

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
Case No. 2013-CP-07-01341

Appeal Case No. 2017-001736

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SC Court of Appeals

Road, LLC and Pinckney Point, LLC,

Of whom Road, LLC is the..... Appellant,

v.

Beaufort County, a political subdivision of the State of South Carolina,
..... Respondent.

RECORD ON APPEAL
VOLUME IV of V

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1 there.

2 MR. ACHURCH: We can get our case up and down
3 pretty quick, I think, so.

4 THE COURT: Okay.

5 MR. ACHURCH: So, we'll see how we go.

6 MS. LOHR: Yeah, cross that bridge when you get
7 there.

8 THE COURT: Okay.

9 BAILIFF: Ready, Judge?

10 THE COURT: Yes.

11 BAILIFF: Jury's entering the courtroom, your
12 Honor.

13 THE COURT: The defense will call their next
14 witness.

15 MR. ACHURCH: May it please the Court? Beaufort
16 County calls Josh Gruber.

17 THE COURT: Thank you.

18 MADAM CLERK: Do you solemnly swear or affirm that
19 the testimony you give to the Court in this case shall
20 be the truth, so help you God?

21 MR. JOSHUA ANDREW GRUBER: I do.

22 MADAM CLERK: You may be seated.

23 JOSHUA ANDREW GRUBER

24 DIRECT EXAMINATION, BY MR. ACHURCH:

25 Q Please tell us your full name, sir.

1 A Joshua Andrew Gruber.

2 Q Josh, where'd you grow up?

3 A I was born in between a small corn field and bean
4 field in mid-western Ohio called Greenville.

5 Q Okay. And how did you wind up in South Carolina?

6 A I ultimately moved here a number of years ago to
7 take a job with Berkeley County.

8 Q Could you gave us a brief educational background on
9 yourself.

10 A Sure. I have a bachelor's degree from Clemson
11 University in political science; a master's degree in
12 public administration with a concentration in urban
13 planning and economic development from Georgia State
14 University; and a juris doctor from Capital University.

15 Q All right. And before you moved to Beaufort
16 County, right before you came here, what did you do for
17 work prior to that?

18 A Previously, before coming here, I was the assistant
19 county attorney at Berkeley County.

20 Q And what positions have you held at Beaufort
21 County?

22 A I was originally hired as the county attorney for
23 Beaufort County, and have subsequently been promoted to
24 be the Deputy County Administrator, and now Special
25 Counsel for Beaufort County.

1 Q Okay. And you've been here all week, right?

2 A I have.

3 Q Okay. And you've heard testimony about the septic
4 issues, working out septic tank issues. How did you
5 become involved in the septic tank issue?

6 A To the best of my recollection, some time in late
7 2012 I believe, I was contacted by Walter Nester and it
8 was in regards to trying to resolve an issue or concern
9 that he had with the septic permits on this particular
10 development.

11 Q What were the issues with the septic?

12 A My understanding of the situation is that the
13 applicant/developer had received a blanket permit from
14 DHEC in 2007 for this particular development; that the
15 law had changed in 2009; and there was a concern on the
16 part of staff regarding the ability to accept the
17 blanket septic bond ~~or~~ permit, rather than requiring
18 individual permits for the property.

19 Q And did you work to try to resolve those issues?

20 A I did. I worked directly with Walter on that
21 matter, and we were ultimately able to resolve it.

22 Q Okay. And what were the DHEC changes to the
23 requirements?

24 A As I stated, I believe, before 2009, DHEC would
25 allow for one blanket bond to cover multiple parcels.

1 And then, after the change was made in 2009, I believe
2 they required individual parcels -- or individual
3 permits on each of the parcels.

4 Q And you were able to finally resolve that?

5 A Ultimately, yes. I believe DHEC provided some
6 correspondence that stated that the blanket bond that
7 they had received in 2007 was still considered valid,
8 and as such, we would accept it. I then worked with
9 Walter to try and address staffs' continuing concern
10 regarding protecting ultimate purchasers of the
11 property. And the way we went about doing that was
12 including restrictive covenants on the plat itself that
13 was ultimately to be recorded.

14 Q What are the concerns about potential purchasers of
15 the property?

16 A Sure. As was stated previously, this particular
17 applicant was looking to develop the site, but was not
18 looking to do any of the actual vertical construction on
19 these lots. So, the concern from staff was that, given
20 the limitations of the septic permits, that they could
21 not be put in the river buffer setback. And the fact
22 that there was no actual site plan about where an actual
23 home would go on any of these individual lots, our
24 concern was that somebody in the future would buy one of
25 these lots, would go to put a home on it, and would

1 learn that they wouldn't be able to put a septic system
2 on it, and would turn around and blame the County for
3 allowing a lot to be created that could not be actually
4 built upon.

5 Q And was that language that you and Mr. Nester
6 agreed on jointly? Was there some language to give
7 buyers notice of the condition?

8 A That's correct. It was a conditional notice that
9 we'd asked be put on the plat, so that any buyer would
10 be put on notice of that potential concern.

11 Q And Mr. Nester agreed to that on behalf of Pinckney
12 Point, LLC?

13 A He did. I believe he drafted the initial round.
14 We circulated it back and forth. And ultimately, agreed
15 upon its language.

16 Q What does DHEC currently require with regard to
17 these same issues?

18 A My understanding is that DHEC currently requires
19 individual septic permits per lot.

20 Q Are you the liaison between Beaufort County and the
21 Beaufort County Open Land Trust?

22 A I -- I am, correct.

23 Q Okay. And is the Open Land Trust a part of
24 Beaufort County?

25 A They are a contractor to Beaufort County.

1 Q Okay. And what to they -- what do we contract with
2 them to do?

3 A They, essentially, help manage the rural and
4 critical lands problem.

5 Q All right. And how did you learn that the Pinckney
6 Point tract may be available to purchase for
7 preservation?

8 A The first time that I learned of actual terms
9 regarding the purchase of the property, I believe, was
10 at the Natural Resources committee meeting some time in
11 early 2013. However, having sat through the trial this
12 week, I do recall Garrett Budds mentioning that we would
13 have touch-base meetings about every two to three
14 months. And I seem to recall that he may have mentioned
15 something about this parcel at one of those meetings.

16 Q And if -- Garrett Budds was the point person for
17 the Beaufort County Open Land Trust?

18 A He was.

19 Q And if he was going to discuss something with the
20 County about a potential -- any potential purchase by
21 the Open Land Trust, would you be the person he would
22 come to?

23 A That's correct.

24 Q Okay. When you heard it could be for sale, did Mr.
25 Budds mention anything about an option?

1 A He did not. He actually didn't have any details of
2 what may or may not be done on the property, because
3 it's my understanding that no negotiations had taken
4 place because there was currently another option on the
5 property for it to be sold to somebody else.

6 MR. WALKER: Objection. Ask that it be stricken,
7 since he was not party to those discussions. Mr. Budds
8 testified to what his discussions were with Lee Wooddall
9 -- and Lee Wooddall were, but this witness doesn't know
10 what those discussions were.

11 MR. ACHURCH: I'm not asking about discussions
12 between Mr. Budds and Mr. Wooddall, your Honor. I'm
13 asking him about the discussion he had with Mr. Budds.

14 MR. WALKER: Still, that would be him saying --

15 MR. ACHURCH: And it goes to notice, your Honor.
16 And they've raised this issue. We're addressing this
17 issue.

18 THE COURT: Okay. I'm going to go ahead and let
19 him. He can testify as to anything he may have had as
20 far as a conversation with Mr. Budds, who has previously
21 testified.

22 MR. ACHURCH: Yes, ma'am.

23 THE COURT: Okay.

24 MR. ACHURCH: Thank you, your Honor.

25 BY MR ACHURCH:

1 Q And you told me about the first time. Did you have
2 a conversation with Mr. Budds about the availability of
3 the property where he made mention of an option?

4 A I -- I believe the reason, when we met, he didn't
5 have any financial figures associated with the property,
6 because no negotiations had taken place because of an
7 option being on the property.

8 Q Okay. And what did he say about -- did he say
9 anything about the option and the availability of the
10 property in that --

11 MR. WALKER: Hearsay.

12 BY MR ACHURCH:

13 A And I don't receive.

14 Q Thank you. When a property is discussed with you
15 by Mr. Budds or the representative of the Open Land
16 Trust, are you told the identity of the potential
17 seller?

18 A Not typically, no. Most of the time the properties
19 are identified by some kind of label with regard to the
20 parcel itself. So, in this case, we would have referred
21 to it as the Pinckney Point property, but we wouldn't
22 have referred to it by who the seller was.

23 Q Why not?

24 A Typically, from our standpoint, and for purposes of
25 the problem, who the seller is, is not really material.

1 What we look at is the quality and nature of the
2 property itself, and what benefit can be brought to the
3 public of purchasing it. So, we look at how big is the
4 property; where is it located; what are its values; the
5 purchase price; and then, would it be a good investment
6 for the program.

7 Q After the County agreed to purchase the Pinckney
8 Point property for preservation, did Mr. -- did you
9 agree to meet with Mr. Nester?

10 A I did. I believe he reached out and requested a
11 meeting, and we did set up a meeting at his require.

12 Q Was I there at that meeting?

13 A Yes. It was yourself, myself, Mr. Bendle, and Mr.
14 Nester.

15 Q Did you receive Mr. Nester's letter in April 2013
16 suggesting the County should not buy the Pinckney Point
17 property?

18 A I did. I believe about two days after our meeting,
19 I received a letter from him to that effect.

20 Q Okay. Josh, let me show you what's been marked as
21 Defendant's Number 25. Can you identify that?

22 A Yes, I can.

23 Q What is it?

24 A This was a letter that was sent back to Walter
25 Nester in response to the letter that he had sent to

1 myself.

2 Q And that's a copy I generated. Did you receive a
3 signed copy of that letter?

4 A I did. I was a carbon copy to it.

5 Q Okay. And would you tell the jury the gist --

6 MR. ACHURCH: Your Honor, I would move that into
7 evidence.

8 THE COURT: Any objection?

9 MR. WALKER: Do we have a copy of it? You gave it
10 to me?

11 MR. ACHURCH: Yes.

12 MR. WALKER: Exhibit, the same as yesterday?

13 MR. ACHURCH: Yes, it is.

14 MR. WALKER: If it's identified by the witness.

15 Mr. Nester didn't remember receiving it, but if this
16 witness says he received it, then, I would assume it
17 would be admissible. So, without objection.

18 BY MR ACHURCH:

19 Q Did you receive that?

20 A Yes, I did receive a carbon copy of this.

21 MR. ACHURCH: I move it into evidence.

22 THE COURT: Okay. It's in evidence.

23 MR. ACHURCH: Thank you.

24 BY MR ACHURCH:

25 Q And will you tell the jury, rather than reading it,

1 tell the jury the gist of the response, please.

2 A Sure. Upon receiving Walter's letter, we reviewed
3 its contents, and I believe upon consultation with you,
4 we vehemently disagreed with the letter that he had
5 stated. So, this was our reply to that letter letting
6 him know that we disagreed with its contents and his
7 conclusions.

8 Q Were you concerned about Mr. Nester's letter and
9 his claims about use of the access easement?

10 A I was not.

11 Q Why?

12 A Walter's letter essentially set forth two concerns.
13 (1) that the County would be in violation of the
14 settlement agreement by moving forward with the
15 purchase. And (2) that the County didn't have
16 sufficient access to the property.

17 In looking at the first concern, we reviewed a copy
18 of the settlement agreement itself, looking at all of
19 the language contained in the document. And nowhere in
20 that document does it mention or contemplate any --
21 excuse me -- any restriction on the purchase or sell of
22 that property by the County. It essentially required
23 the County to declare that it was a public road, or
24 allow it to be declared a public road. And then, also
25 require the County to provide a variance on that

1 property.

2 So, having reviewed that, seeing that there was no
3 restrictions in there, we disagreed with his concern
4 that the County would be in violation of that settlement
5 agreement through our purchase of the property.

6 Again, his second concern was that --

7 Q Let me stop you one second.

8 A Oh. Um-hmm.

9 Q I want to come back to that. Did it concern you
10 when you reviewed the settlement agreement that the road
11 was declared private?

12 A No, it did not.

13 Q Why?

14 A In my world, the declaration that a road is public
15 does not determine who can actually be on the road.

16 MR. WALKER: Objection. He's rendering an opinion
17 right now.

18 THE COURT: Okay.

19 MR. WALKER: Not listed as an expert. Move to
20 strike.

21 MR. ACHURCH: Your Honor, he's not offering as an
22 opinion. They've raised the issue as to whether or not
23 he was concerned. And I think he can testify as to why
24 he was or was not concerned.

25 THE COURT: He can't give a legal opinion, though.

1 MR. ACHURCH: So, this goes to why he wasn't
2 concerned regarding Mr. Nester's letter.

3 THE COURT: I think he testified that he believes
4 or he thinks. So, and then, explain.

5 A Yes, your Honor.

6 BY MR ACHURCH:

7 Q What do you believe about a declaration of the road
8 being private?

9 A I believe that a declaration of a road being
10 private goes to who is responsible for maintaining that
11 road, not who can be on the road.

12 Q Okay. As to the second part of Mr. Nester's letter
13 regarding the use of the road, did you review the title
14 work?

15 A I did. We had actually received the title work
16 prior to our meeting. I believe we had reviewed the
17 title work. Understood that to be, at a minimum, at
18 least a twenty-foot access easement, in addition to
19 possible other easements that were on the property that
20 would be greater than the twenty-foot access easement.
21 And I believe we were told at that point that we would
22 be able to receive title insurance on the easement.

23 Q Okay. Let me show you what's been marked -- it's
24 already previously been marked, but I'll just give you
25 another copy for reference. This is a -- can you

1 identify this document?

2 A Yes, it is a limited warranty deed from Agnes
3 Pinckney to Road, LLC.

4 Q And did you review this document in addressing any
5 concerns that you had regarding the ingress and egress?

6 A Yes, that is correct.

7 Q Okay. And would you look at Page -- the bottom of
8 the page. It's recording information 994.

9 A Yes.

10 Q And do you see that part that says, *and also*
11 *subject to*?

12 A Yes, there are several *also subject to's*.

13 Q Okay. And would you read that into the record,
14 please.

15 A Beginning with the first one?

16 Q Yes.

17 A *And also subject to an easement for vehicular*
18 *access, ingress and egress on, over, and*
19 *across the approximate twenty-foot private*
20 *dirt road extending to the north of Pinckney*
21 *Colony Road as depicted in the plat referenced*
22 *above.*

23 Q What was significant about this language, and about
24 with regard to access to the property?

25 A Sure. That the deed that Agnes was conveying to

1 Road, LLC, was subject to an already existing twenty-
2 foot access easement, and then, that paragraph is
3 referencing that twenty-foot access easement that was
4 already in existence.

5 Q So, the parcel she gave to Road, LLC, came subject
6 to that?

7 A That's correct.

8 Q And let me get you to look at the -- there's a
9 third *also subject to*, down. Can you read that into the
10 record, please.

11 A *And also subject to a restriction that the*
12 *property conveyed herein may be used only as*
13 *a right-of-way or other purpose associated*
14 *therewith, including, but not limited to,*
15 *landscaping, parking, drainage, installation*
16 *of utilities, except, however, not gravity*
17 *sewers or any other purpose necessary or*
18 *appropriate for an entrance area to a private*
19 *residential community.*

20 Q What impact, if anything at all, did that have on
21 any concern you had regarding access?

22 A It didn't have any impact or concern. And the
23 reason for that is, within this document specifically
24 states that it may be used as a right-of-way. It then
25 also includes some conditional language, specifically

1 the including, but not limited to language. In my
2 world, what that means is you're setting forth --

3 MR. WALKER: Objection, your Honor. He's back in
4 his world.

5 THE COURT: Okay.

6 MR. WALKER: I don't know what Josh Gruber's world
7 is, but he's some time in the legal field.

8 THE COURT: You can say I believe.

9 BY MR ACHURCH:

10 Q What did you believe -- what did you believe that
11 to mean?

12 A Sure. I believed that to mean that they were
13 providing an identified list, but not an exhaustive list
14 of what it could have been used for, because it says,
15 *including, but not limited to.*

16 Q Okay. And so, it was -- you could use this as
17 ingress and egress, and then, they also added some other
18 things you could also do with it.

19 A That's correct.

20 Q Okay. And let me ask you -- I'll hand you up
21 another exhibit that's already been made an exhibit.
22 It's labeled *Access Easement Agreement*. And did you
23 look at that when considering Mr. Nester's
24 correspondence?

25 A Yes, sir.

1 Q And what, if anything, did you find significant
2 about that?

3 A Within this particular document, it referenced --
4 and this is a transfer of an easement from Road, LLC, to
5 Pinckney Point, LLC. The County would ultimately be a
6 successor in interest to Pinckney Point, LLC. And in
7 this document, it states that they are granting an
8 easement to Pinckney Point, LLC, that includes the
9 twenty-foot wide access easement that I believe was
10 previously referenced, as well as some additional
11 easements later on in that document.

12 Q And did you review the title work that followed
13 this? In other words, the successors in interest to
14 this?

15 A That is correct. My understanding is Pinckney
16 Point gave it to Equity Resource Partners, and then, the
17 County bought it from Equity Resource Partners.

18 Q And what did you believe that to -- what was the
19 significant of that to you?

20 A That the County acquired the twenty-foot access
21 easement, as well as any other easements that Pinckney
22 Point, LLC, would have obtained as a successor in
23 interest to them.

24 Q Was the County able to obtain title insurance on
25 access to the property?

1 A Yes, we were.

2 MR. ACHURCH: Mr. Gruber, thank you. That's all
3 the questions I have. Please answer any questions Mr.
4 Walker has.

5 JOSHUA ANDREW GRUBER

6 CROSS-EXAMINATION, BY MR. WALKER:

7 Q Mr. Gruber, you were talking about your impressions
8 from meetings or conversations with Garrett Budds. You
9 were not present for any of Garrett Budds'
10 communications with Lee Wooddall of Equity Resource
11 Partners, were you?

12 A That is correct. I was not present.

13 Q So, you don't know when those communications
14 occurred, do you? You were not present.

15 A I was not present.

16 Q And so, you don't know the substance of those
17 communications, do you?

18 A I do not.

19 Q So, would it be fair to say that, insofar as this
20 record involves communications between Garrett Budds and
21 Lee Wooddall, that his testimony would be more reliable
22 than what you have to say?

23 A I wouldn't go that far, no.

24 Q Even though you were not present for those
25 transactions.

1 A I was not present.

2 Q Those communications, rather.

3 A What I --

4 Q Okay.

5 A What I recall is that, when Garrett gave a status
6 update, he did not have any financial information
7 associated with the parcel. And I understood that to be
8 because those discussions had not taken place.

9 Q But he is the one who had those communications,
10 correct?

11 A Yes, he did.

12 Q And today, you've told us that, in your occasional
13 touch-base meetings, they were every two or three
14 months?

15 A Approximately, yes.

16 Q Okay. Mr. Gruber, when Council approved this
17 purchase at its meeting on April 8, did you say about
18 this parcel:

19 *There are a lot of different opportunities*
20 *for it. Nothing is concrete, but we are*
21 *starting to have discussions now that we have*
22 *been authorized to make the purchase.*

23 A I believe I was quoted as saying such in the
24 newspaper. However, I believe that may have come from a
25 press release that was issued contemporaneously with the

1 approval.

