THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Karl A. Folkens, Special Referee

Case Nos: 2015-CP-26-1084 / 2013-CP-26-5530

Appellate Case No.: 2017-001646

RECEIVED
MAR 14 2018
SC Court of Appeals

Jericho State Capital Corp. of Florida, Plaintiff,

v.

Chicago Title Insurance Company, Defendant,

AND

Lynx Jericho Partners, LLC, Plaintiff,

v.

Chicago Title Insurance Company, Defendant.

Of whom Jericho State Capital Corp. of Florida and Lynx Jericho Partners, LLC are the Appellants,

And Chicago Title Insurance Company is the Respondent.

RECORD ON APPEAL

VOLUME TWO

Fred B. Newby
C. Scott Masel
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Myrtle Beach, South Carolina 29577
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P0095 - Peachtree Properties

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

SCHEDULE A

OFFICE FILE NUMBER:	06-RE-388
POLICY NUMBER:	7210740-73317401
DATE OF POLICY:	July 25, 2007 at 3:23 pm
AMOUNT OF INSURANCE:	$17,071,873.33

1. Name of Insured:

   RE Loans, LLC, its successors and/or assigns as their interests may appear

2. The estate or interest in the land which is encumbered by the insured mortgage is:

   Fee Simple

3. Title to the estate or interest in the land is vested in:

   Peachtree Properties of North Myrtle Beach, LLC

4. The insured mortgage and assignments thereof, if any, are described as follows:

   Mortgage from Peachtree Properties of North Myrtle Beach, LLC to RE Loans, LLC dated July 5, 2006, and recorded July 25, 2007, at 3:23 pm, in Book 4629, Page 255, in the Register of Deeds of City of Myrtle Beach, County of Horry, South Carolina.

5. The land referred to in this Policy is described as follows:

   All that certain lot or parcel of land situate in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly described as follows:

   PARCEL ONE

   ALL AND SINGULAR those three (3) certain Lots In Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November

04 April 2013 13:07:06 EST Scott Svirsky
rejerichgroup.com

Countersigned

Oleander Title Agency
2105-B Cromley Circle
Myrtle Beach, SC 29577

Authorized Signatory

16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the Inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

PARCEL TWO:

All AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

PARCEL THREE:

All AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, on hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Scott Surisky
Application 07-1851
Received on

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number: 7210740-73317401

In Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

SEE ATTACHED EXHIBIT "A" FOR DERIVATION

04 April 2013 13:07:26 EST Scott Svirsky
thejerichogroup.com

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number: 7210740-73317401

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10 East 516 feet to Concrete N; thence South 13°55' West 870.9 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to Concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 148 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°20' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed, highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly, of Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded

CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

SCHEDULE B

Policy Number: 7210740-73317401

Exceptions from Coverage

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Special Exceptions:

1. Taxes and assessments for the year 2006, and subsequent years, which are a lien but are not yet due and payable.
2. Timber Deed in favor of Canal Wood Corporation, dated June 25, 1988, recorded in Deed Book 1228, page 129, aforesaid records, conveying 2,985 pine trees. According to its terms, the timber Deed expired on July 1, 1990.
3. Easement in favor of Grand Strand Water and Sewer Authority, recorded in Deed Book 1438 at Page 1693, aforesaid records.
4. Riparian rights incident to the premises.
5. This policy does not insure title to that portion of the subject property, if any, lying below the mean high water mark of abutting tidal Intracoastal Waterway.
6. Interest created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulation, or by South Carolina Code §48-39-10 through 48-39-360, as amended, or any regulations promulgated pursuant to said state or federal laws.

04 April 2013 thejerichogroup.com Scott Swirsky

PART II

In addition to the matters set forth in Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

1. Subject to a Mortgage from Peachtree Properties of North Myrtle Beach, LLC to Jericho State Capital Corp. of Florida, dated July 24, 2006 and recorded in Mortgage Book 4629 at Page 277, public records of Horry County, South Carolina.

AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY
(10-17-92)

Policy No. SC2330-46-06-RE-388A-2006.7210740-72338570

CHICAGO TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
   a. arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
   b. arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Whereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

CHICAGO TITLE INSURANCE COMPANY

By:

ATTEST President

Secretary

SC2330 06-RE-388A
Oleander Title Agency
2105-B Cromley Circle
Myrtle Beach, SC 29577
Tel:(843) 839-2239
Fax:(843) 839-2244

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EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
   (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
      (a) to timely record the instrument of transfer; or
      (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. **DEFINITION OF TERMS**

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Policy for the purpose of imparting constructive notice of matters rel real property to purchasers for value and without knowledge. With re Section 1(a)(iv) of the Exclusions From Coverage, "public records" sh include environmental protection liens filed in the records of the clerk United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter a the title to the land, not excluded or excepted from coverage, which entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. **CONTINUATION OF INSURANCE**

(a) **After Acquisition of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any

exclusion 1(a) may be ok +

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... from the insured or claimed (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) **Amount of Insurance.** The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) the Amount of Insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the term of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefore.

Upon the exercise by the Company of either of the options provided for in paragraphs a (i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has

...ll continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

It is the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment o... ...ount of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section I(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section I(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. SEVERABILITY

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at: the issuing office or to:

Claims Department
P.O. Box 45023
Jacksonville, FL 32232-5023

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LOAN FORM
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

SCHEDULE A

OFFICE FILE NUMBER:	**06-RE-388A**
POLICY NUMBER:	**7210740-72338570**
DATE OF POLICY:	**July 25, 2006 at 3:27 P.M.**
AMOUNT OF INSURANCE:	**$4,263,888.00**

1. Name of Insured:

   Jericho State Capital Corp. of Florida, its successors and/or assigns as their interests may appear

2. The estate or interest in the land which is encumbered by the insured mortgage is:

   Fee Simple

3. Title to the estate or interest in the land is vested in:

   Peachtree Properties of North Myrtle Beach, LLC

4. The insured mortgage and assignments thereof, if any, are described as follows:

   Mortgage from Peachtree Properties of North Myrtle Beach, LLC to Jericho State Capital Corp. of Florida dated July 242006, and recorded in the Land Records of Horry County, South Carolina, in Deed Book 4629 Page 277.

5. The land referred to in this Policy is described as follows:

   All that certain lot or parcel of land situate in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly described as follows:

   PARCEL ONE

   ALL AND SINGULAR those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November

Countersigned

2105-B Cromley Circle
Myrtle Beach, SC 29577

Authorized Signatory

SCHEDULE A
Loan Form (Rev. 1/89)

This Policy valid only if Schedule B is attached.

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16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of T.S. Ludlam dated October 21, 1966, and recorded January 23, 1967, in the Office of the Clerk of Court for Horry County in Deed Book 360 at Page 199.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

PARCEL TWO:

All AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

This being the same property conveyed to Ruth L. McClam by Deed of Larry W. Paul dated February 15, 1982, and recorded on February 18, 1982, in the office of the Clerk of Court for Horry County in Deed Book 737 at Page 818.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

PARCEL THREE:

All AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, on hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10 East 516 feet to Concrete N; thence South 13°55' West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as

shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°40' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed, highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, now or formerly, of Roy Collins, in part, and in part by lands, now or formerly, of Virginia Zeigler; on the South by lands, now or formerly, of J.M. Cooper, in part, and lands, now or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, now or formerly, of Maggie L. Roberts.

LESS AND EXCEPT:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

PARCEL THREE (3) is a portion of the property devised to Ruth Ludlam McClam by Item VIII of the Last Will and Testament of John C. Spivey, Deceased, and conveyed by Deed of Lucy S. Kolb, Executrix, T.B. Ludlam and C.A. Spivey, as Executors of the Last Will and Testament of J.C. Spivey, dated November 13, 1965,

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LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number:

and recorded in the Office of the Clerk of Court for Horry County in Deed Book 336 at Page 482 on November 16, 1965.

Steven Boyd McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 555, public records of Horry County, South Carolina.

Marion Louis McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 in Deed Book 1352 at Page 560, public records of Horry County, South Carolina.

Patrice Ann McClam acquired an undivided 1/70 interest in the property described above by Deed of Ruth Ludlum McClam dated November 10, 1989 and recorded November 15, 1989 in Deed Book 1352 at Page 565, public records of Horry County, South Carolina.

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LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE B

Policy Number:

Exceptions from Coverage

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Special Exceptions:

1. Taxes and assessments for the year **2006**, and subsequent years, which are a lien but are not yet due and payable.
2. Easement in favor of Grand Strand Water and Sewer Authority, recorded in Deed Book 1438 at Page 1693, aforesaid records.
3. Riparian rights incident to the premises.
4. This policy does not insure title to that portion of the subject property, if any, lying below the mean high water mark of abutting tidal Intracoastal Waterway.
5. Interest created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulation, or by South Carolina Code §48-39-10 through 48-39-360, as amended, or any regulations promulgated pursuant to said state or federal laws.
6. Rights of the public generally is and to the use of that subject property used as Remote Lane as shown upon survey prepared for Jeff Shoup by Trico Engineering Consultants, Inc. dated March 28, 2006.
7. Mortgage from Peachtree Properties of North Myrtle Beach, LLC to R.E. Loans, LLC dated July 5, 2006 and recorded in the Land Records of Horry County, South Carolina in Deed Book 4629 at Page 255.

PART II

In addition to the matters set forth in Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

Schedule B of this Policy consists of 1 page(s).

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

C.A. No. 07-CP-26-3579

Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, and Jericho State Capital Corporation of Florida, a Florida corporation

Plaintiffs,

vs.

T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T. J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, and McClam Investment Company, LLC,

Defendants.

ORDER AND DECREE OF FORECLOSURE

DEFICIENCY REQUESTED

FILED
HORRY COUNTY
07 NOV -7 AM 9:09
CLERK OF COURT

Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure and upon the stipulation and agreement of all non-defaulting parties, all causes of action under this proceeding were referred to the undersigned for the purpose of taking testimony and evidence and entering a final judgment or decree, with any appeal being directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to an Order of Reference dated October 10, 2007, a hearing was held on October 30, 2007 attended by S. Sterling Laney, III of Womble Carlyle Sandridge & Rice, PLLC, attorneys for Plaintiffs. Testimony of Plaintiffs was presented by Affidavit, and from the testimony and evidence I make the following findings of fact and conclusions of law and enter the following Order.

FINDINGS OF FACT

1. The Notice of Pendency of Action was filed on June 8, 2007.

2. The Summons and Complaint were filed on June 8, 2007.

3. The Motion for Reference was filed on October 10, 2007

4. Service was made upon the defendants as shown by Affidavits of Service on file in this action. Defendants Peachtree Properties of North Myrtle Beach, LLC ("Peachtree"); Jeffrey Shoup; Ocean Developers, LLC; T & J Development of NMB, LLC; David Hix; Paula Hix; Joyce Shoup; North Myrtle Beach Investment Group, LLC; Hortense G. Hancock; Durward W. Hancock and McClam Investment Company, LLC have filed Answers in this action. Defendants Glenn Michaels, T. J. Ungaro and Horst Goetz are in default as shown by Affidavits of Default on file in this action.

5. Affidavit is on file in this action pursuant to 50 App. U.S.C. §§ 501, *et seq.* stating that none of the defendants who are natural persons is in military service, a minor or incompetent.

6. Plaintiff Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership ("Jericho"), is a limited partnership organized under the laws of the State of Delaware with a principal place of business in Boca Raton, Florida has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

7. Plaintiff Jericho State Capital Corporation of Florida, a Florida corporation ("Jericho Florida"), is a corporation organized under the laws of the State of Florida with a principal place of business in Boca Raton, Florida has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

8. Jericho and Jericho Florida shall be collectively referred to herein as "Plaintiffs."

9. Defendant T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development, LLC ("T & J") is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Horry County, South Carolina, has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

10. Defendant Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company ("Peachtree"), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Horry County, South Carolina, has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

11. Defendant Jeffrey Shoup is a citizen and resident of Horry County, South Carolina, and as such, is subject to the jurisdiction of this Court.

12. Defendant Joyce Shoup is a citizen and resident of Horry County, South Carolina, and, and as such, is subject to the jurisdiction of this Court.

13. Defendant David Hix is a citizen and resident of Horry County, South Carolina, and as such, is subject to the jurisdiction of this Court.

14. Defendant Paula Hix is a citizen and resident of Horry County, South Carolina, and as such, is subject to the jurisdiction of this Court.

15. Defendant Ocean Developers LLC, a South Carolina limited liability company ("Ocean Developers"), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in North Myrtle Beach, South Carolina, and as such, is subject to the jurisdiction of this Court.

16. Defendant Glenn Michaels ("Michaels") has an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

17. Defendants Manny Pappus ("Pappus") and T.J. Ungaro ("Ungaro") have an interest in the real property that is the subject of this action, and, as such, they are each subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

18. Defendant North Myrtle Beach Investment Group, LLC ("North Myrtle Beach") is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in North Myrtle Beach, South Carolina, and had an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

19. Defendant Horst Goetz ("Goetz") had an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

20. Defendant Durward W. Hancock ("D. Hancock") had an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

21. Defendant Hortense G. Hancock ("H. Hancock") had an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

22. Defendant McClam Investment Company, LLC ("McClam"), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Columbia, South Carolina, and claims an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

23. The real property which is the subject of this action is located in Horry County, South Carolina, and, as such, is subject to the jurisdiction of this Court.

24. The Order of Reference was filed on October 10, 2007.

25. A Notice of Hearing, giving notice of October 30, 2007, 2:30 p.m. hearing, was served upon all defendants as shown by a Certificate of Service dated October 16, 2007.

26. On July 24, 2006, for value received, Defendant Peachtree executed and delivered to Plaintiff Jericho Florida a promissory note in the original principal amount of $4,263,888.00 (the "Peachtree Note"), pursuant to which Peachtree promised to pay to Jericho Florida said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein, and all expenses of collection or enforcement of payment of the Peachtree Note, including, but not limited to, reasonable attorney's fees and expenses. A copy of the Peachtree Note is attached and incorporated herein as Exhibit A.

27. In order to secure the payment of the Peachtree Note, for value received, Peachtree granted to Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated July 24, 2006 (the "Peachtree Mortgage"), covering certain real property, described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon, and all other contracts, contract rights, leases, rents and other personal property described more fully therein (collectively, the "Peachtree Property"). The Peachtree Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on July 25, 2006 in Mortgage Book 4629 at Page 277. A copy of the Peachtree Mortgage is attached hereto and incorporated herein as Exhibit B.

28. By its terms, the Peachtree Mortgage additionally secures any future or additional advances made by Jericho Florida at its option to Peachtree, up to a maximum principal secured indebtedness of $8,527,776.00, plus interest and any disbursements made for the payment of taxes, levies, or insurance on the Peachtree Property, plus any sums expended to cure a default under the Peachtree Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Jericho Florida in connection with enforcing the Peachtree Note and Peachtree Mortgage, or incurred in connection with any foreclosure action or other proceeding brought by Jericho Florida to enforce and protect its rights and interest under the Peachtree Mortgage and Peachtree Note, whether incurred before or after any decree of judgment of foreclosure.

29. By its terms, the Peachtree Mortgage secures the covenant of Peachtree not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the Peachtree Property with any such mortgage or lien placed on the Peachtree Real Property to be deemed void *ab initio*. The Peachtree Mortgage further recites that it is subject to a first mortgage upon the Peachtree Property in favor of R. E. Loans, LLC, a California limited liability company, securing a note in the principal sum of $18,520,000.00 (the "Peachtree Superior Mortgage").

30. In order to further secure Peachtree's obligations to Jericho Florida, Peachtree granted to Jericho Florida an Assignment of Leases and Rents dated July 24, 2006 (the "Peachtree Assignment"). The Peachtree Assignment was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on September 5, 2006, in Deed Book 3152 at Page 472. A copy of the Peachtree Assignment is attached hereto and incorporated herein as Exhibit C.

31. In order to further evidence the grant of a security interest in the personal property and fixtures described in the Peachtree Mortgage and Peachtree Assignment, Jericho filed a

UCC-1 Financing Statement on July 25, 2006 in the office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 333, that identifies Peachtree as debtor and Jericho Florida as secured party (the "Peachtree UCC"). A copy of the Peachtree UCC is attached hereto and incorporated herein as Exhibit D.

32. In order to further secure Peachtree's obligations to Jericho Florida, Defendants Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J (collectively, the "Peachtree Guarantors," individually, each a "Peachtree Guarantor") granted to Jericho Florida a Guaranty, dated July 24, 2006 (the "Peachtree Guaranty"), pursuant to which each Peachtree Guarantor unconditionally, jointly, severally and irrevocably guaranteed to Jericho Florida prompt and complete payment when due of the principal, together with any and all interest and other sums due and payable, and the performance, observance and discharge by Peachtree of all covenants and conditions set forth in the Peachtree Note, the Peachtree Mortgage, the Peachtree Assignment, the Peachtree UCC, and any and all other documents evidencing or securing the obligations set forth therein (collective, the "Peachtree Loan Documents"), and the payment of any and all expenses paid or incurred by Jericho Florida in collecting any or all of the sums due and in enforcing its rights under the Peachtree Guaranty or the Peachtree Loan Documents, including, but not limited to, attorneys fees. A copy of the Peachtree Guaranty is attached hereto and incorporated herein as Exhibit E.

33. On October 30, 2006, Peachtree gave to Defendant Michaels a Mortgage of Real Property upon the Peachtree Property purporting to secure the principal amount of $1,500,000.00, which mortgage was recorded on November 7, 2006 in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 4762 at page 785 (the "Michaels Mortgage").

34. The Michaels Mortgage was granted and recorded after the Peachtree Mortgage was recorded. Further, it appears from the uncontroverted testimony of Glenn Chwatt, President of Plaintiff Jericho Florida that the Michaels Mortgage was additionally granted without the knowledge or consent of Jericho Florida. Accordingly, the Michaels Mortgage is subordinate to lien of the Peachtree Mortgage.

35. Defendant Michaels is in default as shown by the Amended Affidavit of Default on file and dated October 16. 2007. Defendant Michaels is now represented by attorney Charles Bernstein of the Charleston County Bar who has made an appearance on behalf of Defendant Michaels and joins in the request that the Michaels Mortgage be considered a subordinate mortgage to the Peachtree Mortgage.

36. On March 9, 2007, Defendants Pappus and Ungaro filed an Amended Lis Pendens (the "Amended Lis Pendens") in the Office of the Clerk of Court for Horry County South Carolina in File No. 06-LP-126 purporting to affect the title to the Peachtree Property.

37. No summons or complaint was filed by Pappus and Ungaro in connection with the Amended Lis Pendens within twenty (20) days after such filing or at any time subsequent thereto.

38. Based on the above and the uncontroverted testimony of Plaintiffs, any interest claimed by Defendants Pappus and Ungaro is considered null and void and the Amended Lis Pendens should be considered of no consequence to this action and cancelled as of record in the Clerk of Court's Office for Horry County.

39. On October 6, 2006, for value received, T & J executed and delivered to Plaintiffs a promissory note in the original principal amount of $8,000,000.00 (the "T & J Note"), pursuant to which T & J promised to pay Plaintiffs said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein and all expenses of collection or enforcement of payment of the T & J Note, whether or not suit is brought, and if suit is brought, then through all appellate actions, including, but not limited to, reasonable attorneys' fees and expenses. A copy of the T & J Note is attached hereto and incorporated herein as Exhibit F.

40. In order to secure the payment of the T & J Note, for value received, T & J granted to Jericho and Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated October 6, 2006 (the "T & J Mortgage"), covering certain real property described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon and all other contracts, contract rights, leases, rents and other personal property described more fully therein (collectively, the "T & J Property"). Individual portions of the T & J Property are sometimes referred to herein and in the T & J Mortgage as Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6, Parcel 7 and Parcel 8. The T & J Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on October 9, 2006, in Mortgage Book 4724 at Page 685. A copy of the T & J Mortgage is attached hereto and incorporated herein as Exhibit G.

41. By its terms, the T & J Mortgage additionally secures any future or additional advances made by Plaintiffs at its option to T & J, up to a maximum principal secured indebtedness of $16,000,000.00, plus interest and any disbursements made for the payment of taxes, levies or insurance on the T & J Property, plus any sums expended to cure a default under the T & J Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Plaintiffs in connection with enforcing the T & J Note and T & J Mortgage, or incurred in connection with any foreclosure action or other proceedings brought by Plaintiffs to enforce and protect their rights and interest under the T & J Mortgage and T & J Note, whether incurred before or after any decree or judgment of foreclosure.

42. By its terms, the T & J Mortgage secures the covenant of T & J not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the T & J Property with any such mortgage or lien placed on the T & J Property to be deemed void *ab initio*. The T & J Mortgage further recites that it is subject to a first mortgage upon the T & J Property in favor of R. E. Loans, LLC, a California limited liability company, securing a note in the principal sum of $12,950,000.00 and a first mortgage upon Parcel 8 of the T & J Property in favor of First Palmetto Savings Bank FSB securing a note in the principal amount of $1,100,000.00 (collectively, the "T & J Superior Mortgages").

43. In order to further secure T & J's obligations to Plaintiffs, T & J granted to Plaintiffs its Assignment of Leases and Rents dated October 6, 2006 (the "T & J Assignment"). The T & J Assignment was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on October 9, 2006, in Deed Book 3170 at Page 419. A copy of the T & J Assignment is attached hereto as Exhibit H.

44. In order to further secure T & J's obligations to Plaintiffs, Defendants Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and Peachtree (collectively, the "T & J Guarantors," and individually, each a "T & J Guarantor") granted to Plaintiffs a Guaranty, dated October 6, 2006 (the "T & J Guaranty"), pursuant to which each T & J Guarantor unconditionally, jointly, severally and irrevocably guaranteed to Plaintiffs the prompt and complete payment when due of the principal, together with any and all interest and other sums due and payable, and the performance, observance and discharge by T & J of all covenants and conditions set forth in the T & J Note, the T & J Mortgage, the T & J Assignment and any and all other documents evidencing or securing the obligations set forth therein (collectively, the "T & J Loan Documents"), and the payment of any and all expenses paid or incurred by Plaintiffs in collecting any or all of the sums due and in enforcing any rights under the T & J Guaranty or the T & J Loan Documents, including, but not limited to, attorneys fees. A copy of the T & J Guaranty is attached hereto and incorporated herein as Exhibit I.

45. On July 24, 2006, T & J gave a Mortgage covering parcels 4, 5, 6, and 7 of the T & J Property to Defendant McClam in the principal amount of $2,942,286.09 that was recorded on July 25, 2006 in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 340 (the "McClam $2MM Mortgage").

46. It appears from the testimony in this matter and the Answer on file from Defendant McClam, that the debt secured by the McClam $2MM Mortgage was satisfied at the closing of the T & J Loan and the McClam $2MM Mortgage is no longer a valid lien on Parcels 4, 5, 6 and 7 of the T & J Property and should be cancelled of record.

47. On January 4, 2004, T & J gave a Mortgage covering Parcels 6 and 7 of the T & J Property to Goetz in the principal amount of $506,250.00 that was recorded on January 7, 2004 in the Office of the Register of Deeds for Horry County in Mortgage Book 3534 at page 951 (the "Goetz Mortgage").

48. Defendant Goetz is in default as shown by the Amended Affidavit of Default on file and dated October 16. 2007.

49. It appears from the testimony in this matter that the debt secured by the Goetz Mortgage was satisfied at the closing of the T & J Loan and the Goetz Mortgage is no longer a valid lien on Parcels 6 and 7 of the T & J Property and should be cancelled of record.

50. On March 4, 2004, T & J gave a mortgage covering parcel 8 of the T & J Property to Defendants Durward W. Hancock and Hortense G. Hancock ("Defendants Hancock") in the principal amount of $200,000.00 that was recorded on March 5, 2004 in the Office of the

Register of Deeds for Horry County in Mortgage Book 3579 at Page 1469 (the "Hancock Mortgage").

51. It appears from the uncontroverted testimony of Plaintiffs, as well as the Answer of Defendants Hancock in this matter, that the debt secured by the Hancock Mortgage was satisfied at the closing of the T & J Loan and the Hancock Mortgage is no longer a valid lien on Parcel 8 of the T & J Property and should be cancelled of record.

52. On October 6, 2006, T & J gave a Mortgage, Assignment of Rents and Security Agreement covering the T & J Property to McClam in the principal amount of $850,000.00 that was recorded on October 9, 2006 in the Office of the Register of Deeds for Horry County in Mortgage Book 4724 at Page 744 (the "McClam $850M Mortgage").

53. From the testimony of Plaintiffs the lien of the McClam $850M Mortgage was granted and recorded after the T & J Mortgage was granted and recorded without the knowledge or consent of Jericho Florida. It appears from the public records documents maintained in the Office of the Register of Deeds of Horry County that the McClam $850M Mortgage was recorded after the T & J Mortgage and is therefore subordinate to lien of the T & J Mortgage, which fact is supported by the Answer on file by Defendant McClam.

54. As a condition to Plaintiff's issuing to T & J the T & J Loan, T & J and Defendant Peachtree Properties of North Myrtle Beach, LLC ("Peachtree") granted to Plaintiffs a Cross-Collateralization Agreement dated October 6, 2006 (the "Cross-Collateralization Agreement") whereby T&J and Peachtree each agreed that the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents as those terms are defined in the Complaint and the T&J Note, T&J Mortgage and other T&J Loan Documents as those terms are defined in the Complaint are and will be cross-collateralized and cross-defaulted with one another so that the Peachtree Mortgage, Peachtree Assignment, T&J Mortgage and T&J Assignment shall secure payment and performance of all of the Peachtree Note and T&J Note and that a default under any of the Peachtree Loan Documents shall also constitute a default under all of the T&J Loan Documents. A true and correct copy of the Cross-Collateralization Agreement is attached hereto and incorporated herein as Exhibit J.

55. On or about March 14, 2007, Plaintiff Jericho Florida gave written notice to Peachtree of its receipt of notification from the holder of the Peachtree Superior Mortgage of Peachtree's failure to make payment of a total past due amount of $708,600.00 due under the Peachtree Superior Mortgage, which notice required Peachtree to cure such default under the Peachtree Superior Mortgage. On or about March 23, 2007, Plaintiff Jericho Florida gave additional written notice to Peachtree of its failure to pay such past due amount and advised Peachtree of Plaintiff Jericho Florida's intent to cure such Peachtree Superior Mortgage default by paying said past due amount on March 26, 2007, and further advising Peachtree that in the event that it failed to reimburse Plaintiff Jericho Florida in full within five days following the date of Plaintiff Jericho Florida's payment of the past due amount, Peachtree would thereupon be in default under the terms of the Peachtree Loan Documents. Plaintiff Jericho Florida paid the sum of $713,152.50 to the holder of the Peachtree Superior Mortgage on March 26, 2007 to cure Peachtree's defaults under the Peachtree Superior Mortgage, and Peachtree has thereafter failed

or refused to reimburse all or any portion thereof to Plaintiff Jericho Florida. Copies of the foregoing letters dated March 14, 2007 and march 23, 2007 (the "Peachtree Demand Letters") are attached hereto and incorporated herein as Exhibit K.

56. Plaintiff Jericho Florida has subsequently paid seven additional monthly installments due to the holder of the Peachtree Superior Mortgage on April 10, 2007 in equal monthly amounts of $185,200.00. No reimbursement of any such sums has been paid by Peachtree to Plaintiff Jericho Florida.

57. The sums so paid by plaintiff Jericho Florida on account of the Peachtree Superior Mortgage, totaling $2,009,552.50, are a portion of the secured indebtedness under the terms of the Peachtree Mortgage. Peachtree's failure or refusal to pay the same within the time required by the Peachtree Demand Letters constitutes an event of default on the part of Peachtree under the terms of the Peachtree Note, Peachtree Mortgage and the other Peachtree Loan Documents.

58. Peachtree's grant of the Michaels Mortgage without the knowledge or consent of Plaintiff Jericho Florida also constitutes an event of default under the Peachtree Mortgage and Peachtree Note.

59. The foregoing events of default under the Peachtree Mortgage confer upon Plaintiff Jericho Florida the right to accelerate payment of the Peachtree Note in accordance with its term and to exercise all rights and remedies available to Plaintiff Jericho Florida under the terms and provisions of the Peachtree Loan Documents, including the right without limitation to institute this action for foreclosure of the Peachtree Mortgage and to seek and obtain a deficiency judgment against Peachtree and the Peachtree Guarantors, jointly and severally, in the amount of any deficiency remaining after the foreclosure sale of the Peachtree Property in accordance with applicable law.

60. As of the date of this Order, Plaintiff Jericho Florida is due from Peachtree the outstanding principal balance of the Peachtree Note in the sum of $6,941,981.42, which includes principal, default interest, unreimbursed payments made by Plaintiff Jericho Florida to the Peachtree Superior Mortgage holder, together with all expenses associated with or incurred in connection with this action, including, but not limited to, reasonable attorneys' fees and costs.

61. Based on the foregoing, Plaintiffs are entitled to have an order entered foreclosing the Peachtree Mortgage and selling the Peachtree Property at public sale in accordance with law, subject to the Peachtree Superior Mortgage, but free and clear of all subordinate liens, including without limitation the Michaels Mortgage and the Amended Lis Pendens.

62. Further, Plaintiffs are entitled to a judgment against Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J jointly and severally, in the amount of any deficiency remaining after sale of the Peachtree Property. From the testimony of Plaintiffs, it appears Plaintiffs are reserving their right to waive such deficiency judgment by providing this Court with written notice, with copy to Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J prior to the publication of Notice of Sale for the foreclosure of the Peachtree Property and the T & J Property.

63. As seen by the terms and conditions of the Note, Mortgage and Guaranty, the Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J have waived the statutory right of appraisal, and the high bid at the judicial foreclosure sale shall be applied to the debt regardless of any appraised value of the Peachtree Property.

64. Pursuant to the terms of the Cross-Collateralization Agreement, the foregoing events of default under the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents constitute an event of default under the T & J Note , T & J Mortgage and other T & J Loan Documents.

65. Additionally, T & J's grant of the McClam $850M Mortgage without the knowledge or consent of Plaintiffs constitutes an event of default under the T & J Mortgage.

66. The foregoing events of default under the Peachtree Note, Peachtree Mortgage, Peachtree Loan Documents, T & J Note, T & J Mortgage and other T & J Loan Documents confer upon Plaintiffs the right to accelerate payment of the T & J Note in accordance with its terms and to exercise all rights and remedies available to Plaintiffs under the terms and provisions of the T & J Loan Documents, including the right without limitation to institute this action for foreclosure of the T & J Mortgage and to seek and obtain a deficiency judgment against T & J and the T & J Guarantors, jointly and severally, in the amount of any deficiency remaining after the foreclosure sale of the T & J Property in accordance with applicable law. Plaintiffs are exercising their rights to accelerate and declare to be due and payable in full the T & J Note and all other enumerated sums secured by the T & J Mortgage, and to foreclose the T & J Mortgage.

67. As of the date of this Order, the following sum is due to Plaintiffs pursuant to the T & J Loan Documents and are secured by the T & J Mortgage: $9,334,244.18, which includes principal, interest, and default interest through the date of this Order, unreimbursed payments made by Plaintiffs on account of the T & J Superior Mortgages, together with all expenses associated with or incurred in connection with this action, including, but not limited to, reasonable attorneys' fees and costs.

68. Plaintiffs are entitled to have an order entered, foreclosing the T & J Mortgage and selling the T & J Property at public sale in accordance with law, subject to the T & J Superior Mortgages, but free and clear of all subordinate liens, including without limitation the McClam $850M Mortgage.

69. Plaintiffs are entitled to the entry of a further order awarding judgment against Defendants T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and Peachtree jointly and severally, in the amount of any deficiency remaining after sale of the T & J Property. From the testimony of Plaintiffs, it appears Plaintiffs are reserving their right to waive such deficiency judgment by providing this Court with written notice, with copy to Defendants Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J prior to the publication of Notice of Sale for the foreclosure of the Peachtree Property and the T & J Property.

70. From the uncontroverted testimony of Plaintiffs, Defendants Peachtree, Peachtree Guarantors, T & J and the T & J Guarantors have each waived the statutory right of appraisal, and the high bid at the judicial foreclosure sale shall be applied to the debt regardless of any appraised value of the T & J Property.

71. From the uncontroverted testimony of Plaintiffs, By deed dated January 23, 2004, Defendant North Myrtle Beach attempted to convey or conveyed Parcel 8 of the T & J Property to T & J Development, LLC (the "North Myrtle Beach Deed"). The North Myrtle Beach Deed was recorded in the Office of the Register of Deeds for Horry County in Deed Book 2691 at Page 456.

72. On January 23, 2004, T & J Development, LLC did not exist, nor does it currently exist according to the records of the South Carolina Secretary of State as of the date of the Complaint.

73. Through the North Myrtle Beach Deed, North Myrtle Beach intended to and did convey Parcel 8 to T & J.

74. Neither North Myrtle Beach nor T & J Development LLC has any remaining right, claim or interest of any kind in Parcel 8 of the T & J Real Property.

75. T & J is the current owner and holder of fee simple title to Parcel 8 of the T & J Property.

76. From the Affidavit for Attorneys' Fees on file in this matter and the affidavits of Plaintiffs, the sum of $80,000.00 is a reasonable fee to allow as an attorney's fees under the terms of the Peachtree Note and T & J Note for Plaintiffs' attorneys' services performed and anticipated to be performed until final adjudication of this action.

77. The Plaintiffs have incurred taxable expenses to date in connection with this matter in the amount of $300.00 which includes $150.00 for the filing fee for the Complaint; $125.00 for the Master-in-Equity's Reference Fee, and $25.00 for motion fee, and will additionally incur advertising charges for the Notice of Sale.

78. If Plaintiffs make no payments prior to the projected Sales Date of December 3, 2007, the following items will constitute the full balance due to the Plaintiffs upon the Peachtree Note and the T & J Note as of the Projected Sales Date as follows:

Principal for Peachtree Mortgage	$ 4,263,888.00
Interest	$ 795,891.21
Unreimbursed payments for the Peachtree	

Superior Mortgage	$ 2,379,952.50
Taxable Expenses as of October 23, 2007[1]	$ 300.00
Attorneys' fees	$ 50,000.00
TOTAL	**$ 7,490,031.71** [2]

Principal for T & J Mortgage	$ 8,000,000.00
Interest	$ 1,491,849.46
Unreimbursed payments for the T & J Superior Mortgage	$ 401,317.53
Attorney's Fees and Insurance Payments	$ 50,000.00
TOTAL	**$ 9,943,166.99** [3]

GRAND TOTAL DUE PLAINTIFFS	**$ 17,433,198.70** [4]

CONCLUSIONS OF LAW

1. The Peachtree Mortgage is a good and valid second mortgage lien on the Peachtree Property, subject only to the Peachtree Superior Mortgage and any past due and applicable property taxes for the Peachtree Property.

2. Plaintiff Jericho Florida shall have judgment of foreclosure of its Peachtree Mortgage for the aforementioned amounts due and owing under the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents.

3. The T&J Mortgage is a good and valid second mortgage lien on the T&J Property, subject only to the T&J Superior Mortgages and any past due and applicable property taxes for the T&J Property.

4. Plaintiffs Jericho and Jericho Florida shall have judgment of foreclosure of their T&J Mortgage for the aforementioned amounts due and owing under the T&J Note, T & J Mortgage and other T & J Loan Documents.

5. The Peachtree Property and the T&J Property shall be ordered sold at public auction after due advertisement. The sale shall be made subject to the rights and interests of the Peachtree Superior Mortgage and T & J Superior Mortgages, and all taxes and assessments that are due on the day of the sale. After making the required deposit, the successful bidder shall be required to pay interest at the Default Rate set forth respectively in the Peachtree Note and T&J Note from the date of sale to the date of compliance.

[1] Plus advertising charges incurred for the Notice of Sale.
[2] Plus advertising charges and Prepayment Premium to be calculated at the time of sale.
[3] Plus advertising charges and Prepayment Premium to be calculated at the time of sale.
[4] Plus advertising charges and Prepayment Premium to be calculated at the time of sale.

6. The Peachtree Property and T&J Property shall be sold according to law and the practice of this Court, the equity of redemption shall be barred, and that the proceeds of sale shall be applied as follows: First: to the costs and expenses, including reasonable attorneys' fees, of this action and such sale; and Second: to the payment and discharge of all amounts due Plaintiffs pursuant to the Peachtree Note and the Peachtree Mortgage as aforesaid. Any surplus shall be held pending further order of this court.

7. At the conclusion of the aforementioned foreclosure sale of the Peachtree Property and T&J Property, Plaintiffs shall be granted judgments against Defendants Peachtree, T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers, personally, jointly and severally, in the amount of any deficiency remaining after sale of both the Peachtree Property and the T&J Property and Fixtures thereon, such deficiency to be based upon the high bid at the judicial foreclosure sale regardless of any appraised value of either or both the Peachtree Property and T&J Property and Fixtures thereon. Plaintiffs may waive their right to a deficiency judgment by providing this Court with written notice of such waiver with a copy to Defendants Peachtree, T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix and Ocean Developers at any time prior to the publication of the Notice of Sale of the Peachtree Property and T & J Property which is the subject of this action.

8. For the reasons set forth herein, the McClam $2MM Mortgage is considered to be satisfied and should be cancelled as of record in the Office of the Register of Deeds for Horry County.

9. For the reasons set forth herein, the Michael Mortgage is considered to be subordinate to the lien, rights and interests of the Peachtree Mortgage.

10. For the reasons set forth herein, the Hancock Mortgage is considered to be satisfied and should be cancelled as of record in the Office of the Register of Deeds for Horry County.

11. For the reasons set forth herein, the Goetz Mortgage is considered to be satisfied and should be cancelled as of record in the Office of the Register of Deeds for Horry County

12. The McClam $850M Mortgage is and shall be considered subordinate to the rights and interests set forth in the T & J Mortgage.

13. The deed from North Myrtle Beach Investment Group to T & J Development, LLC is considered reformed so that title to Parcel 8 of the T & J Property is fully vested in T & J.

14. The Amended Lis Pendens of Defendant Manny Pappus and T. J. Ungaro is declared null and void and should be cancelled of record in the Office of the Clerk of Court for Horry County.

ORDER

It is therefore Ordered, Adjudged and Decreed that:

1. Pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, this Order shall constitute a final judgment, and any appeal shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

2. The Peachtree Mortgage is a good and valid second mortgage lien on the Peachtree Property, subject only to the Peachtree Superior Mortgage and any past due and applicable property taxes for the Peachtree Property. Further, Plaintiff Jericho Florida shall have judgment of foreclosure of its Peachtree Mortgage for the aforementioned amounts due and owing under the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents.

3. The T&J Mortgage is a good and valid second mortgage lien on the T&J Property, subject only to the T&J Superior Mortgages and any past due and applicable property taxes for the T&J Property. Further, Plaintiffs Jericho and Jericho Florida shall have judgment of foreclosure of their T&J Mortgage for the aforementioned amounts due and owing under the T&J Note, T & J Mortgage and other T & J Loan Documents.

4. If the Defendants Peachtree, T&J, Peachtree Guarantors, T&J Guarantors make no payments prior to the projected Sales Date of December 3, 2007, the sum of $17,433,198.70 (representing principal, interest, default interest, escrow payments, late fees, advanced funds, costs and attorneys fees) plus the costs of advertising the Notice of Sale, all calculated at the time of sale, will be due Plaintiffs under the Peachtree Note, the Peachtree Mortgage, the T&J Note and the T&J Mortgage.

5. The McClam $2MM Mortgage is hereby ordered, adjudged and decreed to be satisfied and shall be cancelled as of record in the Office of the Register of Deeds for Horry County. is hereby ordered, adjudged and decreed to be satisfied

6. The Michael Mortgage is hereby ordered, adjudged and decreed to be subordinate to the lien, rights and interest of the Peachtree Mortgage.

7. The Hancock Mortgage is hereby ordered, adjudged and decreed to be satisfied and shall be cancelled as of record in the Office of the Register of Deeds for Horry County.

8. The Goetz Mortgage is hereby ordered, adjudged and decreed to be satisfied and shall be cancelled as of record in the Office of the Register of Deeds for Horry County

9. The McClam $850M Mortgage is hereby ordered, adjudged and decreed to be subordinate to the lien, rights and interests set forth in the T & J Mortgage.

10. The Amended Lis Pendens is hereby ordered, adjusted and decreed to be null and void and is to be cancelled of record in the Office of the Clerk of Court for Horry County.

11. If Defendants Peachtree, T&J, Peachtree Guarantors or T&J Guarantors shall fail to pay the full amount set forth in paragraph 78 above to Plaintiffs prior to the Sales Date, the

Peachtree Property and T&J Property shall be sold by the Honorable J. Stanton Cross, Master in Equity for Horry County, South Carolina, at public auction, at the Horry County Courthouse, Conway, South Carolina, on December 3, 2007, or on some other convenient sales day. Should the regular day of judicial sales fall on a legal holiday, the sales day shall be on the Tuesday next succeeding such holiday. Sale shall be on the following terms:

a. A good faith deposit of 5% of the amount of the bid (in cash or its equivalent) is required at the time of public sale. Such amount shall be applied to the purchase price only upon full compliance with the bid.

b. Full compliance with the bid must occur within 20 days after the date of public sale. If the successful bidder does not comply within such time period, the good faith deposit shall be forfeited and applied to the costs and to the debt owed by Defendants to Plaintiffs.

c. Interest on the balance of the bid must be paid to the day of full compliance at the Default Rate.

d. The sale shall be subject to the rights and interests of the Peachtree Superior Mortgage and the T&J Superior Mortgages, as well as subject to any and all unpaid taxes and assessments, easements existing on the Peachtree Property and T & J Property and other easements and restrictions of record.

e. Purchaser shall pay for the preparation of the deed, for deed stamps and for the cost of recording the deed.

12. If Plaintiffs are the successful bidder, for a sum not exceeding the amount due it under this Order, Plaintiffs shall pay to the undersigned the amount of the costs and expenses of the sale and credit the balance of its bid to its indebtedness.

13. Plaintiffs are currently seeking a deficiency judgment and therefore it is hereby ordered that Plaintiffs shall be entitled to the entry of an order of judgment against Defendants Peachtree, T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers, personally, jointly and severally which shall be entered at the conclusion of the aforementioned foreclosure sale of the Peachtree Property and T&J Property, in the amount of any deficiency remaining after sale of both the Peachtree Property and the T&J Property and Fixtures thereon, such deficiency to be based upon the high bid at the judicial foreclosure sale regardless of any appraised value of either or both the Peachtree Property and T&J Property and Fixtures thereon. However, Plaintiffs are reserving their right to waive such deficiency judgment provided such waiver is in writing by Plaintiffs to the Court with notice to Defendants Peachtree, Peachtree Guarantors, T & J and T & J Guarantors prior to the publication of the Notice of Sale. If such written waiver is given, then any sale of the Peachtree Property and T&J Property on the sales date shall be final. If Plaintiffs do not waive their right to a deficiency judgment by providing Notice to this Court and to Defendants Peachtree, Peachtree Guarantors, T & J and T & J Guarantors prior to the Notice of Sale being published then the bidding and sale shall remain open after the sales date for a period of thirty (30) days as required by South Carolina law.

14. The Master in Equity will, by advertisement according to law, give notice of the time and location of sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the Property. Plaintiffs or another party to this action may become a purchaser at such sale. If the purchaser or purchasers should fail to comply with the terms of sale within twenty (20) days after the date of sale, then the Master in Equity may advertise the Property for sale on the next or some other subsequent sales day, at the risk of the former highest bidder, and from time to time thereafter until full compliance shall have occurred. In the event Plaintiffs are the successful bidder, for a sum not exceeding the amount due it under this Order, at its option or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien on the Property.

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

First, proceeds shall be applied to payment of the costs and expenses of this action and the sale, to any special assessments against the Property and to any taxable disbursements by Plaintiffs.

Second, proceeds shall be applied to payment to Plaintiffs, or Plaintiffs' attorneys, of the amount due Plaintiffs under this Order.

Third, any surplus shall be held by the Master in Equity pending further order of this Court as provided in Rule 71(c) of the South Carolina Rules of Civil Procedure.

16. In the event the successful bidder is other than one of the Defendants in possession herein, the Sheriff of Horry County is ordered and directed to take such action necessary to put the successful bidder or his assigns in full, quiet and peaceful possession of the property without delay and to keep the successful bidder or his assigns in such peaceful possession.

17. The deed from North Myrtle Beach to T & J is hereby ordered reformed to show the title to Parcel 8 of the T & J Property is fully vested in T & J.

18. Defendants Peachtree, T&J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers, and all persons whosoever claiming under them, shall be forever barred and foreclosed of all right, title, interest and equity of redemption in the Property, or any part thereof.

19. The deed of conveyance given pursuant to such sale shall contain the names of only the first-named Plaintiff and the first-named Defendant and the Defendant who was the titleholder of the mortgaged Peachtree Property and mortgaged T & J Property and mortgaged at the time of the filing of the notice of pendency of this action, and the name of the grantee, and the Office of Register of Deeds, is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

20. Attached as Exhibit L is a description of the mortgaged Peachtree Property and mortgaged T & J Property ordered to be sold pursuant to the Peachtree Mortgage and the T & J Mortgage.

Conway, South Carolina
October 6, 2007

J. Stanton Cross
Master in Equity

Grantee's Address: 3835 NW Boca Raton Blvd #200
Boca Raton, FL 33431

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Instrument#: 2008000026096, DEED BK: 3317 PG: 969 DOCTYPE: 001 02/26/2008 at 01:45:52 PM, 1 OF 10, EXEMPT, BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

DEED OF MASTER IN EQUITY

Recitals

A. On June 8, 2007, Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, and Jericho State Capital Corporation of Florida, a Florida corporation filed its complaint in the Court of Common Pleas for Horry County, South Carolina, against T & J Development of NMB, LLC; a South Carolina limited liability company, a/k/a T & J Development LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T.J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, and McClam Investment Company, LLC, defendants, case number 07-26-3579, demanding foreclosure of its mortgage over **(i)** the real property described on attached **Exhibit A** (the ***"Real Property"***); **(ii)** the fixtures located on the Real Property (the ***"Fixtures"***); and **(iii)** the personal property (the ***"Personal Property"***) described on attached **Exhibit B** (collectively, the Real Property, Fixtures, and Personal Properties shall be referred to as the "***Premises***").

B. The matter was heard on October 30, 2007, and a decree was entered ordering that the Real Property, Fixtures, and the Personal Property be sold by J. Stanton Cross, Master in Equity for Horry County, on the terms set forth therein.

C. J. Stanton Cross, Master in Equity, after having duly advertised the Real Property, Fixtures, and Personal Property for sale by public outcry on December 3, 2007 openly and publicly, according to the custom of auction, sold the Real Property and Fixtures to Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever, for the sum of Nine Million and 00/100 Dollars ($9,000,000.00), being at that price the highest bidder.

Now, therefore, know all men by these presents, that:

I,J. Stanton Cross, Master in Equity in and for Horry County, South Carolina, in consideration of the sum of Nine Million and 00/100 Dollars ($9,000,000.00) to me paid by Jericho State Capital Corporation of Florida, a Florida corporation, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever, those certain pieces, parcels and tracts of land described on attached **Exhibit A** together with the Fixtures located thereon and all easements, rights-of-way and rights used in connection with such property and the improvements thereon or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and the Personal Property described on attached **Exhibit B**.

The above described Real Property, Fixtures, and Personal Property were sold subject to any past due or accruing property taxes and assessments, existing easements and restrictions of record, and to the security interests of R. E. Loans, LLC, a California limited liability company.

Together with all and singular the rights, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining and with all the estate, right, title, claim and interest of the parties to the cause aforesaid and of all other persons rightfully claiming from, under or by them or any of them.

To have and to hold, all and singular the premises before mentioned unto Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever.

In witness whereof, I, J. Stanton Cross, Master in Equity, under and by virtue of the aforesaid decree, have hereunto set my hand and seal this 25 day of February, 2008.

Signed, sealed and delivered in the presence of:

Dianne M. Bishop

Anne M. Lawson

J. Stanton Cross (SEAL)
J. Stanton Cross, Master in Equity

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF HORRY)

The undersigned, a notary public for South Carolina, hereby certifies that J. Stanton Cross, Master in Equity, personally appeared before me this day and acknowledged the due execution of the foregoing Deed.

Witness my hand and official seal this 25 day of February, 2008.

Anne H. Lawson (SEAL)
Signature of Notary Public.
My commission expires: 10-4-15

EXHIBIT A

Real Property

All those certains lots or parcels of land situate in the City of Myrtle Beach, County of Horry, State of south Carolina, and being more particularly described as follows:

Parcel One:

ALL AND SINGULAR those three (3) certain Lots I Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J. F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

Parcel Two:

ALL AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

Parcel Three:

ALL AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, one hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J. F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10' East 516 feet to Concrete N; thence South 13°55' West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to Concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence

North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°40' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, nor or formerly, of Roy Collins, in part, and in part by lands, nor or formerly, of Virginia Zeigler; on the South by lands, nor or formerly, of J. M. Cooper, in part, and lands, nor or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, nor or formerly, or Maggie L. Roberts.

Less and Except:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

These being the same properties conveyed to Peachtree Properties of North Myrtle Beach, LLC, by deed of Ruth Ludlam McClaim et al, dated July 6, 2006, and recorded in the Office of the Register of Deeds for Horry County in Deed Book 3132 at Page 779.

EXHIBIT B

Personal Property

All present and future fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and articles of personal property and replacements thereof, other than those rented or owned by lessees, now or at any time hereafter affixed to, attached to, installed upon, placed upon, or used in any way or connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property described in Exhibit A attached hereto, or the improvements on the Real Property;

All proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and any unearned premiums accrued, accruing or to accrue under any and all insurance policies.

All leases of the Premises or any part thereof entered into and all right, title and interest of the Peachtree Properties of North Myrtle Beach, LLC thereunder; and including, without limitation, the Peachtree Properties of North Myrtle Beach, LLC right, if any, to cash or securities deposited thereunder whether or not same was deposited to secure performance by the lessees of their obligations thereunder, including, further, the right upon the happening of an Event of Default, to receive and collect the rents and other charges thereunder;

All utility or municipal deposits made by or on behalf of Peachtree Properties of North Myrtle Beach, LLC or made in connection with the Premises;

All plans, drawings, specifications, site plans, sketches, samples, contracts and agreements, however characterized from time to time prepared for use in connection with the construction of the improvements in and to the Premises;

All contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering or any services, and supply of any materials or the conduct of operations in and the management of the Premises including, without limitation, construction contracts, architect agreements, management agreements, options and other agreements, however characterized affecting the Premises and/or the improvements in and to the Premises;

Any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Premises and/or the improvements in and to the Premises and/or chattels, including, without limitation, building permits, environmental certificates, certificates of operation, warranties and guarantees;

Any and all "Purchase Agreements", as such term is defined in the Mortgage, Security Agreement and Assignment of Leases and Rents from Peachtree Properties of North Myrtle Beach, LLC, to Jericho State Capital Corp. of Florida, recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 277All deposits and accounts of Peachtree Properties of North Myrtle Beach, LLC made with or for the benefit of Jericho State Capital Corporation of Florida, a Florida corporation; and

All of the right, title, and interest of Peachtree Properties of North Myrtle Beach, LLC in and to the items defined as Items (a) through (r) of the Granting Clause all as set forth in the Mortgage, Security Agreement and Assignment of Leases and Rents from Peachtree Properties of North Myrtle Beach, LLC, to Jericho State Capital Corp. of Florida, recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 277.

STATE OF SOUTH CAROLINA)
) DEED AFFIDAVIT
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who duly sworn, deposes and says:

4) I have read the information on this affidavit and I understand such information.

5) The property being transferred bearing Horry Countty Tax Map No. 178-00-05-032 by J. Stanton Cross, Master in Equity for Horry County to Jericho State Capital Corporatin of Florida, a Florida coproation.

6) Check one of the following – the deed is:
(c) _____ subject to the deed recording fees as a transfer for consideration paid in money or money's worth.
(d) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) __x__ exempt from the deed recording fee - see Item 13(See information section of this affidavit)
(If exempt, please skip items 4-7, and go to item 8 on this affidavit).

4) Check one of the following if either item 3(a) or 3(b) above has been checked (See information section of this affidavit):
(b) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.
(b)_____. The fee is computed on the fair market value of the realty which is _____.
(c)_____. The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5) Check Yes ___ or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is _____.

6) The deed recording fee is computed as follows:
(c) Place the amount listed in item 4 above here: $_____.
(d) Place the amount listed in item 5 above here: $_____
(If no amount is listed, place zero here)
(c) Subtract line 6(b) from Line 6(a) and place result here: $_____

7) The deed recording fee due is based on the amount listed on line 6(c) above and the recording fee due is $_____

8) As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Foreclosure Attorney

9) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

S. Sterling Laney, III

SWORN TO before me this 25th
day of February, 2008
Notary Public for South Carolina
My Commission Expires: 1-30-13

NOTARY PUBLIC SOUTH CAROLINA

WCSR 2316233v1

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statue of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, as long as no consideration is paid or is to be paid under the corrective or quitclaim deed;

(15) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

(16) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.

(15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)
) CIVIL ACTION COVER SHEET

Jericho All-Weather Opportunity Fund, L.P., and
Jericho State Capital Corporation of Florida
Plaintiff(s)

vs.

Horry County, South Carolina, and the
South Carolina Department of Transportation,
Defendant(s)

2009 CP 26 9968

2009 OCT 12 PM 1:26
CLERK OF COURT
HORRY COUNTY

(Please Print)		SC Bar #:	68543
Submitted By:	Robert S. Shelton, Esq.	Telephone #:	(843) 448-2400
Address:	Bellamy Law Firm	Fax #:	(843) 448-3022
	P.O. Box 357	Other:	(843) 916-7163
	Myrtle Beach, SC 29578	E-mail:	rshelton@bellamylaw.com

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

DOCKETING INFORMATION *(Check all that apply)*
**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20___-CP-___-___-___
☐ Notice / File Med Mal (230)
☐ Other (299)

Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499) declaratory judgement

Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out of State Deposition (650)
☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 10-12-09

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

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**CIVIL ACTION NO. 2009-CP-26-**
Jericho All-Weather Opportunity Fund, L.P. and Jericho State Capital Corporation of Florida,	)	
Plaintiffs,	)	
vs.	)	**SUMMONS**
Horry County, South Carolina, and the South Carolina Department of Transportation,	)	
Defendants.	)	

TO: THE DEFENDANTS NAMED ABOVE

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
(843) 448-2400
Attorneys for Plaintiff

Robert S. Shelton

Myrtle Beach, South Carolina
October 12, 2009.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**CIVIL ACTION NO. 2009-CP-26-9968**
Jericho All-Weather Opportunity Fund, L.P. and Jericho State Capital Corporation of Florida,	)	
Plaintiffs,	)	**VERIFIED COMPLAINT**
vs.	)	*(Declaratory Judgment)*
Horry County, South Carolina, and the South Carolina Department of Transportation,	)	
Defendants.	)	

TO: THE DEFENDANTS NAMED ABOVE:

Plaintiffs Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership with its principal place of business located in Boca Raton, Florida, doing business and owning real property in Horry County, South Carolina and Jericho State Capital Corporation of Florida, a corporation organized under the laws of the State of Florida with a principal place of business in Boca Raton, Florida, doing business in and owning real property in Horry County, South Carolina, complaining of Horry County, a South Carolina body politic and the South Carolina Department of Transportation, an agency of the State of South Carolina, would respectfully show and allege unto this Honorable Court as follows:

1. This Honorable Court has jurisdiction over the parties and subject matter of this action.

FACTS

2. That Plaintiffs own certain real property (hereinafter referred to as the "Property") located in Horry County, South Carolina and more particularly described in the deed of the Master in Equity for Horry County recorded in the office of the Register of Deeds for Horry County in Deed Book 3317 at Page 969. A copy of this deed is attached hereto and incorporated herein by reference as "Exhibit A."

3. That Plaintiffs' former mortgagor and predecessor in title, upon information and belief, sought the rezoning of the Property in order to develop the Property consistent with the Conceptual Plan recorded with the Horry County Register of Deeds in Deed Book 3245 at Page 1596. The rezoning documentation recorded with the Horry County Register of Deeds in Deed Book 3245 at Pages 1591 through 1600 are attached hereto and incorporated herein by reference as "Exhibit B."

4. That Horry County sought, as stated in Paragraph 5 of Attachment A to the rezoning documentation identified as Exhibit B herein, to require the donation of certain real property from the land included in Exhibit A hereto to facilitate the construction of a portion of the southern terminus of the Carolina Bays Parkway, in order to grant the requested rezoning.

5. That Horry County entered into an agreement (the "Intergovernmental Agreement") with the South Carolina Department of Transportation for the construction of the

southern terminus of the Carolina Bays Parkway. Such agreement is attached hereto and incorporated herein by reference as "Exhibit C."

6. That neither Horry County, the South Carolina Department of Transportation, nor Plaintiffs' predecessor in title notified Plaintiffs of the desired rezoning nor the requirement that any land be donated in order to effect the re-zoning.

7. That neither Horry County, the South Carolina Department of Transportation, nor Plaintiffs' predecessor in title sought or received Plaintiffs' authorization to release any portion of the Property from Plaintiffs' mortgage or to convey any land in order to effect the rezoning.

SOLE CAUSE OF ACTION
Declaratory Judgment

8. Plaintiffs therefore invoke the equitable jurisdiction of this Court and the provisions of the Uniform Declaratory Judgment Act, Sections 15-53-10 through 15-53-140 of the *South Carolina Code of Laws*, 1976 as amended, and ask the Court to inquire into this matter and to enter a declaratory judgment pursuant to Sections 15-53-20 and 15-53-30 of the *South Carolina Code of Laws*, 1976, as amended, finding the following:

a. That the documents incorporated herein as Exhibit B have no legal, binding effect on the Property.

b. That the current zoning of the Property is that which it was prior to the recording of the documents incorporated herein as Exhibit B.

c. That the Plaintiffs are the owners of the Property, including that portion which Horry County sought to require Plaintiffs' former mortgagor and predecessor in title to surrender.

WHEREFORE, Plaintiffs pray this Honorable Court review the matters and allegations herein and issue its judgment and declaration as follows:

9. That the documents incorporated herein as Exhibit B have no legal, binding effect on the Property.

10. That the current zoning of the Property is that which it was prior to the recording of the documents incorporated herein as Exhibit B.

11. That the Plaintiffs are the owners of the Property, including that portion which Horry County sough to require Plaintiffs' former mortgagor and predecessor in title to surrender.

12. For such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578
(843) 448-2400
Attorneys for Plaintiffs

Howell V. Bellamy, Jr., SC Bar # 00642
Robert S. Shelton, SC Bar # 68543

Myrtle Beach, South Carolina
October 12, 2009.

EXHIBIT A

EXHIBIT A

Grantee's Address: 3835 NW Boca Raton Blvd #200
Boca Raton, FL 33431

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Instrument#: 2008000026096, DEED BK: 3317 PG: 969 DOCTYPE: 001 02/26/2008 at 01:45:52 PM, 1 OF 10, EXEMPT, BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

DEED OF MASTER IN EQUITY

Recitals

A. On June 8, 2007, Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, and Jericho State Capital Corporation of Florida, a Florida corporation filed its complaint in the Court of Common Pleas for Horry County, South Carolina, against T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T.J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, and McClam Investment Company, LLC, defendants, case number 07-26-3579, demanding foreclosure of its mortgage over (i) the real property described on attached **Exhibit A** (the ***"Real Property"***); (ii) the fixtures located on the Real Property (the ***"Fixtures"***); and (iii) the personal property (the ***"Personal Property"***) described on attached **Exhibit B** (collectively, the Real Property, Fixtures, and Personal Properties shall be referred to as the "***Premises***").

B. The matter was heard on October 30, 2007, and a decree was entered ordering that the Real Property, Fixtures, and the Personal Property be sold by J. Stanton Cross, Master in Equity for Horry County, on the terms set forth therein.

C. J. Stanton Cross, Master in Equity, after having duly advertised the Real Property, Fixtures, and Personal Property for sale by public outcry on December 3, 2007 openly and publicly, according to the custom of auction, sold the Real Property and Fixtures to Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever, for the sum of Nine Million and 00/100 Dollars ($9,000,000.00), being at that price the highest bidder.

Now, therefore, know all men by these presents, that:

WCSR 3831049v1

~~EXHIBIT A~~

I,J. Stanton Cross, Master in Equity in and for Horry County, South Carolina, in consideration of the sum of Nine Million and 00/100 Dollars ($9,000,000.00) to me paid by Jericho State Capital Corporation of Florida, a Florida corporation, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever, those certain pieces, parcels and tracts of land described on attached **Exhibit A** together with the Fixtures located thereon and all easements, rights-of-way and rights used in connection with such property and the improvements thereon or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and the Personal Property described on attached **Exhibit B**.

The above described Real Property, Fixtures, and Personal Property were sold subject to any past due or accruing property taxes and assessments, existing easements and restrictions of record, and to the security interests of R. E. Loans, LLC, a California limited liability company.

Together with all and singular the rights, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining and with all the estate, right, title, claim and interest of the parties to the cause aforesaid and of all other persons rightfully claiming from, under or by them or any of them.

To have and to hold, all and singular the premises before mentioned unto Jericho State Capital Corporation of Florida, a Florida corporation, its successors and assigns forever.

In witness whereof, I, J. Stanton Cross, Master in Equity, under and by virtue of the aforesaid decree, have hereunto set my hand and seal this 25 day of February, 2008.

Signed, sealed and delivered in the presence of:

Clarence W. Bishop

Anne W. Lawson

J. Stanton Cross (SEAL)
J. Stanton Cross, Master in Equity

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF HORRY)

The undersigned, a notary public for South Carolina, hereby certifies that J. Stanton Cross, Master in Equity, personally appeared before me this day and acknowledged the due execution of the foregoing Deed.

Witness my hand and official seal this 25 day of February, 2008.

Anne H. Lawson (SEAL)
Signature of Notary Public
My commission expires: 10-4-15

EXHIBIT A

Real Property

All those certains lots or parcels of land situate in the City of Myrtle Beach, County of Horry, State of south Carolina, and being more particularly described as follows:

Parcel One:

ALL AND SINGULAR those three (3) certain Lots I Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J. F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

Parcel Two:

ALL AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

Parcel Three:

ALL AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, one hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J. F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

Beginning at Concrete N on the Southern margin of the proposed highway as shown on the referenced Plat (this road is known as the Peachtree Ferry Road); and running thence North approximately 26°5' East 33 feet to a point in the center of the road, the point being taken from the Highway Department survey; thence South 68°22' East 441 feet to point of intersection, as shown on the above Plat; thence South 62°45' East 984.3 feet to point of intersection, as shown on the above Plat; thence South 75°15' East 1028.6 feet to point of intersection, as shown on the Plat; thence North 33 feet to Concrete N on the Northern margin of the road above described; thence North 19°5' East 473.5 feet to Pipe O; thence 53°10' East 516 feet to Concrete N; thence South 13°55' West 872.5 feet to Concrete N on the Northern margin of the road; thence South 33 feet to point in center of the road described above; thence South 75°15' East 710 feet to point of intersection as shown on the Plat; thence South 85°11 minutes East 340.5 feet to point of intersection in center of the road described above, as shown on the Plat; thence Southwest 33 feet to Concrete N on the Southern margin of the road described above; thence South 21°45' West 1045.5 feet to Pipe O and Concrete N; thence North 78°50' West 750 feet to Pipe O and Concrete N; thence South 20°55' West 438.5 feet to Concrete N; thence North 78°10' West 566 feet to Concrete N; thence North 27°10' East to Pipe N; thence North 78°10' West 225 feet to Pipe N; thence South 27°10' West 250 feet to Concrete N; thence North 78°10' West 1284.5 feet to Concrete N; thence North 21° East 250 feet to Concrete N; thence North 78°10' West 100 feet to Concrete N; thence South 21° West 250 feet to Concrete N; thence North 26°25' West 145 feet along Socastee Creek, the Creek being the line; thence North 45° West 100 feet; thence North 57° West 100 feet; thence North 63°10' West 100 feet; thence

North 54°45' West 130 feet; thence South 70°25' West 185 feet; thence North 89°20' West 200 feet; thence North 61°45' West 94 feet; thence North 70°20' West 100 feet; thence South 86°50' West 80 feet to Gum 3MO; thence North 27°40' East 383.5 feet to Gum OM; thence North 27°20' East 261 Feet to Gum OM; thence North 26°05' East 1119.5 feet to the beginning corner.

Bounded on the North by the center of the proposed highway as shown on the Plat in part, and in part by the lands, now or formerly, of Brice J. Ward; on the East by lands, nor or formerly, of Roy Collins, in part, and in part by lands, nor or formerly, of Virginia Zeigler; on the South by lands, nor or formerly, of J. M. Cooper, in part, and lands, nor or formerly, of Virginia Zeigler, in part, and by the Northern margin of the Intracoastal Waterway, in part, Lucy S. Kolb, in part, and Socastee Creek, in part; and on the West by land, nor or formerly, or Maggie L. Roberts.

Less and Except:

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying, and being in Socastee Township, County and State aforesaid, designated as Pump Site and containing 215 square feet and shown on a plat of Pump Site For Grand Strand Water & Sewer Authority owned by Ruth L. McClam; made by Engineering and Technical Services, Inc., dated November 1, 1990; a copy of which is recorded in Plat Book 112, Page 65, public records of Horry County and which is by way of reference made a part and parcel of this description.

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

These being the same properties conveyed to Peachtree Properties of North Myrtle Beach, LLC, by deed of Ruth Ludlam McClaim et al, dated July 6, 2006, and recorded in the Office of the Register of Deeds for Horry County in Deed Book 3132 at Page 779.

EXHIBIT B

Personal Property

All present and future fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and articles of personal property and replacements thereof, other than those rented or owned by lessees, now or at any time hereafter affixed to, attached to, installed upon, placed upon, or used in any way or connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property described in Exhibit A attached hereto, or the improvements on the Real Property;

All proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and any unearned premiums accrued, accruing or to accrue under any and all insurance policies.

All leases of the Premises or any part thereof entered into and all right, title and interest of the Peachtree Properties of North Myrtle Beach, LLC thereunder; and including, without limitation, the Peachtree Properties of North Myrtle Beach, LLC right, if any, to cash or securities deposited thereunder whether or not same was deposited to secure performance by the lessees of their obligations thereunder, including, further, the right upon the happening of an Event of Default, to receive and collect the rents and other charges thereunder;

All utility or municipal deposits made by or on behalf of Peachtree Properties of North Myrtle Beach, LLC or made in connection with the Premises;

All plans, drawings, specifications, site plans, sketches, samples, contracts and agreements, however characterized from time to time prepared for use in connection with the construction of the improvements in and to the Premises;

All contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering or any services, and supply of any materials or the conduct of operations in and the management of the Premises including, without limitation, construction contracts, architect agreements, management agreements, options and other agreements, however characterized affecting the Premises and/or the improvements in and to the Premises;

Any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Premises and/or the improvements in and to the Premises and/or chattels, including, without limitation, building permits, environmental certificates, certificates of operation, warranties and guarantees;

Any and all "Purchase Agreements", as such term is defined in the Mortgage, Security Agreement and Assignment of Leases and Rents from Peachtree Properties of North Myrtle Beach, LLC, to Jericho State Capital Corp. of Florida, recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 277All deposits and accounts of Peachtree Properties of North Myrtle Beach, LLC made with or for the benefit of Jericho State Capital Corporation of Florida, a Florida corporation; and

All of the right, title, and interest of Peachtree Properties of North Myrtle Beach, LLC in and to the items defined as Items (a) through (r) of the Granting Clause all as set forth in the Mortgage, Security Agreement and Assignment of Leases and Rents from Peachtree Properties of North Myrtle Beach, LLC, to Jericho State Capital Corp. of Florida, recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 277.

EXHIBIT A

STATE OF SOUTH CAROLINA)
) DEED AFFIDAVIT
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who duly sworn, deposes and says:

4) I have read the information on this affidavit and I understand such information.

5) The property being transferred bearing Horry County Tax Map No. 178-00-05-032 by J. Stanton Cross, Master in Equity for Horry County to Jericho State Capital Corporatin of Florida, a Florida coproation.

6) Check one of the following – the deed is:
(c) _____ subject to the deed recording fees as a transfer for consideration paid in money or money's worth.
(d) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) __x__ exempt from the deed recording fee - see Item 13(See information section of this affidavit)
(If exempt, please skip items 4-7, and go to item 8 on this affidavit).

