Judgment heard concurrently. The two cases were not consolidated.

For the same reasons set forth in my Order of this date granting Plaintiff summary judgment in Civil Action No. 2009-CP-07-0320, which findings and conclusions are adopted in full herein, I find and conclude that 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 statue of limitations expired before Defendants' commenced the action against Plaintiff.

N&S 11275-131

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 _____, 2014

Honorable Marvin H. Dukes, III
Special Circuit Court Judge

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 LIS PENDENS NO.: 2009-LP-07-01505 RELEASE AND CANCELLATION OF LIS PENDENS

WHEREAS, the Plaintiff, National Bank of South Carolina, filed a Lis Pendens against that certain real property owned by Defendant KCS Investments, LLC, located in Beaufort County, South Carolina, identified as Tax Map Reference R510 012 000 0350 0000 (said property being more fully described in said Lis Pendens), filed on July 6, 2009 in the Beaufort County records being lis pendens number 2009-LP-07-01505; and

WHEREAS, Plaintiff desires to cancel said Lis Pendens against the subject property.

NOW, THEREFORE, the Lis Pendens against that certain real property located in Beaufort County, South Carolina, identified as Tax Map Reference **R510 012 000 0350 0000**, filed on **July 6, 2009** in the Beaufort County records which is recorded as Lis Pendens Number **2009-LP-07-01505**, is hereby cancelled and released of record.

NOVIT & SCARMINACH, P.A.

By: _____

Herbert L. Novit for 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

March 3, 2011
Hilton Head Island, South Carolina

N&S: 11275-131

NOVIT & SCARMINACH, P.A.

MEMORANDUM

TO: The Title Company, Inc.

FROM: Amy Freeman

RE: Segars // Lot 2

DATE: March 3, 2011

FILE NUMBER: 11275-131

---

1. ATTACHED PLEASE FIND:

____ Check for $

__X__ DEED(s):

____ MORTGAGE(s):

____ MORTGAGE SATISFACTION:

____ SUBORDINATION AGREEMENT

____ ASSIGNMENT

____ POWER OF ATTORNEY:

____ WAIVER AGREEMENT

____ UCC 1

____ RELEASE FROM MORTGAGE (PARTIAL)

____ OWNER'S/CONTRACTOR'S AFFIDAVIT

____ RECORDER'S RECEIPT

____ REAL PROPERTY COVENANT AND RESTRICTION

____ OTHER:

____ CHECK FOR $

THE FOLLOWING IS NEEDED:

____ RECORD AND RETURN TO ME

____ PAY TAXES & RETURN RECEIPT TO ME

____ FILE AND DO NOT RETURN TO ME

____ HAVE CLERK SIGN, FILE AND RETURN TO ME

____ OTHER:

THANKS, Amy Freeman ☺

STATE OF SOUTH CAROLINA)
) MASTER'S DEED
COUNTY OF BEAUFORT)

TO ALL WHOM THESE PRESENTS SHALL CONCERN:

I, Marvin H. Dukes III, Master-in-Equity for Beaufort County, South Carolina, send greetings:

WHEREAS, National Bank of South Carolina, being Synovus Bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with National Bank of South Carolina, on or about July 6, 2009, exhibited its summons and complaint in the Court of Common Pleas in the County and State aforesaid against Thaddeus F. Segars and KCS Investments, LLC, case number 2009-CP-07-3201, demanding judgment in relation to the real estate hereinafter mentioned and described; and the cause being at issue, came to be heard on December 9, 2010, and such proceedings were had and therein resulted in a judgment of the said Court, whereby it was adjudged and decreed that the said real estate hereinafter mentioned and described be sold at public auction on the terms and for the purposes mentioned in the said judgment as by reference thereto on file in said Court,; and after having duly advertised the said real estate for sale by public outcry, on January 3, 2011, I, Marvin H. Dukes III, did then openly and publicly, and according to the custom of auction, sell and dispose of the said real estate hereinafter mentioned and described unto Synovus Bank, 3 Belfair Village Drive, Bluffton, SC 29910, for Six Hundred Fifty Thousand And 00/100 ($650,000.00) Dollars, that price being the highest bid therefore.

NOW, THEREFORE, KNOW ALL MEN, that I, Marvin H. Dukes III, in consideration of the sum of **Six Hundred Fifty Thousand And 00/100 ($650,000.00) Dollars**, paid me by Synovus Bank, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do bargain, sell and release unto the grantee, Synovus Bank, the following described 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. Fore 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,

Tax Map Reference No.: R510 012 000 0350 0000

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; AND AS FURTHER conveyed to KCS Investments, LLC by Deed of Kellie W. 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 1945

SUBJECT to assessments, Beaufort County taxes, existing easements, easements and restriction of record, and other senior encumbrances.

TOGETHER with all and singular the Rights, Members, Hereditaments, and Appurtenances to the said premises belonging, or in anyway incident or appertaining, and all the estate, right title, claim and interest whatsoever, of the parties to the cause of action aforesaid, and of each of them, in and to the same, and all other persons rightfully claiming, from, under, or by these or any of them.

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

IN WITNESS THEREOF, I, Marvin H. Dukes III, as Master-in-Equity for Beaufort County, under and by virtue of the aforesaid Decree, have set my Hand and Seal this 1 day of February, 2011.

SEALED AND DELIVERED)
In the presence of:)
)

Marvin H. Dukes, III
Master-in-Equity, Beaufort County

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

This Deed Prepared by and
Upon Recording Return to:
Daniel A. Saxon, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, South Carolina 29938

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 1st day of ~~February~~ March, 2011, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared **Marvin H. Dukes III**, Master-in-Equity for Beaufort County and acknowledged the due execution of the foregoing Deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____ SEAL
Notary Public for South Carolina
My Commission Expires: 3/6/12

This Deed Prepared by and
Upon Recording Return to:
Daniel A. Saxon, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, South Carolina 29938

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF TRUE CONSIDERATION
COUNTY OF BEAUFORT)

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

1. Deed to property located at 8 FIRST STREET, HILTON HEAD ISLAND, SOUTH CAROLINA 29928, TMS#R510-012-000-0350-0000, was executed by Marvin H. Dukes, III, Master-in-Equity to Synovus Bank on March 1, 2011.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 ct. seq. because the deed is:

#13. Transferring realty subject to a mortgage to the mortgagee whether by deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

Recording fee exemption #13.

FURTHER AFFIANT SAYETH NOT

Herbert L. Novit for Daniel A. Saxon
Novit & Scarminach, P.A.
Attorney for Synovus Bank

Sworn to before me this 3rd
day of March, 2011

Notary Public for South Carolina
My Commission Expires: 4/21/15

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 South Carolina .....Respondent,

v.

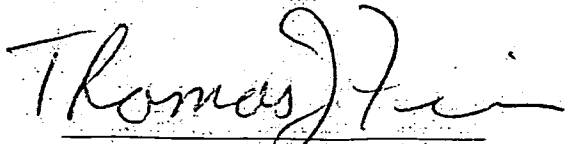
Thaddeus F. Segars; KCS Investments, LLC; Singleton Place Homeowners Association, Inc., Suntrust Mortgage, Inc., ...Defendants

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

FINN LAW FIRM, PC



Thomas J. Finn
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843) 682-3555
Attorney for Appellant

April 30, 2015