2 Q And that press release would have come from the
3 County?

4 A It was drafted by the Open Land Trust.

5 Q But reviewed by the County.

6 A Not necessarily. We requested that they would do
7 that, along with drafting the language, and the Council
8 would typically vote upon.

9 Q So, you authorized them to do that.

10 A We'd requested them to do that, yes.

11 Q They had authority to do it?

12 A Well, we'd asked them to do it, yes.

13 Q Yeah. And did you also suggest Pinckney Point
14 could serve as headquarters for a regional parks agency?

15 A That may have been in the press release. I don't
16 recall specifically making that statement.

17 Q And that it also could be the nexus of a marine
18 kayaking trail, linking all protected lands around the
19 Okatie and Colleton Rivers?

20 A That very much sounds like Garrett Budds' language.

21 Q Which you required and asked that they release,
22 correct?

23 A Correct.

24 Q You attended the Rural and Critical Lands meeting
25 on March 14?

1 A I did not.

2 Q 2011?

3 A Not -- not the Rural and Critical Lands board
4 meeting, no.

5 Q Earlier, you were talking about your conversations
6 with Walter over the language in the restricted
7 covenant, so that the septic tanks would not be in the
8 buffer. Do you recall that?

9 A Yes, I do.

10 Q I think in your testimony, you said that was
11 December 2012. Wasn't it actually in December 2011?

12 A It may have been.

13 Q All right. I say that because there's an exhibit
14 in evidence that gives the 28th where he communicated
15 with you in December about it.

16 A That's -- I recall he reached out in December, and
17 then, shortly after the first of the year I think we
18 were able to resolve it.

19 Q So, you knew back from as early as December 2011
20 that Walter Nester was representing Pinckney Point in
21 this attempt to get all the approvals, correct?

22 A Yes.

23 Q And when you learned about this property, Pinckney
24 Point, the same one you'd helped him draft a restricted
25 covenant in, did you think, well, I wonder what's going

1 on; maybe I'll call Walter and find out where they are?

2 A No.

3 Q So, you didn't even think about picking up the
4 phone and calling him or doing anything like that.

5 A No.

6 Q And you've mentioned that you took a look at the
7 settlement agreement. You studied the settlement
8 agreement, or at least went through it, when it was
9 brought to your attention by Walter?

10 A We did. We reviewed its contents.

11 MR. WALKER: Madam Court Reporter, do you have
12 Exhibit 78 there that the witness can take a look at.

13 COURT REPORTER: Here you go. Here we go.

14 MR. WALKER: Thank you.

15 BY MR. WALKER:

16 A Thank you.

17 Q Now, after you reviewed this, did you come to the
18 conclusion that the parties contemplated that the
19 Pinckney Point tract would be developed as a residential
20 development, that, that was what was contemplated in
21 this agreement?

22 A I believe there may be language in there, but
23 that's not what I was reviewing the document for.

24 Q And if we could go back to Page 3 of that
25 agreement. Now, in the middle of this paragraph it does

1 allude to or refer to the development as a residential
2 development. It says, does it not:

3 *To the extent a variance shall be*
4 *required from the river buffer and river*
5 *setback requirements, Subsection 106-1845*
6 *of the ZDSO, for the construction of the*
7 *road parcel and utility infrastructure*
8 *for the development of the Point tract*
9 *as contemplated herein, Beaufort County*
10 *agrees that such variance is hereby approved.*

11 So, this agreement contemplated the development of
12 the Point tract; did it not?

13 A It contemplated that the purpose of requesting a
14 variance was to allow for development of the Point
15 tract.

16 Q And again, on the next page, if we could go, again,
17 to a provision that's, oh, about halfway down in the
18 first paragraph, where it says, starts with *Beaufort*
19 *County agrees. Says:*

20 *Beaufort County agrees that said*
21 *right-of-way --*
22 *and that is the road tract --*
23 *-- provides sufficient access to and*
24 *from the Point tract for the development*
25 *thereof, in accordance with the Beaufort*

1 County Zoning and Development Standards
2 Ordinance.

3 PPLC, --

4 that's my client, --

5 -- agrees that such right-of-way is
6 required for the development of the Point
7 tract as contemplated herein.

8 So, can we just agree that this agreement
9 contemplated the development of the Point tract?

10 A I think we can agree that it was the PPLC's intent
11 to develop it as a residential property, and they were
12 required to have fifty feet in order to do that.

13 Q Well, you don't dispute that the word *contemplated*
14 is in this agreement in reference to the development to
15 the Point tract, correct?

16 A Yes, it is in the agreement.

17 Q Okay. And after studying the agreement, did you
18 find any language in this Exhibit 78 where it
19 contemplated that the County would buy the Point tract?

20 A No, I did not.

21 Q And if the County purchased the Point tract, that
22 would frustrate the purpose of development of the Point
23 tract, correct? Because the County had no intent to
24 develop it.

25 A It would have frustrated PPLC's absolutely to

1 develop the tract.

2 Q When you received -- when you received Walter
3 Nester's letter, that was still before you entered the
4 contract of sale, wasn't it?

5 A Yes, I believe so.

6 Q And I don't know we've entered the contract of sale
7 yet. Did Beaufort County enter a contract of sale with
8 Equity Resource Partners to purchase this property?

9 A Yes, it did. I believe we entered into a purchase
10 agreement.

11 Q Have you had a chance to look at this to see if
12 this is a true and accurate copy of the contract?

13 A Just now?

14 Q Yeah.

15 A Yes.

16 Q What is the date of this contract?

17 A There are two different dates on here, so just to
18 be clear. The date that is on the first page of the
19 agreement is the 24th day of April, 2013. However, the
20 execution date by Equity Resource Partners is the 23rd
21 day of April, 2013.

22 Q Very good.

23 MR. WALKER: Your Honor, we would move Plaintiffs'
24 Exhibit 82 into evidence.

25 MR. ACHURCH: No objection, your Honor.

1 THE COURT: Without objection.

2 ITEM IDENTIFIED AS CONTRACT (PURCHASE
3 AGREEMENT) BETWEEN BEAUFORT COUNTY
4 AND EQUITY RESOURCE PARTNERS
5 MARKED PLAINTIFFS' EXHIBIT NUMBER 82,
6 ADMITTED AS EVIDENCE.

7 BY MR. WALKER:

8 Q Now, is it typical in a real estate contract to
9 have a down payment or what's known as an escrow
10 deposit?

11 A Sometimes.

12 Q And if we go to Paragraph 7 of this agreement, is
13 earnest money another way of saying a down payment or?

14 A Correct.

15 Q In this instance, the County didn't have to put any
16 down payment down, did it?

17 A That is correct.

18 Q Is it typical, also, for a contract like this to
19 discuss what happens if one side doesn't want to go
20 forward or one side breaches?

21 A It sometimes can, yes.

22 Q And in this contract, and I direct your attention
23 to 13 that's called default. Do you see that?

24 A I do.

25 Q So, if we -- in looking at that, it says:

1 *If buyer or seller fails to perform any*
2 *covenant of this agreement, the other may*
3 *elect to seek any remedy provided in equity,*
4 *but not at law, for money damages, as a*
5 *result of such failure to perform, including*
6 *an action for specific performance of*
7 *sellers obligation under this agreement.*

8 And let's just pause right there. An action for
9 specific performance would be what?

10 A Generally speaking, it would require the parties to
11 do what they had agreed to do.

12 Q So, would this provide that the buyer, the County,
13 could compel the seller, Equity Resource, to sell, if
14 Equity Resource balked or breached the contract?

15 A That is correct.

16 Q Continuing on:

17 *Or terminate this agreement with a five-*
18 *day written notice. If terminated, both*
19 *parties shall execute a written release of*
20 *the other from this contract, and both shall*
21 *agree to hold the escrow agent harmless.*

22 So here, there was a right to terminate with five
23 days written notice, correct?

24 A I believe that's what it states, yes.

25 Q And if the County terminated, then, nothing would

1 happen, would it?

2 A I don't know that I can speculate to that.

3 Q Okay. Thank you. Let's turn to this access
4 easement agreement that you referenced a few minutes ago
5 that was entered with Pinckney Point and Road, LLC. I
6 think that's before you. It's Plaintiffs' Exhibit 81.

7 A Yes, sir.

8 Q Go to the second page. You mentioned that
9 something about your understanding about what private
10 means, and you said private just means maintenance;
11 doesn't have anything to do with who can use it. Was
12 that basically it?

13 A That is correct. I understand there to be a number
14 of private roads in the county that are used by the
15 public.

16 Q I understand that those can be with consent,
17 correct?

18 A Yes, it could be.

19 Q Consent of the owner.

20 A Could be.

21 Q And if it's private property, doesn't the owner
22 have the right to say who can come on his property?

23 A Potentially, yes.

24 Q Yeah. And let's look at Paragraph 4 here. So,
25 this language says no dedication. And we looked at

1 language yesterday in the settlement agreement, but it
2 says:

3 *This agreement is not intended to and*
4 *should not be construed to dedicate the*
5 *easement to the general public.*

6 So, wouldn't you agree that's basically saying that
7 this agreement is not giving a right to the general
8 public?

9 A I would agree that this agreement is intended to
10 give a right between two private parties.

11 Q Stop. I understand it's between two private
12 parties, but this says that it's not intended to grant
13 any dedication to the general public, correct?

14 A Which I believe is a reflection of the intent to be
15 a transaction between two private parties.

16 Q Between the owner and another party.

17 A The Road, LLC, and Pinckney Point, LLC.

18 Q All right. And then, on something we haven't spent
19 a lot of time on, I'd like you, if you would, to please
20 go up to 3. Mr. Gruber, do you see 3 at the top of the
21 page?

22 A Yes, I do.

23 Q What does that say?

24 A Would you like me to read it?

25 Q Please.

1 A Okay.

2 *Limitations on Easement: This easement*
3 *is limited to access only. Neither party shall*
4 *install a fence or other barrier, which could*
5 *prevent or obstruct the passage of pedestrian*
6 *or vehicular travel for the purpose herein.*

7 *Grantee is not permitted to make any*
8 *improvements or perform any work on or to*
9 *the easement area without the prior approval*
10 *of -- from grantor.*

11 Q In this case, the grantee was Pinckney Point,
12 correct?

13 A That is correct.

14 Q At this time, the County's purchased the land that
15 was once owned by Pinckney Point, correct?

16 A No. This was signed in 2011.

17 Q What I'm saying is that, the County now basically
18 stands in the shoes of the grantee because it owns the
19 Point parcel.

20 A We acquired our interest from Equity Resource
21 Partners.

22 Q Which acquired its interest from Pinckney Point.

23 A That's correct.

24 Q And this easement agreement was of record before
25 the deed, correct?

1 A That is correct.

2 Q So, that deed was subject to this easement
3 agreement, correct?

4 A I believe that easement was a -- was of record at
5 the time we reviewed it, correct.

6 Q So, what this means is that the County was not
7 permitted to make any improvements or perform any work
8 on or to the road area, which we've seen several times,
9 without the prior approval of Road, LLC, correct?

10 A In this document, Road, LLC, was the grantor.

11 Q Right. So, the County can't do anything out there
12 without Road, LLC's permission, correct?

13 A I don't know that I would agree with that.

14 Q You disagree with what the language says?

15 A No, I agree that is what it says.

16 Q So, if this language were put into effect, the
17 County couldn't do any improvements or perform any work
18 on that dirt road, that two-tenths of a mile, without
19 permission from Road, LLC, correct?

20 A And again, I disagree with you, and I'll explain
21 why I disagree with you.

22 Q All right. Well, I'm just asking.

23 A The grantor -- the grantor to the County was Equity
24 Resource Partners. It was not Road, LLC.

25 Q We're talking about the road, the road, the two-

1 tenths of a mile road. Equity Resource Partners never
2 owned the two-tenths of a mile dirt road, did it?

3 A It acquired something from Road, LL -- or for --
4 yeah, Pinckney -- it acquired it from Pinckney Point,
5 and Pinckney Point acquired something from Road, LLC.

6 Q And the deed from Equity Resource Partners to the
7 County that was read from yesterday, said it was subject
8 to this easement, and these rights were transferred,
9 correct?

10 A Yes.

11 Q Okay. Now, have you been on that road recently?

12 A Recently, no.

13 Q Were you here for Mr. -- have you been here for the
14 whole testimony?

15 A Yes, I have.

16 Q Were you here for John Kunkel's testimony?

17 A Yes, I have.

18 Q Where he said he'd been out there.

19 A I believe I recall him saying that, yes, that
20 whatever -- whatever time he was in town.

21 Q Best shape he's seen it since they had it.

22 A I believe he stated that.

23 Q And work has been done. Appeared to have been
24 done.

25 A I believe, in his opinion, yes.

1 Q Well, who has been doing that work out there?

2 A I would contend that no work has been done out
3 there, other than repairs to the roadway.

4 Q Who has done the repairs to the roadway?

5 A Beaufort County did.

6 Q Now, when -- do you recall my sending a *Freedom of*
7 *Information Act* request that you responded to last week,
8 --

9 A Yes, sir.

10 Q -- and said do you have any information from the
11 Public Works Department or anybody else documenting
12 repairs that have been done to the road?

13 A I believe your request regarded any document
14 regarding maintenance of the roadway.

15 Q Okay. So, repairs, not maintenance.

16 A That is my opinion, yes.

17 Q But it is work on the road.

18 A It is a repair to the road, yes.

19 Q It is work on the road.

20 A You could interpret it that way.

21 MR. WALKER: One minute, your Honor.

22 BY MR. WALKER:

23 Q Did you attend the Council meeting where the
24 Council approved this purchase on April 8?

25 A Yes, I did.

1 Q Do you recall that the agenda made no mention at
2 all that Council was going to consider this property?

3 A I believe the agenda referenced matters arising
4 from executive session.

5 Q All right. If I read that *matters arising from*
6 *executive session*, would I know -- would I know that was
7 talking Pinckney Point?

8 A No, you would not. But let me give you an example
9 of why we do that, because I've been asked that question
10 on multiple occasions before, both from the press and
11 from citizens. To give you an example of that, if you
12 were buying a home, do you take out an advertisement in
13 the newspaper that says, hey, public, I'm going to put
14 an offer on this house thirty days from now, before you
15 actually move forward and buy the house. You don't do
16 that. And the reason you don't do that is, you don't
17 want somebody else who could be a potential competitor
18 to come in and offer more than what you were planning on
19 offering for the property.

20 So, whenever we're discussing the potential
21 purchase of property, we do so in executive session.

22 Q There was no notice to the public, though, of what
23 the property was or that it was going to be discussed,
24 correct?

25 A No, and it's for that reason.

1 Q Even though a little less than seven million
2 dollars of this Critical Lands money was getting ready
3 to be spent, there was no notice to the public, right?

4 A No, but the public elects the officials who make
5 that decision.

6 Q Correct. And there wasn't any public hearing on
7 it, was there?

8 A No, there was not. Again, it wouldn't make much
9 sense to advertise the fact that we're going to do it
10 before we've actually entered into a contract to buy it.

11 Q It certainly wouldn't make sense to let my client
12 know, would it?

13 A It wouldn't have made sense at that time because he
14 didn't have an option to buy it.

15 Q And you felt no reason or compunction or moral
16 obligation or any, any reason to let them know what the
17 County was doing, did you?

18 A My obligation was to do what was in the best
19 interest of the public.

20 Q You were working for the County.

21 A That is correct.

22 Q And did the -- did Council vote after it came out
23 of executive session?

24 A Yes, it did.

25 Q Does the County record its meetings?

1 A It does.

2 Q And is there a video -- there's a video of that
3 meeting, isn't it?

4 A I believe so, yes.

5 MR. WALKER: Your Honor, we've discussed this with
6 opposing counsel. We have about a two-minute video of
7 the executives [sic] coming out of executive session and
8 the vote that was taken that we would like to now play.

9 THE COURT: Okay.

10 MR. ACHURCH: No objection, your Honor.

11 THE COURT: Okay.

12 PLAYING VIDEO OF BEAUFORT COUNTY
13 COUNCIL. (SEE PLAINTIFFS' EXHIBIT
14 NUMBER 109).

15 END PLAYING VIDEO OF BEAUFORT COUNTY
16 COUNCIL.

17 BY MR. WALKER:

18 Q Was that a video of the discussion after execution
19 session, obviously?

20 A I believe it to be, yes.

21 MR. WALKER: One moment, your Honor.

22 THE COURT: Okay.

23 MR. WALKER: That's all we have for Mr. Gruber at
24 this time.

25 THE COURT: Okay.

1 MR. ACHURCH: Just very quickly, your Honor.

2 JOSHUA ANDREW GRUBER

3 RE-DIRECT EXAMINATION, BY MR. ACHURCH:

4 Q Josh, I saw there's a video of that County Council
5 meeting. Does County Council record all of its
6 meetings?

7 A Yes, we have for the last several years.

8 Q Okay. And we were able to pull this up years later
9 to go find that meeting so that everyone could see it?

10 A That's correct.

11 Q And was this parcel approved in the same fashion as
12 the purchase of other parcels that have been approved
13 pursuant to the referendum that the voters voted on?

14 A That is correct.

15 Q Okay. And are you taking the position that
16 Beaufort County has -- that this road has been dedicated
17 to the public use through dedication?

18 A No, I am not.

19 Q And dedication is something different from a deeded
20 access, isn't it?

21 A Correct. A lot of times it comes up in context of
22 a dedication on a plat.

23 Q Okay. And did you -- when you developed your
24 belief that the County has access over the property, did
25 you rely on the fact that it was because of this

1 dedication?

2 A No.

3 Q And does the County have a twenty-foot easement
4 that's reserved in its deed that was actually reserved
5 in the deed to the property that got sold?

6 MR. WALKER: Objection. Leading. It's already
7 been said.

8 THE COURT: Okay.

9 MR. WALKER: It's a document in evidence and it's a
10 legal conclusion.

11 THE COURT: Okay. You can ask the question.

12 BY MR ACHURCH:

13 Q What's your belief about an easement that was
14 reserved?

15 A At a minimum, I believe we have a twenty-foot,
16 vehicular ingress and access easement that we received
17 title insurance on.

18 Q Okay. And how about in addition to the reserved
19 easement? Was there actually a recorded and deeded
20 easement?

21 A Yes, sir.

22 MR. ACHURCH: Thank you. That's all the questions
23 I have, your Honor.

24 MR. WALKER: No re-direct.

25 BY THE COURT:

1 THE COURT: All right. You may step down.

2 All right. Call your next witness.

3 MR. ACHURCH: Thank you. May it please the Court?
4 Beaufort County calls --

5 THE COURT: All right. I apologize. I understand
6 we need to take a very short recess. Ladies and
7 gentlemen, do not discuss this case. It wouldn't be
8 appropriate to do so. And we'll be right back with you
9 all. Okay? Thank you.