4) Check one of the following if either item 3(a) or 3(b) above has been checked (See information section of this affidavit):
(b) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.
(b)_____ The fee is computed on the fair market value of the realty which is _____.
(c)_____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5) Check Yes ___ or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is _____.

6) The deed recording fee is computed as follows:
(c) Place the amount listed in item 4 above here: $_____
(d) Place the amount listed in item 5 above here: $_____
(If no amount is listed, place zero here)
(c) Subtract line 6(b) from Line 6(a) and place result here: $ _____

7) The deed recording fee due is based on the amount listed on line 6(c) above and the recording fee due is $_____

8) As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Foreclosure Attorney

9) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

S. Sterling Laney, III

SWORN TO before me this 25th
day of February, 2008

Notary Public for South Carolina
My Commission Expires: 1-30-13

WCSR 2316233v1

CTIC_02384

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, as long as no consideration is paid or is to be paid under the corrective or quitclaim deed;

(15) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

(16) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.

(15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT B

Document Detail Report - ORDINANCE Instrument #: 2007[redacted]0071477 Book 3345 Page 1591

EXHIBIT B

Recorded 5/17/2007 9:15:45 AM	Instrument # 2007[redacted]0071477 BK/PG D 3345 / 1591 Blue = Added Red = Deleted
Last Modified Date	5/17/2007 1:30:52 PM
# of Pages	10
Doc Type	(057) ORDINANCE
GRANTOR	HORRY COUNTY COUNCIL (5/17/2007 1:30:52 PM)
GRANTEE	HORRY COUNTY COUNCIL (5/17/2007 1:30:52 PM)
MEMO	ORDINANCE NO 76-07

CTIC_02387

Instrument#: 20070000714 DEED BK: 3245 PG: 1591 DOCTYPE: 057 05/17/2007 at 09:18:45 AM, 1 OF 10 H[illegible]RY V. SKIPPER, HORRY COUNTY, SC REG[illegible]R OF DEEDS

EXHIBIT B

COUNTY OF HORRY)
) ORDINANCE NO. 76-07
STATE OF SOUTH CAROLINA)

AN ORDINANCE TO AMEND THE ZONING ORDINANCE, APPENDIX B OF THE HORRY COUNTY CODE OF ORDINANCES; AND TO APPROVE THE REQUEST TO AMEND THE OFFICIAL ZONING MAPS FOR HORRY COUNTY, SOUTH CAROLINA, SO AS TO REZONE TMS # 178-00-05-032 CONSTITUTING A TOTAL OF 131.4 +/- ACRES FROM R-1 RESIDENTIAL DISTRICT (R-1) TO PLANNED DEVELOPMENT DISTRICT (PDD).

WHEREAS, ordinance Number 107-04 pertaining to Planned Development Districts (PDD), allows a variation of requirements contained in other zoning districts to accommodate flexibility in uses within the project; and

WHEREAS, a request has been filed to amend the official zoning maps for the parcels of land identified as TMS # 178-00-02-032; and

WHEREAS, the present zoning ordinance does not provide a provision for the recording of a development summary or a list of conditions of approval for Planned Development Districts (PDD); and

WHEREAS, County Council finds that R-1 Residential District (R-1) zoning is no longer employed as a zoning tool for new development in Horry County and instead employs Planned Development Districts (PDD); and

WHEREAS, County Council finds that the request to revise the R-1 Residential District (R-1) to Planned Development District (PDD) is in compliance with the Comprehensive Plan and the good of the public welfare and is a reasonable request; and

WHEREAS, no provision of this ordinance shall supercede the requirements of the Horry County Land Development Regulations; and

WHEREAS, no provision of this ordinance shall supercede the requirements of the Horry County Zoning Ordinance unless such provision is contained within this actual ordinance as recorded in the office of the Horry County Register of Deeds.

NOW THEREFORE by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained:

1) **Amendment to the Zoning Ordinance of Horry County:** The Horry County Code of Ordinances, Appendix B, Shall be amended as set forth below:

   Section 721.8 – Approved PDDs and Summary of Uses

   Addition of Attachment A titled "Peachtree Plantation Planned Development District (PDD) Ordinance # _____," and Exhibit 1 entitled "Conceptual Plan."

2) **Amendment of Official Zoning Maps of Horry County:**

   Parcels of land identified by TMS # 178-00-05-032 constituting 131.4 +/- acres currently zoned Residential District (R-1) is herewith amended to Planned Development District (PDD) and is restricted to the uses as found in Attachment A - "Peachtree Plantation Planned Development District (PDD) Ordinance #_____," attached to this ordinance and incorporated herein by reference.

3) **Severability:** If a Section, Sub-section, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section, or part of

EXHIBIT B

this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

4) **Effective Date:** This Ordinance shall become effective on Third Reading.

ADOPTED AND APPROVED by the governing body

this 15th day of May, 2007.

HORRY COUNTY COUNCIL

Liz Gilland

Liz Gilland, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Michael L. Ryan, District 4

Howard D. Barnard, III, District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Kevin J. Hardee, District 10

Al Allen, District 11

Attest:

Patricia S. Hartley

Patricia S. Hartley, Clerk to Council

Date of First Reading April 17, 2007
Date of Second Reading May 1, 2007
Date of Third Reading May 15, 2007

Robert Guyton, agent for Peachtree Properties of North Myrtle Beach LLC, Peachtree Plantation PDD (07-03-012)

CTIC_02389

Instrument#: 2007000071 DEED BK: 3245 PG: 1593 DOCTYPE: 05 05/17/2007 at 09:18:45 AM, 3 OF 10 RY V. SKIPPER, HORRY COUNTY, SC REG AR OF DEEDS

EXHIBIT B

ATTACHMENT A

Summary of Peachtree Plantation Planned Development District (PDD)
ORDINANCE #

HCPD Case # 07-03-012
TMS # 178-00-05-032

The Planned Development District (PDD) for "Peachtree Plantation" includes the development of 131.4 +/- acres located on Peachtree Road and the Atlantic Intracostal Waterway in Horry County, South Carolina.

GENERAL PROVISIONS

1. **Permitted Uses** – Use districts shall be in accordance with Exhibit 1- Conceptual Plan

Proposed Use District	# of units/sq.ft	Acreage	Gross Density	Net Density	Percentage of Project
Single Family A	203	85.27	± 1.55 DU/AC	± 2.38 DU/AC	65 %
Multi-Family	608	35.21	± 4.64 DU/AC	± 17.27 DU/AC	27%
Commercial A	20,000 sq. ft.	1 AC	N/A	N/A	0.7 %
Amenity	N/A	1.7 AC	N/A	N/A	0.7 %
Dedicated Right-of-Way	N/A	11.00 AC	N/A	N/A	8.37 %
Total		**131.4**			**100 %**

A) **Multi-family**

i) Single-Family Residential
   a) Single-family, stick build residential units, sold "in-common" or "fee-simple"

ii) Multi-family Residential
   a) Multi-Family, including mid-rise and garden apartments
   b) Multi-Story Condominiums and/or rental apartments
   c) Two-Family Single Family attached
   d) Three-Family Single Family attached
   e) Four-Family Single Family attached
   f) Single-Family attached ie. Townhomes
   g) Single-Family, stick built residential units.

iii) Commercial
   a) Activity/Learning/Day Care Services
   b) Grocery store and associated retail
   c) All office and medical uses
   d) Apparel and Accessory Stores
   e) Eating and Drinking Establishments
   f) Gasoline Stations with Convenience Stores
   g) Variety Stores
   h) Single Family, stick built residential units

EXHIBIT B

B) Amenity Areas

i) Pool
ii) Tot Lots / Playgrounds
iii) Picnic Areas

2. Dimensional Standards

Proposed Use	Lot Area	Minimum Lot Width	Setbacks				Height
			Front	Side	Rear	Corner	
Single Family A	8,750	70'	25'	10'	15'	15'	35'
Multi-family	25,600	160'	25'	10'	15'	25'	45'
Commercial	10,000	60'	25'	10'	15'	15'	35'

Minimum building separation shall be 20'.
* Buildings abutting existing PDD buffer shall meet the 25' requirement.

SPECIAL PROVISIONS

1. Open Space Requirements

(a) Open space shall be provided in accordance with Exhibit 1 – Conceptual Plan.

Open Space Description	Type of Open Space			Acreage Required	Acreage Provided	Public / Private
	Common	Active	Passive			
Upland /Recreational (SF Residential)	13.9 ac	0.9 ac	13 ac	6.09 ± ac.	13.09 ±ac.	Private
Upland /Recreational (MF Residential)	16.18ac	16.0 ac	0.18 ac	14.0 ± ac	16.18 ± ac.	Private
Total Open Space Provided	30.08 ac	16.9 ac	13.18 ac	20.09 ac	30.1 ac	

Minimum required open space for the residential portion of the project is as follows:
811 dwelling units * 2.3 persons per unit * 0.01 acres = 18.65 acres
Common space requirements = 18.65 acres ÷ 2 = 9.33 acres

Total open space required for the entire project is 18.65 acres of upland recreational open space, with an additional 9.33 acres of common open space is required for a total of 27.98 acres of open space.

EXHIBIT B

2. Parking

(a) All parking requirements shall be in accordance with the Horry County Zoning Ordinance in effect at the time of development.

3. Sidewalks & Pathways

a. Sidewalks shall be provided along all internal roadways within the PDD, and shall be designed in accordance with the standards set forth in the Horry County Land Development Regulations.

4. Buffering

a. The existing twenty-five foot (25') PDD buffer is to be maintained around the entire PDD perimeter. The buffer shall remain undisturbed and at a minimum it shall meet the standards for landscaping in Section 527 of the zoning ordinance.

5. Community Benefit

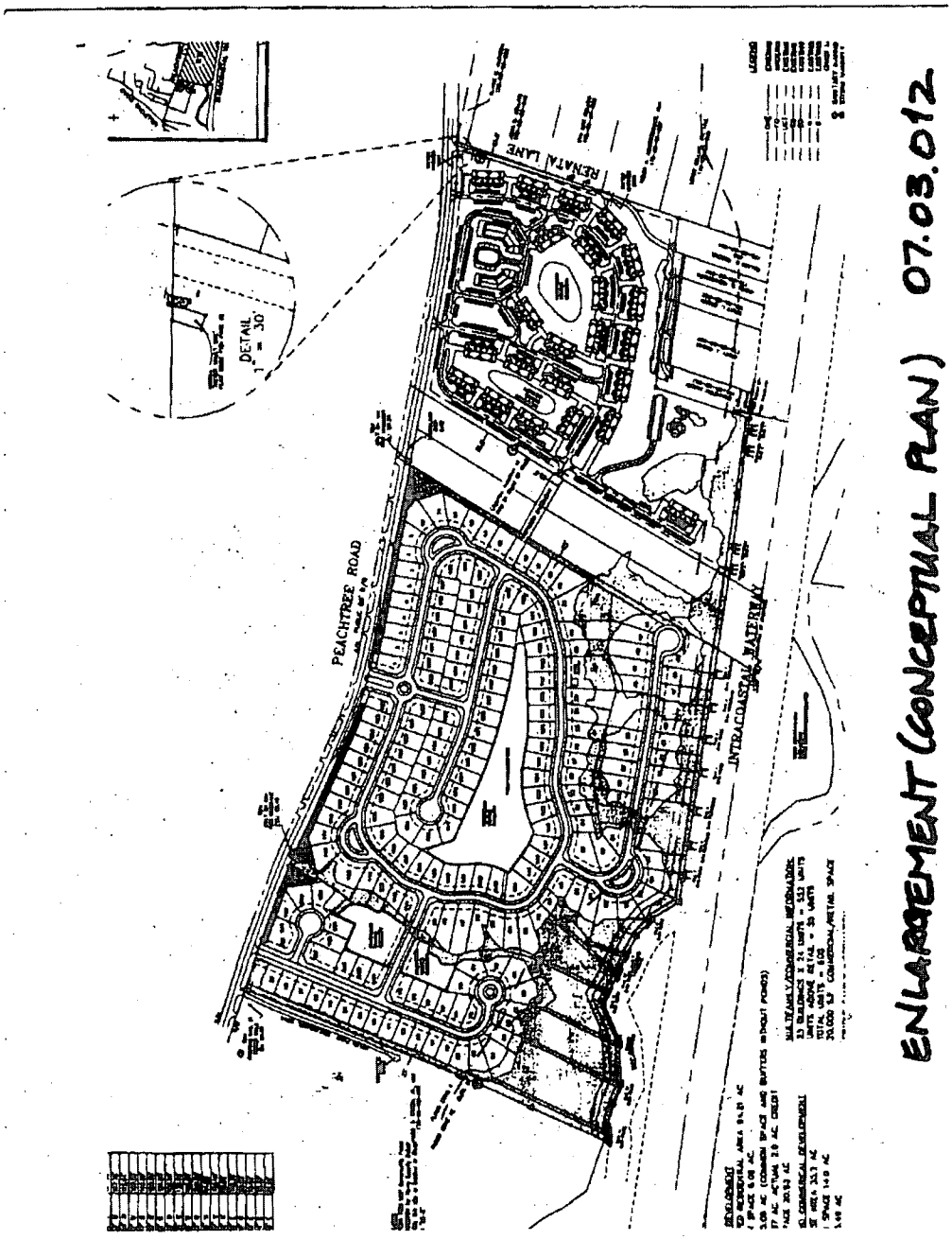
The property owner has agreed to donate to Horry County at no cost, property sufficient to construct that portion of the 300 ft. wide Highway 31(Carolina Bays Parkway) right-of-way that traverses the property in issue. The property will be conveyed to Horry County by general warranty deed, free of all encumbrances within 120 days of third reading of this ordinance. The property conveyed will be restricted to use as a right-of-way only. If for any unforeseen reason the planned extension of Carolina Bays Parkway is not constructed, the grantor shall have first right-of refusal to repurchase the property. In such case, the restriction on use would be removed and the value of the property would be determined based on a per acre price if developed in accordance with surrounding properties. If no agreement on price could be reached, each party would have the property appraised. If there was still no agreement following the appraisals, the two appraisers would choose a third appraiser whose determination would be final. The use restriction on the property would also be removed if the grantor declined to repurchase the property under the first right of refusal.

The County will allow the developer to use the property conveyed for access and staging up until the County conveys it to the South Carolina Department of Transportation (SCDOT). The developer shall not encroach into or encumber the property with infrastructure (i.e. water, sewer, drainage, utilities). The County will not convey the property to SCDOT until at least 180 days following third reading.

The property owner has requested an easement across the right-of-way that would allow travel across the right-of-way between the two portions of the PDD. The County cannot guarantee that SCDOT will allow an easement through the right-of-way, but will use its best efforts to assist the developer in negotiating the easement with SCDOT.

The developer will improve Peachtree Road to include a center left hand turn lane and the appropriate deceleration lanes along that section of Peachtree Road fronting this project. The developer will also pay to Horry County, a pro rata share of the cost (not to exceed 25%) to install a traffic signal at the intersection of Peachtree Road and Dick Pond Road at the time a SCDOT warrant analysis is met.

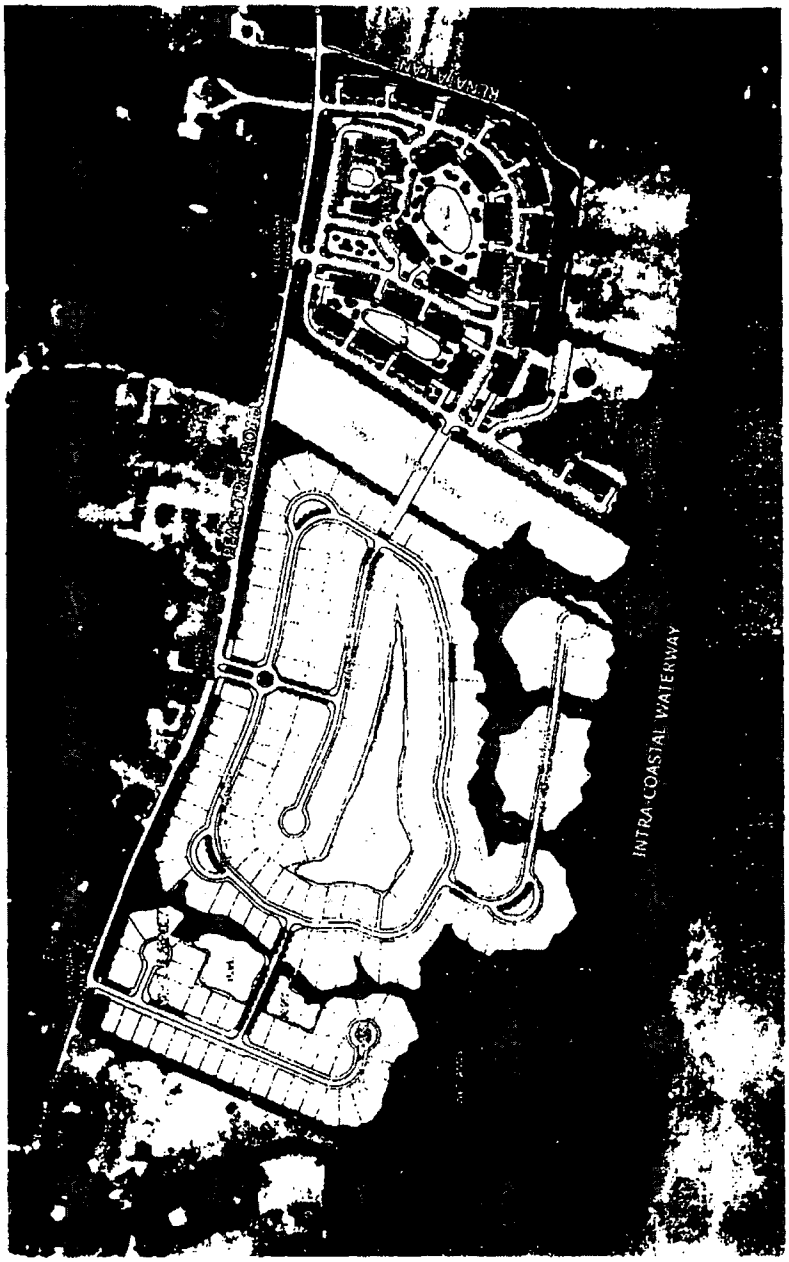
EXHIBIT B



ENLARGEMENT (CONCEPTUAL PLAN) 07.03.012

Instrument#: 200700007[illegible], DEED BK: 3245 PG: 1597 DOCTYPE: 05[illegible]5/17/2007 at 09:18:45 AM, 7 OF 10 [illegible]ERY V. SKIPPER, HORRY COUNTY, SC RE[illegible]RAR OF DEEDS

EXHIBIT B



ILLUSTRATIVE PLAN 07.03.012

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EXHIBIT B

Rezoning Review Sheet

PROPERTY INFORMATION

Applicant	Robert S. Guyton agent for Peachtree Properties of NMB, LLC	Rezoning Request #	07-03-012
Tax Map (TMS) #	178-00-05-032	County Council District #	Grabowski
Site Location	Peachtree Road and Intracoastal Waterway, Socastee	Staff Recommendation	Approval
		PC Recommendation	Approval 8/0
Property Owner/ Contact	Peachtree Properties (843) 663-3600	Size (in acres) of Request	131.4

Date Advertised: 3/11/07

Date Posted: 3/12/07

Property Owner Notified: 60

Date Notification Mailed: 3/14/07

Report Date: 3/14/07 BY VR

ZONING DISTRICTS

Current Zoning	R-1
Proposed Zoning	PDD
Proposed Use	Single-family & multi-family residential

LOCATION INFORMATION / ADJACENT PROPERTIES

Flood and Wetland Information	Zone X & A	R-2	R-1	R-2
Public Health & Safety (EMS/fire) in miles radius	1 / 1	R-2	Subject Property	R-2
Utilities	GSWSA	CFA	CFA	CFA
Character of the Area	Residential Single Family			

COMMENTS

Comprehensive Plan District: Wedge near Urban Corridor and Secondary Area of a Township

Is this plan consistent with the Land Use Plan?

Discussion: Applicant is seeking to rezone this parcel from R-1 to PDD. Applicant proposes to have single-family, multi-family and commercial uses within the Peachtree Plantation PDD. The proposed commercial uses are similar to those found in the RE1 and RE2 districts that provide services to the community. The Carolina Bays Parkway has been proposed to divide this parcel in two. The applicant is willing to provide acreage to accommodate the Carolina Bays Parkway, which is approximately an 11-acre portion of this property. The setbacks proposed for single-family, multi-family and commercial development are 25 feet front, 10 feet side, and 15 feet rear. Height for single-family portion not to exceed 35 feet, and for the multi-family portion height should not exceed 45 feet. The commercial portion will have a maximum height of 35 feet.

Public Comment: There was no public input.

Environment Assessment and Open Space?

Open Space will be provided

TRANSPORTATION INFORMATION

Current Zoning Trip-Generation Estimate	6,300	Existing Road Conditions	Peachtree Rd.: paved; 2 lanes
Proposed Zoning Trip-Generation Estimate	8,010	Traffic Volume (2006; in AADT) / Percent of Road Capacity	Hwy. 544 (Traffic Count Station 244): 28,800; 79.1%
Proposed Improvements	Applicant proposes to give the county the easement for the Carolina Bays Parkway.		

DIMENSIONAL STANDARDS

	Requested	Current	Adjacent	Adjacent	Adjacent	Adjacent
	PDD	R-1	R-1	R-2	CFA (res/com)	
Min. Lot Size (in square feet)	See Narrative	43,560	43,560	21,780	21,780/43,560	
Front Setback	See Narrative	50 feet	50 feet	40 feet	25/60 feet	
Side Setback	See Narrative	20 feet	20 feet	15 feet	10/25 feet	
Rear Setback	See Narrative	30 feet	30 feet	25 feet	15/40 feet	
Bldg. Height	See Narrative	35 feet	35 feet	35 feet	35 feet	

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EXHIBIT B

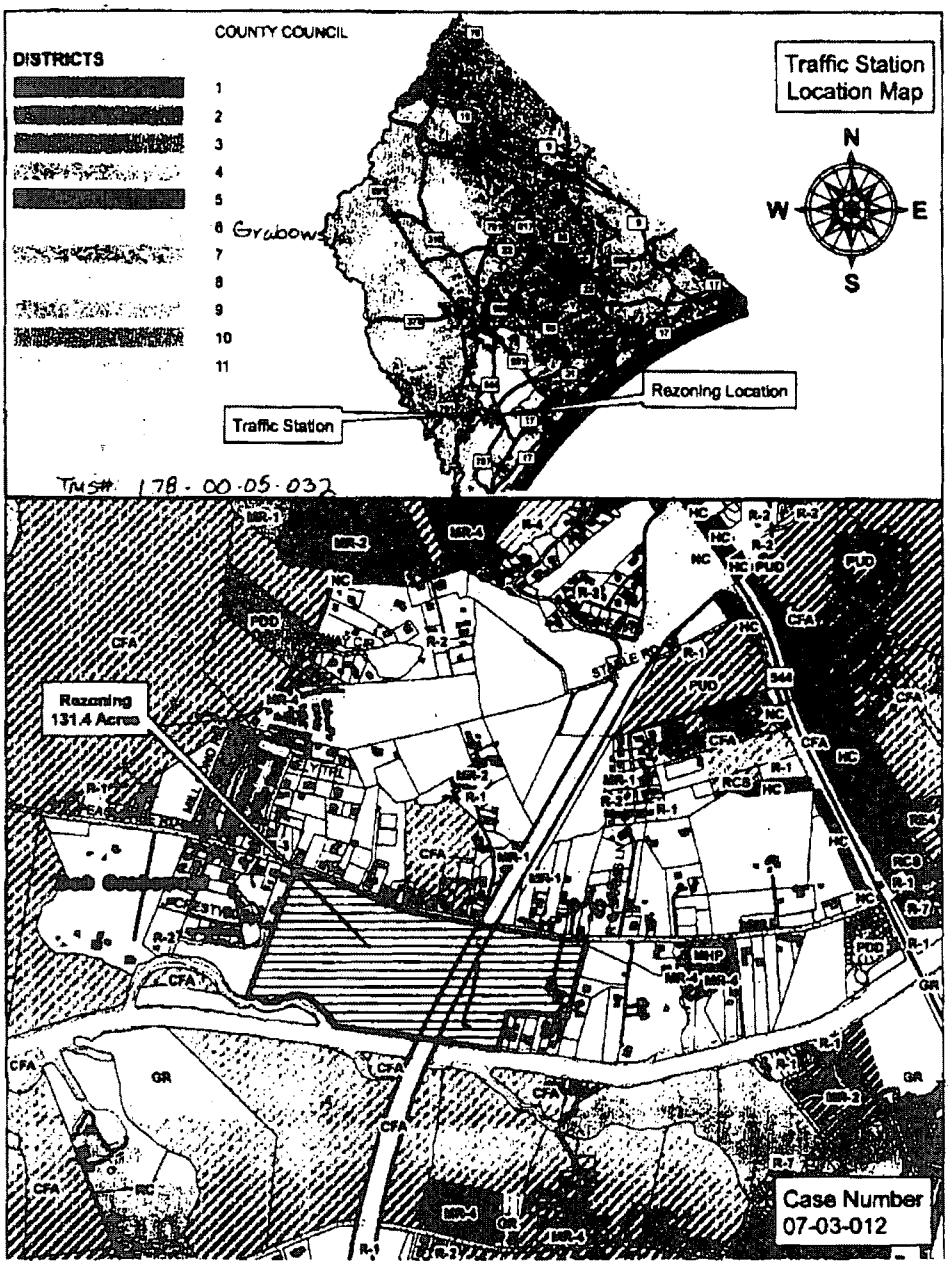

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EXHIBIT B

Horry County Schools

Division of Construction Management, Planning Office

Horry County Subdivision and Rezoning Review Comments

Public Hearing Date:	**04-05-2007**
Request Number:	**07-03-012**
Request Type:	**Rezoning**
Subdivision:	
Zoning:	**R-1 to PDD**
School Attendance Zones:	**Forestbrook Elementary School** **Forestbrook Middle School** **Socastee High School**

Comments:

Forestbrook Elementary School:

Design Capacity:	700
2006-07 Enrollment:	787
Percent Capacity:	112%

Forestbrook Middle School:

Design Capacity:	849
2006-07 Enrollment:	1,045
Percent Capacity:	123%

Socastee High School:

Design Capacity:	1,388
2006-07 Enrollment:	1,428
Percent Capacity:	103%

64

CTIC_02397

EXHIBIT C

EXHIBIT C

INTERGOVERNMENTAL AGREEMENT FOR HORRY COUNTY CAROLINA BAYS PARKWAY EXTENSION/SC 707 PROJECT IN HORRY COUNTY, SOUTH CAROLINA

This Intergovernmental Agreement is made and entered into as of June 20, 2007, by and among **HORRY COUNTY, SOUTH CAROLINA** (the "County"), the **SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION** (the "SCDOT"), and the **SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK**, a body corporate and politic and an instrumentality of the State of South Carolina (the "Bank"), concerning the funding and construction of the Horry County Carolina Bays Parkway Extension/SC Highway 707 Project (the "Project") in Horry County, South Carolina, which is described in more detail hereinbelow and in the Horry County Application, as supplemented, submitted to the Bank (the "Application").

WITNESSETH

WHEREAS, the Bank was created for the purpose, among others, of selecting and assisting in financing major projects by providing financial assistance to government units for constructing and improving highway facilities necessary for public purposes, including economic development, as is more fully set forth in the South Carolina Transportation Infrastructure Bank Act (South Carolina Code Ann. Sections 11-43-110, et seq., as amended);

WHEREAS, by an application submitted to the Bank dated on or about December 5, 2005, as supplemented by other submissions, the County requested financial assistance for two component highway improvement projects in Horry County consisting of extending the Carolina Bays Parkway and widening SC Highway 707;

WHEREAS, as part of its submissions, the County committed a local contribution in the amount of $93.6 million for the widening of SC Highway 707 from the revenues from the County's one percent sales and use tax recently adopted by the County pursuant to the Capital Project Sales Tax Act;

EXHIBIT E

CTIC_02399

WHEREAS, at a meeting on June 30, 2006, the Bank's Evaluation Committee (the "Committee") recommended and the Board of Directors of the Bank (the "Board") found the Application met the criteria in Section 11-43-180(B) and was an eligible and qualified Project under the South Carolina Transportation Infrastructure Bank Act, and at the same meeting, the Committee recommended and the Board approved financial assistance for the Project, which has a total estimated cost of $246 million, in the form of an initial grant of $40 million for engineering and environmental work and acquisition of rights of way and a subsequent grant, or grants, not to exceed $110 million for the Project from the next new funds available to the Bank after fully funding financial assistance for all existing obligations on all previously approved projects with all financial assistance from the Bank conditioned on the aforementioned local match contribution identified by County in the Application being made and the execution of an intergovernmental agreement between the parties in a form acceptable to the Board;

WHEREAS, on August 1, 2006, the Capital Improvements Joint Bond Review Committee ("IBRC") of the South Carolina General Assembly approved the Project and financial assistance from the Bank for the Project in the form of a grant in the initial amount of $40 million;

WHEREAS, the Component Project consisting of the extension of the Carolina Bays Parkway has received a commitment of Federal funds in the form of a Congressional earmark in the amount of $2.4 million;

WHEREAS, due to changes in circumstances since the County submitted it Application to the Bank, it is expected that all of the Bank's financial assistance may be expended on the Component Project consisting of the extension of the Carolina Bays Parkway with the County being responsible for all of the costs of the Component Project consisting of widening SC Highway 707; and

WHEREAS, the County, SCDOT, and the Bank now desire to set forth the respective responsibilities of the parties for the Project, including the funding and construction of the Project;

NOW, THEREFORE, in consideration of the mutual benefits, promises and obligations set forth herein, the sufficiency of which are hereby acknowledged and accepted by each party hereto, the County, SCDOT, and the Bank hereby agree as follows:

ARTICLE I

1. Definitions

For purpose of this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

"Account" means the account of the Bank maintained by the South Carolina State Treasurer into which is deposited monies to fund Disbursements for Eligible Costs of the Project.

"Act" means the South Carolina Transportation Infrastructure Bank Act, which is codified as South Carolina Code Ann. Sections 11-43-110, et seq., as amended.

"Application" means the Application for Financial Assistance dated on or about December 5, 2005, submitted by the County to the Bank, as supplemented by other materials submitted by the County up to the date of this Agreement.

"Budget" means the budget established by the Bank for the Project and for each Component Project.

"Component Project" means the two individual projects listed hereinbelow under the definition of "Project."

"Contract" means any contracts entered into by the County or SCDOT with any other person or firm for engineering, design, construction, materials or similar purposes for the Project.

"Disbursements" means the transfer or payment of monies to the County or SCDOT for Eligible Costs of the Project or the payment of invoices approved by Bank and/or its designee for Eligible Costs of the Project incurred pursuant to a Contract.

"Eligible Costs" has the same meaning as set forth in Section 11-43-130 (5) of the Act as applied to qualified projects to be financed from the state highway account of the Bank.

"Event of Default" means the uncured breach by the County or SCDOT of a provision or obligation in this Agreement.

"Project" means the set of highway improvement projects in Horry County as identified and described in the Application, as supplemented, and in this Agreement which consist of the following two Component Projects (excluding bicycle and pedestrian paths, unless mandated by federal or state law or regulation) in the order of priority as established by the County:

1. Construction of a fully controlled access six lane highway extending the Carolina Bays Parkway from SC Highway 544 to SC Highway 707, including bridges over the Intracoastal Waterway and SC Highway 707 Interchange; and

2. Widening of SC Highway 707 to five lanes from U.S. 17 in Murrells Inlet to Enterprise Road in Socastee, South Carolina.

"Sales Tax" means the one percent sales and use tax established in Horry County by Horry County Council Ordinance Number 86-06 pursuant to the Capital Project Sales Tax Act (South Carolina Code Ann. Sections 4-10-300, et seq., as amended).

"SCDOT" means the South Carolina Department of Transportation.

ARTICLE II

2. Term of Agreement

This Agreement shall be effective as of June 20, 2007, and shall terminate, except for specific provisions which are expressly stated to survive the termination of this Agreement, on the date when the last of the following events occurs: (i) the last payment on the local contribution owed by the County as set forth in Section 3.2. is made; (ii) the Bank makes the final Disbursement on the Project; or (iii) the Project is declared completed and accepted by the County, SCDOT, and the Bank.

ARTICLE III

3. Funding Commitments of Parties

3.1 Bank

The Bank shall establish a Budget for the Project within the Account of the Bank and will, from time to time as it deems necessary at its discretion, deposit into the Account, or credit the Budget for, monies from one or more sources to fund Disbursements. The Bank will make Disbursements from the Account, pursuant to Section 6.1 of this Agreement, to pay for Eligible Costs of the Project incurred directly by the County or incurred by the County on Contracts. The Bank may deposit into the Account, or credit the Budget, in such increments as it determines in its discretion, financial assistance in the form of grant(s) not to exceed $40 million from its existing sources of revenues and any monetary contributions to the Project from the County or any other source that is not expended in some other manner on the Project. This grant may be used only for Eligible Costs for engineering and environmental work and for right-of-way acquisitions for the Project.

From the next funds or proceeds of revenue bonds available to the Bank for the Project after fully funding the financial assistance for all existing obligations of the Bank on projects previously approved by the Board and the JBRC, as determined by the Bank in its discretion, and subject further to the approval of such financial assistance by the JBRC as required by the Act, the Bank may deposit into the Account, or credit the Budget, in such increments as it determines in its discretion, financial assistance in the form of grant(s) not to exceed an additional $110 million for the remainder of the Project. This grant may be used for any Eligible Costs of the Project.

In no event at any time shall the Bank be required to increase its financial assistance, grants, credits, disbursements, or contributions to the Project beyond $150 million or to disburse, advance, transfer or pay from its own monies in excess of $150 million for the Project. However, subject to the provisions of Section 5.5 of this Agreement, the County is not precluded from submitting requests for additional financial assistance to the Bank for consideration if needed to complete the Project. Any savings in the total cost of the Project shall be credited against and reduce the amount of the Bank's grants to the Project. Furthermore, any state (other than the Bank's), County (other than the Sales Tax), municipal, regional government or private funds of any kind or any Federal funds (other than the Congressional earmark of $2.4 million) of any kind provided or available for the Project in any form shall offset and reduce the amount of the Bank's grants for the Project on a dollar for dollar basis unless those funds are needed, as determined by the Bank, to complete the Project in a manner consistent with its original scope or with an expanded or upgraded scope.

3.2 County

The County promises to, and shall, expend $93.6 million for the Component Project designated as SC Highway 707 as its local match contribution to the Project. The County will provide the Bank a quarterly report on the status of the expenditures

comprising the local match contribution in a form acceptable to the Bank. The expenditure of the local match contribution of $93.6 million on SC Highway 707 must be completed by the end of the seven (7) year period set forth in Section L 5 of Horry County Council Ordinance Number 86-06.

ARTICLE IV

4. Additional Obligations of the County and SCDOT

4.1 Additional Documents and Actions

At the request of the Bank, the County and SCDOT shall execute any other documents that the Bank determines are reasonably necessary to evidence or establish the County's or SCDOT's obligations to the Bank set forth in this Agreement. The County and SCDOT acknowledge that the Bank intends to raise funds for its commitment to the Project and other qualified projects through the issuance of revenue bonds or other indebtedness as permitted under the Act. Accordingly, the County and SCDOT shall take such actions and enter into such other documents, including amendments to this Agreement or other agreements that are consistent with the substance hereof, as may be reasonably necessary to comply with South Carolina laws and regulations associated with such bonds or indebtedness and to satisfy requirements for documentation and information reasonably imposed by the Bank, prospective purchasers of such bonds, holders of such bonds, bond insurers, rating agencies, lenders or regulatory agencies and their attorneys, advisors, and representatives; provided, however, that no such action or document shall create any additional material obligation or increase any material obligation of the County or SCDOT.

4.2 Additional Warranties and Covenants of the County

The County warrants and covenants that:

A. The County has full power and authority to execute, deliver and perform and to enter into and carry out the transactions contemplated by the provisions in this Agreement, and the execution and performance of these provisions and transactions by the County does not and will not violate any applicable law and does not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound, a violation of which would cause a material adverse effect to the Bank. This Agreement has, by proper action, been duly authorized, executed and delivered by the County.

B. This Agreement is valid, binding and enforceable as to the County in accordance with its terms.

C. No further authorizations, consents or approvals of governmental bodies or agencies are required in connection with the execution and delivery by the County of this Agreement and the performance of its obligations hereunder.

D. No litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving the County is pending or, to the knowledge of the County threatened, in which any judgment or order may be or has been rendered, or is sought, that may have a material and adverse effect upon the operations or assets of the County or would materially or adversely affect the validity of this Agreement, or the performance by the County of its obligations hereunder or the transactions contemplated hereby, including the obligation to make the local match contribution pursuant to Section 3.2 of this Agreement. The County will immediately notify the Bank in writing if any such litigation or proceeding is commenced or threatened at any time during the term of this Agreement.

E. If requested by the Bank, the foregoing warranties and covenants shall be confirmed by a written opinion issued to the Bank by legal counsel for the County in a form and with conclusions satisfactory to the Bank.

4.3 Reimbursement of Bank

If the Bank determines at any time that any Disbursements made by it on the Project were for costs or expenses that were not Eligible Costs, were based on misstatements of fact by the County, SCDOT or the agents of either of them, or were for work, services, or materials which do not meet the design and construction specifications and standards of SCDOT and which have not been corrected to meet those specifications and standards, the Bank, at its option, may require the County or SCDOT, whichever is responsible as determined by the Bank, to reimburse the Bank or the Account for all or some portion of such costs and expenses. In the event that the County or SCDOT does not pay the full amount of the reimbursement to the Bank within ninety (90) days of the date of the notification to the County or SCDOT that such reimbursement is due the Bank or on such other terms as the Bank shall establish, the County's or SCDOT's obligation to reimburse the Bank shall be subject to the provisions of Section 11-43-210 of the Act and Article VIII of this Agreement. This Section 4.3 shall survive the termination of this Agreement.

4.4 Project Reporting

The County shall report to the Bank in writing at least quarterly on the status of each Component Project, including, but not limited to, the status of design, right-of-way acquisition, environmental and related approvals, construction, scheduled and projected draw requests, project changes, project scope changes, and any other matters identified by the Bank.

4.5 Assistance with Municipal Cooperation and Agreements

The County shall be solely responsible for obtaining from each municipality in which any portion of a Component Project is to be constructed a properly and duly executed Municipal State Highway Project Agreement, as required by South Carolina Code Ann. Section 57-5-820, in the form attached hereto as Exhibit A and delivering the original executed Municipal State Highway Project Agreement to SCDOT. The parties to this Agreement acknowledge that the failure of a municipality to cooperate in executing such an agreement may delay a Component Project, increase the costs of a Component Project, result in a modification of or reduction in the scope of a Component Project, or otherwise impact a Component Project.

ARTICLE V

5. Project Administration

5.1 Project Administration

The SCDOT will administer the Project for the County. The County Administrator shall appoint a designee to serve as the day-to-day contact for the County for all Component Projects. The SCDOT shall oversee all planning, design, engineering, right-of-way acquisition, contract administration, inspection, awarding of contracts, the review and approval of payment of contracts, construction for the Project and each Component Project, and any related or necessary activities or functions of the Project. Preconstruction and construction services shall be obtained from third-party consultants or contractors by or on behalf of the County through the procurement process authorized by law applicable to that contract. All Contracts with third-parties shall be entered into in the name of the County as owner. However, should the SCDOT determine that it would be more efficient or cost effective or would result in more expeditious completion of the Project, the SCDOT may perform any service to the Project with its own forces. The County, subject to the terms of

Article VI herein, authorizes SCDOT to submit draw requests directly to the Bank and authorizes the Bank to pay invoices directly to SCDOT or, if the Bank agrees therewith, directly to consultants or contractors.

The SCDOT shall be entitled to draw, and be paid hereunder, its normal and customary rates for its services that are Eligible Costs of the Project subject to review and approval by the Bank or its designee as to the reasonableness of such rates and costs and the qualification of such costs as Eligible Costs. All work, services, construction and materials used on the Project shall conform to the standards and specifications applied by SCDOT. Each Component Project shall be opened for public use upon completion subject to the terms of acceptance therefor set forth in Section 5.7 of this Agreement.

Notwithstanding the provisions of this Agreement, the role of SCDOT and services provided by SCDOT on the portion of the Component Project designated as SC Highway 707 not funded by the Bank under this Agreement shall be governed by the Intergovernmental Agreement between SCDOT and County for the Continuation of the County RIDE II Program dated _____, 2007.

5.2 Contracting Methods

The SCDOT may solicit the contractor or consultant services needed to complete each Component Project by the procurement method it deems will result in the selection of the best qualified firm, lowest contract price, or the best value for that Component Project, so long as SCDOT is authorized by law to employ such method. Contract forms shall be design-bid-build, design-build, or any other form permissible by law that SCDOT determines will result in the most cost-effective, efficient and expeditious delivery of that Component Project.

5.3 Scope of Project

The SCDOT and the County shall agree in writing on the general scope of each Component Project prior to soliciting contract proposals. The County shall keep the Bank informed of the scope of each Component Project and all changes or refinements to such scope through the quarterly status reports required by Section 4.4 of this Agreement.

5.4 Change Orders

The SCDOT may authorize change orders it deems necessary to complete the Component Projects within the scope for that Component Project approved by the County. The SCDOT shall obtain the prior approval of the County for any change orders which may materially increase estimated costs for a Component Project or materially alter the scope of a Component Project. The SCDOT shall promptly report each change order requiring the approval of the County to the County, and the County shall promptly inform the Bank of each such change order.

5.5 Project Delivery

SCDOT shall perform the work on the Component Projects in accordance with the priorities established through consultation with the County. The SCDOT does not guarantee completion of each Component Project within the scope approved by the County and within the Budget for that Component Project. The SCDOT shall obtain the authorization of the County prior to awarding any construction contracts or project delivery contracts where the award would cause the total estimated budget for a Component Project to be exceeded. If the available funds are not sufficient to complete each Component Project within the approved scope for that Component Project, the County shall be responsible for obtaining or providing additional funding for the Project, reducing the scope of either Component Project or both Component Projects to conform to available funding, or some combination thereof.

The parties recognize that the funding by the Bank for the Project is finite and limited to the commitments set forth in Article III herein. Therefore, prior to awarding a Contract on a Component Project, the County and SCDOT will ascertain whether the estimated contract price plus any claims or potential claims under prior Component Projects would exceed the remaining available funds. In such event, the County and SCDOT will not pursue that Contract until additional funds are secured or the scope of the Component Project is reduced with the approval of the County. However, the foregoing shall not be construed to obligate any party to this Agreement to provide such funds.

5.6 Utility Relocations

5.6.1 Utility relocations will be paid based on *prior rights*. Where a utility establishes a prior right of occupancy in its existing location, the County will be responsible for the cost of that relocation, including all real and actual costs associated (engineering, easements, construction, inspections, and similar costs). Prior rights may be established by the following means:

5.6.1.1 The utility holds a fee, and easement, or other real property interest, the taking of which is compensable in eminent domain.

5.6.1.2 The utility occupies a SCDOT right-of-way and under an existing agreement with SCDOT is not required to relocate at its own expense.

5.6.2 Where the utility cannot establish a prior right of occupancy, the utility will be required to relocate at its own expense. However, in some

cases, the County may elect to use Project funds for all or part of such utility costs.

5.6.3 If Federal funds are used for utility relocations, the County shall comply with applicable Federal regulations (23 C.F.R. 645 A and B).

5.7 Acceptance

Upon completion of the Extension Project, the State Highway Engineer will recommend to the SCDOT Commission the acceptance of the Extension Project into the State Highway System, as defined by South Carolina Code Ann. Section 57-5-10, as amended, for all purposes including maintenance. Work performed by the SCDOT on roads owned by the County or any municipality incidental to work on a Component Project shall not be construed as requiring SCDOT to accept such roads into the State Highway System.

5.8 Right-of-Way Acquisition

All rights-of-way for the Project shall be acquired in the name of the SCDOT or the County as determined by the mutual agreement of those two parties, and the laws and procedures of the State of South Carolina for acquiring rights-of-way shall apply and be followed. In acquiring such rights-of-way for the Project, the SCDOT shall act as the agent for the County and SCDOT shall have the sole authority to determine the interest to be acquired, whether fee simple or easement. Upon completion and acceptance into the State Highway System of each Component Project, the County will deed all of its interests in the rights-of-way for that Component Project, if any, to the SCDOT free of all encumbrances. If any right-of-way for the Project which was acquired with funds provided by the Bank is not used for the Project and is sold conveyed, transferred or otherwise disposed of, the proceeds of thereof, less the costs of the sale, shall be paid to the Bank. Any unused right-of-way acquired for the Project shall not be sold, conveyed, transferred or otherwise disposed of without the

written approval of the Bank. This Section 5.8 shall survive the termination of this Agreement.

ARTICLE VI

6. Conditions Precedent to Bank's Disbursements:

6.1 Draw Requests

The Bank's obligation to make Disbursements arises only upon receipt of a draw request from SCDOT and the Bank's approval thereof, which draw request shall be in a form approved by the Bank, and is further conditioned upon all of the following being met or verified by the SCDOT or the County:

6.1.1 No lien or other interest shall have attached to a Contract, nor any rights-of-way, real property or improvements related thereto.

6.1.2 Construction of the completed portions of the Project described in the relevant Contract shall have been carried out substantially in accordance with the applicable plans, standards and specifications.

6.1.3 No event of default exists under this Agreement or any Contract.

6.1.4 No event or condition shall have occurred or arisen which prevents the Bank from obtaining funds sufficient to complete its financial assistance to the Project or from receiving the other contributions necessary to make the remaining Disbursements due under this Agreement or to complete the Project.

6.1.5 The County shall have fulfilled all of the warranties, covenants and obligations set forth in this Agreement.

6.1.6 The SCDOT shall have approved the draw request and certified that the entire payment applied for in the draw request is for Eligible Costs of the Project.

6.1.7 No action shall have been taken by the County or any other person, firm or entity to prevent the collection of the Sales Tax, payment of the revenues from the Sales Tax to the County, or the timely expenditure of the revenues from the Sales Tax for the local match contribution pursuant to Section 3.2 of this Agreement.

6.1.8 The draw request shall be reviewed and approved by the Program Manager assigned by SCDOT to the Project.

ARTICLE VII

7. Indemnification of Bank

To the maximum extent permitted by law, the County shall defend, indemnify and hold the Bank harmless from and against any and all liabilities, claims, actions, damages, judgments and attorneys' fees and related expenses and costs in any way arising out of or relating to the design, location, construction, modification, or operation of the Project, or any portion or component thereof, or the selection, use or payment of persons or firms for design, construction, modification, or operation of the Project, or any portion or component thereof. In the event the County does not pay the full amount of any such indemnification to the Bank within ninety (90) days of the date of the notification to the County that such indemnification is due the Bank or such other time period established by the Bank, the County's obligation to pay the Bank for such indemnification shall be subject to the provisions of Section 11-43-210 of the Act. This Section 7 shall survive the termination of this Agreement. The SCDOT shall be responsible for all claims arising from its own wrongful acts arising from any services it performs on behalf of the County, and in the event of such a claim or claims, the SCDOT shall be subject to the provisions of this Section 7 thereby requiring it to indemnify and hold harmless the Bank to the maximum extent permitted by law.

ARTICLE VIII

8. Bank's Rights and Remedies

8.1 Events of Default and Remedies as to the SCDOT

In the event SCDOT shall violate or fail to comply with any provision or obligation under this Agreement (including other agreements and obligations incorporated herein), and if such failure continues for a period of thirty (30) days after receipt of a written notice of such default from the Bank, such failure shall constitute an Event of Default hereunder. Among other rights and remedies available to the Bank following an uncured Event of Default, the Bank shall have the right to cease making any further Disbursements under this Agreement with respect to the Project until such Event of Default has been cured. The Bank shall also have and may pursue any other remedies available under this Agreement or South Carolina law, except as such remedies may be expressly limited by the specific provisions of this Agreement.

8.2 Non-Local Match Contribution Events of Default as to the County

In the event the County shall violate or fail to comply with any provision or obligation under this Agreement (including other agreements and obligations incorporated herein) other than an obligation concerning payment of the local match contribution required by Section 3.2 of this Agreement, and if such failure continues for a period of thirty (30) days after receipt of a written notice of such default from the Bank, such failure shall constitute a Non-Local Match Contribution Event of Default hereunder.

8.3 Local Match Contribution Events of Default as to the County

In the event the County shall fail to complete the local match contribution as required under Section 3.2 of this Agreement, then such failure shall be deemed a Local Match Contribution Event of Default.

8.4 Remedies for the Bank as to the County

Whenever any Event of Default occurs, any one or more of the following remedies may be pursued by and shall be available to the Bank against the County in addition to those provided in other sections of this Agreement:

A. As to any Non-Local Match Event of Default, any obligation the County failed to perform shall be deemed a ministerial act and subject to the remedies of mandamus and mandatory injunction requiring the County to perform the obligation, and the Bank shall be deemed to have no adequate remedy at law for such Event of Default.

B. In the event of a Local Match Contribution Event of Default, the Bank shall have reasonable access to inspect, examine, copy and audit the books, records, accounts, and financial data of the County, or any records of the State Treasurer or South Carolina Department of Revenue pertaining to the County, and the Bank may reduce its grant or grants for the Project in the same proportion as the County failed to fund the local match contribution required by Section 3.2 of this Agreement.

C. The County shall pay the Bank the reasonable attorneys' fees and expenses incurred by the Bank in pursuing any remedy for any Event of Default.

D. In the event the County fails to make any payment to the Bank in full by the due date, as required by this Agreement, it acknowledges the authority

of the State Treasurer under Section 11-43-210 of the Act to withhold funds allotted or appropriated by the State to the County and to apply those funds to make or complete any such payment. The County agrees that the current provisions of Section 11-43-210 are hereby incorporated into this Agreement verbatim as an independent and separate contractual obligation of the County and shall be enforceable against the County and survive even if Section 11-43-210 is repealed or its application is reduced or amended by action of the General Assembly, or it is otherwise abrogated or its application is reduced or modified by a court or court decision. The Bank will notify the County prior to requesting that the State Treasurer withhold such funds.

8.5 Remedies Cumulative; Nonwaiver

All rights and remedies of the Bank provided for in this Agreement or in any other related document as to any party are cumulative, shall survive the termination of this Agreement, and shall be in addition to any and all other related rights and remedies provided for or available to the Bank at law, including those contained in the Act, or in equity. The exercise of any right or remedy by the Bank shall not in any way constitute a cure or waiver of an Event of Default, nor invalidate any act done pursuant to any notice of the occurrence of an Event of Default.

ARTICLE IX

9. General Conditions

9.1 Waivers

No waiver of any Event of Default by the County or SCDOT hereunder shall be implied from any delay or omission by the Bank to take action on account of such Event of Default, and no express waiver shall affect any event of default other than the Event of Default specified in the waiver and it shall be operative

only for the time and to the extent therein stated. Waivers of any covenants, terms or conditions contained herein must be in writing and shall not be construed as a waiver of any subsequent or other breach of the same covenant, term or condition. The consent or approval by the Bank to or of any act by the County or SCDOT requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of the Bank hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy by the Bank.

9.2 Benefit and Rights of Third Parties

This Agreement is made and entered into for the sole protection and benefit of the Bank, the SCDOT and the County, and their successors and assigns. No other persons, firms, entities, or parties shall have any rights, or standing to assert any rights, under this Agreement in any manner, including, but not limited to, any right to any Disbursements at any time, any right to require the Bank to apply any portion of the amounts committed herein that have not been disbursed by the Bank to the payment of any such claim, or any right to require the Bank to exercise any right or power under this Agreement or arising from any Event of Default of any kind by the County or SCDOT. Nor shall the Bank owe any duty or have any obligation whatsoever to any claimant for labor or services performed or materials or supplies furnished in connection with the Project. No other persons, firms, entities, or parties shall, under any circumstances, be deemed to be a beneficiary of any conditions or obligations set forth in this Agreement, any or all of which may be freely waived in whole or in part by the Bank at any time, if in its sole discretion, it deems it desirable to do so.

9.3 No Liability of Bank

The Bank makes no representations and assumes no obligations or duties as to any person, firm, entity, or party, including the parties to this Agreement,

concerning the quality of the design, construction, modification, or operation of the Project, or any portion or component thereof, or the absence therefrom of defects of any kind. The Bank shall not be liable in any manner to any person, firm, entity, or party, including the parties to this Agreement, for the design, location, construction, modification, or operation of the Project, or the failure to design, locate, modify, operate, or construct the Project or any portion or component thereof, generally or in any particular manner. The Bank shall not be liable in any manner on any Contract to which it is not a named party, the execution of which has not been properly and duly authorized by the Board, or which has not been so executed by the Bank.

9.4 Assignment

The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, neither the County, nor SCDOT shall not assign or delegate this Agreement, any of its respective rights, interest, duties or obligations under this Agreement, or any Disbursements without the prior written consent of the Bank; and any such attempted assignment or delegation (whether voluntary or by operation by law) without said consent shall be void. In the event that a Non-Local Match Contribution Event of Default or Local Match Contribution Event of Default occurs which is not cured by the County to the satisfaction of the Bank, the Bank may require the County to assign all Contracts, licenses, permits, approvals and authorizations for the Project or a Component Project, together with all plans, drawings, and specifications, to the SCDOT or some other entity which has the option of accepting or not accepting the assignment.

9.5 Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent or meaning of any provision hereof.

9.6 Notices

All notices required to be given hereunder, except as otherwise provided in this Agreement, shall be deemed effective when received by the other party, through certified mail, registered mail, personal delivery, or courier delivery. All such notices shall be addressed to the parties as follows:

Horry County

South Carolina Transportation Infrastructure Bank
Chairman
South Carolina Transportation Infrastructure Bank
955 Park Street, Room 102
Columbia, SC 29201

South Carolina Department of Transportation:
Tony L. Chapman, State Highway Engineer
P.O. Box 191
Columbia, SC 29202-0191
or
955 Park Street, Room 314
Columbia, SC 29201.

9.7 Amendments

Any amendment to this Agreement shall only be made through a written instrument duly authorized and signed by each party hereto.

9.8 Savings Clause

Invalidation of any one or more of the provisions of this Agreement by any court of competent jurisdiction shall in no way affect any of the other provisions hereof, all of which shall remain, and is intended by the parties to remain, in full force and effect.

9.9 Execution in Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement it shall not be necessary to produce or account for more than one such fully executed counterpart.

9.10 Authority to Execute

By executing this Agreement, the undersigned each affirms and certifies that he or she has authority to bind his or her principal thereto and that all necessary acts have been taken to duly authorize this Agreement under applicable law.

[SEPARATE SIGNATURE PAGES FOR EACH PARTY TO FOLLOW]

EXHIBIT C

SIGNATURE PAGE FOR HORRY COUNTY

IN WITNESS WHEREOF, Horry County has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

Horry County, South Carolina

By: _____

Printed Name: Danny Knight

Title: Administrator

Attest:

By: Patricia S. Hartley

Printed Name: Patricia S. Hartley

Title: Clerk to Council

(SEAL)

[Approved by action of Horry County Council at its meeting held on June 19, 2007]

EXHIBIT F

EXHIBIT C

SIGNATURE PAGE FOR BANK

IN WITNESS WHEREOF, the South Carolina Transportation Infrastructure Bank has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

South Carolina Transportation Infrastructure Bank

By: _____
Donald D. Leonard,
Chairman

Attest: _____
James M. Holly
General Counsel

(SEAL)

EXHIBIT F

CTIC_02423

SIGNATURE PAGE FOR SCDOT

IN WITNESS WHEREOF, South Carolina Department of Transportation has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

South Carolina Department of Transportation

By: _____
H. B. Limehouse, Jr., Executive Director

chief admin is the office

Recommended by:

_____

Printed Name: Beacham O. Brooker, Jr.

Title: Assistant Chief Counsel

(SEAL)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**CIVIL ACTION NO. 2009-CP-26-**
Jericho All-Weather Opportunity Fund, L.P. and Jericho State Capital Corporation of Florida,	)	
Plaintiffs,	)	
vs.	)	**VERIFICATION**
Horry County, South Carolina, and the South Carolina Department of Transportation,	)	
Defendants.	)	

PERSONALLY appeared before me, Glenn Chwatt, and says that: (1) he is the President of Jericho State Capital Corporation of Florida, (2) he has read the foregoing Summons and Complaint, and (3) that the information contained therein is true.

Glenn Chwatt

SWORN to before me this 8
day of October, 2009

Notary Public for the State of Florida

My Commission Expires: 6/25/2010

Pamela N. O'Brien
Commission # DD567204
Expires June 25, 2010
Bonded Troy Fain - Insurance, Inc 800-385-7019

CTIC_02425

SCDOT R/W Form 815 (08-06)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) C/A NO. 09-CP-26-11956
COUNTY OF HORRY)

Road/Route	**SC Route 31 (Carolina Bays Parkway)**
File	**26.036775A**
Item	
Project	**HORR**
PIN	**36775 RD01**

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

CONDEMNATION NOTICE AND TENDER OF PAYMENT

(JURY TRIAL DEMANDED)

HORRY COUNTY
2009 DEC 15 AM 10:28
MELANIE [illegible]-WARD
CLERK OF COURT

TO: THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Jericho State Capital Corporation of Florida** is named as Landowner(s) in this action by virtue of **their** claim(s) of title (or other interests) as shown by that certain deed **from J. Stanton Cross – Master dated February 25, 2008 and recorded February 26, 2008 in Deed Book 3317, Page 969 in the office of the RMC for Horry County.**

3. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 10.18 acres, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by Jericho State Capital Corporation of Florida, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 1442+00 and 1459+00, left and right of the survey centerline of SC Route 31 (Carolina Bays Parkway).

Tax Map Number 178-00-05-032

4. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

5. The property sought herein is to be acquired for public purposes, more particularly for the construction of **a section of SC Route 31 (Carolina Bays Parkway).**

6. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

7. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

8. Project plans may be inspected at the office of **the South Carolina Department of Transportation, Horry County Maintenance Office, 4145 Highway 701 North, Conway, South Carolina 29526**

9. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF **BENEFITS EXCEED DAMAGES** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

10. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Oscar K. Rucker, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

11. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

15. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

Hart Baker
Assistant Chief Counsel

BY: _____
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 20 09

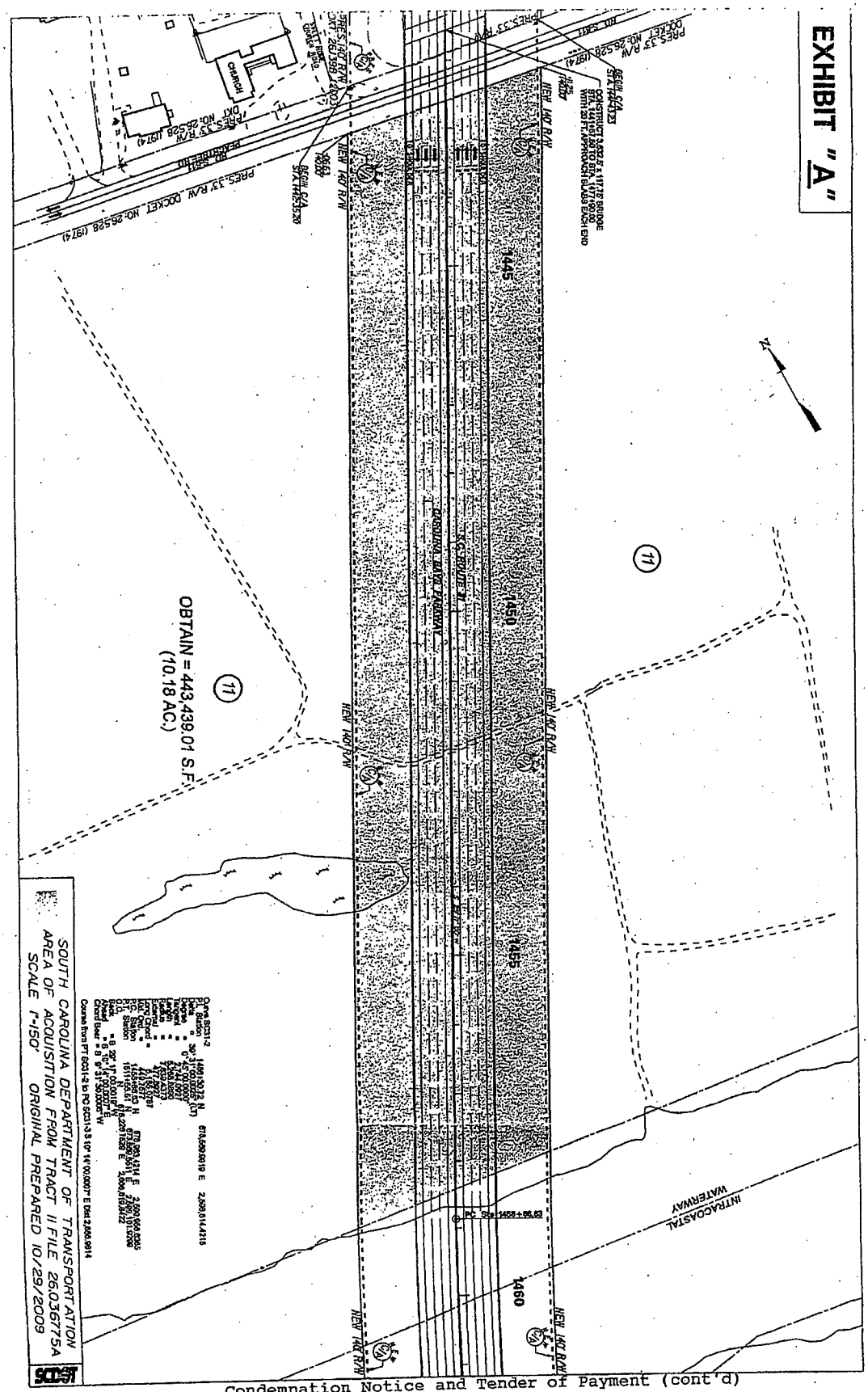
EXHIBIT "A"
OBTAIN = 443,439.01 S.F.
(10.18 AC.)
NEW 140' R/W
NEW 140' R/W
NEW 140' R/W
NEW 140' R/W
NEW 140' R/W
1445
1450
1455
1460
11
11
INTRACOASTAL WATERWAY
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA OF ACQUISITION FROM TRACT II FILE 26.036775A
SCALE 1"=150' ORIGINAL PREPARED 10/29/2009

CTIC_02310

JAYROE APPRAISAL COMPANY

APPRAISAL OF THE TAKING AND DAMAGES TO THE REMAINDER OF A 131.40 ACRE VACANT TRACT OF LAND LOCATED ON PEACHTREE ROAD NEAR MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA

(JERICHO STATE CAPITAL CORPORATION OF FLORIDA)

FOR

HOWELL V. BELLAMY, JR., ESQUIRE
ROBERT S. SHELTON, ESQUIRE
THE BELLAMY LAW FIRM
1000 29TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577

DATE OF VALUATION: DECEMBER 15, 2009

PREPARED BY

JAYROE APPRAISAL COMPANY

JAMES R. JAYROE, JR., SENIOR APPRAISER
STATE CERTIFIED GENERAL REAL ESTATE APPRAISER
CERTIFICATION NO.S CG 987 (SC), CG 6091 (GA)

J. BRIAN DONOVAN
STATE CERTIFIED GENERAL REAL ESTATE APPRAISER
CERTIFICATION NO.S CG 3798 (SC), A 6432 (NC)

JAYROE APPRAISAL COMPANY

REAL ESTATE APPRAISERS AND CONSULTANTS

PHONE: (843) 497-7158
FAX: (843) 497-3765

1601 N. OAK STREET SUITE 204
MYRTLE BEACH, SOUTH CAROLINA 29577

April 16, 2014

Howell V. Bellamy, Jr., Esquire
Robert S. Shelton, Esquire
The Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577

Gentlemen:

At your request, we have made an appraisal investigation of that certain real property which is located on Peachtree Road in the Socastee township, near Myrtle Beach, in Horry County, South Carolina. The subject property consists of a 131.40 acre tract of undeveloped land. This property is more particularly described by a complete narrative description within the text of the following report.

The purpose of this appraisal was to estimate the market value of the taking and damages and/or benefits to the remainder, after a partial taking by the South Carolina Department of Transportation (SCDOT), effective December 15, 2009. Market value, fee simple interest and other appraisal terms are defined within the text of the following appraisal report. The value estimate is based upon no adverse effects upon the subject property from any environmental cause.

Value opinions are made, in part, based on the appraisers' interpretation of the project plans as of the effective date of this report, intended to coincide with the date of the taking. If any interpretations regarding our analysis of the taking and remainder are in error, we reserve the right to amend this report as needed.

As a result of our investigation and by virtue of our experience and training, we have estimated that the market value of the taking and damages to the remainder effective December 15, 2009, was:

FOUR MILLION TEN THOUSAND DOLLARS

($4,010,000)

This report was intended to be a ***Summary Appraisal Report*** and to conform with the Appraisal Institute's Guidelines and Requirements, and the Uniform Standards of Professional Appraisal Practice (USPAP).

THE BELLAMY LAW FIRM

This letter of transmittal precedes the full narrative report which follows, further describing the property and containing the reasoning and most pertinent data leading to the final value estimate. Your attention is directed to the "General Assumptions," "General Limiting Conditions" and "Certificate of Appraisal" which are considered usual for this type of assignment and are included within the text of this report.