10 JURORS LEAVE COURTROOM 12:10 P.M.

11 BAILIFF: Jury's clear, your Honor.

12 THE COURT: All right. Let's talk scheduling
13 really quickly. So, we just have, obviously, the county
14 administrator and that's it. We're going to get him up
15 and down before lunch.

16 MR. ACHURCH: Yes, ma'am.

17 THE COURT: We obviously have to break for lunch.
18 We have to do motions.

19 MR. WALKER: Charges.

20 THE COURT: We have to do charges. I mean, I think
21 we could argue and charge today, unless you both say you
22 don't want to, but then, you leave it to me to explain
23 to this jury why we're going to break today at 1:00
24 o'clock and come back on Monday morning, which we can
25 do. I mean, obviously, they don't know how long the

1 rest of that is going to take. So, I certainly can
2 explain it.

3 What's your pleasure. Mr. Walker, you tell me.

4 MR. WALKER: I feel like if we tried to get it in
5 today, that we could be here very late.

6 THE COURT: Okay.

7 MR. WALKER: And I am -- I do, number 1, don't want
8 to impose on the jury on a Friday night. Number 2,
9 believe that puts time pressures that could easily
10 result in the jury not giving it the time they should
11 give to it. I would rather have them be rested and have
12 time to reflect and make their decision. So, I would be
13 for going Monday. Also, I left here last night thinking
14 we were going to argue on Monday, and haven't done a
15 thing towards closing argument. Would like to be
16 prepared because this is a big case for my client.

17 THE COURT: Okay. Okay. Mr. Achurch, what's your
18 position?

19 MR. ACHURCH: I'll do whatever the Court does.
20 Whatever the Court's preference is, your Honor.

21 THE COURT: Okay.

22 MR. ACHURCH: I have to say that I thought it was
23 going to be Monday, as well, and did very little to
24 nothing to prepare a closing argument.

25 THE COURT: Oh, goodness. Okay.

1 BAILIFF: The jury's definitely prepared for
2 Monday.

3 THE COURT: They are? No problem? Okay. Okay.
4 We'll do closings on Monday. So, let's go ahead and, if
5 the jury's ready to come back, as soon as they are --
6 you all just take five minutes. Let's get Mr. Kubic up.
7 You can rest your case. There's not going to be
8 anything for rebuttal, I presume, as if right now. And
9 then, we'll just do motions again, and we'll renew
10 motions, and we'll talk about the charge. Sounds good.

11 OFF THE RECORD 12:13 P.M.

12 BACK ON THE RECORD 12:36 P.M.

13 BY THE COURT:

14 BAILIFF: All rise. Court is now back in session.

15 THE COURT: Okay. We're ready to go. Let's bring
16 the jury in, Rick.

17 BAILIFF: Are you ready, your Honor?

18 THE COURT: Thank you.

19 BAILIFF: Jury's entering the courtroom.

20 JURORS ENTER COURTROOM 12:37 P.M.

21 THE COURT: You may be seated. Go ahead and call
22 your next witness.

23 MR. WALKER: Your Honor, not to interrupt. I meant
24 to introduce the video as 109 into evidence. And we
25 have a copy of it that we can introduce.

1 THE COURT: Okay. Without objection.

2 MR. WALKER: He's burning it right now. And when
3 he's finished, we'll put an exhibit sticker on it and
4 admit it.

5 THE COURT: Very good. Okay.

6 MR. WALKER: Thank you.

7 ITEM IDENTIFIED AS VIDEO OF
8 BEAUFORT COUNTY COUNCIL
9 MARKED PLAINTIFFS' EXHIBIT NUMBER 109,
10 ADMITTED AS EVIDENCE.

11 MR. ACHURCH: That's fine. Thank you. Beaufort
12 County will call Gary Kubic, your Honor.

13 MADAM CLERK: Do you solemnly swear or affirm that
14 the testimony you give to the Court in this case shall
15 be the truth, so help you God?

16 MR. GARY THOMAS KUBIC: I do.

17 MADAM CLERK: You may be seated.

18 MR. GARY THOMAS KUBIC: Thanks.

19 GARY THOMAS KUBIC

20 DIRECT EXAMINATION, BY MR. ACHURCH:

21 Q Good late morning.

22 A Good morning.

23 Q Will you tell us your full name, please.

24 A Gary Thomas Kubic.

25 Q Mr. Kubic, what do you do for a living?

1 A I'm the county administrator for Beaufort County.

2 Q How long have you been the county administrator for
3 Beaufort County?

4 A I was officially appointed in November 2003.

5 Q Okay. And before you came to Beaufort County,
6 where did you work?

7 A I was the administrator for Mahoning County, Ohio.

8 Q How long did you do that?

9 A Just short of ten years.

10 Q Okay. How long have you been involved in public
11 administration?

12 A This will -- as of July 7 of this year, I will
13 officially reach my 41st year.

14 Q Okay. And what is your role as Beaufort County
15 administrator?

16 A Well, we have, in Beaufort County, a county
17 administrator form of government. Council basically
18 makes policy, and I am responsible for implementing the
19 policy.

20 Q And as a Beaufort County administrator, who do you
21 represent?

22 A I represent all the people of Beaufort County.

23 Q Are you familiar with the litigation that Beaufort
24 County was involved with over who owned the end of the
25 Pinckney Colony Road, the dirt road, aspect of that?

1 A Somewhat familiar, yes, sir.

2 Q Okay. What prompted Beaufort County to imitate
3 that action?

4 A I believe we're talking about the blocking of the
5 road.

6 Q Yes.

7 A Is that the action you're talking about?

8 Q Yes.

9 A We were notified that either the owners or
10 neighbors of that area had placed a barrier crossing the
11 road prohibiting free travel through the road. When I
12 received that information, I contacted your law firm. I
13 discussed it with you to prepare and take the necessary
14 action to give me the ability to seek an injunction and
15 have that barrier removed for public safety purposes.

16 Q Other than removing the barrier for public safety
17 purposes, was there any other objective in filing the
18 action?

19 A No, sir, that was all I had intended.

20 Q Did you sign the settlement agreement that's the
21 subject of this lawsuit?

22 A Yes, sir, I did.

23 Q Did County Council have to vote to approve that
24 settlement agreement?

25 A No, not in this instance.

1 Q Tell me how it would that -- how would it wind up
2 with you that you had the authority to do that.

3 A County Council was briefed by County Legal. The
4 consideration that was included in the settlement
5 agreement did not involve the exchange of any money.
6 So, therefore, after the briefing of Council, if a
7 particular councilman in that executive session had an
8 objection, then, that councilman would request to the
9 chair of County Council to place it on the floor for
10 consideration of a formal vote. That would allow the
11 record to hear any objections. That was not done in the
12 executive session. No money was exchanged. And
13 therefore, I signed the agreement.

14 Q What were the benefits to Beaufort County for
15 entering into the settlement agreement?

16 A There were two benefits, actually. The first was
17 the declaration of a private road, and the second was
18 the incorporation of an approval of a requested
19 developer's variance for Pinckney Point, that particular
20 property.

21 Q What's the benefit to the County of the road being
22 declared as private?

23 A Well, my administration, basically, we do not
24 accept private roads into the public system, because,
25 obviously, it's a burden upon the tax payer. So, any

1 time that I can defer public costs on the roadway and
2 have it declared as a public -- or as a private road, I
3 thought that was a very good thing to do. I believe it
4 was an issue going back even in some of the earlier
5 discussions, so it provided clarity on that point.

6 And the other item, as far as the variance goes, it
7 then allowed the developer to pursue the development of
8 the property and remove that as a legal issue.

9 Q As far as variances go, how long can it take a
10 variance action to move its way up through the courts?

11 A Well, typically, most litigation involving the
12 court system does take a long time, but in variances, it
13 could take -- it could take years.

14 Q And what were the County's obligations under the
15 settlement agreement?

16 A The County's obligation under the settlement
17 agreement was to provide the developer the opportunity
18 to meet with the DRT and go forward with the
19 development.

20 Q Did the County agree to grant the variance
21 requested?

22 A Yes.

23 Q And was that done?

24 A Yes.

25 Q And did the County enter into an order that said

1 the road was private?

2 A I'm not sure that the County entered the order. It
3 might have been a consent order from a judge. I'm not
4 clear on that.

5 Q Okay. Did you, on behalf of the County, enter into
6 that settlement agreement in good faith?

7 A Yes, sir.

8 Q As far as Pinckney Point, LLC, is concerned, what
9 did you expect them to do with the property after the
10 settlement agreement was approved?

11 A Proceed with their plans to develop the property.

12 Q Was there anything else meaningful for you in
13 signing the settlement agreement?

14 A No. I think it just, you know, as I said before,
15 my responsibility is to represent the both developer and
16 the citizens. And in this case, the variance has a
17 question mark for the developer, and having that
18 resolved in the settlement agreement allowed them to
19 move forward. It then took care of my obligation as a
20 public road versus a private road. It was declared
21 private, so that the subsequent maintenance would be
22 completed by the adjacent property owners or the owner
23 of the road.

24 Q Why did Beaufort County appeal the issuance of the
25 dock permits? I know it's not part of this settlement

1 agreement, but the dock permits that were issued by DHEC
2 on this property, why did Beaufort County appeal that?

3 A This is a very unique piece of property. It's
4 often referred to as the tennis racket because of its
5 configuration. It's bounded by two rivers, the Okatie
6 and the Colleton. Okatie is an impaired water body
7 preventing shell fish harvesting.

8 When the dock permit came in, three docks, ten
9 boats allowable on each, we appealed it for the
10 environmental reasons that all the activity associated
11 with boats, oil, fuel, maintenance, other boats using
12 it. So, we thought it was more like a marina, and not
13 as much a residential dock.

14 Q Do you know how many docks the developer had asked
15 for?

16 A I believe it was three docks with ten boats each.

17 Q That's what DHEC issued. Do you know what the
18 developer had asked for?

19 A Probably a dock in every piece of property.

20 MR. WALKER: Objection, your Honor. That's not --

21 THE COURT: Okay.

22 MR. WALKER: That's not what the record is, and he
23 said --

24 MR. ACHURCH: He said *probably*. I'll agree to
25 strike that.

1 THE COURT: Okay. Well, go ahead and strike that
2 answer.

3 BY MR ACHURCH:

4 Q Just do you know what the developer asked for?

5 A No.

6 Q Okay. All right. You received Mr. Nester's letter
7 in April 2013, correct?

8 A Yes.

9 Q Did that letter concern you?

10 A No.

11 Q Why not?

12 Q Well, I figured Attorney Nester was representing
13 his clients, and he was presenting his clients'
14 position. I turned that over to County Legal to make an
15 interpretation of -- of the content of that letter.

16 Q Okay. And have you ever asked the zoning or
17 planning administrator to alter or delay the outcome of
18 a citizens request?

19 A Not in twelve years. My administrative style is
20 that I avoid vendor lunches. I don't go to council
21 homes for dinner, lunch. And I don't -- I have lunch
22 with employees. And I have practiced that for over
23 forty years, and it maintains my independence and
24 objective objectivity. So, it's just my personal style.
25 I believe that my DRT people are well qualified, and

1 they have -- they know their responsibilities. I
2 delegate those duties to them.

3 MR. ACHURCH: Mr. Kubic, that's all the questions I
4 have. Thank you. Please answer any questions Mr.
5 Walker has.

6 A Be happy to.

7 GARY THOMAS KUBIC

8 CROSS-EXAMINATION, BY MR. WALKER:

9 Q Mr. Kubic, we've met before, have we not?

10 A Yes.

11 Q And we were able to read your deposition today, so
12 that's going to considerably shorten my examination.

13 A Okay.

14 Q You mentioned that if it's a private road, that's
15 fine, because it takes it off the county maintenance
16 roles, basically.

17 A Yes.

18 Q In this instance, I think you were here for Mr.
19 Gruber's testimony. We're dealing with a private road,
20 now, for the last two-tenths of a mile, the dirt road
21 between the end of the paved portion of Pinckney Colony
22 Road and the beginning of Pinckney Point, which the
23 County now owns, correct?

24 A Yes.

25 Q It's a private road.

1 A Small bit.

2 Q So, even though there's a policy not to maintain
3 private roads, the County has done some repairs to that
4 private road that's owned by my client, Road, LLC,
5 correct?

6 A We could have, yes.

7 Q Yeah.

8 A I don't have direct knowledge, but we could have.

9 Q And the terms of the benefits to Beaufort County,
10 if the settlement agreement -- part of the settlement
11 agreement listed a number of benefits and you signed it,
12 you would have agreed to those benefits to Beaufort
13 County, correct?

14 A Yes.

15 MR. WALKER: All right. Thank you. That's all I
16 have.

17 MR. ACHURCH: Nothing further, your Honor.

18 THE COURT: All right. You're excused, sir.

19 A Thank you. I appreciate it.

20 THE COURT: All right. Anything further from the
21 County?

22 MR. ACHURCH: No, your Honor. That's the
23 conclusion of the County's case.

24 ITEM IDENTIFIED AS LETTER TO JOHN R.

25 THOMAS, DATED OCTOBER 10, 2005,

1 MARKED DEFENDANT'S EXHIBIT NUMBER 2,
2 ADMITTED AS EVIDENCE.

3 ITEM IDENTIFIED AS FORBEARANCE
4 AGREEMENT, DATED DECEMBER 29, 2011,
5 MARKED DEFENDANT'S EXHIBIT NUMBER 4,
6 ADMITTED AS EVIDENCE.

7 ITEM IDENTIFIED AS JOINT MOTION TO
8 DISMISS APPEAL,

9 MARKED DEFENDANT'S EXHIBIT NUMBER 5,
10 ADMITTED AS EVIDENCE.

11 ITEM IDENTIFIED AS EMAIL CHAIN,
12 MARKED DEFENDANT'S EXHIBIT NUMBER 11,
13 ADMITTED AS EVIDENCE.

14 ITEM IDENTIFIED AS LETTER FROM
15 ROBERT ACHURCH TO WALTER NESTER,
16 DATED APRIL 23, 2013,

17 MARKED DEFENDANT'S EXHIBIT NUMBER 25,
18 ADMITTED AS EVIDENCE.

19 DEFENDANT RESTS.

20 BY THE COURT:

21 THE COURT: All right. Ladies and gentlemen, at
22 this time, the County as also rested their case. What
23 we have left to do, ladies and gentlemen, --

24 Yes. You have rebuttal?

25 MR. WALKER: Can I just have one second to talk to

1 my client?

2 THE COURT: Yes. Unless we have some rebuttal.

3 So, yes. Okay?

4 MR. WALKER: Right. Very quickly.

5 THE COURT: All right. Absolutely.

6 MR. WALKER: We have no rebuttal.

7 THE COURT: All right. Very good. So, ladies and
8 gentlemen, at this time, you have heard all the evidence
9 in the case. What is left to do is hear the lawyers'
10 closing arguments, and I need to charge you on the law
11 that's applicable to this case. And there are a number
12 of motions that I need to take up with the attorneys
13 prior to that.

14 We have a rule of thumb, typically, when we do
15 this, and I know how long all of that takes. What I
16 don't want to do is send this case to you at 5:30
17 tonight, which is what would happen if we were to do all
18 of that today. I can just tell you that it's just been
19 my experience it's not a good idea. It's been a very
20 long week.

21 Does anyone have a problem being back Monday? It's
22 my understand you all are okay. Because I would very
23 much like to take up all these matters with these
24 lawyers, which is probably going to take me probably the
25 bulk of the afternoon, and be ready and fresh on Monday

1 morning to hear closing arguments, and then, get this to
2 you before lunch. That is my endeavor. And we'll bring
3 lunch in for you on Monday, to give you an opportunity
4 to deliberate. Is that acceptable with everyone? Very
5 good. Okay.

6 Ladies and gentlemen, I do need to tell you that,
7 although you have now heard all the evidence, you
8 haven't heard the arguments from the lawyers, you
9 haven't heard my charge on the law, and it would be
10 inappropriate over the weekend for you to discuss this
11 case.

12 Additionally, ladies and gentlemen, you are not to
13 read, watch, or do any independent research on the
14 computer or any other way, in regards to this case. And
15 as I reminded you before, no one is to do a drive-by of
16 the property over the weekend. Again, that would be
17 inappropriate.

18 Ladies and gentlemen, go have a wonderful weekend.
19 Enjoy it. I look forward to seeing you all back 9:30
20 Monday morning, where we're going to go ahead and
21 conclude this case.

22 Go ahead and leave your pads in your seats again,
23 if you would, and we'll collect them up. You will have
24 them in the jury room when you deliberate. So, don't be
25 concerned about that. All right? Goodnight.

1 Goodnight.

2 JURORS LEAVE COURTROOM 12:42 P.M.

3 BAILIFF: Jury's clear, your Honor.

4 THE COURT: I propose we all take lunch break. Is
5 that okay with everybody before we start all this? I
6 think it's just --

7 MR. WALKER: I think it's a very good idea.

8 THE COURT: I think it might shorten things, and
9 might make things go a little better this afternoon.

10 Let me ask you this. Anyone else have any
11 additional request to charge now or for me to consider,
12 now that we've finished the case? And I just want it so
13 I can kind of put it in, if I'm going to put it in.

14 MS. LOHR: I would like the charge -- I can't
15 remember, obviously, what the two charges were, but
16 since we've gone into a lot of specificity about lost
17 profit, I'd like the *Drews* case to be charged.

18 THE COURT: Okay. Well, what I would need the two
19 of you to do, then, is if you guys want to craft
20 something together that you both can agree on, I think
21 we both agree as far as what needs to be required and
22 proven. And I think you might want to include those
23 things that they can potentially consider in looking at
24 lost profits, the list. So, I think it might be
25 something that you both can agree to. And I would

1 agree, because I can tell you, where I see the charge
2 not as maybe descriptive or strong is in the damages
3 portion. Because we all know, kind of your typical
4 breach of contract, you know, putting-you-back-in-the-
5 same-position-before-it type of thing.

6 So, again, do you think that's something the two of
7 you could do over the lunch hour?

8 MR. WALKER: We'd be happy to.

9 MS. LOHR: Sure. Sure.

10 MR. WALKER: Sure. I think that's a good idea.

11 THE COURT: If you could take a stab at it, thanks,
12 so we could kind of include both sides. Does that sound
13 okay? All right, what time do you all want to come
14 back. I know I want to give you a bite to eat, too.
15 So, maybe -- want an hour? Do you want more? You tell
16 me.

17 MR. WALKER: A hour's fine. Unless --

18 THE COURT: Mr. Kubic, you don't even -- you don't
19 even have to come back if you don't want.

20 MR. GARY THOMAS KUBIC: Appreciate that, your
21 Honor.

22 MR. ACHURCH: Your Honor, I thought you were
23 looking at me.

24 THE COURT: No, you're coming back, Robert. Well,
25 I don't know. We're going to -- so, what do you think?

1 You want an hour? You want an hour, 15 minutes?

2 MS. LOHR: Maybe an hour and a half, just so that
3 we can divvy that up.

4 THE COURT: So, you two can get together? Okay. .

5 MS. LOHR: And still eat lunch.

6 THE COURT: And still grab some lunch. Okay. That
7 sounds good. All right. Well, let's do this. How
8 about everybody be back at 2:00? Is that fine?