Respectfully submitted,

JAYROE APPRAISAL COMPANY

James R. Jayroe, Jr., Senior Appraiser
State Certified General Real Estate Appraiser
Certification Numbers: CG 987 (SC)
CG 6091 (GA)

J. Brian Donovan
State Certified General Real Estate Appraiser
Certification Numbers: CG 3798 (SC)
A 6432 (NC)

JRJ:JBD
12165

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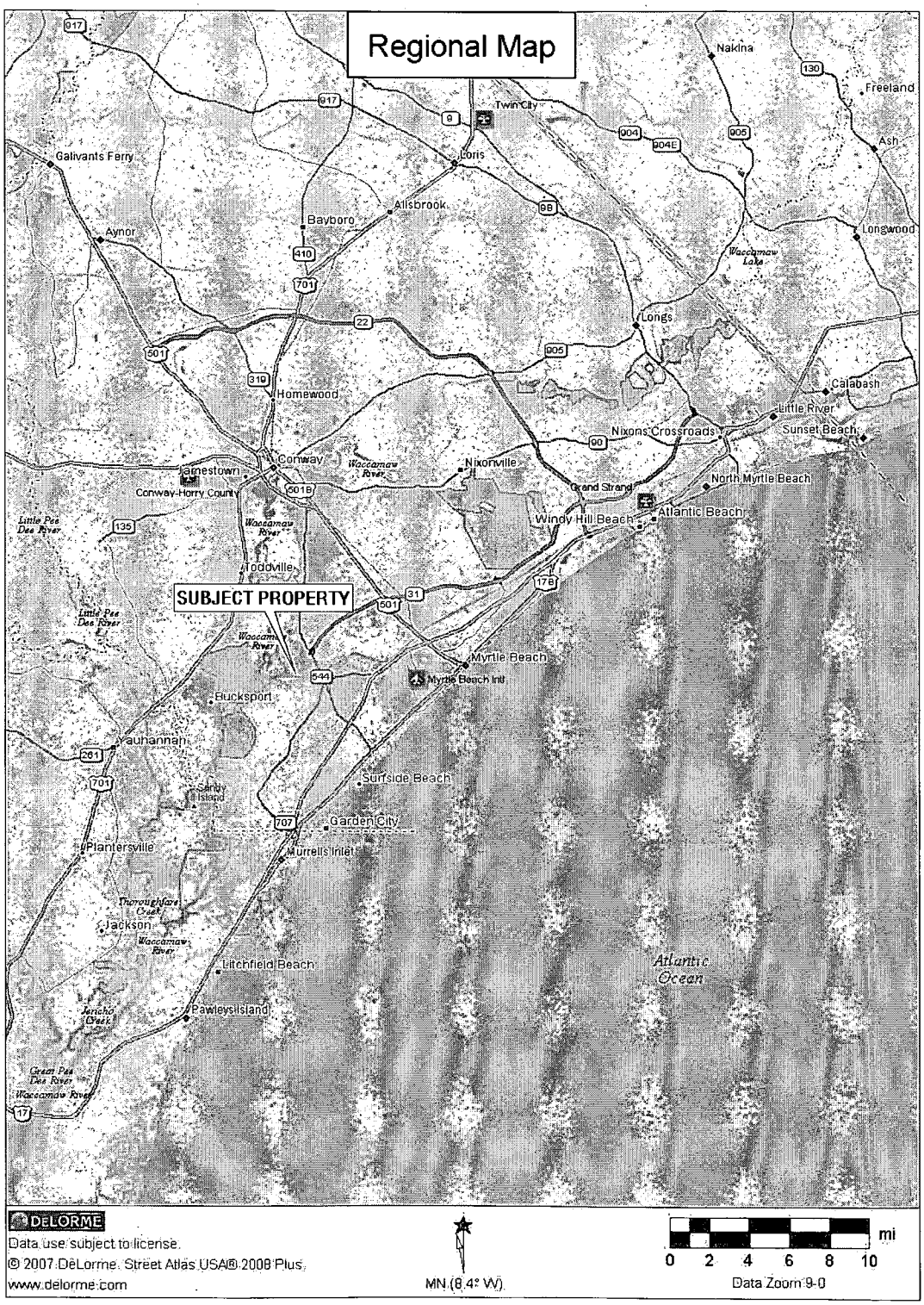
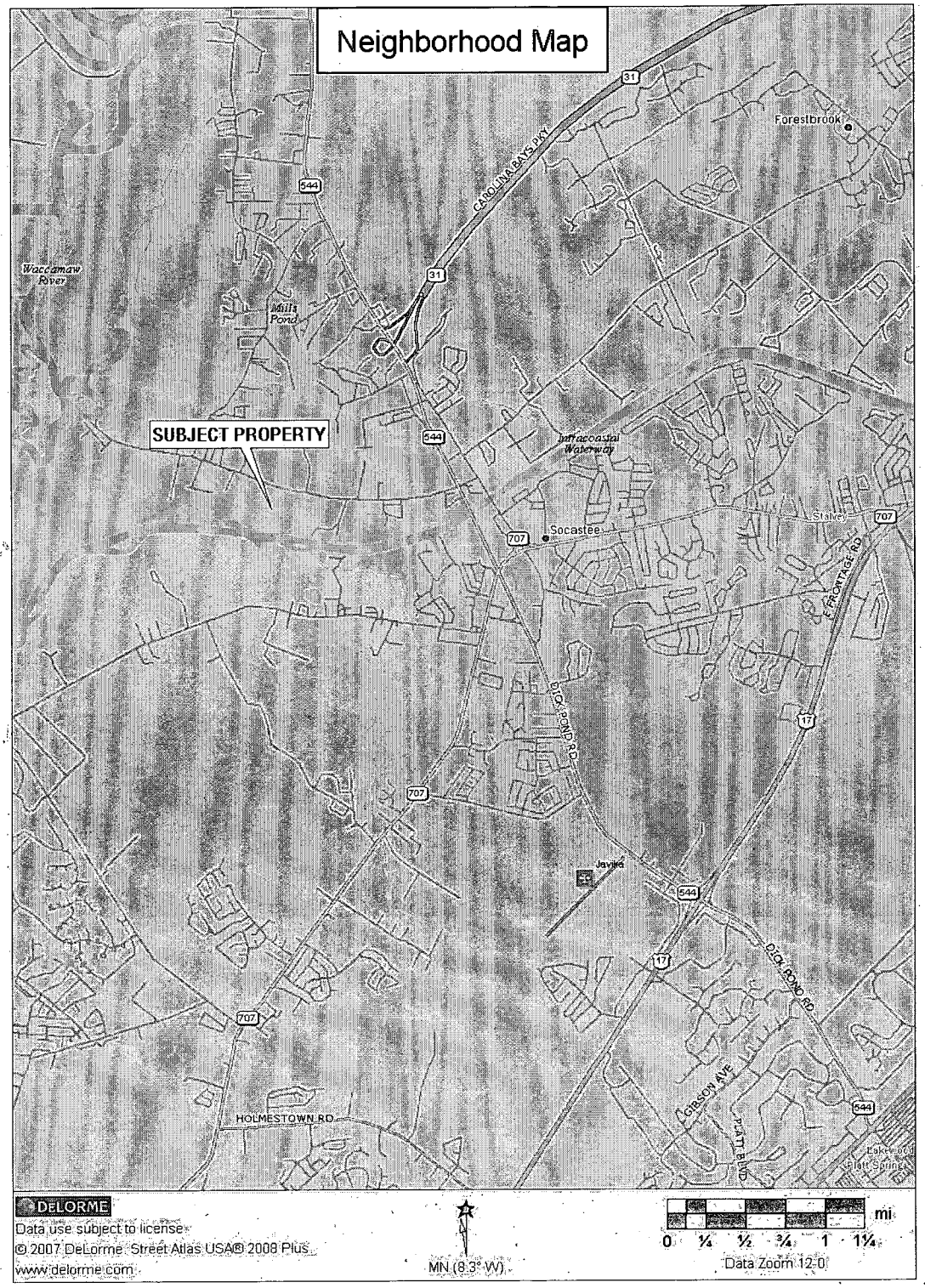
SUMMARY OF APPRAISAL

Location	The subject property is located on Peachtree Road in the Socastee Township near Myrtle Beach, Horry County, SC.
Ownership	Jericho State Capital Corporation of Florida
Tax Map Number	178-00-05-032
Type of Property	Vacant land
Site Data	
Before the Taking	131.40 acres
Area Acquired	10.18 acres
After the Taking	121.22 acres (35.31 ac's East, 85.91 ac's West)
Uneconomic Remainder	N/A
Improvements	N/A
Zoning	SF-40, Horry County
Highest and Best Use	
As Vacant	Investor holding; future low-density single-family development.
After Acquisition	Similar use
Interest in Property Appraised	Fee Simple Interest
Date of Valuation	December 15, 2009
Final Value Estimate-Before	$9,198,000
Value of Taking	$ 712,600
Uneconomic Remainder	N/A
Value of Taking & Damages to Remainder	$4,010,000

Report Format	Summary Appraisal Report
Conditions	This appraisal is subject to "General Assumptions" and "General Limiting Conditions" included in the text.
	This appraisal is based on an interpretation of SCDOT project plans as of the date of inspection. We reserve the right to amend the report if the interpretations are erroneous.
	The before value is based on the extraordinary assumption that the planned road project did not exist as of the date of valuation and that the property was zoned SF-40.
	The after value is based on the hypothetical condition that the road project is complete as of the effective date.

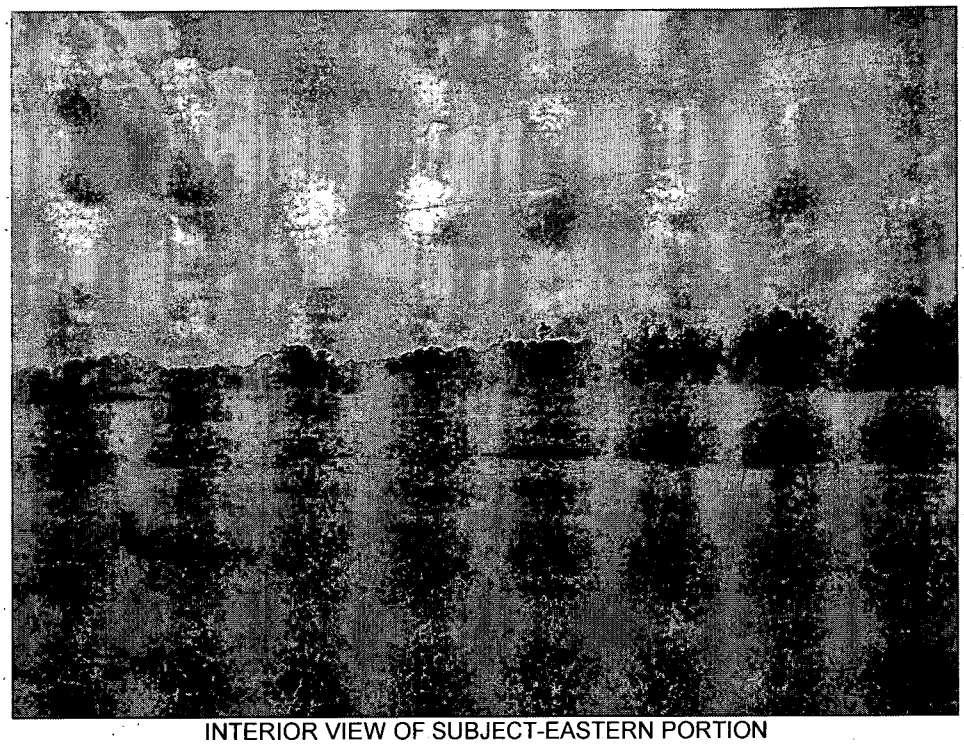

Regional Map
SUBJECT PROPERTY
Nakina
Freeland
Twin City
Galivants Ferry
Loris
Ash
Allsbrook
Bayboro
Aynor
Longwood
Waccamaw Lake
Longs
Homewood
Calabash
Little River
Nixons Crossroads
Sunset Beach
Conway
Waccamaw River
Nixonville
Conway-Horry County
Grand Strand
North Myrtle Beach
Atlantic Beach
Windy Hill Beach
Little Pee Dee River
Toddville
Myrtle Beach
Myrtle Beach Intl
Bucksport
Socastee
Surfside Beach
Garden City
Murrells Inlet
Plantersville
Jackson
Litchfield Beach
Atlantic Ocean
Pawleys Island
Jericho Creek
Great Pee Dee River
DELORME
Data use subject to license.
© 2007 DeLorme. Street Atlas USA® 2008 Plus.
www.delorme.com
MN (8.4° W)
mi
0 2 4 6 8 10
Data Zoom 9-0

Neighborhood Map

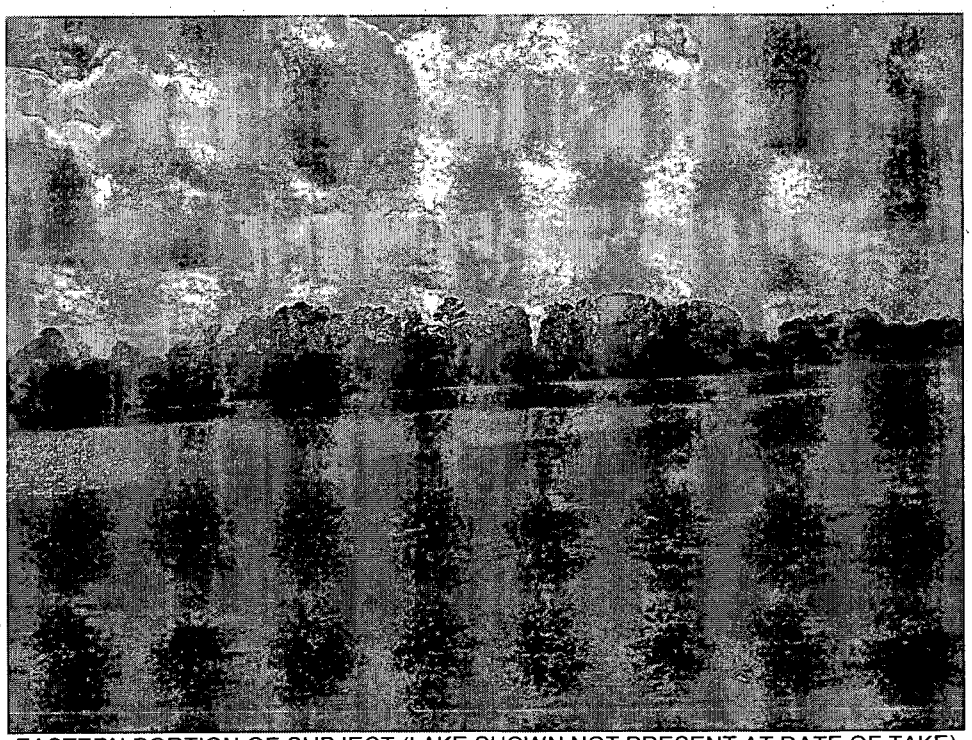


VIEW ALONG PEACHTREE RD. FACING WEST AT EAST END OF SUBJECT TRACT (TO LEFT)

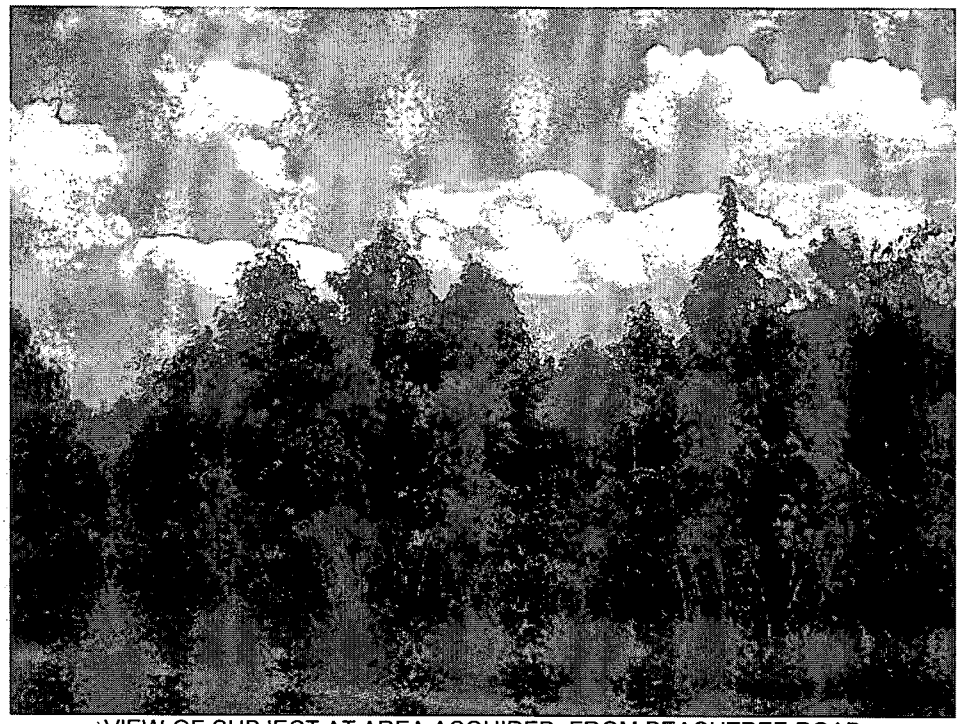
VIEW ALONG PEACHTREE RD. FACING EAST AT WEST END OF SUBJECT TRACT (TO RIGHT)



INTERIOR VIEW OF SUBJECT-EASTERN PORTION



EASTERN PORTION OF SUBJECT (LAKE SHOWN NOT PRESENT AT DATE OF TAKE)



VIEW OF SUBJECT AT AREA ACQUIRED, FROM PEACHTREE ROAD

PEACHTREE ROAD FRONTAGE AT AREA OF ACQUISITION

INTERIOR VIEW-WESTERN PORTION NEAR AREA ACQUIRED FACING TOWARD ICW

AERIAL PHOTO OF SUBJECT

DEFINITION OF APPRAISAL TERMS

Market Value is defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, 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:

a. buyer and seller are typically motivated;

b. both parties are well informed or well advised, and each acting in what he considers his own best interest;

c. a reasonable time is allowed for exposure in the open market;

d. payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and

e. 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.[1]

Fee Simple Estate is defined as the absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. [2]

Leased Fee Estate is defined as an ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others; the rights of lessor (the leased fee owner) and leased fee are specified by contract terms contained within the lease. [3]

Leasehold Estate is defined as the right to use and occupy real estate for a stated term and under certain conditions as conveyed by the lease. A leasehold interest arises from the margin of economic productivity of the property, subject to meeting the terms and provisions of the lease.[4]

Highest and Best Use is defined as the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible,

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[1] _____ Office of the Comptroller of the Currency, 12 CFR Part 34, Subpart C "Real Estate Appraisals" (8/24/90), pursuant to FIRREA, Public Law 101-73, Title XI (8/18/89).
[2] _____ The Dictionary of Real Estate Appraisal, Third Edition (Chicago: The Appraisal Institute, 1993): 140.
[3] _____ The Dictionary of Real Estate Appraisal, Third Edition (Chicago: The Appraisal Institute, 1993): 177.
[4] _____ Ibid., 177.

and which results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability. [5]

Hypothetical Condition is that which is contrary to what exists, but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis. [6]

Extraordinary Assumption is an assumption directly related to a specific assignment which, if found to be false, could alter the appraisers' opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in the analysis. [7]

Reasonable Marketing time is defined as an opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal.[8]

Reasonable Exposure time is defined as the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market.[9]

Functional Obsolescence may be caused by a deficiency or a superadequacy; some forms are curable and others are incurable. [10]

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[5] _____ The Dictionary of Real Estate Appraisal, Third Edition (Chicago: The Appraisal Institute, 1993): 171.
[6] _____ Uniform Standards of Professional Appraisal Practice, DEFINITIONS, USPAP 2006 Edition © Appraisal Foundation: 3 (Line 91-92).
[7] _____ Uniform Standards of Professional Appraisal Practice, DEFINITIONS, USPAP 2006 Edition © Appraisal Foundation: 3 (Line 82-87).
[8] _____ Advisory Opinion 7. (AO-7) USPAP 2006 Edition © The Appraisal Foundation: 141.
[9] _____ Statement on Appraisal Standards No. 6. (SMT-6) USPAP 2006 Edition © The Appraisal Foundation: 93.
[10] _____ The Appraisal of Real Estate, Twelfth Edition, 2001 © The Appraisal Institute: 405.

SCOPE OF WORK

The "Scope of Work" is intended to mean the extent of the process of collecting, confirming and reporting data. The scope of the appraisal requires compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation. The Standards contain rules that must be followed and specific guidelines that deal with the procedures to be followed in developing an appraisal, analysis, or opinion. These uniform standards set the requirements to communicate the appraisers' analyses, opinions, and conclusions in a manner that will be meaningful and not misleading to the intended users. The scope of the assignment further requires compliance with the client's requirements set forth in their letter of engagement.

This appraisal report was prepared in accordance with the 2012-2013 edition of the USPAP. In 2006, extensive changes to the USPAP were enacted as a result of the Appraisal Standards Board examination of the proper role of the scope of work and departure concepts in the appraisal process. The most significant changes beginning with the 2006 edition of the USPAP are the elimination of the Departure Rule and the introduction of the Scope of Work Rule. Other changes include the discontinued use of the terms "Complete" and "Limited" to describe the appraisal process. The Ethics Rule now also requires full disclosure of services performed on the subject property within the past 36 months and any prospective interest in the property or parties involved.

The Standards clearly impose a responsibility on the appraiser to determine the scope of work necessary in relation to the significance of the appraisal problem, and to communicate with the client the steps taken to arrive at the opinions and conclusions. The Scope of Work is intended to be unique for each appraisal assignment.

The subject of this appraisal assignment is a 131.40 acre tract of vacant land located on Peachtree Road near Myrtle Beach. The purpose of the report is to provide an opinion of value for the subject property before an acquisition by the South Carolina Department of Transportation as well as a value estimate after the taking along with damages and/or benefits to the remainder as a result of the taking. The following report is presented in a summary format.

In the valuation process before the taking, the Sales Comparison Approach was developed to value the property. This is the only applicable approach since the subject is vacant land. In determining an opinion of value after the taking, the physical characteristics of the property in relation to the new road project were examined along with their impact on value.

In developing an opinion of value for the subject property, the appraisers have analyzed the forces influencing market values within the general area and neighborhood of the subject property. Regional and neighborhood data and trends are considered in the valuation process as well as the determination of highest and best use both before and after the taking. The effective date of this report is meant to be the date of condemnation, or December 15, 2009. On-site inspections were performed subsequent to the date of the take, in April and May 2013.

The appraisers have analyzed the physically possible, legally permissible and economically feasible uses of the subject and have made a determination of the highest and best use as vacant and as improved. Factors considered in the determination of highest and best use include physical characteristics, zoning, overall market conditions, supply and demand for similar vacant tracts, and land use patterns within the neighborhood. These factors were considered based on those existing as of the effective date.

The data collection process involved researching the subject area for comparable land sales. The comparables were selected based on their sale dates, similar physical characteristics, location, zoning and highest and best uses. Sources used to compile and verify these comparable sales included direct participants, County records, developers, our appraisal files, brokers and other appraisers in the area.

The comparable sales were compared to the subject and adjusted for various transactional and physical elements. The adjusted comparables were then reconciled with appropriate weight placed on the individual sales, and a reliable indication of value was concluded.

In determining a value after the take, the appraisers considered the physical impact the new road project will have on the subject and the market's likely reaction to the subject in its after situation. The after value estimate and damages to the remainder are based on our interpretation of the after condition and anticipated expectations and reactions of market participants.

SUBJECT PROPERTY DATA

Purpose of the Appraisal

The purpose of this appraisal was to estimate the market value of the fee simple interest in the subject property, before the acquisition, effective December 15, 2009. In addition, the purpose of this appraisal also involves an estimation of the value of the taking by the SCDOT and the damages and/or benefits to the remainder as a result of the acquisition, effective December 15, 2009.

Intended Use and Users of Appraisal

The intended use of this appraisal is for the client's sole use. It is the appraisers' understanding that a portion of the subject property has been acquired by the South Carolina Department of Transportation. The primary intended use of this appraisal is for settlement purposes with the condemning entity. The primary intended user is identified as The Bellamy Law Firm as legal counsel to the property owners.

Type and Address

The subject property is located on Peachtree Road between Renata Lane and Welch Pass, in the Socastee township near Myrtle Beach, Horry County, South Carolina. The subject property consists of a 131.40 tract of land with frontage on the Intracoastal Waterway.

Legal Description

The appraisers were not provided with a complete legal description of the subject property. The subject is identified by Horry County as tax parcel number 178-00-05-032.

Interest Appraised

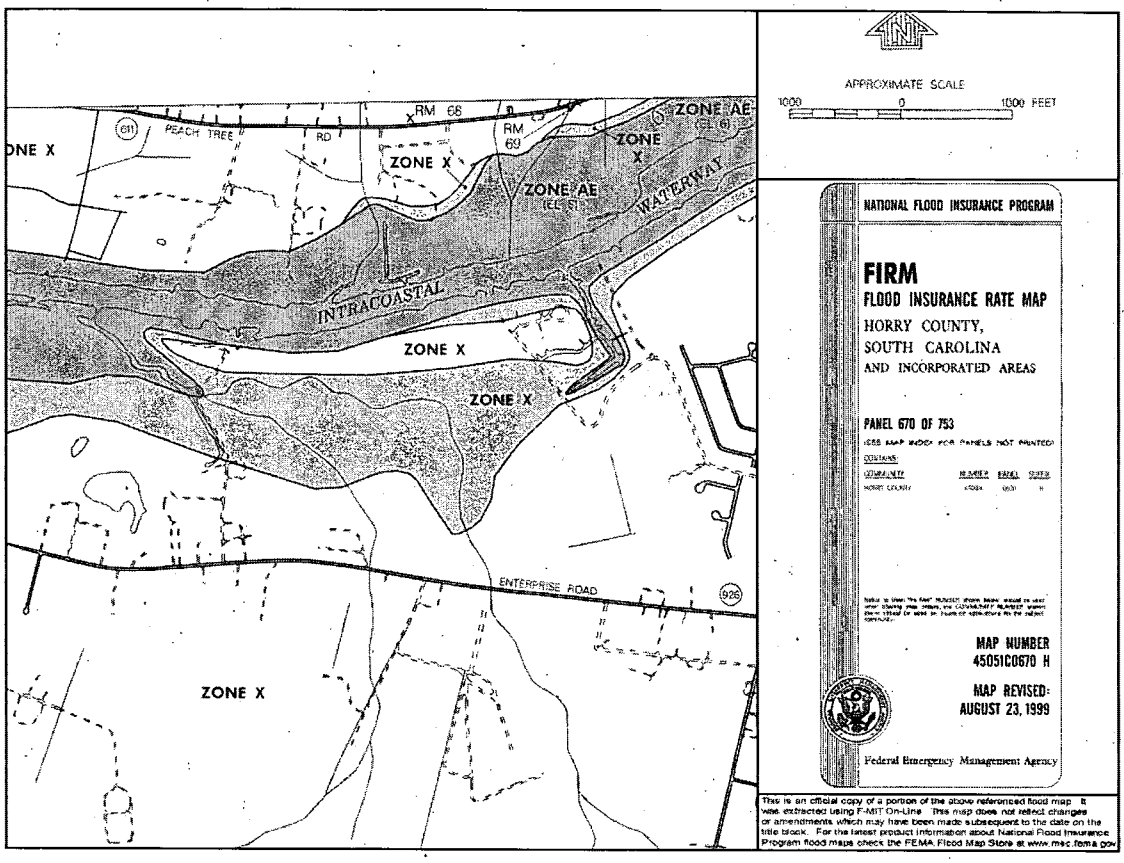
The interest appraised in this report is the fee simple interest.

Property History

The subject property is owned by Jericho State Capital Corporation of Florida. It was acquired from the Master-in-Equity on February 25, 2008 for the consideration of $9,000,000 (high bid at public auction), as recorded in Deed Book 3317 at Page 969 in the Register of Deeds in and for Horry County.

The subject was previously acquired by Peachtree Properties of North Myrtle Beach, LLC from Ruth L. McClam, et al., on June 6, 2006 for the consideration of $22,500,000, as recorded in Deed Book 3132/779.

Flood Hazard Statement



According to Community Map 45051CO670 H as published by the Federal Emergency Management Agency, last revised August 23, 1999, a substantial portion of the subject is located within identified flood hazard zone (Zone AE, elevation 5).

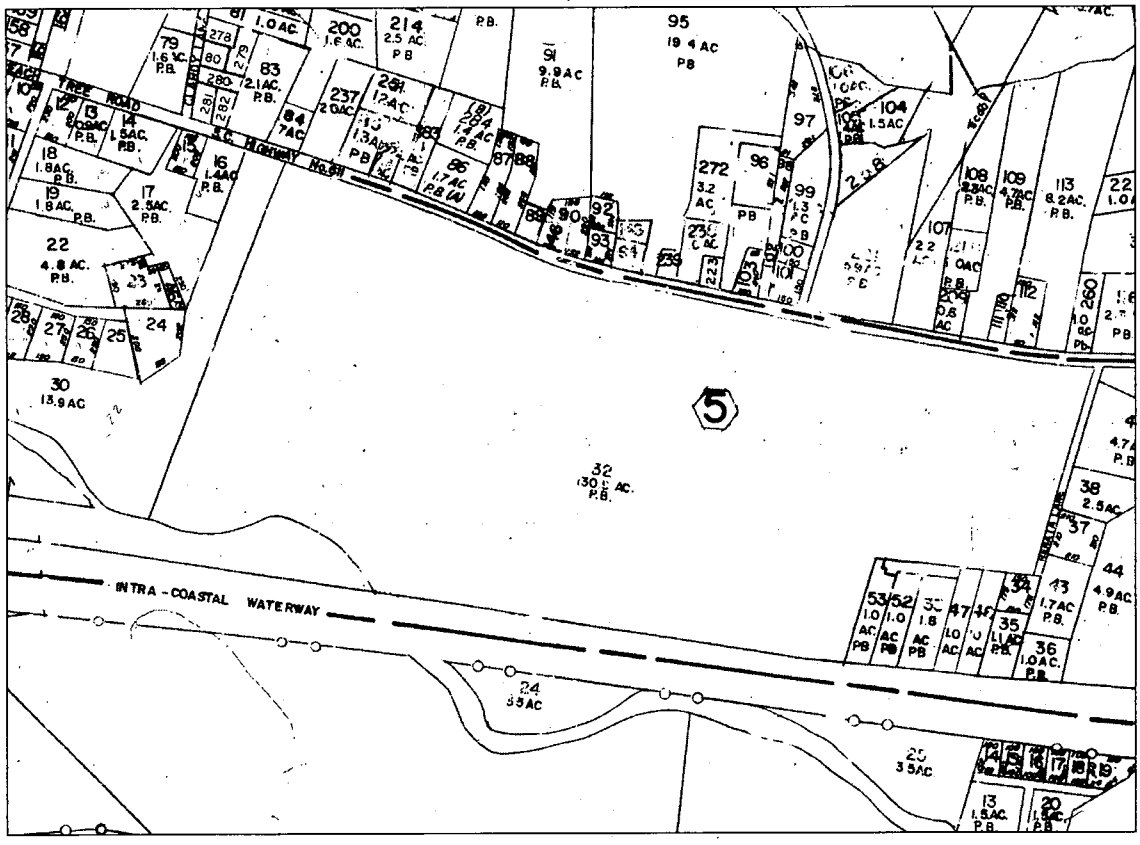
Zoning

The subject property is zoned SF-40, a low-density single-family district, by Horry County. The property was previously zoned R-1, which was replaced by the new SF-40 district in 2007. The only significant difference between R-1 and SF-40 is that R-1 has a minimum lot size requirement of one acre (43,560 SF) whereas the minimum lot size in

the SF-40 district is slightly smaller at 40,000 SF. Zoning will be discussed further in the Highest and Best Use section.

Assessment and Taxes

The subject property is identified as Tax Parcel Number 178-00-05-032 by the Horry County Assessor's Office. As of the effective date, the subject had an assessed value of $1,873,600. Taxes in the amount of $23,806.43 were paid for the 2009 tax year.



Tax Map Location 178-00-05-032

NEIGHBORHOOD ANALYSIS

A neighborhood is defined as a group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.[3] Neighborhoods are characterized by individual boundaries being either physical or socio-economic. In addition, neighborhoods are usually in one of four stages; either declining, growing, static or transitional. This portion of this appraisal will define the neighborhood, the neighborhood boundaries, and make projections as to current and future status of the neighborhood.

Location

The subject property is located on Peachtree Road in the Socastee area of southeast Horry County. The subject neighborhood is considered to be the Socastee area, which is not a municipality and has no defined political boundaries. It is located primarily on the ocean side of the Intracoastal Waterway, but includes areas on the inland side along the SC Highway 544 corridor northward to roughly Highway 814 and west to the Waccamaw National Wildlife Refuge (riverine wetlands along the Waccamaw River). East of the Waterway, the neighborhood is mainly those areas along the Highway 707 corridor from its origination at Highway 17 Bypass to the north, to roughly Holmestown Road to the south. The subject is located on the inland side of the Waterway between the Waccamaw River and SC 544.

Access

Primary access to the subject neighborhood is provided by SC Highway 707. Highway 707 is a highly traveled state highway which originates and terminates at US 17 Bypass. It is four lanes from Enterprise Road northward to US 17, and is planned to be widened from two to four lanes southward to its southern terminus. SC 707 handles mostly local traffic. SC Highway 544 is the main east-west arterial within the neighborhood and provides access from Conway through the Socastee area to south-Strand coastal communities. SC Highway 31 (Carolina Bays Parkway) is a six-lane, limited access highway which originates at SC 544 west of the Waterway and extends northerly to SC Highway 9 west of North Myrtle Beach.

New road projects in the area include the aforementioned widening of Highway 707 from Enterprise Road southward to its southern terminus at US 17 Bypass in

[3] The Appraisal of Real Estate, Thirteenth Edition, 2008 © The Appraisal Institute: 55.

Murrells Inlet. Additionally, the third phase of the Carolina Bays Parkway (SC 31) will extend the limited access highway from its present termination at SC 544 southeasterly over the Waterway to SC 707 near Moss Creek Road. At the north end of the neighborhood, work is underway on the Highway 17 overpass at the SC 707/Farrow Parkway intersection. The new overpass will alleviate traffic congestion along US 17.

Developments

Development along the Highway 707 corridor within the subject neighborhood is varied and consists of a mixture of residential and commercial developments. Commercial uses are most prevalent at the northern end of the neighborhood around the junction of SC 544 and SC 707. Uses here include Food Lion and Bi-Lo-anchored neighborhood retail centers, a Rite-Aid Drugs, banks, fast food restaurants and Socastee High and Elementary Schools. Further north, uses include several strip centers and single-tenant retail, used car lots, auto repair and other trade shops, some professional offices, churches, and the like. Commercial developments are interspersed with residential uses in this area which include older single-family homes and several mobile home parks. Several well-established single-family communities are located off the highway corridor. Multi-family projects are concentrated mainly near SC 707 and US 17 and along Palmetto Pointe Boulevard, and include three large apartment complexes.

The south end of the neighborhood includes convenience stores and new fast food and retail stores at SC 707 and Holmestown Road, along with some single-and multi-tenant retail and trade shops. Commercial uses are less concentrated in the mid-portion of the neighborhood between Enterprise Road and Bay Road. The new St. James High School opened in 2003 just south of Holmestown Road off Salem Road.

New residential development in the area is primarily single-family and occurred consistently from the mid-to-late 1990's up to the market downturn in the late 2000's. New projects targeted mainly middle-income homebuyers with average new home values mostly below to near median home values area wide. The Socastee area has been one of the fastest growing sub markets in the Grand Strand due to its convenient location and good schools.

Developments along Peachtree Road in the immediate vicinity of the subject, and the general character of this area are somewhat more rural in nature, but still considered suburban due to its proximity to major highway corridors and more heavily developed areas. Newer, planned residential projects are limited to the Kenzgar and Harbor Oaks subdivisions near the SC 544 bridge. Zoning is mostly low-density single-family and commercial forest-agriculture, and uses include single-family homes and mobile homes

on larger lots, some mobile homes and mobile home parks, a few destination-based commercial uses, small agricultural tracts and vacant land.

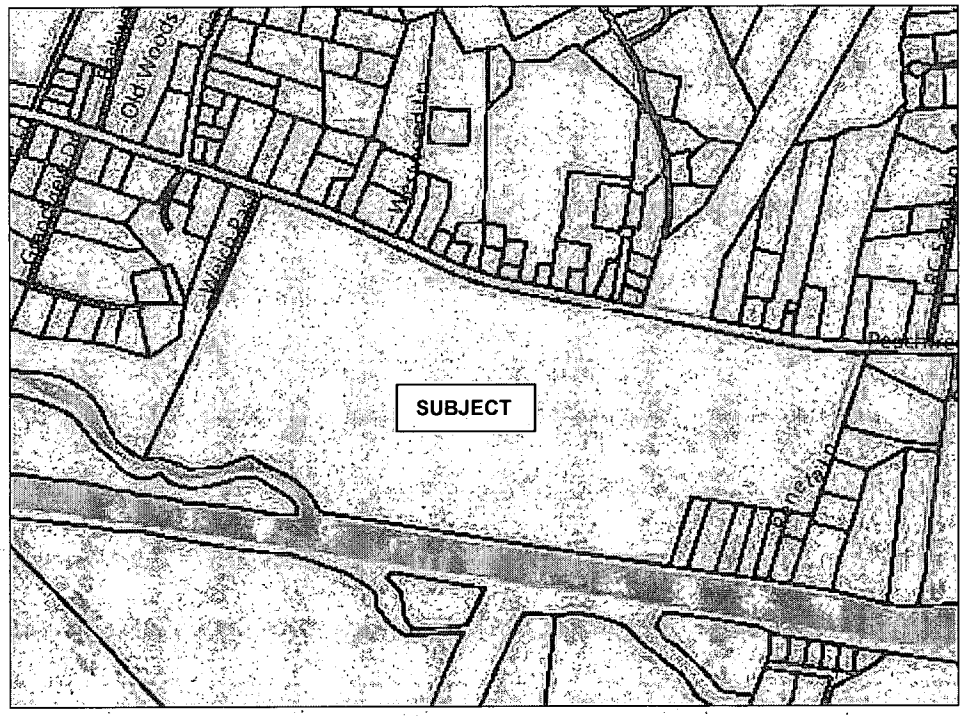
Summary

The Socastee and bordering south-Strand areas are among the fastest growing regions along the Grand Strand. New residential growth west of Highway 17 has largely consisted of projects catering to middle-income families and the large influx of service industry workers. The subject neighborhood has experienced a transition from semi-rural-agriculture to more suburban in character over the past 10 to 15 years. This is evidenced by new commercial and residential growth occurring nearby and new schools. Vacant land is available along the highway corridors to provide future commercial services for the growing population. Of the neighborhood phases, the area is considered to be in a growth phase, with growth slowed due to economic and real estate market conditions.

SITE DESCRIPTION

The subject site is located on the south side of Peachtree Road between Welch Pass and Renata Lane, on the Intracoastal Waterway. The subject is located approximately three-quarter mile west of Holmestown Road.

Area and Dimensions



The subject has an irregular, functional shape and contains a total of 131.40 acres. The tract has approximately 3,800 feet along Peachtree Road and is 1,740± feet deep along its western boundary. The subject has roughly 3,400 feet of frontage on the Intracoastal Waterway, approximately one-third of which is along Socastee Creek at the west end. Gross site area is based on public records and dimensions are based on GIS data.

Easements, Encroachments and Utilities

An on-site inspection revealed no apparent adverse easements or encroachments. Typical utility easements are assumed along the Peachtree Road right-of-way. All utilities, including public water and sewer, are available to the property.

Topography and Drainage

The subject site is generally level and roughly at the grade of Peachtree Road. The property has a gradual slope downward from the upland areas near the road frontage toward the Waterway. Open drainage is present along the road frontage. Based on an on-site inspection, drainage appears adequate.

According to a topographical map of the property prepared by Venture Engineering, the subject has 22.65 acres of wetlands. Of this total, 22.33 acres are jurisdictional wetlands (those regulated by the US Army Corps of Engineers) and 0.32 acre is non jurisdictional. Wetlands are located mainly along the Waterway frontage. A copy of the referenced map is included in the Addenda of the report.

As of the date of inspection, there was a large pond on the eastern portion of the tract. This pond did not exist as of the effective date and is assumed not to be present in the analysis.

Soil and Subsoil

We assume no responsibility for hidden or unapparent conditions beyond the area of our expertise as appraisers (see Item 6 of General Assumptions). Only a visual surface inspection of the subject property was made. No soil or subsoil problems were apparent. No obvious hazardous environmental conditions on site or nearby were noted.

Access and Street Improvements

Access to the subject is via its frontage on Peachtree Road, with approximately 3,800 feet of continuous frontage. The subject also has frontage on two minor unpaved roads at its east and west boundaries which do not appear to benefit the subject or provide access. Peachtree Road is a two lane, paved neighborhood road which intersects SC 544 approximately 0.8 mile east of the subject. It dead ends at Peachtree Landing at the Waccamaw River west of the subject.

HIGHEST AND BEST USE ANALYSIS

The Highest and Best Use may be defined as "that reasonable and probable use that supports the highest present value, as defined, as of the effective date of the appraisal.

Alternatively, that use from among reasonable, probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible and which results in the highest land value (maximally productive).

This definition applies specifically to the Highest and Best Use of unimproved land. Implied within these definitions is recognition of the contribution of that specific use to community development goals, in addition to wealth maximization of individual property owners.

Also implied is that the determination of Highest and Best Use results from the appraiser's judgment and analytical skills, i.e., that the use determined from analysis represents an opinion, not a fact, to be found. In appraisal practice, the concept of Highest and Best Use represents the premise upon which value is based. In context of most probable selling price (Market Value), another appropriate term for Highest and Best Use would be the most profitable use."

In order to value a property at its Highest and Best Use, it is analyzed on its legal, physical and economic aspects. The Highest and Best Use for a property is estimated as both vacant and improved. Given the nature of the assignment, the Highest and Best Use is analyzed both before and after the acquisition.

Legal

The subject property is zoned SF-40, Single-Family Residential district, by Horry County. The SF-40 district replaced the R-1 district in 2007. The SF-40 is a low-density, single-family district which requires minimum lot sizes of 40,000 SF. All other requirements are the same as the previous R-1, including setbacks, allowable uses, etc. Permitted uses within the SF-40 district include single-family dwellings (no mobile homes), farms, nurseries, golf courses, churches and cemeteries, as well as conditional uses such as public use facilities, utility sub-stations, private schools and day care centers. A copy of the SF-40 ordinance is included in the Addenda.

As vacant, a low density single family development is an allowable use. We noted no deed or private restrictions which would further limit the potential uses of the property.

Physical

The subject tract has a functional shape and contains 131.40 acres with approximately 3,800 feet of road frontage on Peachtree Road and roughly 3,800 feet of frontage on the Intracoastal Waterway, including 1,200± feet along Socastee Creek. Of the gross area, 22.65 acres are wetlands, most of which are jurisdictional. This represents 17% of the total area, which is typical of similar tracts with Waterway frontage. The location of the wetlands do not appear detrimental to site development. The subject is level at the road frontage, sloping down to the Waterway and appears adequately drained. All utilities, including both public water and sewer, are available.

As vacant, we noted no physical characteristics that would limit the development potential of the subject other than size and configuration. Given the location, zoning and physical characteristics, a low-density single-family use would be physically possible and most likely.

Financially Feasible

The financial feasibility of a property is measured by its income producing capability. Essentially, any use which produces a positive return is considered to be feasible.

The subject is located in the Socastee area of southeastern Horry County. This area has noted consistent new commercial and residential growth through much of the past 10 to 15 years. Most new residential development in the Socastee area has consisted of single-family projects with price points just below median new home price levels.

The rapid growth that occurred up to 2006-2007, coupled with slowing economic conditions and the collapse of the sub-prime lending market, resulted in an over supply of residential product and significant value declines. As of the effective date, the market remains in a position of over supply, particularly for multi-family units, but of single-family lots and homes as well. The following table illustrates the average and median sale prices of single family homes and lots in the Grand Strand market area, based on data compiled by the Coastal Carolina Association of Realtors (local MLS).

SF Lot Sales

	No. Sales	Average SP	% Diff.	Median SP	% Diff.	Avg DOM	Gross Sales	% Diff.
2007	974	$ 135,738		$ 80,000		191	$ 132,208,812	
2008	514	$ 145,684	7.3%	$ 81,450	1.8%	209	$ 74,881,576	-43.4%
2009	429	$ 98,866	-32.1%	$ 57,000	-30.0%	210	$ 42,413,514	-43.4%

SF (Site Built) Home Sales

	No. Sales	Average SP	% Diff.	Median SP	% Diff.	Avg DOM	Gross Sales	% Diff.
2007	4,227	$ 291,924		$ 227,478		191	$ 1,233,962,748	
2008	3,096	$ 277,818	-4.8%	$ 210,000	-7.7%	209	$ 860,124,528	-30.3%
2009	3,255	$ 238,368	-14.2%	$ 185,000	-11.9%	210	$ 775,887,840	-9.8%

The subject is benefitted by its location on the Intracoastal Waterway which affords location and view premiums for potential single family lots fronting on the Waterway. The large size of the tract also allows common area access to the Waterway for all homes if developed in this manner.

Market conditions as of the effective date are not favorable for the immediate development of a low-density single-family project; however, this use remains a long-term, feasible use. The most feasible use of the property is investor holding until such time that excess inventories are absorbed and development is more profitable.

Maximally Productive

Among the physically possible, legally permissible and financially feasible uses, that use which produces the highest residual land value consistent with the rate of return warranted by the market, is the use that is maximally productive. It is our opinion that a low-density, single-family project consistent with the SF-40 zoning and which takes advantage of the Waterway frontage is the maximally productive use. This use would follow a period of investor holding, with development to occur as demand dictates.

Exposure Time

Exposure time is not intended to be a prediction of a date of sale or a one-line statement. Instead, it is an integral part of the appraisal analysis and is based on one or more of the following:

- Statistical information about days on the market;
- Information gathered through sales verification;
- Interviews of market participants.

The reasonable exposure period is a function of price, time and use. It is not an isolated estimate of time alone. Exposure time is different for various types of real estate and under various market conditions. Exposure time is the estimated length of time the property would have been offered prior to a hypothetical market value sale on the effective date of appraisal. It is a retrospective estimate based on an analysis of recent past events, assuming a competitive and open market. It assumes not only adequate, sufficient, and reasonable time, but also adequate, sufficient, and reasonable marketing effort. Exposure time is therefore interrelated with appraisal conclusion of value. In consideration of these factors, we have analyzed the following:

- Exposure periods of comparable sales revealed during the course of this appraisal;
- The PwC Real Estate Investor Survey (2nd Quarter 2012); and
- Knowledgeable real estate professionals.

Based on the forgoing analysis and conditions presiding as of the effective date, an exposure time of 12 months is reasonable, defensible and appropriate. We assume the subject would have been competitively priced and aggressively promoted regionally.

Marketing Time Estimate

Marketing time is the period a prospective investor would forecast to sell the subject property immediately after the date of value, at the value opinion provided. The marketing time is an estimate of the number of months it will require to sell the subject from the date of value, into the future. The anticipated marketing time is essentially a measure of the perceived level of risk associated with the marketability or liquidity of the subject property. The marketing time estimate is based on the data used in estimating the reasonable exposure time, in addition to an analysis of the anticipated changes in market conditions following the date of appraisal.

The future price for the subject (at the end of the marketing time) may or may not equal the appraisal estimate. The future price depends on unpredictable changes in the physical real estate, demographic and economic trends, real estate markets in general, supply/demand characteristics for the property type and many other factors.

Based on market conditions as of the effective date and marketing times for similar properties, the estimated marketing time for the sale of the subject, at or near our opinion of value, is roughly 12 months.

APPRAISAL PROCESS

There are three traditional approaches normally used by appraisers in the estimation of market value. These three approaches provide data from the market from three different sources when all are available. These three techniques are the Cost Approach, the Income Approach and the Sales Comparison Approach (Market Approach).

The Cost Approach is the sum of the land value and the depreciated reproduction cost new of the improvements. The Cost Approach is based on the premise that an informed, rational investor/purchaser would pay no more for an existing property than it would cost him to reproduce a substitute property with the same utility.

The Income Approach is based on the premise that a prudent investor would pay no more for the subject property than he would for another investment with similar risk and return characteristics. Since the value of an investment can be considered equal to the present worth of anticipated future benefits, dollar income or amenities, this approach estimates the market value of the net income that the property is capable of producing. This amount is capitalized at a rate which should reflect risk to the investor and the amount of income necessary to support debt service or mortgage requirements.

The Sales Comparison Approach (Market Approach) is the process of comparing prices paid for properties having satisfactory degrees of similarity to the subject property. This approach is based on the principle of substitution, which implies that a prudent purchaser will not pay more to buy a property than it would cost him to buy a comparable substitute property, without undue delay.

In providing an opinion of value for the subject, the Sales Comparison Approach is the only applicable method of valuation given the subject is a vacant tract of land.

SALES COMPARISON APPROACH

Land Value Estimate

The Sales Comparison Approach was used to value the subject property. This approach is based on the premise that a prudent buyer would pay no more for the subject property than he would for an equally desirable substitute property, similar in size, shape, location and utility (i.e., usefulness). Also known as the Market Approach, the value estimate for the subject property was made by comparing recent sales of similar properties with the subject property on some basis such as price per square foot, or price per unit, and then adjusted for differences in location, date of sale, and physical characteristics.

Several relatively recent sales along the Intracoastal Waterway have been selected for comparison to the subject in the Before condition. Due to the lack of such sales in the subject neighborhood, sales along the Waterway in similar areas of the County were also used. Please refer to the individual write-ups on these land sales for information in reference to size, location, date of sale and other pertinent information on the comparable sales that were used to value the subject site.

All of the following land sales are compared to the subject site and then adjusted and reconciled in order to reach the final value estimate.

LAND SALE 1

Location	North side of Enterprise Road at terminus of Bay Road, in Socastee, Horry County, SC.
Tax Parcel No.	184-00-01-051
Grantor	Enterprise Investors, LLC
Grantee	Portrait Homes River Bend, LLC
Sale Price	$4,200,000
Sale Date	January 6, 2005
Recorded	Deed Book 2844/1182
Verification	Third-party with knowledge of transaction; County records
Description	Site contains 52.84 acres, inclusive of 11.51 acres of wetlands (21.8%). The tract has roughly 1,680 feet of frontage on the Intracoastal Waterway / Waccamaw River and 1,875 feet on Enterprise Road. All utilities were available.
Comment	The site was purchased for the development of the River Bend subdivision to contain 216 units (SF home sites and townhome lots). This tract does not have a spoilage easement along the Waterway frontage, as do most east side, Waterway tracts in this area.
Zoning	CFA at time of sale. Re-zoned to RC (Resort Commercial)
Analysis	The sale price reflects $79,489 per acre.

LAND SALE 2

Location	Old Sandridge Road, on the south side of the Robert Edge Parkway bridge, west side of Intracoastal Waterway, North Myrtle Beach, Horry County, SC.
Tax Parcel No.	144-00-01-016
Grantor	Pointe South, LLC, Robert & Kim Hotchkiss & Intracoastal Waterway, LLC
Grantee	Diversified Executive of Myrtle Beach, LLC
Sale Price	$11,286,000
Sale Date	August 1, 2005
Recorded	Deed Book 2953/203
Financing	Cash to seller
Verification:	Paul D'Agnes, with the purchasers
Description	This sale consists of a Waterway frontage tract containing 55.70 acres, with 1,276 feet of frontage on the Waterway. Access at time of sale was via Old Sandridge Road, however, upon completion of the NMB Connector road projects, access will be much improved. The site contains 1± acre of wetland and has a 20-foot power line easement through the mid-portion of the tract. Public water and sewer were available.

Zoning	CFA at time of sale. Rezoned to PDD and annexed into City of North Myrtle Beach after purchase.
Comment	This tract was purchased for the development of a mixed-use multi-family and commercial development to include 1,300± multi-family units, a 150 slip marina and 50,000 SF of commercial space. Purchaser was aware of the location of the Main Street Connector Bridge, which abuts on the north side. The land plan incorporated commercial areas next to the high-rise bridge right-of-way to minimize its impacts on the proposed residential units.
Analysis	The sale price reflects $202,621 per acre.

LAND SALE 3

Location	Western terminus of Mr. Joe White Avenue at the Intracoastal Waterway, Myrtle Beach, Horry County, SC.
Tax Parcel Number	173-00-01-034
Grantor	Myrtle Beach Farms Company, Inc.
Grantee	Grand Strand Water & Sewer Authority
Sale Price	$27,611,506
Sale Date	January 12, 2007
Recorded	Deed Book 3213/1155
Financing	Cash to seller
Verification	Knowledgeable third party; County records
Description	This parcel contains 105.92 acres with approximately 2,370 feet of frontage on the Waterway and roughly 850 feet along Mr. Joe White Avenue (10th Avenue North). No significant wetlands were present. All utilities were available.
Zoning	LI, Limited Industrial
Comment	The Grantees had been leasing the land (undisclosed terms) for use as a waste water treatment facility and acquired the fee simple interest. The tract is located west of US 17 Bypass and to the rear of the Grantor's water park.
Analysis	The sale price reflects $260,683 per acre.

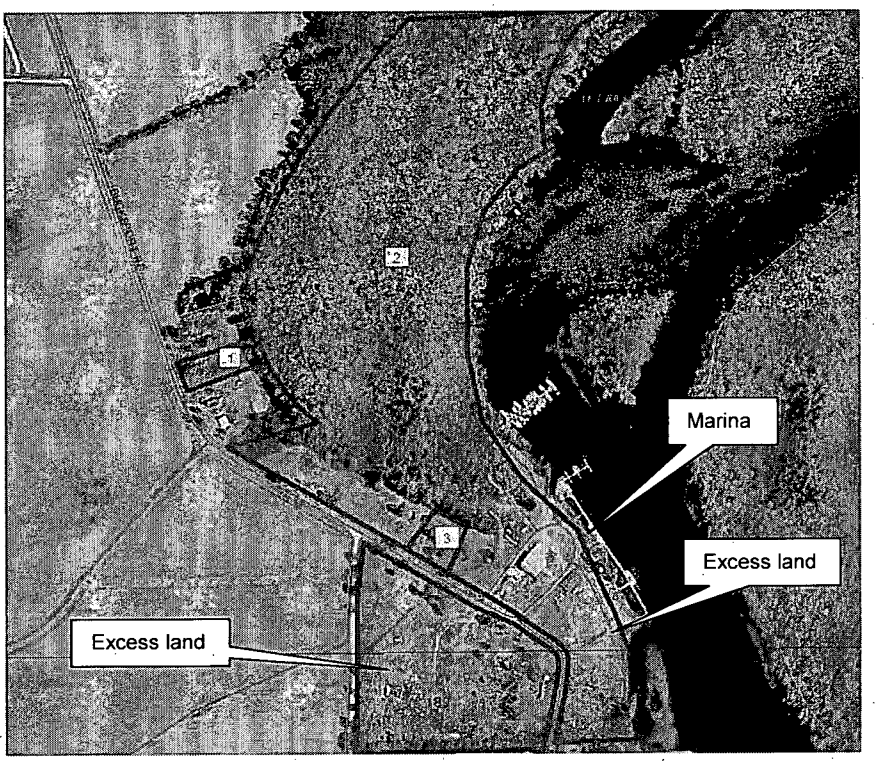
LAND SALE 4

Location	West side of the Intracoastal Waterway, off Sandridge Road Extension, North Myrtle Beach, Horry County, SC.
Tax Parcel Number	144-00-01-122
Grantor	Permenter Brothers Holdings, LLC
Grantee	Sanibel Harbour, LLC
Sale Price	$3,865,000
Sale Date	September 8, 2009
Recorded	Deed Book 3419, Page 1308
Financing	Owner financed
Verification	Grantee, inspection
Description	This site is irregular in shape and contains a total of 15.46 acres with 650 feet of frontage on the Waterway. The tract has frontage on a large 24-acre lake (former mining pit) and is free of wetlands with no spoil easement. All utilities were available to the site.
Zoning	FA, Forest-Agriculture (County). Pending annexation into North Myrtle Beach and rezoning to Traditional Neighborhood District.
Comment	This sale represents the first phase take-down on a 186 acre parent tract. Phase 1 will be developed with 53 single-family lots as part of the planned Sanibel Harbor development. The terms of the owner financing warrant a downward adjustment to the sale price based on the confidential terms of the contract. The tract is located just south of the new Robert Edge Parkway with very good access.
Analysis	The sale price reflects $250,000 per acre.

LAND SALE 5

Location	West side of the Intracoastal Waterway, north of the North Myrtle Beach Connector, in North Myrtle Beach, Horry County, SC.
Tax Parcel Number	130-00-08-058, 130-00-08-105 and 130-00-08-101
Grantor	Jerome L. Bell, Loy Ree Marlowe and BFG Partners, LLC
Grantee	Canal Land and Timber, LLC
Sale Price	$4,250,000 + $752,000 + $1,800,000 ($6,802,000)
Sale Date	February 22, 2005
Recorded	Deed Book 2865 Pages 160, 163 and 172
Financing	Cash to seller
Verification	Bobby Miller, Broker, and representatives of Grantee
Description	This site consists of three tracts containing approximately 26.56 acres, 4.70 acres and 9.14 acres for a total of around 40.40 acres. The site has roughly 1,785 feet of frontage on the Waterway. Access is currently on Old Sanders Road, but will be on the new frontage road upon completion of the road projects. All utilities were available.
Zoning	CFA at time of sale, rezoned to PDD (City of North Myrtle Beach)
Comment	The tracts were purchased for the development of a multi-family project to contain 320 units in the first phase.
Analysis	The sale price reflects $168,366 per acre.

LAND SALE 6



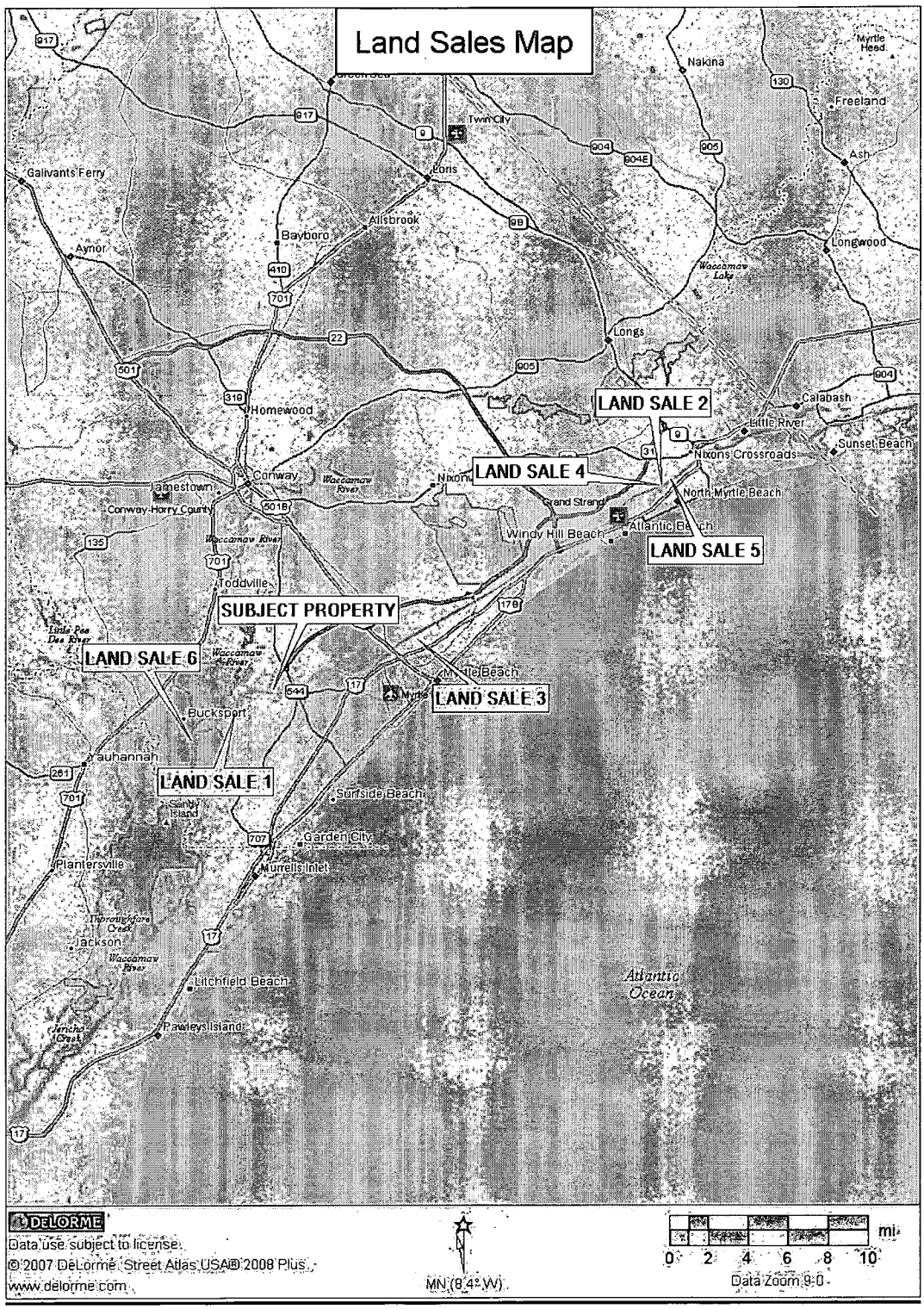
Location	This site is located at 135 Bucksport Road, near Conway, in Horry County, SC.
Tax Map #	183-00-03-036, 041 & 042
Grantor	Weaver Five, LLC
Grantee	Grand Strand Water & Sewer Authority
Sale Price	$3,500,000 (Allocated as $875,000 to marina improvements and $2,625,000 to excess land).
Sale Date	February 25, 2010
Recorded	Deed Book 3447/1344—Horry County
Financing	Cash to seller
Verification	Bob Weaver (Grantor), Fred Richardson (Grantee), inspection
Description	Sale consists of the Bucksport Marina containing 52 wet slips, a 3,024 SF restaurant, 5,550 SF metal storage-boat repair building and small storage building. Improvements were older and nearing the end of their economic lives. The slips include 30 floating wet slips and an additional 22 slips along the fixed dock. Land area is allocated as 2.0 acres marina improvements, 6.0 acres Clark Island

(wetland in Waterway), 28.1 acres excess upland and 32.7 acres of wetlands in one area north of the marina. The property has over 1,500 feet along the Waccamaw River (Intracoastal Waterway).

Zoning — RC, Resort Commercial

Comment — The Grantors own several hundred acres of surrounding land and acquired the marina and excess land for Waterway access to develop a marine industrial park in conjunction with Santee-Cooper, Horry County and the Myrtle Beach Regional Economic Development Corp. The Grantees sold the marina, in their opinion at a below market price, and applied for a tax deduction. Any upward condition of sale adjustment is offset by the contributing value of the full entitlements and permits for an additional 240 slips.

Analysis — The allocated sale price reflects $39,296 per gross acre (66.80 acres net of marina site) and $93,416 per upland acre (28.1).


Land Sales Map
LAND SALE 1
LAND SALE 2
LAND SALE 3
LAND SALE 4
LAND SALE 5
LAND SALE 6
SUBJECT PROPERTY
Myrtle Beach
Conway
Georgetown
Bucksport
Pawleys Island
Litchfield Beach
Garden City
Surfside Beach
North Myrtle Beach
Little River
Calabash
Longs
Loris
Nakina
Freeland
Bayboro
Aynor
Galivants Ferry
Homewood
Nixons Crossroads
Sunset Beach
Windy Hill Beach
Plantersville
Jackson
Murrells Inlet
Atlantic Ocean
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Land Sales Analysis

	Subject	*Land Sale 1*	*Land Sale 2*	*Land Sale 3*	*Land Sale 4*	*Land Sale 5*	*Land Sale 6*
Location	Peachtree Rd Socastee	Enterprise & Bay Rd Socastee	Old Sandridge Rd, NMB	Mr. Joe White Ave., Myrtle Beach	Sandridge Rd Ext, NMB	Old Sanders Rd, NMB	Bucksport Rd, Bucksport
Size-Gross Ac's	131.40	52.84	55.70	105.92	15.46	40.40	66.80
Wetlands	22.65	11.51	1.00	-	-	-	38.70
Percent Wetlands	17%	22%	2%	0%	0%	0%	58%
Zoning/Density	SF-40	CFA	CFA	LI	CFA	CFA	RC
Sale Date	N/A	01/06/05	08/01/05	01/12/07	09/08/09	02/22/05	02/25/10
Sale Price	N/A	$ 4,200,000	$ 11,286,000	$ 27,611,506	$ 3,865,000	$ 6,802,000	$ 2,625,000
SP/Gross Acre		$ 79,485	$ 202,621	$ 260,683	$ 250,000	$ 168,366	$ 39,296
Trans. Adj's							
Property Rights	Fee Simple	0%	0%	0%	0%	0%	0%
Adjusted SP/Ac		$ 79,485	$ 202,621	$ 260,683	$ 250,000	$ 168,366	$ 39,296
Financing	Market	0%	0%	0%	0%	0%	0%
Adjusted SP/Ac		$ 79,485	$ 202,621	$ 260,683	$ 250,000	$ 168,366	$ 39,296
Cond's of Sale	Arm's Length	0%	0%	0%	-15%	0%	0%
Adjusted SP/Ac		$ 79,485	$ 202,621	$ 260,683	$ 212,500	$ 168,366	$ 39,296
Market Conditions	See Disc	-10%	-10%	-35%	0%	-10%	0%
Adjusted SP/Ac		$ 71,537	$ 182,359	$ 169,444	$ 212,500	$ 151,530	$ 39,296
Physical Adj's							
Location Adj.	Peachtree	0%	-20%	-25%	-20%	-5%	30%
Size Adj.	131.40	-15%	-15%	0%	-35%	-20%	-10%
Zoning/Density	SF-40	0%	0%	0%	0%	0%	-5%
Wetlands	17%	0%	-10%	-10%	-10%	-10%	35%
Utilities	All available	0%	0%	0%	0%	0%	0%
Physical Adj.	Typical	0%	0%	0%	5%	0%	0%
Net Adjustments		-15%	-45%	-35%	-60%	-35%	50%
Ind Value/Acre	**$ -**	**$ 60,806**	**$ 100,297**	**$ 110,138**	**$ 85,000**	**$ 98,494**	**$ 58,945**

Mean of Adjusted Sales **$ 85,614**

Indicated Value of Subject

Area-Acres	131.40
Value Per Acre	$ 70,000
Value Indication	$ 9,198,000

Discussion of Adjustments

The first adjustments considered were transactional elements. All sales were fee simple transfers and no adjustments were made for *property rights conveyed.* With the exception of Sale 4, all sales were financed at market terms and no adjustments were made for *financing.* Sale 4 was adjusted a minus 15% based on the terms and conditions of the owner financing and take-down agreement. To the extent which could be verified,

all sales had reasonably similar motivations between the buyer and seller and no adjustments were made for *conditions of sale.*

The comparable sales required adjustments for *market conditions,* or changing prices over time. The sales used occurred during periods of fluctuating market conditions. Values for residential development tracts increased at a steady rate in the earlier part of the decade and more rapidly in the mid-2000's before falling back beginning around late 2006 into 2007 and continuing through the effective date. Sales 1, 2 and 5 occurred in 2005 during a period in which values were increasing prior to falling back. These sales were adjusted a minus 10%. Sales 4 and 6 occurred in similar market conditions and were not adjusted. Although Sale 6 closed after the effective date, the sale price had been established. Sale 3 closed in early 2007 and required the highest minus adjustment at 35%.

Location was considered next. Sale 1 is located within the subject neighborhood and in close proximity to the subject (on the east side of the Intracoastal Waterway) and was not adjusted. Sales 2, 4 and 5 are located on the west side of the Waterway in the North Myrtle Beach market. Values for these comparables were influenced by the improved accessibility to areas east of the Waterway afforded by the new road project. These sales were adjusted minus 5% to 20%. Sale 3 has a superior location on the east side of the Waterway in Myrtle Beach and was adjusted a minus 25%. Sale 6 is located in a more rural area and was adjusted a plus 30%.

Size adjustments were made based on the tendency for smaller tracts to sell for more per unit area than do larger tracts. With the exception of Sale 3, all sales were smaller than the subject and required downward adjustments ranging from 10% to 35%. These adjustments were made to the gross area with separate adjustments made for wetlands.

The subject is assumed to be zoned SF-40, a low-density single-family district, but was previously approved at a higher density (mixed-use PDD). With the exception of Sale 6, the useable areas of the comparables were zoned CFA at their respective dates of sale. Several of the CFA-zoned comparables were subsequently approved for higher density developments and re-zoned. As such, these sales were not adjusted. Sale 6 was adjusted a minus 10% for its superior Resort Commercial zoning which allows higher density residential and commercial uses.

The subject contains approximately 17% wetlands which is average for Waterway frontage tracts of this size in this area. Although wetlands can be incorporated into land plans and used for drainage, they are generally not developable without mitigation. Sale 6 has considerably more wetlands than does the subject and required a plus adjustment of

35%. Sales 2, 3, 4 and 5 were mostly free of wetlands and were adjusted minus 10% each.

The subject has access to public water, sewer and all other utilities, as do the comparable sales. No adjustments were required for utilities.

The physical adjustment considered factors such as configuration, easements, topography, etc. The shape of the subject results in a high ratio of Waterway frontage to depth which would allow for a similarly higher ratio of Waterway frontage lots to interior lots. Sales 1, 2, 3, 5 and 6 have similar Waterway frontage ratios and were not adjusted. The adjustment for Sale 4 (at plus 5%) considers its frontage on a large lake. All other physical characteristics were generally similar and no further adjustments were required.

The adjusted sales range from $58,945 to $110,138 per acre, with a mean of $85,614 per acre. In selecting a value for the subject we have accorded slightly more weight to Sale 1 given its similar location, and Sale 4 given its similar date of sale. Lesser weight is accorded Sale 6 despite its recent sale date due to its inferior location and use. As such, a value of $70,000 per gross acre is reasonable and supportable. Applied to the 131.40 acres in the Before, the indicated value is **$9,198,000**.

VALUATION AFTER THE TAKING

Description of Area Acquired

Descriptions of the area acquired and remainder are made based on information provided by the client including a review of the SCDOT project plans and the subject's Condemnation Notice. If any conclusions regarding our interpretation of the taking and remainder are in error, we reserve the right to amend this report as needed.

The area acquired consists of a swath of land approximately 280 feet wide which bisects the tract generally perpendicular to its road and Waterway frontage. Total area within the new right-of-way is 10.18 acres. The new roadway will be elevated at just over 17 feet (minimum vertical clearance) at Peachtree Road, and increasing in height as it approaches and crosses the Intracoastal Waterway. We assume the vertical clearance over the ICW to be 70-75 feet at the remainders' Waterway frontage.

The area acquired is for the extension of SC 31 from SC 544 to SC 707. The SC 31 extension will be a limited-access highway with six traffic lanes. There will be no access to SC 31 from Peachtree Road.

Description of Remainder

After the acquisition, the subject will contain 121.22 acres in two remainders bisected by the new roadway. The east remainder will contain 35.31 acres with approximately 700 feet of Waterway frontage, and the west remainder is 85.91 acres with 2,830± feet on the ICW. Each remainder will retain full access to Peachtree Road along their respective remaining frontages.

Value of the Taking

The before land value was determined to be $70,000 per acre. Applied to the 10.18 acres acquired, this equates to $712,600.

Highest and Best Use in the After

The most significant impact to the subject's highest and best use in the after is the physical characteristics resulting from the taking including the severance of the tract and each remainders' adjacency to the elevated highway/bridge. The taking will not have an

impact on the legally permissible uses of the remainders, as low-density single-family development will remain a permissible use.

In the after, the two remainders will be adjacent to an elevated bridge which will enter the subject at a height of roughly 17 feet at the Peachtree Road frontage, increasing to over 70 feet as it crosses the Waterway. The new right-of-way will carry six lanes of through traffic with a speed limit of at least 60 mph. The adjacency to the new highway bridge will result in inferior conditions relating to the desirability for residential development than existed in the before. In addition to the adverse effects due to noise and aesthetics, further physical impacts may result caused by storm water run-off from the bridge onto each remainder.

Also, development costs would increase as a result of the severance. Compared to the single tract that existed in the before, the two remainders would have higher development costs per lot, as at least one additional entrance would be required and possibly an additional pump station and water tap along with permits would be necessary. The severance would also increase the ratio of linear feet of interior roads to number of lots.

The financially feasible and maximally productive use of the property in its after condition remains development with a low-density single-family project following a period of investor holding. Given the zoning and location, no other use would produce a greater return. However, the physical condition of the remainders will place the subject at a competitive disadvantage to other similar properties without these physical issues. This would include the subject in its present state (vacant land) as well as future single-family uses. While most ICW tracts in the market with residential highest and best uses area are developed with subdivisions featuring homes in the mid- to upper level price points, the aesthetic qualities in the after may dictate that an entry-level subdivision, or one with lower-value homes would be most feasible.

Other similar Intracoastal Waterway tracts in the area which are adjacent to similar high-rise bridges have incorporated commercial uses in areas adjacent to the bridge, such as Sale 2 in the preceding valuation in the before. The subject's zoning would not allow such buffer uses. Other developments, such as the Kenzgar and Harbor Oaks single-family projects, located at the base of the SC 544 bridge near the subject, have added amenities (boat docks, large clubhouse and pool) to help offset the impacts caused by close proximity to an elevated bridge. We have researched sales within these subdivisions, but because they are small projects, all lots are similarly impacted and no discernible value trend based on distance to the bridge could be determined. Larger

projects do, however, show decreasing values in relation to proximity to an elevated bridge.

In summary, the highest and best use of the two remainders in the after is low density, moderately priced single-family development on each remainder.

Damages to the Remainder

The damages to the remainder are estimated to be the difference between the market value before the taking and the market value after the taking. As discussed earlier, the taking results in conditions which are inferior to the before and detrimental to future development and marketability. Since the subject and immediate area will have no direct access to the new SC 31, there are no benefits to the remainder.

In order to estimate damages to the subject caused by the new road project, we have examined paired sales of similar land tracts as well as single-family lot sales within varying distances from similar high-rise bridges. The analysis of individual lot sales is probably the better method of determining if damages are present since the variable can be more easily isolated. There are often more variables impacting value when two paired acreage tract sales are compared.

In the Sales Comparison Approach we have examined Sale 2 which was adjacent to the (planned at time of sale) Robert Edge Parkway, or North Myrtle Beach Connector, bridge over the Waterway in comparison to Sale 5 which is located approximately one mile north. Sale 2 contains 55.7 acres and sold for $202,621 per acre in August 2005. Sale 5 contains 40.4 acres and sold for $168,366 per acre in February 2005. Both were zoned CFA at the time of sale and were acquired for mixed-use development.

Despite Sale 2's location next to the high-rise bridge, it has much superior access to Sale 5 by means of the new roads which were completed subsequent to the sales. Sale 2 was also able to incorporate commercial areas adjacent to the bridge with the planned condo buildings located further south. Assuming Sale 2 to have cumulatively about 35% superior access and location to Sale 5 with little to no adjustments needed for size, market conditions or other factors, Sale 5 would adjust upward to $227,294 per acre, or a difference of approximately 12% which could be attributed to its adjacency to the bridge.

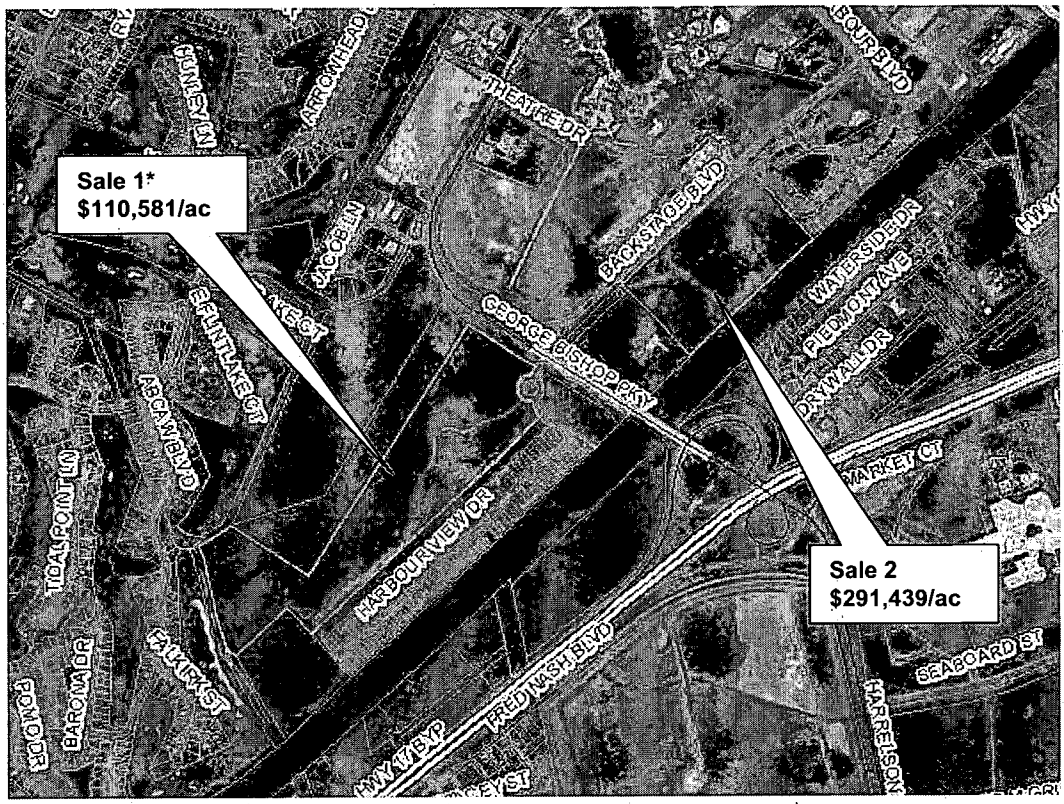
Two additional paired sales considered are located on the ICW in the Fantasy Harbor area of Myrtle Beach. Sale 1 contains 94.95 acres and sold for $10,500,000 ($110,585 per acre) in December 2004. The Waterway frontage portion of this sale was developed with the Boardwalk on the Waterway project and was approved as a PDD to contain 525 single and multi-family units and marina. It is located on the south side of

the Fantasy Harbor high-rise bridge and was zoned Highway Commercial and Community Commercial at the time of sale.

Sale 2 is located approximately 1,250 feet north of the Fantasy Harbor bridge. It contains 27.43 acres and sold for $8,000,000 ($291,651 per acre) in October 2005. It was purchased for speculation and was zoned Resort Commercial at the time of sale. These sales are depicted on the following page.

	Sale 1	Sale 2
Location	Adjacent to bridge	1,250' N of bridge
Deed Ref	2837/826	2991/439
Sale Date	Dec-04	Oct-05
Sale Price	$ 10,500,000	$ 8,000,000
Size	94.95	27.43
SP/Acre	$ 110,585	$ 291,651
Market Conditions	10%	
Adjusted SP/Ac	$ 121,643	
Size	30%	
Adjusted SP/Ac	158,136	$ 291,651
Percent Difference-Sale 2 to Sale 1	46%	

In order to isolate the market penalty due to Sale 1's location adjacent to the Fantasy Harbor bridge, we have adjusted Sale 1 upward 10% for market conditions given the increases in values that were occurring between the respective dates of sale, and upward an additional 30% for size to account for Sale 1's larger gross area. The sales have relatively similar ratios of Waterway frontage, similar zonings, access, location and utilities. After adjustments, the adjusted sale price per acre for Sale 1 is 46% below Sale 2. It should be noted that the Fantasy Harbor bridge was completed in 2009, but its location and route were well known at the dates of sale.



*Note that lots along Harborview Dr and 4.5 ac's adjacent to bridge were part of original sale

Further evidence of reduced values caused by proximity to an elevated bridge can be found by examining lot sales within the Boardwalk on the Waterway subdivision which was developed on the Intracoastal Waterway portion of Sale 1 above. We have analyzed the original developer sales of Waterway frontage and second row lots, all of which closed in the spring of 2005. The data clearly indicate decreasing values the closer the lots are to the Fantasy Harbor bridge, which is similar in height as the planned SC 31 bridge, but with only five lanes of through traffic (three eastbound; two westbound) and a 45 mph speed limit. A sampling of the developer lot sales with distances from the bridge are shown in the following table.

ICW Frontage Sales

TMS No	Lot Size (sq. ft.)	Sale Price	Distance to Bridge
180-35-01-003	8,862	$ 274,880	500
180-35-01-004	7,908	$ 274,880	550
180-35-01-005	7,771	$ 272,880	600
180-35-01-011	9,702	$ 279,880	900
180-35-01-017	8,440	$ 289,880	1,200
180-35-01-021	7,471	$ 294,880	1,400
180-35-01-022	7,259	$ 299,880	1,450
180-35-01-030	10,046	$ 304,880	1,900
180-35-01-035	9,862	$ 299,880	2,100
180-35-01-038	8,741	$ 349,880	2,350
180-35-01-049	7,917	$ 399,880	2,850
180-35-01-050	7,737	$ 369,880	2,900

Second Row Sales

TMS No	Lot Size (sq. ft.)	Sale Price	Distance to Bridge
180-35-01-110	9,652	$ 114,880	480
180-35-01-109	9,494	$ 99,880	530
180-35-01-107	8,392	$ 99,880	630
180-35-01-104	7,428	$ 109,880	770
180-35-01-103	7,365	$ 119,880	820
180-35-01-098	8,848	$ 114,880	1,060
180-35-01-095	9,936	$ 114,880	1,210
180-35-01-087	8,795	$ 129,880	1,600
180-35-01-079	7,484	$ 129,880	1,980
180-35-01-071	9,998	$ 137,880	2,360
180-35-01-067	9,791	$ 142,880	2,560
180-35-01-063	9,711	$ 144,880	2,790
180-35-01-058	7,356	$ 149,880	3,050

**Distance to bridge calculated using Horry County GIS mapping tools*

The above lots are all relatively similar in size and utility, being 50 feet wide and of various depth. Thus it appears that the only significant variable accounting for the sale price differences are the locations of the lots within the project. The more northerly Waterway frontage lots closest to the bridge were selling roughly 20-25% less than the lots at the south end of the project away from the bridge's influences. The second row lots appear to have been slightly more impacted, with sale price differences of 25-30%. It should also be noted that the developers split a 4.57 acre parcel from the parent tract located immediately adjacent to the bridge which was slated for a dry stack marina and boat docks. The developers sold the tract in 2006 for $2,200,000. It was later foreclosed by the lender.

Based on the foregoing lot sales, it appears that residential lots as much as 2,000 feet from the bridge were impacted based on the diminishing sale prices. In the after, the subject's smaller eastern remainder will be at its widest around 1,150 feet along Peachtree Road, and narrowest at the Waterway frontage (700± feet). The larger western remainder will contain approximately 2,830 feet of frontage on the ICW and roughly 2,400 feet on Peachtree Road. Thus, all of the eastern remainder and most of the western remainder will be subject to adverse influences of the new SC 31 right-of-way.

The appraisers have consulted with Steve Powell, P.E., President of Venture Engineering. Mr. Powell provided information concerning the elevation of the bridge as it enters the tract from Peachtree Road and as it crosses the ICW at the subject's Waterway frontage. Mr. Powell also estimated likely increases in noise levels as a result of the new highway. Mr. Powell estimates that noise levels at the base of the bridge would be in the range of 77 to 80 decibels (dBA) and that attenuation of the noise

travelling away from the roadway will be diminished due to the height of the bridge. He also points out a study performed by the University of California-Davis, commissioned by the Federal Highway Administration (FHWA), which indicated diminished home values in the range of 1.3% to 2.0% for every increase in dBA.

While we were not provided with any noise level analyses at the subject in the before, one would assume that, given the surrounding developments (mostly low-density single-family, agricultural and vacant land) and the lightly-traveled Peachtree Road, the ambient noise level at the subject would be no greater than 55 dBA's, which the FHWA typically considers as the noise threshold in residential communities. Therefore, based on Mr. Powell's estimate of noise levels as high as 80 dBA's in the most impacted areas and the UC-Davis study of home values and noise, a decrease in future home values in the range of 33% to 60% could be expected in areas where the noise levels are highest.

Reconciliation of After Value

Given the preceding analysis, it is our opinion that the market would recognize a loss in value for each of the remainders in its after condition. The two paired-set acreage sales reflect value losses of around 12% to 46% after adjusting and isolating for the bridge proximity factor. These paired sales provide a good indication of the market's likely reaction to the subject as a raw land tract in its after situation. However, some uncertainty exists in the motivations of the buyers and sellers and how the potential future uses impacted the value differences.

The analysis of sales at Boardwalk on the Waterway provides a very good indication of how the market will react because the highest and best uses are similar. Since the sales were single-family lots, the bridge proximity factor can be better isolated. Given the lower density of the subject with the SF-40 zoning compared to the smaller lots at Boardwalk on the Waterway, the subject will likely be more greatly impacted since a higher percentage of future lots will be affected, particularly on the eastern remainder. These sales also occurred during a period in which demand was greater and supply of lots was more limited. The market conditions as of the effective date were less favorable (less demand and greater supply) and buyers would likely penalize future lots or homes to a greater degree than was realized at the Boardwalk subdivision.

Based on the foregoing data analyzed, it is our opinion that the smaller eastern remainder is damaged 40% and the western remainder is damaged 35% due to increased noise and decreased aesthetics.

In addition to the estimated loss in value due to the high-rise bridge proximity, the subject would likely be penalized due to the severance of the tract by the new right-of-

way. A potential purchaser/developer would anticipate greater costs to develop the property in its after condition as opposed to a substitute, whole tract of similar utility. This would include one additional entrance and lift station, extra amenity center, greater soft costs and a higher ratio of interior road length to number of lots.

Given these factors, the increase in potential development costs as a result of the severance could range from $150,000 to $250,000, based on Mr. Powell's estimates. Accordingly, we have reconciled damages due to the severance at $200,000.

The application of the percentages of damages due to the bridge proximity applied to the respective remainders, and adding damages of $200,000 due to severance results in a total after value of $5,191,925. These calculations are summarized as follows:

	Size (Ac's)	*Before Value per Acre*	*Damages*	*After Value per Acre*	*After Value*
East Remainder	35.31	$ 70,000	0.60	$ 42,000	$ 1,483,020
West Remainder	85.91	$ 70,000	0.65	$ 45,500	$ 3,908,905
			Deduct Damages from Severance		$ 200,000
				After Value	$ 5,191,925

The Before and After values along with damages to the remainder are summarized below.

Summary of Value of Taking and Damages to the Remainder

Market Value-Before the Taking	$ 9,198,000
Value Estimate of Taking	$ 712,600
Difference	$ 8,485,400
Value After the Taking	$ 5,191,925
Difference	$ 3,293,475
Add: Value of Taking	$ 712,600
Value of Taking and Damages to the Remainder	$ 4,006,075
Rounded to	**$ 4,010,000**

CERTIFICATE OF APPRAISAL

The undersigned hereby certify that, to the best of our knowledge and belief; the statements of fact contained in this report are true and correct; that the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions; that we have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved; that we have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment; that our engagement in this assignment was not contingent upon developing or reporting predetermined results; our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client; the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal; that our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP), Standards of Professional Practice of the Appraisal Institute; and that no one provided significant professional assistance to the persons signing this report.

This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of the loan.

The use of this report is subject to the requirements of the Appraisal Institute relating to peer review by its duly authorized representatives.

We do not authorize the out-of-context quoting from or partial reprinting of this appraisal report; and neither all nor part of this appraisal report shall be disseminated to the general public by use of any public communications media without the prior written consent of the undersigned appraiser.

As of the date of this report, James R. Jayroe, Jr. and J. Brian Donovan have completed the requirements of the continuing education program of the South Carolina Real Estate Appraisers Board.

The subject of this appraisal report is located on Peachtree Road in the Socastee township near Myrtle Beach, in Horry County, South Carolina. The subject is comprised of a 131.40 acre tract of land.

The undersigned State Certified General Real Estate Appraisers, James R. Jayroe, Jr. and J. Brian Donovan, certify that they have personally inspected the subject property. The client is advised that we have preformed no previous appraisal services or any other work on the subject property within the past 3 years preceding the acceptance of this assignment. The undersigned have no prospective interest in the subject or the parties involved.

As a result of our investigation into those matters which affect market value, and by virtue of our experience and training, we have estimated the market value of the taking and damages to the remainder, effective December 15, 2009, was:

FOUR MILLION TEN THOUSAND DOLLARS

($4,010,000)

Respectfully Submitted,

JAYROE APPRAISAL COMPANY

James R. Jayroe, Jr., Senior Appraiser
State Certified General Real Estate Appraiser
Certification Numbers: CG 987 (SC)
CG 6091 (GA)

J. Brian Donovan
State Certified General Real Estate Appraiser
Certification Numbers: CG 3798 (SC)
A 6432 (NC)

QUALIFICATIONS OF THE APPRAISERS

JAMES R. JAYROE, JR.
JAYROE APPRAISAL COMPANY
1601 N. Oak Street Suite 204
Myrtle Beach, South Carolina 29577
Phone: 843-497-7158 Fax: 843-497-3765

• EDUCATIONAL BACKGROUND

Wingate College Wingate, North Carolina	**Associate in Arts Degree**,1964
University of South Carolina	**BS Degree**- Business Admin.,1983
Leadership Grand Strand IV Myrtle Beach, South Carolina	**Graduate**, 1984
University of South Carolina	Real Estate Appraisal & Investment Management, 1981
Horry-Georgetown Technical College Myrtle Beach, South Carolina	Continuing Education, HP-12C WordPerfect, 1986 & 1989

• APPRAISAL COURSES: THE APPRAISAL INSTITUTE

Real Estate Appraisal Principles South Carolina Chapter	Exam 1A-1, 1988
Basic Valuation Procedures South Carolina Chapter	Exam 1A-2, 1988
Residential Valuation University of Georgia	Courses 8 - 2, 1985
Standards of Professional Practice South Carolina Chapter	Exam 023, 1986
Capitalization Theory and Techniques University of North Carolina	Part A, 1988
Capitalization Theory and Techniques University of North Carolina	Part B, 1988
Case Studies in Real Estate Valuation Florida State University	2 - 1, 1991
Report Writing and Valuation Analysis Florida State University	2 - 2, 1991
Uniform Standards of Professional Appraisal Practice South Carolina Chapter	SPP Parts A & B, 1993 SPP Part C, 2000

• APPRAISAL SEMINARS: THE APPRAISAL INSTITUTE

- Introduction to Income Capitalization, 1985
- Recent Developments in Income Property Valuation, 1985
- Capitalization Overview, Federal Home Loan Bank Board Appraisal Procedures, 1987
- Narrative Appraisal Report Writing, 1988
- Federal Home Loan Bank Board Memorandum R-41c, 1987
- Appraising after Hurricane Hugo, 1989
- Environmental Considerations in Real Estate Transactions, Discounted Cash Flow Analysis, 1990
- Non-Residential Demonstration Appraisal Report Writing, 1994
- The Appraisal of Golf Courses and Country Clubs, 1994
- Re-Engineering Your Appraisal Business around E.D.I., 1995
- The Appraiser as an Expert Witness, 1995 The Future of Appraising, Review Appraisal, 1997
- New Technologies for the Real Estate Appraiser, 1998, USPAP, 1999
- Eminent Domain and Condemnation Appraising, 2001 Appraising Conservation Easements, 2001
- Partial Interest Valuation, Appraisal & Analysis of Proposed Subdivisions & Condominiums, 2002
- Convincing Residential Appraisals, Analyzing Commercial Lease Clauses, 2003
- USPAP, Residential Construction, 2004, Condemnation/Eminent Domain, 2005
- Condo Hotels, 2005, Valuation Perspectives, 2006, Loss Prevention, 2006, Inverse Condemnation 2007,
- Site To Do Business, 2007, Cool Tools, 2007, Wetland Valuation, 2007, USPAP Update, 2008,
- Business Practices and Ethics, 2008. USPAP, Agreement for Services, 2010;
- Appraising Distressed Commercial Property, 2010; Commercial Engagement and Review, 2010,
- Residential Appraisal Update, 2011; The Lending World in Crisis, 2011; Business Practices & Ethics, 2011
- Mold and Mildew, 2012 Environmental Issues, 2012 Conservation Easements, 2013Marketability Studies, 2013

• PROFESSIONAL EXPERIENCE

Real Estate Broker in Myrtle Beach, South Carolina from 1970 through Present

Real Estate Developer in Myrtle Beach, South Carolina, 1970 through 1975 and 1980 through 1984.

Qualified as ***expert witness*** in Real Estate Valuation in County, State and Federal Courts.

Senior Appraiser, *Ratchford Group, Inc., Real Estate Appraisers and Consultants*, March 1985 through July 1987.

Senior Appraiser, ***Jayroe Appraisal Company***, July 1987 to Present.

Senior Appraiser and Executive Vice President, ***Appraisal Group Southeast, Inc.***, August 1987 through December 1994

Senior Appraiser, ***Yahnis Appraisal Services, Inc.*** , August 1987 through July 1995.

• TYPES OF PROPERTY APPRAISED

- Commercial
- Agricultural
- Hotels
- Shopping Centers
- Campgrounds
- Country Clubs
- Residential
- Acreage
- Motels
- Barrier Islands
- Subdivisions
- Tax Credit Apartments
- Industrial
- Golf Courses
- Resort Properties
- Wetlands
- Interval Ownerships
- Auto Dealerships

• PARTIAL LIST OF CLIENTELE SERVED:

- SCDOT
- Fannie Mae
- Anchor Bank
- Wachovia Bank of S. C.
- NBSC National Bank of S. C.
- General Services Administration
- Beach First National Bank
- Coastal Federal Savings Bank
- International Paper Realty Co.
- Peoples Federal Savings & Loan
- Georgetown County Water & Sewer
- FDIC
- Resolution Trust Corporation
- Mutual Federal Savings & Loan
- Nationsbank
- First Citizens Bank
- Conway National Bank
- Master-in-Equity (County)
- Carolina First Bank
- Branch Bank and Trust
- Security Federal Savings Bank
- Grand Strand Water & Sewer Authority

• MEMBERSHIPS, CIVIC & VOLUNTEER:

Grand Strand Sertoma Club	Charter Member and Past President
American Red Cross	Volunteer, Disaster Team, Water Safety Instructor, CPR & Standard First Aid
Happy Days & Special Times "The Loving Answer for Children with Cancer."	Volunteer, Counselor, and Waterfront Director-Camp Happy Days 1984-2002

• PROFESSIONAL AFFILIATIONS:

Real Estate Broker	South Carolina Real Estate Commission License Number 383368553
State Certified General Real Estate Appraiser	South Carolina Real Estate Appraisers Board Certification Number CG 987
State Certified General Real Property Appraiser	Georgia Real Estate Appraisers Board Certification Number CG 6091
Associate Member of The Appraisal Institute	MAI Candidate Number: M860858
Member:	Coastal Carolina Association of REALTORS, S. C., Association of REALTORS and NATIONAL ASSOCIATION of REALTORS

• SAMPLE OF PROPERTIES APPRAISED:

• Mall at Shelter Cove	Hilton Head, South Carolina
• Mountain Resort	Canaan Valley, West Virginia
• Magnolia Plaza Mall	Myrtle Beach, South Carolina
• Kure Beach Village	Carolina Beach, North Carolina
• Long Bay Club (Jack Nicklaus)	Myrtle Beach, South Carolina
• Masonboro Island	New Hanover County, North Carolina
• Tybee Island Resort	Savannah, Georgia
• Litchfield Golf & Country Club	Litchfield Beach, South Carolina
• Briarcliffe RV Resort	Myrtle Beach, South Carolina
• Nags Head Inn	Nags Head, North Carolina
• Ford's Colony Country Club	Williamsburg, Virginia
• Surf Golf & Beach Club	N. Myrtle Beach, South Carolina
• Sandpiper Bay Golf & Country Club	Calabash, North Carolina
• Carolina Opry Theatre	Myrtle Beach, South Carolina
• Myrtlewood Golf Club	Myrtle Beach, South Carolina
• Village Square Shopping Center	Myrtle Beach, South Carolina
• Brick Landing Golf & PUD	Ocean Isle, North Carolina
• Alabama Theatre	Myrtle Beach, South Carolina
• Coastal Academy School	Myrtle Beach, South Carolina
• Island West Golf Course	Hilton Head, South Carolina
• Hunter's Creek Golf Course and PUD	Greenwood, South Carolina
• Silver Creek Golf Course	Morganton, North Carolina
• Tax Credit Apartment Complex	Columbia, South Carolina
• Woodland Park School	MBAFB, Myrtle Beach, South Carolina
• Whispering Pines Golf Course	MBAFB, Myrtle Beach, South Carolina
• Myrtle Beach Air Force Base Housing	MBAFB, Myrtle Beach, South Carolina
• SCDOT Highway Condemnations	Horry & Georgetown Counties, South Carolina
• Tara Golf and Country Club	Savannah Lakes, South Carolina
• Florence Country Club	Florence, South Carolina
• Royal Amelia Golf Course	Amelia Island, Florida
• Holiday Inn Express	Various locations throughout Southeast
• Super 8 Motel	Various locations throughout Southeast
• Hampton Inn	Various locations throughout Southeast
• Wingate Inn	Various locations throughout Southeast
• Comfort Inn & Suites	Various locations throughout Southeast
• Meadowlands Golf Club	Calabash, North Carolina
• Player's Course @ St. James	Southport, South Carolina
• Briarcliffe Mall	Myrtle Beach, South Carolina
• Caravelle Resort Hotel	Myrtle Beach, South Carolina
• Sand Castle South	Myrtle Beach, South Carolina
• Crow Creek Golf Club	Calabash, North Carolina

References Available Upon Request

Qualifications of J. Brian Donovan
JAYROE APPRAISAL COMPANY
1704 Oak Street
Myrtle Beach, South Carolina 29577
Phone: 843-497-7158 Fax: 843-497-3765

EDUCATIONAL BACKGROUND

Chamberlain High School Tampa, Florida	**Graduate**, 1983 Graduation Marshall; Top 10% of Class
University of South Florida Tampa Florida	**Pre-Med program**, 1983-1987
South Carolina Institute of Real Estate Columbia, South Carolina	**L1**, Foundations of Real Estate Appraisal, 1997 **L2**, Appraising the Single Family Residence, 1998 **L3**, Standards and Ethics, 1999
JT & T Seminars Pawleys Island, South Carolina	**C1**, Introduction to Income Property Appraisal, 2001 **C2**, Advanced Income Capitalization Procedures, 2001 **C3**, Applied Income Property Valuation, 2001

APPRAISAL SEMINARS: THE APPRAISAL INSTITUTE

- Supporting Capitalization Rates, 2003
- National USPAP Update, 2003
- Rates and Ratios, 2004
- Eminent Domain, National USPAP Update, Condo Hotel Valuation, 2005
- Motel Valuation, 2006
- Subdivision Valuation, 2006
- USPAP Update, Federal Land Acquisitions (Yellow Book), 2007
- Business Practices & Ethics, 2008
- USPAP Update, 2009
- Even Odder-More Oddball Appraisals, 2010 (McKissock)
- Mortgage Fraud, 2010 (McKissock)
- Private Appraisal Assignments, 2010 (McKissock)
- USPAP Update, 2011
- Appraising & Analyzing Office Buildings for Mortgage Underwriting, 2011 (McKissock)
- USPAP Update, 2012
- Appraising & Analyzing Industrial and Flex Buildings for Mortgage Underwriting, 2012 (McKissock)

PROFESSIONAL EXPERIENCE

Jayroe Appraisal Company, Myrtle Beach, South Carolina 1996 to present
Research Associate, Data analyst, Market demographic studies, Appraiser

• TYPES OF PROPERTY APPRAISED:

- Motels
- Apartments
- Restaurants
- Auto Dealerships
- Golf Courses
- Acreage
- Subdivisions
- Manufacturing/Industrial
- Shopping Centers
- Retail Stores
- Condominiums
- Residential

• SAMPLE OF PROPERTIES APPRAISED:

• Wachesaw East Golf Course	Murrells Inlet, South Carolina
• Wild Wing Plantation	Conway, South Carolina
• Colonial Mall	Myrtle Beach, South Carolina
• Barefoot Landing, Phase III	North Myrtle Beach, South Carolina
• Jordan Care Assisted Living	Conway, South Carolina
• Addys Harbor Dodge	Myrtle Beach, South Carolina
• Wild Water & Wheels	Surfside Beach, South Carolina
• Holiday Inn West	Myrtle Beach, South Carolina
• Days Inn	Various locations within SC
• Microtel Inn	Myrtle Beach, South Carolina
• Sand Castle Oceanfront Resort	Myrtle Beach, South Carolina
• Queens Harbour Office Park & phases	Surfside Beach, South Carolina
• The Galleria Shopping Center	Myrtle Beach, South Carolina
• Alligator Adventure	North Myrtle Beach, South Carolina
• Anderson Ocean Club & management contract	Myrtle Beach, South Carolina
• Oceans One Resort & management contract	Myrtle Beach, South Carolina

References Available Upon Request

GENERAL ASSUMPTIONS

1. The legal description used in this report is assumed to be correct.

2. No survey of the property has been made by the consultant and no responsibility is assumed in connection with such matters. Sketches in this report are included only to assist the reader in visualizing the property.

3. No responsibility is assumed for matters of legal nature affecting title to the property nor is an opinion of title rendered.

4. Information and data furnished by others is usually assumed to be true, correct and reliable. When such information and data appear to be dubious and when it is critical to the analysis, a reasonable effort has been made to verify all such information; however, no responsibility for its accuracy is assumed by the consultant.

5. All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within this report. The property is analyzed as though under responsible ownership and competent management.

6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.

7. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws, unless noncompliance is stated, defined and considered in this report.

8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined and considered in this report.

9. It is assumed that all required licenses, consents or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

10. It is assumed that the utilization of the land and improvements is within the bounds of property lines of the property described and that there is no encroachment or trespass unless noted in this report.

GENERAL LIMITING CONDITIONS

1. The consultant will not be required to give testimony or appear in court because of having made this analysis, with reference to the property in question, unless previous arrangements have been made thereof.

2. Possession of this report, or copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the consultant and, in any event, only with proper written qualifications and only in its entirety.

3. The distribution of the total valuation in this report between land and improvements, if any, applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.

4. No environmental impact studies were either requested or made in conjunction with this analysis, and the consultant hereby reserves the right to alter, amend, revise, or rescind any of the value opinions based upon any subsequent environmental impact studies, research or investigation.

5. Neither all nor any part of the contents of this report, or copy thereof, shall be conveyed to the public through advertising, public relations, news, sales, or any other media without written consent and approval of the consultant. Nor shall the consultant, firm or professional organization of which the consultant is a member be identified without written consent of the consultant.

6. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of such substances as **asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials** may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for them. The client is urged to retain an expert in this field, if desired.

7. Unless otherwise stated in this report, no pertinent environmental laws affecting the property were made known to the appraiser, Examples of such laws include **wetlands, coastal area legislation, clean water legislation and clean air legislation.** Since the appraiser does not possess the expertise to identify these factors, a survey or proper certification by governing authorities is recommended to indicate areas of concern. Presence of wetlands, or any other environmental concern, may affect the value of the property.

8. Acceptance of this report signifies acceptance of the foregoing "General Assumptions" and "General Limiting Conditions" presented in this report.

9. In the event that any material data provided the appraiser is found to be erroneous, the sole responsibility of Jayroe Appraisal Company is to provide an amended appraisal report based upon corrected data.

ADDENDA

Valbridge
PROPERTY ADVISORS
Robinson Company

October 23, 2014

SCDOT
In care of Mr. John B. McCutcheon, Jr.
Thompson & Henry, P.A.
1300 Second Avenue
Conway, South Carolina 29528

Re: Addenda Letter to Appraisal of
Tract 11
South side of Peachtree Road
Myrtle Beach, South Carolina

Dear Mr. McCutcheon:

At your request, this letter is to serve as an addendum to the appraisal report produced by the Robinson Company of Greenville for the South Carolina Department of Transportation dated September 2, 2014. This letter should not be considered as a stand-alone document but as an integral part of the previously produced appraisal report and subject to all limiting conditions, assumptions, and extraordinary assumptions stated in the appraisal referenced above. As such, the detailed discussion of the current marketplace, subject property, comparables and analysis is contained within the original appraisal report.

The subject is identified as a 131.4 acre tract of land owned by Jericho State Capital Corporation of Florida. It is further identified as Horry County Tax Parcel 178-00-05-032.

The purpose of this letter is to determine the impact on the subject property due to changes to the size of the area within the noise impact zone from 13.4 acres to 19.7 acres. A 6.3 acre pond created by a borrow pit was not present as of the date of condemnation.

Prior to the acquisition, the subject contained 131.4 acres of land. The extension of SC Highway 31 will bisect the remainder with a total land size of 121.22 acres. There is a 35.31 acre remainder along the east side of SC Highway 31, which is identified as remainder left. There is an 85.91 acre remainder along the west side of SC Highway 31, which is identified as remainder right.

After the acquisition, the remainders will have suitable access, size, shape, and topography as before the acquisition. A noise study provided by the client indicates that approximately 19.7 acres of the remainder will be impacted by noise after the road project. The remaining 101.52 acres are not considered to be measurably impacted as they are sufficiently set back from the new road. A copy of the noise study is retained in the appraisal file.

An examination of the subject neighborhood found that the presence of the existing portions of SC Highway 31 has not limited single-family residential development. As far as the elevation of the new road above grade, there are examples throughout this area of residential subdivisions being developed below road grade due to overpasses. Examples included developments at the Highway 544 overpass and the Intracoastal Waterway, Highway 501 and the Intracoastal, and George Bishop Parkway and the Intracoastal. The subject 101.52 acre remainders appear to have adequate depth to sufficiently set back any future development from the new roadway. This is further supported by the previous owner's site plan for proposed development which accounts for and incorporates the extension of SC Highway 31 through the subject property.

In my opinion, the highest and best use of the remainder "after" is unchanged. It remains as hold for future residential development with damage to 19.7 acres only.

The indicated market value of the subject land "after" the acquisition is shown as follows:

101.52 Acres	X	$40,000 per Acre	=	$ 4,060,800
Rounded to:		$ 4,061,000		

19.7 Acres	X	$10,000 per Acre	=	$ 197,000
Rounded to:		$ 134,000		

Total After:	=	$4,257,800
Rounded:		**$4,258,000**

As stated in the appraisal dated September 2, 2014, the market value of the subject property "before" the acquisition is **$5,256,000.**

Final Statement of Value:	
Having considered all applicable approaches, it is my opinion that the indicated value of the whole property before the acquisition is:	**$5,256,000**
Having considered all applicable approaches, it is my opinion that the indicated value of the whole property after the acquisition is:	**$4,258,000**
The difference between the indicated value of the property before the acquisition and the indicated value of the remainder after the acquisition is:	**$998,000**

My opinion of the retrospective fair market value of the acquisition, as of December 15, 2009, based upon my independent appraisal and the exercise of my professional judgment, is as follows:

NINE HUNDRED NINETY-EIGHT THOUSAND DOLLARS
($998,000)

CHaskell
H. Corbin Haskell, MAI
S.C. Certified General Real Estate Appraiser
Certificate No. CG296

Instrument#: 2011000074606 MTG BK: 5336 PG: 3001 DOCTYPE: 008 07/28/2011 at 12:30:09 AM, 1 OF 2 BALLE V. SKIPPER, HORRY COUNTY, SC GISTRAR OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CORRECTIVE ASSIGNMENT OF MORTGAGE
Mortgage Book 4629 at page 255

WHEREAS, a certain Mortgage was given by Peachtree Properties of North Myrtle Beach, LLC to R.E. Loans, LLC dated July 5, 2006, and duly recorded in the public records of Horry County, State of South Carolina, on July 25, 2006, in Mortgage Book 4629 at page 255;

WHEREAS, subsequently, R.E. Loans, LLC assigned said Mortgage to Wells Fargo Foothill, LLC by instrument recorded in Mortgage Book 4952 at page 1521;

WHEREAS, subsequently, R.E. Loans, LLC purported to assign said Mortgage to Mortgage Fund '08, LLC by instrument recorded in Mortgage Book 5071 at page 96; however, said assignment did not contain two (2) subscribing witnesses, and also said assignment was executed and recorded by R.E. Loans, LLC prior to the reassignment of the Mortgage from Wells Fargo Foothill, LLC back to R.E. Loans, LLC, which reassignment is described below;

WHEREAS, subsequently, Wells Fargo Foothill, LLC reassigned said Mortgage back to R.E. Loans, LLC by instrument recorded in Mortgage Book 5130 at page 2614;

WHEREAS, the Mortgage assignments described above were not executed or recorded in the correct chronological order;

WHEREAS, according to the recorded Mortgage assignments, the last Mortgagee of record is R.E. Loans, LLC;

WHEREAS, Mortgage Fund '08, LLC is the current and legal owner and holder of the promissory note which is secured by the Mortgage;

WHEREAS, R.E. Loans, LLC intends to correct the record assignment of the Mortgage so that the Mortgage follows the current and legal ownership of promissory note which is secured by the Mortgage.

NOW THEREFORE, FOR VALUE RECEIVED, **R.E. Loans, LLC** hereby sets over, transfers and assigns unto **Mortgage Fund '08, LLC**, its successors and assigns, all its rights, title and interest in and to that certain Mortgage, executed by Peachtree Properties of North Myrtle Beach, LLC to R.E. Loans, LLC dated July 5, 2006, and duly recorded in the public records of Horry County, State of South Carolina, on July 25, 2006, in **Mortgage Book 4629 at page 255**.

IN WITNESS WHEREOF, **R.E. Loans, LLC** has caused this instrument to be executed in its corporate name and behalf by Kelly Ng, as its Manager, duly authorized, on this 26th day of April, 2011.

R.E. LOANS, LLC,
a California limited liability company

Witness No. 1

By: _____
its: Manager

Witness No. 2

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

ACKNOWLEDGMENT
S.C. Code § 30-5-30
(Effective January 1, 1995)

I, the undersigned, Notary Public for the State of California, do hereby certify that **R.E. Loans, LLC** by Kelly Ng, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 26th day of April, 2011.

VINCENT HUA
Commission # 1890939
Notary Public - California
Contra Costa County
My Comm. Expires May 25, 2014

Print Name: Vincent Hua

NOTARY PUBLIC FOR CALIFORNIA
My Commission Expires: May 25, 2014

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(016480-00002)

LAW OFFICES

MACDONALD | FERNANDEZ LLP

IAIN A. MACDONALD
RENO F.R. FERNANDEZ III
MATTHEW J. OLSON

221 SANSOME STREET
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CENTRAL VALLEY OFFICE
814 THIRTEENTH STREET
MODESTO, CALIFORNIA 95354
TELEPHONE: (209) 549-7949
FACSIMILE: (209) 236-0178

January 8, 2013

VIA FIRST CLASS US MAIL AND FACSIMILE TO (561) 362-7199

Jericho All-Weather Opportunity Fund LP
Jericho State Capital Corporation of Florida
Attn: Glenn Chwatt and Scott Svirsky
3835 NW Boca Raton Blvd, Suite #200
Boca Raton, FL 33431

The Jericho Group
Attn: Glenn Chwatt and Scott Svirsky
300 West 55th Street, Suite 2V
New York, NY 10019

RE: **NOTICE OF OPPORTUNITY TO EXERCISE FIRST RIGHT OF REFUSAL**

Dear Messrs. Chwatt and Svirsky:

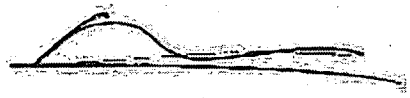
This office represents Susan L. Uecker, Trustee of the Mortgage Fund '08 Liquidating Trust (the "Trust"). Pursuant to Section 11 of that certain Engagement Agreement dated October 22, 2012, by and between Jericho All-Weather Opportunity Fund LP, Jericho State Capital Corporation of Florida (collectively, "Jericho"), the Trust and the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., Jericho holds a first right of refusal to purchase the Trust's interest in that certain real property located on Peachtree Road, Myrtle Beach, South Carolina, designated at Tract 11 by the South Carolina Department of Transportation, and commonly referred to as "Peachtree Plantation."

This is to inform you that the Trust has received an offer to purchase a portfolio of loans including the Trust's interest in a loan secured by Peachtree Plantation for the gross price of $1.4 Million. The amount allocable to Peachtree Plantation is $447,725. The offer is all cash. There is no financing contingency. There is a due diligence period 14 days from acceptance of the offer, with documentation to proceed in parallel with due diligence. Closing shall occur within 14 days of the later of execution of a purchase and sale agreement or approval of the sale by the United States Bankruptcy Court for the Northern District of California. A deposit of 10% of the gross purchase price must be paid within five days of acceptance of the offer, which becomes non-refundable upon the earlier of execution of a purchase and sale agreement or expiration of the due diligence period; provided that the deposit may be refunded if the bankruptcy court does not approve the sale.

This is further to inform you of your opportunity to purchase the Trust's interest in said loan for the same price of $447,725 and upon the same or better terms. The opportunity to exercise Jericho's first right of refusal will remain open until 5:00 pm on Friday, January 11, 2013. Please communicate your response in writing by return facsimile to (415) 394-5544. If no response is received, Jericho's first right of refusal will be deemed to have expired without further notice and the Trust may accept the pending offer and proceed to a sale. If Jericho exercises its first right of refusal, Jericho must be ready, willing and able to pay the purchase price of $447,725.

Time is of the essence in this transaction, and your prompt response is appreciated. Thank you, and please do not hesitate to call with questions.

Very truly yours,



Reno F.R. Fernandez III

Enclosures
cc Client
Howell V. Bellamy, Jr.

Entered on Docket
April 03, 2013
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Susan L. Uecker, Trustee of th
Mortgage Fund '08 Liquidating Trust

The following constitutes the order of the court. Signed April 3, 2013

Roger L. Efremsky
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re:	Case No. 11-49803-RLE-11
MORTGAGE FUND '08 LLC,	Chapter 11
Debtor.	ORDER APPROVING SALE OF PEACHTREE PLANTATION LOAN
	Date: March 27, 2013 Time: 2:00 pm Place: 1300 Clay Street, Courtroom 201 Oakland, California
	Honorable Roger L. Efremsky

A hearing on the Motion for Authority to Sell Peachtree Plantation Loan (the "Motion"), filed by Susan L. Uecker, Trustee of the Mortgage Fund '08 Liquidating Trust, (the "Trustee"), was held before this Court on March 27, 2013, at 2:00 pm. Reno F.R. Fernandez III of Macdonald Fernandez LLP appeared for the Trustee; Linda Sorensen of Pinnacle Law Group LLP appeared for Jericho All-Weather Opportunity Fund LP and Jericho State Capital Corporation of Florida (collectively, "Jericho"); Jeffrey Olsen appeared *in pro per*.

Having considered the Motion and all related pleadings, any opposition thereto, and the arguments of counsel,

THE COURT FINDS THAT:

A. Notice of the Motion was proper and adequate.

B. The Buyer (as defined below) has acted in good faith and is entitled to the protections of Section 363(m) of the Bankruptcy Code.

Based on the foregoing and the findings of fact and conclusions of law stated orally in the record, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The notice of the Motion and the hearing thereon is approved as proper and adequate under the circumstances.

2. The objection of Jeffrey Olsen is overruled.

3. The Motion is granted and the sale to Jericho or its assignee ("Buyer") is approved as the highest and best offer.

4. The Trustee is authorized to sell all of the Trust's right, title and interest in and to that certain loan to Peachtree Properties of North Myrtle Beach, LLC in the original principal amount of $18,520,000 dated as of July 5, 2006 (Loan No. P0095) ("Sale Assets") to Buyer for the purchase price of $950,000.00, and in accordance with the terms and conditions of a purchase agreement with terms (other than price) materially equivalent to those that are set forth in the purchase agreement which is attached to the Declaration of Susan Uecker as Exhibit J.

5. Buyer has not assumed any liabilities of the Trustee.

6. The Trustee is authorized to execute any such releases, termination statements, assignments, consents or instruments on behalf of any third party that are necessary or appropriate to effectuate or consummate the sale.

7. The Trustee, and any escrow agent upon the Trustee's written instruction, shall be authorized to make such disbursements on or after the closing of the sale as are required by the purchase agreement or order of this Court, if any, including but not limited to brokers' commissions.

8. The Trustee and her employees and agents be and they hereby are authorized to execute the purchase agreement, or other related documents that are reasonably necessary or appropriate to complete the sale, and to undertake such other actions as may be reasonably necessary or appropriate to complete the sale.

9. Except as otherwise provided in the Motion, the Sale Assets shall be sold, transferred, and delivered to Buyer on an "as is, where is" and "with all faults" basis.

10. Buyer is approved as a buyer in good faith in accordance with Section 363(m) of the Bankruptcy Code, and Buyer shall be entitled to all protections of Section 363(m) of the Bankruptcy Code.

11. This Order shall be effective immediately upon entry. No automatic stay of execution, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure, or Bankruptcy Rules 6004(h) or 6006(d), applies with respect to this Order.

12. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and the purchase agreement, all amendments thereto, any waivers and consents thereunder, and each of the documents executed in connection therewith in all respects, including retaining jurisdiction to (a) compel delivery of the Sale Assets to the Buyer, (b) resolve any disputes arising under or related to the purchase agreement, and (c) resolve any disputes regarding liens, claims, or interests asserted against the Sale Assets, if any.

13. The purchase agreement and any related documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the bankruptcy estate.

END OF ORDER

COURT SERVICE LIST

Jeffrey Brett Olsen
7121 Norfolk Road
Berkeley, California 94705

All other parties in interest required to be served are registered ECF participants. B.L.R. 9022-1(a).

EXECUTION VERSION

AMENDED AND RESTATED OPERATING AGREEMENT

OF

LYNX JERICHO PARTNERS, LLC

Dated as of April 17, 2013

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THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "***Agreement***") of **LYNX JERICHO PARTNERS, LLC**, a Florida limited liability company (the "***Company***"), is made and entered into as of April 17, 2013 (the "***Effective Date***"), among the Persons (as defined in Annex I attached hereto) identified in Schedule I hereto and amends and restates in its entirety the Operating Agreement of the Company dated as of April 4, 2013 (the "***Original Agreement***").

WHEREAS, pursuant to the Original Agreement, the Original Agreement may be amended only by the written consent of LAS (the "***Existing Member***");

WHEREAS, the Existing Member desires to admit new Members and amend and restate the terms and provisions of the Original Agreement as set forth herein; and

WHEREAS, each Member (as defined in Annex I attached hereto) has deemed it to be in the best interest of the Company and the Members, for the purpose of creating provisions for the continuity and stability of the business and policies of the Company, to hereby set forth their agreement with respect to the Units (as defined in Annex I attached hereto) owned by each such Member.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties, covenants, consents and agreements contained in this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
GENERAL PROVISIONS

Section 1.1 Definitions; Rules of Construction.

(a) Certain capitalized terms used in this Agreement are defined in Annex I attached hereto. Annex I is hereby incorporated by reference into this Agreement.

(b) The use of the masculine, feminine or neuter forms shall also denote the other forms, as in each case the context may require.

(c) Except when the context requires otherwise, any reference in this Agreement to any Section, Clause, Schedule, Annex or Exhibit shall be to the Sections and Clauses of, and Schedules, Annexes and Exhibits to, this Agreement.

(d) The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern the interpretation of any of the terms or provisions of this Agreement.

Section 1.2 Company History; Schedule of Members; Member List; Records.

(a) The name of the Company shall be "Lynx Jericho Partners, LLC."

(b) The Company was formed upon the execution and filing with the Secretary of State of the State of Florida of the articles of organization (the "***Articles***") of the Company on April 4, 2013. The parties hereto hereby ratify and confirm the filing of the Articles.

(c) This Agreement (including the definitions set forth in Annex I) is intended to serve as a "operating agreement," as such term is defined in, § 608.402(23) of the Florida Act.

(d) The name and address of the Members are set forth on Schedule I. The Manager shall amend Schedule I from time to time to accurately reflect the names and addresses of each of the Members and each of the Persons who shall become Members after the date hereof.

Section 1.3 Purpose.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Florida Act and engaging in any and all activities necessary or incidental to the foregoing.

Section 1.4 Offices.

(a) The principal office of the Company, and such additional offices as the Manager may determine to establish, shall be located at such place or places inside or outside the State of Florida as the Manager may designate from time to time.

(b) The registered office of the Company in the State of Florida is located at 2255 Glades Road, Suite 324A, Boca Raton, Florida 33431. The registered agent of the Company for service of process at such address is Matthew Maschler, Esq.

ARTICLE II
MANAGEMENT OF THE COMPANY: MEMBERS

Section 2.1 Management.

Except as otherwise expressly provided herein, the management and operation of the Company shall be vested exclusively in the Manager, which shall have the power on behalf and in the name of the Company to carry out any and all of the purposes of the Company and to perform all acts and enter into and perform all contracts and other undertakings that it may deem necessary or advisable or incidental thereto. The Manager shall have full authority in its discretion to exercise, on behalf of and in the name of the Company, all rights and powers generally conferred under the Florida Act, subject to the limitations herein.

Section 2.2 Authority to Act.

(a) No Member (by virtue of being a Member) shall have any right to, and shall not, take part in the management or control of the Company's business or act for or bind the Company; *provided*, that, the Members shall have all of the rights, powers and privileges granted

to the Members in this Agreement and as granted by the Manager and, where not inconsistent with the terms of this Agreement, under the Florida Act.

(b) The Manager may appoint, employ, or otherwise contract with such other Persons for the transaction of the business of the Company or the performance of services for or on behalf of the Company as it shall determine in its sole discretion. The Manager may delegate to any officer of the Company or to any other Person such authority to act on behalf of the Company as the Manager may from time to time deem appropriate in its sole discretion.

(c) Except as otherwise provided by the Manager, when the taking of such action has been authorized by the Manager, any officer of the Company or any other Person specifically authorized by the Manager may execute any contract or other agreement or document on behalf of the Company and may execute and file on behalf of the Company with the Secretary of State of the State of Florida any certificates of amendment to the Company's Articles, one or more restated articles of organization and, upon the dissolution and completion of winding up of the Company, or as otherwise provided in the Florida Act, certificates of dissolution canceling the Company's Articles.

(d) Fundamental Transactions. Notwithstanding the foregoing, so long as there has not occurred a Triggering Event, the following actions of the Company shall require approval of the Class B Member:

(A) any direct or indirect sale, conveyance, financing, refinancing or transfer of any Portfolio Notes and/or Non-Portfolio Notes, loans evidencing same ("***Loans***") or any property secured by same ("***Loan Collateral***");

(B) the creation of any liens on the Loan Collateral;

(C) the filing, or consent to filing, of a bankruptcy or insolvency petition, any general assignment for the benefit of creditors of the institution or any other insolvency proceeding, or seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or similar official with respect to the Company;

(D) the admission of an additional Member into the Company;

(E) the entering into of any transaction or agreement that would have the effect of diluting the ownership interest of any Member of the Company;

(F) the entering into of any transaction or agreement with any person that is related, directly or indirectly, to any Member;

(G) the acquisition or ownership by the Company of property or assets, other than the Portfolio Notes and the Non-Portfolio Notes;

(H) the execution of any agreement to provide services by or to

any third party in excess of $20,000 and not provided for in the Company's budget;

(I) the merger into or consolidation with any Person or dissolution, termination or liquidation, in whole or in part, or transfer or other disposition of all or substantially all of the Company's assets, or alteration of the Company's legal structure;

(J) the co-mingling of Company assets with the assets of any other Person;

(K) the acceptance of responsibility for the debts of another Person;

(L) the approval of the Company's budget, any amendments to the Company's budget or any variances applicable to the Company's budget;

(M) the removal of any Member;

(N) an amendment of this Agreement;

(O) entering into any agreement paying any fee, salary, bonus or compensation to any officer, director, manager, partner, Affiliate of the Company;

(P) the issuance of additional Units;

(Q) the acceptance of any Capital Contribution of any Member;

(R) the dissolution of the Company pursuant to Section 6.2(a)(i); and

(S) the approval of any Transfer of Units.

(e) Notwithstanding the foregoing or anything to the contrary herein, as to the Portfolio Notes and the Portfolio Loans, the Members agree that for three (3) years from Effective Date there shall be no action taken with regard to such Portfolio Notes or loan documents securing the same, including but not limited to any mortgage ("***Portfolio Loan Documents***") or any property securing such ("***Portfolio Property***") without the approval of the Class B Member, it being understood that the Class B Member is related to and/or an Affiliate of the owner of such Portfolio Property, and it is based upon such forbearance/action with regard to the Portfolio Notes, the Portfolio Loans and the Portfolio Loan Documents that they have entered into this Agreement. Furthermore, the transfer of the Non-Portfolio Notes shall not require the approval of the Class A Member or the Manager if the transferee of the Non-Portfolio Notes is not an Affiliate of the Class B Member and a Triggering Event has not occurred.

ARTICLE III
MEMBERSHIP UNITS

Section 3.1 Authorized Units; General Provisions with Respect to Units.

(a) The ownership interests of the Company shall be divided into and be represented by Units. The Units of the Company may be divided into one or more classes of Units. On the date hereof, the Company shall have two classes of Units: Class A Units and Class B Units. The Manager shall be authorized to cause the Company to issue additional Units.

(b) Upon the issuance of additional Units. this Agreement shall be amended to add the counterpart signature pages of the purchasers thereof, to revise Schedule I, and to revise the schedule maintained by the Manager pursuant to Section 5.1, accordingly.

Section 3.2 Article 8 Opt-In

Each Unit shall constitute a "security" within the meaning of Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Florida.

ARTICLE IV
MEMBER REPRESENTATIONS

Upon the acquisition or receipt of any Units, in addition to any other representations and warranties set forth in any other document required by the Manager with respect to such acquisition or receipt, each Member makes the following representations and warranties to the Company with respect to such Units, effective upon the issuance thereof and upon such Member's execution and delivery of a counterpart hereof or Joinder Agreement:

Section 4.1 Power; Authority; Capacity.

If the Member is other than a natural person, the Member is an entity duly organized, validly existing and in good standing under the laws of the State of its jurisdiction of formation; has all requisite power and authority to own or lease and operate its properties and assets and to carry on its business as now conducted and as proposed to be conducted; is duly qualified or licensed to do business and is in good standing as a foreign entity in all jurisdictions in which it owns or leases property or in which the conduct of its business requires it so to qualify or be licensed, except where the failure to be so licensed or qualified has not had a material adverse effect with respect to such Member. If the Member is other than a natural person, the Member has all requisite power and authority (corporate or otherwise), or if the Member is a natural person, the Member has the capacity, to execute, deliver and perform its obligations under this Agreement.

Section 4.2 Binding Obligation; Authorization.

The execution, delivery and performance of this Agreement by such Member has been duly authorized. This Agreement has been duly executed and delivered by such Member and (assuming the valid authorization, execution and delivery of this Agreement by the other parties

hereto) is the legal, valid and binding agreement of such Member, enforceable against such Member in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, and similar laws of general application relating to or affecting creditors' rights and to general equity principles.

Section 4.3 No Conflict.

(a) The execution, delivery and performance by such Member of this Agreement, the consummation of the transactions contemplated hereby, and the compliance by such Member with the provisions hereof, will not, if applicable, (i) conflict with or result in a breach of any provision of the Organizational Documents of such Member, if applicable, (ii) violate or conflict with or constitute (with notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, or result in the creation of any encumbrance upon such Member's Units pursuant to, the terms, conditions or provisions of any note, bond, lease, mortgage, indenture, license, agreement or other instrument or obligation to which such Member is a party or by which such Member or such Member's properties or assets are bound, or (iii) violate any provision of law, statute, rule, regulation, order, judgment, award, writ, injunction or decree applicable to such Member or any of such Member's properties or assets.

(b) No permit, authorization, consent or approval of or by, or notification of or filing with, any Person is required in connection with the execution, delivery or performance by such Member of this Agreement.

Section 4.4 No Voting Trust.

Such Member has not granted, and is not a party to, any proxy, voting trust or other agreement which is inconsistent with or conflicts with the provisions of this Agreement, and, without the prior consent of the Manager, no Member shall grant any proxy or become party to any voting trust or other agreement which is inconsistent with or conflicts with the provisions of this Agreement.

Section 4.5 Additional Members.

The Company shall issue additional Units and admit additional Members upon the acquisition of such Units upon such terms and conditions, at such time or times, and for such capital contributions as shall be determined by the Manager. In connection with the admission of an additional Member, the Manager shall amend Schedule I hereof to reflect the name and address of the additional Member. Prior to the admission of any Person as a Member, such Person shall execute a counterpart to this Agreement or a Joinder Agreement and shall agree to be bound by the terms hereof.

ARTICLE V
CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS

Section 5.1 Initial Capital Account.

Each Member has made, or has been deemed to have made, in either cash or assets, a Capital Contribution to the Company in the amount set forth in Schedule I hereof in consideration for the issuance of the Units set forth opposite his, her or its name on Schedule I (each, an ***"Initial Capital Account Balance"***). In the event that any Member makes additional Capital Contributions in cash, Securities or other assets or if a Member receives additional Units, the Company shall amend Schedule I accordingly to reflect the issuance of additional Units to such Member, if applicable. No Member shall have any obligation to make any additional Capital Contributions to the Company.

Section 5.2 Capital Accounts.

The Company shall maintain a separate capital account for each Member in accordance with the rules set forth in Treasury Regulation Section 1.704-1(b)(2)(iv) (each such account shall be a ***"Capital Account"***). The Capital Account of each Member as of the date hereof shall equal its Initial Capital Account Balance.

Section 5.3 Allocations of Net Profits and Net Losses.

(a) Subject to, and after the application of, the other allocation rules in this Section 5.3, Net Profits and Net Losses, and items thereof, for each Taxable Year (or other relevant period) shall be allocated so as to produce, as nearly as possible, an Adjusted Capital Account balance for each Member (after taking into account any Capital Contributions made to the Company during the Taxable Year (or other relevant period) but before taking into account any distributions of cash or property made by the Company during such Taxable Year (or other relevant period)) as of the end of the Taxable Year (or other relevant period) equal to the following:

(i) the sum of the cash and Fair Market Value of property (net of any relevant liabilities secured by such property) actually distributed to the Member during such Taxable Year (or other relevant period), plus

(ii) the hypothetical cash that would be distributed to such Member if (i) each of the Company's assets were sold at the end of such Taxable Year (or period) for an amount of hypothetical cash equal to the sum of (A) the Carrying Values of the assets at the end of such Taxable Year (or period), plus (B) the aggregate "partnership minimum gain" (as defined in Treasury Regulation Section 1.704-2(g)) and "partner nonrecourse debt minimum gain" (as defined in Treasury Regulation Section 1.704-2(i)(3)) at the end of such Taxable Year (or period), (ii) the Company paid all its liabilities (other than nonrecourse liabilities to the extent that they exceed the Carrying Value of assets securing such liabilities for tax purposes) in accordance with their terms up to the amount of hypothetical cash, and (iii) the remaining hypothetical cash, if any, from such deemed sale was immediately distributed under Section 6.2(d)(iii).

ARTICLE V
CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS

Section 5.1 Initial Capital Account.

Each Member has made, or has been deemed to have made, in either cash or assets, a Capital Contribution to the Company in the amount set forth in Schedule I hereof in consideration for the issuance of the Units set forth opposite his, her or its name on Schedule I (each, an ***"Initial Capital Account Balance"***). In the event that any Member makes additional Capital Contributions in cash, Securities or other assets or if a Member receives additional Units, the Company shall amend Schedule I accordingly to reflect the issuance of additional Units to such Member, if applicable. No Member shall have any obligation to make any additional Capital Contributions to the Company.

Section 5.2 Capital Accounts.

The Company shall maintain a separate capital account for each Member in accordance with the rules set forth in Treasury Regulation Section 1.704-1(b)(2)(iv) (each such account shall be a ***"Capital Account"***). The Capital Account of each Member as of the date hereof shall equal its Initial Capital Account Balance.

Section 5.3 Allocations of Net Profits and Net Losses.

(a) Subject to, and after the application of, the other allocation rules in this Section 5.3, Net Profits and Net Losses, and items thereof, for each Taxable Year (or other relevant period) shall be allocated so as to produce, as nearly as possible, an Adjusted Capital Account balance for each Member (after taking into account any Capital Contributions made to the Company during the Taxable Year (or other relevant period) but before taking into account any distributions of cash or property made by the Company during such Taxable Year (or other relevant period)) as of the end of the Taxable Year (or other relevant period) equal to the following:

(i) the sum of the cash and Fair Market Value of property (net of any relevant liabilities secured by such property) actually distributed to the Member during such Taxable Year (or other relevant period), plus

(ii) the hypothetical cash that would be distributed to such Member if (i) each of the Company's assets were sold at the end of such Taxable Year (or period) for an amount of hypothetical cash equal to the sum of (A) the Carrying Values of the assets at the end of such Taxable Year (or period), plus (B) the aggregate "partnership minimum gain" (as defined in Treasury Regulation Section 1.704-2(g)) and "partner nonrecourse debt minimum gain" (as defined in Treasury Regulation Section 1.704-2(i)(3)) at the end of such Taxable Year (or period), (ii) the Company paid all its liabilities (other than nonrecourse liabilities to the extent that they exceed the Carrying Value of assets securing such liabilities for tax purposes) in accordance with their terms up to the amount of hypothetical cash, and (iii) the remaining hypothetical cash, if any, from such deemed sale was immediately distributed under Section 6.2(d)(iii).

(b) Special Allocations.

(i) Items of Net Profits or Net Losses that constitute "partner nonrecourse deductions" (within the meaning of Treasury Regulation Section 1.704-2(i)(2)) shall be allocated in the manner provided under Treasury Regulation Section 1.704-2(i)(2).

(ii) Items of Net Profits or Net Losses that constitute "nonrecourse deductions" (within the meaning of Treasury Regulation Section 1.704-2(c)) shall be allocated to the Members in any manner permitted under the Section 704(b) of the Code and the Treasury Regulations promulgated under Section 704(b) of the Code and selected by the Tax Matters Member.

(iii) Net Profits and Net Losses, and items thereof, shall be allocated to comply with (i) the "partnership minimum gain chargeback" provisions of Treasury Regulation Section 1.704-2(f); (ii) the "partner nonrecourse debt minimum gain chargeback" provisions of Treasury Regulation Section 1.704-2(i)(4); and (iii) the "qualified income offset" provisions and "stop loss" provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(iv) The allocations set forth in this Section 5.3(b) (the "***Regulatory Allocations***") are intended to comply with certain requirements of Section 704 of the Code and Treasury Regulation promulgated thereunder and all such provisions shall be interpreted in a manner consistent with such requirements (including, without limitation, the ordering rules of Treasury Regulation Section 1.704-2(j)). The Regulatory Allocations shall be taken into account so that the Profits and Losses allocated to each Member (after taking into account the Regulatory Allocations, including Regulatory Allocations that are expected to be made in future years) shall, to the extent possible, equal the amount of Net Profits and Net Losses that would have been allocated had no Regulatory Allocations been made.

(c) Other Allocation Rules.

(i) In the event Members are admitted to the Company pursuant to this Agreement during a Taxable Year (or other relevant period), the Company's Net Profit and Net Loss, and items thereof, allocated to the Members for such Taxable Year shall be allocated among the Members using any reasonable convention permitted by Section 706 of the Code and selected by the Tax Matters Member. In the event a Member transfers any Units during a Taxable Year, the Company's Net Profits and Net Loss for such Taxable Year shall be made between such Member and its transferee using any reasonable convention permitted by Section 706 of the Code and selected by the Tax Matters Member.

(ii) If, and to the extent that, any Member is deemed to recognize any item of income, gain, deduction, or loss as a result of any transaction between the Member and the Company pursuant to Sections 83, 482, 483, 1272-1274, or 7872 of the Code, or a similar provision now or hereafter in effect, the Company shall

use reasonable efforts to allocate the corresponding item of Net Profit or Net Loss to the Member who recognizes such item in order to reflect the Members' economic interest in the Company.

(d) Tax Allocations.

(i) Except as otherwise provided in this Section 5.3(d), all items of Company income, gain, loss and deduction for federal and applicable state and local income tax purposes shall be allocated among the Members in the same manner as they share correlative items of book income, gain, loss or deduction, as the case may be, for the Taxable Year (or other relevant period). Allocations pursuant to this Section 5.3(d) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses or other items or distributions pursuant to any provision of this Agreement.

(ii) Solely for income tax purposes, income, gain, loss and deduction shall be allocated among the Members as required under Section 704(c) of the Code and Treasury Regulations promulgated thereunder so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Carrying Value. The Tax Matters Member shall make any elections or other decisions relating to allocations under this Section 5.3(d), including the selection of any allocation method permitted under Treasury Regulation Section 1.704-3.

(iii) Allocations of credits or tax credit recapture shall be allocated to the Members by the Tax Matters Member after taking into account the requirements of applicable law (including the Code and the Treasury Regulations promulgated thereunder).

(iv) If any portion of gain recognized on the disposition of property represents "recapture" of previously allocated deductions by virtue of the application of Sections 1245 or 1250 of the Code or any similar provision, such gain shall, to the extent permitted under the Code and the Treasury Regulations, be allocated in accordance with how the previously allocated deductions were allocated.

(v) The liabilities of the Company for tax purposes shall be allocated to the Members in accordance with any manner permitted under Section 752 of the Code and Treasury Regulation promulgated thereunder and selected by the Tax Matters Member.

(e) Compliance with Income Tax Laws. The intent of Section 5.3 is that the allocations of Net Profit and Net Loss, and items thereof, and corresponding allocations of items of taxable income or loss, shall be respected for income tax purposes and otherwise comply with the requirements of the Code and Treasury Regulations. To the extent that the Manager determines that any allocation may not be respected or otherwise comply with the Code and

Treasury Regulations, the Manager shall, subject to the next sentence, make appropriate changes to this Agreement (or, if necessary, to a Member's Capital Account or how Capital Accounts are maintained) to ensure that such allocation will be respected and otherwise comply with the Code and Regulations. Notwithstanding the foregoing, this provision shall not entitle the Company to change, modify, or amend any distribution provision of this Agreement, including those contained in Section 5.4 or 6.2(d).

Section 5.4 Distributions.

(a) Distributions. Subject to Section 6.2 (*Dissolution*), Distributions of Available Cash (excluding for purposes of this Section 5.4(a), distributions made by the Company to the Members upon a Liquidation Event, which shall be governed by Section 6.2(d)), shall be made by the Manager at such times as it determines in its sole discretion as follows:

(i) Subject to Section 5.4(a)(iii), with respect to Distributions of Portfolio Note Proceeds:

(A) First, to the Class A Members, pro rata in accordance with their Class A Units, until each Class A Member has received Distributions in an amount equal to his, her or its Unpaid Capital Preference;

(B) Second, to the Class A Members, pro rata in accordance with their Class A Units, until each Class A Member has received Distributions in an amount equal to his, her or its Unreturned Capital; and

(C) Third, 10% to the Class A Members, pro rata in accordance with their Class A Units and 90% to the Class B Members, pro rata in accordance with their Class B Units.

(ii) With respect to Distributions of Non-Portfolio Note Proceeds and/or any proceeds received from the RE Loans Title Claim, 10% to the Class A Members, pro rata in accordance with their Class A Units and 90% to the Class B Members, pro rata in accordance with their Class B Units.

(iii) With respect to Distributions of Eminent Domain Proceeds and/or any proceeds from any title claims pertaining to the Peachtree Loan and/or property securing the same (other than proceeds received from the RE Loans Title Claim): Distributions shall be made as follows: 100% to the Class A Members pursuant to Section 5.4(a)(i)(A) and Section 5.4(a)(i)(B) until each Class A Member's Unpaid Capital Preference and Unreturned Capital is paid in full and after such payment in full, 100% to the Class B Members, pro rata in accordance with their Class B Units.