9 MR. ACHURCH: That's good. 2:00 o'clock.

10 THE COURT: It's quarter 'til right now. Does that
11 sound good. I know some of you wanted -- I assume
12 you're packing up and want to go home, too. So, for the
13 weekend? I would hope.

14 OFF THE RECORD DISCUSSION.

15 MR. WALKER: But I have Exhibit 109 as the video.

16 THE COURT: Yes, please. Wanda's got it. Yes..
17 Thank you.

18 MR. WALKER: Thank you, your Honor.

19 THE COURT: Okay. The other thing we're going to
20 do, you all, just to make sure, let's go through all of
21 the evidence like with our list with Wanda. That way,
22 we won't have a mess on Monday morning. And then,
23 hopefully, if you're using some of these exhibits in
24 your closing arguments, we try to keep them somewhere
25 organized.

1 One of the things I always laugh when I talk about
2 the amount of time before we actually -- it seems the
3 exhibits take forever to go through them. This case is
4 going to be -- it's going to be thirty or forty minutes
5 to go through the exhibits before we can even take them
6 to them, after you mess them up during closing. So, and
7 I looked directly at you, Mr. Achurch.

8 MR. ACHURCH: I know you were looking at me. I
9 know you were looking at me.

10 THE COURT: So, anyway, I just think that was just
11 another layer to consider. So, anyway, grab some lunch.

12 MR. ACHURCH: I resemble that remark.

13 THE COURT: Grab some lunch. We'll come back,
14 we'll do directed verdict motions, we'll talk about the
15 charge and anything else you all need to do. And then,
16 Wanda, you okay?

17 COURT REPORTER: I'm good.

18 THE COURT: And then, you guys can go through the
19 exhibits so we're all tight on that. Okay?

20 MR. ACHURCH: Thank you, your Honor.

21 THE COURT: Have a nice lunch, you all.

22 OFF THE RECORD 12:36 P.M.

23 BACK ON THE RECORD 2:32 P.M.

24 MOTIONS AND RULINGS:

25 THE COURT: Okay. Ms. Lohr, do you want to start

1 by --

2 MS. LOHR: Oh, yeah.

3 THE COURT: -- renewing your directed verdict
4 motions.

5 MS. LOHR: Your Honor, the defendant would renew
6 its motion for directed verdict at this time.
7 Specifically, I would like to address a couple of
8 things. I don't think that, with regard to the road
9 litigation, Road's case, the damages, there's any
10 evidence that they were damaged. There's no testimony
11 that came in via either the owner -- well, specifically
12 by Mr. Kunkel or Tommy Hartnett with regard to what the
13 value of the property is today. Obviously, the value of
14 the property today has to be less than it was prior to
15 the alleged breach of contract, otherwise, they have
16 suffered no damaging. So, there's no testimony for the
17 jury to seek to find where the damages are. The
18 damaging -- he said the value -- the only testimony
19 that's in the record is from Tommy Hartnett, and that's
20 that the property is today worth five million dollars.

21 Additionally, I don't believe that there is any
22 evidence of breach. I don't believe that there is a
23 latent defect that's been proved in this case.

24 THE COURT: Let me do this really quick. Do you
25 mind just to answer again. And I recall what you argued

1 yesterday, Mr. Walker. But again, for the record, as
2 far as the damages for Road, LLC.

3 MR. WALKER: On Road, LLC, Mr. Hartnett testified
4 that the parcel had a value of five million dollars,
5 with the highest and best use being as access to a
6 residential subdivision. And through the County's
7 actions and through the testimony, that it will never be
8 anything but open land conservation, they have totally
9 frustrated the highest and best use. So, that value is
10 no longer in the parcel, and it's basically nominal
11 value. So, we believe that there is sufficient evidence
12 for the jury to determine that the County's conduct
13 under our theory of the case --

14 THE COURT: Right.

15 MR. WALKER: -- not the defense theory -- but under
16 our theory of the case, that the value has been
17 eliminated through depriving the property of the
18 capacity to have its highest and best use.

19 MS. LOHR: The problem is --

20 THE COURT: And then, the breach of contract,
21 obviously, Road, LLC, was a party to the settlement
22 agreement.

23 MR. WALKER: They were. Road, LLC, was a party to
24 the settlement agreement, and the way the settlement
25 agreement was structured, it was to receive money at

1 such time as the property was developed. And as we've
2 said multiple times, we believe that it's clear that the
3 settlement agreement contemplated a residential
4 subdivision. All the promises in that were related to
5 the development of the Point parcel as a residential
6 subdivision. And the County's actions not only
7 frustrated that -- and there's proof they frustrated it
8 in the process, but also, they appropriated the
9 property. And we say that, had we not been frustrated
10 in the property in the process, plus, had they not gone
11 out and started looking at it, then, we would have been
12 able to develop it.

13 So, we understand that we have to prove several
14 things, but looking at the evidence in the light most
15 favorable to both plaintiffs at this time, and
16 particular as to Road, LLC, because we hadn't
17 concentrated on Road, LLC, there is proof they would
18 sustain, we think, a verdict through breach of contract
19 through frustration of the purpose and breach of
20 obligations to it, too, because it was a particular to
21 the agreement. It wasn't just an outsider.

22 THE COURT: Can I ask you. As far as potential
23 damages for a jury to award on that, I know you talked
24 about the difference between that Pinckney Point, LLC,
25 was going to buy the road for five million dollars,

1 which was what was agreed upon. Is that what you claim
2 the damages are, among other -- I guess among other
3 actual damages, but.

4 MR. WALKER: Yeah, but we recognize that the jury
5 -- I think there's three places the jury could light.
6 If they wanted, they could go with five million dollars.
7 Or, if they didn't think that Hartnett's testimony was
8 believable, or they had some reason to think, no, we
9 disagree, they could go with 1.3 million dollars.

10 THE COURT: Okay.

11 MR. WALKER: Or they could come to the conclusion
12 that there were no damages, and agree with the
13 defendant. So, I think they could go zero, 1.3, or 5.

14 MS. LOHR: Your Honor, the problem I have with that
15 is the only testimony was that it was worth five million
16 then, and it's worth five million now. There was no
17 testimony that it has lost the value. I think that's a
18 presumption that the plaintiffs' argument is premised
19 upon. I don't think that Tommy Hartnett actually ever
20 said that. I don't think that he said, well, with the
21 County being the owner currently today, the property is
22 now worth \$20,000.00, or you know, \$5,000.00, or
23 whatever. So, the jury doesn't have the evidence of a
24 diminution of value. What he specifically said, -- and
25 again, because I wrote it down -- he specifically said

1 that the property today is valued at five million
2 dollars. And Mr. Achurch had him repeat it.

3 THE COURT: He said with -- that's the highest and
4 best use, though, so.

5 MS. LOHR: Right. But there's no evidence of what
6 the current actual value is with the owners being who
7 they are. He never testified to that, and that's the
8 proof problem.

9 MR. ACHURCH: We asked him, Judge, specifically, so
10 what's it worth. Is that your value of today. He said,
11 well, I really did this before, but I updated, but, yes,
12 it's still worth that today. He said, even though the
13 County owns it, my recollection of the testimony was,
14 even if the County owns it, there might be a point in
15 time where they don't own it, and as of today, it's
16 worth five million dollars. There is no other word, no
17 other number that came out of his mouth during that
18 testimony other than five million dollars.

19 He said, I decided to -- he said, you should
20 appraise it to where -- I said, specifically, were you
21 asked to appraise it for it's highest and best use? No,
22 I did that; this is its highest and best use; that's how
23 it ought to be valued. And forget the highest and best
24 use. He said -- I said, what is it worth today? Is
25 that your opinion of the value today? He said, yes.

1 Even with the County owning it. Because I wanted to
2 make sure, really. And he goes, yeah. And that's the
3 only word that came out of his mouth.

4 THE COURT: Okay.

5 MR. WALKER: He also was talking about for future
6 development and left open the possibility of future
7 development. He did not assume what we now know from
8 the testimony of Gary Kubic and other County people that
9 the acquisition is going to be conservation forever. I
10 mean, nobody said if it's conservation forever. He was
11 talking about the second mouse and all this; if you lose
12 one developer, another developer will come along;
13 there's even the possibility now.

14 But we know, under the evidence, there's no
15 possibility, because, according to the County, it's
16 going to be conservation. They don't even need access.
17 They've said they don't need access. And even if they
18 don't need access, regardless of use, it's not worth the
19 five, because the highest and best use is access to a
20 residential subdivision.

21 MR. ACHURCH: He said it should still be used as
22 highest and best use. And if you'll recall, your Honor,
23 he said, well, I connected the properties up. Why'd you
24 do that? Well, because they had a contract, so, you
25 should connect the properties up.

1 And I don't know, maybe Mr. Walker will correct me,
2 but I never heard another number come out of him. He
3 never testified as to what -- he never said -- he --
4 even if -- and I think Mr. Walker, respectfully, is
5 incorrect about that testimony, but even if he's right,
6 he didn't say, well, now that the County bought it, it's
7 worth less. Not only did he not say that, he certainly
8 didn't give a number. There was no number that came out
9 of him, except five million dollars. And he did not
10 say, and it was not elicited, well, now that the County
11 has it, is it worth less. That was never any testimony.
12 Again, the specific testimony, I said, what is it worth
13 today? Five million dollars. Even with the County
14 owning it. Yes.

15 So, you can't just assume -- he's the expert. He
16 said, today, it's worth five million dollars. Because,
17 to be honest with you, I was right surprised. I was
18 surprised when I got his appraisal. I was surprised
19 when I deposed him. But his appraisal number, I don't
20 think we put it in, but it was the same as -- it's worth
21 at least five million dollars, is, I believe, what his
22 testimony was. And he went on to say, how he arrived at
23 the number and da, da, da. But I specifically remember
24 saying, even with the County owning it. He said yes.

25 MR. WALKER: We think there's a factual issue. And

1 to compare it to the Pinckney Point case, five million
2 is basically a lost profits case, but there's no
3 question there's 1.3 in it. And that, as Mr. Kunkel
4 testified and Mr. Bush testified, that, if it's never
5 going to be used, that 1.3 is lost. So, the jury, I
6 think, even without Mr. Hartnett's testimony, could come
7 to the conclusion that our reliance damages are 1.3,
8 because that was actually paid under the settlement
9 agreement, with the whole structure of the transaction
10 stated in it that it would be bought back; it would be
11 twenty feet; and then, it would be fifty feet to do a
12 residential subdivision. And that, without any expert
13 testimony is 1.3 million dollars worth of damage.

14 So, I understand what Mr. Achurch is saying. We
15 believe that's a factual issue. But in any respect,
16 even if you put Hartnett on the side, you've got 1.3 in
17 the case.

18 MR. ACHURCH: Your Honor, I respectfully disagree
19 about testimony from the witnesses that we can't sell it
20 for that anymore. They did say we explained to -- this
21 is how we plan to get our money, but there's no
22 testimony over that. And honestly, there is no factual
23 dispute. There's nothing to counter Tommy Hartnett's
24 testimony. There's nothing to counter his testimony
25 that, today, it's worth five million dollars. We didn't

1 bring anything in here to say it was still worth five
2 million dollars. He came and said it's worth five
3 million. That's the only testimony on the record.

4 MS. LOHR: And that would go -- also, your Honor,
5 that would go specifically to the lost value that they
6 had in it. If they bought it for 1.3 million dollars,
7 and the only evidence in the case is today it's worth
8 five million dollars, then, they don't have any damaging
9 that way, either, because they're sitting -- they got a
10 great deal; they had bought it for 1.3; and today, it's
11 worth five. So, there's no evidence to let that issue
12 go to the jury whatsoever, because there's no proof in
13 front of the jury that there are damages.

14 MR. WALKER: We just have to disagree vigorously on
15 the 1.3. I get the five million and how they've got an
16 argument there. We disagree about highest and best use
17 and what he may have said. That's a perfect jury
18 question. But on the 1.3, John Kunkel explained the
19 whole structure of the transaction and how the money was
20 to be returned in such time as it was used as a
21 residential subdivision. And I don't think that the
22 Court can disregard a witness's testimony simply because
23 we put up an expert that might be in conflict.

24 THE COURT: I understand that. I think Kunkel can
25 testify to it. He said that they spent 1.3, Road, LLC,

1 did. Okay.

2 MR. ACHURCH: Yes, your Honor, he said they spent
3 1.3, and we had a contract to buy it back for five
4 million. But he didn't say, well, because this
5 happened, it's worth nothing. Frankly, I think they
6 avoided any testimony about it being worth nothing or
7 reduced value. There were two numbers. One we paid
8 1.3. And we had a contract for five million dollars.
9 And the only time about the value of it now is Mr.
10 Hartnett's. That's it. There's nothing for inference
11 on that. And he said, I valued it at the highest and
12 best use. There was no testimony it is not the highest
13 and best use. He said this is what it is.

14 In fact, I specifically remember him saying even
15 though the County has it, he decided the value that way,
16 because that's the way you should value the property,
17 it's highest and best use. Sometimes you have a piece
18 of property on the highway, you know, a farm in
19 Allendale might be for a gas station, but there's no
20 demand for it, see? But this property, it's like the
21 cement steps to the trailer. And so, because they're
22 just cement steps, they'd be worth nothing. But because
23 it's the only way you can get in the -- it's the only
24 way you can get to the trailer.

25 THE COURT: Now he's trying to raise the value of a

1 trailer. I mean, come on.

2 MR. WALKER: Well, back to this whole thing just to
3 hit the ball over that one more time.

4 THE COURT: That's okay. I apologize. Let me tell
5 you all, honestly, I just want you all to talk, because
6 the simple fact is this, we need to make a good record.

7 MR. WALKER: Yeah, and --

8 THE COURT: So, that's why I'm letting you play
9 tennis. It's fine.

10 MR. ACHURCH: I've said all I could have said.

11 THE COURT: I know. And Mr. Walker's going to say
12 it three or four times. That's completely fine.

13 MR. WALKER: Well, more -- I'm just going to --
14 I've already said my piece with Tommy Hartnett, and I
15 would be repeating it.

16 THE COURT: Okay. And I would agree that I think
17 Kunkel can testify as to the loss. I think his number
18 is they paid 1.3 for it. If, taking the theory
19 completely on the plaintiffs' side, if, obviously, the
20 simple fact that, allegedly, the County breached,
21 causing them not to be able to follow through, causing
22 Pinckney Point (a) not to be able to buy the property,
23 (b) because they're not buying the property, they're not
24 going to buy the road; and I mean, it's down the chain,
25 but I see that, so. That's taking everything, of

1 course, which is what I have to do in a directed verdict
2 motion, so. Anyway.

3 MR. ACHURCH: I just don't remember any testimony
4 from them about now we don't have it.

5 THE COURT: Well, I think within the -- in evidence
6 is the contract they paid 1.3 million for it. And I
7 think there's also -- isn't there evidence in the
8 agreement that there will be a buy-back for it? And
9 that's in there, too.

10 MR. WALKER: Yes, there was that --

11 THE COURT: That's in there, too, so.

12 MR. WALKER: I mean, the whole premise was it was
13 to be bought back. First, it was only bought for 1.3
14 because there was the value as access to a residential
15 subdivision. Road didn't pay 1.3 to go to a party.

16 THE COURT: I understand.

17 MR. WALKER: They paid 1.3 to facilitate a
18 residential subdivision because at such time as that
19 subdivision had to get final approval, there would have
20 to be a buy-back of a fifty-foot right-of-way.

21 THE COURT: They were trying to protect their
22 already million- millions'-, millions'- dollars
23 investment.

24 MR. WALKER: Exactly, and --

25 THE COURT: That's what they were doing.

1 MR. WALKER: And so that, the whole thing was
2 structured on the premise it would be a residential
3 subdivision. When the County frustrated it, then, that
4 1.3 just went down the drain.

5 THE COURT: Okay. All right. So, respectfully,
6 I'm going to deny your motion based on the evidence for
7 Road, LLC, and we'll see what the jury will do with it.
8 Okay.

9 Let's go to the next part, Ms. Lohr.

10 MS. LOHR: With regard to the breach of contract --
11 hold on. I've got to find my -- breach of contract
12 claim, the evidence shows that the County fully complied
13 with the specific terms of the contract. There's no
14 latent -- there's nowhere in the contract that the
15 plaintiffs have been able to point to that produces a
16 latent ambiguity. The only latent ambiguity that
17 they've asserted is what the parties' intent was, and
18 that was that it was to be a residential development.

19 They County has put forth evidence that, while it
20 was happy for them to pursue their development, there
21 was no -- there was no intent on behalf of the County
22 for it ever to be tied up by this contract as a
23 development.

24 John Kunkel testified that he didn't believe that
25 it was the case that it would be forever bound up to be.

1 a residential development in his testimony.

2 With regard to the argument that the County
3 frustrated the attempts, causing them to not be able to
4 get an investor, your Honor's heard specific evidence
5 that they had an investor who was interested; they just
6 didn't like the terms, so they turned it down.

7 Additionally, you've heard evidence that, as of the
8 -- with regard to the one issue, there was one issue in
9 the conditions for final approval that held it up for a
10 period of months. That issue was worked out. An
11 extension was granted by the County for a further year.
12 And no efforts were made to make final submittal. The
13 County wasn't holding anything up. There's no evidence
14 for during that duration of time anything was held up by
15 anybody at the County. There was no contact with the
16 County during that time period.

17 We gave them the variance immediately. The septic
18 permit issue was worked out. No other entitlements were
19 requested. Kunkel testified that they were looking for
20 an investor until -- they weren't even looking for an
21 investor until the option was getting ready to expire.
22 Therefore, there can't be any evidence that our delay
23 was frustrating them, because they weren't looking. And
24 then, when they found one, they didn't like the terms,
25 so they let him so.

1 There's just no evidence in this case that the
2 County's efforts frustrated -- the County frustrated the
3 efforts of the plaintiff such that it would delay their
4 ability to perform under the contract.

5 Additionally, under the *Swinton Creek Farms* case,
6 one cannot pursue a claim for breach of contract where
7 implied covenant of good faith and fair dealing if he is
8 in breach of the contract. He has to show the contract
9 has been performed on his part, or at least that it was,
10 at the appropriate time, able, ready, and willing to
11 perform.

12 Mr. Bush's testimony specifically was that, when
13 they lost the option, they couldn't perform under the
14 contract. And to the extent that we are bound in to the
15 settlement agreement with Road, they can't separate the
16 settlement agreement out now and say, well, the County
17 can't argue that we were going to breach with Dot or
18 somebody else. The fact of the matter was, they didn't
19 have any obligations to the County, but they did have
20 obligations under the settlement agreement. And when
21 they don't own the property anymore, they can't come to
22 us for anything else; they can't satisfy Dot; they can't
23 have the subdivision. So, the whole contract becomes a
24 nullity.

25 THE COURT: Can I ask you a question. There is

1 some testimony by Irby that I thought was a bit
2 confusing when he said something about -- I think he
3 said they had the money or they had the new investor,
4 but the way it almost read in the deposition, was almost
5 like it might have been a typo. And I just need to know
6 if you two can agree on what it says.

7 MR. ACHURCH: Yeah, that was a typo, your Honor.
8 He said --

9 THE COURT: Okay.

10 MR. ACHURCH: He said they had the money when they
11 said they had the money.

12 THE COURT: Yeah.

13 MR. ACHURCH: And that had to read, they did not
14 have the money when they said they -- than they had when
15 they said they had the money. That's how it ought to
16 read, and Mr. Walker might disagree. But it wouldn't
17 make any sense to say they had the money when they said
18 they had the money.

19 If you go, there are other portions of the
20 deposition where he reiterated, there were several times
21 we were set for closing when they had the money, and
22 then, they didn't have the money. Because if they had
23 the money when they said they had the money, they would
24 have bought it, and we wouldn't be in here this week.

25 THE COURT: Well, the other thing that I felt

1 begged a question that I don't think anyone at least
2 asked in the portion that I read was, were there any
3 other reasons, other than lack of funds that the
4 closings didn't go through. Because that seems to be
5 like they were trying to prepare for one, and then, it
6 just didn't go. And if it was for some other reason
7 other than the money.

8 MR. ACHURCH: The gist of the testimony was, Judge,
9 they told them on a couple occasions we can -- we can --

10 THE COURT: Meet the -- yes. Meet the deadline,
11 yes.

12 MR. ACHURCH: We can buy it. And then, they got
13 ready, and they couldn't buy it.

14 THE COURT: Yes.

15 MR. ACHURCH: And that's what he was referring to.

16 THE COURT: That's what I figured.

17 MR. ACHURCH: I agree, that was -- that wasn't --
18 and shame on me, I picked that up earlier, and I just
19 didn't mention it. There were different copies. My
20 extra copy, I'd written down on there. And Mr. Walker
21 may not have agreed with me, but it's clear that was a
22 typo. You can't have the money, and then, but then,
23 they had the money.

24 THE COURT: Yes.

25 MR. ACHURCH: But he did address it later.

1 THE COURT: Okay.

2 MR. ACHURCH: They said a couple times they had the
3 money, and then, they didn't.

4 THE COURT: Right.

5 MR. ACHURCH: For instance, they were setting up
6 this closing for March 11. I mean, that's what they
7 were all moving toward.

8 THE COURT: Right.

9 MR. ACHURCH: And Mr. Nester said, hey, there's
10 emails in there, hey, you know, I understand, Mr. Irby,
11 you're going to close. And they would waive a conflict,
12 and there you go. And then, it just didn't happen.
13 They didn't -- they -- Pinckney Point just didn't pull
14 the trigger on it because they didn't like the terms.

15 THE COURT: Okay.

16 MR. ACHURCH: Or for whatever reason.

17 THE COURT: Okay. And I apologize. I didn't mean
18 to jump in there.

19 MS. LOHR: But the fact that they had an investor
20 is proof that nothing that the County was doing was
21 frustrating them from getting an investor. And quite
22 frankly, the evidence is that, for a year and three
23 months, there was nothing that the County was doing,
24 period, that was holding them up. They got the
25 variance. They got the conditional approval. They

1 worked out the septic tank issue. The engineers were
2 going. It was 95 percent completed.

3 THE COURT: Let me ask you this, though. At the
4 point when they still had a little bit of time to
5 exercise that option, why couldn't -- was there anything
6 in the way of them asking for the final approval?

7 MS. LOHR: No. They absolutely could have asked
8 for it. It might be on their end they hadn't done
9 everything that they needed to do with their planning,
10 with their plats.

11 THE COURT: Right.

12 MS. LOHR: You know. But in terms of the County --

13 THE COURT: It seems like everyone talked about the
14 fifth thing on that list was the septic tank was the
15 problem.

16 MS. LOHR: Because the other four things weren't
17 issues.

18 THE COURT: Right.

19 MS. LOHR: And I think Walter testified that those
20 things were --

21 THE COURT: Yes.

22 MS. LOHR: I know that Hillary testified.

23 MS. MONOC: They both said that, that's the only
24 thing that was holding them up.

25 MR. ACHURCH: Nester did, as well.

1 MS. LOHR: But your Honor, I think the fact that
2 we're missing here is while -- I think the plaintiff has
3 to show bad faith, which is important here. And I don't
4 know there's any evidence of bad faith on the part of
5 the County with regard to this frustration issue. I
6 think the only evidence is that the County let them go
7 forward. But they have to show that we intended for
8 them not to be able to meet their obligations under the
9 option agreement to purchase it. There's no evidence
10 that the County had any idea that was going on, until,
11 perhaps, Garrett Budds went out there and talked to
12 somebody. But then, there's no evidence after that
13 point that the County did anything to hold anybody up.
14 In fact, the evidence was that we waited and didn't
15 negotiated further with ERP until we were told the
16 option had expired.

17 So, I don't -- while it might have frustrated them,
18 that short period of delay, because, again, I think
19 we're talking about only after the settlement agreement.
20 I don't think we can go back and talk about what
21 happened in 2005 and 2007, because, certainly, that
22 could not breach the settlement agreement, because there
23 was no settlement agreement.

24 So, when we start talking about 2011, the only
25 issue of frustration has to be with those septic permits

1 that got worked out. And then, there's no issue that
2 the County had any inkling that there was an issue with
3 the option. So, the plaintiffs can't prove bad faith or
4 a breach of the covenant of good faith, because there's
5 no evidence that we were doing anything to stop them
6 from fulfilling their obligations. It might have
7 frustrated them, but it wasn't in bad faith.

8 MR. WALKER: To correct the record, first, with Mr.
9 Irby, there weren't multiple closings. There was only
10 one. With all due respect to Mr. Irby, the only proof
11 from outside was we were trying to raise the funds not
12 just in the last thirty days. We had tried it with our
13 investor all along, Arendale Holdings, who insisted on
14 all of the entities behind Arendale that we have all the
15 approvals. And we didn't have the approvals.

16 Then, we had to go out in a much more brutal market
17 to see if we could get somebody to come in. And Silver
18 Point had a term sheet that they never agreed to the
19 terms; they had not done their due diligence; and had
20 not committed. They were just saying, unless you agree
21 to this, we aren't going to even go there. So, by no
22 means did we have an ability to do it.

23 But to come back to this whole thing about
24 frustration, what was the frustration? We have the
25 settlement in January of 2011. We have a hold-up on the

1 septic tank issue, and it didn't start with the
2 conceptual site plan approval in August of 2011. There
3 was testimony, and we even have communications well
4 before then. There's a letter in the record that says
5 Criscitiello raised it in May. And we worked with the
6 county attorney, and it was not resolved. And then, it
7 was inserted in the conceptual site plan in August. And
8 that was not resolved until Mr. Criscitiello agreed to
9 take it out in February.

10 So, in the light most favorable to us, there was
11 eight months where we could not pull the trigger on the
12 engineering. And the engineering is a very involved
13 process. Because, as Walter Nester said, you don't know
14 what your engineering -- if we have to go back and do
15 something differently, we can't go out and spend -- and
16 it's well over a hundred thousand dollars, almost a
17 hundred and fifty to do engineering drawings.

18 So, that is, in our case, eight months that we
19 lost. Plus, -- and one could reasonably infer from
20 that, that we could have gotten the approvals had we not
21 had that eight months lost. But then, well, also, even
22 with that eight months, we had the argument that, had
23 the County not started looking at this property while we
24 were still trying to get approvals, and they looked at
25 it in November, and according to Garrett Budds, he was

1 having negotiations with Lee Wooddall when he got back
2 to work in January, he started having discussions with
3 him. That proposal that he had put together at three
4 alternatives, the sheet that he presented to the Rural
5 and Critical Lands board, wasn't just pulled together in
6 the last two days, despite what Mr. Irby said. Mr. Irby
7 was doing a CYA and saying we didn't have any
8 discussions or wouldn't have until after the option
9 expired. And the testimony's undisputed, hey, bud,
10 that's not correct, because Bill Herbkersman was out
11 there in November soliciting the County within a short
12 time after the referendum was passed. Getting the money
13 they got more gas in the tank, and they could go out and
14 go shopping again. And this was the highest thing on
15 their shopping list.

16 So, we can show that, but for these actions -- I
17 mean, reasonable inference -- jury might not believe it,
18 but we can show -- we put in the proof through Mr.
19 Kunkel that we could have -- first, through Mr. Bush,
20 that we could have gotten the permits within four
21 months, and Mr. Kunkel, three months; that we could have
22 -- or four months -- we could have gotten the financing.
23 So, we think we meet the elements of the case.

24 And the frustration is that they totally undermined
25 the purpose of the settlement agreement, which is to --

1 which contemplated a residential subdivision. And they
2 are right, the contract didn't say County can't buy this
3 property, but it's certainly implicit. It also did not
4 say County can buy this property. It didn't say this is
5 going to be a park. It said this is going to be a
6 residential subdivision. And our commitments were to
7 build that residential subdivision, and we were
8 frustrated from doing that when the County stalled us in
9 the process and took the opportunity.

10 THE COURT: Okay.

11 MS. LOHR: Your Honor, my only concern and question
12 with this is, when does this contract end? They lose
13 interest in the property, and does it go on forever as
14 long as there's a glimmer of hope out there? I mean,
15 they couldn't do the things they had to do under this
16 contract. Okay? Taylor Bush admits, we couldn't do the
17 things we had to do under this contract, unless we got
18 the property an extension.

19 When does it end? Is the County is bound forever
20 and ever and ever and ever with a party who doesn't have
21 any obligations to them, and who doesn't have any
22 obligations under the contract to -- I mean, they didn't
23 own the property anymore. They couldn't come in and
24 submit for final approval if they didn't own the
25 property. All this is premised on we would have gotten

1 the money, and then, --

2 Which brings me to, actually, my next argument.
3 Again, There's three layers of speculation in this case.
4 First, is that we would have gotten an investor. And
5 their testimony is all over the place about that. We
6 would have gotten an investor, if the County had given
7 us our permits. Uh, we got an investor, but we didn't
8 like the terms. So, they contradict themselves
9 completely, and they're telling the testimony as to ERP
10 they were very close to getting an investor, and they
11 were going to have the money, and we were going to be
12 able to close.

13 So, number 1, they have to prove they were going to
14 be able to get an investor, which they haven't shown any
15 evidence of that. They haven't brought in any potential
16 investor to say, yeah, we were, you know, if they had --
17 if they had gotten all their permitting or had all their
18 plans, we would have absolutely jumped on board.

19 They gave us no names of people who we could talk
20 to, to confirm their testimony. And they certainly
21 brought no one in who could testify to the jury that we
22 were on the cusp of sealing this deal with them; if we'd
23 had 120 more days and they'd gotten their permits, we
24 would have done it. There's no evidence of that. Okay?
25 So, pure speculation, not supported by evidence. The

1 only thing it's supported by is Taylor Bush's own
2 speculative testimony. There was no -- that he could
3 have done it.

4 The next layer is ERP. Would ERP have sold it to
5 them if they had gotten the money? Again, they
6 speculate that, that would have happened, but they don't
7 know who else ERP, what else would come along during
8 that time.

9 They're also speculating that ERP would have given
10 them an extension. I don't believe that Irby's
11 testimony was that he would have given them another
12 option. I don't think there's any testimony as to that.
13 I think it's pure speculation that they would have
14 gotten that option. They were hoping, but I don't know
15 that there's even evidence.

16 They didn't bring Mr. Irby in here to say, sure, if
17 the County -- if we hadn't had the County out there
18 roaming around, we would have absolutely have given them
19 another option. While they might think that's the case,
20 they're speculating that, that might be the case. Mr.
21 Irby didn't come in here and say that, that was the
22 case. So, again, speculation number 2.

23 And then, speculation number 3, I'd like to
24 reiterate the argument I made this morning that there
25 was no expert testimony that was required. He wasn't

1 qualified as an expert. The Court of Appeals, upon
2 review, is going to hear testimony from the owner, but
3 it's not going to be expert testimony. It's going to be
4 testimony from the owner. So, that is -- that's another
5 issue that's looming around out there in this case. So,
6 I think that pretty much covers breach of contract.

7 THE COURT: Okay. Okay. All right. Well, again,
8 just in keeping with what we did before, I think there
9 are facts that were testified to that this jury could
10 conclude that there was a breach of contract. So, I'm
11 going to go ahead and deny your motion for a directed
12 verdict.

13 MS. LOHR: And with regard to the other causes of
14 action, I'll rely -- reiterate my -- renew my motion
15 based on the brief.

16 THE COURT: Exactly. And tell me again, after this
17 is over, what are the remaining causes of action that
18 are going to have to be determined?

19 MS. LOHR: Okay.

20 THE COURT: Determined by a jury.

21 MS. LOHR: I've got them written down somewhere.

22 THE COURT: I'm not sure I can put my hands on
23 whatever must be able to explain this.

24 MS. LOHR: There's a request -- there's a request
25 for an injunction.

1 THE COURT: Of what? I can't put my hands on it.

2 MR. WALKER: Your Honor, I've got it right here. I
3 can give you mine, if you'd like.

4 THE COURT: That would be great. Thank you.

5 MS. LOHR: The first is a declaratory judgment
6 action. And it seeks:

7 *Finding and concluding that Pinckney*
8 *Colony Road across the road parcel as*
9 *private; cannot be improved without permission*
10 *from Road, LLC.; is limited to private uses as*
11 *described herein for the private persons*
12 *described therein.*

13 THE COURT: What paragraph are you on?

14 MS. LOHR: Paragraph 23.

15 THE COURT: Thank you. Okay.

16 MS. LOHR: The second cause of action, I believe
17 your Honor struck.

18 The third cause of action was for an injunction
19 enjoining the County from using the road parcel for --
20 -- this is Paragraph 30.

21 THE COURT: Okay.

22 MS. LOHR: -- *general public to access*
23 *Pinckney Road from and using Pinckney Point*
24 *parcel for any use other than residential*
25 *development, as agreed by the County, set*

1 *forth in the settlement agreement.*

2 The fourth cause of action is for specific
3 performance under breach of contract theory.

4 Fifth cause of action is breach of contract.

5 Sixth cause of action was struck.

6 And the seventh cause of action is:

7 *Judicial estoppel and equitable estoppel*
8 *from allowing public to use Pinckney Point*
9 *Road.*

10 This is Paragraph 51:

11 *Sole vehicular access to and from*
12 *Pinckney Point parcel from using Pinckney*
13 *Point parcel as anything other than a*
14 *residential subdivision.*

15 THE COURT: All right. Thank you. And I
16 appreciate the copy. I've been hunting for it. Okay.
17 Okay. So, we've renewed -- obviously, we just put for
18 the record that those are going to be argued on brief
19 later after the jury comes back with a verdict on breach
20 of contract damages.

21 Okay.

22 CHARGE CONFERENCE:

23 MR. WALKER: Are we --

24 THE COURT: Yes.

25 MR. WALKER: I was just going to say, the charges.

1 THE COURT: Okay.

2 MR. WALKER: I think we can go through them pretty
3 quickly, because we're fine with their main charges.

4 THE COURT: Okay.

5 MR. WALKER: And there are only a couple that we've
6 identified that I think we're going to need to talk
7 about.

8 THE COURT: Okay.

9 MR. WALKER: So, --

10 MS. MONOC: Mary and I came up with a joint charge
11 for the expert.

12 THE COURT: Oh.

13 MS. MONOC: And so, I can hand that up, if that's
14 okay.

15 THE COURT: Okay. Sure. For the expert? Is that
16 what you guys did?

17 MS. MONOC: Yeah, for the expert on damages. Or
18 all the which ways you can prove lost profit.

19 THE COURT: Perfect.

20 MS. MONOC: And it's at the very back of that.

21 THE COURT: And I see this. I apologize, because
22 you did have further on, and I hadn't looked, you did
23 have where you talked about it a little bit.

24 MS. LOHR: We went into detail and agreed what
25 those -- the *Moore versus Moore* and *Drews* case said.

1 THE COURT: Perfect. Thank you. Okay. So, that
2 is helpful.

3 MS. MONOC: If you could just pull that last at the
4 end, it says joint.

5 THE COURT: Is it at the very end of what you just
6 handed me again? Oh, here we go. There we go. Okay.
7 All right. Can we just start with one side or the other
8 of requests to charge.

9 MR. WALKER: Well, I was -- rather than go through
10 ours, since we're going to agree to some of the defense,
11 I was going to tell the Court -- and I've talked to Mary
12 and Robert about this, too.

13 THE COURT: Okay.

14 MR. WALKER: And because they're -- we can, I
15 think, isolate the charge or two. I think there's --
16 where they have a single charge and we have a single
17 charge.

18 THE COURT: Okay.

19 MR. WALKER: That may be in issue. I don't know.

20 THE COURT: Okay.

21 MR. WALKER: But we're fine with -- and I'm going
22 through the order that they printed out on my printer,
23 because they don't have numbers.

24 THE COURT: So did I. Okay.

25 MR. WALKER: The first one I had was governmental

1 entities. That's good.

2 THE COURT: Okay.

3 MR. WALKER: Damages, I think that's good. You're
4 going to have a very extended one, so, I don't know if
5 it's redundant or not, but it's certainly a correct
6 statement of the law.

7 THE COURT: Okay.

8 MR. WALKER: The next one I had was expert witness
9 testimony. And I assume that the Court has a standard
10 -- and you your standard charge and you wouldn't need
11 that.

12 THE COURT: A standard charge, yes.

13 MR. WALKER: And then, the next one I had was
14 conflict and testimony of expert witnesses. I don't
15 think it really pertains.

16 THE COURT: I don't think it applied here, exactly.
17 So, that's not in. Okay.

18 MR. WALKER: And then, there's one on payment of an
19 expert witness. I'll leave it -- if you all want to
20 charge it, we're cool on that.

21 THE COURT: I've got a standard one. I've got a
22 standard one on that, so.

23 MR. WALKER: Defendant's requested charge, breach
24 of contract defined. It's more extensive than ours, so
25 we're okay with that.

1 THE COURT: I'm sorry. We're on 6. Yes. I can
2 tell you, I'm doing mine just breach of contract. So,
3 the *Bench Book*, so it's all the same thing.

4 MR. WALKER: Would it be relative -- and I only ask
5 this because I would like to know as I'm looking at this
6 over the weekend what the Court is going to charge, but
7 we're fine with their charge.

8 THE COURT: Okay.

9 MR. WALKER: If the Court wants to do it.

10 THE COURT: Mine's about the exact same thing, so.

11 MR. WALKER: Okay.

12 THE COURT: Okay.

13 MR. WALKER: Then, the next one we had is the
14 breach of contract. And I talked to Mary and Robert
15 about this one. This appears to be more was a contract
16 formed. And we think that the breach of contract charge
17 they had right before this is really the one that
18 pertains more to this case.

19 MS. LOHR: I would agree. I actually hesitated
20 putting that one in the charges.

21 THE COURT: Okay.

22 MS. LOHR: I don't think we have an issue as to
23 whether there's a contract or not.

24 THE COURT: What I'm going to do, too, once I make
25 the final -- and it's on this -- we'll email a copy to

1 all of you all.