(b) Withholdings. If the Company is required by law to pay any tax that is specifically attributable to a Member (or the status of a Member or the status of the direct or indirect shareholders, members, or other owners of such Member), including federal or state withholding taxes and state unincorporated business taxes, then such Member shall indemnify and reimburse the Company for the amount of such tax (including any interest or penalties). The Company may offset distributions which any Member is otherwise entitled to receive under this

Agreement against such Member's indemnification obligation under this Section 5.4(b) and, to the extent offset, such amount shall for all purposes of this Agreement (other than as necessary to maintain Capital Accounts or allocate items of Net Profits or Net Losses) be treated as distributed to such Member for all purposes of this Agreement. A Member's obligation to indemnify and reimburse the Company under this Section 5.4(b) shall survive the Member selling or otherwise disposing of its interest in the Company and the termination, dissolution, liquidation, or winding up of the Company. The Company may pursue remedies against any Member, including instituting a lawsuit to collect such indemnification and reimbursement amount. Any indemnity or reimbursement pursuant to this Section 5.4(b) shall not be treated as a Capital Contribution but shall, to the extent necessary to maintain proper Capital Accounts, increase a Member's Capital Account.

(c) Draws. Notwithstanding any other provision of this Section 5.4, to the extent that a Member would be distributed, during any Taxable Year (or other relevant period), an amount in excess of the maximum amount which could be distributed to such Member without causing the Member otherwise to recognize gain under Section 731(a) of the Code, then such distribution shall be, to the extent possible, an advance or draw (as described in Treasury Regulation Section 1.731-1(a)(1)(ii)) against such Member's allocations of Net Profits and constituent items of income and gain for the Taxable Year (or other relevant period) in which such distribution is made.

Section 5.5 Liability for Return of Capital.

No Member shall have any liability for the return of any Member's capital contribution. No Member, nor any successor Member, shall have the right, while this Agreement remains in effect, to have the assets of the Company partitioned, or to file a complaint or institute any proceeding at law or in equity, to have the assets of the Company partitioned, and each of the Members, on behalf of itself and its successors, representatives and assigns, hereby irrevocably waives any such right.

Section 5.6 Administrative Matters.

(a) The taxable year of the Company (the "***Taxable Year***") shall be its Fiscal Year, except as otherwise required under the Code or Treasury Regulations or other applicable laws.

(b) Except as otherwise provided by this Agreement, all elections and decisions required or permitted to be made by the Company under any applicable tax law shall be made by the Tax Matters Member (or its designee) (including the election under Section 6231(a)(1)(B)(ii) of the Code to cause Section 6231(a)(1)(B)(i) of the Code not to apply (the "***TEFRA Company Election***").

(c) Within a reasonable time after the end of the Taxable Year, the Company shall furnish each Member with a copy of a federal and applicable state and local tax returns and such reports as may be necessary for each Member to complete its respective tax returns. Each Member shall furnish to the Company all pertinent information in its possession relating to the Member or the Company's operations that is necessary to enable the Company's tax returns to be

prepared and filed. Any balance sheet prepared for any tax return of the Company shall, unless otherwise determined by the Tax Matters Member or required under applicable law, be prepared in accordance with the same methods of accounting used for purposes of determining Capital Accounts.

(d) If the TEFRA Company Election is made, then for any applicable Taxable Year, the Tax Matters Member is hereby designated as the "tax matters partner" for the Company within the meaning of Section 6231(a)(7) of the Code. The Manager shall be the "**Tax Matters Member**" hereunder, and shall be authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and other expenses reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings.

(e) Each Member acknowledges that this Agreement creates a partnership for federal and state income tax purposes, and hereby agrees not to elect under Section 761 of the Code or applicable state law to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar state statute of the Company. No Member, agent or employee of the Company may file Internal Revenue Service Form 8832 (or such alternative or successor form) to elect to have the Company classified as a corporation for federal income tax purposes, in accordance with Treasury Regulation Section 301.7701-3.

(f) Each Member authorizes the Company and the Tax Matters Member to make any elections or amendments to this Agreement to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Company transferred to a service provider by the Company in connection with services provided to the Company as provided in Revenue Procedure 93-27 and Revenue Procedure 2001-43; *provided*, that such amendment is not materially adverse to such Member (as compared with the after-tax consequences that would result if Revenue Procedure 93-27 and Revenue Procedure 2001-43 applied to all interests in the Company transferred to a service provider by the Company in connection with services provided to the Company).

ARTICLE VI
WITHDRAWAL; DISSOLUTION

Section 6.1 Withdrawal.

No Member shall have the right to withdraw from the Company except with the consent of all Members and upon such terms and conditions as may be specifically agreed upon among the other Members and the withdrawing Member. The provisions hereof with respect to distributions upon withdrawal are exclusive, and no Member shall be entitled to claim any further or different distribution upon withdrawal under Section 608.444 of the Florida Act of the Florida Act or otherwise. This Section 6.1 shall not apply to Transfers permitted under this Agreement.

Section 6.2 Dissolution.

(a) The Company shall be dissolved and its affairs wound up and terminated upon the first to occur of the following:

(i) the determination by the Manager to dissolve the Company; or

(ii) any other event causing a dissolution of the Company under Section 608.441 of the Florida Act.

(b) Upon dissolution of the Company, the Company's affairs shall be promptly wound up in accordance with the provisions of this Section 6.2. The Company shall engage in no further business except as may be necessary, in the reasonable discretion of the Manager, to preserve the value of the Company's assets during the period of dissolution and liquidation.

(c) The Net Profits and Net Losses shall be allocated among the Members in accordance with the provisions of Section 5.3.

(d) Upon dissolution of the Company, the assets of the Company (including, without limitation, proceeds from the sale or other disposition of any assets during the period of dissolution and liquidation) shall be applied as follows:

(i) first, to repay any indebtedness and any other liabilities of the Company, whether to third parties or the Members, in the order of priority required by law;

(ii) second, to any reserves which the Manager reasonably deems necessary for contingent or unforeseen liabilities or obligations of the Company (which reserves when they become unnecessary shall be distributed in accordance with the provisions of (iii), below); and

(iii) third, in accordance with Section 5.4(a).

Section 6.3 Limitation on Liability.

The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

ARTICLE VII
TRANSFER RESTRICTIONS

Section 7.1 General.

(a) Generally. Except as permitted under and in compliance with this Agreement, no Member will Transfer all or any part of its Units to any Person without the

consent of the Manager. The provisions regarding Transfers of Units contained in this Article VII shall apply to all Units now owned or hereafter acquired by a Member.

(b) Void Transfers. Any Transfer or attempted Transfer of any Units by a Member in violation of any of, or not in accordance with, the provisions of this Agreement shall be void *ab initio*, and the Company shall not record such Transfer on its books or treat any purported Transferee of such Units as the owner of such Units for any purpose.

(c) Notice of Transfer; Opinion. Each Member shall, after complying with the provisions of this Agreement, but prior to any Transfer of Units, give written notice to the Company of such proposed Transfer. Each such notice shall describe the manner and circumstances of the proposed Transfer. Upon request by the Manager, each Member seeking to Transfer Units shall deliver a written opinion, addressed to the Company, of counsel for such Member, stating that in the opinion of such counsel (which opinion and counsel shall be reasonably satisfactory to the Manager) such proposed Transfer does not involve a transaction requiring registration or qualification of such Units under the Securities Act or the securities laws of any State of the United States.

(d) Joinder. In the event of any Transfer of any Units, any such Transferee shall, as a condition to the effectiveness of such Transfer, be required to execute a counterpart to this Agreement or a joinder to this Agreement substantially in the form attached hereto as ***Exhibit A*** (the "***Joinder Agreement***"), whereupon such Transferee will become a party to, and be bound by and obligated to comply with the terms and provisions of, this Agreement as if such Transferee was originally included in the definition of Class A Member and Class B Member (as the case may be) herein and had originally been a party hereto.

(e) New Entities as Members. Each Member that is not an individual agrees that (i) certificates for shares of its common stock or other instruments reflecting Securities in such entity (and the certificates for shares of common stock or other Securities in any similar entities controlling such entity) will note the restrictions contained in this Agreement relating to the restrictions on Transfer of Units as if such common stock or other Securities were Units, (ii) no shares of such common stock or other Securities may be Transferred to any Person other than in accordance with the terms and provisions of this Agreement as if such common stock or other Securities were Units, and (iii) any Transfer of such common stock or other Securities shall be deemed to be a Transfer of such Member's Pro Rata Amount.

Section 7.2 Forced Sale Right.

(a) Forced Sale Right. Notwithstanding anything to the contrary in this Agreement, at any time from and after the occurrence of a Triggering Event, LAS has the right (a "***Forced Sale Right***") to cause any Class B Member or their Affiliates to sell any Portfolio Property owned by such party (a "***Forced Sale***") in accordance with and subject to the terms and conditions set forth below. LAS may exercise the Forced Sale Right by giving written notice (a "***Forced Sale Notice***") to the Class B Member. The Class B Member or such Affiliate that owns the respective Property (the "***Owner***") will be deemed to have authorized and approved the sale of such Property pursuant and subject to this Section 7.2, for a purchase price and otherwise

pursuant to such terms, conditions and provisions as are determined appropriate in the reasonable discretion of LAS.

(b) Conditions to a Sale. In no event may a sale to a third party pursuant to this Section 7.2 be consummated unless both of the following conditions are satisfied and, if one or both of such conditions is not so satisfied, such Forced Sale has been approved by LAS: (i) the terms of such sale were negotiated to an unaffiliated third party on a bona fide, arms-length basis and (ii) all proceeds received by the Owner from such Forced Sale are used to repay the respective Portfolio Note, and all proceeds received by the Company from such Forced Sale are distributed in accordance with Section 5.4.

(c) In furtherance of LAS's rights under this Section 7.2, the Class B Member hereby, to the fullest extent permitted by law, irrevocably constitutes and appoints LAS, with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to execute, acknowledge, deliver, file and record in the appropriate public offices all conveyances and other instruments or documents necessary to reflect any sale of any Property pursuant to this Section 7.2 on behalf of the Class B Member, as an Affiliate of such respective Owner. The foregoing power of attorney, to the fullest extent permitted by law, is hereby declared to be irrevocable and a special power coupled with an interest, and it shall survive and not be affected by the Transfer, directly or indirectly, of all or any portion of each Property and shall extend to the Class B Member's successors, assigns and representatives. Upon the request of LAS, the Class B Member shall cause the respective Owner to record with the appropriate governmental entity in which the real estate records of the respective Property are kept, a memorandum or other instrument setting forth in full the foregoing power of attorney in form acceptable to LAS.

ARTICLE VIII
OTHER AGREEMENTS

Section 8.1 Right of First Refusal.

(a) If any Class B Member (the "***Selling Member***") or Affiliate of the Selling Member receives a bona fide offer to purchase any Portfolio Property (the "***ROFR Property***"), the Selling Member shall set forth the terms of the proposed offer, including, without limitation, the proposed amount and type of consideration and the location of such Property in a notification (the "***Offer Notice***") and promptly deliver such offer to LAS.

(b) For a period of fifteen (15) calendar days (the "***Offer Period***") from the date of receipt of the Offer Notice, LAS or any of its Affiliates shall have the option, exercisable by providing notification to the Selling Member prior to the expiration of the Offer Period, to purchase the ROFR Property on substantially the terms and conditions as are set forth in the Offer Notice. If LAS or any of its Affiliates elects to purchase the ROFR Property, then such Person shall be obligated to purchase the ROFR Property at the price and on the terms and conditions set forth in the Offer Notice.

(c) If LAS or any of its Affiliates shall not have elected to purchase the ROFR Property, the Selling Member or one of its Affiliates shall be free to sell such ROFR Property at the price and on the other terms and conditions contained in the Offer Notice within one hundred

eighty (180) calendar days after the expiration of the Offer Period, but not at any other price or upon any other terms and conditions than were set forth in the Offer Notice. However, if the Selling Member or one of its Affiliates has not completed the sale of the ROFR Property within such one hundred eighty (180) day period in accordance with the above conditions, then the ROFR Property shall continue to be subject to the terms of this Agreement as if no Offer Notice had been given.

Section 8.2 Expenses.

The Members shall bear their own costs and other expenses incurred from time to time in connection with the performance of and compliance with all agreements and conditions contained in this Agreement on its part to be performed or complied with.

Section 8.3 Acknowledgment.

(a) Each Member and the Company hereby acknowledges that:

(i) The Manager, Member or its Affiliates may have or may hereafter acquire Securities or other ownership interests in other businesses that may compete directly or indirectly with the businesses of the Company and/or its Subsidiaries and/or may have business relationships with the Company and/or its Subsidiaries, in each case (each such business, a ***"Member Portfolio Company"*** and, collectively, the ***"Member Portfolio Companies"***), and (ii) the Manager, the Members or its Affiliates may serve as a director, manager and/or officer of such Member Portfolio Companies. Accordingly, each Member, in recognition of the benefits to be derived by the Company and such Member through the Company's continued contractual, business and other relations with the Manager and the other Members (including the services of officers, directors, partners, managers, employees or Affiliates of the Manager), acknowledges and agrees as follows:

(A) None of the Member Portfolio Companies or any their respective Affiliates (the ***"Member Applicable Entities"***) shall have a duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Company or its Subsidiaries.

(B) None of the Member Applicable Entities or any of their respective officers, directors or representatives shall be liable to the Company or any of its Subsidiaries or Members for breach of any fiduciary duty by reason of the activities of the Member Portfolio Companies.

(C) If the Manager, Member or any Member Portfolio Company acquires knowledge of a potential transaction or matter that may be a corporate opportunity for the Company or any Subsidiary, then none of the Member Applicable Entities shall have any duty to communicate or offer such corporate opportunity to the Company or such Subsidiary and none of the Member Applicable Entities or any of their respective officers, directors or representatives shall be liable to the Company or any of its

Subsidiaries or Members for breach of fiduciary duty by reason of the fact that the Manager, Member or a Member Portfolio Company, as the case may be, pursues or acquires such transaction or corporate opportunity for itself or directs such corporate opportunity to another Person or does not communicate information regarding, or offer such transaction or corporate opportunity to the Company or its Subsidiaries.

(b) For the purposes of this Section 8.3 "corporate opportunities" shall not include any business opportunities that the Company is not financially or contractually able to undertake, or that are, from their nature, not in the line of the Company's then-current business or are of no practical advantage to the Company or that are ones in which the Company has no interest or reasonable expectancy.

(c) Any Person purchasing or otherwise acquiring Units of the Company shall be deemed to have notice of and consented to the provisions of this Section 8.3.

Section 8.4 Notices.

All notices, requests, demands, claims, consents and other communications which are required or otherwise delivered hereunder shall be in writing and shall be deemed to have been duly given if (i) personally delivered, (ii) sent by nationally recognized overnight courier, (iii) mailed by registered or certified mail with postage prepaid, return receipt requested, or (iv) transmitted by facsimile (with a copy of such transmission concurrently transmitted by registered or certified mail with postage prepaid, return receipt requested), to the parties hereto at the following addresses (or at such other address for a party as shall be specified by like notice):

(i) if to the Company, to:
Lynx Jericho Partners, LLC
30 Freneau Ave
Matawan, NJ 07747
Attention: Michael McCarty
Telephone: (732) 290-2063
Facsimile: (732) 360-9740

with a copy to:

Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Attention: Bradley C. Vaiana, Esq.
Telephone: (212) 294-2610
Facsimile: (212) 294-4700

Scott Svirsky
3835 NW BOCA RATON BLVD.
STE 200
BOCA RATON, FL 33431
Telephone: (561) 362-0091
E-Mail scottsvirsky@gmail.com

Glenn Chwatt
3835 NW BOCA RATON BLVD.
STE 200
BOCA RATON, FL 33431
Telephone: (561) 362-0091
E-Mail gchwatt@gmail.com

(ii) if to the Members, to their respective addresses set forth on Schedule I attached hereto.

or to such other address as the party to whom such notice or other communication is to be given may have furnished to each other party in writing in accordance herewith. Any such notice or communication shall be deemed to have been received (i) when delivered, if personally delivered, (ii) when sent, if sent by facsimile on a Business Day during normal business hours (or, if not sent on a Business Day during normal business hours, on the next Business Day after the date sent by facsimile), (iii) on the next Business Day after dispatch, if sent by nationally recognized, overnight courier guaranteeing next Business Day delivery, and (iv) on the fifth Business Day following the date on which the piece of mail containing such communication is posted, if sent by mail. Notwithstanding the foregoing, any notices, requests, demands, claims, consents and other communications delivered in connection with Section 8.1 shall not be deemed to have been duly given if transmitted by facsimile.

Section 8.5 Amendments and Waivers.

No term or provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Manager which explicitly states the Manager's intention to change, waive, discharge or terminate such term or provision.

Section 8.6 Entire Agreement.

This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersede and preempt any and all prior arrangements, agreements and understandings with respect thereto. In case of any conflict among this Agreement and any such other documents the terms of this Agreement shall govern.

Section 8.7 Governing Law; Consent to Jurisdiction; Waiver of July Trial; Prevailing Party.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any law or rule that would cause the laws of any jurisdiction other than the State of Florida to be applied.

(b) Consent to Jurisdiction. Any action or proceeding against the parties relating in any way to this Agreement may be brought and enforced in the courts of the State of Florida or the United States District Court for the Southern District of Florida, to the extent subject matter jurisdiction exists therefor, and the parties irrevocably submit to the jurisdiction of both such courts in respect of any such action or proceeding. Each of the parties irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such action or proceeding in the courts of the State of Florida located in Palm Beach County or the Southern District of Florida and any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum. Any judgment may be entered in any court having jurisdiction thereof.

(c) Waiver of Jury Trial. Each of the parties hereto hereby irrevocably waives its or her right to a jury trial of any claim or cause of action based upon or arising out of this Agreement or any dealings between the parties hereto relating to the subject matter hereof.

(d) Prevailing Party. If any party to this Agreement brings an action or proceeding directly or indirectly based upon this Agreement or the matters contemplated hereby against any other party hereto (or its Affiliates), the Prevailing Party shall be entitled to recover, in addition to any other appropriate amounts, its reasonable fees, costs and expenses in connection with such action or proceeding, including, but not limited to, reasonable attorneys' fees, fees of expert witnesses and expenses and court costs.

Section 8.8 Indemnification; Insurance.

(a) To the fullest extent permitted by the Florida Act as the same exists or may hereafter be amended, except for a bad faith violation of the implied contractual covenant of good faith and fair dealing, a manager or member of the Company, shall not be liable to the Company or its Members for breach of fiduciary duty as a manager or member.

(b) Without limitation of any right conferred by clause (a) of this Section 8.8, each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***Proceeding***"), by reason of the fact that he is or was a member, manager or officer of the Company, or is or was serving at the request of the Company as a manager, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an ***"Indemnitee"***), whether the basis of such Proceeding is alleged action in an official capacity while serving as a member, manager, officer, employee or agent or in any other capacity while serving as a member, manager, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent authorized by the Florida Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith and such indemnification shall continue as to an Indemnitee who has ceased to be a member, manager or officer and shall inure to the benefit of the Indemnitee's heirs, testators, intestates, executors and administrators; *provided, however,* except as provided in clause (c) of this Section 8.8 with respect to Proceedings to enforce rights to indemnification, the Company shall indemnify any such Indemnitee in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) initiated by such Indemnitee was authorized by the Manager. The right to indemnification conferred in this Section 8.8 shall be a contract right and shall include the right to be paid by the Company the expenses incurred in defending any such Proceeding in advance of its final disposition (hereinafter an ***"Advancement of Expenses"***); *provided, however,* that, if the Florida Act requires, an Advancement of Expenses incurred by an Indemnitee in his capacity as a member, manager or officer shall be made only upon delivery to the Company of an Undertaking (hereinafter an ***"Undertaking"***), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which

there is no further right to appeal (hereinafter a ***"Final Adjudication"***) that such Indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

(c) If a claim under clause (b) of this Section 8.8 is not paid in full by the Company with sixty (60) calendar days after a written claim has been received by the Company, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be twenty (20) calendar days, the Indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim if successful in whole or in part in any such suit, or in a suit brought by the Company to recover an Advancement of Expenses pursuant to the terms of any Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an Advancement of Expenses) it shall be a defense that, and (ii) in any suit by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking the Company shall be entitled to recover such expenses upon a Final Adjudication that, the Indemnitee has not met the applicable standard of conduct set forth in the Florida Act. Neither the failure of the Company (including the Members or independent legal counsel) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the Florida Act, nor an actual determination by the Company (including independent legal counsel or the Members) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an Advancement of Expenses hereunder, or by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such Advancement of Expenses, under this Section or otherwise shall be on the Company.

(d) The rights to indemnification and to the Advancement of Expenses conferred in this Section 8.8 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, agreement, vote of Members, this Agreement or otherwise.

(e) The Company may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a member, manager, officer, employee or agent of the Company or any person who is or was serving at the request of the Company as a manager, officer, employer or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the Florida Act.

Section 8.9 Successors and Assigns.

This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns, Transferees, legal representatives and heirs; *provided, however,* that the rights under this Agreement shall not be assignable by any Member, except in connection with a Transfer not prohibited by this Agreement.

Section 8.10 Consultation With Counsel.

Each Member who or which executes and delivers a counterpart signature page to this Agreement hereby acknowledges that he, she or it has had the opportunity to consult with his, her or its own counsel with respect to the subject matter of this Agreement, and has read and understands all of the provisions of this Agreement. Each Member who or which executes and delivers a counterpart signature page to this Agreement hereby further acknowledges that he, she or it has had the opportunity to ask questions of, and to seek additional information from, the Company with respect to each of the matters set forth herein.

Section 8.11 No Third Party Beneficiaries.

None of the provisions in this Agreement shall be for the benefit of or enforceable by any Person other than the parties to this Agreement and their respective successors and assigns.

Section 8.12 Further Assurances.

Each Member shall execute all such certificates and other documents and shall do all such other acts as the Manager shall deem appropriate to comply with the requirements of law for the formation of the Company.

Section 8.13 Counterparts; Facsimile Signatures.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. Facsimile and PDF counterpart signatures to this Agreement shall be acceptable and binding.

Section 8.14 Severability.

It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

* * * * * *

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

THE COMPANY:

LYNX JERICHO PARTNERS, LLC

By: _____
Name: Michael McCarty
Title:

MEMBERS:

LYNX ASSET SERVICES, LLC

By: _____
Name: Michael McCarty
Title: President

SRKD-SAM ADVISORS LLC

By: _____
Name: GLENN M. CUNNATT
Title: MANAGER/MEMBER

Schedule I

Members

Member	Class A Units	Class B Units	Initial Capital Contribution	Initial Capital Account
Lynx Asset Services, LLC 30 Freneau Ave Matawan, NJ 07747 Attention: Michael McCarty Telephone: (732) 290-2063 Facsimile: (732) 360-9740	100	---	$2,500,000	$2,500,000
SRKD-SAM Advisors LLC 3835 NW Boca Raton Blvd #200 Boca Raton, FL 33431 Attention: Scott D. Svirsky and Glenn M. Chwatt	---	100	$0	$0
Total	**100**	**100**	$2.500,000	$2,500,000

Definitions

"Adjusted Capital Account" shall mean with respect to any Member, in such Member's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to restore or is deemed to be obligated to restore to the Company pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Advancement of Expenses" has the meaning ascribed to such term in Section 8.8(b).

"Affiliate" means, with respect to any specified Person, (i) any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by, such specified Person, (ii) any other Person who is a director, officer or partner or is, directly or indirectly, the beneficial owner of 5% or more of the specified Person or a Person described in clause (i) above, on an as converted fully diluted basis, (iii) any other Person of whom the specified Person is a director, officer or partner or is, directly or indirectly, the beneficial owner of five percent (5%) or more of equity on an as converted fully diluted basis, or (iv) any Relative or spouse of the specified Person or any of the foregoing Persons described in clause (i), (ii), or above, any Relative of such spouse, and any spouse of any such Relative.

"Agreement" has the meaning ascribed to such term in the caption hereto.

"Articles" has the meaning ascribed to such term in Section 1.2(b).

"Available Cash" means all cash received and held by the Company, which represents at any particular time funds legally available for Distribution to the Members after the Manager makes reasonable provision for (a) payment of all operating expenses and fees of the Company, as of such time and (b) payment of all outstanding and unpaid current obligations of the Company.

"Business Day" means any day that is not a Saturday, Sunday, legal holiday or other day on which banks are required to be closed in New York, New York.

"Capital Account" has the meaning ascribed to such term in Section 5.2.

"Capital Contribution" means, for any Member, the total amount of cash or property contributed to the Company by such Member.

"***Capital Preference***" means, with respect to each Class A Member, an amount accruing at a rate of 12% per annum, compounded daily, during the period beginning on the Effective Date through and including the date of determination, applied on the Unreturned Capital of such Class A Member as of the date of determination; *provided, however*, that if a Distribution pursuant to Section 5.4(a)(i) is made prior to the first anniversary of the Effective Date (an "***Early Distribution***"), the Capital Preference with respect to such Early Distribution shall be calculated as if the date of determination of such Early Distribution is the first anniversary of the Effective Date.

"Carrying Value" means, with respect to any asset of the Company as of any date, such asset's adjusted basis for federal income tax purposes as of such date, except as follows: (i) the initial Carrying Value of an asset contributed by a Member to the Company shall be the Fair Market Value of such asset on the date of such contribution; (ii) if the Manager determines that an adjustment is necessary or appropriate to reflect the relative economic interests of the Members as provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(f)(5), the Carrying Value of each asset shall be adjusted to equal its Fair Market Value; (iii) the date of a grant of more than a de minimis profits interest for services rendered or to be rendered to the Company by the recipient of such profits interest; and (iv) if the Carrying Value of an asset has been determined under clause (i), (ii) or (iii) above, such Carrying Value shall thereafter be adjusted by the depreciation, cost recovery and amortization attributable to such asset assuming that the adjusted basis of such asset was equal to its Carrying Value determined under the methodology described in Treasury Regulation Section 1.704-1(b)(2)(iv)(g)(3). The Carrying Value of the assets of the Company hereof shall be appropriately adjusted to reflect the Initial Capital Account Balance for each Member.

"Class A Member" means each Person holding Class A Units as reflected in Schedule I hereto (or any joinder hereto) and any successor to, or, subject to Article VII, Transferee of, any such Class A Member who shall agree in writing to be treated as a Class A Member and to be bound by the terms and to comply with the provisions of this Agreement.

"Class A Units" means the Class A Units which entitle the holder thereof to the rights provided by this Agreement with respect to Class A Units.

"Class B Member" each Person holding Class B Units as reflected in Schedule I hereto (or any joinder hereto) and any successor to, or, subject to Article VII, Transferee of, any such Class B Member who shall agree in writing to be treated as a Class B Member and to be bound by the terms and comply with the provisions of this Agreement.

"Class B Units" means the Class B Units which entitle the holder thereof to the rights provided by this Agreement with respect to Class B Units.

"Closing Fee Portion" means 2.0% times the aggregate amount of Capital Contributions made by a Class A Member (or considered to have been made by such Member).

"Code" means the Internal Revenue Code of 1986, as amended, or any successor Federal statute.

"Company" has the meaning ascribed to such term in the caption herein.

"Control" (together with the correlative meanings "Controlled by" or "under common Control with") means, with respect to any Person, the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Cure Transaction" has the meaning ascribed to such term in the definition of "Triggering Event."

"Distributions" means all distributions made by the Company to holders of the Units, whether in cash, property, dividends or distributions upon a Liquidation Event or otherwise.

"Early Distribution" has the meaning ascribed to such term in the definition of "Capital Preference".

"Effective Date" has the meaning ascribed to such term in the caption herein.

"Eminent Domain" means an action in eminent domain or condemnation pertaining to the Peachtree Loan and/or property securing same.

"Eminent Domain Proceeds" means all cash, securities and other property received by the Company (including, through a Member, Subsidiary, Affiliate or their Affiliates), less expenses incurred (including, without limitation, attorneys' fees and costs) in respect of the Property securing the Peachtree Note arising from a recovery of proceeds resulting from Eminent Domain, including, without limitation, Eminent Domain take and Eminent Domain damages and all proceeds therefrom, and all proceeds from any title policy insurance claim whatsoever pertaining to such Property, except the RE Loans Title Claim. Each Member agrees that it will and will cause any of its Subsidiaries or Affiliates to use any cash, securities and other property received by it, less expenses incurred (including, without limitation, attorneys' fees and costs) in respect of the Property securing the Peachtree Note arising from a recovery of proceeds resulting from Eminent Domain, including, without limitation, Eminent Domain take and Eminent Domain damages and all proceeds therefrom, and all proceeds from any title policy insurance claim whatsoever pertaining to such Property (other thant the RE Loans Title Claim) to repay the Portfolio Notes.

"Equity Securities" means all shares of capital stock of the Company, including, without limitation, the Units, all securities convertible into or exchangeable for ownership interests of the Company, and all options, warrants, and other rights to purchase or otherwise acquire from the Company ownership interests, including any unit appreciation or similar rights, contractual or otherwise.

"Existing Member" has the meaning ascribed to such term in the recitals herein.

"Extension Amount" means 2.0% times the aggregate amount of Capital Contributions made by each Class A Member (or considered to have been made by such Member).

"Fair Market Value" means, as to any Equity Security that is listed on any United States securities exchange or quoted in the NASDAQ System or the United States over-the-counter market, (i) the average of the closing prices of such Equity Security's sale on all United States

securities exchanges on which such Equity Security may at the time be listed, or (ii) if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or (ii) if on any day such Equity Security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, on such day, (iii) if on any day such Equity Security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the United States over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar or successor organization, in each such case averaged over a period of thirty (30) days consisting of the day as of which "Fair Market Value" is being determined and the twenty (20) consecutive Business Days prior to such day. If a determination of "Fair Market Value" is required as to any Equity Security that is not listed on any United States securities exchange or quoted in the NASDAQ System or the United States over-the-counter market, the "Fair Market Value" of such Equity Security shall be the fair market value thereof as determined in good faith by the Manager after taking into account such factors as the Manager shall deem appropriate. The "Fair Market Value" as to any other property shall be the fair market value thereof as determined in good faith by the Manager after taking into account such factors as the Manager shall deem appropriate.

"Final Adjudication" has the meaning ascribed to such term in Section 8.8(b).

"Fiscal Year" means the twelve (12) month period beginning on January 1 and ending on December 31 of each year or any 52/53 week period provided for under the Code; *provided, however,* that for 2013 the Fiscal Year shall mean the period commencing on the date hereof.

"Florida Act" means the Florida Limited Liability Company Act, § 608.401 et sec., Fla. Stat.

"***Forced Sale***" has the meaning ascribed to such term in Section 7.2(a).

"***Forced Sale Notice***" has the meaning ascribed to such term in Section 7.2(a).

"***Forced Sale Right***" has the meaning ascribed to such term in Section 7.2(a).

"Indemnitee" has the meaning ascribed to such term in Section 8.8(b).

"Initial Capital Account Balance" has the meaning ascribed to such term in Section 5.1.

"Joinder Agreement" has the meaning ascribed to such term in Section 7.1(d).

"LAS" means Lynx Asset Services, LLC.

"***Las Colinas Loans***" means the loans acquired by the Company pertaining to the Las Colinas property.

"Las Colinas Notes" means the notes given in connection with the Las Colinas Loans.

"Liquidation Event" means the occurrence or consummation of (i) any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Company and (ii) any Sale

of the Company.

"Loan Collateral" has the meaning ascribed to such term in Section 2.2(d)(A).

"Loans" has the meaning ascribed to such term in Section 2.2(d)(A).

"Manager" means Lynx Asset Services, LLC.

"Member Applicable Entities" has the meaning ascribed to such term in Section 8.3(a)(i)(A).

"Member Portfolio Company" has the meaning ascribed to such term in Section 8.3(a)(i).

"Members" means those parties listed on Schedule I hereto.

"Net Profits and Net Losses" means the net income or net loss (including capital gains and losses), respectively, of the Company determined for each Taxable Year (or other relevant period) of the Company as determined for purposes of maintaining the Member's Capital Accounts in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

"Non-Portfolio Loans" means the Southfork Landing Loan, the Tuscany Hills Loans and the Las Colinas Loans.

"Non-Portfolio Notes" means the Southfork Landing Note, the Tuscany Hills Notes and the Las Colinas Notes.

"Non-Portfolio Note Proceeds" means all cash, securities and other property received by the Company (including, through a Subsidiary) in respect of the Non-Porfolio Notes (specifically excluding any Eminent Domain Proceeds), and any proceeds thereof.

"Offer Notice" has the meaning ascribed to such term in Section 8.1(a).

"Offer Period" has the meaning ascribed to such term in Section 8.1(b).

"Organizational Documents" means, with respect to any Person, those instruments that, among other things, (i) define its existence, as filed or recorded with the applicable governmental authority, including, without limitation, articles or certificates of incorporation, organization or association, and certificates of formation or limited partnership and (ii) govern its internal affairs, including, without limitation, any bylaws, partnership, limited liability company or operating agreement, and members' agreements, in each case as amended, supplemented, and/or restated.

"Original Agreement" has the meaning ascribed to such term in the caption herein.

"Owner" has the meaning ascribed to such term in Section 7.2(a).

"Peachtree Loan" means the loans acquired by the Company pertaining to the Peachtree property.

"Peachtree Note" means the note given in connection with the Peachtree Loan.

"Person" means, and shall be construed broadly and shall include, an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Portfolio Loans" means the Peachtree Loan and the Saucepan Loan.

"Portfolio Loan Documents" has the meaning ascribed to such term in Section 2.2(e).

"Portfolio Property" has the meaning ascribed to such term in Section 2.2(e).

"Portfolio Notes" means the Peachtree Note and the Saucepan Note.

"Portfolio Note Proceeds" means all cash, securities and other property received by the Company in respect of the Porfolio Notes, and any proceeds thereof.

"Prevailing Party" means, in an action seeking (i) monetary damages, a party shall be deemed a prevailing party for purposes of this Agreement if it secures as a final judgment, a dollar amount (excluding interest) that is equal to or greater than fifty percent (50%) of the amount claimed as damages in the complaint or as a counterclaim in the answer, and, if such party fails to secure an amount equal to or greater than fifty percent (50%) of the amount claimed, then the other party shall be deemed to be the prevailing party for purposes of this Agreement; (ii) a declaratory ruling or a permanent injunction, a party shall be deemed a prevailing party for purposes of this Agreement if it successfully secures the relief sought, and, if such party is unsuccessful in securing such relief, then the other party shall be deemed to be the prevailing party; and (iii) monetary damages and a demand for a declaratory ruling or permanent injunction, such party shall be deemed to be a prevailing party for purposes of this Agreement only if it satisfies the criteria in both clauses (i) and (ii), and, if such party does not satisfy such criteria, then the other party shall be deemed to be the prevailing party; *provided, however*, if one party would be a prevailing party under one of the clauses in this definition and the other party would be a prevailing under another clause, then neither party shall be deemed a prevailing party for purposes of this Agreement.

"Proceeding" has the meaning ascribed to such term in Section 8.8(b).

"Property" means any developed or undeveloped real property securing any Portfolio Note or Non-Portfolio Note.

"Pro Rata Amount" means, with respect to any Member and as of the date of determination, the ratio of the number of Units held by such Member to the total aggregate number of all outstanding Units.

"Regulations" shall mean the final or temporary regulations promulgated from time to time under the Code or, if no final or temporary regulations with respect to a tax issue are then in effect, proposed regulations then in effect.

"Regulatory Allocations" has the meaning ascribed to such term in Section 5.3(b)(iv).

"Relative" means any former spouses, parent, grandparent, great-grandparent, child, grandchild great-grandchild or sibling (in each case, whether natural or adopted).

"RE Loans Title Claim" means all title claims pertaining to the title policy issued pertaining to the Portfolio Loans and to the Non-Portfolio Loans as assigned to the Company, now or hereafter made, and any proceeds thereof.

"ROFR Property" has the meaning ascribed to such term in Section 8.1(a).

"Sale of the Company" means (i) the Transfer (in one or a series of related transactions) of all or substantially all of the Company's assets to a Person or a group of Persons acting in concert, (ii) the Transfer (in one or a series of related transactions) of all or substantially all of the outstanding Units (whether directly or indirectly through the sale of a Member) to a Person or a group of Persons acting in concert, or (iii) the merger or consolidation of the Company with or into another Person that is not (A) an Affiliate of the Company or (B) a Member, in each case in clauses (ii) and (iii) above, under circumstances in which the holders of a majority in voting power of the outstanding Equity Securities, immediately prior to such transaction, own less than a majority in voting power of the outstanding Equity Securities, or the surviving or resulting Person immediately following such transaction.

"Saucepan Loan" means the loan acquired by the Company pertaining to the Saucepan property.

"Saucepan Note" means the note given in connection with the Saucepan Loan.

"Securities" means any form of common or preferred equity of any Person, including, without limitation, the Equity Securities (including warrants, rights, put and call options and other options relating thereto or any combination thereof), and any notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, choices in action, other property or interests commonly regarded as securities, interests in real property, whether improved or unimproved, and interests in personal property of all kinds, tangible or intangible (including cash and bank deposits).

"Securities Act" means the Securities Act of 1933, as amended, or any successor Federal statute, and the rules and regulations of the Securities and Exchange Commission thereunder, all as the same shall be in effect from time to time.

"Selling Member" has the meaning ascribed to such term in Section 8.1(a).

"Southtree Loan" means the loan acquired by the Company pertaining to the Southtree property.

"Southfork Note" means the note given in connection with the Southfork Loan.

"Subsidiary" means, with respect to any Person, any corporation, association, partnership, limited liability company or other business entity of which fifty percent (50%) or

more of the total voting power or equity interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, representatives, managers or trustees thereof is at the time owned or Controlled, directly or indirectly, by such Person.

"Tax Matters Member" has the meaning ascribed to such term in Section 5.6(d).

"Taxable Year" has the meaning ascribed to such term in Section 5.6(a).

"TEFRA Company Election" has the meaning ascribed to such term in Section 5.6(b).

"Transfer" means, any sale or any other transfer, assignment, gift, pledge, grant of a security interest in, distribution, encumbrance or other disposition whether voluntarily or involuntarily, direct or indirect, and with or without consideration.

"Transferee" means any Person to whom a Member shall Transfer Units.

"Treasury Regulations" means regulations promulgated pursuant to the Code.

"***Triggering Event***" means the failure of the Class A Member's Unreturned Capital and Unpaid Capital Preference to be paid in full by the third anniversary of the Effective Date; *provided, however*, that the Class B Member may cure such Triggering Event by paying the sum of an amount equal to the aggregate the Class A Member's Unpaid Capital Preference plus the Extension Amount to the Class A Member on or prior to the third anniversary of the Effective Date (the "***Cure Transaction***"); *provided, further*, that if the Class B Member has cured a prior Triggering Event by previously consummating the Cure Transaction, the failure of the Class A Member's Unreturned Capital and Unpaid Capital Preference to be paid in full by the Fourth Anniversary of the Effective Date shall be a Triggering Event.

"Tuscany Hills Loans" means the loans acquired by the Company pertaining to the Tuscany Hills property.

"Tuscany Hills Notes" means the notes given in connection with the Tuscany Hills Loans.

"Undertaking" has the meaning ascribed to such term in Section 8.8(b).

"Units" means, the Units authorized in Section 3.1 and shall also include any Equity Security issued in respect of or in exchange for such Units, whether by way of dividend or other distribution, split, recapitalization, merger, rollup transaction, consolidation, conversion or reorganization.

"***Unpaid Capital Preference***" means, with respect to each Class A Member on any date of determination, an amount equal to the excess, if any, of (x) the Capital Preference of such Member as of date of determination minus (y) the aggregate amount of Distributions made to such Member pursuant to Section 5.4(a)(i)(A) and any payment made by the Class B Member in consummation of the Cure Transaction with respect to the Unpaid Capital Preference (but not the Extension Amount).

Exhibit A

JOINDER AGREEMENT

By execution of this Joinder, the undersigned agrees to become a party to that certain Amended and Restated Operating Agreement dated as of April 17, 2013 of Lynx Jericho Partners, LLC among the Persons that are parties thereto. The undersigned shall have all the rights, and shall observe all the obligations, applicable to a Member thereunder.

Name: _____

Address for Notices:	with copies to:
_____	_____
_____	_____
_____	_____

Instrument#: 2013000060111, MTG BK: 5500 PG: 2940 DOCTYPE: 008 05/22/2013 at 10:51:57 AM, 1 OF 3 BALLER . SKIPPER, HORRY COUNTY, SC R STRAR OF DEEDS

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

Lynx Jericho Partners LLC
Attention: Glenn Chwatt
3835 NW Boca Raton Blvd., Suite #200
Boca Raton, FL 33431

**ASSIGNMENT OF
TRANSFER AND ASSIGNMENT (PEACHTREE) OF
COMMERCIAL MORTGAGE OF REAL PROPERTY AND SECURITY
AGREEMENT AND CORRETIVE ASSIGNMENT OF MORTGAGE**

For Value Received, the undersigned hereby grants, assigns and transfers to Lynx Jericho Partners, LLC, a Florida limited liability company, all beneficial interest under that certain Commercial Mortgage of Real Property and Security Agreement ("Commercial Mortgage") dated as of July 5, 2006, between Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, as Borrower, and R.E. Loans, LLC, a California limited liability company, as Lender recorded on July 25, 2006 in the Official Records of the County of Horry, South Carolina in Mortgage Book 4629 Page 255 and subsequently transferred and assigned by R.E. Loans, LLC to Mortgage Fund '08 LLC, pursuant to Transfer and Assignment (Peachtree) (the "Transfer and Assignment") dated effective January 4, 2008 executed by R.E. Loans, LLC, a California limited liability company, as Assignor, to Mortgage Fund '08 LLC, a Delaware limited liability company, as Assignee, recorded in the Official Records of the County of Horry County, South Carolina, in Mortgage Book 5071 Page 96 and subsequently corrected by Corrective Assignment of Mortgage dated April 26, 2011 by R.E Loans, LLC transferring and assigning all rights, title and interest recorded on July 28, 2011 in the Official Records of the County of Horry, South Carolina in Mortgage Book 5336 Page 3001 describing land therein as any other security instruments, including but not limited to those described on **Schedule I** attached hereto, together with all the rights, powers and privileges conferred there under. Together with the money due and to become due thereon with interest and all rights accrued or to accrue under said Commercial Mortgage.

Dated as of April 17, 2013

MORTGAGE FUND '08 LIQUIDATING TRUST

By: _____, Trustee
Susan L. Uecker,
Trustee

MF08/CBRENoteSale/JerichoFinalSale/Assignment-PeachtreePlantation

STAIE OF California
COUNTY OF San Francisco
BEFORE ME, the undersigned Notary Public, duly authorized in the County and State aforesaid, personally appeared Susan L. Uecker as Trustee of Mortgage Fund '08 Liquidating Trust, who is personally known by me, or who has produced CA DL as identification, who in my presence executed the foregoing instrument and who took an oath.

Witness my hand and official seal in the County and State last aforesaid this 17 day of April, 2013.

Notary Signature
Andrew F. Albright
Printed Notary Signature

ANDREW F. ALBRIGHT
COMM. #1966230
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Feb. 7, 2016

As witnessed by:

Witness #1

Witness #2

MF08/CBRENoteSale/JerichoFinalSale/Assignment-PeachtreePlantation

Instrument#: 20130000060111, MTG BK: 5500 PG: 2942 DOCTYPE: 008 05/22/2013 at 10:51:57 AM, 3 OF 3 BAILER, SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

SCHEDULE I
Peachtree Plantation

of North Myrtle Beach, LLC ("Peachtree Properties LLC

Property	Description	Parties	Date	Recorded Date	Notes
Peachtree	Note Secured by Mortgage	To RE LOANS from Peachtree Properties, LLC	7/5/2006		Note total: $18,530,000
Peachtree	Intercreditor Agreement	RE LOANS, LLC (Sr) and Jericho State Capital Corp of FL (Jr)	7/5/2006		
Peachtree	Mortgage	To RE LOANS from Peachtree Properties, LLC		7/5/2006	No document - Record of listing of Mortgage Book 4629 Page 255 Inst#2006000058962, Horry County, SC Registrar of Deeds
Peachtree	UCC 1 Filing	To RE LOANS from Peachtree Properties, LLC		7/25/2006	No document - Record of listing of Inst#2006000058963, Horry County, SC Registrar of Deeds
Peachtree	Collateral Assignment of Mortgage and Loan Documents	To Wells Fargo Foothill,LLC from RE LOANS LLC	7/17/2007	8/15/2007	Mtg Bk 4953 Pg 2531 Inst #2007000031578 Horry County, SC Registrar of Deeds
	Allonge	To Wells Fargo Foothill,LLC from RE LOANS LLC	7/17/2007		
Peachtree	Commercial Mortgage of Real Property and Security Agreement	To RE LOANS from Peachtree Properties of Myrtle Beach, LLC	7/5/2006	7/25/2006	No document - Record of listing of Mtg Bk 4629 Pg 255 Inst#Unknown Horry County, SC Registrar of Deeds
Peachtree	Note Purchase Agreement	To Mortgage Fund '08 LLC from RE LOANS, LLC	1/4/2008		
Peachtree	Allonge	To Mortgage Fund '08 LLC from RE LOANS, LLC	5/9/2008		Exhibit A to Note Purchase Agreement
Peachtree	Transfer and Assignment	To Mortgage Fund '08 LLC from RE LOANS, LLC	5/9/2008		Exhibit B to Note Purchase Agreement Record of listing of Mtg Book 5071 Page 96 Horry County, SC Registrar of Deeds
Peachtree	Deed of Master in Equity	Jericho State Capital Corp of FL	2/25/2008	2/26/2008	Record of listing of Inst#2008000026096, Horry County, SC Registrar of Deeds
Peachtree	Re-Assignment of Mortgage and Loan Documents	To RE LOANS, LLC from Wells Fargo Foothill,LLC		12/11/2008	No document - Record of listing of Inst#2008000158761, Horry County, SC Registrar of Deeds
Peachtree	Corrective Assignment of Mortgage	To Mortgage Fund '09 LLC from RE LOANS, LLC		7/13/2011	No document - Record of listing of Mtg Bk 5336 Pg 3001 Inst#2011000074026 Horry County, SC Registrar of Deeds

Additional Documents:	
UCC Financing Statement	7/25/2006
Gunn Law Offices Cover Letter	7/28/2006
Chicago Title Insurance Policy #7210740-73317401 Schedule A	7/15/2007
Certificate of Liability Insurance	10/30/2007
Greenberg Traurig Cover Letter	5/13/2008
CB&T Financial Services Invoice	9/4/2007
CB&T Financial Services Invoice	9/19/2007
Rogers Townsend & Thomas Cover Letter	8/17/2011
Purchasers Closing Statement (Seller Ludlam)	No Date

M:\08\CBRENoteSale\JerichoFinalSale\Assignment-PeachtreePlantation

DISBURSEMENT SCHEDULE
SCDOT V. Jericho State Capital Corp of FL
Our File No. 027818-87773

December ___, 2014

TOTAL RECEIPTS TO BE DISBURSED:
Amount of Jury Verdict with interest: **$2,928,953.42**

LESS THE FOLLOWING AMOUNTS:

Bellamy Law Firm Fee Calculation: $2,928,953.42 (per agreement with client) (1/3) =	$976,317.81
Outstanding Costs Advanced:	
•Jayroe Appraisal Co. Inv.	$ 4,500.00
•Venture Engineering Inv.	$ 5,400.00
•Melissa Decker (transcripts)	$ 533.00
•Bellamy Law Firm (kinkos/fedex)	$ 465.29
TOTAL FEES AND COSTS:	**$987,216.10**

Amount due Client
BALANCE: **$1,941,737.32**

Read and approved this 5th day of December, 2014.

Jericho State Capital Corporation of Florida

By: _____, President
Glenn M. Chwatt, President

Bellamy Law Firm has offered no tax advice regarding the funds disbursed hereto. It is recommended that the undersigned consult a tax professional in these regards.

FedPayments Manager[SM] -- Funds

Environment:	Prod	ABA:	[redacted]
Mode:	Prod	Service Unit:	[redacted]
Cycle Date:	12/11/2014	System Date/Time:	12/11/2014 13:09:12

Status:	Completed	Message Type:	Standard
Create Time:	12/11/2014 12:59:27	Test/Prod:	Prod
IMAD:	[redacted]		
OMAD:	[redacted]		
Template Name:	BELLAMY LAW FIRM		

BASIC INFORMATION

Sender ABA {3100}:	[redacted] CRESCOM BANK
Receiver ABA {3400}:	[redacted] TD BANK NA
Amount {2000}:	1,941,737.32
Type Code {1510}:	1000 - Transfer of Funds
Business Function {3600}:	CTR - Customer Transfer
Sender Reference {3320}:	6

ORIGINATOR INFORMATION

Originator {5000}

ID Code:	D - DDA Account Number
Identifier:	[redacted]
Name:	BELLAMY LAW FIRM
Address:	1000 29TH AVENUE NORTH MYRTLE BEACH SC 29577 843-448-2400

BENEFICIARY INFORMATION

Beneficiary {4200}

ID Code:	D - DDA Account Number
Identifier:	[redacted]
Name:	LYNX ASSET SERVICES LLC
Address:	30 FRENEAU AVENUE MATAWAN NJ 07747

Beneficiary FI {4100}

ID Code:	F - Fed Routing Number
Identifier:	[redacted]
Name:	TD BANK NA
Address:	3024 RT 516 OLD BRIDGE NJ 08857

CHECK CONTAINS A MULTI-COLORED PANTOGRAPH AND MICROPRINTING. BACK HAS A WATERMARK. HOLD AT AN ANGLE TO VIEW. VOID IF NOT PRESENT.

PURSUANT TO WARRANT OF
RICHARD ECKSTROM
COMPTROLLER GENERAL

STATE OF SOUTH CAROLINA

Office of State Treasurer

CURTIS M. LOFTIS, JR.
STATE TREASURER

NO. 141329924

11-24
1210

Date
12/03/2014

Document NBR: 3405674652

Agency: U150 - INFRASTRUCTURE BANK BOARD

Phone: 803-737-0094

TWO MILLION NINE HUNDRED TWENTY-EIGHT THOUSAND NINE HUNDRED FIFTY-THREE USD and 42/100

2,928,953.42

PAY--> $*****2,928,953.42*

Pay To: BELLAMY RUTENBERG COPELAND EPPS GRAVLEY
TRUST ACCOUNT FOR JERICHO STATE CAPITAL CORPORATION OF FLORIDA

CONTINGENCIES ACCOUNT
WELLS FARGO BANK, NA

Curtis M. Loftis, Jr.
CURTIS M. LOFTIS, JR. STATE TREASURER

⑈141329924⑈ ⑆121000248⑆ 2003233043787⑈

CHICAGO TITLE INSURANCE COMPANY
16969 VON KARMAN AVENUE, SUITE 150, IRVINE, CA 92606 (949) 263-6800 FAX (949) 263-0571

December 3, 2009

Nicole S. Dunn, Esq.
Assistant Vice President
Claims Counsel

Via U.S. Mail and Email (grc@fcohenlaw.com)

Gregory R. Cohen
Cohen, Norris, Scherer, Weinberger & Wolmer
712 U.S. Highway One Suite 400
P.O. Box 13146
N. Palm Beach, Florida 33408-7146

RE: Chicago Title Insurance Company Claim Number 322537
Chicago Title Insurance Company Claim Name: Jericho State Capital Corp.
Chicago Title Insurance Company Policy Number: 7210740-72338570
Property Address: Unknown

Dear Mr. Cohen:

Chicago Title Insurance Company ("the Company") is in receipt of the claim tendered pursuant to the terms and conditions of the Loan Policy of Title Insurance issued by the Company on July 25, 2006 with a policy limit of $ 4,263,888.00 insuring a mortgage in favor of Jericho State Capital Corp. of Florida from Peachtree Properties of North Myrtle Beach, LLC recorded on July 25, 2006 in Deed Book 4629, Page 277 in the Land Records of Horry County, South Carolina.

You on behalf of your client, Jericho State Capital Corp. of Florida ("Jericho"), demanded that full policy limits be paid to Jericho due to a taking/condemnation of the Property in question pursuant to the Ordinance recorded in Book 2497, Page 0986 which Ordinance was not reflected as a title exception in the Loan Policy. If my understanding of this claim is incorrect, please contact me immediately.

The Company has had an opportunity to investigate this claim and has reached the following coverage analysis. The investigation included a review of the recorded mortgage, survey, Ordinance, as well as the above-referenced title policy issued.

The alleged defect on title (i.e. taking/condemnation of the Property in question pursuant to an Ordinance) relates to a matter that is an exception in the policy. The ALTA Loan Policy Exclusions From Coverage expressly states:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, cost, attorneys' fees or expenses which arise by reason of: . . .

1. (a) any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or change in the dimensions or area of the land or any parcel of which the land is or was a part of; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

Based on the foregoing, the Company denies any duty to defend or indemnify under the policy. There is no evidence in the public records of a notice of the enforcement of the ordinance or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. Further, you have not provided any information requested relative to proof of loss. However, if you are aware of any facts or legal theories that might alter the Company's conclusion, please provide me with that information at your earliest convenience.

Although the reasons set forth above are sufficient to deny your claim, they are not intended to be exclusive. The Company reserves the right to establish additional grounds should further review of the matter become necessary.

Sincerely,

CHICAGO TITLE INSURANCE COMPANY

Nicole S. Dunn
Assistant Vice President
Claims Attorney

CHICAGO TITLE INSURANCE COMPANY

January 30, 2015

Fred B. Newby, Esquire
Newby, Sartip, Masel & Casper, L.L.C.
4593 Oleander Drive
Myrtle Beach, SC 29577

Re: Claim No. 465003
Lynx Jericho Partners, L.L.C., successor assignee of mortgage from Peachtree Properties of North Myrtle Beach, L.L.C. to RE Loans, L.L.C. (the "Insured")
CTIC Loan Policy No. 7210740-73317401 (the "Policy")

Dear Mr. Newby:

On July 18, 2013, in response to the claim you submitted on behalf of the Insured, I wrote to you requesting that the Insured submit certain documents to me to assist me in completing my investigation of the claim. Among the documents I requested were the loan file, a copy of the loan payment history, an itemized calculation of the alleged loss (including an explanation of how it was calculated), a copy of the pleadings from the foreclosure of the property at issue, a copy of the pleadings from any eminent domain proceeding regarding all or a part of the property at issue, and any document related to any claim filed with mortgage insurance. I also asked for documentation regarding the assignment of the loan to the Insured.

In December of last year, you submitted to me a disc containing copies of documents produced in the lawsuit brought by Jericho State Capital Corp. (a sister company that originated a second mortgage on the same property) against Chicago Title Insurance Company ("CTIC" or the "Company"), as well as certain loan documents from the Insured's loan file and certain bankruptcy pleadings from the Insured's predecessor's bankruptcy. You all included copies of the assignment of the loan into the Insured.

Although the documents produced in the Jericho State Capital Corp. lawsuit against CTIC contain a few of the documents that might be found in the Insured's loan file, they do not constitute the entirety of the Insured's loan file. In addition, you have provided no documents indicating that the Insured has completed a foreclosure of its mortgage on the subject property or any pleadings from any eminent domain proceedings. You have also not included an itemization and explanation of the Insured's alleged loss under the Policy or a loan payment history for the Insured's loan. Finally, you have not included any information regarding a claim against any mortgage insurance policy. You have provided no explanation as to why these documents were

601 Riverside Avenue, VG, Jacksonville, FL 32204 P: 904.701-6145 email: charles.mccall@fnf.com

not submitted to the Company (or why it took a year and a half to provide a substantially incomplete document production to the Company).

Accordingly, based on the Insured's failure to provide the documents I had requested in connection with my investigation of the claim, my investigation is limited to only those documents that the Insured has submitted to the Company in support of its claim.

Factual Background

In your claim letter, you assert that prior to issuance of the Policy, Horry County adopted an ordinance which showed the route of a proposed road through the property encumbered by the Insured's mortgage. Although the ordinance was recorded in the public records of Horry County, South Carolina, it was not excepted from the Policy. You assert in your claim letter that the road will cause a "considerable monetary loss" to your client, the Insured (although the extent of that loss is not detailed in your letter and the request for documents regarding the calculation of that loss, as noted above, were not provided by the Insured).

The Insured acquired the RE Mortgage loan on April 17, 2013. At the time of the acquisition, the suit by its affiliate, Jericho State Capital Corp., against the Company had already begun (the claim by Jericho State Capital Corp. under its title insurance policy having been made on February 26, 2009). Thus, the Insured had actual knowledge through its principals (who were also principals of Jericho State Capital Corp.) of the alleged title defect at the time it acquired the insured mortgage.

Importantly, the ordinance in question set forth the proposed route of the Carolina Bays Parkway, but did not purport to condemn any property for the Parkway. At the time that the Policy was issued, the title to the land subject to the Insured's mortgage was exactly as detailed in the Policy. Condemnation proceedings were not begun until several years after the Insured's mortgage was made.

Although you have not provided, as requested, copies of the condemnation proceedings, I understand that a jury in the condemnation proceedings awarded the Insured $2,100,000 as compensation for the taking of the land for the road.

The Policy

The Policy was written on the 1992 ALTA Loan Policy form and contains the following provisions:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS

FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

2. Any defect in or lien or encumbrance on the title;

3. Unmarketability of the title;

4. Lack of a right of access to and from the land;

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;

6. The priority of any lien or encumbrance over the lien of the insured mortgage;

7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:

(a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or

(b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;

8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect

in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions

and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

Analysis

The Policy insures against any defect or lien or encumbrance on the title. The ordinance is not, by its own terms, a defect, lien or encumbrance on title. The ordinance merely sets forth the proposed route (as envisioned in 2002) of an extension for the Carolina Bays Parkway. Horry County was not purporting through the ordinance to assert ownership of (or any claim of ownership of) the property along the proposed route, nor was it asserting a lien upon such property. A title insurer has no duty to disclose matters which do not, in its judgment, constitute liens or encumbrances to title. See, e.g., *Luboff v. Security Title & Guaranty Co.*, 260 N.Y.S.2d 279 (Sup.Ct. 1965); *Sala v. Security Title Ins. & Guarantee Co.*, 81 P.2d 578 (Calif. 1938); *Peterson v. Title & Trust Co. of Fla.*, 431 So.2d 311 (Fla.App. 1983).

Moreover, as the ordinance is not indexed to the property owner or the property itself, it is not designed or intended to give constructive notice. Therefore, it is not a public record as that term is defined in the Policy (Condition 1(f)). The recording of the ordinance therefore does not fall within the exception to Exclusion 2.

At most, the ordinance is notice that the county may, in the future, bring a condemnation action. Such condemnation actions are excluded from coverage under Exclusion 2 of the Policy. The condemnation action in the instant case (which was commenced after issuance of the Policy, and thus is also excluded as a post-Policy event under Exclusion 3(d)) has already resulted in a payment to the Insured of the amount determined to be the fair market value of the taking. Therefore, the Insured has already been compensated for the diminution in value of the property through the condemnation process. Thus, even if Exclusion 2 were not applicable, the Insured has already obtained the diminution in value of the property and is owed nothing further under Condition 7(a)(iii) of the Policy.

To the extent that the document production by the Insured is intended to represent the contents of Insured's loan file, the document production contains a copy of a version of the purchase and sale agreement that clearly lists the ordinance in a schedule thereto. Since the ordinance does not constitute a public record, Exclusion 3(b) would operate to exclude the claim.

To the extent that the document production by the Insured is intended to represent the contents of Insured's loan file, the document production contains a copy of a version of a closing checklist dated July 21, 2006 that omits a previous checklist item regarding the Carolina Bays Parkway. Again, this supports the application of Exclusion 3(b) to exclude the claim.

As the Insured had knowledge of the claim at the time it purchased the mortgage, such claim is subject to exclusion 3(a) as created, suffered, assumed, or agreed to by the Insured. In such event, coverage is likewise excluded for the claim.

Conclusion

For the foregoing reasons and based on the documents produced by the Insured to the Company to date, CTIC denies the claims referenced above based on the information currently available to CTIC. If you have additional information that you believe CTIC should consider in connection with this matter that you have not previously provided, please submit that information to me. If I do not hear from you within 30 days, CTIC will close this claim file.

Nothing contained in this letter is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of CTIC's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Very truly yours,

Charles S. McCall
National Major Claims Counsel

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

CASE NO. 2013-CP-26-5530

Jericho State Capital Corp. of Florida,

Plaintiff,

- vs.-

Chicago Title Insurance Company,

Defendant.
_____/

301 NE 51st Street
Suite 1240
Boca Raton, Florida
10:03 a.m. - 2:05 p.m.
Thursday, April 3, 2014

- - - - -

DEPOSITION

OF

GLENN CHWATT

- - - - -

Job No. CS1832126

APPEARANCES

On Behalf of the Plaintiff:
NEWBY SARTIP MASEL & CASPER, LLC
BY: FRED B. NEWBY, ESQ.
4593 Oleander Drive
Post Office Box 808
Myrtle Beach, South Carolina 29577
(843) 449-9417

On Behalf of the Defendant:

CALLISON TIGHE
BY: DEMETRI "JIM" K. KOUTRAKOS, ESQ.
1812 Lincoln Street
Columbia, South Carolina 29201
(803) 404-6900

ALSO PRESENT:

Charles S. McCall
Scott Svirsky

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- - -

EXHIBITS

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Deposition taken before Elizabeth Schiller, Shorthand Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

- - -

Thereupon,

GLENN CHWATT

having been first duly sworn or affirmed, was examined as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. KOUTRAKOS:

Q. Mr. Chwatt, am I saying it correctly?

A. Yes.

Q. Good morning. My name is Jim Koutrakos. I represent Chicago Title Insurance Company. Here today with me is Charles McCall from Chicago Title. Today I'm going to be taking the corporate deposition of Jericho State Capital Corporation of Florida.

Can you please state your full name for the record.

A. Glenn Mark Chwatt.

Q. Have you been deposed before?

A. Yes, I have.

Q. Okay. Well, I'm going to ask you a series of questions today. If you don't understand anything I

ask you -- and you probably will receive a question that you don't know what I'm talking about -- ask me to rephrase it, repeat it, or just tell me you don't understand. I'll be more than happy to try to come up with a better question. Okay?

A. Absolutely.

Q. Is that fair?

A. Absolutely.

Q. If you answer a question, when we read the transcript later, I'm going to assume that you understood the question. Is that fair as well?

A. Sure.

Q. The court reporter is taking everything we say down today, so if you say uh-huh, she is going to type uh-huh. So please, say yes or no so we can understand what you meant later on.

In addition, I have a bad habit, because of my heritage, of talking over people, so I'll try not to talk over you if you don't talk over me. Is that fair?

A. Yes.

Q. Are you on any medications that may affect your memory or ability to tell the truth today?

A. No.

Q. Are you capable of giving truthful testimony today?

A. Yes.

Q. If you need any breaks throughout the course of this deposition, please, let me know. I'll be more than happy to take a break. Okay?

A. Yes.

Q. Under the South Carolina Rules of Civil Procedure, I'm required to instruct you or inform you that if you have any questions, need any definitions or clarifications of anything I ask you that you are to ask me as opposed to your attorney. Do you understand that?

A. Yes.

Q. Also, I'm required, I believe, to instruct you that to the extent we take a break in the deposition, that you shouldn't discuss the substance or the proposed substance of your testimony or your deposition with anybody else, including your attorney, because I can ask you about that. Do you understand that?

A. Yes. You can ask me about what?

Q. You cannot -- and your lawyer can explain it to you further, but after the deposition starts, if we take a break, you can't --

A. Oh, not talk to him?

Q. Right.

A. Or you can ask me if I spoke to him. Okay. I understand. I thought you said during a break you were

going to talk to me. I couldn't understand that.

Q. I'm required to advise you that you should most likely not talk about your deposition with anybody because I'm allowed to ask about that, even if it's with your attorney. Do you understand?

A. Absolutely.

Q. Can you give me your full name, please.

A. Glenn Mark Chwatt.

Q. Where do you reside?

A. My address?

Q. Yes.

A. 6508 Landings Court, Boca Raton, Florida 33496.

Q. And where do you work?

A. I work at Jericho State Capital Corp. of Florida and Jericho All-Weather Opportunity Fund.

Q. Do both of those companies have the same office?

A. Yes.

Q. And where is that office located?

A. 3835 NW Boca Raton Boulevard, Boca Raton, Florida.

Q. How long have you been involved with Jericho State Capital?

A. Corp.?

Q. Well, let me ask you: Have both entities been in existence for around the same time?

A. No.

Q. Which company was in existence first?

A. There is a company called Jericho State Capital Corp., which was founded in 1972. Jericho Capital of Florida was founded in 1989, I believe; 1990, something around there.

Q. Which one -- how about the All-Weather?

A. That was created, I believe, in 2005. 2004/2005.

Q. Are you the founder of Jericho State Capital Corp. of Florida?

A. No.

Q. Who is the most senior person at Jericho?

A. I am at this point.

Q. How long have you been at Jericho, either Jericho or one of the Jericho-related entities?

A. Since I graduated college in 1981.

Q. Tell me, where did you graduate from college?

A. University of Miami.

Q. What year did you graduate? You graduated in '81. What did you study?

A. Finance and prelaw.

Q. Do you have any education subsequent to University of Miami? Did you go to law school, medical school or anything like that?

A. I was enrolled in law school. Didn't go to law school.

Q. You were enrolled, but you never started classes?

A. Correct.

Q. Smart man.

MR. NEWBY: Really.

BY MR. KOUTRAKOS:

Q. So basically, after graduating from University of Miami, you have been at Jericho or Jericho-related entities since then?

A. Yes.

Q. From 1981 to today?

A. Yes.

Q. That makes life a lot easier. Great.

When you first started at Jericho, what did you do?

A. Basically, everything I was instructed to do. I did a lot of, as we call it, "the grunt work" behind the scenes; analysis, traveling to different properties. That's basically it.

Q. Now I'm going to have some definition

problems here because I'm going to ask you about Jericho.

To me, you mentioned three entities: Jericho State Capital Corp. of Florida, which is the plaintiff in this case.

A. Correct.

Q. You mentioned some similar-named entities.

A. Jericho State Capital Corp.

Q. And then the All-Weather Opportunity Fund.

A. Can I make it simple?

Q. Yes, please.

A. Why don't just call The Fund JAWOF, J-A-W-O-F. That's what we call it. It's Jericho All-Weather Opportunity Fund so we'll make it simple.

Q. The Fund, JAWOF.

A. Or you can just call it "The Fund."

Q. Exactly. The Fund, okay.

A. If you want to call Jericho Capital of Florida, you can call it Jericho of Florida. Then it's just Jericho and make it simple that way.

Q. Okay. So Jericho Florida, the plaintiff in this case, what is its business model? What does it do?

A. It's a real estate lender.

Q. And that's been in existence since '89?

A. Correct. Around that, yes.

Q. And it's a lender to commercial properties?

Is it exclusive to commercial properties?

A. Pretty much, yes.

Q. Or residential development -- anything other than residential loans?

A. Correct.

Q. And tell me about The Fund. What does The Fund do?

A. Same thing.

Q. Same thing. Okay. And then the Jericho Corp., does that do the same thing?

A. Yes.

Q. So all three entities have a similar function; that is, loaning money for commercial purposes, I guess.

A. Real estate-related property, real estate-related commercial.

Q. Okay. Have you had any specific training in real estate other than on-the-job training? I mean, do you have any education, classes --

A. Mortgage broker's license. I have my -- I had securities licenses. I had a Series 22, I believe, also, in addition to my other securities licenses, which was private placements because we did a lot of real estate financing in private placements.

Q. Any other licenses besides those?

A. I think I used to have -- I had my security licenses, which expired. I, I believe I had an insurance license early on in my career, which I never continued with, and that's it.

Q. Okay. Have you ever been disciplined by any licensing board?

A. No.

Q. Investigated?

A. No.

Q. What is your position at the plaintiff, Jericho Florida?

A. I'm the president.

Q. Okay. And Mr. Scott Svirsky --

A. Yes.

Q. -- what is his role?

A. He has none.

Q. He is not employed by Jericho State Capital of Florida?

A. No.

Q. Was he at one time employed by Jericho State Capital of Florida?

A. No.

Q. Where is he employed?

A. He is one of the general partners of The Fund, JAWOF. You don't mind if -- can I call it "The

Fund" for simplicity?

Q. Whatever you want to call it.

A. It makes it simpler.

Q. The Fund. Okay. How many employees does Jericho have?

A. Jericho?

Q. When I refer -- unless I distinguish it somehow, when I refer to Jericho, I'm referring to the plaintiff in this case, so Jericho State Capital Corp. of Florida.

A. Three.

Q. Who are the employees?

A. Richard Chwatt and Jamie Friedman.

Q. Okay. And you're the third?

A. Yes. I'm sorry. Yes.

Q. And is Richard related to you?

A. My father.

Q. Did he start Jericho?

A. We, we started together, yes.

Q. In '89. Okay. Who is the founder of the other Jericho entities, the Jericho Corp. entities at this time?

A. Richard Chwatt.

Q. The three Jericho entities are basically a family business. Is that fair to say?

A. Yes.
Q. What does Richard do at the company today?
A. Nothing.
Q. How about what does Jamie Friedman do?
A. Really nothing at this point. She is still an employee, but she's not actively involved.
Q. Was she administrative?
A. Yes.
Q. Back at the time of the transaction involved in this case, which was 2006, how many employees did Jericho have?
A. Seven.
Q. Other than -- if you were to reduce or subtract the administrative help, how many employees after that?
A. Three. In addition to what I gave you?
Q. No. I'm saying around 2006, subtracting administrative help, how many employees did you have?
A. Four.
Q. And it was Richard, you, Glenn, and who were the other two?
A. Monica Goldstein.
Q. And what did she do?
A. She was comptroller.
Q. Who was the fourth?

A. It would be a gentleman named Jerry Kaniak, who was our accountant who also worked with the company who passed away.

Q. Does Jericho, the plaintiff in this case, does it keep track of the size of its loan portfolio?

A. Yes.

Q. Do you know or recall what it would have been in 2006?

A. No.

Q. Okay. Do you have -- is it 5 million, 100 million?

A. I believe 20 million, around.

Q. Okay. How about today? What is the loan portfolio?

A. Twelve.

Q. From today's perspective, since Jericho loans money on real estate projects, correct?

A. Correct.

Q. How many projects would consist of that $12 million loan portfolio?

A. I guess about six.

Q. And the property involved in this case is one of them?

A. That's correct.

Q. Where are the other five located?

A. One is in North Carolina. One is in Destin, Florida. One is Miami. One is in Hutchinson Island in Florida. One is in Indiana. I think that's it.

Q. Including the one involved in this case, that would be six?

A. Six or seven.

Q. The one in North Carolina, that's not related to this transaction; is it?

A. You have to define "related."

Q. The borrowers were related?

A. Yes.

Q. Is that the Saucepan project?

A. Yes.

Q. I'll ask you about that later. I need to know what that is about.

Of the ones that you listed -- there were six properties. The North Carolina one was a nonperforming loan.

It went into default; is that correct?

A. Yes.

Q. The South Carolina one involving Peachtree Properties of North Myrtle Beach, that was obviously in default and you all owned the property, correct?

A. Correct.

Q. How about the one in Indiana?
A. We own that property.
Q. After default?
A. After default.
Q. How about the one in Hutchinson Island, Florida?
A. That's -- okay. I got to back up a moment because the owner of title in the South Carolina property, the one we're talking about today, is Jericho State Capital Corp. of Florida.
Q. Correct.
A. It has a participant. The Fund is a participant. The other deals that, that you referenced, Jericho State Capital Corp. of Florida is not the lead. It is a participant.
Q. Fair enough. Fair enough.
A. The titles are in The Fund's name.
Q. Okay. Tell me about the Hutchinson Island, Florida property. Is it a performing loan?
A. It is not performing.
Q. Have you all foreclosed?
A. The Fund foreclosed.
Q. The Fund foreclosed?
A. Yes.
Q. How about the Miami property? Is that a

performing loan?

A. It's no longer a loan. It's a development project. It's a joint venture right now.

Q. Did you take over the property from the borrower?

A. I apologize. I want to be specific.

Q. I want to be specific, too.

A. The Fund took the property over. You said me. It's not me. The Fund.

Q. How about the Destin property, was that a performing loan?

A. No. The Fund took that back.

Q. So basically, today, either one of the three entities that you mentioned to me today is managing property as a result of defaulted loans; is that correct?

A. That's correct.

Q. When was the last time either of these entities made a commercial loan?

A. I would guess -- '09?

Q. Is it fair to say that today, Jericho, either of the three entities, is out of the business of making loans?

A. No.

Q. It just has not made a loan since 2009?

A. Correct.

Q. And most of its time is spent on trying to realize on the assets from defaulted loans?

A. Okay. Yes.

Q. In general, Jericho, when it was making loans, was it a secondary financier, or did it also provide first mortgage lending?

A. It was first and seconds.

Q. Tell me the relationship that Jericho would have had with R.E. Loans, LLC, if any?

A. It had none.

Q. The only relationship would have been in this particular transaction? It held a first, and you all held the second?

A. This transaction and Saucepan Bay.

Q. Both transactions. All right. Tell me about an entity called Lynx Jericho Partners, LLC.

A. Lynx is a lending entity at this time that acquired some first mortgages.

Q. Okay. How many first mortgages did it acquire?

A. It acquired Saucepan Bay. For this -- Saucepan Bay and Peachtree. That's what it went to acquire.

Q. So it acquired two separate mortgages?

A. It acquired -- well, the way it was -- it

was a bankruptcy sale, so it acquired several mortgages, but the ones that were germane to this conversation are Saucepan Bay and Peachtree. That's what was eventually done.

Q. How much did Jericho buy the Peachtree mortgage for? Let me back up.

The Peachtree mortgage, this would have been the first mortgage that was given by the developer Peachtree to R.E. Loans, LLC; correct?

A. Correct.

Q. And today, Lynx Jericho Partners, LLC is a holder of that note and mortgage?

A. Correct.

Q. And it would have purchased it after R.E. Loans filed for bankruptcy; is that correct?

A. I don't believe that's the case.

Q. It purchased it from an entity who was liquidating the assets of R.E. Loans, LLC; is that right?

A. No.

Q. Okay. Explain to me what happened.

A. It purchased it from a liquidating trustee.

Q. How much did Lynx Jericho Partners, LLC purchase the Jericho mortgage for?

A. Two and a half million dollars.

Q. How much did it purchase the Saucepan

mortgage for?

A. We can't split them up that way because it was one transaction for two and a half million dollars.

Q. It was a package deal?

A. Yes.

Q. You paid 2.5 for two first mortgages?

A. Correct.

Q. How much was the first mortgage on the Saucepan property?

Let me back up. I don't know much about the Saucepan property. I see it referenced in some of the documents, but perhaps it doesn't concern me or my client that much.

The Saucepan, you all had a second mortgage on that as well?

A. Yes.

Q. What was the amount of the second mortgage on that property?

A. Eight million.

MR. NEWBY: What was that?

THE WITNESS: Eight million.

BY MR. KOUTRAKOS:

Q. R.E. Loans would have had a first?

A. No.

Q. Who would have the first mortgage?

A. The first mortgage was held by a group called MF08, I believe.

Q. How much was that first mortgage?

A. Twelve million, eight hundred and some-odd-thousand dollars.

Q. Was there a loan originated by the same people, the same folks involved with the R.E. Loans first mortgage on the Peachtree property?

A. You have to define "originate." I'm sorry.

Q. My understanding is that after R.E. Loans filed for bankruptcy, some of its mortgagees were assigned to an entity called MF08. Is that your understanding?

A. I don't recall. I don't know how that worked. I had no affiliations with R.E. Loans or any of that group.

Q. Fair enough. On the Saucepan project, MF08 had a $12,800,000 loan, first mortgage lien. You all had a second mortgage lien for $8 million.

A. Correct.

Q. You purchased the MF08 first mortgage on Saucepan and the R.E. Loans' first mortgage on Peachtree for a total of $2.5 million.

When I say, "you," I mean Lynx Jericho Partners, LLC.

A. That's what they paid for the note, correct, but additional funding was required going forward.

Q. Can you explain that to me?

A. Sure. There is insurance, there is taxes, there is engineering and all the work that is going to be necessary. There is a forward commitment of, we don't even know how much, to go forward at this point.

Q. Understood. Understood. Who are the members of Lynx Jericho Partners, LLC?

A. The individual members? There are no individual members.

Q. Who are the entities that are members of Lynx Jericho Partners, LLC?

A. Lynx Partners and another entity called SRKD Sam Advisors, I believe.

Q. S --

A. RKD. The next word is S-A-M, Advisors.

Q. Who are the members of Lynx Partners?

A. Those are the two. Lynx and SRKD.

Q. Well, there is Lynx Jericho Partners, LLC is the limited liability company, correct?

A. Correct.

Q. And you identified two members. One was Lynx Partners.

A. Correct.
Q. Is that an LLC?
A. I don't know.
Q. Is it a corporation?
A. I don't know.
Q. Who are the partners in Lynx Partners?
A. Who are the individuals?
Q. Yes.
A. I don't even know. I could guess. It's a family called Maschler. Maschler, M-A-S-C-H-L-E-R. I'm not sure if -- I don't know if Michael is.
Q. How about SRKD Sam Advisors?
A. Who are the --
Q. Who are the members of that company?
A. The entities are SRKD Management -- the individuals?
Q. I'm trying to find out everybody who is somehow associated with Lynx Jericho Partners, and I'm trying to do it as easily as possible.
A. Sure.
Q. You identified the Maschler family members as possibly being associated with --
A. I think Mike McCardy might be -- I'm not sure if he is or not. His name is Mike McCardy. He may be involved on the Lynx side.

Q. How about SRKD Sam Advisors? Is that a limited liability company?

A. Yes.

Q. And from your knowledge, can you tell me who the members of that company are?

A. Glenn Chwatt, I'm involved, and Scott Svirsky.

Q. So there are two members of Links Jericho Partners, LLC; correct?

A. Yes.

Q. What interest -- what membership interest does SRKD Sam Advisors have in the LLC?

A. I don't remember exactly how it is. It's an advisor to Lynx.

Q. I understand that, but it's a member. I'm sure there is an operating agreement that references that SRKD Sam Advisors is a member of Lynx Jericho Partners, LLC, correct?

A. Correct.

Q. What percent ownership interest in the LLC does Lynx Jericho Partners, LLC have?

A. I'm not sure. I don't recall exactly what it is.

Q. Do you have those documents?

A. With me?

Q. Yes.
A. No.
Q. Can you provide those documents to your lawyer to provide to me?
A. Sure.
Q. Who has signing authority on behalf of Lynx Jericho Partners, LLC?
A. I believe Mike McCardy. I believe -- I may have when we went out to, when I went out to San Francisco. I believe for limited transactions I do.
Q. When you went out to San Francisco, can you explain to me what you did in San Francisco?
A. I reacquired the notes, the Saucepan Bay and Peachtree notes.
Q. Who did you meet with? Did you have a negotiation with anybody?
A. No, not really, just the bankruptcy attorney, trustee.
Q. So you dealt with the bankruptcy trustee and his attorney?
A. Her.
Q. Her attorney?
A. Yes.
Q. Okay.
(Defendant's Exhibit 1, notice of taking

deposition, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm going to show you what has been marked as Exhibit 1 to your deposition. Have you seen this before?

A. Yes.

Q. Do you understand that it is a notice of taking the deposition of Jericho State Capital Corp. of Florida?

A. Yes.

Q. And do you see there are about -- there are, in fact, exactly 31 areas of inquiry listed in the notice of deposition. Do you see that?

A. Yes.

Q. Are you prepared today to testify about each and every one of those areas of inquiry?

A. To the best of my knowledge, yes.

Q. What have you done -- let me back up.

Are you the person most knowledgeable at Jericho State Capital Corp. of Florida to testify about these areas of inquiry?

A. Yes.

Q. Did you do anything to investigate these areas of inquiry?

In other words, did you talk to any

employees or anybody else to be prepared for this deposition?

A. No.

Q. Okay. Did you review any documents?

A. The word review is different. I went through all of my documents, had them copied and sent them to my attorney who then, I assume, got them to you.

Q. Right. That was about a year and a half or so ago.

I'm talking about in preparing for the deposition today, have you reviewed any documents?

A. I went through certain of my -- yes. I went through certain of the discovery stuff, yes.

Q. Did you talk to anybody else? Like, did you talk to Scott in preparation for this deposition, Scott Svirsky?

MR. KOUTRAKOS: Am I saying your name right, Scott?

MR. SVIRSKY: Yes.

THE WITNESS: I talk to Scott every day about everything so...

BY MR. KOUTRAKOS:

Q. I'm saying in preparation for this deposition, did you say, hey, do you remember what happened in 2006? Did this happen? Did that happen?

Did you do any type of due diligence by talking to other folks involved in that transaction in order to be prepared for today's deposition?

A. I would say yes.

Q. You talked to Scott?

A. Yes.

Q. Did you talk about the facts and circumstances surrounding the transaction at issue in 2006?

A. No, no. We really went through delivery of documents, and he assisted me in culling through our files to get everything that you requested.

Q. Okay. Did you talk to anybody else besides Scott in preparation for your deposition?

A. My attorney.

Q. Other than your attorney.

A. No.

Q. Do you understand that the testimony you're giving today is the testimony of Jericho and it's binding on Jericho? Do you understand that?

A. Yes.

Q. You are the representative today giving testimony for Jericho?

A. Yes.

Q. So sometimes today I will refer to you, but

I really mean Jericho.

A. I'm only going to answer as Jericho.

Q. But if I confuse you -- if I ask you a question that has nothing to do with Jericho, it might be individually, if you get confused about that, feel free to correct me.

A. Okay.

Q. You said you -- this is a quick example. You, I mean Glenn Chwatt, you have been deposed; correct?

A. Yes.

Q. How many times have you been deposed before?

A. Including my divorce?

Q. Excluding your divorce.

A. I guess maybe about half a dozen times.

Q. And were those cases -- tell me generally, were those cases involving the Jericho-related entities?

A. Most -- most of it, yes.

Q. Did they involve -- generally, can you tell me what those depositions were about? Can you go case by case?

If a group of them happen to be where Jericho was foreclosing and you were just testifying --

A. That's basically all that they were.

Q. Jericho or a Jericho-related entity was

foreclosing and trying to collect on a note, and the borrower's counsel took your deposition as a representative of one of the Jericho entities?

A. Yes.

Q. Any cases where Jericho had a title dispute?

A. No.

Q. Or one of the Jericho-related entities?

A. No.

Q. Any cases where Jericho was suing an insurance company?

A. No.

Q. Okay. To your knowledge, how many title insurance claims has Jericho had?

A. Zero.

Q. Besides the one that you have all asserted in this case?

A. This one, correct. This is the first and only one that Jericho has had ever.

Q. How about you, yourself? Have you been associated with any title insurance claims other than the one -- through being a member of being involved in Jericho State Capital, have you been involved in any other title insurance claims?

A. Well, I don't know how to answer that

because a borrower of ours had a claim against an insurance company, but we were not directly involved.

Q. Okay. And where was that property located?

A. St. Croix.

Q. It was actually litigation. In fact, I think there was a published opinion about that case; right?

A. No. It was settled.

Q. You were named as a party in that litigation, correct, in the Virgin Islands?

A. I don't know if we were. We might have been because The Fund was a lender, but I don't know if it was.

Q. But other than an owner making a claim on a piece of property where you had a loan, this is the only other claim, title insurance claim that Jericho has filed that you know of?

A. That's correct, yes.

Q. Back in 2006, I asked you what Jericho's loan portfolio would have been and you didn't know.

A. I think I answered.

Q. I don't think you did. I asked you for an amount of what the portfolio would have been.

A. I said about $20 million.

Q. You did. Sorry. How many loans did that

involve?

A. Well, some came in and some came out, some paid off and some were new. It was a revolving number. That 20 million was a revolving number, so it probably had anywhere to do with eight to twelve.

Q. If you put your mind-set back in the 2006/2007 area, because it was different then than it is now, so I have to try to ask you questions about that particular time.

How many closings were you all doing generally on a yearly basis, a closing of a mortgage loan?

A. We're talking 2006? Probably eight. Six to eight.

Q. Per year?

A. Yeah. Until, until the world, the finance world fell apart, yes.

Q. In these transactions, did Jericho State Capital Corp. of Florida, did it generally hire its own attorneys to represent it at closing?

A. Versus having one attorney to handle the entire transaction?

Q. Correct.

A. No. To clarify, Jericho State Capital Corp. had used a battery of attorneys from its inception

in 1972 through obviously, today. All the documents were basically the same except they were adjusted for specific transactions.

We used the same lawyers. We used the same everything except when we would be out of state. We would hire local counsel out of New York state, I should say, or Florida.

Q. You confused me there. You said you hired local counsel, and then you said --

A. Well, we would have an attorney -- we used a lot of our New York attorneys, or we used Florida attorneys. If the deal was not a New York- or Florida-based deal, we would hire local counsel in that jurisdiction.

Q. So hypothetically, in 2006, if you were loaning money on a piece of property in Pennsylvania, the borrower typically would have its lawyer; is that correct?

A. Yes.

Q. And then you would hire, Jericho would hire a law firm to represent its interest in the transaction; correct?

A. Yes.

Q. And normally, the fees were paid by the borrower; is that correct?

A. Sometimes.

Q. If you can make that happen, that's what Jericho would prefer; correct?

A. Sometimes.

Q. And so what law firms were you using in 2006 to represent Jericho in these types of transactions?

A. Westerman Ball was one of them. Westerman Ball. There was a litany of them. Cohen Norris. There was Womble Carlisle.

There was Greenstein, Starr, Gerstein & Rinaldi. Fischbein, Badillo, Wagner & Harding. A lot of these have changed. I apologize.

Q. Sure.

A. I was not prepared for that request. I'm trying to think of all the attorneys. In each jurisdiction, we had different attorneys.

Q. So Westerman is out of New York, correct?

A. Correct.

Q. Cohen Norris is out of Florida?

A. Correct.

Q. Womble Carlisle is based in numerous states.

Where would you have used Womble Carlisle? Would you have used Womble Carlisle in South Carolina?

A. South Carolina and North Carolina. I have

to clarify one thing though. When dealing with the out-of-state attorneys, our attorneys took the lead with either Westerman Ball or Cohen Norris, and they went out and procured the attorneys in the different states who they had relationships with. We had no relationship with Womble Carlisle until this transaction.

Q. This transaction in question?

A. This transaction, yes.

Q. Womble Carlisle was really your foreclosing law firm, correct?

A. No. I believe they also did the closing in conjunction with our attorneys.

Q. They did? Womble Carlisle would have been involved in the Peachtree closing?

A. I believe so. I don't recall exactly how that worked.

Q. Where is Greenstein Starr located?

A. New York.

Q. And how about the Fischbein?

A. Fischbein, that's New York also.

Q. With respect to this particular closing, you used Westerman Ball. Jericho used Westerman Ball to represent them in this transaction?

A. My conversations and my direction and my conversations were directed to Westerman Ball. If they

needed clarification locally, they dealt with the local counsel.

Q. As far as you know, there are no South Carolina attorneys at Westerman Ball; is that correct?

A. I have no idea.

Q. You have no knowledge of any attorney at Westerman Ball having a South Carolina law license; do you?

A. I have no knowledge.

Q. You have no knowledge of anybody at Westerman Ball having any knowledge of South Carolina law, do you?

A. I have no idea what their knowledge is there.

Q. As far as you know, the only attorney or law firm that represented you with respect to the transaction at issue in this case was the law firm of Westerman Ball, correct?

A. I don't know.

Q. Can you identify any other law firms that would have had an attorney/client relationship with Jericho with respect to the closing in this case and the mortgage loan transaction at issue in this case?

A. No.

Q. When you would have prepared for your

deposition, you would have looked at transactional documents, I assume, and been prepared to testify about the topics, which included your due diligence with respect to the closing.

Is it fair to say there is no other law firm that you could see or that Jericho knows of that was involved in the transaction involved in this case that represented Jericho other than Westerman Ball?

A. I think Womble Carlisle represented Jericho.

Q. Explain how Womble Carlisle represented Jericho and what Womble Carlisle did.

A. I don't know. It would have been between Westerman Ball and Womble Carlisle, but we did have to pay a fee to them so...

Q. Okay. Would Womble Carlisle have been involved with the Saucepan project?

A. I believe so.

Q. Okay. Were they involved -- do you have any particular knowledge of them being involved with the Peachtree project?

A. I believe they were.

Q. Okay. And the lawyer at the Cohen firm, is it Greg Cohen that you used?

A. That's one of them, yes.

Q. Do you use any firms for litigation?
A. We don't really litigate, but yes.
Q. Which firm would that be?
A. We use Cohen Norris as one of them. Homer & Bonner is another one.
Q. Where is that law firm located?
A. Miami.
Q. That's fair enough. Do you know if Mr. Cohen is licensed to practice law in the state of South Carolina?
A. I have no idea.
Q. As far as you know, he is a Florida attorney?
A. Yes, I assume.
Q. Has Jericho been named, or any of the Jericho-named entities been named a defendant in any condemnation actions that you know of or eminent domain actions?
A. Other than this transaction?
Q. Yes.
A. No.
Q. Are you familiar with the provisions in the general Jericho mortgage that -- you mentioned there was a form that you've been using for years.
Are you familiar with the provisions that

involve condemnation and eminent domain?

A. No.

Q. I could ask you questions about it, and you would rely on the law firm that represented you in preparing that document; correct?

A. Absolutely. Yes.

Q. Has anyone at Jericho itself, other than its lawyers, reviewed the law, South Carolina law related to eminent domain and condemnation?

A. Anybody in Jericho?

Q. Yes, in Jericho. Have you picked up a statute and looked at it or Googled the South Carolina eminent domain law or anything like that?

A. No.

Q. You would rely on your attorneys to do that, correct?

A. Yes.

Q. I want to go in a little more detail about the transaction at issue here in this case. I think we all kind of know the general, the general framework of that transaction.

I think it was July 25, 2006, Peachtree Properties of North Myrtle Beach, LLC purchased property in Horry County off the Intracoastal Waterway, approximately 131.4 acres, and obtained title around that

time, July 25, 2006.

Is that your understanding of part of the transaction?

A. I actually thought it was July 24th, but okay.

Q. In conjunction with that transaction, Peachtree gave a first mortgage to R.E. Loans, LLC, and it was $8,520,000; is that correct?

A. No.

Q. What was it?

A. $18,520,000.

Q. What was it?

A. $18,520,000.

Q. I'm sorry. That's what I meant to say. I apologize. Okay.

And then Jericho took a second in the amount of $4,263,888; correct?

A. Sounds correct, yes.

Q. Jericho's mortgage was intended to be the second lien. R.E. Loans was intended to be the first lien; correct?

A. Correct.

Q. You all got a policy. Jericho was issued a loan policy from Chicago Title Insurance Company shortly after closing ensuring that, among other things, that

Jericho's mortgage was the second mortgage lien on the property; correct?

A. I think it was at closing we received the policy. Jericho would not have closed without a title insurance policy.

Q. When was Jericho first contacted about this transaction?

A. I would guess a couple months prior to the closing.

Q. Okay. Who would have contacted you?

A. In preparation, I did come up with a name. It was a gentleman by the name of Andrew Grace out of New York City.

Q. And who is Andrew? Is he associated with the company?

A. Yes. I don't recall the name of the company.

Q. Is he a mortgage broker?

A. Yes. We work with -- Jericho and all three of the entities, it's been around for a very long time, so it has relationships with a lot of mortgage broker companies around the United States.

Q. And would Andrew Grace have contacted you at Jericho, or would he have contacted somebody else?

A. I don't recall how it came about.

Q. I'm trying to find out how -- so Andrew Grace called Jericho.

Can you explain to me what happened next going forward and how you wound up to closing?

A. Sure. Absolutely. Somebody will call us, either someone who knows us, an attorney, an accountant, a brokerage firm, you know, whatever, will contact us and say, we've got a deal we'd like you to take a look at.

I take a look at the deal. They send us the particulars of the deal. We would go through it, analyze what we believe to be the selling points and then go visit the property.

We interim-ly contact our attorneys, have a conversation with our attorney about this transaction we're looking at, see if they could do some due diligence on our behalf to see what it is.

Certain states we won't get involved with because of certain different laws, and then we'll determine at that point if it's a deal we want to do or not.

Q. Tell me, in particular with regard to this transaction, the Peachtree transaction, tell me what you all did.

Did you all go visit the property? What kind of due diligence did Jericho do in order to commit

to making a loan and wind up making the loan to Peachtree?

A. Jericho got delivered to it all the documents: Environmental, appraisals, geologicals, engineering.

The work product of the borrower was forwarded to Jericho for our analysis. Then conversations with our attorneys would begin, and then several site visits are made to the property.

Jericho contacted several real estate professionals in the marketplace to do comparables in the market to see what other projects are out there, get a land value of the property based upon it.

It was difficult because this was basically one-acre lots, and we could not find comparable one-acre lots. We found smaller lots to determine the value of the acreage.

Q. Who at Jericho visited the property?

A. I did several times. Scott did.

Q. And this would have been before the closing in 2006?

A. Oh, yes.

Q. How many times do you think you visited?

A. I would say three or four.

Q. Did you visit it with anybody else? Was

anybody else with you on these visits?

A. Prior to closing?

Q. Yes.

A. Scott Svirsky.

Q. Okay. Anybody else?

A. No.

Q. Did you ever meet Jeff Shoup?

A. Yes.

Q. When is the first time you met Jeff Shoup?

A. At my first site visit.

Q. I just asked you who was there.

A. I apologize. I thought you meant who went with me. I apologize.

Q. Jeff Shoup was with you at the site visit?

A. Jeffrey Shoup, yes.

Q. Who else was there with you besides Scott Svirsky and Jeff Shoup?

A. Sometimes Tommy Hicks was there, who I believe was his partner, and then some other employees of World Development.

Q. What do you think of Jeff Shoup?

A. Well, what do I think of him now? It's hard to answer that, you know. Back then he had a very impressive resume. He had a very impressive financial statement, and more importantly, the project looked like,

you know, a gold mine in that marketplace for that period of time. I'll leave it there.

Q. Okay. You said you contacted several real estate appraisers.

Who are the real estate appraisers you would have contacted, or consultants?

A. I didn't say appraisers. I said professionals.

Q. Who are the real estate professionals you would have consulted?

A. There is one name that comes -- Rusty Helm. I know there are others. I don't recall their names at this moment.

Q. Would they have provided to you a written product?

A. No. They would have told me where to basically search things and where they saw comparables. We do our own homework to go on the Internet and see what the comparables were and what the values were and what other projects were around.

We visited different projects in our visits down there to see what was going on in that area. We visited the marketplace to see what was around a particular project. One of the things we do is we go into the surrounding towns, cities or whatever and see

what is going on in there.

One of the things I was taught was you go see car dealers and see how car dealerships are doing. Is their business up? Is their business down? You do topographicals. You kind of see what the layout is and what's around there. That's basically it.

Q. Did Jericho hire an appraiser with respect to this transaction?

A. Jericho did not hire its own appraiser, no.

Q. Was it its general practice to hire appraisers in regard to making commercial loans?

A. Sometimes.

Q. Is it fair to say from what you're telling me, that you visited the property, you talked to folks, and you, meaning Jericho, came to its own opinion of value?

You looked at comps, and you got comfortable with what you felt the value of the property was?

A. Yeah, that's fair.

Q. Okay. Did you review any appraisals conducted by others in conjunction with your due diligence for this loan?

A. Yes.

Q. What appraisals did you review?

A. There were a couple appraisals given to us. One was given to us by the borrower. It was an MIA appraisal, which is what is required in our office. It was a verifiable appraisal.

We received a couple. We got one for $39.6 million for the property. We had another appraisal that came to us, which was about 42-and-change million dollars.

Q. Okay. I recall seeing one appraisal done for the borrower by a guy by the name of Neeves, N-E-E-V-E-S, but you're referencing more than one appraisal.

Can you tell me who performed the other appraisal?

A. I don't recall who it was.

Q. Would you have produced that document?

A. I believe I did.

Q. Was that appraisal done before or after the closing?

A. I think it was simultaneously because it was going to be the take-out of Jericho's loan. Jericho was only supposed to be a short-term bridge loan. The whole property was supposed to be refinanced.

Q. Was the guy named Volpe?

A. I believe that's it.

MR. NEWBY: I think you were provided that.

MR. KOUTRAKOS: Yes, I have that. It was a lucky guess. I was thinking prior to the loan, but maybe he did something prior to the loan.

BY MR. KOUTRAKOS:

Q. Okay. So with respect to doing due diligence for Jericho, it would have been you, Glenn Chwatt, Scott Svirsky; correct?

A. Correct.

Q. And then you would have, you would have expected the Westerman Ball law firm to do some due diligence with respect to this transaction as well; correct?

A. Yes.

Q. Legal due diligence?

A. Yes.

Q. Let me ask you: Generally in a transaction like this where your borrower is buying the property, do you review the contract of sale?

A. Do I personally?

Q. Yes.

A. I read it, but I, I'm not an attorney, so I always forward it to my attorneys.

Q. And do you have the contract of sale for this particular transaction?

A. I don't know. That's a good question.

Q. But certainly, the Westerman Ball law firm would have reviewed the contract on behalf of Jericho; correct?

A. Correct.

Q. And it would have been its responsibility to advise Jericho whether there was anything wrong with the contract or, quite frankly, whether there was anything wrong with any of the other documents involved in the transaction; correct?

A. I believe so, yes.

Q. The borrower was paying the Westerman Ball law firm, but Westerman had a duty -- let me back up. It's a bad question.

It's Jericho's position that even though the borrower was paying the Westerman law firm, the Westerman law firm owed a duty of care to Jericho; is that correct?

MR. NEWBY: I'm going to object to the form.

THE WITNESS: I don't know how to answer. I'm going to say yes. I believe they are representing our interests.

BY MR. KOUTRAKOS:

Q. And you would have expected them to review

the documents and advise Jericho whether there were any issues, correct?

A. Yes.

Q. Do you have any opinion -- does Jericho have any opinion as to the current fair market value of the property?

A. Not at this moment, no.

Q. When you say, "not at this moment" --

A. I don't know what's going to be there with what the property was worth when we made this and now. I believe, it's un-developable.

Q. I think I'm entitled to ask you whether Jericho itself has its own opinion of value today.

Your answer is no, it does not have an opinion of value?

A. I could guesstimate a value, but I don't know what could be built there, so I can't give you a value until I understand what's happening with the property, the zoning issues.

Q. Well, in South Carolina, landowners are allowed to testify as to value of property. That's why I'm asking you.

I'm asking you today if Jericho, whether it has an opinion of value of the property, and your answer is no; correct?

A. As I sit here today, what you're asking me to give you a value on knowing what I can build on that particular property would change everything.

Q. How do you not know what you can build on the property?

A. Because there's no permits available because there's a conflict right now between the owner of the property and the South Carolina Department of Transportation and Horry County.

Q. Okay. My understanding is the South Carolina Department of Transportation has filed a condemnation action; correct?

A. I don't know if it's called that, but yes.

Q. In fact, that property -- once the condemnation action was filed, the South Carolina Department of Transportation sought to take that property; correct?

A. That's what they are trying to do, correct.

Q. And you're telling me today that you are waiting on some resolution with respect to that litigation before you can decide what Jericho can do with the rest of the property?

A. That's correct.

Q. So --

A. We don't know what the zoning is going to

be. When Jericho made the loan, it was zoned specifically one way, and that's what we determined at that point in time why we would be very comfortable in making that loan.

Today we have no idea what the value of that property is because we don't know what you're allowed to build or if you're allowed to build at all.

Q. Why would you not be allowed to build on the property?

A. Horry County may determine that they don't want us to build. I don't know.

Q. I'm just curious. How is that possible? If I owned -- let me ask you a question. If I owned a thousand acres, and a highway is going through six of them, are you telling me I can't use the remainder of the acreage because a portion of my property is being affected?

Is that Jericho's position in this case?

A. Jericho's position is that it does not know what it can possibly build with a high-speed, massive bridge over it, that's correct.

Q. So you're telling me you cannot apply to -- Jericho cannot apply today to Horry County to develop the remainder of the acreage?

A. That's correct.

Q. Do you have anything in writing from Horry County that says you cannot use the remainder of your property, Jericho?

A. No.

Q. Have you asked them?

A. Have I personally asked them?

Q. Yes. Has Jericho asked Horry County, what can we do with this property?

A. No. The zoning is in limbo right now.

Q. Have you hired a zoning attorney in Horry County to talk to the good folks at the Horry County zoning office and say, what can I do with this property?

A. I have hired a law firm in Myrtle Beach, South Carolina to represent our interests.

Q. Is that Mr. Newby?

A. No.

Q. You hired another law firm with respect to zoning interests?

A. Zoning, condemnation and all that.

Q. The Bellamy law firm?

A. The Bellamy law firm.

Q. Okay. So has Jericho been informed that it cannot use the property because Horry County won't let Jericho use or develop the property?

A. I don't know.

Q. So the fact that you're telling me today that Jericho, that you previously said about three and a half minutes ago, you said you don't know what to do with the property. You don't know what the zoning is.

In fact, you have nothing in writing from Horry County, and Horry County has never made a representation to Jericho that it cannot use the remainder of its property; correct?

A. It has not made that representation, but it has threatened Jericho years ago -- I believe it was in February of 2009 -- that if Jericho didn't turn this property's right-of-way over to them, they were going to revert back to an R-1, which is one acre per lot versus what was anticipated by this other group of changing the zoning.

That's what we wanted so we said, "Fine. We're not giving you the property. We have a mortgage on the property, and we're not turning over the property to you. We don't know anything about this action you're taking." We hired a law firm to represent us, and that's where we sit today.

Q. Jericho would agree that today, the property, the property involved in this case, that it does have, that it is worth something; correct?

A. It's worth something, yes.

Q. It's not worth what it once was, but there is value to that particular property; correct?

A. There is always value to a piece of land, yes.

Q. Not just nominal value. It's more than nominal value, correct?

A. No.

Q. You think it's nominal value?

A. Yes.

Q. Does Jericho believe it's worth a half a million dollars?

A. No.

Q. It's worth less than a half a million dollars?

A. No. It's worth more than a half a million dollars.

Q. Okay. So I guess your definition of nominal is a little different than mine.

MR. NEWBY: Because we're lawyers.

THE WITNESS: Well, we had to get a $40 million appraisal, and there was $24 million financed on the property, and it's not worth anything close to that.

BY MR. KOUTRAKOS:

Q. So there is some value to the property,

correct?

A. Yes.

Q. And the reason why Jericho believes it has value is because you have been, Jericho has been paying property taxes on the property for the last few years; correct?

A. Correct.

Q. In fact, do you know how much was paid in property taxes in the last tax year?

A. No.

Q. In 2013, there was about $26,000. Does that sound correct?

A. You're reading it, so I believe you.

Q. I printed it out. You tell me if you believe there is --

A. Okay. If that's what it says, yes.

Q. Do you have any reason to question the numbers on what is now going to be Exhibit 2?

MR. NEWBY: Which numbers, Jim?

MR. KOUTRAKOS: This is Exhibit 2.

MR. NEWBY: No. The numbers.

MR. KOUTRAKOS: Let me get the extra copy. Here's one for you, and here's one for you and one for me. We'll mark this one and make it Exhibit No. 2.

(Defendant's Exhibit 2, land records, was marked for identification.)

BY MR. KOUTRAKOS:

Q. There you go. Exhibit No. 2 is --

MR. KOUTRAKOS: I could represent to everybody I went online yesterday, I believe it was, and printed out this information from horrycounty.org.

BY MR. KOUTRAKOS:

Q. Mr. Chwatt, if you look at the tax map number, the legal description, the owner, does that information appear to be accurate on the first page?

A. Yes.

Q. On the second page, the tax assessor has given a fair market value of the property of $2,648,900. Do you see that?

A. I see that.

Q. And then it listed the taxes paid, it looks like, going back to 2004. Do you see that?

A. Yes.

Q. Does Jericho have any reason to question the validity of the total taxes paid; I mean, the accuracy of those figures?

A. Of the taxes paid?

Q. Yes.

A. No.

Q. Does it sound right that you all paid about $27,000 in taxes?

A. Yes. The assessed value is $129,282, and the taxes are $26,478.16.

Q. Right. So you don't have any reason to question any of the information on Exhibit 2?

A. Other than the fair market value.

Q. You think the fair market value is too high?

A. Yes. I don't know how they determined that number.

Q. Okay.

MR. NEWBY: Jim, I don't want to interrupt your train of thought, but can we take a break?

MR. KOUTRAKOS: Absolutely.

(A brief recess was taken from 11:07 a.m. to 11:18 a.m.)

BY MR. KOUTRAKOS:

Q. Lynx Jericho Partners, do they have any remaining obligation to the entity from which it purchased the Jericho mortgage?

A. Do they have any -- ask me again, please.

Q. When I asked you the question, you said you paid 2.5 million for the first mortgage on the Saucepan

and the first mortgage on the Peachtree property; correct?

A. They paid, yes.

Q. Lynx paid the liquidating trustee, or whatever it's called; right?

A. Yes.

Q. Is there any remaining obligation? In other words, is it, hey, if you make X amount of money, you owe the liquidating trustee a certain amount? Is there any remaining obligation?

A. No, not that I know of.

Q. When you're talking about costs that you have to incur, those are carrying costs that Lynx Jericho Partners would have to incur, or I guess Jericho would have to incur; is that right?

A. Incurred the carrying costs, yes, and the ultimate development cost of whatever you're going to have to develop it.

Q. But there's no remaining obligation to the liquidating trustee right?

A. No, not that I'm aware of.

Q. Has Jericho ever questioned the value associated with the property that was given to the property by Horry County?

A. At this point, no. We have not done any

certiorari proceedings at this time.

Q. In other words, you haven't said, hey, Horry County, these taxes are way too high because the property is not worth that much.

Jericho has not done that at this stage?

A. No. Not at this moment, no.

Q. What is the property currently zoned?

A. I don't know. I truly don't know. It's -- they have changed the zoning numbers and letters to -- I know when we made the loan, it was R-1. That's residential one-acre lots. That's when we made the loan.

It has subsequently gone through -- and I have read different things about different namings of that same zoning. I don't know if it's still that. I don't know if it's multi-family. I truly don't know what it's zoned at this moment.

Q. Does Horry County know what it's zoned?

A. I assume that they do, but I'm not sure they know what it is at this point.

Q. You mentioned something about having a topographical map and stuff like that. Have you produced those in discovery?

A. No. When I said that, you go online, and you go to Google Earth and you can see all of that stuff, see what the proximity is to what things, and things are

pointed out to you and expressed to you.

Look at this house next to the property. It's worth -- and you go onto the appraiser thing and you look at his site. You can see the property of that single house is worth at that time $3 million next door to it on the Intracoastal Waterway.

There is a bunch of houses along the property that we looked at the values and said, wow, that's a beautiful home.

Q. Can you, on behalf of Jericho, explain to me the basis on which Jericho has sued Chicago Title in this case?

A. Yes. There is a bridge going through the property, and we had no knowledge that there would be a bridge going through it. We would never ever, ever have made any loan much less a second, first. I wouldn't have lent the guy a dollar if there was a bridge going through the middle of the property.

We've done hundreds and hundreds and hundreds of deals. We have done a couple billion and a half dollars in financing. I have never seen anything like this. We used Chicago Title. In our whole lives, we've never seen anything like this. Someone should have said something. We never would have made this loan.

Q. When was the first time -- when you say --

let me back up.

When you say, "bridge," are you talking about the extension of a highway that would run through the property that ultimately would result in a bridge going over the property and over the Intracoastal Waterway?

A. Yes. Correct.

Q. When was the first time that Jericho learned there was going to be a public highway going through, or there was a planned public highway that would go through the subject property?

A. Around 2008 after -- about a year after the foreclosure -- within a year after the foreclosure, we sent a group -- we hired a group, a consulting firm who has done a lot of the developments up and down the Eastern Seaboard. We sent them down to Myrtle Beach, South Carolina to see how we should start tackling this property.

They have done a lot of single-family homes. They went down there, and from their review -- and they're the ones who met the Bellamy law firm to start with to use them to do the development work. They went to work with the engineers we hired.

They said, "Whoa. We can't" -- "you can't build anything. There's a bridge coming through here."

I said, "No, there isn't. What kind of bridge?" That was the first knowledge that we had of anything going on there; that there was a bridge coming through the middle of the property.

Q. It was in 2008?

A. Around 2008, correct.

Q. Who was the consulting firm?

A. Skymark.

Q. What was it called?

A. Skymark.

Q. Who was the professional associated with Skymark that you had talked to?

A. Stanley Markovsky.

Q. Has Skymark provided any written product for you? Have they done any studies or analyses?

A. Not at that point, no. They had worked with Sinclair & Associates, who were our engineers, and that was the product. They worked and kind of gave guidance to Sinclair & Associates.

Q. Can you narrow it more? You said 2008. What part of 2008?

A. I'm going to say middle of 2008; middle to end.

Q. And that knowledge would have come from Skymark?

A. Well, Skymark had told us this. I then subsequently got on an airplane and flew down there to meet with the Bellamy law firm, who told me straight up, "There is a bridge going through your property. And not a little bridge; a high-speed, four-lane bridge connector."

Q. Is that the first time you heard the word "bridge" being associated with this property?

A. Going through this property? Yes.

Q. Or going near this property?

A. Going near it?

Q. Yes.

A. What was discussed with me -- what was told was that about a mile and something down the road was going to be a new bridge. That was in one of the appraisals I read; that there was a new bridge coming down about a mile and something down the road past the property. And that's a good thing. Not through your property.

Q. Who told you about that?

A. It was in the appraisal.

Q. Whose appraisal?

A. I know there was one in Neeves' appraisal. There was -- actually, in one of the due diligence packages that we did, we read through, in the package it

even stated there was a new bridge coming down the road.

Q. Okay.

A. I'm happy to show you in my papers.

Q. Sure.

A. This was part of the -- where it's blue. It's part of the due diligence package.

Q. Is this part of a larger document?

A. Yes. You have this. I'm sorry. We'll make it simpler.

Q. Okay. I've seen that before.

A. Right.

MR. NEWBY: Jim, can you identify for the record what you were looking at?

MR. KOUTRAKOS: Sure. Mr. Chwatt pointed out a project loan package required for Waterford Estate Plantation. Developers: T&J Development. I'm not sure if it's dated or not.

THE WITNESS: In the original appraisal, it references a bridge going down -- it says the subject is only a few miles from the new Highway 31.

BY MR. KOUTRAKOS:

Q. Can I see that? I'm looking at what you showed me from the Waterford Estate Plantation document, Developers: T&J Development.

It says, quote, "Being that the site area is less than one mile from the new Highway 31 connector, the location is optimized for development sales requiring minimal marketing requirements."

Is that what it says?

A. Yes.

Q. Okay. I don't see any reference to a bridge. Do you?

A. The 31 Highway connector is the bridge. That's what the connecter is.

Q. Okay. The bridge over the Intracoastal Waterway?

A. Yes.

Q. When you're referring to "bridge," you're referring to --

A. The connecter.

Q. -- the connecter. All right.

A. That's part of the appraisal that we reviewed.

Q. This is the Neeves' appraisal?

A. That's correct.

Q. "The subject is only a few miles from the new Highway 31. You can drive to the north or south end of the strand in less than 20 minutes. The Westward communities will continue to develop and prosper."

We're just going to make this an exhibit. Do you mind? Do you have extra copies of that?

A. No, I don't mind, but I don't have extra copies. I believe I sent you that.

MR. NEWBY: We can get a copy here I'm sure.

MR. KOUTRAKOS: Let's make this -- put that page back. Let's go ahead and make this -- if you don't mind, we'll make copies for you before we leave. Is that fine?

THE WITNESS: Yes.

BY MR. KOUTRAKOS:

Q. It's not an original document; is it?

A. No, it's a copy.

Q. Let's make this Exhibit 3.

(Defendant's Exhibit 3, Waterford Estate Plantation document, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Okay. This is the project loan package. Exhibit -- is that the Neeves' appraisal?

A. Yes.

Q. It's fairly large. I don't think we can make that an exhibit.

MR. NEWBY: Do you want just the one page and identify where it came from?

MR. KOUTRAKOS: I don't care. We can do it without it. That's fine.

BY MR. KOUTRAKOS:

Q. Once you found out about -- I guess when you were consulted or informed in 2008, did you contact, did you contact Shoup, you or anybody on your behalf?

A. I must have spoken to him.

Q. What did you say? Did you say, what is going on with this bridge?

A. What's going on with this bridge. He never said anything. We really -- at that point, he was having his own legal issues, so I really kind of stayed away from him.

I had the property. I had to deal with it. There was no recourse against him at that point anyhow, so we dealt -- we went to find attorneys who could help us. Bottom line is we wanted to stop this from happening because it would destroy the property.

And I would paraphrase what was said but not for the record. It was told me when I met with my attorneys, there is a bridge coming, and it's coming in this attorney's lifetime, and this attorney is a lot older than I am. So he was telling me --

MR. NEWBY: For the record, that's not me.

THE WITNESS: It wasn't him. It was said

with a southern drawl. "Glenn, there is a bridge coming through your property in my lifetime. Not in your lifetime, my lifetime."

I was like, "What? How is that possible?"

BY MR. KOUTRAKOS:

Q. Prior to the closing, did Jericho believe there was a possibility of a road or bridge being conducted across the property?

A. Absolutely not.

Q. Do you recall ever hearing the word -- well, you answered that question.

Do you have any knowledge whether the sellers of that property knew there was a bridge coming?

A. I have no idea.

Q. Do you have any knowledge whether Shoup, who was associated with the borrower, whether he had any knowledge of the bridge coming, or the highway?

A. His documents that he provided to us said it was going be down the street, all the way down the street. As far as I'm concerned, as far as my reading of this, it was happening well down past the property, not through the property.

Q. So you don't believe Shoup knew about it at the time of the closing?

A. No. Why would you buy a piece of property

with a bridge going through it?

Q. How much profit did Jeff Shoup think he was going to make off this property?

A. A considerable amount of money.

Q. Do you think -- my guess is -- and you tell me if this is your guess as well -- that Jeff Shoup would have still made 60, 70 million, because that's the number he was throwing around back then, even if the bridge was going through the property.

A. No.

Q. Not Jeff Shoup?

A. No. Not even Jeff Shoup.

Q. Are you sure? I mean, 40-, $50 million was being thrown around in this transaction like it was change for lunch, and you don't think Jeff Shoup the mastermind, the guy with an impressive resume, wouldn't have found a way to make if not 50 million, he would have made 25 million off of this project with the bridge going through it?

A. Not even close. Absolutely not. I'm not even going to allow that to go forward because there's no possibility he's going to be able to build multimillion dollar houses underneath a high-speed, four-lane bridge with tractor trailers honking, noise, pollution, tractor treads flying over. Absolutely not.

Q. If your New York lawyers had knowledge of a bridge going over the property, you would have expected them to tell you; correct?

A. They would have absolutely told me, and I never would have made this loan.

Q. Would you have been upset if they did?

A. Would I be upset?

Q. Yes.

A. Oh, yeah.

Q. Okay. What has Jericho done to obtain the documents that the New York law firm would have acquired in due diligence?

A. We requested them to be forwarded to you.

Q. Do you understand that the original document, apparently some of it has been destroyed and shredded?

A. Okay.

Q. Do you understand that? Have you heard that? I've being trying to get documents from the New York law firm, and I've been given some computer electronic documents, but the New York law firm has indicated that a good part, that they believe the document, the file has been destroyed.

A. I called them to ask them to provide you with the entire set of the documents. We're completely,

100 percent transparent. They said they were going to get you everything that we've got, and we put a lot of stuff into our computer and that's what I got.

I don't know if anything -- if you destroy hard copies that you keep in the computer, I don't know if that's bad.

Q. I have been informed by the New York law firm that the original file has been destroyed, and they provided to us what they have electronically.

Do you have any reason to doubt that?

A. No, not at all.

Q. Okay.

MR. NEWBY: Did you mark the page out of the Neeves?

MR. KOUTRAKOS: I did not. If you want to mark it later, we can do so.

BY MR. KOUTRAKOS:

Q. Do you know who Robert Gwin is?

A. Do I know who he is? Yes.

Q. Do you know how he was involved in this transaction?

A. I believe he was T&J and World Development's attorney.

(Defendant's Exhibit 4, Gwin e-mail with attachment, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Okay. I'm showing you what has been marked as Exhibit No. 4. Can you take a look at that.

A. Okay.

Q. Just give me a second. You see that e-mail dated July 17, 2006? It's from Robert Gwin. Do you see that?

A. Yes.

Q. And Exhibit No. 4, this e-mail is addressed to Ed Bullard. He's one of your New York lawyers, correct?

A. Yes.

Q. It's addressed to Jeff Shoup, who is associated with the borrower; correct? Shoup at World --

A. Yes, yes.

Q. And then G. Chwatt, which is you, at aol.com; right?

A. Yes.

Q. And Scott Svirsky, who is sitting with us in the room today; correct?

A. Yes.

Q. And two other New York lawyers, right?

A. Yes.

Q. And you see Robert Gwin is talking about the checklist, and he wanted to delete from the check,

the preliminary checklist the satisfactory resolution of the determination by the municipality not to build a bridge. Do you see that?

A. No. Where does it say that?

Q. Right there. Let's make sure we're -- did I give you the correct exhibit? Yes.

Do you see where it says, "Attached"? Quote, "Attached please find red line comments to the commitment letter. Also, please consider this my request to delete the following requirements from the preliminary checklist. Page 3, satisfactory resolution of the determination by municipality not to build a bridge," close quote.

Do you see that?

A. No, I don't. That's on this? Attached clean black list?

MR. NEWBY: Up here.

THE WITNESS: I'm sorry. Up here? Page 3.

Okay. I see that, yes.

BY MR. KOUTRAKOS:

Q. Okay. Tell me, in July of 2006, Robert Gwin is requesting to remove from a requirement in the checklist, getting a resolution that the county, the municipality is not going to build a bridge. Do you see that?

A. I see what that says.

Q. So there was a concern at closing, prior to closing about a bridge. Would you agree with me?

A. No.

Q. Weren't you contacted on July 17th of 2006, and there was a discussion about a bridge?

A. Did I contact?

Q. No. You received a communication on July 17, 2006. It's talking about a bridge, correct?

A. This says, "Satisfactory resolution of determination by municipality not to build a bridge."

Q. Right. It's talking about a bridge. This is an e-mail dated July 17, 2006 to you and your New York lawyers and the borrower on the future transaction talking about a bridge; correct?

A. I was copied on it. It was not directed to me.

Q. Yes. There is a communication directed to you and others, copied to you --

A. Copied to me.

Q. -- that mentions a bridge with respect to this property; correct?

A. Correct.

Q. And there is a lawyer for the borrower saying, hey, I don't want to get you a resolution by the

municipality not to build a bridge. He's asking your New York lawyers to say, I'm not going to get this document from the county. Do you see that?

A. That's what you're saying it says. I don't know what they were discussing. I was not privy to that.

Q. But you were copied on this communication.

A. I was cc'd on this communication.

Q. And they were talking about a bridge.

A. I don't know what bridge they were talking about.

Q. Did you ask your New York lawyers, why am I getting this e-mail about a bridge? What is the deal with the bridge?

A. I have no idea what bridge they were talking about. It could have been the one a mile down the road. I have no idea.

Q. But would you agree with me that there was some concern in July of 2006 prior to the closing, prior to Jericho making the commitment to loan over $4 million, that there was an issue discussed about a bridge; correct?

A. No. I don't know what they were relating to.

Q. Well, there was an e-mail that mentions the word bridge.

A. Yes.

Q. Would you agree with me there was a communication prior to the closing that discussed a bridge in relation with this property, correct?

A. No.

MR. NEWBY: I'm going to object to the form of that question.

THE WITNESS: It just says a bridge. It doesn't say anything about this property.

BY MR. KOUTRAKOS:

Q. Okay. So you believe that Glenn -- excuse me -- that the New York lawyers were concerned about issues with respect to another property?

A. I don't know.

(Defendant's Exhibit 5, preliminary closing checklist, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm showing you what has been marked as Exhibit 5.

A. For the record, this was an unsigned document. This is just a draft.

Q. And you're referring to?

A. Four.

Q. Four was a draft?

A. Draft.

Q. A draft e-mail?

A. No, no, the attachment. That was unexecuted and just a draft form.

Q. Right. That was commitment letter attached, right?

A. It was a draft of a commitment letter which was not accurate.

Q. Understood. I wasn't asking about that. I think that would have just made the e-mail complete because I think that was an attachment to the e-mail about which I was asking you questions.

A. I just wanted to clarify.

Q. Now this is Exhibit 5. Do you see where it says, "Lender: Jericho All-Weather Opportunity Fund, LLP," and then it says, "Property: 131 acres off Peach Tree Road, Myrtle Beach, Horry County, South Carolina."

Do you see that?

A. Yes.

Q. Have you seen these type of checklists before?

A. Yes.

Q. The Westerman law firm creates one for each of the transactions it handles for Jericho?

A. Yes.

Q. And do you see on page 2 of this checklist,

it says, "B. Title and Survey." Do you see that?

A. Yes.

Q. Do you see where it says about one, six lines down that as a requirement it says, "Satisfactory resolution of the determination by the municipality not to build a bridge." Do you see that?

A. Yes.

Q. And do you see where it says, "Responsible Party: BC"? Do you understand BC to mean borrower's counsel?

A. Yes.

Q. Tell me, why is the Westerman law firm sending a preliminary closing checklist requiring a satisfactory resolution of the determination by the municipality not to build a bridge?

A. I don't know.

Q. Do you think the Westerman law firm had some information about a bridge possibly being built across the property?

A. I don't know what information they had.

Q. Do you think they would have added that to the checklist for no reason at all?

A. I don't know. You have to ask them. I have no idea. I had all the confidence in the world in the professionals.

Q. Do you think there would be information about the bridge in those shredded files somewhere?

A. No. I have no knowledge of that whatsoever.

Q. Is it fair to say that somebody at the Westerman law firm had some issue about a bridge because we now have two documents that predate closing talking about a bridge, correct?

A. I don't know if it's the same document. It may be referencing the same thing.

Q. We have an e-mail, Exhibit No. 4. It talks about -- an e-mail communication, which you were copied on, talking about a checklist; correct? Excuse me. Talking about a checklist and a bridge requirement on the checklist.

A. This is a checklist, and this is the same related documents.

Q. Fine.

A. Well, you're categorizing them as two separate documents.

Q. No. We have Exhibit No. --

A. He is discussing that in here. The e-mail is saying it here. I don't know anything about this bridge.

(Defendant's Exhibit 6, preliminary closing

checklist, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm showing you what is being marked as Exhibit No. 6. I apologize for the delay. My stack is different from your stack because of -- let me find my copy of the exhibit.

MR. NEWBY: Are there dates on those two preliminary closing checklists? I see, "Last revised." Maybe I have --

MR. KOUTRAKOS: Exhibit 6 says, "Last revised 7/21/2006." The other one, there is no date.

MR. NEWBY: So we don't know which one was first.

MR. KOUTRAKOS: I know which one, but you have to reach your own conclusion.

BY MR. KOUTRAKOS:

Q. In looking at Exhibit No. 6, do you see it says, "Last revised 7/21/2006"?

A. Yes.

Q. Do you see the requirement about the bridge resolution? Do you see that in the checklist? Remember last time it was in the Title and Survey section, section B?

A. Yes.

Q. Okay. You no longer see the bridge requirement there, do you?

A. I do not, no.

Q. Is it fair to say then, after borrower's counsel sent Mr. Bullard an e-mail on July 17, 2006 requesting that it be removed, in fact, the Westerman law firm agreed to remove that as a requirement from the checklist?

A. No. What I would read from this is that they did their preliminary title search, and there was no problem with the bridge so there was no reason to have it.

There was no bridge going through this property. There was no bridge being built over this property. The bridge was going down the street, and there was no reason to have it in the documents about it.

Q. Are you speculating as to what happened?

A. You asked me a question. I'm answering what I understand, how I read this and how I understand it.

Q. Okay. The checklist, the original checklist required a resolution. Borrower's counsel wanted it to be removed.

Apparently, it appears that it was subsequently removed from a later checklist; correct?

A. I don't know.

Q. Do you have to approve as the client, what remains on the checklist and what gets removed on the checklist, or you would defer to your lawyers to do that?

A. Both, depending on what it is.

Q. You were copied on these e-mails forwarding the checklist, correct?

A. I don't know. I'm probably not copied on all of them, no, because again, the attorneys know what they're doing.

Q. Do you have a copy of the real estate contract in your file, the contract where Shoup purchased the property from the prior owners?

A. I may have. I don't remember.

Q. All right.

(Defendant's Exhibit 7, real estate sales agreement, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm showing you what has been marked as Exhibit No. 7.

MR. KOUTRAKOS: Here, Fred.

MR. NEWBY: Thank you.

BY MR. KOUTRAKOS:

Q. Okay. I'll represent to you that Exhibit No. 7 is an unsigned contract. The contract involves the

purchase of the property by Jeff Shoup from the prior owners. I obtained a copy of this just the other day from the attorney who represented the sellers, and he said this is the final version of the contract.

MR. NEWBY: Who was that, Jim?

MR. KOUTRAKOS: It's Brian Kernaghan at Nexsen, N-E-X-S-E-N, Pruet, P-R-U-E-T.

BY MR. KOUTRAKOS:

Q. If you could go to paragraph 3.5.

A. Yes.

Q. It's on page 3. See where it says, "Except as set forth in schedule" -- are you already at that page?

A. Yes, page 3.

Q. "As except as set forth" -- have you seen this document before?

A. Yes.

Q. I just wanted to know how you knew I was going to page 3.

A. I just opened to the page.

Q. "Condemnation Proceedings and Roadways," it says, "Except as set forth in Schedule 3.5 attached hereto, to the knowledge of the seller, there are no condemnation or eminent domain proceedings pending or contemplated against the property or any part thereof and

Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the property or any part thereof."

And then it says, "Except as set forth in Schedule 3.5 attached hereto, Seller has received no written notice of any change or proposed change in the route, grade, width or other specification of any street or road located within or adjacent to the property."

Did I read that correctly?

A. Sure.

Q. Do you recall seeing this language in the purchase contract signed by your borrower?

A. No. It just stated there is nothing contemplated.

Q. As except as in Schedule 3.5, right? If you go to Schedule 3.5, lo and behold, 3.5 says, "Attached May 15, 2002 notice regarding the Carolina Bays Parkway." Do you see that?

A. Yes.

Q. If you flip over to the next page --

A. Hold on a second. I never saw this.

Q. Sure. Okay. If you look at the attached notice --

A. There is nothing.

Q. I think you need to flip the page. There

is a map.

A. Go forward you mean?

Q. Hold on a second.

A. I saw that he read that. I saw that. This you're talking about?

Q. Yes.

A. You said flip it.

Q. There is something -- I can tell you that I don't know why there is no image on that blank page because I got it in Word, and I don't know why it didn't print. There is an image with a map there. I apologize. I didn't realize that.

Regardless, I'll forward you the same electronic copy I have, and there is an image that has a map. I can't tell you exactly what the map says, but I think that's what page 3 of Schedule 3.5 says.

In any event, you have not seen this Schedule 3.5 before; have you?

A. Before when?

Q. Before today.

A. Yes, I have seen this before today.

Q. When did you see it?

A. When I met with my attorneys about this whole thing. And they're saying that when we discussed the title issue, this was noticed in 2002, and the title

policy should have picked this up and stated this as an exception or possibility that it's going to happen.

Q. Let me be more specific with my question. Schedule 3.5 to this agreement, have you seen this --

A. No. I have never seen this agreement before.

Q. Do you have any knowledge whether your New York lawyers have seen this agreement?

A. I have no idea.

Q. Do you believe it's possible they were talking about a bridge because of Schedule 3.5 to the agreement?

A. I have no idea what they're talking about. I don't know this to be the final thing because it's not signed.

Q. I understand.

(Defendant's Exhibit 8, real estate sales agreement, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm showing you what has been marked as Exhibit No. 8. Exhibit No. 8, I can attest, is a copy of the, of the contract that was in Bob Gwin's file. If you look at it, this is actually signed by your borrower, Jeff Shoup, on page 19.

Do you see that?

A. Uh-huh.

Q. And do you also see whether on page 3 it has the same -- it appears to be identical, Schedule 3.5 -- excuse me -- Section 3.5 on page 3 that I read to you previously with respect to Exhibit No. 7.

A. This looks like they're almost the same document you gave me, except this one is signed by Shoup and not signed by --

Q. Anybody else.

A. -- the seller.

Q. Correct. Do you see it has a Schedule 3.5? It would be the last page of the exhibit. That's all it has. That is all that was in the lawyer's file.

A. It says nothing. It says, "Attached May 15th notice." It could be anything.

Q. I understand that. I understand that, but it says, "Notice re Carolina Bays Highway."

MR. NEWBY: Jim, the highlight you mean?

MR. KOUTRAKOS: The highlighting is mine. Sorry. That's the way the copy came. Sorry. The copy from his file is not highlighted. I'll represent that.

BY MR. KOUTRAKOS:

Q. Again, look at Exhibit No. 7 -- excuse me. This would be Exhibit No. 8. There is indication here

that the seller is saying there is no condemnation threatened, but there is something, and it's about the Carolina Bays Parkway.

A. I don't know that that could be the case at all. It could be the thing they talked about a mile down the street.

Q. Okay. Then why would the borrower -- okay. The seller was concerned about -- okay. Let's go to paragraph 3.5. It says, "Except as in Schedule 3.5" -- and I'm skipping some words -- "there is no condemnation or eminent domain proceedings against or contemplated against the property."

There is the contract of sale. We can go through the definition of the property, but presumably, it was affecting the property that is being sold, not the property down the street; correct?

A. It's saying there is no condemnation against this property, and there may be something going on down the street at the Carolina Bays, whatever he is saying.

Q. If that's what you want the testimony of Jericho to be, I can't stop you. I don't think that's what it says but --

A. I believe that's what it says.

Q. Okay.

A. I don't know anything about a bridge. I would have never made a loan if I had known about the bridge.

MR. NEWBY: I'm going to object to the form only because we don't have the map to look at. The letter talks about adjacent. It doesn't say on, and without the exhibit --

MR. KOUTRAKOS: What letter are you referring to?

MR. NEWBY: The one from Horry County on Exhibit 6 or 7, whatever it was.

MR. KOUTRAKOS: Let me look at it.

MR. NEWBY: I do not want to inject too much in here, but it says something about your property is either directly affected or is adjacent to the property affected.

MR. KOUTRAKOS: I understand.

MR. NEWBY: And we don't have the map. The map might clarify all of that.

MR. KOUTRAKOS: I have the map that was attached to -- well, that was part of the contract. I could probably show it to you on my phone. I don't know why it didn't print out for some reason.

We're done with the contract. This is

Exhibit No. 9.

MR. NEWBY: Another one?

MR. KOUTRAKOS: Another one. They just keep on coming.

(Defendant's Exhibit 9, real estate sales agreement, was marked for identification.)

BY MR. KOUTRAKOS:

Q. This is Exhibit No. 9. I can attest to you -- I can represent to you this is a copy of the agreement that was, that was sent to me by your attorney, Mr. Newby, that he received from the Westerman Ball law firm. You can take a look at that for a second.

A. Okay.

Q. Do you see where this agreement appears to be fully signed?

Let me back up. There appears to be an agreement to purchase this property, correct, by Mr. Shoup?

A. Yes.

Q. Okay. And is Exhibit No. 9 fully executed?

A. Yes.

Q. In section No. 5, does it reference a Schedule 3.5 or any limitation on the representation made about condemnation or eminent domain proceedings in Section 3.5 on page 3 of the contract, in Section 3.5 of

the contract?

A. I'm sorry? Ask me that again.

Q. I'm sorry. I told you I was going to ask you some bad questions.

This version of the contract does not have any reference to a Schedule 3.5 in Section 3.5 on page 3, correct?

A. It says, no condemnation or eminent domain proceedings, and there's no Schedule 3.5 so...

Q. Okay. Do you know why your law firm would have a different version of a contract than what has been represented to me as being the final version?

A. I assume because it wasn't happening. I have no idea why. I have no idea.

Q. Do you know if the New York law firm had previous drafts of the contract or had different versions of the contract?

A. I have no idea what they have or what they had.

Q. Do you understand there were certain amendments made to the contract of sale?

A. Am I personally aware?

Q. Does Jericho have any knowledge of there having been amendments to the contract extending the closing date and things of that nature?

A. I don't know. I don't remember the closing dates.

Q. Jericho has no knowledge whether there were amendments to the real estate contract between your borrower and the sellers?

A. Do I know --

MR. NEWBY: Hold on.

THE WITNESS: I don't want her to write this down. I'm just thinking out loud.

Do I have any knowledge of amendments between the seller and the buyer?

BY MR. KOUTRAKOS:

Q. Right.

A. I don't know, but there generally are amendments always to contracts.

Q. But you have no knowledge of any today? You have no knowledge of any amendments?

A. No.

Q. Do you have any copies of any amendments, because you didn't produce any to me.

A. No.

Q. Do you have any knowledge if the New York law firm has copies of those amendments?

A. I have no idea what they would have.

Q. You can put that right there. I'm going to

show you what will be marked as Exhibit No. 10.

(Defendant's Exhibit 10, July 20, 2006 e-mail, was marked for identification.)

THE WITNESS: Can we go back to this?

BY MR. KOUTRAKOS:

Q. Sure. Take your time.

A. I just want to ask a question. You had me thinking. I just kind of -- this does -- you said that -- you -- I don't want to put words in your mouth, but you said that missing behind this was Schedule 3.5, but there is no reference here to any Schedule 3.5.

Q. That's what I was asking. I was confirming. There is no Schedule 3.5. There is not even a reference to 3.5.

A. That's what it says. There is no reference to 3.5, and there is no 3.5, other than this being -- this is 3.5, but in the other one, it said there is a reference to 3.5.

Q. Exactly.

A. But here there is no reference to it, so I assume that it was a moot point and there was nothing to worry about.

Q. You can say what you want. I'm establishing that in the contract provided by your New York law firm, there is no mention of an exclusion to the

representation that there are no threatened condemnation actions, whereas other folks have other documents that actually say there is a threat of something that possibly might happen in the future.

A. This is the executed version. We acknowledge this is the executed version. This makes no reference to anything --

Q. You can make any acknowledgment you want as to whether that's the executed version or not.

A. You're the one who represented to me it was the executed version.

Q. Well, that one appears to be because there is a signature page. If you look at the bottom of each signature page, is that Mr. Shoup's signature page?

A. Yes.

Q. If you look at the bottom, you will see a stamp of the law firm that prepared the document. Do you see where it says B4? It says one -- excuse me.

A. No.

Q. I'll show you. You see where it says, "15035.4-CS," and in parentheses it says, "BFK."

Can you see the .4 on the bottom? Yours will probably say .1. Which one are you looking at?

A. The one you just gave me.

Q. This Exhibit 9, do you see where it says

.1?

A. Yes.

Q. And if you look at the signature pages --

A. This says .1.

Q. Which one are you looking at?

A. Mr. Shoup's signature.

Q. Which exhibit are you on? I'm sorry.

A. Exhibit 9. They all say .1.

Q. No, they don't. Exhibit 9 --

MR. NEWBY: Mine says .1. The first one does.

MR. KOUTRAKOS: Keep on looking. If you look at the rest, it's .4.

THE WITNESS: This one says .1. You're going after that number?

BY MR. KOUTRAKOS:

Q. Yes. The signature pages, go to the signature pages.

A. That happens often in a lot of our closings. They are signed opposite and then put together.

Q. What appears happened to me is that there are -- the .4 version, which is the same that Mr. Kernaghan represented to me is the final version, which is Exhibit No. 7, is the .4 version.

We have most of the signature pages on Exhibit No. 9 are the .4 version, including Mr. Shoup's version, but the body of the contract is the .1 version.

Do you see that?

A. I'm not sure what you're, what you're saying here because I'm -- are you saying that --

MR. NEWBY: Why don't we stipulate to some things and save ourselves some time on the issue?

MR. KOUTRAKOS: What do you want to stipulate to?

THE WITNESS: I don't know what you're saying, other than the final signed version that you just gave me does not have any reference to a bridge or anything.

BY MR. KOUTRAKOS:

Q. Honestly, I'm not saying it's the final signed version. It's what your law firm is representing to us, apparently, as the final signed version.

A. You have a copy of our closing. I guess we would not have that in the closing, right?

Q. I'm just telling you that is what was produced to me, and I don't know if it was the final signed version or not. It was an executed version of the contract, but it was a contract that was provided to me through your lawyer that came from the New York law firm.

I'm just pointing out that other folks have different versions of the contract.

A. They have draft versions, but this is the signed one.

MR. NEWBY: Page 16 has a .3, so there are three different --

MR. KOUTRAKOS: Right.