2 MR. WALKER: Great.

3 THE COURT: Jamie will email all of you all one.

4 MR. WALKER: Super.

5 THE COURT: So, you'll have the exact language.

6 Okay? Okay.

7 MR. WALKER: And burden of proof, I'm sure you've
8 got a charge on burden.

9 THE COURT: I certainly do.

10 MR. WALKER: The plain language of contract, that's
11 fine. We're okay on their request to charge on implied
12 covenant of good faith and fair dealing.

13 And the only one that we have an issue with is the
14 request to charge requirement for proof of breach of
15 contract, breach and implied covenant of good faith and
16 fair dealing, which is the *Swinton Creek*, simply because
17 there's no proof, and I think the defense admits this,
18 that we breached any obligation to the County. And so,
19 and I'm sure they'll respond to that. But that says you
20 can't recover if you're in breach. That would be both
21 for the Road and for --

22 THE COURT: What request number do they have that
23 on?

24 MS. LOHR: It's not -- they're not numbered.

25 MR. WALKER: They're not numbered. It's a double

1 heading, your Honor. It says requirement for proof of
2 breach of contract/breach of implied covenant of good
3 faith and fair dealing. It says *Swinton Creek* at the
4 bottom.

5 THE COURT: Got it. I don't know. I never even
6 got that.

7 MS. LOHR: You probably got the first set, because
8 then, I emailed a second set. I can hand it to you.

9 THE COURT: I'm sorry. Okay. I'm sorry.

10 MS. LOHR: And it basically is exactly the wording
11 taken -- I pulled straight out of the *Swinton* case. And
12 we do believe, your Honor, that they breached the
13 contract, because they could not perform under the
14 contract. And the contract isn't just with us. If they
15 can't perform with the other folks in the contract,
16 then, the contract goes away. I mean, the plaintiff
17 can't argue that we are forever bound to them, but
18 they're not bound to us or anybody else, and the
19 contract's binding forever and always as against the
20 County, because we didn't require an obligation directly
21 from them to us.

22 And furthermore, the contract becomes an
23 impossibility, your Honor, because they can't ever apply
24 for final. There was nothing in this contract that
25 required them to apply for final approval. But we

1 couldn't -- there couldn't be a residential development
2 if they didn't own the property. So, once they lost it
3 under the option, they -- if the whole intent -- if
4 their argument is the whole intent for this property to
5 be a residential development, it can't be, because they
6 can't apply for final approval. So, the contract goes
7 away. It's been breached by them.

8 THE COURT: So, what I have in my charge, and it
9 talks about it, it says:

10 *The plaintiff may not recover damages*
11 *for breach of contract unless the plaintiff*
12 *shows that they have performed their part of*
13 *the contract, or at least were ready, able,*
14 *and willing to perform at the appropriate time.*

15 MR. WALKER: We're fine with that charge, your
16 Honor. We'd request that charge in lieu of the defense
17 charge.

18 THE COURT: Okay. I mean, that's what I've got in
19 there, and not this exact. So, I think it's the same
20 thing. It's within the body of it, so I think you all
21 are okay. Anything else? And I apologize, so. It's
22 the same thing. It's in my regular charge.

23 MR. WALKER: So, you'll charge the regular charge,
24 your Honor?

25 THE COURT: Yes, I will.

1 MR. WALKER: All right. Thank you.

2 THE COURT: And you guys are all going to have a
3 copy of this, so I want you to know exactly what I'm
4 charging so you'll know. Okay?

5 MR. ACHURCH: Thank you, Judge.

6 THE COURT: Absolutely.

7 MR. ACHURCH: We'll have that over, I guess, over
8 the weekend?

9 THE COURT: As fast as Jamie can do it, you will
10 have it, so.

11 MS. LOHR: He has been giving me homework for weeks
12 now.

13 THE COURT: Okay.

14 MR. WALKER: So, in looking at our charges, --
15 maybe I'll just let Robert in.

16 THE COURT: Well, I can -- I mean, I can tell you
17 what's in --

18 MR. WALKER: Okay.

19 THE COURT: The settlement agreements are
20 considered contracts. I don't think there's any
21 question that's in the charge. Your Plaintiffs' Request
22 to Charge Number 2, for breach of contract, again,
23 you've got a general breach of contract. It's not this
24 exact one.

25 MR. WALKER: Yeah, we'll withdraw that because of

1 --

2 THE COURT: Okay. And then, you've got this:
3 Every contract includes an implied covenant of good
4 faith and fair dealing. I'll tell you the portion or
5 how I'm going to do it, because it kind of married --

6 MR. WALKER: And we're fine using the more
7 extensive defense charge, too, on this.

8 THE COURT: And what I did was this. I added -- I
9 started with theirs. It's in every contract. And I've
10 spoken about the legally enforceable promise of good
11 faith and fair dealing. And then, I used, not the first
12 line, but the rest of the defendant's charge. So, just
13 to put it in there so it makes sense.

14 MR. WALKER: That's fine, your Honor.

15 THE COURT: So, I think it's -- I think it's a
16 correct statement of the law.

17 Where are we proposing we put Number 4? Because I
18 don't think -- I'm not sure where it makes sense to put
19 it. It just needs more context than that.

20 MR. WALKER: I think it would come after the breach
21 of contract charge and before the damages.

22 THE COURT: Okay. What do you all think about,
23 obviously, Number 4, Mary?

24 MS. LOHR: Well, to take the page out of Trenholm's
25 book, I don't think there's any evidence of it to start

1 with.

2 MR. WALKER: Well, --

3 MS. LOHR: So, I'd object to it on that ground.

4 But that being the case, I certainly don't think it
5 needs to -- if the *Swinton Creek* charge is going to be
6 kind of wrapped up in the rest of the breach of contract
7 charge, I think it needs to kind of go right in there
8 near it.

9 THE COURT: Okay.

10 MS. LOHR: It doesn't need to kind of be a stand-
11 alone.

12 THE COURT: Okay.

13 MR. WALKER: Then, our --

14 THE COURT: Hold on a second. I'm sorry. Give me
15 one sec you all. I just want to make sure I get this
16 in.

17 Okay. I'll just make sure it goes somewhere,
18 obviously, after the breach, but before the damages.
19 Breach of contract charge. Okay.

20 I can tell you that the portion of it where that
21 the actual is a natural consequence of breach --

22 MR. WALKER: Is that in your --

23 THE COURT: It's in my regular charge. Yes, it's
24 in my damages charge.

25 MS. LOHR: Your Honor?

1 THE COURT: Yes.

2 MS. LOHR: My one concern about the damages charge,
3 now that we've worked out the issue of lost profit and
4 submitted the joint charge to you, my only remaining
5 issue is I am concerned about the jury being confused
6 about the costs that go in, understanding that they're -
7 - if you give lost profit, you can't give the cost,
8 because, you know. So, I think there needs to be a
9 charge on damages that kind of explains to them you can
10 give one or the other, but you can't give both.

11 THE COURT: Okay.

12 MS. LOHR: They are mutually exclusive. Because if
13 you find there's no lost profit, --

14 THE COURT: Right.

15 MS. LOHR: -- you can give the cost spent.

16 THE COURT: Right. Right.

17 MS. LOHR: And I'm not sure what your charge
18 covers, but that's kind of an unusual issue.

19 THE COURT: Okay. So, I will tell you that what I
20 did, I put in -- I put in Plaintiffs' Request to Charge,
21 because this was just the general, and that's, for the
22 most part, in, but not the exact wording. I put in
23 verbatim the Plaintiffs' Request to Charge Number 6.
24 And then, so you want to say -- so, you want to do some
25 kind of segue into where this asks for -- this is lost

1 profits, which we're going to have to dovetail with this
2 joint one.

3 I understand what you're asking. Okay. I can do
4 that where it can be actual costs, such as, do you want
5 me to say something like -- I don't want to call it out-
6 of-pocket costs, but it's actual costs. Hard money.

7 MS. LOHR: It's money expended in past.

8 THE COURT: I will call it hard money. People
9 understand. Since soft money is spent. So, I don't
10 want to mess them up.

11 MR. WALKER: And then, you could describe the lost
12 profits as future, alleged future losses, or something
13 like that. That's really not true, because I agree with
14 the defense. I don't think we can recover lost profits,
15 and then, recover lost profits that includes the loss.

16 THE COURT: Exactly.

17 MR. WALKER: And it is my intent to tell the jury
18 that we either get our out of pockets or the lost
19 profits, if they award us the damages.

20 THE COURT: Right. Okay. Well, do you want me to
21 leave it to you all to write it? Do you want to write
22 it?

23 MR. WALKER: Could you also say: the plaintiffs
24 also seek, in the alternative?

25 THE COURT: Okay.

1 MS. LOHR: That would be -- I think that's --

2 MR. WALKER: It's seeking the alternative to
3 recover. And then, Robert and Mary can argue it has to
4 be one or the other. And I will do the same thing.

5 THE COURT: Okay. I'll figure something and send
6 it to you. Okay. Okay. I'll put something together
7 for the two of them and add it on. What number are we
8 on, on plaintiffs? Sorry.

9 MR. WALKER: Your Honor, I think --

10 THE COURT: Obviously, burden is in the regular
11 charge. 9 is in the regular charge. Okay. Think
12 that's it?

13 MR. WALKER: Yeah, I think we're done. I would
14 like to just go back to Number 5, the Plaintiffs'
15 Request to Charge, which your Honor said you were going
16 to cover on your general charge, just to confirm that
17 there is a statement of the last sentence in our Charge
18 Number 5 in your general charge.

19 THE COURT: You want me do a payment of expert
20 witness charge, correct?

21 MR. WALKER: No, no. I was in the Plaintiffs'
22 Proposed Jury Charges.

23 THE COURT: On the plaintiffs'. I apologize.

24 MR. WALKER: No, that was --

25 THE COURT: Okay. And I've got five different

1 books going on at this point.

2 MR. WALKER: Number 5's a breach of contract
3 charge. Your Honor indicated that it would be in the
4 general charge. We merely wanted to confirm that the
5 last sentence would be -- or some principal or some
6 charge to the effect of the last sentence would be in
7 the Court's charge. These damages are proper, even
8 where plaintiff has partially performed on a contract,
9 but was wrongfully prevented from completing a contract.

10 THE COURT: Okay. Okay. That's going to have to
11 be a part of when I'm going to put something together
12 about either your actual damages or your lost profit. I
13 understand that you want that language.

14 MR. WALKER: Thank you, your Honor.

15 THE COURT: Okay. Okay. Sorry, Jamie, I should
16 have had you print out a copy. Anything else, you all,
17 we need?

18 MR. WALKER: You have our charges in Word? I'm
19 trying to think, have we given them to you in a format?

20 JAMIE THOMPSON: Yes.

21 THE COURT: Jamie has them.

22 MR. WALKER: Okay. Thank you.

23 THE COURT: We're good. Jamie, do you have their
24 emails? I know Leigh Ellen did.

25 JAMIE THOMPSON: I do.

1 MS. LOHR: Do we need to talk about special
2 interrogatories. I know at times you said that may be
3 something we need to think about.

4 THE COURT: You know, we did. And thinking about
5 this, too, obviously, you have to separate out,
6 obviously, damages for -- I mean, I was going to do a
7 pretty straight-up verdict form is my thought of, you
8 know, either find for the defendant, you know, Beaufort
9 County, or find for the plaintiff, Road, LLC, in the
10 amount of blank damages. I guess where my concern is
11 this, is that, they can't have a differing -- they can't
12 -- okay. Do you think they can have a verdict as to
13 breach of contract as to Road, LLC, and not Pinckney
14 Point, and vice versa? I mean, that's my question.

15 MR. WALKER: I think --

16 MS. LOHR: I absolutely -- sorry.

17 MR. WALKER: You go ahead, Mary.

18 MS. LOHR: I absolutely think they can for the same
19 reason that we were talking about earlier.

20 THE COURT: Okay.

21 MS. LOHR: Because they can find breach, but not
22 damages.

23 THE COURT: Right.

24 MR. WALKER: I agree with her that they --

25 THE COURT: Okay.

1 MR. WALKER: They could find, if we didn't prove
2 causation of damages for one or the other.

3 THE COURT: Okay.

4 MR. WALKER: So, and I think it's all in their
5 province. But I agree there's some fundamental
6 inconsistency in the sense that the contract's either
7 breached and they both suffered losses, or it's not.
8 But I agree with the defense that --

9 THE COURT: Based on -- okay.

10 MR. WALKER: -- they get to determine if there's
11 any loss.

12 THE COURT: Okay. So, do you want, as far as
13 specific interrogatories, do it as to --

14 MR. WALKER: And we oppose any specific
15 interrogatories.

16 THE COURT: Okay.

17 MR. WALKER: We want a general form like your Honor
18 said.

19 MS. LOHR: Well, and that's fine, too. We can do
20 this on -- I mean, I've done this before in complicated
21 medical malpractice cases.

22 THE COURT: Well, usually, you just break it down
23 to did someone, you know, do you find that someone, you
24 know, breached a contract; do you believe that there are
25 damages as to X plaintiff or X plaintiff. And they

1 would have to agree on both of them separately, and I
2 know that's not what you want, but. And then, do dollar
3 amounts.

4 You just tell me how you want it. Sounds like you
5 guys -- if you can agree to it, I'm fine with it.

6 MR. ACHURCH: I don't have the language yet, your
7 Honor.

8 THE COURT: Okay.

9 MR. ACHURCH: Mary doesn't have the language yet.

10 THE COURT: Okay.

11 MR. ACHURCH: But it occurred to me that it would
12 be appropriate to have some specific finding that they
13 find that Beaufort County, if they found for the
14 plaintiff or a breach, that they found that Beaufort
15 County did not act in good -- did not fulfil its
16 obligation to act in good faith and fair dealing.
17 Because it may be, you know, it might be a -- it might
18 be that they find that, well, we simply, by buying the
19 property, we breached maybe an obligation to Road.
20 Okay.

21 But I think you need to know if there's a covenant
22 of good faith and fair dealing, because they like doing
23 -- or blend it all up. There really isn't -- the only
24 way they could find that Beaufort County breached its
25 contract with Pinckney Point is because we breached our

1 covenant of good faith and fair dealing. That's the
2 only evidence in the record.

3 THE COURT: Well, that's your argument, though.
4 That's, obviously, --

5 MR. ACHURCH: Well, --

6 THE COURT: I don't like the idea of parsing the
7 two out like that. I think that is a disaster.

8 MR. ACHURCH: Well, I'm trying to --

9 MR. WALKER: And I think -- and I disagree -- I
10 mean, I agree completely with the Court. I never want
11 to disagree with the Court. But I agree, even our Court
12 has said the implied covenant of good faith is within
13 the cause of action. You don't start parsing it out.
14 And we are not -- yes, we've talked about the implied
15 covenant of good faith and fair dealing. We think it
16 was breached. But we also have this whole thing of
17 frustrating our performance.

18 THE COURT: Right.

19 MR. WALKER: And so, and that does not -- that's
20 different. I mean, it could also be construed to be the
21 breach of the implied covenant of good faith and fair
22 dealing. I think we're all better off just having a
23 general verdict form, just like the Court has suggested;
24 where it's, you know, we find for the defendant, or we
25 find for the Plaintiff Road, and you know, for X

1 dollars. Or we find for the Plaintiff Pinckney Point X
2 dollars. Or we find for the defendants. However you'd
3 like to put it to the jury. I agree when you start --
4 we could end up in just sideways on this thing, and
5 create error because a jury could just simply not
6 understand it. And we don't think it's warranted to
7 start to slice the case finely on the verdict form.

8 MR. ACHURCH: Your Honor, rather than -- if your
9 Honor would give us over the weekend, we might -- we
10 might agree with that.

11 THE COURT: Why don't the two of you find the one
12 you can agree to, and if not, both of you come in with a
13 proposed one on Monday.

14 MR. ACHURCH: Yeah.

15 MR. WALKER: Okay.

16 THE COURT: If you can't agree on one, you both
17 come in with a proposed one. And then, does that sound
18 okay?

19 MR. ACHURCH: Well, yeah. The defense might agree
20 with that position, and if we don't, then, we'll do
21 something. And perhaps we can agree with Counsel.

22 THE COURT: Okay. You all can confer and figure
23 out what you want to do.

24 MR. ACHURCH: I don't want to waste the Court's
25 time. We have a little more time. Maybe we'll

1 reconsider.

2 THE COURT: Okay.

3 MR. ACHURCH: If that pleases your Honor.

4 THE COURT: Okay. All right. Do I have
5 everything, then? Does anyone have a proposal for --
6 what I'm more worried about, it just so small and as in
7 general, the actual. I don't want to be listing what
8 your actual hard costs are. I don't want to call them
9 hard, because I understand.

10 MR. WALKER: What about just what you have in the
11 charge? That seems to be okay.

12 THE COURT: Just on this first?

13 MR. WALKER: Says meeting out-of-pocket costs.

14 THE COURT: Yes.

15 MR. WALKER: I don't think that, that's as hard. I
16 don't think.

17 THE COURT: Out of pocket, well, I don't think it's
18 that -- but I mean, that -- if you're fine with that, I
19 know. It just doesn't seem to be very much or very
20 descriptive.

21 MR. WALKER: Or you could put costs. Whatever.

22 MS. LOHR: I think that's too general for --

23 MR. ACHURCH: Yeah, I don't like that.

24 THE COURT: Actual costs? Made of actual?

25 MR. ACHURCH: I'm okay with out of pocket.

1 MR. WALKER: Actual cost is fine.

2 THE COURT: Actual costs?

3 MR. WALKER: Actual or out-of -- actual cost is
4 fine.

5 MR. ACHURCH: I like out of pocket.

6 THE COURT: Okay. Okay. Okay. All right, you
7 all. Anything else? Are we good? Everyone okay?

8 MR. WALKER: Fine from the plaintiff, your Honor.
9 And thank you for going through the charges today.

10 THE COURT: Absolutely.

11 MR. WALKER: Because I think it will help both of
12 us when we present to the jury.

13 MR. ACHURCH: Yeah.

14 THE COURT: And I got to tell you -- Jamie, you're
15 okay with time. We're going to go back and just do it
16 right now before I leave, so we can have it done. And
17 I'm hopeful, by the time you get home, that you both
18 will have them.

19 MR. WALKER: Yeah.

20 THE COURT: I may not get them as quickly as you
21 get home, but I'm going to try hard, so.

22 MR. ACHURCH: Yeah. Thank you. Thank your Honor.
23 And I appreciate you accommodating all this and being
24 able to close -- we might have been able to do it, but I
25 think it would be -- it is important to both sides.

1 MR. WALKER: Right. We would have had -- I think
2 you anticipated where we would be.

3 THE COURT: Yes.

4 MR. WALKER: Because we probably wouldn't be going
5 to the jury 'til what, 5:36?

6 THE COURT: Exactly, so.

7 MR. ACHURCH: We did agree it would be a lot
8 shorter closing.

9 THE COURT: Exactly. It always works that way when
10 you break, when there's, you know, how much more cross
11 or direct you have. And magically, after a lunch
12 period, you come back and there's only four more
13 questions and you're done. Whereas, before lunch, they
14 said at least 45 minutes.

15 MR. ACHURCH: Well, the problem, even if we closed
16 spontaneously, I might have been scared to leave
17 something out. I'd probably keep on.