MR. NEWBY: There are three different things in the same document rather than just two.

MR. KOUTRAKOS: Right, but some at the end have a .4. I understand. Hey, I didn't create it. I'm just asking questions about it. I don't know. I wasn't there.

BY MR. KOUTRAKOS:

Q. You have Exhibit No. --

MR. NEWBY: Ten.

BY MR. KOUTRAKOS:

Q. This is an e-mail, July 20, 2006, from Zinelle October.

A. That's one of my attorneys.

Q. Do you see where it says in the last sentence of that e-mail right before her signature --

A. She's a stripper. Kidding. Don't put that in.

Q. It says, "Bob, We also need signed" -- and

I can't tell if "signed" is underlined or not. Maybe it's the way the copy was made. "Signed copies of the purchase contract and all amendments."

Do you see that?

A. Yes.

Q. It says, "Please forward them to us." Do you believe that the New York law firm had numerous copies of signed or unsigned contracts in its possession?

A. I have no idea.

Q. Does it suggest they already have unsigned copies of a purchase contract but were looking for actual signed copies?

MR. NEWBY: Object to the form.

THE WITNESS: I have no idea. I have no idea what they're referencing here. Was I even copied on this?

BY MR. KOUTRAKOS:

Q. Yes.

A. No, I was not. No, I was not. Yes, I was. The last one. I got you. Sorry.

Q. If you look at the next page, page 2 of 4, there is another e-mail from Zinelle to Jay Levinton, Bob Gwin, Scott Svirsky, and it says, "Attached please find a revised checklist for the above-referenced closing. Thank you."

So you were provided copies of the checklist, correct? I don't know what version was attached to that e-mail, but you were generally copied on the e-mail.

A. I'm copied on a lot of e-mails. I'm not sure I would represent that every one.

Q. Sure. But generally, it looks like your New York law firm was sending stuff to both you and Shoup and Bob Gwin, and she was just copying everybody.

A. Okay.

Q. Let me ask you: You received a closing notebook after closing from the Westerman law firm; is that right?

A. Yes.

Q. Is that generally, your firm does those kind of transactions, and you just send a closing notebook to your client, and it has all the documents that are generally important; correct?

A. Closing binder.

Q. Have you reviewed the closing binder to see if the contract of sale is in the closing binder?

A. No.

Q. It's not there; is it?

A. I don't know.

Q. Do you know why they would not have

included the contract of sale in the closing binder, the New York law firm? I can tell you it's not there.

A. I have no idea.

Q. Would they generally be included in the closing binder?

A. I don't know.

Q. Did anybody give Jericho an opinion of title with respect to this transaction?

A. I don't know what the opinion -- we got an opinion at the end of every deal.

Q. An opinion letter?

A. Yeah.

Q. And that would come from borrower's counsel?

A. Could come from borrower's counsel, and I believe we got one also.

Q. And it was signed by borrower's counsel?

A. I think we also got one from our counsel.

Q. From the New York law firm?

A. I don't recall. I don't remember, but generally, we try and get opinions on both sides if it's possible. I don't even know if we did.

Q. Okay. All right. Let me ask you. Maybe because I'm not familiar with the whole construction project and how much water it actually goes over, but

when you're buying -- if you're doing a closing either as a seller or buyer or a lender for the buyer and there is property on a waterway, it means generally, the risk of a bridge running across your property and going over the waterway is not usually a concern. Would you agree with me?

I mean, if you look at this transaction, and this property on the Intracoastal Waterway, the concern of a highway coming across the property is probably less of a concern as opposed to property elsewhere by virtue of being right on the water.

A. I have no idea what you're getting at. I don't understand the question.

Q. It seems to me if you have property on a waterway, the odds -- first of all, it's probably very expensive to build a bridge. The odds of a highway being constructed over your property and a bridge being built over your property are so slim that it's typically something you would never think about.

I mean, I wouldn't. That would never cross my mind.

A. Well, only by virtue of a definition of a bridge, it's got to go over water.

Q. I understand that. I'm just trying to figure out why that bridge showed up on the checklist.

A. I don't know. From what I'm reading in the final one, it was not in there. It was supposed to be down the road, and that's all I understand it to be.

Q. What was supposed to be down the road? Oh, down the road not in the future, but down the physical road?

A. Exactly. Yes.

MR. NEWBY: I'm going to ask for another break, too.

(A brief recess was taken from 12:14 p.m. to 12:55 p.m.)

MR. KOUTRAKOS: Exhibit No. 11.

(Defendant's Exhibit 11, September 10, 2007 Volpe Real Estate Advisors document, was marked for identification.)

BY MR. KOUTRAKOS:

Q. This is something from Volpe Real Estate Advisors dated September 10, 2007.

Did Mr. Volpe do work for you?

A. No.

Q. What did you -- this document was produced by your attorney in this case.

Can you tell me how this document got in your file?

A. Mr. Shoup sent it to us.

Q. When would he have sent it to you?

A. I assume around this time, considering that the loan was already come due and matured.

Q. He was already in default of this loan?

A. I believe so.

Q. And this is one of the appraisals you mentioned early on in the deposition when you said about 42 million; is that right?

A. I'm not sure if this was the one or there was another one that I had seen. I don't recall which one it was.

Q. There is a Neeves appraisal that you have in front of have.

A. I think there was a third appraisal, and I seem to recall one that was -- I can't seem to find it. I don't know where it is. We've been looking for it because it's something I really wanted to show you.

There was a group out of New York called Kennedy Funding.

Q. Do you see where it says, "E-mailed to Kevin Wolfer? My understanding is he is with Kennedy Funding.

A. There was one that was completely addressed to Kennedy Funding.

Q. What is Kentucky Funding's involvement in

this transaction?

A. Apparently, Mr. Shoup was going to him to refinance us all out.

Q. So Kennedy Funding would not have been involved in this transaction until after the loan closed around the time of default?

A. I don't know. I don't know what the conversation was. He was going to them to have us refinanced. What their conversation was I was not privy to.

Q. But you have a specific recollection of receiving this document from Mr. Shoup on September 10, 2007?

MR. NEWBY: This is Exhibit 11?

MR. KOUTRAKOS: Yes, sir.

THE WITNESS: I don't recall when I got it.

BY MR. KOUTRAKOS:

Q. Well, you would have received this document in his attempts to try to either refinance or to try to buy you out, I guess; is that correct?

A. He sent me this document. I don't recall why he sent it to me, other than to show me he was working on trying to get this done.

Q. So presumably, it would have been at or around September 2007?

A. You keep saying that. I don't remember when it was.

Q. You would have received it in 2010. It got in your file somehow, and the purpose of why it's in your file, I'm just trying to find out why.

A. Mr. Shoup sent it to me. I don't recall when he sent it to me.

Q. If you look at the second page, it does talk about a right-of-way for future highway under the development status and potential section.

MR. NEWBY: Where are you looking?

MR. KOUTRAKOS: Second page. It's right under development status and potential.

THE WITNESS: Okay.

BY MR. KOUTRAKOS:

Q. Do you see that?

A. I see what it says, yes, but --

Q. At that point in time, this is September 10, 2007, it appears that without question, Jeff Shoup knew about the highway.

If you received this document, you would have some, Jericho would have been informed to some extent, there was a right-of-way going through the highway; correct?

A. I have no idea. Our foreclosure took

almost a year and a half to finalize this, so he might have sent this to me later on. I have no idea when he sent this to me whatsoever. This was well after we closed on this loan.

Q. All right. Do you recall Jericho filing an action against the South Carolina Department of Transportation in Horry County?

A. I assume it did. I assume Bellamy's firm did.

Q. For what reason?

A. To block this thing; to stop it.

Q. Can you be more specific than that?

A. To stop the bridge from going through the property.

Q. Do you think Jericho had any power to stop the bridge from going through the property?

A. Obviously not.

Q. How would your lawyers go about doing that? Did you hire them to specifically block Horry County --

A. I wanted to stop it, yeah. I had no idea it had been in the works forever. And everybody missed it. I rely on professionals, and I truly rely on the ultimate, the title policy, the title insurance. Of the hundreds and hundreds of deals I've ever done, I have never had an issue before.

Q. Have you read the title insurance policy that's involved in this particular case?

A. Yes, I read it.

Q. You have?

A. Yeah. I'm not a lawyer, so I can't give you an opinion about it.

Q. I'm showing you what will be marked as Exhibit 15. Oh, sorry. Exhibit 12.

(Defendant's Exhibit 12, DOT lawsuit, was marked for identification.)

THE WITNESS: That's why I didn't read it.

BY MR. KOUTRAKOS:

Q. Looking at Exhibit 12, this is a lawsuit filed by Jericho. The Jericho Fund and Jericho State Capital against Horry County and the South Carolina Department of Transportation; is that correct?

A. Yes.

Q. Do you recall reading this complaint?

A. I don't recall reading this complaint.

Q. Do you have any memory of this complaint?

A. No, not really.

Q. Do you see where it was filed in 2009? Look at the first page. You'll see a stamp of October 12, 2009. Do you see that?

A. Yes.

Q. If you look at the last page of the exhibit --

A. The last page? Okay. Yes.

Q. Is that your signature?

A. Yes.

Q. Okay. Do you see where you, you verified all the information in the complaint as true? Do you see that?

A. It says I appeared before -- what am I verifying? What does it say I'm verifying? It just says, "Verification." It says that he is -- "He has read the foregoing Summons and Complaint and that the information contained herein is true." Okay.

Q. Do you recall signing that verification?

A. No, but it's my signature.

Q. You said you recall reviewing this complaint.

A. I don't recall reviewing it, but I said I did so I must have. This is a while ago.

Q. So if you had signed something back in 2009 saying everything in the complaint is true and accurate, I assume in 2009, you would have looked at the complaint and determined that everything stated in there was true and accurate; correct?

A. Okay.

Q. Is that yes or no?
A. I don't recall what it is.
Q. Would you have lied in 2009?
A. No, I never lied.
Q. So you would have actually reviewed the complaint and said, hey, this looks true, so I'm going to verify the complaint; correct?
A. Pretty much, yeah. I don't know if I read it line by line.
Q. Understood.
A. It was conversations I had with the attorneys.
Q. Why don't you read it real quick. It's four pages long, and it will take you a couple minutes to read. I want to ask you some questions about it, why this lawsuit was filed and so forth.
A. Okay.
Q. Okay. Was the purpose of this lawsuit to -- if you look at paragraph 3, it talks about the plaintiff's former mortgagor.

Do you understand that to be Jeff Shoup?
A. T&J World Development, yes.
Q. Where they sought to rezone the property, and that's the property involved in this case; correct?
A. That's correct.

Q. Okay. And it says, "Consistent with the conceptual plan with Horry County." Do you see that?

A. Okay.

Q. In paragraph 4, it talks about some rezoning documentation that required that the property for the right-of-way to be donated to Horry County. Do you see that?

A. Yes.

Q. Tell me what happened with that process.

A. I have no idea.

Q. You have no idea?

A. None whatsoever. He was not allowed to give a piece of our property, my collateral away.

Q. So you, Jericho sought this litigation to say, hey, Jericho owns this property. We never agreed to give any property away to anybody; is that correct?

A. Correct.

Q. And in the complaint, you sought an order that -- if you look at page 4, paragraph 11, you requested that you, the plaintiffs, are the owners of the property, including that portion which Horry County sought to require plaintiff's former mortgagor and predecessor in title to surrender. Do you see that?

A. Yes.

Q. Basically, you wanted the court to say, we

own the property. We haven't surrendered or agreed to give up any portion of the property, correct?

A. That's what it says.

Q. Tell me what you said. You verified it. What did you say?

A. Listen, I'm not an attorney. I appreciate what you're saying. I don't know what the word -- the plaintiff's former mortgagor and predecessor in title to surrender. It says what it says. I don't know what it means to that point.

Q. Fair enough. Fair enough. Do you recall reviewing the exhibits to this contract when you verified the complaint?

A. I don't recall that.

Q. I can ask you questions about Exhibit C. You're not going to recall any specifics of reviewing it; is that correct?

A. Let me see what Exhibit C is.

Q. Or for that matter, any of the exhibits. Do you have any independent knowledge of reviewing the exhibits or have any knowledge of the purpose of the exhibits?

A. Do I -- I don't recall these at all.

Q. Okay. Do you recall reviewing them when you verified the complaint?

A. Do I -- I don't recall. I truly don't remember.

Q. You can't tell me what the goal of this lawsuit was?

A. My goal was to stop -- my goal was to stop this bridge.

Q. Were you successful?

A. Obviously not.

Q. Isn't it true that your goal by filing this lawsuit, was to have the South Carolina Department of Transportation file a condemnation action?

A. What?

Q. Was it your goal, was is Jericho's goal to file this lawsuit to say, okay Department of Transportation. You need to file a condemnation action. You've waited too long. Was that your goal?

MR. NEWBY: I'm going to object to the form.

THE WITNESS: And I'm going to say no. Absolutely not.

BY MR. KOUTRAKOS:

Q. What was the result of the lawsuit represented by Exhibit No. 12?

A. It's still ongoing.

Q. All right. I'm going to show what you what

is going to be marked as Exhibit No. 13. If you can review that for a second.

(Defendant's Exhibit 13, stipulation of dismissal, was marked for identification.)

THE WITNESS: No idea what this is.

BY MR. KOUTRAKOS:

Q. Do you see that it's signed by Mr. Shelton or Mr. Bellamy of the Bellamy law firm -- it's on the second page -- which is counsel for plaintiff?

A. Uh-huh.

Q. They're your lawyers dealing with the South Carolina Department of Transportation, correct?

A. Yes.

Q. That's the law firm that Jericho hired to deal with zoning on DOT issues?

A. Okay. Yes.

Q. And they would have had authority to file this lawsuit against Horry County, correct, the one that you just talked about, the complaint that you verified, Exhibit No. 12?

A. Yes.

Q. So Exhibit No. 13, they were acting, the Bellamy law firm was acting on behalf of Jericho in signing the stipulation of dismissal; correct?

A. Correct.

Q. Is it your understanding that they dismissed Exhibit No. 12 just because the South Carolina Department of Transportation filed a condemnation as stated in the stipulation of dismissal?

A. I have absolutely truly no idea what you're getting at. I don't know what you're talking about.

Q. So you don't know the purpose of Exhibit No. 12?

A. I know why it was filed. We wanted to stop the bridge. That was my direction to them. We have to stop the bridge. It's going to destroy the property. The property is going to be worth nothing.

Q. It was stop the bridge or get money for the bridge?

A. No, no, no. That was not contemplated. I didn't want the bridge. There is no value to the property anymore with a big bridge going through it. I have to keep saying that.

I don't know what you're trying to do, but I promise you, I really mean it. I just wanted to stop it so I can go and develop it. It's beautiful property on the Intracoastal Waterway. It's got a massive bridge on it.

Q. Did the South Carolina -- you agree with me that the South Carolina Department of Transportation

eventually did file a condemnation action.

Do you know what a condemnation action is?

A. Yes. They are taking 10.18 acres of my property.

Q. Do you understand that that action is currently pending today?

A. Yes, it is.

Q. And do you understand that by virtue of that action which the South Carolina Department of Transportation filed against Jericho State Capital, that it was exercising its rights of eminent domain to take Jericho's property away?

A. They are trying to take our property away, yes.

Q. And the first time that the Department of Transportation, to your knowledge, filed any legal action to enforce its right of eminent domain against your property was when it filed its condemnation action against Jericho State Capital?

A. I don't know. I don't know when the timing starts. I don't know when the actions began. I don't know.

Q. Okay. Who owns that 10.1 acres today?

A. I believe Jericho State Capital Corp. of Florida and The Fund.

Q. The legal proceeding represented by Exhibit No. 12, the complaint --

A. You know what? This brought up something, if we can go back to something. You asked me before -- just so we're clear about this, you gave me a value that they said they put on the property for the -- you went on to the taxes.

Q. Yes.

A. You came up the number. We said the assessed value was $127,000, and there was $27,000 worth of taxes paid. You had me look at a value, and you wanted, for the record, the value of $2.8 million.

That was $2.8 million prior to any contemplated bridge or anything else or the loss of the 10.18 acres and the diminished asset value of the rest the property. We stipulated to 2.4 or 2.8 million.

I'm not stipulating to that. I just realized that. It just triggered something in my mind. If I don't have that, and you have a value back then, they are saying the value was only $2.8 million back then. Now with the bridge going through it and it's separated into two development lots that you don't really know what you can do, I think it's a lot less than that number.

Q. I was not stipulating to anything. I was

asking you questions.

A. All right. Fine. I just wanted to be clear.

Q. Did Jericho receive communications from the Department of Transportation prior to the Department of Transportation exercising its right to enforce eminent domain by filing its condemnation action?

A. I don't know the timelines, so to answer it as candidly as I can, I did receive it. Was it before or after? I don't recall. I did get a call from a Holly Moody who wanted to go look at the property, and I told her she could not go onto my property.

I got contact from a gentleman named Clyde Rafford who wanted to go on the property. I told him he could not go on the property. Any further communications they should have, I directed them to Mr. Bellamy.

Q. Was there a point in time where Jericho was trying to convince the DOT to build the bridge elsewhere?

A. That was my attempt through my attorneys.

Q. So basically, there was a point in time when you were involved with the property where the plans by the Department of Transportation were tentative. The bridge could go across your property and the bridge may not go across your property.

A. No. As I said earlier, there was no ifs,

ands or buts about it. The bride was going through the property. In addition, as I learned later on, there was apparently a sales tax that was added to this.

Q. When did you learn that?

A. Throughout this whole nightmare that I'm having with this. Apparently, it was common knowledge.

Q. Has Jericho commissioned an appraisal of the property to determine the value of the property being sought to be taken by the Department of Transportation?

A. Yes.

Q. Do you know who that appraiser is?

A. Has Jericho?

Q. Jericho, yes.

A. No, Jericho has not.

Q. Jericho has not hired an appraiser?

A. No.

Q. Has the Bellamy law firm hired an appraiser on your behalf?

A. Appraisers, yes.

Q. More than one appraiser?

A. I don't know. I think so.

Q. Do you know who the appraiser is?

A. They're not -- I know the appraisals are not complete yet.

Q. Do you know who the appraiser is?

A. I'm trying to --

Q. I'm sorry.

A. Relax. Seriously. I understand. I'm trying to remember the names. We had spoken to a couple. One was a guy -- Denafrio is one name that sounds familiar. Another name sounds like McCall and with a J.

Q. Jayro? (phonetic)

A. Yeah.

Q. Have you gotten -- has Jericho received any preliminary conclusions as to what the appraiser is going to opine?

A. We have had conversations. Everything is in draft, and it's not been signed off on and not been agreed upon.

There is a lot of things that were not taking into consideration in regard to the appraisal; the additional costs of developing a property like this when you have to do two separate of everything.

Q. When you say, a lot of things were not taken into consideration, who is doing the consideration?

A. The conversations were with me and my attorneys and for them to direct the appraisers to understand what they're looking at here.

Q. So your appraisers have reached a conclusion --

A. No.

MR. NEWBY: Object to the form.

BY MR. KOUTRAKOS:

Q. I'm trying to --

A. I already said no to you.

Q. I understand that. But you said -- it sounded to me like you said certain appraisers didn't take things into consideration. I was trying to find out who you were talking about.

Are you talking about the DOT's appraisers, or are you talking about your own appraisers? I don't know.

A. I got a copy of the DOT appraiser's thing that said with the bridge going through it, it's going to be worth more money, which is genius. The conversations were laying out what we're looking for in the appraisal; for example, what are the damages that this bridge is going to cause, which are immense.

I mean, you take a property that was going to be spectacular, one-acre waterfront lots to a tract -- I don't know what it's going to be. I have people calling us. They want to make a horse track out of it. What was going to be a beautiful development is now, to me, worth zero.

Q. Has the appraiser given any preliminary

figure to what he believes the diminution of the property will be because of the --

A. He has given certain numbers, yes.

Q. What are they?

A. I don't know. I don't recall exactly what they were, but they're not complete so...

Q. All right. Has he asked you to review the numbers before he completes, before he reaches his final conclusion?

A. No. We are doing what his assumptions are.

Q. What are his assumptions?

A. Well, what factors you have to take into consideration. You have to take consideration the height of this bridge, the sound, the vibration, the pollution, the noise, the liability of a thing coming off the bridge, people throwing stuff off the bridge, tractor trailers in the middle of the night at 3:00 in the morning honking their horns.

There are so many things you have to take into consideration by the loss, by this bridge coming through this property.

Q. Well, I assume the appraiser is qualified and licensed to do what he was hired to do, and you're telling me all of this stuff. I understand that. I'm not arguing with you.

But are those things that you felt a need to communicate to the appraiser that you hired, or are you just telling me because you want to tell me?

A. No. I told my lawyers this to make sure that this is all put into consideration. This is not like a little road coming through the property and you can still do stuff.

Q. Did the appraiser that Jericho hired come back with a preliminary figure, and did Jericho say, go back to the drawing board because we don't like that figure?

A. We've seen some numbers. Okay.

Q. Did you like those numbers?

A. I was not comfortable with those numbers, no.

Q. Can you give me a general idea of what those numbers were?

A. It's not completed yet, so I don't want to do that.

Q. I mean, I know you don't want to give it to me, but I'm asking: Do you have a recollection of --

A. I don't recall what those numbers are.

Q. Was it over a million dollars?

A. Was which over a million dollars?

Q. The effect on value of the property due to

the condemnation.

A. You have to be more specific.

Q. Well, how about you be more specific?

A. You're asking the questions. I'm trying to answer you, but you're not asking me the question.

Q. Did the appraiser give you a number?

A. For what?

Q. That's what I'm asking. Did he give you a number at all?

A. For what?

Q. Any number; value of the property, value of the property before, the value of the property after.

A. He is going to be giving us numbers before and after.

Q. Has he given you any preliminary numbers?

A. I have numbers across the board, anywhere from 2 million to 10 million. When it goes in front of a jury, we'll figure it out. The damages, we can't figure out what damages are at this point.

(Defendant's Exhibit 14, condemnation notice, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm showing you what has been marked as Exhibit No. 14. This is the condemnation notice, and I also attached the amended condemnation notice.

Would you -- you would agree with me that this is a legal action filed by the South Carolina Department of Transportation against Jericho State Capital Corporation?

A. That's what it says, yes. I'm not an attorney. I don't know.

Q. You're being sued in a lawsuit where it says South Carolina Department of Transportation v. Jericho State Capital Corporation of Florida, landowner. Do you see that?

A. Yes.

Q. Do you see where it says lis -- it says, "Lis Pendens"?

A. I'm sorry. What page?

Q. This is the fourth page of the exhibit.

A. Okay.

Q. It says, "Notice is hereby given that the Condemnor above named," and it cites a statute, "has brought an action against the Condemnee(s) above named to acquire the real property described herein for public purposes." Do you see that?

A. Who's the condemnee?

Q. You are, Jericho State Capital.

A. My caption says, "Landowner."

Q. It should be condemnee.

A. Okay.

Q. When Jericho received this, are you telling me Jericho did not think it was a legal action?

A. I don't know if Jericho ever received it. It went to the attorneys I assume.

Q. As far as you know, being the person most knowledgeable at Jericho to testify about these matters, was this the first time that a legal action was filed against Jericho related to the proposed construction of a highway across Jericho's property?

A. I have no idea.

Q. Is there anything you can tell me about the condemnation action, or do I have to take your lawyer's deposition so he can tell me about the condemnation?

A. I don't know. Maybe you have to take their deposition. This is my first foray into condemnation.

(A discussion was held off the record.)

(Defendant's Exhibit 15, February 20, 2009 letter, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm showing you what has been marked as Exhibit No. 15. Take a look at that letter. Now this is addressed to Richard -- is that your dad?

A. Yes.

Q. Would you have received this letter and

reviewed it?

A. Yes.

Q. At the time, do you recall receiving this letter?

A. Yes.

Q. Tell me what you knew of this zoning and rezoning process at the time you received the letter, or was this the first time you heard about it?

A. The first time I heard about the rezoning?

Q. Yes.

A. No. I had heard about the rezoning prior to this. I testified to this earlier before. That's fine. I was actually in New York when I got this, and it was read to me, and I was thrilled because what they're saying is if I don't give them the property -- if I don't give the property, as I understand it, to Horry County, then all bets are off; that they're not going to increase the density and everything could go back to my one-acre property. I was thrilled. That's what I wanted.

Q. Basically, it was going to revert back to the prior zoning, which is R-1, one-acre lots.

A. Yes, and no bridge or anything.

Q. Is that what you understand the current zoning to be?

A. I have no idea what the current zoning is.

Q. At what point in time did you understand the property to be one-acre zoned, whatever designation it was, to allow you to build residential lots one-acre in size?

A. When I first made the loan in 2006, it was zoned R-1. R-1, as I understand it today, does not exist.

Q. The designation doesn't exist, but are you still allowed to have one-acre lots?

A. I have no idea what I'm allowed to do.

(Defendant's Exhibit 16, August 31, 2009 letter, was marked for identification.)

BY MR. KOUTRAKOS:

Q. I'm showing you what has been marked as Exhibit 16. Do you recall receiving this letter?

A. I do.

Q. Do you see in the first sentence -- first of all, it's addressed again, to your father, but you would have received this letter; correct?

A. Correct.

Q. If you look at it, it says, "South Carolina Department of Transportation is in the process of acquiring rights of way for South Carolina Route 131." Do you see that?

A. Yes.

Q. And it says, "The records of Horry County indicate that you own property involved on this project." Do you see that?

A. Yes.

Q. At this point in time when you received, Jericho received this letter, was it your position that Jericho still owned the property and that the Department of Transportation was threatening to do something but at that point in time had not done it yet?

A. I have no idea.

Q. At that point in time, it was Jericho's position that it owned the property; correct?

A. I don't know. I was told that I'm not going to own the property. I don't remember exactly what I was thinking on August 31, 2009, if I still own it or not.

Q. Okay. At that point in time, would you agree with me that the Department of Transportation had not initiated its condemnation action?

A. I don't know about that.

Q. If you look at the condemnation action, Exhibit No. 14, we see it was filed on December 15, 2009. Do you see that?

A. I think -- I don't know if that's correct or not. That may be re-filed. I'm pretty sure that's

what happened.

Q. That it was re-filed?

A. Yes.

Q. I can represent to you that is the date it was filed. The re-filing occurred a couple years later.

A. I don't know when it was re-filed. I know something was done improperly so it was re-filed.

Q. Give me a couple seconds. Do you recall after Jericho foreclosed on the second mortgage, how much it bid for the property?

MR. NEWBY: How much what?

MR. KOUTRAKOS: It bid at the foreclosure sale.

THE WITNESS: No idea.

BY MR. KOUTRAKOS:

Q. You have no idea?

A. I don't recall at all.

Q. If I ask you questions about the foreclosure, what value Jericho would have placed on the property when it made a bid, you don't have any memory or cannot testify about that today?

A. On the foreclosure -- at the date of foreclosure, I think the property was worth -- at the foreclosure, it was prior to the bridge, so it had to have been close to $40 million.

Q. I can tell you the foreclosure was 2007. The foreclosure sale and the deed was -- the foreclosure sale was December 3, 2007.

You would have known about the bridge by December 3, 2007, correct?

A. No, I didn't.

Q. You didn't know about the bridge? You didn't receive the --

A. December 2007?

Q. Yes. You didn't receive Exhibit No. 11 dated September 10, 2007 before the foreclosure sale?

A. At the foreclosure, I knew nothing about the bridge.

Q. So you would have known nothing about the bridge?

A. That's what I testified to, yes.

Q. You mentioned in the complaint that you filed against Chicago Title that you didn't think the property is marketable at all.

A. Correct.

Q. And the damages you seek against Chicago Title is basically the amount that you loaned; is that correct?

A. Are you talking about -- not only the money I loaned, but the monies I paid for the cure payments to

keep the first mortgage in place for a long period of time without the knowledge of this.

Because if I knew there was a bridge, I never would have made cure payments. Every day that goes by, I have outstanding loans on the monies I put up, and they are accruing at 14 percent a year. I don't know if there's a final number yet.

Q. Had you known about the bridge, you never would have made cure payments?

A. I would never have made the loan.

Q. If you knew about the bridge before you made the cure payments, would you have made the cure payments?

A. No.

Q. So you think the property is worth nothing?

A. I think the property has lost almost all its value now. I don't know what you can build there.

Q. Let me ask you: Why did you buy the first mortgage for 2.5 million if you thought the property was worth nothing?

A. To protect -- I'm a general partner in The Fund, and The Fund had to protect it so hopefully, one day -- I don't know what's going to happen -- to see if you can use the property. I have no idea, but it was to protect the assets.

Q. Is your appraiser -- you don't know what your appraiser is going to opine, do you, because he has not finished his analysis; correct?

A. Correct.

Q. When do you expect him to finish his analysis?

A. I don't know.

Q. Is that something the Bellamy law firm is coordinating?

A. Yes.

Q. In the complaint you filed against Chicago Title, you are complaining about the fact -- you're saying or alleging that Chicago Title missed something.

What did they miss?

A. I'm sorry. There was a possibility -- not even a possibility of a bridge, but a real bridge is being built. There is a bridge being built. Apparently, everybody knew it except nobody said anything.

Q. I've heard you making that -- well, I've heard from others that you've made that statement before, "Everybody knew about it." Tell me -- go down the list of everybody who knew about it.

A. Everybody who lives in Horry County because they were paying an additional sales tax as I learned.

Q. So Jeff Shoup knew about it?

A. I don't know if Jeff Shoup knew about it.

Q. The surveyors that were hired on the project knew about it?

A. I don't know.

Q. You said everybody in Horry County.

A. I found this out later on. I don't know when it started, the sales tax. You showed me something, and I saw that in 2002, they were talking about it. I relied on my title insurance to make sure that everything is clean and aboveboard.

Q. What on the title did you expect Chicago Title to find that you're saying it did not find on the title?

A. That somebody else is going to own a piece of your property, and they were building a bridge right through the middle of it.

Q. What is the document you say that Jericho believes that Chicago Title did not find that they should have found in the public records?

A. I don't understand the question. Please, do it again.

Q. Do you believe Chicago Title -- does Jericho take the position that Chicago Title has an obligation to review zoning on a particular piece of property?

A. I don't know if it's zoning, but any encumbrance they should have noted. Any possible encumbrances are supposed to be noted. Any exclusions and possibilities should be told and brought to your attention so you know what you're doing.

Q. Have you read the ordinance enacted by Horry County in this particular case?

A. No.

Q. Have you ever seen it before?

A. No.

Q. Do you know what Jericho is alleging that Chicago Title failed to find in the ordinance that was recorded in the register?

A. I don't know.

Q. I can show the ordinance and ask you questions about it, and you're not going to know anything one way or the other?

A. I relied on the title policy to make this loan, and the title policy missed it.

Q. I guess -- I was going to ask you what the amount due on the Jericho mortgage is, but it's been liquidated and there is no amount. It's gone.

What would have been the balance of the Jericho mortgage at the time you foreclosed?

A. Well -- the balance?

Q. Just generally. I know I'm asking you a specific question but --

A. I gave you numbers. I can refer back to them as to a certain time. The cure payments, all the engineering we did, all the work we did, probably close to -- right now with accrued interest on the Jericho side, over $10 million.

Q. Does the amount due on -- I guess the first mortgage and second mortgage exceeds the value of the property, correct?

A. Yes.

Q. And that's Jericho's position, that it exceeds the value of the property?

A. Yes.

Q. Was there a point in time when the balance did not exceed the value of the property?

A. When the balance --

Q. I'm sure there was. The value of the property was greater than the balance due on the first and second mortgage.

A. Sure.

Q. Can you attribute -- and eventually, the balance exceeded the market value, correct?

Over the course of time, would you agree with me that the balance on the first and second

mortgagee eventually exceeded the market value?

A. Because of the bridge coming through, yes.

Q. Did it have anything to do with the worldwide financial crash where builders in Horry County went bankrupt, developers went bankrupt, there was an overflow of inventory on the property and you couldn't sell anything, foreclosures were at an all-time record high, and they actually had to hire another judge to hear foreclosures?

Do you think any of those reasons had anything to do with perhaps, the decrease in the market value?

A. Of course it did, and I've been involved -- I'm being candid. I have been involved in real estate throughout the United States, and that's absolutely -- you know, that was a risk that we were willing, that we were willing to take, a financial risk we were willing to take, but not one that is not told to us and not a bridge coming through it.

That's a business risk. The market can go up and down and do all different things, but you can't build a bridge through my property, and you can't ask me to change the value.

Q. Do you agree with me that the title insurance company does not insure that business risk that

you were talking about, the decrease in valuation?

Would you agree with me the title insurance policy -- and you would never expect the title insurance policy to insure that.

A. I'm not looking for you to do anything about the business risk. I'm talking about the bridge coming through the property. I would have never made this loan. It's not -- I would never have made the loan if there was bridge, even if there was a thought of a bridge.

Q. You have alleged, Jericho has alleged that Chicago Title acted in bad faith.

Do you believe that Chicago Title acted in bad faith?

A. I don't know what the term bad faith means. I think they missed it, and I think that's why you're here to depose me, because you realize, oh, no. We screwed up here and we got to now find a way to get out of this. Listen, I understand.

Q. There are reasons why I'm here, and the reasons why I'm here are because the judge -- we filed a motion to dismiss. He was this close to filing it because there was merit to the case and so we had to actually do some discovery.

A. There is no merit?

Q. Yes. Have you looked at the exclusions in the policy? Has anybody shown you the exclusions in the policy related to eminent domain?

A. Yes. I believe that's absolutely -- I've read it. I've seen it, and I believe that follows -- following the delivery of the policy, not prior to it; not when it was out there already.

The reason why we get title insurance is to protect that we own it. I don't want to know -- like if you're doing a house and that -- I'm buying a house, and I go buy a title policy. Then I find out a quarter of my house is owned by somebody else. Well, then, you know what? I wouldn't buy that house.

I wouldn't have lent the money on this property ever if I knew there was a possibility. I go to my professionals. They go to other professionals. All the professionals do is -- I have spent millions and millions of dollars with Chicago Title on title policies. I have done hundreds and hundreds of deals. I've never had an issue. Somebody dropped the ball here and it wasn't us.

Q. Are you saying somebody dropped the ball in closing the transaction?

A. No. I'm not saying that at all. I'm saying that Chicago Title missed it.

Q. Missed it?

A. Missed giving the exclusion, noting that there was a possibility -- just saying there was a possibility, this transaction would never ever have happened.

Q. My question -- I'm probably not going to ask a good question. When you say, "they missed something," are you saying at the time of the transaction, at the time the policy was issued, they missed something; in other words, they missed this ordinance that is referenced in the complaint?

A. I'm saying Chicago Title should have noticed. When I paid all of this hundreds of thousands of dollars for the policies, they should have told me, listen, you know what? There is a problem. There is a potential problem. There may be a bridge. I would have stopped.

Q. The question I'm asking you is -- Chicago Title disagrees, respectfully, with your reason as to what it should have picked up at the time they issued the policy or not.

The question I'm asking you is, in the way it happened, the claim -- when a claim was filed by Jericho, do you believe that Chicago Title in handling the claim, acted dishonestly?

A. Oh, yes. As their first response was by denying it outright, yes, I do. I think it was inappropriate, yes. I don't know why you bother buying title insurance if you can't insure the title and not the loss of the property.

Q. Let's take a break.

A. I have to get back to my office. Come on.

Q. We have to take a five- to ten-minute break.

(A brief recess was taken from 1:51 p.m. to 1:58 p.m.)

BY MR. KOUTRAKOS:

Q. Can you explain to me what Jericho has done to try to find documents related to this transaction, like e-mails and such?

A. I've gone through everything that we had. I made copies of my files.

Q. How does your e-mail system work?

A. How does it work?

Q. Yes. Do you have a system, or do you use third-party providers to provide e-mail for you? What is your e-mail address? It's aol.com; isn't it?

A. And gmail.com.

Q. Does that come up on a Microsoft Outlook type system, or do you just log into AOL?

A. I log in.

Q. Does your company have a network? Does your company have any backup tapes of prior documents that may have been saved to any computer system or hard drive?

A. No.

Q. If I wanted to -- let me ask you this. Let me back up. I told you I was going to ask you bad questions.

If somebody sends you an e-mail with a contract scanned like a PDF, is there a place where you would save it?

If you wanted to save that document to the computer, would you save it to your individual computer's hard drive, or is there a network or some kind of joint system where Scott can access something that you may --

A. No. He cannot access anything of mine.

Q. You have your own personal computer?

A. Yes. Now since, I am going to guess a year and a half ago, I can -- everything is now on Carbonite, or whatever that is, but that's because my computer completely crashed.

Q. Are you able to go into your AOL account and pull up old e-mails?

A. I did.

Q. How far back? I have AOL, but I don't know how far back I can go.

A. I went back as far as I was able to. I went back to 2007. I was able to bring up some stuff I think.

Q. How did you determine whether an e-mail was relevant to this transaction? Did you do a word search, or did you look at the dates?

A. No. I looked at the deal. I looked under Peachtree and I looked under T&J and I looked under World Development, and I brought up everything in addition to the ones between me and my attorneys, which I sent to the attorneys.

Q. Prior to you, Jericho, obtaining the first mortgage, did you reach some agreement with the holder of the first mortgage as to how the eminent domain, any condemnation award would be shared?

A. Did I prior to --

Q. Yes.

A. We tried to negotiate with --- there was a consultant brought in who was running the show at that point. We had worked trying to put together a thing. That didn't work. He was then pushed out. They brought in a new person.

First of all, it was a guy named Dan

Freeman, and then Bill Brinkman came in and we subsequently put together a deal on that. That fell apart because he was pushed out, and then it was forced into liquidation.

Q. Because there is some documents you sent me. There was a memorandum of understanding, but there was nothing -- there's no agreement written. There was just some paper exchanged back and forth. You never had a deal.

A. No. We never had a deal.

Q. Did you all ever have any deal as to how a title insurance claim would be filed, as to whether or not the first mortgage holder would file a title insurance claim?

A. Cursory, yes, of course.

Q. When was that?

A. When?

Q. Yes. Did you have any agreements as to how --

A. No. There is no agreement. There was only things that we tried to get agreed, apparently. MF08 was in really bad trouble and they had their own issues.

Q. Were the communications that Jericho made with Chicago Title limited with respect to filing this claim? Were they limited to communications made by your

lawyer, Mr. Cohen, with Chicago Title?

A. Did I ever contact them?

Q. Here's what I'm trying to find out. Did you ever have any conversations with any folks at Chicago Title related to this claim?

A. Yes, recently. I called Rudy for advice, not realizing this is the same thing.

Q. And Rudy is --

A. Rudy Riviera.

Q. He is a colleague of Mr. McCall?

A. Right.

Q. Other than that, I don't want -- when we're at trial, I don't want you to testify, oh, I had this two-hour conversation with claims counsel back in 2010. I don't think you did.

But my question to you is: Were there communications following this claim in communicating with Chicago Title about this claim?

Other than your conversation with Mr. Riviera, were they limited to letters going back and forth between your attorney, Mr. Cohen, and Chicago Title?

A. It was originally Mr. Cohen. I don't know who he spoke to and how many times and whatever the letters read, I don't know, and then Mr. Newby.

Q. Besides --
A. I have not had any conversations with Chicago Title.
Q. As far you know, Mr. Svirsky has not either?
A. No, not that I'm aware of.
Q. All right. Do you have any relatives that live in Horry County?
A. No.
Q. I'm asking you because there will be a jury maybe one day here in this case, and that's what we normally do is find out if you have a first cousin in Horry County that is going to be on the jury.
A. No.
Q. Do you know if Mr. Svirsky has any relatives down there.
A. Not that I know of.
MR. NEWBY: We have a lot of Svirskys in Horry County.
MR. KOUTRAKOS: Give me one second. That's all the questions I have.
MR. NEWBY: I think I'll resist the urge. Done.
(The reading and signing of this Deposition was not waived.)

(The Deposition was concluded at 2:05 p.m.)

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY
CASE NO.: 2015-CP-26-1084

LYNX JERICHO PARTNERS, LLC,
Plaintiff,
vs.
CHICAGO TITLE INSURANCE COMPANY,
Defendant.
_____/

Cambria Hotel
141 Southwest 19th Court
Dania Beach, Florida 33004
Wednesday, March 16, 2016
12:00 p.m. - 2:45 p.m.

DEPOSITION OF SCOTT SKIVRSY
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Taken before Tambria Lee Dery, RPR, FPR, Registered Professional Reporter, Florida Professional Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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Job No. CS2238732

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ALSO PRESENT:
GLENN CHWATT.

I-N-D-E-X

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THEREUPON,

SCOTT SVERSKY,

having been first duly sworn, and answered, "I do," testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. KOUTRAKOS:

Q Mr. Svirsky, did I pronounce that right?

A Svirsky.

Q Svirsky. We've met before, my name is Jim Koutrakos and I represent Chicago Title Insurance Company. You sat in on a deposition in a related case, so you probably heard all of this before, but I think I need to put it on the record.

I'm going to ask you a series of questions today and if you don't -- and there will be questions you do understand, but if you do not understand a question, please ask me to rephrase it, tell me you don't understand and I'll try to provide a better question for you. Do you understand that?

A Yes.

Q Do you believe that's fair?

A Yes.

Q The court reporter's taking everything we say down today and so I have a bad habit probably because of my ethnic background of talking over

people and so I will try my best to wait until you're done speaking and if you can do the same for me, I would appreciate it, okay?

A Sure.

Q Because the court reporter is transcribing everything today, if you actually instead of saying yes, you say uh-huh, she's going to actually put in the transcript uh-huh, so let's try to stick with verbal as opposed to nonverbal responses, do you understand that?

A Yes.

Q Are you on any medications or have a physical disability that affects your memory or your ability to tell the truth today?

A No.

Q Are you capable of giving truthful testimony today?

A Yes.

Q I'm not sure how long we will go today, I will try to not take too long, but if you need a break, just let me know and we'll break.

A Yes.

Q Okay. Can you please spell your name for the record?

A S as in Sam, V as in Victor, I-R-S-K-Y.

First name is Scott, S-C-O-T-T.

Q I forgot to tell you something else. Under the South, the Rules of Civil Procedure, I'm required to tell you that if you need any definitions, clarifications or explanations of anything I ask you, you're to ask me as opposed to your counsel. Also, you might hear an objection being made. You have to answer a question unless your attorney instructs you not to answer the question, do you understand that?

A Yes.

Q Okay. Where were you born?

A Milford, Connecticut.

Q Okay. And how old are you?

A Forty-three.

Q Date of birth?

A [redacted]1972.

Q And where do you currently reside?

A Boca Raton, Florida.

Q Do you have an address?

A 3176 Saint Ann's Drive, Boca Raton, Florida, 33497.

Q Do you have a business address?

A 3835 Northwest Boca Raton Boulevard, Number 200, Boca Raton, Florida 33431.

Q Okay. And what is the business at that address?

A I have a number of limited liability companies, Svirsky Asset Management, Sverski Capital Advisors, SDS Tax Lien Advisors; manager and member of a number of other LLCs, mostly related to the real estate industry.

Q If I went to that office, it would say Scott Svirsky on it?

A No, it's under the Jericho companies.

Q Okay. So you share an office with the Jericho companies?

A Correct.

Q So if I went to your office, it would say Jericho on it?

A I believe it says The Jericho Group.

Q The Jericho Group, okay. Can you just tell me a little bit about your educational background?

A I went to the University of Miami from 1990 to 1994 and graduated with a business degree in management.

Q Any education beyond your business degree?

A I did postgraduate work, you know, as a Certified Financial Planner. That's, you know,

continuing education requirements related to being a financial advisor, those types of educational requirements.

Q Okay. Do you have any licenses?

A I do not any longer, no.

Q Have you ever had a license before?

A Yes.

Q For?

A 7, 63, 31, basically securities licenses.

Q Okay. And you no longer hold those licenses?

A I do not.

Q Why not?

A I went into a different line of work.

Q And when you had a securities license, what company did you work for using your securities license or licenses?

A Dean Witter, which became Morgan Stanley/Dean Witter and then Smith Barney, which was part of Citigroup.

Q And when you worked for Dean Witter and Smith Barney, where were those offices located?

A Aventura, Florida and Boca Raton, Florida.

Q You were born in Connecticut, but you now live in Florida; how long have you been in Florida?

A Since going to college, 1990.
Q Okay. You've been continuously living in southern Florida?
A Yeah, as opposed to college, my residence was technically Connecticut, but --
Q Okay.
A Since graduation of college, South Florida.
Q Okay. Because you moved from Connecticut -- you started in South Florida --
A While I was in school, I suppose my legal residence was probably Connecticut.
Q So they could charge you. There's no difference to be out of state or in state with Miami, right?
A Right. Correct.
Q Okay. Have you had any training in real estate?
A No.
Q Do you have a real estate license?
A No.
Q Broker's license?
A No.
Q You understand what a deed, a mortgage is and all those terms?

A Yes.

Q And those are terms -- would you have learned those concepts on the job?

A Through owning, purchasing, selling real estate.

Q Okay.

A And then on-the-job training, yes.

Q Okay. We talked about your office, you talked about the different limited liability companies you're involved with. Do you have an employer?

A No, they're all essentially S-corporations that flow to my personal tax return.

Q Okay. So you don't, you make money off of investments, you don't have an employer for which you do work and they give you, pay you a salary?

A No, I receive a 1099 as an outside contractor from several different entities.

Q Okay. If you can just quickly, from college to, from `94 till today, in your own words, just go through your work history in general terms from `94 until today.

A `95 until approximately 2001 was as a financial advisor with Dean Witter and then became named Morgan Stanley/Dean Witter. Approximately

2001 until 2015 with Smith Barney. And then from 2005 until present, various entities, Sverski Asset Management, you know, that were involved in the real estate industry.

Q Okay. So after you're done being a stockbroker, is that fair, a stockbroker or a financial advisor, how did you go into the real estate business?

A Where I lived was in close proximity to where my current partner, Glenn Chwatt, lives and we did social and recreational things together and I learned of his family's real estate lending business that went back to the early 1970s and there was an opportunity for us to raise outside assets from individual investors to take advantage of that lending history and that business model and I joined in 2005 and have served various capacities during that timeframe in the lending, commercial lending space.

Q Okay. For example, The Jericho Group, when you do work for Jericho, do you get a consulting fee from Jericho?

A No, Jericho is just an overriding term. The main source of income is the Jericho All Weather Opportunity Fund, which is a domestic limited

partnership. And my entity Sverski Asset Management is one of the general partners of the Jericho All Weather Opportunity Fund.

Q Tell me about the Jericho All Weather Opportunity Fund.

A It's a limited partnership.

Q And who is the general partner for that?

A Sverski Asset Management, which is my entity; SKE Management, which is Glenn Chwatt's entity. And then there's a third entity called Magnum US Investments, which is a third partner's, David Friedland's, entity.

Q Is it Friedland?

A F-R-I-E-D-L-A-N-D.

Q And the other entity was SKE Management?

A Yes.

Q And Sverski Asset Management?

A Correct.

Q Any other folks involved in Jericho All Weather Opportunity Fund, LP, besides those three entities?

A Those are the three general partners. There's certainly other people involved in the administration side, et cetera, et cetera.

Q Any limited partners?

A Yeah, there's a whole myriad of limited partners.

Q Those are investors?

A Correct.

Q What's the relationship between Jericho All Weather Opportunity Fund, LP and Jericho State Capital Corporation of Florida?

A There's no direct relationship. In past history, Jericho State Capital Corp. of Florida has made loans and the Jericho All Weather Opportunity Fund has occasionally participated alongside as a pari passu participant and vice-versa where Jericho All Weather Opportunity Fund has made loans, real estate loans and Jericho State Capital Corp. of Florida has participated as a pari passu participant.

Q Say that again, what's the last word?

A Pari passu participant.

Q Okay. Let me ask you, we're here about this property on the Intercoastal waterway. What do you all call it?

A Peachtree Road.

Q The Peachtree Road property. The Peachtree property. If I talk about property from now on, unless otherwise indicated, I'm going to say

the Peachtree Road or Peachtree property, is that right, 131-acres or so, okay?

A Yes.

Q The property that's the subject of this case.

A Yes.

Q Okay. Who from all these entities we discussed first got involved in that property, was it you or was it Glenn?

A It was both.

Q Okay. Who first contacted you?

A Who first contacted? I don't recall.

Q Okay. Was this something that you sought out to get involved in or somebody was looking for a partner or a lender to get involved with the Peachtree property?

A Jericho State Capital Corporation of Florida had a wide range of real estate finance brokers that would present lending opportunities to the entity and the Peachtree property was a similar occurrence.

Q Okay. Who are the folks who would provide these lending opportunities, I mean --

A Myriad. It was attorneys, it was accountants, it was real estate investment banks

from New York, Los Angeles, all over the United States.

Q So it wasn't locally, it was nationally?

A Correct.

Q Had you all done work in South Carolina before this project, before the Peachtree property?

A I can only speak for the Jericho All Weather Opportunity Fund, and the answer is no.

Q Any of the other entities you're associated with have any dealings with South Carolina property?

A That I'm associated with?

Q Yes.

A Not that I'm aware of.

Q Okay. Do you recall first being contacted by Jeff Shoup?

A As I said, I don't recall who initiated the contact.

Q Okay. Just a general question, when that, this loan opportunity was presented to Jericho State Capital, right, let me check out my entities, this loan opportunity which was presented, was that present to the All Weather Opportunity Fund or was it presented to Jericho State Capital?

A Well, there was a transition period;

initially, it was Jericho State Capital, because Jericho State Capital, that was their business model for 30-plus years prior to the Jericho All Weather Opportunity Fund coming into existence. And as investors came into the Jericho All Weather Opportunity Fund and assets increased, the Jericho All Weather Opportunity Fund then became the lead lender.

Q Okay.

A And Jericho State Capital Corp. became a minority participant.

Q Okay. You don't remember how, if anybody contacted you with respect to the Peachtree property, but do you remember who made the presentation to the Jericho folks? I mean, who was the one contacting you -- you don't remember that, you don't remember who contacted?

A I don't remember who contacted and Jericho folks, I don't know which entity you're referring to.

Q Okay. Somebody approved this Jericho loan, correct?

A Yes.

Q Who was that?

A I believe it was Glenn Chwatt.

Q Okay. Did you have any involvement in that?

A Jericho All Weather Opportunity Fund was a participant, which I was involved in.

Q Okay. Did you have to approve anything yourself?

A Define approve. What are you referring to?

Q Well, did Mr. Chwatt say, Scott, what do you think of this deal? Anything, anything to that effect or like that?

A Jericho State Capital Corp. of Florida presented the opportunity to the Jericho All Weather Opportunity Fund.

Q Okay.

A And my entity, Sverski Asset Management, along with Magnum PS Investments and SRKD Management collectively made a decision whether to participate or not in a particular loan. In this Peachtree instance, it chose to participate.

Q Okay. Did anybody express any concerns from any of the general partners of Jericho All Weather Opportunity Fund, any concerns about the, whether this was a good idea or not, to your recollection?

A I don't recall.

Q Okay. Let me just back up a little bit. The Jericho State Capital entity, who are the members of that?

A It's not my entity.

Q That's Glenn's entity?

A Correct.

Q Okay. Do you know if Glenn has any partners?

A I believe it is him and his father and one of his sisters.

Q Okay. Glenn Chwatt's father and his sister, as far as you know. Anybody else?

A As far as I know, again, it's not my entity, so I can't tell you for sure.

Q Okay. You have no involvement in Jericho State Capital?

A I do not.

Q Does Jericho State Capital exist today, as far as you know?

A I believe it's active.

Q Okay. Do you know what assets it owns, if any, Jericho State Capital? And I know it's confusing, because there's a lot of Jerichos, but it's Jericho State Capital.

A The only asset that I'm aware of that it owns jointly at this juncture with Jericho All Weather Opportunity Fund, the Peachtree property that you referred to and the Saucepan Bay property, which is a property in North Carolina that was cross collateralized with the Peachtree property.

Q Okay.

A So my understand is that the title has both Jericho All Weather Opportunity Fund and Jericho State Capital Corp. of Florida on those two properties.

Q Are you sure about that?

A I believe so.

Q Okay. If, in fact, the All Weather Opportunity Fund had an interest in the Peachtree property, there would be some deed of some sort, you would think, is that right?

A Well, I believe the foreclosure sales were concurrent between North Carolina and South Carolina, so certainly the North Carolina property Saucepan has both names on the deed.

Q Okay.

A Not certain about the Peachtree property.

Q Would it concern you being a member of the All Weather Opportunity Fund, if, in fact, the All

Weather Opportunity Fund has no interest at least of record of the Peachtree property?

A No, because we have participation agreements which spell out ownership rights.

Q Fair enough.

A Regardless of title.

Q Fair enough. Okay. Have you ever had your deposition taken before?

A Yes.

Q How many times?

A Two or three.

Q Okay. Can you explain why your deposition was taken, and what type of case it was in, whether you were a party or not and so forth?

A I had a, did construction on my house and I had a dispute with the contractor over the remaining punch list and the price to be paid for that remaining punch list.

Q And you were deposed in that case?

A Correct.

Q Okay. You sued the contractor?

A He actually sued me first and then I counter sued and we went through depositions and it was settled.

Q Okay. That's fine. The next deposition?

A The next deposition was for a case called Pier 17 versus the Jericho All Weather Opportunity Fund, Sverski Asset Management and myself personally.

Q And what was that about? First of all, where was that case filed?

A Fort Lauderdale, Florida.

Q Okay. And how long ago was that?

A I believe it was filed in 2010. It's still ongoing.

Q Still ongoing. Can you tell me a summary of what that case is about?

A Jericho All Weather Opportunity Fund gave a commitment letter to fund a refinance of a piece of land and construction of a marina and returned the commitment fee and was unable to fund -- basically, was unable to fund as a result of the economic conditions and the credit facility being pulled gave back the commitment fee and then a number of years later, the developer sued that as a result of a lack of construction funding, that was the reason why his project was unsuccessful.

Q And you've been deposed in that case?

A Yes.

Q Okay. Who's your lawyer in that case?

A Jim Telepman from Cohen Norris Sheen Weinberger and Wolmer.

Q Okay. And that case is ongoing?

A It's under appeal, yes.

Q It's under appeal, okay. What did the trial court decide in that case?

A It provided a judgment against the Jericho All Weather Opportunity Fund and Sverski Asset Management as a general partner, but my personal liability was thrown out or whatever the term is.

Q There's no personal judgment against you?

A Correct.

Q But there is against the All Weather Opportunity Fund and SAM, Sverski Asset Management?

A Correct.

Q What was the judgment amount?

A I don't recall specifically, but it was about five million dollars, lost profits.

Q Was that a jury trial?

A It was a judge trial.

Q Judge trial. Is there any insurance for that, any insurance coverage?

A No.

Q When was that judgment entered, to the best of your recollection?

A Probably 12 to 18 months ago maybe.
Q Interest, as far as you know, interest would be accruing on that judgment?
A Correct.
Q Has the appeal been argued?
A Briefs have been filed.
Q Okay. And you were deposed in that case?
A Yes.
Q Okay. All right. The third case?
A Third case was a foreclosure action that the Jericho All Weather Opportunity Fund went through.
Q Okay.
A It's called Sea Breeze.
Q And where was that foreclosure action filed?
A Fort Lauderdale.
Q And just a debt collection action, a mortgage foreclosure?
A Yeah, we, the Jericho All Weather Opportunity Fund was foreclosing and as a general partner, I was deposed.
Q Deposed as to the amount due under the note secured by the mortgagee you were foreclosing?
A I'm not sure why, what their motivation

was, but ultimately, there was a foreclosure action that was completed and the judgment in favor of the Jericho All Weather Opportunity Fund.

Q Any other depositions besides those three depositions, that you recall?

A Not that I can recall.

Q Have you ever testified in court before? And I presume you probably testified in the Pier 17 case in court?

A Yes.

Q Did I ask you if that's in federal court or in state court?

A That is state.

Q Okay. Did the court make any findings about your testimony; did the judge make any findings?

A I don't really understand the question.

Q Okay.

A I mean, I was, no judgment was --

Q Okay.

A The case against me was dropped.

Q Fair enough, fair enough. Okay. Testified in court. Any other time besides the Pier 17 case?

A I testified in the Sea Breeze bankruptcy.

Q Okay.
A Court proceeding.
Q The borrower filed for bankruptcy?
A The borrower filed for bankruptcy.
Q Any other time you recall testifying in court?
A Not that I can recall.
Q Have you ever testified before any administrative tribunals?
A Not that I can recall.
Q Have you ever had your Series 9, not Series 9, your Series 6 it was called?
A 7.
Q 7, sorry. Was it ever suspended?
A No.
Q Okay.
A Not that I can recall.
MR. KOUTRAKOS: Okay. All right. I'm going to show you what is marked as Exhibit 1.
(Defendant's Exhibit 1 was marked for identification.)
BY MR. KOUTRAKOS:
Q This is Exhibit 1. Mr. Svirsky, have you seen Exhibit 1 before?
A Yes.

Q And this is a Notice of Taking Deposition and this is the Notice of Deposition for the deposition, for this deposition today, correct?

A Yes.

Q Have you looked at all the areas of inquiry that will be involved in this deposition?

A Yes.

Q And do you understand today that you'll be testifying on behalf of the entity called Lynx Jericho Partners, LLC?

A Yes.

Q And you feel comfortable you're the most knowledgeable person at Lynx Jericho Partners, LLC to testify about the matter listed in Exhibit 1, matters 1 through 23?

A Yes.

Q Okay. Great. Is there anybody else at Lynx Jericho Partners, LLC who would know anything about these areas of inquiry, would it be Glenn?

A Yes.

Q All right. Anybody else associated with Lynx Jericho Partners who would know something about it, any of these areas of inquiry?

A There are other partners in Lynx Jericho Partners, LLC that, I mean, I haven't -- if you

would like me to go through --

Q No, no --

A They might have passing knowledge of some of the items.

Q Okay. All right. But you and Glenn as the two folks associated with that entity, you and Glenn would know the most, correct?

A Yes.

Q Did you bring any documents with you today?

A Personally, no.

Q Okay. Did anybody else? I mean, if you look at the notice on the third page, it asks you to bring documents related to the areas of inquiry.

Have you brought any documents today that would be different from the documents your lawyers may have produced in discovery in this case?

A No.

Q Okay.

MR. KOUTRAKOS: Scott, South Carolina Scott, there aren't any other documents besides what you've produced?

MR. MASEL: As far as I know, that's correct.

MR. KOUTRAKOS: All right. I see a stack

of documents over there, that has nothing to do with that production request, is that right?

MR. MASEL: That's correct.

MR. KOUTRAKOS: Thanks, Scott.

BY MR. KOUTRAKOS:

Q Okay. Now I want to talk to you about the formation of Lynx Jericho, which is one of the, one of the areas of inquiry. And I want -- we all know why it was formed, it was formed to purchase the note and mortgage originally given by Peachtree, the Peachtree entity to RE Loans, is that right? Among other things.

A Yes.

Q Okay. Tell me in your own words how Lynx Jericho Partners, LLC was set up. What's the structure of it?

A The structure is that Lynx Asset Services put up the two-and-a-half million dollars to purchase the Peachtree and Saucepan first mortgages from the liquidating bankruptcy trustee from I believe it was MF '08, LLC. So the original, original first mortgage was with RE Loans, LLC and at some point, they transferred it to their lender at the time, Wells Fargo Foothill and then repaid that collateral somehow and had that mortgage

released and then transferred it to an affiliated entity, MF '08. So there were a number of, those were the chain of assignments along the way.

Q Let me stop you for a second. When you say you had the mortgages released, what do you mean by that?

A The mortgage was collateral for the RE Loans' credit facility. And this, again, this is my understanding, I'm not a member of any of those entities, but RE Loans had a credit facility it assigned that mortgage as collateral to Wells Fargo Foothill, I guess it somehow arranged for Wells Fargo Foothill to release that collateral, I can only assume they repaid their credit facility in an amount that was sufficient for Wells Fargo Foothill to release that mortgage.

Q Okay.

A That went to MF, that went to RE Loans. RE Loans then sold, transferred, I don't know what mechanism or how it ended up in MF '08, LLC.

Q Let's stop you, this will save you time. MF '08, is that an entity that you had heard about before?

A No.

Q Is it related to RE Loans that you know

of?

A Yes.

Q Okay. It's -- okay.

A And that is the entity that went into bankruptcy was the MF '08 entity.

Q And RE Loans went into bankruptcy, too, is that right, or --

A I don't know the answer to that.

Q But MF '08 was a -- do you know the principal behind it?

A Similar principals to RE Loans.

Q Is it Barry Neg or Ng?

A It's Barney.

Q Barney?

A Ng. But I don't know what his capacity was, but it's the in the family, Ng. It was a number of member participants.

Q You were familiar with Barry --

A Barney.

Q Barney, thank you. You were familiar with Barney or at least RE Loans because when you were with Jericho, I mean, you were there contemporaneously, I mean, you knew they were the first mortgage holder on the property, the Peachtree property on which Jericho State Capital was going to

hold a second mortgage, right?

A Correct.

Q So you knew of that entity?

A Correct.

Q And you knew Barry -- Barney, excuse me, was involved in that transaction, or his company was?

A Correct.

Q Okay. Okay. So you were talking about the loan gets back, the RE Loans' first mortgage.

A So MF '08 went into bankruptcy and the liquidating trustee was selling the two mortgages through the bankruptcy proceeding and neither Jericho State Capital Corp. of Florida nor the Jericho All Weather Opportunity Fund had the means to purchase those mortgages from bankruptcy.

Q Okay.

A So Lynx Asset Services proposed to buy the mortgages out of bankruptcy and we formed -- or an LLC was formed called Lynx Jerico Partners, LLC. And the structure of it is there are A shares which are owned by Lynx Asset Services, I believe, who contributed the full two-and-a-half million dollars and there are B shares which are held by SRKD-SAM Advisors, LLC, which is my entity and Glenn Chwatt's

entity were the two managers of that entity.

Q Okay. It's a combination of Svirsky Asset Management and Glenn's other company, SRKD Management, is that right?

A The name, yes.

Q All right.

A They're separate, obviously separate entities.

Q Understood. Understood.

A So there are B shares which contributed zero dollars to the purchase of the mortgages and there's an operating agreement which outlines a waterfall of proceeds where Lynx Asset Services gets its two-and-a-half million dollars that it put up to purchase the mortgages, plus an interest rate, plus a carried interest going forward, even after its principal and interest has been paid.

Q Okay. Tell me about Lynx Asset Services, who is behind Lynx Asset Services, LLC?

A I believe Mike McCarty is the manager. I'm not aware of who is the actual ownership makeup of Lynx Asset Services.

Q Okay. Is he, is he the head guy?

A He is -- my understanding is that he is the investment professional in charge of Lynx Asset

Services.

Q Okay.

A I don't know who specifically is the owner of Lynx Asset Services.

Q And where is, do you know where Mr. McCarty resides?

A New Jersey.

Q Okay. Did you know Mr. McCarty -- let me back up. The All Weather, the Jericho entities, Jericho State Capital and Jericho All Weather Opportunity Fund owned the Peachtree property today, correct?

A Correct.

Q Okay. There's a big mortgage on the property, correct? I mean, when Jericho came into title of the Peachtree property, that property was subject to a very large mortgage, is that correct?

A An $18.52 million mortgage.

Q Right. That's the RE Loans' mortgage, correct?

A Yes.

Q And that's the same mortgage that was purchased by Lynx Jericho Partners, LLC, correct?

A Yes.

Q Okay. You all sought out somebody to buy

that note because you didn't want somebody else foreclosing that mortgage on the property, is that correct?

A That's correct.

Q Okay. Who reached out to Mr. McCarty, was it you, was it Glenn?

A I don't recall specifically. Mr. McCarty is a long time family friend of the Chwatts.

Q Okay. So he's somebody that the Chwatts knew and have done business with before in the past?

A Don't know about done business before, but knew previously.

Q Did you know who he was prior to this transaction?

A Prior to this transaction?

Q Yes.

A I had met him before, yes, on other opportunities.

Q What was your understanding of his ability to get involved in opportunities? That could be a bad question. I mean, what did Mr. McCarty do, I mean, you obviously had some knowledge about Mr. McCarty prior to this transaction, what did you understand that he did?

A Mr. McCarty is I would say a coinvestor

with the Maslow family and the reason I don't, I mentioned I don't know who specifically owns Lynx Asset Services, because the Nashville family has a myriad of different entities and companies and structures, very well-to-do family and Mike McCarty effectively operates as their investment advisor.

Q Do you think he has ownership interest or do you think he's the guy who's running the show for the folks who had the real money?

A I believe it's both.

Q It's both. He's got a cut in it?

A He, I believe he has significant ownership in Lynx Asset Services.

Q Okay.

A But again, I don't own that entity, nor have specific knowledge.

Q Do you know Matthew Mashler?

A Yes.

Q Who's Matthew?

A He is one of the family members that I just mentioned. He's one of the sons.

Q And he lives here, right?

A Boca Raton, Florida.

Q What does he do for a living?

A He's an attorney, real estate agent, real

estate investor.

Q And how about do you know Sheldon Mashler?

A That's the father.

Q Sheldon's the dad. Okay. Do you know anything of the makeup of Lynx Asset Services; do you know the entities that are involved in that?

A I do not.

Q Do you know, have you ever heard of Harrison Investors?

A I have heard of Harrison Investors.

Q Tell me what you know about Harrison Investors.

A We had, I had assisted, my SDS Tax Lien Advisors, LLC had assisted Harrison Investors in acquiring some Florida property tax liens.

Q You can acquire tax liens in Florida?

A Yes.

Q Okay. Is that -- so it was some kind of --

A It's an auction process once a year.

Q Okay. And do you step in the shoes of the government? I'm just curious.

A In a simplistic way, yes.

Q Simplistic's good. That's all we need. Have you ever heard of Day Tech Online?

A I have not.

Q Have you ever heard of any of the, any legal troubles with anybody involved in Lynx Asset Services?

A No.

Q Have you ever heard any problems with trading, SEC violations or anything like that?

A No.

Q Okay. Did you know who was involved in Harrison Investors or who is involved in Harrison Investors?

A I only dealt with Mike McCarty who was the manager of that entity.

Q He was the manager of that entity as well?

A Yes.

Q Okay. So Lynx Asset Services, a member, a Class A member of Lynx Jerico Partners, LLC, put up 2.5 million. Your entity, Scott Sversky's entity and Glenn's entity are basically Class B members, is that right?

A That is correct.

Q Has Lynx Asset Services been paid any of its contribution back?

A It received the proceeds of the South Carolina Department of Transportation condemnation

trial.

Q Okay. You mentioned a waterfall. Can you explain to me how that waterfall works and where the waterfall ends up?

A I think I mentioned that they put up the $2.5 million and they get, they get their principal and the A class holders get their principal which was the $2.5 million, plus interest, I believe it's a 12 percent interest rate.

Q Okay.

A And then once that is repaid, they keep a ten percent remainder interest in both properties.

Q And when you say both properties, that's the Saucepan property in North Carolina?

A Saucepan and Peachtree, correct.

Q Okay. So is there, how much is Lynx Asset Services owed at this time? They paid approximately I think 1.9 million, is it, how much, I mean, obviously, math to me is a base of $600,000, is there, with all this interest and other charges you talk about, how much are they owed?

A I don't have an exact figure, but the guess would be 2.5 million plus whatever interest has accrued minus the approximately 1.9 million that was received as the holder of the first mortgage on

the property.

Q Okay. Did Jericho State Capital have an agreement with RE, an intracreditor agreement with RE Loans?

A I believe so, yes.

Q Okay. Did that result in -- what type of protections did it provide to Jericho State Capital, to your recollection?

A It was essentially notice provisions and cure provisions.

Q You guys gave -- excuse me, gave Jericho State Capital the opportunity to cure the RE Loans' mortgage, the mortgage that now Jericho -- Lynx Jericho, LLC owns today, is that right?

A Yes.

Q At one point in time, I'm not sure which entity it is, but somebody had a first refusal in buying the RE Loans' mortgage, is that right?

A Jericho State Capital Corp. of Florida and the Jericho All Weather Opportunity Fund agreed to pay the back property taxes, because the property was in jeopardy and in return for that, providing those monies and that protection to the liquidating trustee in the bankruptcy court, we negotiated the Jericho All Weather Opportunity Fund and Jericho

State Capital Corp. of Florida, that is, negotiated a right of first refusal on the Peachtree property.

Q Is it the Peachtree property or the paper?

A The paper.

Q The paper, okay. All right.

MR. KOUTRAKOS: I'm showing you what I'm going to mark as Exhibit 2.

(Defendant's Exhibit 2 was marked for identification.)

BY MR. KOUTRAKOS:

Q This is an engagement agreement between the Bellamy Law Firm and it looks like Jericho All Weather and Jericho State Capital and it looks like the trustee of the mortgage fund is MF '08?

A Yes.

Q Do you recall, did you sign this document?

A It appears I signed on behalf of Jericho All Weather Opportunity Fund.

Q Paragraph 11 on Page 3, first right of refusal, do you see that?

A Yes.

Q Is that where that agreement that we just talked about is memorialized, is this fee agreement with the Bellamy Law Firm?

A It certainly appears here. I'm not sure

if this is the only place that it appears.

Q Okay. You believe -- you're not sure whether there's another document that creates this right of refusal?

A The Jericho All Weather Opportunity Fund negotiated a first right of refusal. I'm not sure if this was the only document that that was memorializing.

Q I want to talk a little bit more about the makeup of link Jericho Partners, LLC.

(Defendant's Exhibit 3 was marked for identification.)

BY MR. KOUTRAKOS:

Q I'm showing you what's been marked as Exhibit 3. Have you seen this document before? I assume you have.

A Assuming it's a complete copy, yes.

Q It came from your lawyer, so I think I copied every page.

A Yes, I've seen this document before.

Q Okay. Who drafted this document, do you recall?

A I believe it was Lynx Asset Services' attorney.

Q Okay. If you look at Page 10, before I

ask you about that, when -- and I want to go through documents in a second, but y'all purchased, Jericho Partners, Lynx Jerico Partners, LLC purchased notes from Uecker, the bankruptcy trustee for MF '08, is that right?

A Yes.

Q It was more than one note, correct?

A Yes.

Q It included the Peach -- the RE Loans' note and mortgage that secures that note and it included some other loans as well, is that correct?

A Yes.

Q So the Peachtree loan, is that right?

A Yes.

Q Okay. The other loan that was purchased was the Saucepan loan?

A Yes.

Q There were other loans purchased as well, right?

A Yes.

Q Can you tell me what those loans were or how you identify those loans?

A From memory, there was a loan out of Idaho, there was a loan out of California, and there was a loan out of Texas.

Q Idaho, California and Texas. The five loans purchased total by Lynx Jericho Partners, LLC?

A From recollection, yes.

Q And the total purchase price is 2.5 million, is that right?

A I believe it was it was 1.95 million was the purchase price.

Q Okay. That makes sense. Five notes for 1.95 million, right?

A Yes.

Q The Peachtree loan, was there a purchase price allocated to the purchase of that loan?

A I seem to recall there was, because of that document, the Exhibit 2, I believe that you just showed with the first right of refusal in there, that other groups made offers for the portfolio of five loans, but because of our first right of refusal, they sort of arbitrarily assigned a percentage based upon the principal amount in relation to the other loans a dollar amount attributable to the Peachtree loan itself.

Q Okay.

A And the issue with the basket of five was that from the Jericho All Weather Opportunity Fund, Jericho State Capital Corp. of Florida's view of

things is Peachtree and Saucepan were cross-collateralized, so that created a certain set of issues as a result of that. The other three notes, Lynx Jerico Partners knew nothing about.

Q Is this the Idaho, California and Texas?

A Right, other than there was open litigation, there were open funding commitments and there were meaningful liabilities that were being undertaken by purchasing those notes. But as far as the bankruptcy trustee was considered, while the Peachtree note was broken out because of the right of first refusal, in fact, she was only selling them as a basket, so she required us to buy the basket of notes to acquire the Peachtree note.

Q Okay. Have you realized anything from the, from the -- do you recall the name of the Idaho loan?

A I do not offhand.

Q Okay. The Idaho, California and Texas loans that you were required to purchase, have you realized any value from those?

A There have been proceeds from those, somewhere in the neighborhood of $750,000, I believe, but the remaining note which is Texas is subject to liabilities and funding commitments that

are far in excess of that amount.

Q Which one is the Las Colinas property, do you recall?

A I confuse the two of them, that very well may be the -- I'm not sure if that's Texas or California.

Q Okay. Southfork?

A Southfork would be Idaho.

Q And which one did you receive 750 from, the Idaho one?

A It would be the California and the Idaho one collectively.

Q So you have 750 --

A Approximately. I don't recall the specific amount.

Q Is there -- have those notes been cancelled and satisfied, the Idaho and California notes?

A Yes, they have.

Q So there's no chance of the entity receiving any other assets from those two properties, is that correct?

A That is correct.

Q So what you're left with today is Texas?

A Correct.

Q Saucepan?
A Correct.
Q And Peachtree?
A Correct.
Q Peachtree you've already received the condemnation award, is that right, 1.9 million?
A Yes.
Q How about the Saucepan company, what's the status of the Saucepan property?
A We've spent quite a bit of money, we as in the Jericho All Weather Opportunity Fund, has spent quite a bit of money on land planning to try to move that property forward for development purposes.
Q And that's a property in North Carolina, y'all foreclosed and it's your title?
A Yes.
Q Who was the initial borrower on that one?
A It was cross-collateralized with Peachtree, so it's the same. I believe it's a different entity, but the same personal guarantees and borrowers.
Q And just to make sure we're talking about the same thing, the Jericho, Lynx Jerico Partners, LLC received $1,941,737.32 as part of the, as the condemnation award, is that right?

A I don't have the specific number in front of me.

Q Does that look right to you?

A That sounds right.

Q Okay. So you got 750, plus a condemnation award, so it's approximately 2.6 -- $2.7 million of money that has been brought in by Jericho, by Lynx Jerico Partners, LLC, is that right?

A Yes.

Q Any other money besides that, that you can recall?

A Not that I can recall.

Q Going back to the companies, Lynx Jericho Partner, LLC's purchase of the Peachtree paper, isn't it correct that the purchase price for that paper was $950,000?

A For?

Q For the Peachtree loan.

A I don't recall the specific breakdown. The trustee required the purchase of all five notes.

(Defendant's Exhibit 4 was marked for identification.)

BY MR. KOUTRAKOS:

Q I will show you what's been marked as Exhibit 4. Have you seen this order before?

A I'm not sure.

Q Reading it, does it refresh your recollection as exactly how much was paid for the mortgage that's the subject of this case?

A It appears that they allocated $950,000 towards the Peachtree mortgage.

Q And with respect to the assets that were brought into your company, and I want to be sure that we're talking -- we talked about a lot of companies, Lynx Jericho, LLC, the company we're imposing theoretically right now, assets brought in related to the Peachtree property is the condemnation award of $1.94 million, correct?

A That is correct.

Q So at this point, the note that your company purchased related to this property was $950,000, you've received double that amount, you've doubled your investment with respect to this piece of property, would you agree with me?

A No, because again, the only reason that it was broken out at $950,000 was the bankruptcy trustee required all five notes to be purchased. They took the Peachtree at $18.52 million. They added up the Idaho property, the Texas property, the California property, they added up the nominal

amounts of the notes, divided that by the percentage that was paid. So the Peachtree was only allocated the $950,000 amount in this document, because that was the proportionate amount of the nominal amount of the mortgages, it had nothing to do with what the value of that particular mortgage was at the time. And as we all know, the value of the first mortgage was a lot less than $18.52 million at the time of this.

Q Sure. Either way, 1.95 million paid to purchase the portfolio, correct, is that what you call it, the basket of notes?

A It was collective 2.5 million, because there were legal fees.

Q I was going to ask you that.

A Liability -- property tax liabilities that were past due. There were contractors that had done work on the property with past due balances, so the collective amount was 2.5 million.

Q Okay. That's why -- okay. That's why Lynx Asset Services, LLC's contribution was 2.5 instead of 1.95?

A Correct. There were additional liabilities associated with purchasing these mortgages.

Q Going back to Exhibit Number 3, Page 4, subparagraph E on the bottom of Page 4, can you take a look at that for a second? I'm going to ask you a couple of questions about that, that provision.

A Okay.

Q In your own words, can you explain to me what Paragraph E, what the agreement was between the members of Lynx Jerico Partners, LLC?

A The purpose for the Jericho All Weather Opportunity Fund and Jericho State Capital Corp. of Florida was to not have a potentially adversarial party acquire the two notes and lose them in a foreclosure, so the purpose of bringing Lynx Asset Services to assist in the purchase through the Lynx Jerico Partners, LLC, was to ensure as much as possible that Jericho All Weather Opportunity Fund and Jericho State Capital Corp. were not foreclosed out. So as part of the agreement, there was a three-year time window to monetize those two assets to attempt to pay back the Class A shareholders.

Q And you don't know exactly what is owed to the Class A -- is there an amount -- let me back up here. I'm taking the deposition of Lynx Jerico Partners, LLC, the Class A member of which is Lynx Asset Services, correct?

A Yes.

Q Would you agree with me that Lynx Asset Services, your Class A member of the entity I'm deposing today, that there is a conflict, I don't know if it's a conflict of interest is a strong word, but there is an issue between Lynx Asset Services and your entity and Glenn's entity; SK -- SRKD-SAM Advisors, LLC, would you agree with me?

MR. MASEL: I'll object to the form.

MR. KOUTRAKOS: You can answer.

THE WITNESS: I don't know why there would be, why you consider them to be a conflict of interest.

BY MR. KOUTRAKOS:

Q It seems like there's a three-year standstill period, is that what that paragraph says, that no action can be taken on the mortgage in a three-year period?

A Yeah, and there's provisions or contemplations of extensions of that time period.

Q Tell me what those provisions say or what your recollection of those provisions are.

A That it can be extended for another two years upon payment of an extension fee.

Q And what's the extension fee?

A I believe it's one percent of the outstanding balance.

Q Okay. Do you know -- you do not know what the outstanding balance is today?

A No, I don't have the calculation in front of me. It's 2.5 million plus 12 percent interest until it received one million nine -- 1.94 million from the condemnation which reduced that amount and that new amount accrued at 12 percent interest which would get us to where we are today.

Q So ballpark, can you give me a ballpark, what you believe it to be?

A A million-and-a-half dollars, a million-and-a-quarter, a million-and-a-half.

Q Okay. And the extension fee would be one percent, a percentage of that?

A A percentage of the outstanding balance.

Q Of the approximate 1.5?

A Yes. Well, whatever the number, the percentage of that number.

Q Okay.

A I don't recall if it's one percent or two percent for the extension amount.

Q Fair enough. And three years from -- well, I could tell you what the extension amount is.

This two percent, according to Annex 1-3, which is 30 of 30 -- 30 of 101 on the bottom is the best way to find it.

A Right.

Q So I'm not sure if that, the definition of extension, I'm going to use exactly what you said it means, but it's two percent of some number, but you believe it to be the outstanding amount due to Lynx Asset Services, is that right?

A Yes.

Q Okay. Well, that three-year anniversary, we're pretty close to it, aren't we?

A I believe it's April.

Q April. Okay. Have you -- okay. And in order to extend that agreement, it is a self-executing matter, you just pay or your entity and Glenn's entity, I assume, pays Lynx Asset Services that two percent fee and it will be extended, is that right?

A That is my understanding, yes.

Q Okay. All right. If we can go to -- how does -- Jericho State Capital Corporation of Florida had filed a title claim with my client, Chicago Title Insurance Company, is that correct?

A On the second mortgage, correct.

Q On the second mortgage. Subsequently, after Lynx Jerico Partners, LLC acquired the partner and became the owner of what used to be the RE Loans' first mortgage, RE Loans filed a claim with Chicago Title as well, is that correct? Excuse me, Lynx Jerico Partners, LLC filed a claim with Chicago Title, is that correct?

A That is correct.

Q Two lawsuits have been filed, the first one by Jericho State Capital, the second one is what we're here about today?

A Yes.

Q Is there any agreement between Lynx Jerico Partners, LLC, Jericho State Capital of Florida, the All Weather Opportunity Fund or Lynx Asset Services as to the outcome of those two lawsuits or those two claims?

A I don't follow the question.

Q Okay. If we go to trial and, I'm not saying it's going to happen, it's a way for me to get an answer to this question, Lynx Jerico Partners gets a judgment against Chicago Title for, you know, say ten dollars, how much of it does -- who keeps what?

A The claims request would be delineated in

a damages ruling and/or we would sign an agreement between Jericho Lynx Partners and Jericho State Capital Corporation of Florida for an equitable distribution of whatever proceeds are, so I don't know that that has been addressed or determined as of this point.

Q Okay. As to Lynx Jericho Partners, LLC, what agreement is there among the members, the two general partners, as to how any money obtained from the lawsuit and/or the title claim would be distributed?

A They're not general partners, they're members.

Q I'm sorry, members.

A And I believe it is a 90/10 split, that the Class A shareholders need to be retired, their principal commitment and interest received or the interest that has accrued needs to be repaid first.

Q Okay.

A And it's a 90/10 split.

Q After that?

A Thereafter.

Q Ninety percent --

A Well, it's the same ten percent remainder interest that I referred to earlier.

Q Right. So your entity and Glenn's entity gets 90?

A Correct.

Q Lynx Asset Services gets ten percent?

A After it's been repaid --

Q Its full principal and interest and whatever it's due?

A And fees expended.

Q Okay. There was no chance that Lynx Jericho Partners, LLC will ever receive the amount actually due under that note, correct?

A With the Peachtree note.

Q The amount that's really due under that note.

A That particular note with accrued default interest is probably close to $50 million. So there's no way that that property is worth close to what the mortgage amount is.

Q Right. Has there ever been, as far as you know, a threat by the holder of the RE Loans' mortgage, which is Lynx Jericho Partners today, to foreclose on that mortgage?

A Not as of yet, because we have, as we just discussed, the three-year forbearance clause within the LLC agreement.

Q Have you had any discussions with Mike McCarty about, after the three years ends, possibly foreclosing?

A Assuming that we are in compliance with the agreement, our intention, the Jericho All Weather Opportunity Fund, the SRKD-SAM Advisors, everyone involved, the intention is to pay the two percent extension fee.

Q Your intention as you -- you're here as a representative today of Lynx Jericho Partners, LLC, that's the hat you're wearing today, would you agree with me that's the hat you're wearing today?

A Yes.

Q But the other hat that you have on which is for your entity and for Glenn's entity, you don't want Lynx Jericho Partner, LLC to ever foreclose, correct?

A That's not necessarily the case. I mean, essentially, if they foreclosed and the gross proceeds, the net proceeds were greater than their loan amount, the two-and-a-half million dollars plus interest minus the amount received, whatever proceeds are received, would be distributed after they've received their principal and interest would be distributed 90/10.

MR. KOUTRAKOS: Okay. Fair enough. Let's take about a five-minute break if y'all don't mind?

THE WITNESS: Sure.

(Brief recess.)

BY MR. KOUTRAKOS:

Q At the time Lynx Jericho Partners, LLC purchased the RE Loans for its mortgage, it technically was a Defendant in the condemnation action that was filed by the Carolina Department of Transportation, is that correct?

A Yes.

Q There was a mediation in that condemnation action, is that right?

A I don't recall.

Q Okay. All right. Did you have counsel representing you, you being Lynx Jericho Partners, LLC, in that condemnation action?

A I don't -- I don't recall.

Q Okay.

A Obviously, subsequent to the acquisition of the notes, the South Carolina Department of Transportation added Lynx Jericho Partners, LLC as a Defendant as the first mortgage holder.

Q Did Skeets Bellamy and the Bellamy Law

Firm, do they represent Jericho Lynx Partners, LLC?

A If there was representation, he would have been the group representing.

Q Okay.

A He represented all of the members that were Defendants in this condemnation.

Q If the case had settled prior to going to trial, your entity, Lynx Jericho Partners, LLC, would have had to be a party to that settlement, would you agree with me?

A Lynx Jericho Partners owning the mortgage would have received the proceeds, as a legal matter, I don't know that they would have had to have been part of the process.

Q Can you tell me today whether or not Lynx Jericho Partners, LLC had an interest in the condemnation action?

A I don't know.

Q Okay. It received 1.9 plus million dollars from the condemnation action, correct?

A Yes. Well, there was a judgment awarded to the entities involved in the lawsuit with the South Carolina Department of Transportation. Proceeds went to the Skeets Bellamy Law Firm. His fees were deducted. As the holder of the first

mortgage, Lynx Jericho Partners had those proceeds wired directly to Lynx Asset Services as the Class A member receiving those funds, entitled to receive those funds.

Q At the time the trial took place, Lynx Jericho, LLC was the owner of the RE Loans' mortgage, correct?

A At the time of trial, yes.

Q Okay. Do you recall at trial, what testimony that Jericho or Lynx Jericho Partners, LLC put up as to what they thought or it thought the value of the property was?

A I don't recall that they did.

Q You don't recall the figure, you don't recall they put up any value?

A Jericho -- Lynx Jericho Partners, LLC, I don't believe put, as a, as that entity by itself, put up a valuation.

Q Okay.

A I believe that Skeets Bellamy on behalf of --

Q Jericho.

A -- all of the Defendants put on a case which included expert witness testimony, which --

Q Were you at trial?

A I was not.

Q Okay. And what, do you recall the figure, what were the damages Jericho was seeking from the Department of Transportation?

A I do not recall.

Q Do you recall the amount of the jury awarded?

A Yes.

Q What was it?

A I believe it was $2.1 million.

Q And then interest was added to that?

A Yes.

Q And made it approximately 2.9 million?

A Approximately.

Q Are you familiar with this document, the disbursement schedule?

A Yes, I've seen it.

MR. KOUTRAKOS: Let's go ahead and mark this as an exhibit.

(Defendant's Exhibit 5 was marked for identification.)

BY MR. KOUTRAKOS:

Q Exhibit Number 5. Exhibit Number 5 shows a total award plus interest of 2.92 million, pretty much?

A Yes.
Q Okay. And it shows the amount paid to Jericho -- well, it's signed by Jericho State Capital Corporation of Florida, do you see that?
A Yes.
Q By Glenn Chwatt?
A Yes.
Q But that, that amount, that balance of 1.94 was paid, that was wired directly to Lynx Asset Services, correct?
A Yes.
Q And that's what the remaining documentation of Exhibit 1 shows?
A Yes.
Q Not Exhibit 1, what exhibit is that?
A 5.
Q Exhibit 5. So you can't, you don't recall the damages that, that any of the entities you're involved with were seeking in that condemnation action?
A No, I don't recall.
Q Do you have any involvement with the administration of that lawsuit?
A Yes.
Q Okay. Did you review any appraisals that

had been obtained by the Bellamy Law Firm?

A Yes.

Q Okay. You don't recall what amounts were reflected in those appraisals?

A No, not specifics, no.

Q Okay. The jury awarded 2.1 million, do you believe that Jericho was asking for more than 2.1 million?

A Yes.

Q Okay. But you don't recall what that amount was?

A I do not, no.

Q Do you know what the, what figure the Department of Transportation was saying the injury to the property was?

A I recall their first iteration of an appraisal, which showed no damage, which was the first that was sent to us, but I don't recall the results of the report they actually utilized.

Q Okay. So you can't tell me what evidence was put up at trial, what testimony was given by those experts or anything like that?

A No.

Q Okay. What is the current value of the property, in your opinion? Let me back up, does

Lynx Jericho Partners, LLC have its own opinion as to what the property is worth today?

A In my capacity with the Jericho All Weather Opportunity Fund, I have been approached a number of times by national home builders through our engineers that approximate the price they would pay at $25,000 per lot. There are approximately 200 lots which are buildable on the property. And that is in a five-year takedown strategy, so if you do a discounted cash flow modeling, the number is probably somewhere between two-and-a-half and three million dollars would be the current value, based upon the inquiries that I've received in my Jericho All Weather Opportunity Fund capacity.

Q In your capacity as a representative of Lynx Jericho Partners, LLC, could you tell me what that entity believes the value of that property to be?

A Similar to what I just mentioned.

Q 2.5 or $3 million?

A That would be a realistic valuation at this time.

Q Okay. Do you have any idea what the current tax assessed values are of the property?

A I just saw that invoice, but I don't

recall what it is.

Q Okay.

A The tax amount is about $30,000, so --

Q Okay. In your hat as being involved in the All Weather Opportunity Fund, when you made the loan, the second mortgage, how much did you all think that property was worth? And mind you, I'm talking about the property, I'm talking about the 131.4-acres prior to condemnation.

A Well, we had seen two appraisals on the property, one for I believe just under $40 million and one for just over $40 million, and our analysis using comparable homes in the marketplace led us to believe that the value was somewhere between 35 and $40 million at the time of the loan.

Q And the time of the loan was 2006?

A Yes.

Q So 40 million to 2.5 million, is that correct?

A Yes. Obviously, the condemnation proceeds are, would be added up on that and, you know, there certainly has, certainly was a portion of that as a market decline, but my opinion is a significant amount is as a result of a six-lane bridge going through the middle of the property.

Q How much do you think that property would be worth today if there was no six-lane bridge, 40 million?

A Not even.

Q 20 million?

A It would be hard to assess, because the, the number of buildable lots would be quite different if the bridge were not intersecting the property. The bridge effectively cuts the property in two. Not only does it make it less desirable, but it also cuts off access to both, so you need to have two entrances, two road systems, two sewer systems. You need two of everything as a result of that, so it increases the development cost quite dramatically as a result. So, you know, I quite frankly wouldn't have an opinion of it at this juncture without doing further analysis if there were no bridge. I could tell you that with the bridge, as I said, the offers we've received are in the $25,000 per lot range and that is in a takedown scenario, so obviously, not all up front and it's a certain number of lots per year for five years.

Q The jury determined that the effect of the bridge, the effect of the taking of the condemnation was $2.1 million, correct?

A Yes.

Q That was how -- that was how the value of the property was impacted, it was impacted to the extent of $2.1 million?

A Very different calculation from our calculation in that the jury was, their job was to determine the value, the loss value from the condemnation date, which had already seen the market decline. We made the loan in 2006 with no bridge in a different market environment. So, you know, they're two completely different sets of circumstances between when we made the loan and what the jury was asked to -- charged with determining valuation on.

Q Well, thank you for telling me that, but the jury's job was to determine the value of the property on the date of the taking, correct? December 15th, 2009.

A Yes.

Q Do you accept the jury's verdict in that regard?

A I was unhappy with the jury's verdict.

Q You all had your day in court and a jury came back and determined the loss and value as of December 15th, 2009, was $2.1 million?

A Yes.

Q That issue has been litigated already, hasn't it?

A Yes.

Q Explain to me -- let me back up a little bit. When Lynx Jericho Partners, LLC purchased the note and the mortgage, its principals already knew about the condemnation, correct?

A Yes.

Q They knew that there was an alleged title issue on the property, correct?

A They didn't know there was a title issue, because they, Jericho, Lynx Jericho Partners, LLC, prior to acquiring the note, had never seen the title policy from the bankruptcy trustee or RE Loans. The RE Loans' loan, first mortgage actually closed, I want to say a week to ten days prior to the second mortgage closing. It was not a simultaneous closing. So Lynx Jericho Partners was not privy to whatever title policy RE Loans had prior to acquiring it and getting a copy of it after the fact.

Q At the time you purchased, Lynx Jericho Partners purchased the RE Loans' paper, if you will, you did not know whether there was a title insurance

policy?

A We knew that there was, Lynx Jericho Partners knew there was a title policy, but they had not seen the title policy, is my recollection.

Q At the time y'all purchased the RE Loans' note on and mortgage on the Peachtree property, the principals of Lynx Jericho Partners, LLC, knew that there was an issue with the South Carolina Department of Transportation condemning a portion of the property, correct?

A Condemnation action, yes.

Q When did the -- do you recall when the South Carolina Department of Transportation officially took title of the property?

A I do not.

Q Was it the date they filed the condemnation action?

A My understanding is the day that they filed the action, they officially take the property and then it becomes a situation of compensation for that take.

Q Okay. You were involved personally in the activity related to Jericho State Capital Corporation of Florida providing a second mortgage; you were involved in that process, correct?

A I was not involved with Jericho State Capital Corp. of Florida, I was involved with Jericho All Weather Opportunity Fund, which participated in the loan as a minority pari passu participant.

Q You were copied on e-mails during that transaction, correct?

A I'm sure that I was copied on some e-mails.

Q Okay. Did you have knowledge, personally, prior to the closing, that there was going to be, there was mention of a bridge between you, Jeff Shoup, the principal of the borrower, and the closing attorney?

A Jeff Shoup mentioned that there was a bridge that was going to be a mile, mile-and-a-half down the road and presented that as a positive for the property and that it would provide easy ingress and egress to go east to Myrtle Beach.

Q Okay.

A I never had any specific dealings with the closing attorney that I think you just mentioned, that I can recall.

(Defendant's Exhibit 6 was marked for identification.)

BY MR. KOUTRAKOS:

Q I'm showing you what I've marked as Exhibit Number 6. It's an e-mail dated July 27th, 2006 from Margaret Glenn to Ed Bullard Shoup at an e-mail address Shoup at another e-mail address, Glenn Chwatt, Scott Svirsky, Dave Levinton and Zinelle, do you see that?

A Yes.

Q Have you seen this e-mail before?

A I don't recall this e-mail.

Q Okay. Is that your e-mail address, Scott Sverski@gmail.com?

A One of, yes.

Q Would that have been your e-mail in 2006?

A One of.

Q Do you see where -- do you know Robert Gwin?

A I do.

Q He would have been the closing attorney for the first mortgage and the second mortgage, correct, and the purchase of the property?

A I don't know about the first mortgage, but the second mortgage, yes.

Q Okay. Do you see where the lawyer who closed the transaction is asking to remove from the

commitment a requirement that requires a satisfactory resolution of a determination by municipality not to build a bridge, do you see that?

A I see that referenced, yes.

Q Okay. Who -- now, commitment letter, would that have been the loan commitment?

A It could be the title commitment letter, I don't know.

Q Let's back up. That was a bad question. If you look at what's attached to this e-mail is a preliminary closing checklist, do you see that?

A Yes.

Q Do you see where it says WBEM&S, Westerman, Ball, Ederer & Sharfstein, LLP, do you see that?

A Yes.

Q That would have been the lawyers for Jericho, for the Jericho All Weather Opportunity Fund, is that right?

A Yes.

Q And do you see on Page 2 of this checklist, it says: Title and survey, satisfactory resolution of the determination by the municipality not to build a bridge. Do you see that?

A Yes.

Q And do you see where it says responsible party, BC?

A Yes.

Q Do you know what BC stands for?

A Borrower's counsel, probably.

Q Correct. Do you recall receiving a copy of this checklist?

A I do not recall.

Q If you look at the bottom of page, of the same page you're looking at, do you see where it say: See documents and settings?

A Uh-huh.

Q And then there's a slash and then where it says: Scott Sverski/local settings/temporary internet files and then it keeps on going on and on, it says: Closing checklist, version one, do you see that?

A Uh-huh. Yes.

Q Would this refresh your recollection if this printed out from your computer?

A Probably did, but I don't recall this document.

Q Were you concerned when you heard that there was some kind of, that the closing attorney wanted to remove a satisfaction that would have

provided you comfort there would be no bridge on the property?

MR. MASEL: Object to the form.

THE WITNESS: I believe I stated I don't recall seeing this document whatsoever. And the only mention of a bridge had ever occurred during due diligence was, as I said, was an explanation that the bridge was going to be a mile down the road and a benefit to the property, not six lanes going through the middle of the property.

BY MR. KOUTRAKOS:

Q Have you seen checklists like this before?

A Yes.

Q Have you seen checklists, other checklists that have a requirement not to build a bridge?

A I've seen lots of different things in checklists, so I can't say one way or the other whether I've seen it or not.

Q That's not a standard provision in a checklist for a closing, is it?

A I can't answer that. You'd have to ask the attorney.

Q From your recollection doing real estate transactions, do you think, I mean, I assume on the

checklist, somebody procures title insurance and you probably see that on every checklist, right?

A Yes.

Q You don't see resolution not to build a bridge on every checklist, do you?

A I don't follow what your question is.

Q Okay. You've dealt with checklists before, correct?

A I've seen checklists before.

Q Let me back up. Checklists for closings?

A I've seen checklists for closings.

Q Have you seen more than one?

A Yes.

Q Okay. Have you seen dozens?

A Yes.

Q Okay. Is it fair to say that on almost every one, there's, there's an item that somebody has to procure title insurance or procure a commitment, let me finish the question, obtain a title commitment or issue title commitment and that's someone's responsibility, is that fair to say that's probably on each checklist that you've ever seen?

A Yes, the attorneys are the ones who deal with the checklist. This is a checklist from one

attorney to another and is not part of the due diligence that I would be involved in.

Q But your attorney was involved in it, correct, the Westerman Law Firm, Zinelle October was your attorney; your attorney meaning, I'm talking about your hat being the Jericho All Weather Opportunity Fund.

A The Jericho All Weather Opportunity Fund was not the lender on this.

Q Okay. Jericho State Capital.

A Which I'm not a member of.

Q Okay. What search have you done to determine, to make sure that you have given your lawyers and your lawyer can give to me all documents related to the note and loan that Lynx Jericho Partners, LLC owns related to the property, the Peachtree loan?

A I don't follow the question.

Q Okay. Have you done a search of -- what documents have you provided to your attorney related to the Peachtree loan?

A Lynx Jericho Partners documents?

Q Yes.

A I searched e-mails and files to see what documents were there. They were dealing with a

bankruptcy trustee. There's very, very, very, very limited amount of information that they provide.

Q Did anybody request from the bankruptcy trustee a copy of RE Loans' loan origination file?

A We did, but I don't believe that such a file was in existence any longer.

Q So you specifically recall requesting that file from the trustee?

A There was -- the group that conducted the sale of the RE Loans' notes, of which there were many, put together a website and gave a password with an expiration on that password. And we were able to look at whatever documentation they had and then that password expired and the documentation was gone. We weren't able to print anything, just able to review the documentation. And there were a number of notes which had been sold prior to our involvement even, so the loan package that was provided to us was essentially a handful of documents tops which included the actual note and several of the filings that were done related to how it ended up in bankruptcy and the filings post bankruptcy.

Q I get that. So the only loan origination document you have is a copy of the note?

A I don't recall specifically what it was. Whatever was provided to you was whatever we had in our files.

Q Well, what you did is you provided to me all the documents that Jericho produced in its case, so I'm just asking you what documents related to this loan, the RE Loans, I'm talking about loan origination, I already have the documents in the form of the trust that sold it to you, I get that. I'm talking --

A We received zero due diligence documents from the bankruptcy trustee.

Q This website that you pulled up, did it have pages or sets, places you can look for each particular loan or were they all documents grouped together?

A They were sub categorized.

Q Okay.

A And they were, the vast majority of the documents, there were no appraisals, there were no -- it was minimal at best.

Q Do you recall seeing any -- what documents do you recall seeing related to the Peachtree loan?

A Essentially, just legal filings.

Q Note, mortgage?

A Yeah.
Q Does --
A The transfer, the chain of transfer and assignments.
Q Got it.
A From ER Loans to Wells Fargo Foothill, Wells Fargo to RE Loans, RE Loans to MF '08, MF '08 to the liquidating trustee. It was essentially that chain of information.
Q All of which is on the public record?
A Yes.
Q You don't recall -- did you see a closing statement on the website for this particular loan?
A I do not recall seeing one.
Q Do you recall seeing a title policy?
A I do not recall seeing a title policy.
Q Loan commitment letter?
A No.
Q Title commitment?
A No.
Q You specifically recall not seeing those documents we just talked about?
A I don't -- you asked do I recall seeing them and I answered no.
Q Okay. Okay. What documents do you recall

seeing, besides the public records stuff?

A Nothing that I recall.

Q Okay. Do you believe that's because the entity with your bankruptcy or is it because the lax standards that RE Loans had in underwriting loans?

A It was bankruptcy, because they, I'm sure that they had due diligence and documentation. We met with Barney Ng on several occasions. We negotiated an intracreditor agreement. Their issues were likely bankruptcy related and fraud related and the liquidating trustee makes a specific point of providing minimal information because they're not assuming any responsibility for any of the due diligence materials that are out there. That was one of the major issues when we acquired the portfolio of five notes was that we had almost no information on the other notes other than the mortgage documents themselves which showed millions and millions of dollars of unfunded liabilities.

Q So you feel confident that there's really not much of anything with regard to the loan origination documents from the RE Loans transaction?

A Yes.

Q Your entity, Lynx Jericho Partners, LLC has sued my client. Can you tell me why?

A Lynx acquired a first mortgage that was originated from RE Loans. RE Loans made an $18.52 million mortgage, they received title policy similar to the Jericho All Weather Opportunity Fund two years after the fact. It was determined that there was a six-lane bridge going through the middle of the property destroying the value of the property. So just like any other acquisition of a portfolio, Lynx Jericho Partners believes it is entitled to monies from Chicago Title as a result of failure to disclose a meaningful title examination.

Q Okay. Explain to me how, when you say exemptions, you are talking about exceptions?

A Exceptions, excuse me.

Q What would that exception have shown or said?

A That there was a bridge going through the middle of the property.

Q You believe it's Chicago's responsibility to determine whether there would be a bridge that would go through the property in the future?

A There was a recording going back several years before the purchase of the property ever recorded showing that there was going to be a bridge going through the property.

Q Okay.

A That is the purpose of title insurance.

Q When you filed the title insurance claim, Lynx Jericho Partners, LLC filed the title insurance claim, at the time it was submitted, you, it had a pretty good idea the claim was going to be denied, right?

A It's standard operating procedure, from my understanding, for title companies to deny claims regardless of merit, so it was not unexpected that the claim was denied.

Q And where did you get the standard operating procedure from?

A My understanding from speaking to and interviewing attorneys relating to filing the claim was that in most experiences, title company is not overly eager to pay out on a title claim, that they vigorously defend whether there's a legitimate reason to or not.

Q And were those discussions connected to a discussion about the bridge on this property and so forth?

A It was in relation to this project and interviewing attorneys about other projects that they had been involved with that had title policy

issues.

Q Okay. You've accused my client of engaging in bad faith, do you understand that?

A Yes.

Q And can you explain to me how my client engaged in bad faith?

A There was title insurance that was paid for. There was a claim that was put forth which seems to me to be pretty clear and straightforward. That claim was denied. And my feeling is that it should not have been denied.

Q You're just saying they breached the contract, the insurance contract?

MR. MASEL: Object to the form.

THE WITNESS: No, I'm saying that this has been going on for, in Lynx Jericho Partners' case, for a couple of years at this juncture, but in my other duty as Jericho All Weather Opportunity Fund, that this is year three, four, five of this particular issue.

BY MR. KOUTRAKOS:

Q Now, with respect to the time that it's taken, do you know when -- did you have any responsibility individually yourself in filing the claim with Chicago Title? Let me back up, do you

know who filed the claim with Chicago Title on behalf of Lynx Jericho Partners?

A Lynx Jericho Partners' attorneys.

Q And it would have been one of these guys in the room from South Carolina, correct?

A Yes.

Q Do you know how long it took your attorneys to provide documents to Chicago Title Insurance Company?

A I do not.

Q You've alleged in the complaint that one of the things that Chicago Title Insurance Company did wrong in your bad faith allegation is they took too long to decide the claim, are you aware of that?

A Yes.

Q Are you aware that after two months after your lawyers finally provided documents to my clients, a decision was made, are you aware of that?

A Yes.

Q Okay. And despite that, you still are alleging that my client did not make a timely decision as to coverage?

A Timely decision is one of several issues.

Q Okay. Have you read the policy yourself?

A Yes.

Q Okay. Have you read the eminent domain exclusion?

A Not recently, but yes.

Q Okay. All right. What damages are being claimed by Lynx Jericho Partners, LLC against Chicago Title Insurance Company?

A The damages are that the loan never would have been made had Chicago Title done its job and advised RE Loans that there was a bridge coming through the property and therefore, the loan never would have been made.

Q Is that your complete answer to what damages Lynx Jericho Partners, LLC is seeking from Chicago Title?

A I'm sure there are a number of other damage claims that are involved in this complaint that I haven't read recently, so --

Q Well, give me a number. I mean, you're seeking -- you're seeking monetary -- is Lynx Jericho Partners, LLC seeking monetary relief from Chicago Insurance Title Company?

A Yes.

Q What is the monetary relief and what is the basis of that relief?

A It's a number to be determined, but

essentially, it is the original title policy amount which was roughly $17 million, from my recollection, minus the amount that was received from the condemnation action, which was approximately $2.1 million, minus which a professional would attribute as the market portion of the decline, market value portion of the decline and the net difference is what the damages should be.

Q Okay. 17 million minus 2-point -- why are you subtracting 2.1 million?

A That was the condemnation proceeds for the roughly 11-acre portion of the property that was received by the first mortgage group.

Q Okay. And 17 million minus 2.1 minus the market value part -- I don't understand what you said there, market part of the equation or something?

A No, I said the depreciation related to the market value depreciation as determined by, you know, a professional.

Q Okay.

A In the condemnation case, the professional determined that there was a 40 percent dep you in addition of value as a result of the bridge, so --

Q All right. This is the time where you

tell me what your damages are. I mean, this is your opportunity right here that Lynx Jericho Partners, LLC, I know it's one of the things on the list if you look at Exhibit Number 1, it's in there, asked you about the damages. And this is not the time to not give me a complete answer. This is the time where I need a complete answer of your damages. And you're telling me you don't have a complete answer for me, is that correct?

A I'm stating --

Q You're giving me a formula basically.

A I'm stating that I believe, according to our professionals, is that at a minimum, we're entitled to the $17 million amount of the title policy. On top of that, cure payments which were made to the first mortgage group for the year that we foreclosed --

Q Can I stop you there for a second? Because you would have been the recipient of those payments. Testifying today as Lynx Jericho Partners, LLC, so the amount of money that somebody else paid --

A That's accurate.

Q Okay. Do you understand that I'm saying?

A Yes, I do.

Q Let's start with the beginning a little bit, because I want to segregate that and maybe I should have done a better job, but Lynx Jericho Partners, LLC has a separate complaint against Chicago Title, has a separate title policy and a separate title claim. And today, I've heard numbers in excess of 10 million, so I think I deserve or my clients deserve to know what this huge lawsuit is about and give me a figure in definitive terms, because now is the time to not make broad allegations. I need specific numbers in a specific way that Lynx Jericho Partners, LLC was damaged and the damages it's seeking from my client. We've come down to Florida to take your deposition and that's the primary purpose I'm here today is damages.

MR. MASEL: I'm going to object to the form. He's two feet for you. You don't need to be yelling at him.

MR. KOUTRAKOS: I'm sorry, I apologize.

THE WITNESS: I enjoyed the speech. At a minimum, I believe that is the $17 million initial policy, minus the $2.1 million that was received, minus the current value, which is probably somewhere in the neighborhood of two-and-a-half to three million dollars, and I

believe that the difference is what are the damages.

BY MR. KOUTRAKOS:

Q Okay. 17 million, the policy amount which is over 17 million, whatever that policy amount is minus 2.1 million, is that because the jury awarded that or is it 1.9 the amount that was received?

A 2.1 because that's what the jury awarded.

Q Okay. And minus the current value of the property, two-and-a-half million?

A Correct.

Q Okay. And the two-and-a-half million comes, you have an appraisal that says two-and-a-half million?

A That's the number that I gave you earlier.

Q Okay. This is damages that Lynx Jericho Partners, LLC is claiming?

A Correct.

Q As also being involved in the other case, are those damages separate and apart than what, from what Jericho Partners, excuse me, Jericho State Capital Corporation of Florida is claiming in the other lawsuit in the other title claim?

A Any proceeds that go to the second mortgage claim would theoretically reduce the

damages in the first mortgage claim.

Q Do you think both entities are entitled to separate damages from Chicago Title?

A It's one damage amount to be split amongst the two parties.

Q So the formula you have before is the damage amount that both would be seeking, but they're not separate amounts?

A The -- they're different amounts in that the second mortgage group is entitled to the $4 million, which was over and above the $17 million. So if you're combining the two properties, then you have $22 million of title claim issues, minus the $2.1 million, minus the 2.5 current value which is my opinion, so --

Q Okay. Have you, have you ever asked the Westerman Law Firm to put their carrier on notice for any malpractice that they may have committed in regards to representing Jericho?

A We have not.

Q Have you investigated that?

A We have not.

Q Have you -- when was the last time you talked to Jeff Shoup?

A Me personally?

Q Yes, sir.
A Very, very long time.
Q Okay. How about Tommy Hixs?
A Same response.
Q How about Bob Gwin?
A Same response.
Q Any -- what is the property currently zoned?
A I don't know the actual number on it, whether it's R1 or B1 or whatever the case may be, but I believe that it is about 205 single family homes and a number of multifamily homes.
Q You said that zoning designation has been in place for a number of years, as far as you know?
A It is the zoning designation by default, is my understanding.
Q All right. When you were involved in the initial transaction, do you recall when you first found out there was a bridge that was actually going to be going through the property, through the middle of the property?
A Yes.
Q Do you know when that was?
A That was after we had started the foreclosure, completed the foreclosure. Well,

you're asking me as Jericho?

Q Yes, sir.

A Okay.

Q I'm asking you personally, in your individual capacity.

A Yes. It was after the Jericho All Weather Opportunity Fund and Jericho State Capital Corp. of Florida filed foreclosure actions on Peachtree and Saucepan because they were cross-collateralized. The Peachtree property, I believe was a foreclosure was completed at the end of 2007 sometime, fall, fall/winter 2007 and we hired a local group that we've done business with in the past called Skymark Real Estate Consulting. They're residential real estate developers up and down the East Coast. So they -- we paid for them. They went to inspect the property to try to resolve the zoning issue and essentially, in their investigation, they came about this recording for the Carolina-based Parkway to go through the middle of the property. They then interviewed a number of attorneys to determine what the issue was and that's how we came to Skeets Bellamy. So the answer is sometime in spring, summer of 2008 is when, from my recollection, when I first learned of the eminent building of the bridge.

Q The foreclosure sale was in December of 2007.

A Right.

Q So you would have learned before that?

A No, I said 2008.

Q I got that. But you said during the pendency of the foreclosure action is when you learned that.

A No, that's not what I said.

Q I'm sorry.

A I think what I said was, or at least certainly what I should have said was that we started the foreclosure in let's say spring/summer of 2007, the foreclosure was completed sometime, as you're referring to, November or December of 2007. Then we hired Skymark Realty --

Q After you were --

A -- after we foreclosed.

Q Got you.

A And then sometime in 2008 is when they alerted us to the fact that there was this eminent bridge issue.

Q Have you, during that time period, did anybody ever pick up the phone and say, Jeff, what's the deal with this, this highway that you never told

us about? Anything like that? Any conversations with your former borrower saying, what's the deal?

A No, our conversations with them was, we're not paying the first mortgage, what's the deal?

Q Did you contact Bob Gwin and ask him?

A No, I would never contact --

Q The borrower's attorney?

A The borrower's counsel.

Q Did you contact your counsel, is it Westerman Ball?

A I -- nothing related to the bridge. We -- I'm sure that they provided notification to Bob Gwin of their, his client's failure to make payments to the first mortgagee as required.

Q When you all loan money on property, do you ask for like a zoning letter from a zoning administrator saying, hey, this property is zoned X or something to that effect?

A I am certainly not an expert on the legal side of things, but I believe that we typically have an opinion letter from someone about what is built on the property.

Q Okay.

A I'm not sure whether we do that on raw land.

Q I recall seeing a zoning letter from Gwin, do you recall looking at this by any chance?

A I don't recall.

Q Okay. You bought property yourself individually?

A I have bought a house, yes.

Q Okay. The entities that you're involved in, do they just loan property as opposed to buy property; loan money instead of buying property?

A Typically lenders, yes.

Q Is the property currently being listed for sale?

A It is not.

Q Any plans for any of the Jericho entities to actually develop the property?

A Possibly.

Q Have you hired any engineers or any land planners in an attempt to do that?

A We have hired land planners and engineers to attempt to make the best of the site plan considering the bridge going through the middle. What I mean by that is that we have hired them to attempt to reconfigure the site plan because the site plan that was developed previously never really contemplated the size of the bridge.

Q Who's doing that work for you?
A I want to say it's Culpepper & Terpening, but I can't recall for certainty.
Q Is it a South Carolina firm?
A Yes.
Q Horry County, Myrtle Beach?
A Likely, yes.
Q Okay. Any other professionals that you've hired recently in regards to the property besides land planner?
A Not that I can recall.
Q And these folks are being paid by which entity, is it the All Weather Opportunity Fund?
A It's actually being paid by Lynx Jericho Partners.
Q Lynx Jericho Partners.
MR. KOUTRAKOS: I might be close to being done, so if you all give me five, ten minutes to look at my list, talk to my client, and we might be out of here.
(Brief recess.)
BY MR. KOUTRAKOS:
Q We talked about the jury's award. Is it your understanding that the jury award is not only for the damages of the loss of the value of that

acreage that was taken up by that bridge, but is also the value to the remainder of the property that remained in Jericho's name?

A I believe there was some component of damages and some component of the actual 11-acre portion.

Q Okay. So you -- okay. When you were going through your calculation before, it's probably my fault, but you gave me the formula and then you restated the formula. The first time you gave the formula, you said 17 million, minus the 2.1, which would have been the jury's award. And then you said the market value of the -- the value that the property has gone down because of the market value, excuse me, the number that the property has declined in value and that's what you put in your formula. And then when you gave me your formula the second time, you didn't include that in there.

A You asked me for specific damages. I can't represent what may or may not be market value decline, if that even, I don't even know if that comes into consideration in this.

Q Okay. Do you believe that my client has a responsibility to compensate your entity for the decline in the property due to market forces?

A No.

Q Title insurance insures title, it doesn't insure the deal, correct?

A It doesn't insure against market loss, but it insures against the original value of the deal.

MR. KOUTRAKOS: That's all the questions I have. I appreciate your time.

MR. MASEL: Let me follow up on just one thing on what Jim was just asking you about. And it kind of relates back to what you had said earlier in your deposition when you were sort of making a distinction between how you would calculate damages when solely looking at the first mortgage as compared to looking at both the first and second mortgage. And I don't think I took good notes on how you distinguished between the two, two ways to look at the damages.

THE WITNESS: Well, I think with my Lynx Jericho Partners' hat, it's the 17 million whatever odd number, you know, minus the take amount, minus the current value amount. And that's the real number that we should be discussing as the amount that should be paid out as damages. With my Jericho All Weather

Opportunity hat, it's the amount from the 17 million to the roughly 22 million plus plus, which is the 4,263,888 actual title claim, but then there are several million dollars of cure payments that were made that would have never been made had we never made the loan, which is essentially what this about, which is we never would have made the loan had there been notification from Chicago Title that there was a bridge going through the property. So the second mortgage damages are not only the 4,263,888, but it's the cure payments, it's all of the legal fees that we had to accrue in doing it and it's hiring of Skymark, the real estate professionals to find this information out, so it's a much larger number, more like seven-and-a-half million, plus plus.

MR. MASEL: Okay. That's the only question I have. Thank you.

MR. KOUTRAKOS: That's it. Thank you.

(Deposition concluded at approximately 2:45 o'clock p.m.)

CERTIFICATE OF OATH

STATE OF FLORIDA)
:SS
COUNTY OF BROWARD)

I, the undersigned authority, certify that SCOTT SVIRSKY, personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 18th day of March, 2016.

Tambria Dery

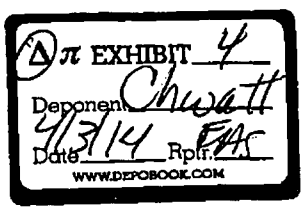
TAMBRIA LEE DERY

Robert H. Gwin III

From: "Robert H. Gwin, III" <rgwin1@sc.rr.com>
Date: Monday, July 17, 2006 4:44 PM
To: "Ed Bullard" <EBullard@westermanllp.com>; <shoup@worldnmb.com>; <Shoup@hiptop.suncom.net>
Cc: <gchwatt@aol.com>; <scottsvirsky@gmail.com>; "Jay Levinton" <jlevinton@westermanllp.com>; "Zinelle October" <zoctober@westermanllp.com>
Attach: COMMITMENT LETTER v.2.doc
Subject: Re: Waterford Estate Plantation

Attached please find redlined comments to the Commitment Letter. Also, please consider this my request to delete the following requirements from the preliminary checklist:
Page 3 Satisfactory resolution of the determination by municipality not to build a bridge;
Page 3 Permits, Licenses, and Approvals for proposed development
Page 3 Casualty and Builders Risk Insurance
----- Original Message -----
From: "Ed Bullard" <EBullard@westermanllp.com>
To: <rgwin1@sc.rr.com>; <shoup@worldnmb.com>; <Shoup@hiptop.suncom.net>
Cc: <gchwatt@aol.com>; <scottsvirsky@gmail.com>; "Jay Levinton" <jlevinton@westermanllp.com>; "Zinelle October" <zoctober@westermanllp.com>
Sent: Monday, July 17, 2006 9:29 AM
Subject: Waterford Estate Plantation

As you may be aware, Jay Levinton is out of the office until Wednesday and I will be filling in for him on the referenced transaction. Therefore, please include me with all emails and correspondence in this matter.
I understand the closing date has been extended until no later than July 26, 2006 so we can proceed with this financing. I attach clean and blacklined drafts of the revised commitment letter for your review. Please note that there are several missing items which remain blank in the commitment letter which need to be filled in. In addition to the commitment letter, the commitment fee needs to be paid.
Please further note that the attached is simultaneously being sent to our client and remains subject to the review and comments of our client.
Finally, I refer you to our closing checklist which was forwarded previously by Jay. Please forward the documentation referenced in the checklist as soon as you can.
<<DVComparison_COMMITMENT LETTER v.doc>> <<COMMITMENT LETTER v.2.doc>>



Edward J. Bullard Jr., Esq.
Westerman Ball Ederer Miller & Sharfstein, LLP
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Mineola, New York 11501
Tel: (516) 622-9200 x 414
Fax: (516) 622-0679
www.westermanllp.com

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FAX: 516-622-9212; OR ANOTHER REPRESENTATIVE OF OUR FIRM, SO THAT WE CAN
ARRANGE FOR THE RETURN OF THE DOCUMENTS TO US AT NO COST TO YOU.
>

PRELIMINARY CLOSING CHECKLIST

Definitions

Lender: Jericho All-Weather Opportunity Fund, L.P.

Borrower: TBD

Guarantors:

WBEM&S: Westerman Ball Ederer Miller & Sharfstein LLP

BC: Borrowers counsel

Title: TBD

Property: 131 acres off Peach Tree Road, Myrtle Beach, Horry County, SC

R.984

	Document	Responsible Party	Status
A.	LOAN DOCUMENTS:		
	Promissory Note	WBEM&S	
	Mortgage and Security Agreement	WBEM&S	
	Assignment of Leases and Rents	WBEM&S	
	Guaranty	WBEM&S	
	UCC-1s	WBEM&S	
	Environmental Indemnity of Borrower and Guarantors	WBEM&S	
	Document Re-execution Agreement	WBEM&S	
	Brokerage Indemnity	WBEM&S	
	Borrower's Certificate (including financial certification)	WBEM&S	
	Guarantor's Certificate (including financial certification)	WBEM&S	

EXHIBIT 5
Deponent: Chwatt
Date 4/3/14 Rptr. EAS
WWW.DEPOBOOK.COM

	Document	Responsible Party	Status
	Assignment of Agreements, Permits and Contracts (if required)	WBEM&S	
	Other Escrow/Holdback Letters (if required)	WBEM&S	
	Title Company Recording Instructions (if required)	WBEM&S	
B.	TITLE AND SURVEY:		
	Title Insurance Commitment, including copies of all recorded instruments, real estate tax, vault and water and sewer taxes and charges searches; verification of independent tax lot status	BC	
	ALTA Title Insurance Policy including the following endorsements: (a) Land Same as Survey, (b) ALTA 9, (c) Contiguity and (d) Affirmative insurance and other endorsements as Lender may require	BC	
	Title Affidavits as required by the Title Company	BC	
	Flood Zone Certification	BC	
	Current Survey certified to Lender	BC	
	Satisfactory resolution of the determination by the municipality not to build a bridge	BC	
	Paid Receipt of Title Company	Title Company	
	UCC-1 financing statement search, tax lien search, Patriot Act searches and judgment search against Borrower and Guarantor (Secretary of State for Borrower and Guarantor, County where property is located and principal residence for Guarantor and, if required by Lender, where Borrower is organized)	BC	
	Insured Closing Letter	BC	
C.	ZONING, USE AND OCCUPANCY:		
	Zoning verification letter	BC	

R.985

	Document	Responsible Party	Status
	Municipal departmental violation searches, including environmental lien searches	BC	
	Permits, Licenses and Approvals for proposed development	BC	
D.	CASUALTY, LIABILITY AND BUILDER'S RISK INSURANCE:		
	Original Insurance Policies, with Lender Loss Payable Clause and proof of premium payment	Borrower	
	Flood Insurance (if applicable)	Borrower	
E.	ORGANIZATIONAL DOCUMENTS OF BORROWER, GENERAL PARTNERS AND MANAGING MEMBERS:		
	Corporations:		
	(a) Certificate of Incorporation and all amendments thereto, certified as filed by Secretary of State where incorporated	BC	
	(b) By-laws, certified by Borrower	BC	
	(c) Certificate of Good Standing issued by Secretary of State where incorporated	BC	
	(d) Certificate of Good Standing issued by Secretary of State where property is located	BC	
	(e) Certificate of Corporate Resolutions and Incumbency	BC	
	Partnerships:		
	(a) Certificate of Partner, if applicable	BC	
	(b) Certificate of Limited Partnership and all amendments thereto, certified as filed by appropriate office in state where organized	BC	
	(c) Partnership Agreement and all amendments thereto	BC	
	(d) Consent of Partners, if applicable	BC	
	(e) Certificate of Good Standing issued by Secretary of State where organized, if applicable	BC	
	(f) Certificate of Good Standing issued by state where Property is located, if applicable	BC	

R.986

	Document	Responsible Party	Status
	(g) Fictitious Name Affidavit or Certificate of Limited Partnership certified as filed by appropriate office in state where property is located, if applicable	BC	
	(h) Evidence of publication (if required)	BC	
	Limited Liability Companies:		
	(a) Articles of Organization and all amendments thereto, certified as filed by the Secretary of State where formed	BC	
	(b) Operating Agreement, and all amendments thereto	BC	
	(c) Consent of Members, if required	BC	
	(d) Certificate of Good Standing issued by Secretary of State where organized	BC	
	(e) Certificate of Good Standing issued by Secretary of State where property is located	BC	
	(f) Certificate of Member	BC	
	(g) Fictitious Name Certificate or evidence of authority to do business in state where property is located, if applicable	BC	
F.	OPINION LETTERS:		
	Due execution, enforceability etc.	BC	
	Local counsel opinion (including zoning)	BC	
G.	SUPERIOR AND SUBORDINATE MORTGAGES:		
	Copies of all loan documents entered into by Borrower with the holder of any other mortgage	BC	
	Inter-Creditor Agreement(s) with other Mortgagees	BC	
	Proof of paydown of existing second mortgage		
H.	ACQUISITION DOCUMENTS:		
	Certified copy of Contract of Sale, together with Deed and other closing documents re: acquisition, if applicable	BC	
I.	MISCELLANEOUS:		
	Evidence of Payment of Mortgage Broker Commissions	Borrower	

R.987

	Document	Responsible Party	Status
	Loan Disbursement Instructions/Wiring Instructions	Borrower	
	Photographic Identification	WBEM&S	
	Environmental Report		Received
J.	PAYMENTS AT CLOSING:		
	Payment of interest for the month of closing and funding of interest reserve		
	Payment of Lender's attorneys' fees and/or disbursements		
	Payment of Lender's local counsel fees		
	Payment of commitment fee		
	Payment of origination fee		
	Payment of any other fees and expenses of Lender		
	Payment of escrow hold-backs (if required)		
	Payment of tax and insurance escrow deposit (if required)		
	Payment of title insurance premiums and recording taxes and fees		

R.988

HORRY COUNTY
PLANNING DEPARTMENT

301 Second Avenue
Conway, South Carolina 29526

(843) 915-5340
(843) 205-5340
FAX (843) 915-6340

May 15, 2002

NOTICE TO PROPERTY OWNERS OF PUBLIC HEARING AND REVIEW TO ADD PROPERTY TO THE "INDEX MAP" OF THE OFFICIAL MAP ORDINANCE FOR HORRY COUNTY

To Whom It May Concern:

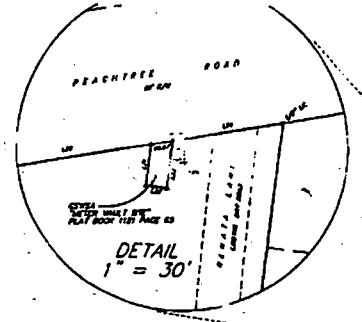
The Horry County Council is considering the addition of future right-of-way for the Carolina Bays Parkway from Highway 501 to Highway 17 By-pass to the "index map" of the Official Map for Horry County. You have received this notice because your property is either directly affected by this proposal or is adjacent to the property affected by this proposal.

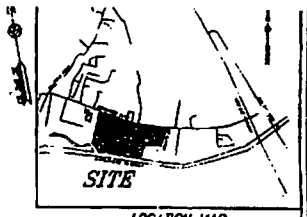
The County Council will hold a public hearing on this matter on June 18, 2002 at 6:00 P.M. in the Council Chambers, located at 1301 Second Avenue in Conway, South Carolina.

If you need additional information regarding this matter, please contact Patrick R. Zenner at the Horry County Planning Department at (843) 248-1213.

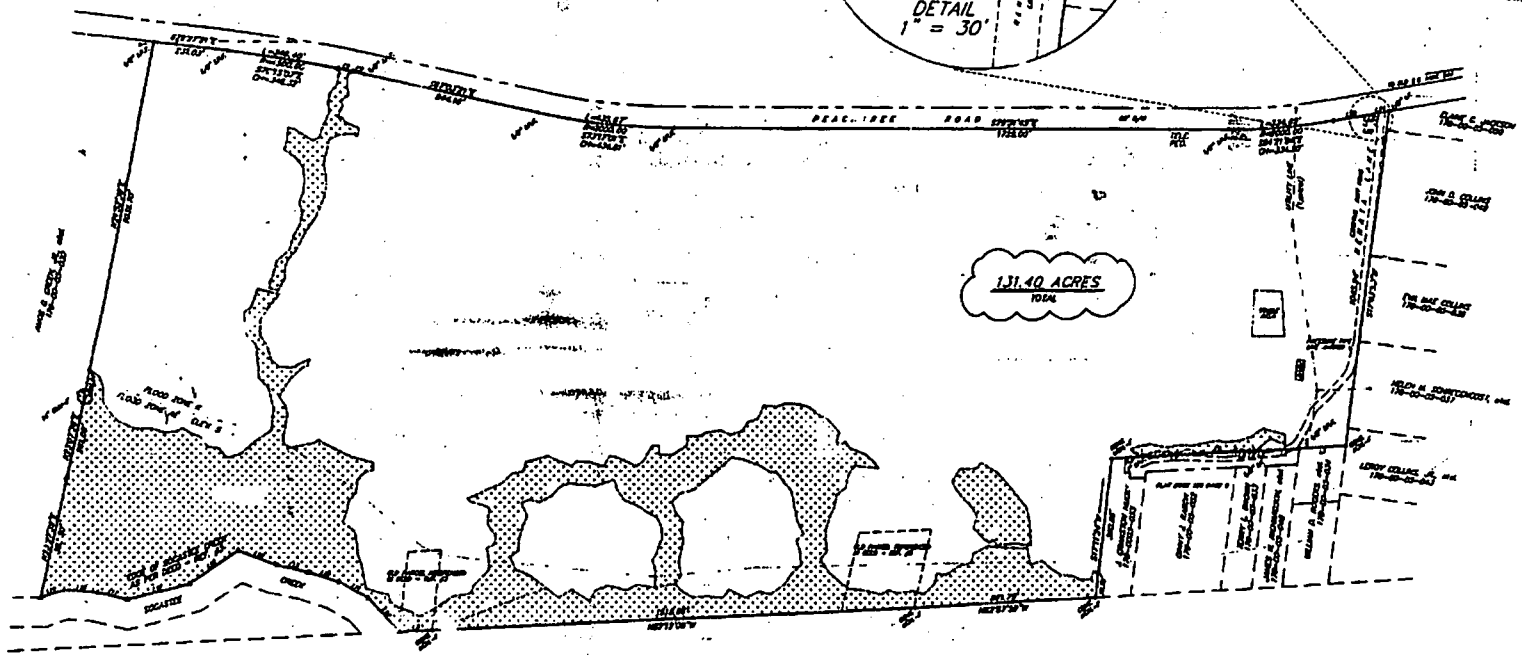
Please keep in mind that County Council reserves the right to amend their agenda at any time. Please look for public notice in the newspaper as to the official dates and location of Council meetings.

215.81





LOCATION MAP



I GREGORY F. CUNNINGHAM HEREBY CERTIFY THAT THIS SURVEY IS A RESURVEY OF EXISTING TRACT OF RECORD WITH NO BOUNDARY CHANGES WHATSOEVER

I HEREBY STATE 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

LEGEND

- PROPERTY LINE WITH PROPERTY CORNER FOUND (AS DESCRIBED)
- PROPERTY LINE WITH PROPERTY CORNER SET (SEE NOTE #3)
- ADJACENT PROPERTY LINE
- RIGHT OF WAY LINE
- CENTERLINE OF RIGHT OF WAY
- EASEMENT LINE

PLAT

SHOWING 131.40 ACRES LOCATED ON THE INTRACOASTAL WATERWAY, PREPARED FOR

JEFF SHOUP

SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA

DATE: MARCH 28, 2006

R.990

STATE OF SOUTH CAROLINA :
: SS:
COUNTY OF HORRY :

IN THE COURT OF COMMON PLEAS

JERICHO STATE CAPITAL CORP. OF FLORIDA, Plaintiff, -vs- CHICAGO TITLE INSURANCE CO., Defendant.

Case Number 2013-CP-26-5530

Deposition of DAVID C. TURNER, the witness herein, called for the purpose of Discovery Examination by the Defendant, pursuant to the South Carolina Rules of Civil Procedure, taken before Rita Rodriguez, a Notary Public for South Carolina, at the Law Offices of Newby, Sartip, Masel & Casper, LLC., 4593 Oleander Drive, Myrtle Beach, South Carolina, on Monday, July 14, 2014, commencing at 10:37 a.m.

- - - - -

Job No. CS1892114

A P P E A R A N C E S:

ON BEHALF OF PLAINTIFF:

FRED B. NEWBY, ESQ.
Newby, Sartip, Masel & Casper, LLC.
4593 Oleander Drive
Myrtle Beach, South Carolina 29578

ON BEHALF OF DEFENDANT:

DEMETRI K. KOUTRAKOS, ESQ.
Callison, Tighe Law Firm, LLC.
1812 Lincoln Street, Second floor
Columbia, South Carolina 29201

- - - - -

STIPULATIONS

This deposition was taken pursuant to proper Notice and pursuant to Circuit Rule 30, to be used for the purpose of discovery and/or evidence at trial, or for any other purpose permitted by Circuit Rule 30; all objections except as to the form of the question are reserved until the time of trial. Reading and signing of deposition was waived.

- - - - -

INDEX OF EXAMINATION

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Examination by Mr. Koutrakos	04
Examination by Mr. Newby	60
Reexamination by Mr. Koutrakos	72

INDEX OF EXHIBITS

Exhibits	Marked
1- Affidavit of David C. Turner.	30
2- Ordinance No. 88-202.	40
3- Printout of web page.	46
4- Ordinance 153-99, filed October 7, 1999.	51
5- Ordinance 107-98.	53
6- Ordinance 153-99, filed October 14, 1999.	54
7- Aerial photocopy of Carolina Bays Parkway Right-Of-Way Map.	69

(Original of Exhibit 7 is retained by Mr. Newby)

- - - - -

DAVID C. TURNER,

of lawful age, the Witness herein, called for Discovery Examination by the Defendant, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION

BY MR. KOUTRAKOS:

Q. Mr. Turner, good morning.

A. Good morning.

Q. My name is Jim Koutrakos. I represent Chicago Title Insurance Company in a lawsuit filed against it by an entity called Jericho State Capital Corporation.

I'm going to ask you a series of questions today. If you do not understand anything that I ask you, if you don't understand a question, please feel free to ask me to rephrase the question. Is that okay?

A. Yes.

Q. If you answer a question, I'm going to assume that you understood the question. Is that fair?

A. Yes.

Q. The Court Reporter is here taking everything we say down. So if you say uh-huh or you shake your head or nod your head, she's actually going to

put in the transcript uh-huh or nods head, shakes head, and then we're going to later have to figure out what in the world you meant by that. So let's try to give verbal as opposed to nonverbal responses. Okay?

A. Yes.

Q. I have a bad habit, probably through my heritage or genetic makeup, of talking over people. So I'm going to try to do my best to wait until you're finished, if you could do the same with me, that would make our life easier today, and I don't think we'll be here long, and it will make the Court Reporter's life a lot easier as well. Okay?

A. Yes.

Q. Are you on any medications, do you have a physical or medical condition that affects your memory or ability to tell the truth?

A. No.

Q. You're capable of giving truthful and accurate testimony today?

A. Yes.

Q. Like I said, I don't think we'll be here long today, but if you need any breaks throughout the course of the deposition, just let me know. I

would just ask that if there is a question on the table, you go ahead and answer that. Okay?

A. Okay.

Q. You're not represented by counsel here today, are you, sir?

A. No, sir.

Q. I'm required to tell you under the Rules of Civil Procedure that if you need any clarifications, definitions or explanations of anything that I ask you or any documents that I present to you, that you are to ask me for those clarifications or explanations. Do you understand that?

A. Yes.

Q. And I'm also required to tell you under the Rules of Civil Procedure if we take a break today, that should you talk about the substance of your testimony during the break, I can ask you about that.

A. Okay.

Q. Can you give me your full name, sir?

A. David Carlisle Turner.

Q. Where were you born?

A. Conway, South Carolina.

Q. What is your date of birth?

A. [redacted]/47.

Q. Can you give me the address of your current residence?
A. 4336 Tilly, T-i-l-l-y, Swamp Road, Conway, 29526.
Q. What is your business address?
A. P.O. Box 642, Conway.
Q. Do you have an e-mail address?
A. Yes.
Q. What is it?
A. Dcturn642@hotmail.com.
Q. If you could go briefly through your education starting from high school and anything after high school?
A. High school, University of South Carolina at Coastal. And I have had seven years training through an attorney firm in Conway.
Q. What high school did you go to?
A. Conway High School.
Q. What year did you graduate?
A. '65.
Q. And then you said you went to Coastal?
A. Yes, two years there.
Q. When did you start at Coastal?
A. '65.
Q. And you finished up in '67?
A. Yes.

Q. Any other education after your two years at Coastal?
A. Just some computer classes.
Q. Tell me about your work history. You finished up in '67 at Coastal. If you could just take me through your work history from '67 until the present the best that you can?
A. Okay. Well, I actually started this title work in 1962 when I was still in high school. I worked for a law firm in Conway, Suggs & McCutcheon. I worked there for seven years. And during that seven years Mr. Suggs trained me in doing title work.
Q. So you worked at Suggs & McCutcheon from --
A. '62 to '69, when I went out on my own as an independent.
Q. And you have been an independent abstractor ever since?
A. Yes.
Q. Do you have a name of a company?
A. Number One Title Company. It's a pound sign. They call it hash tag now I think.
Q. Number One Title Company, was it always called Number One Title Company?
A. Yes.

Q. Since 1969 it's been called Number One Title Company?
A. Yes.
Q. How many employees do you have today?
A. None.
Q. Have you ever had any employees?
A. No.
Q. Besides your training by Mr. Suggs, have you had any training in real estate?
A. What do you mean?
Q. Have you gone to any seminars about abstracting, taken any courses on title --
A. No, not that I can remember.
Q. Any courses on real estate transactions?
A. No.
Q. Have you ever attended any seminars in real estate transactions?
A. No.
Q. Have you ever spoken in any seminars about real estate transactions?
A. I spoke at the Ocean Forest Hotel in 1970 before the State Bar Association.
Q. What was the topic?
A. It was about paralegals doing abstracts, title examinations.

Q. Any other seminars at which you have spoken besides that?
A. No.
Q. Have you taught any classes?
A. No.
Q. Have you written any articles, books, pamphlets or anything regarding real estate?
A. Not yet.
Q. Have you taken any courses at any local universities or any schools on the topic of real estate?
A. No.
Q. Are you a licensed title agent?
A. No.
Q. Have you ever been a licensed title agent?
A. No.
Q. Number One Title Company has been in existence since '69?
A. Yes.
Q. And it's only been you the whole time?
A. Yes.
Q. Do you do commercial and residential title examinations?
A. Yes.
Q. Do you do anything other than title examinations?