18 THE COURT: I know. Everyone has that fear. Okay,
19 you all. So, I'll get this done. I'll get it out to
20 you. And will you please go ahead and immediately
21 comment back on it.

22 MR. WALKER: Yes.

23 THE COURT: So, if there's something that causes
24 you heartburn, immediately comment back to Jamie, and cc
25 me on it, as well, so I can be looking at it over the

1 weekend. And I'll wait for her to forward it to me.
2 Okay?

3 MS. MONOC: Sounds good.

4 MR. WALKER: Thank you, your Honor.

5 MS. MONOC: I'll email you all the joint charge, so
6 you'll have it in Word.

7 THE COURT: That will be great. Jamie appreciates
8 it. Okay. Good night, you all.

9 MS. MONOC: Good night.

10 MR. ACHURCH: Your Honor, thank you, Judge.

11 THE COURT: Absolutely.

12 END DAY FIVE, FRIDAY,

13 APRIL 29, 2016, 3:33 P.M.

14 BEGIN DAY SIX, MONDAY,

15 MAY 2, 2016, 10:19 A.M.

16 BY THE COURT:

17 THE COURT: All right, Ms. Lohr, you need to go
18 ahead and put your objection on the record.

19 MS. LOHR: Yes, ma'am. Thank you. Back in
20 chambers we discussed the plaintiff had wanted to have a
21 proposed jury instruction on latent ambiguity, and the
22 defendant would object to that, as we don't believe
23 there exists in the contract a latent ambiguity.

24 THE COURT: Thank you. And that's in keeping with
25 your objections throughout the whole trial. Of course,

1 you are preserved for that. And we went through --
2 Jamie emailed you all I think it was Saturday afternoon,
3 I don't know exactly when, as far as your proposed jury
4 charge. And then, back in chambers, plaintiffs gave me
5 the plaintiffs' Pinckney ambiguity charge, which I am
6 including in the charge. And also, they both agreed
7 that they wanted the defendant's breach of contract
8 portion. They just thought it needed more description,
9 and I agree. So, we're going to put defendant's breach
10 of contract charge in there.

11 Other than that, I know you both have reviewed the
12 verdict form, and there's no objections. Is that
13 correct? Defendants?

14 MR. WALKER: Well, we would prefer that the order
15 of the verdict form submitted by the defendants have the
16 reverse order. And we didn't see the need to instruct
17 them that they didn't have to deliberate further. We
18 think it's self evident if they say no, that they don't
19 deliberate further. And I don't want them to rush
20 through the deliberation and say, hey, we can get out of
21 here faster if we find no. And that was my concern.
22 So, we did have an objection to including that.

23 THE COURT: Okay.

24 MR. WALKER: -- that proviso that's in the verdict
25 form submitted by the defendants.

1 MS. LOHR: Your Honor, with regard to that, we
2 think it just clarifies for the jury so you can't get an
3 inconsistent verdict. It's pretty standard language
4 used on verdict forms all over the State.

5 THE COURT: I use it just to make sure that we
6 don't have any inconsistencies. So, anyway. Okay. All
7 right. Other than that?

8 MR. ACHURCH: Nothing from the defense, your Honor.

9 THE COURT: Ready to go? Everyone ready to go?
10 You all ready? Okay. Let's bring the jury out, Rick.

11 BAILIFF: Jury entering the courtroom, your Honor.

12 THE COURT: Thank you.

13 UNIDENTIFIED JUROR: Good morning.

14 THE COURT: Good morning.

15 JURORS ENTER COURTROOM 10:24 A.M.

16 THE COURT: Everyone be seated. Good morning,
17 ladies and gentlemen.

18 RESPONSES FROM JURORS.

19 THE COURT: It is a pleasure to see you all. As I
20 told you on Friday, what we have left to do is hear the
21 closing arguments from the attorneys. I am then, going
22 to charge you on the law that's applicable to this case,
23 and we are going to send it to you for your
24 deliberations. All right? So, at this time, if you
25 would give Mr. Walker your attention, please.

1 MR. WALKER: Thank you, your Honor.

2 CLOSING ARGUMENT ON BEHALF OF

3 PLAINTIFFS, BY MR. WALKER:

4 MR. WALKER: The first thing I want to do before I
5 talk about the facts of the case and what you're about
6 to decide is to thank you. Each of you has taken what
7 is now six days out of your business and personal lives
8 to come here to perform a vital function. You're here
9 to decide this dispute, finally. You're to decide it
10 fairly and impartially, according to the law, as the
11 Judge will give it to you very soon.

12 I would like to thank you on behalf of my clients,
13 John Kunkel, who's here for Pinckney Point, LLC; Bill
14 Lanius, who's here on behalf of Road, LLC. We thank you
15 for all that you've given in this case and your
16 willingness to decide it.

17 Well, let's talk about the facts. Let's talk about
18 the case. I have to admit that the information has been
19 flying at you like drinking out of a fire hose. And
20 you're probably wondering what do we do now. I mean,
21 you've just been pouring all this information on us;
22 tell us a little bit what we're supposed to do. And so,
23 I thought it would be helpful just to give you the very
24 simple explanation of this case.

25 My two clients, Pinckney Point, LLC, and Road, LLC,

1 have brought a claim for breach of contract. Pinckney
2 Point did own the Point parcel. It spent a considerable
3 time and money towards the development of it. Road,
4 LLC, purchased the two-tenths of a mile, dirt segment of
5 the road between the paved portion and the beginning of
6 the Point tract in 2011.

7 The contract, breach of contract, what contract?
8 The contract that our claim relates to is the global
9 settlement, the multiparty settlement agreement January
10 14, 2011. It is Plaintiffs' Exhibit 78. So, when you
11 go in the jury room, and you want to see what that
12 contract is, I ask you to look at Plaintiffs' Exhibit
13 78.

14 Breach. What does breach mean? Breach means we
15 claim and have proof that we submit that the County
16 violated that agreement. What are the breaches? Well,
17 with regard to Pinckney Point, LLC, there are really two
18 main breaches. And that is (1) that the settlement
19 agreement was to make sure that the permitting process
20 went smoothly. The County imposed a requirement for
21 individual septic tank permits that was not part of
22 their ordinances and delayed the project considerably.

23 And the number 2 thing is a very big thing, and
24 that is that the County negotiated to buy the Point
25 property and purchased it, which absolutely eliminated

1 by client's, Pinckney Point's ability to develop the,
2 property and caused damages.

3 How about Road, LLC? because we have to look at
4 each plaintiff. Plaintiff is the person suing. What
5 about Road, LLC? What happened to them? What was the
6 breaches to Road? Road was a party to the settlement
7 agreement, too, and we, likewise, claim two main
8 breaches. The first is the settlement agreement clearly
9 required that the road was private. Everybody agreed it
10 was private; no dedication; no public use. Judge Dukes
11 entered a court order; we looked at it two times; this
12 road is private. And the County has not treated it as
13 private.

14 The second thing is the same thing as to Pinckney
15 Point, and that is that the County went out and
16 negotiated and purchased the Point parcel, thereby,
17 preventing this two-tenths of a mile from being an
18 access to a residential subdivision as contemplated in
19 the settlement agreement.

20 And the damages we'll get to when I wrap up my
21 argument, but those acts have caused considerable losses
22 to my two clients.

23 One thing I want to dispel in the beginning is an
24 argument I heard in opening statements. And that is
25 that my clients are gamblers, they're risk-takers,

1 they're just out there on a lark, basically. That's not
2 the case. I think you heard from John Kunkel and Taylor
3 Bush. They've been at it for thirty years. They have a
4 great tract record. They work with large amounts of
5 money. They've had considerable success. They did
6 their projections, they did their homework.

7 John Kunkel is a CPA. At least my experience in
8 dealing with CPAs is that CPAs are not gamblers. He's a
9 very deliberate person. You just credibility. You
10 judge the qualities of the individual. The individuals
11 make up the entity. And I submit, they were cautious,
12 and they proceeded deliberately. They did their due
13 diligence before the acquisition. By due diligence, I'm
14 they looked at the access, made sure that was straight.
15 They looked -- the utilities. What are the utilities?
16 They looked at everything before they bought it.

17 All right. Let's talk about the fundamental fact
18 that they bought this property. They closed on March
19 31, 2006. They paid 10.6 million dollars for it. And
20 of that 10 million 6, \$5,700,000.00 came out of the
21 pocket of Pinckney Point. That is cash in the
22 transaction. They had a loan from BB&T that was up to
23 eight-and-a-half million, but they didn't -- only drew
24 down part of that to pay the ten million six purchase
25 price.

1 All they did was plan to do what the zoning
2 allowed. The zoning allowed up to 76, 77, single-family
3 houses, and that's what they did. They didn't go in and
4 say we want a hundred houses. They said, we'll go with
5 the zoning. Why? Because that's what's known as a by-
6 right development, and you don't have to get a zoning
7 change.

8 What else did they decide to do? Their vision was
9 that it would be an environmentally sensitive and aware
10 project. How were they going to do that? They were
11 going to have sewers. They wanted to take the sewage
12 and pipe it off. And they even got easements to do it.
13 And you heard what happened there. They weren't allowed
14 to do that.

15 The other thing they were going to do is, they were
16 going to have the storm water, instead of flowing off
17 the island out into the marsh, they were going to put it
18 into the island, and have a retention pond so that there
19 would not be water going into the marsh.

20 What else were they going to do? That road went
21 through the buffer along the tree line. We looked at
22 that picture many times, and we looked at where it was.
23 They were going to take that little tree line there
24 where the road went through and snaked its way up to the
25 house, and they were going to re-plant it so that there

1 wouldn't be a road next to the marsh, because the
2 concern was, well, they'll be runoff into the marsh.

3 So, they did -- or they had a vision for this
4 property that shouldn't have been too complicated. They
5 said it usually takes one to two years to get a permit.
6 But here, after seven years, they still didn't have one
7 key approval, and that was an approval from the County.
8 And why? And we submit it was because the County
9 breached the agreement.

10 So, what I'm going to do right now is, I'm going to
11 stand back, and we've prepared a time line. And this is
12 an explanation of the path things took, because we start
13 around 2004, and then, we work our way to April 2013,
14 when we learn that the County has acquired the property.

15 So, I'm going to show different versions of this
16 time line, but let's start with the beginning.

17 All right. We do know from testimony the County
18 was interested in Pinckney Point before our client
19 acquired it, but it was too expensive.

20 All right. Then, we enter a contract to purchase
21 Pinckney Point in 2005. We started the planning process
22 right away. And actually had a letter from the
23 Development Review Team in 2005.

24 All right. Here is a momentous event. This is the
25 beginning of what turned out to be a big delay factor,

1 and that's the lawsuit that was filed by the County.
2 And the County said get those poles out. And John David
3 Pinckney had to take the poles out of the road. And the
4 other thing they did is said, we've got the right to
5 have this a public road, and we're going to have a
6 declaratory judgment that it's a public road. But they
7 later, as you heard, went neutral on that aspect of it,
8 and the case went on and on.

9 All right. In 2007, in April, you heard Walter
10 Nester and Taylor Bush talk about the variance we needed
11 to remove the road from over 3,000 feet of the river
12 buffer and just go through 120 feet, which was denied by
13 the County, even though it was good for the environment.
14

15 Then, here's the big event. This is the global
16 settlement. In 2011, -- well, the years before 2011, my
17 client was stalled. I think Walter Nester used the word
18 they were *stymied*. They were *stymied* because of the
19 access issue and the litigation. *Stymied*. They
20 couldn't do anything. And so, you don't see a lot of
21 major events or happenings between '07 and 2011. They
22 tried the case before Judge Dukes, but he didn't rule.
23 And we had to do something.

24 We had three lawsuits. We had the road litigation,
25 which was not resolved. We had the variance appeal,

1 which was necessary for the development, with the County
2 on the other side. That was not resolved. And the dock
3 case, where the County was appealing the dock. So, we
4 said, all right, the only way to move ahead is to have a
5 global settlement. We entered this global settlement
6 with the County, Exhibit 78. And the main things --
7 this is really important. The main things were we were
8 going to have peace now and be able to proceed. They
9 County agreed to grant all the variances that were
10 necessary to proceed with the project, but we still had
11 to meet the technical requirements of the ordinances.

12 Also, at that time, it was agreed that the road
13 would be private. Private. Even though the County had
14 said it's a public road, everybody agreed, and the judge
15 said it's private. That was a huge and important aspect
16 of that resolution.

17 Accompanying that, Road, LLC, -- and this is where
18 Road enters the picture -- Road purchased that .2 mile
19 dirt strip for 1.3 million dollars. And as the
20 settlement agreement says, the easement was only 20
21 feet, because later, when Pinckney Point would develop
22 the Point parcel, and they needed 50 foot of right-of-
23 way to subdivide, because it had to be paved, they would
24 pay for it. And they were going to pay five million
25 dollars for it.

1 All right. All right. In early 2011, we know that
2 Representative Bill Herbkersman, according to John
3 Irby's deposition, brought to Equity Resource Partners'
4 attention the foreclosure proceedings by BB&T, allowing
5 Equity Resource Partners to buy the note and mortgage.

6 Then, problems arise. May 6, 2011, Tony
7 Criscitiello, who's the head of the Planning Department,
8 says, we're going to insist on individual septic tank
9 permits, even though not in the ordinances.

10 Then, August 23, we get a letter, conceptual site
11 approval, that includes the septic permit requirement.

12 Then, according to the deposition of Mr. Irby, they
13 definitely had, ERP definitely had discussions with the
14 County before the option agreement. Or either the Land
15 Trust, the County, or Equity Resource about the
16 property. So, there were discussions before the option
17 agreement.

18 Then, the option agreement, December 21st. And
19 this option agreement is really important. Because what
20 happened is, my client, Pinckney Point, agreed to
21 transfer the land to Equity Resource Partners, and
22 Equity Resource Partners said, okay, even though we have
23 it, you're going to have the right to buy this land
24 back; you're going to have the right to get it back; and
25 you'll have until August 31, 2012, or, if you want, you

1 can pay 125,000 for that, if you want, you can extend it
2 another six months to February 28, 2013, for
3 \$375,000.00.

4 This is another important date, February 12, 2012.
5 We saw that email a couple times. That is the date
6 Walter Nester finally succeeded in getting Tony
7 Criscitiello to remove the requirement of individual
8 septic tank permits. And the reason I say it's an
9 important date is, the County has said, oh, this was
10 just a three-month issue or a four-month issue. It
11 wasn't. We went all the way from May 6, 2011 to
12 February 9, 2012. That's nine months. Nine months. As
13 Walter Nester said, as Taylor Bush said, we could not go
14 out and do the very involved engineering, which is to
15 lay out the lots, do the infrastructure, we could not do
16 that engineering, which is a hundred thousand dollars
17 plus exercise until we knew exactly what the
18 requirements were. And the engineering was the biggest
19 piece to getting final site plan approval, and we
20 couldn't do it. For nine months, we were delayed.

21 All right. As I said, we were delayed, and as a
22 result, the first option period expires. And I think we
23 read Mr. Bush's email from July 2012, John Irby saying
24 we're going to have to extend it. And they paid
25 \$375,000.00 to go to February 28, 2013. And then, the

1 option expired, but there was a lot of activity going on
2 in the mean time.

3 All right. First Tuesday, November 2012, the
4 voters approve a referendum to re-fund the Rural and
5 Critical Lands Program. So, what would that be, 5th,
6 6th, some time during the first week.

7 All right. And we know from Garrett Budds'
8 testimony that he was contacted by Bill Herbkersman
9 before his birthday, which he said it was November 14,
10 shortly before it, within days of it, to go out to the
11 property. And Garrett Budds went out there with Mr.
12 Herbkersman and Lee Wooddall probably around November
13 12, 13, 14.

14 Meanwhile, the engineers are moving along and
15 trying to get ready the final DRT application. They've
16 been working since they were turned loose in February.
17 And we looked at the bills that John Kunkel talked about
18 showing \$40,000.00 payment. They were working furiously
19 to try to get this done.

20 Okay. So, January 7, 2013, Mr. Irby writes an
21 email to Taylor Bush, and he says:

22 *We understand you'd like to have some*
23 *additional time to exercise your option to*
24 *buy the property. We can conditionally agree*
25 *to this request for a period of 120 days*

1 after the current date set for the expiration
2 of your option, if and after supplying the
3 above prior to February 15, 2013.

4 And then, he went on to say -- and you'll see this
5 email -- he went on to say:

6 We want you to get rid of this problem
7 with the road. We want to have a full
8 easement for 50 feet. If you do that, we'll
9 agree to it.

10 Shortly thereafter, Garrett Budds returned to work.
11 He was out for six weeks or so. Returned in early July.
12 And he said, after he returned, he began discussions
13 with Lee Wooddall of Equity Resource Partners, and they
14 were negotiating deal terms. He said it's like any
15 other real estate transaction. And you saw they came up
16 with three options at different prices.

17 All right. Here's December 22, 2013, Mr. Bush, and
18 this is Plaintiffs' Exhibit 55, emails Mr. Irby, and he
19 has a proposal for extending the option. And he says:

20 Thank you so much for taking the time
21 late Friday to discuss Pinckney. Rather
22 than getting wordy in this email, I will rely
23 upon you to convey to your partners our
24 conversation regarded our efforts to raise
25 capital, which we now feel is achievable,

1 *within a little more time. With that said,*
2 *we respectfully ask that your group*
3 *reconsider allowing us to complete this*
4 *process.*

5 And then, he goes on to say the various things that
6 Pinckney Point's willing to do, including Number 3:

7 *We agree to grant to Equity Resource,*
8 *with no conditions, the right-of-way easement.*

9 So, he came back and he said, all right, we will
10 agree to this. They had a conversation with Equity
11 Resource; and Equity Resource said we aren't going to
12 extend it; and he said I'd like you to reconsider.

13 So, what had happened in the middle? What had gone
14 on between January 7 and mid-February 2013? Well, we
15 know what went on, because Garrett Budds testified to
16 it. He was negotiating with Lee Wooddall, and they had
17 specific terms with the County. And again, Mr. Irby
18 repeated that he was going to let the option expire, but
19 we'll stay in touch in the coming weeks.

20 Then, Mr. Irby and Equity Resource gave us until
21 March 11 to try to close. And by the way, that was the
22 only effort at closing. In his deposition, he said,
23 well, I thought we may have sent documents to Walter
24 Nester on the 28th to close on the 28th. That's not
25 what Walter Nester said. Walter Nester said the only

1 possible closing was March 11, and that did not happen,
2 because they couldn't get the funds, because they didn't
3 have the permits.

4 And then, we have John Irby getting back to Walter
5 Nester, who asked for a little more time, and he said,
6 they're not willing to commit further on the property.
7 We now know why.

8 Then, three days later -- two days later, Garrett
9 Budds presents the purchase proposal to the Rural and
10 Critical Lands committee of the County to the board.
11 Only two days later. And that was not something that
12 was ginned up in two days. And we'll look at it later.
13 That was a very deliberate proposal of three pages. And
14 that is Exhibit 105, Plaintiffs' Exhibit 105.

15 Then, on April 1, Taylor Bush emails John Irby, and
16 as Taylor said, it was a goodwill email. And he says,
17 in the second paragraph:

18 *In our conversations, you did mention*
19 *that you and your partners did not have any*
20 *immediate plans for the property.*

21 So, he's continuing to stay in touch.

22 That same day, the proposal that was presented to
23 the Natural Resources Committee was presented to
24 councils -- excuse me -- the Rural and Critical Lands
25 was presented to the Natural Resources Committee of

1 Council and approved.

2 April 3, 2013, ERP responded to Taylor Bush, who
3 wanted to take an investor the property, and said, okay,
4 you can go out there and take a possible investor. We
5 were still working to get the funding.

6 April 8, council approves the purchase of Pinckney
7 Point for 6,950,000.00 to stop development of Pinckney
8 Point. About a week later, Walter Nester, at his
9 meeting with Josh Gruber, Tab Bendle, and Pat Kennedy
10 and Robert Achurch to express concerns and to say you
11 cannot do this in light of the commitments and the
12 settlement agreement, and in light of the limitations of
13 access in the access easement agreement.

14 Then, he writes a letter, to follow it up, which
15 you will have. It's an exhibit. All that was before
16 the County even entered a contract. So, the County
17 could have walked away. You've got the contract. They
18 didn't sign the contract until April 24th. And the
19 County closed on May 28.

20 So, there we have the facts in terms of the time
21 line, what went on when.

22 So, back to the contract. What did the contract
23 require? And you will have it, 78, and it clearly --
24 you go page after page after page of that contract and
25 it all contemplates that Pinckney Point will be a

1 residential subdivision. It says it on Page 2, 3, 4.
2 And look at the exhibit for the variance action, which
3 is Exhibit B. It says all of this is to accomplish the
4 residential development contemplated herein.

5 The settlement agreement, very important, does not
6 say the County has the right to buy the property, or the
7 County will take over the property, or the land will be
8 used for conservation. I anticipate the County is going
9 to say, well, there wasn't any prohibition. But what
10 you need to consider is whether or not the contract
11 contemplated that the County would take the property.
12 And even Josh Gruber had to say, no, there was no
13 provision in that contract that would allow the County
14 to acquire the property. And why did the County acquire
15 the property? We had the deposition of Gary Kubic that
16 we read into evidence. And he was very direct about it.
17 And we have some excerpts from that deposition where I
18 ask:

19 *When you say a prime piece of property*
20 *for the County, what did you mean?*

21 *Well, it's an undeveloped piece of*
22 *property that has two rivers, and from an*
23 *environmental point of view and from a*
24 *scenic point of view, the County was always*
25 *interested in buying that property and not*

1 to have development on it.

2 What did you understand to be my client,
3 Pinckney Point, LLC's, ultimate objective
4 with respect to the Point parcel?

5 To develop the property for a
6 residential home development.

7 So, he knew that was the objective, and that's what
8 the settlement agreement was all about, to clear the way
9 for that.

10 And then, finally, where we closed his deposition,
11 I asked:

12 Would an absence of access restrict the
13 available uses of the property for the County?

14 No.

15 Why not?

16 Because I think the primary use that we wanted
17 was to prevent development of the property.

18 There was also one other person who was intimately
19 involved in this, and as you know, made the contact with
20 Garrett Budds, and that was Bill Herbkersman. Now, why
21 would Bill Herbkersman be so interested in this
22 transaction, this representative. And he was the one
23 who, on behalf of Equity Resource, contacted Garrett
24 Budds. Well, he stood to profit handsomely if the
25 transaction went down. And we actually have a copy of

1 the closing statement, which is Exhibit 38, Plaintiffs'
2 Exhibit 38, and you will have it. And you will go to
3 Page 2 of that at the top.

4 If you could please -- there you go.

5 Less disbursements on behalf of the seller. So,
6 when a property is sold, there's a closing statement
7 that it says where the money will go. And here, the
8 consulting fee to 4-H Family Trust, LLC, was a quarter
9 million dollars. And that was attested to by John Irby.

10 So, we know why the County did this. They did this
11 for the purpose of thwarting the development of my
12 client. They did it in order to keep the Point from
13 being developed.

14 Now, there was some dispute about when negotiations
15 started. Josh Gruber said, well, we had touch-base
16 meetings with Garrett Budds, and he may have said
17 something about the Point parcel, but that was before
18 the option expired; there was no discussion of financial
19 information. And he also said that, I didn't go to the
20 Rural and Critical Lands Committee meeting.

21 And I'd like you to now consider the testimony that
22 I read from you from Mr. Gruber's deposition that was
23 given before trial. If we could. If you would put that
24 up.

25 I ask him:

1 When did you first learn about Pinckney
2 Point?

3 I first learned about Pinckney Point when
4 it came before the Natural Resources Committee
5 meeting.

6 When was that?

7 I don't recall the date specifically.

8 So, you heard about it at a Natural
9 Resources Committee meeting. And what were
10 they saying?

11 I was there when the presentation
12 proposal -- when the presentation was made
13 as to the proposal.

14 Well, this is totally contrary to what he told you
15 on Friday, because he said he didn't go to the Natural
16 Resources Committee on March 14th. And he also said
17 that he had heard about Pinckney Point before this
18 meeting in these touch-base meetings, but here, he
19 clearly said in his deposition he didn't hear about it
20 until the Natural Resources Committee meeting.

21 Both John Irby and Josh Gruber fall all over
22 themselves trying to say there weren't discussions
23 before the expiration of the option. But Garrett Budds
24 says it like it is. There were clearly discussions back
25 as early as November, and then, money negotiations in

1 January and February.

2 Let's talk about the breach itself, or how we got
3 to this, because the County had been interested in
4 Pinckney Point, but they had not acted on it because,
5 according to Gary Kubic, it was too expensive before my
6 clients bought it. Mr. Gruber's presentation to the
7 Rural and Critical Lands Boards lays it out. And that's
8 Plaintiffs' Exhibit 105. And what's so ironic is that
9 the reasons that are given for the acquisition are those
10 that were created by the County.

11 For instance, in the third -- fourth bullet point
12 down there, we see the property currently has an
13 approved master plan for a rural subdivision, maximizing
14 the waters' edge maritime for 77 units, 77 septic tanks.
15 Well, who approved those units? The County did. That's
16 what their zoning allowed. What about the septic tanks?
17 We tried to have sewer; we asked to have sewer; and the
18 County said you need to demonstrate that there is a
19 health hazard, and we don't think you've demonstrated
20 that. So, we had to go with septic tanks. And then,
21 later, you saw the email from Tony Criscitiello in, I
22 think it was, June of 2011, saying have you considered
23 sewers. Certainly we considered it, but you told us we
24 couldn't have it.

25 Also, the whole thing about runoff, and we will get

1 into this, if you go through it in the jury room, you'll
2 see that it talks about water quality. As Walter Nester
3 brought home the entire water quality issue was being
4 directly addressed, and I've already talked about it,
5 where the storm water was no longer going to go into the
6 marsh. The way it is now, with the County ownership,
7 the storm water goes into the marsh and there's no storm
8 water control.

9 We also had proposed to move and re-plant the
10 entrance road so that, that would be green, but they
11 denied that. So, the County, in effect, was creating
12 the conditions that it would use as the justification to
13 go to the Rural and Critical Lands Committee.

14 And if we would, if we could go to the next page,
15 please.

16 And what were the uses being considered?

17 If we could go down to the very bottom bullet
18 point, please.

19 Historic Homes said:

20 *Could serve as a future Beaufort County*
21 *Parks headquarters, retreat, or public meeting*
22 *space.*

23 Now, Josh Gruber also said that to the newspaper.
24 He was quoted. I read it. Now they say, nope, we
25 aren't going to do that; that was just in there; we

1 don't have any plans for it; didn't really mean it.

2 And if we go to the last page, please. And the
3 last paragraph.

4 *Pinckney Point would be the crown jewel*
5 *of the Okatie Colony, connecting all*
6 *protected properties to date; preserving one*
7 *of the most geographically unique landscapes,*
8 *and offering a central location from which to*
9 *operate a Regional Conservation Park Complex.*
10 *A true eco-tourism attraction.*

11 They didn't want Pinckney Point to develop it,
12 because they thought it was a crown jewel. They wanted
13 it, and they found a way to get it, and that was totally
14 contrary to the purposes of the settlement agreement
15 that said it was to be developed as a residential
16 subdivision.

17 They also, as I said earlier, with respect to
18 Pinckney Point, slowed it down for nine months, without
19 justification. And Hillary Austin acknowledged that the
20 requirement of individual septic tanks was not in their
21 ordinances. And that was something that was placed on
22 them unnecessarily and slowed them down for nine months.

23 As to Road, LLC, what is the breach there? Well,
24 it's that the County is treating it like it's a public
25 road, and the private property is public property,

1 they're contending. They haven't gated it. Their
2 testimony was they had not gated it. Their testimony was
3 there were no signs saying you cannot come here. The
4 testimony was that they treat it like a public road.
5 According to Mr. Gruber, private road just means
6 somebody else owns it and pays for the maintenance, and
7 we can go whenever we want. He treats it like a public
8 road. That's a breach. The owner gets to decide who
9 goes on that property.

10 And again, a contradiction, Mr. Gruber said, well,
11 we've been repairing. And he made a distinction. He
12 said, oh, no, no, no, that's not maintaining it; we're
13 just repairing it. Well, it's private property. He has
14 to get the permission of the owner to do that, and that
15 hadn't been done. So, they're repairing it. Mr. Kubic
16 said, we only maintain and repair roads that are public
17 roads. So, again, they're demonstrating that they're
18 treating it as a public road.

19 And as far as the biggest loss of all to my client,
20 it's that they are treating this in a manner that will
21 never let it be an access to a residential subdivision,
22 or even a regional park, because they said it's just for
23 conservation purposes. And my client, Road, LLC, put in
24 1.3 million dollars, understanding it was going to be a
25 residential development, as contemplated by the

1 agreement. And then, when the County bought it, it's a
2 park. They lost the highest and best use, as Mr.
3 Hartnett said, which was all the value contained in it
4 being an access for a residential subdivision, the only
5 access.

6 The County has all these defenses that they're
7 coming in and saying. And one of the things is, well,
8 the settlement agreement didn't specifically require it
9 be a residential subdivision. You know, the County's
10 right. There's no provision that said, as a matter of
11 law, there's a restriction on this property; it has to
12 be a residential subdivision. No. But the intent and
13 purpose of every line in that agreement was that it be a
14 residential subdivision. The County's saying, well, it
15 didn't say we couldn't buy it; didn't say that. That's
16 right, it didn't say it because nobody contemplated it.
17 And it would be against the purpose of the whole
18 agreement. The whole agreement would be undermined if
19 the County owned it.

20 They say, well, we can do whatever the contract
21 allows, and we did that, and what the law allows. Well,
22 no, you'll hear the Judge's charge, not if it frustrates
23 the purpose of the contract. You can't do it.

24 Many times we heard, well, it's no different from
25 ABC corporation; what if ABC corporation bought that

1 property; wouldn't you be in the same position, you,
2 Pinckney Point; same position.

3 Now, it's not like ABC. ABC corporation was not
4 the permitting agency. And ABC corporation didn't sign
5 an agreement that it would be a residential subdivision.
6 You can't consider ABC corporation, because we're
7 dealing with a party who undertook obligations. It had
8 obligations, and it was required to abide by in good
9 faith and fair dealing, those obligations in what the
10 purpose was.

11 You might also hear, well, hey, guys, Pinckney
12 Point has breached; you know, they were unable to
13 deliver. Well, that's right, because, once the property
14 was purchased, we couldn't deliver. There was no way
15 for us to do it. And the Judge will charge you, if they
16 present us -- prevent us from performing, they can't
17 take advantage of that, because they took the property
18 and kept us from being able to acquire it back. So,
19 they don't get the advantage of that. Plus, there isn't
20 any showing of any obligation we breached to the County.
21 Those were future obligations to Dot Gnann and to Agnes
22 Pinckney, and they all, guess what? dealt with the
23 configuration of the road for the residential
24 subdivision; they dealt with the privileges of being a
25 gated community; and it dealt with all the other facets

1 of a residential community.

2 Let's talk for a minute about the law. The Judge
3 is going to give you the law. And in that charge, she's
4 going to say that a breach includes conduct where
5 somebody knowingly prevents, hinders, or makes more
6 costly the other party's performance. If they hinder
7 the performance of a party or impair it. That certainly
8 happened here. It happened with the sewer delay,
9 imposing conditions that weren't in the ordinance. It
10 happened later when they took the property.

11 The implied covenant of good faith and fair
12 dealing. The Judge is going to tell you the law will
13 imply an agreement by the parties to do and perform
14 those things that, according to reason and justice, they
15 should do -- this is the key -- in order to carry out
16 the purpose for which the contract was made.

17 I've talked about the contract. I've talked about
18 the breaches. Now, let's talk about causation. We have
19 to show that there was a cause of this. They County
20 said, you just ran out of time; you didn't have the
21 money. Well, let's talk about time first.

22 Taylor Bush said if he had 120 days, he could have
23 gotten the final site plan approval. He could have done
24 it. We've shown, I think, you can conclude that, had
25 the County, through Garrett Budds, and later, not been

1 pursuing this property, that Mr. Irby, who sent an email
2 on January 7 saying we'll extend it under these
3 conditions, that it's likely he would have done that.
4 The only thing that changed was that Mr. Budds had
5 negotiated a deal with Lee Wooddall.

6 And very, very, very important is that, when we got
7 to February 28, 2013, we were at the position we should
8 have been in nine months earlier. We should have been
9 in that position May 31, 2012, with nine months to go,
10 because we got totally impaired for nine months over
11 this septic tank issue while the County stalled us out.
12 And in that nine months, there's just no question about
13 it that we would have been able to obtain the approvals
14 and the funding.

15 Now, let's talk about the money. They said, well,
16 you didn't have the money; you didn't go out and get an
17 investor. Well, that's not quite the case. As Mr.
18 Kunkel said, Reinet, which funded Arendale Holdings, the
19 owner of Road, was willing to invest, but they were not
20 going to do it until all the approvals were obtained.
21 It had to be, in his words, shovel ready.

22 But there was an investor who was willing to do it,
23 once we had the approvals. They had already put money
24 in Road, and they were working on it, on a collaborative
25 basis on all these old projects. But they had specific

1 underwriting guidelines, you need to have your permits,
2 and we did not have those permits.

3 They County said, well, really, you didn't start
4 looking for money until Equity Resource Partners told
5 you in February they weren't going to give you the
6 extension. That's not true. We looked for money and
7 located money through Reinet before then, but we hadn't
8 met their underwriting condition.

9 What we did do, when Equity Resource Partners said
10 we aren't going to extend for 120 days, what we did do
11 is, we went out to what Mr. Kunkel said were the capital
12 markets. These are the groups that we don't have an on-
13 going relationship. But he mentioned two. He mentioned
14 Sherman Capital, who came and took a look. And he
15 mentioned Silver Point. And you heard a lot about
16 Silver Point. Silver Point is the group that wanted a
17 right of first refusal on every project. They wanted
18 what he called a scrape. That means every project they
19 had, they wanted some money. And even then, they had
20 not fully committed. They had a term sheet, but that's
21 not a contract. And they still had their due diligence.
22 Silver Point, I would submit, was not money where we
23 could readily grab it and close it. The County's going
24 to argue we could. I just want you to have a clear
25 understanding of the Silver Point arrangement.

1 And I think I mentioned this, but there was only
2 one closing scheduled, and that was March 31st. There
3 was a lot of testimony from John Irby about those sneaky
4 guys, this and that. But you saw in his email, you
5 know, the truth is, in his email of January 7, 2013, he
6 was willing to extend it. He didn't say sneaky. And
7 when you looked at the other emails that he sent, there
8 was no suggestion he was irked at them. And I would
9 like to point out to you, too, that the thing he was
10 referring to, which was the easement and the sale of the
11 property of the road, occurred as part of the master
12 settlement agreement on January 14, 2011, before, before
13 they acquired it.

14 And the last element. We've talked about contract,
15 the breach. Now, we have to talk about damages. And
16 the damages, according to the law, must be foreseeable.
17 That means they have to be within *the contemplation of*
18 *the parties*.

19 Now, as to Pinckney Point, we know they were
20 considered and with the contemplation of the County.
21 Gary Kubic testified in his deposition he was not
22 surprised at all that our clients had spent -- or
23 Pinckney Point had spent almost ten million dollars.
24 So, he knew, if the property was gone, we're going to
25 lose that money.

1 Road, the County would have known, too, because Mr.
2 Kubic signed the settlement agreement that said we're
3 paying 1.3 million dollars, and that it will be bought
4 back by Pinckney Point at such time as it needs its 50-
5 foot right-of-way.

6 The damages can't be speculative in the sense you
7 just can't imagine things. There has to be some
8 reasonable basis for the calculation. But they don't
9 have to be known to with precision down exactly so that
10 you know it's a specific dollar amount. We can give you
11 an amount that we believe to be reasonably accurate.
12 And that's exactly what John Kunkel did for Pinckney
13 Point.

14 Now, I'm going to, at this time, talk about the
15 damages to Pinckney Point. And we really put up two
16 measures of damages. And the first is the totally lost
17 investment, and that is dollars in that we cannot get
18 out when the County slowed us down and took the
19 property. And that number, which is on Exhibit 18,
20 Plaintiffs' Exhibit 18, is \$9,549,431.00.

21 We, also, just to show that we kept going with the
22 project after the settlement agreement, spent close to
23 \$960,000.00 after January 14, 2011. And as I said
24 earlier, of that nine million five, five million seven
25 was just the money that we put in to acquire the land.

1 So, that is our out-of-pocket loss.

2 Now, the alternative -- and you cannot do both --
3 but the alternative is you would award the present
4 value, the current value of the lost profits. And
5 that's composed of two elements: money that Pinckney
6 Point would have received from the sales of the
7 property; and the management fees from managing the
8 property.

9 And Mr. Kunkel gave a very detailed explanation of
10 this calculation. The revenues and sales were
11 calculated by establishing a price with a local
12 appraiser, and talking about absorption with a local
13 appraiser, and also, mainly, the real estate community
14 here. The cost, he actually had actual cost estimates
15 from the engineers, what it was going to cost to price
16 the infrastructure. And most important, he considered
17 what it's going to take to get an investor. And we'll
18 look at that in a second.

19 But he considered that the investor was going to
20 have to be paid first and have to get its share of the
21 profits. It would have to get a ten percent return on
22 everything it put in. It was going to have to get 55
23 percent of the lot sales. And when you looked at that,
24 even though the sales might have been in the 50-million-
25 dollar range, when you took out the investor number, he

1 said the range of loss for lost profits would be eight-
2 and-a-half million to five million seven.

3 And if we could, could we see Exhibit 20, please.

4 This is that spread sheet that Mr. Kunkel did in
5 order to derive these values. And in doing it, I just
6 want to show you, if you go to the bottom on the left.
7 Thank you. This is where he's talking about the money
8 out to the investor. So, the investor takes out almost,
9 when you look at it, forty million, over forty million,
10 because it gets its money back; it gets a preferred
11 return, plus, it gets the profit sharing.

12 So, he was not considering that the investment was
13 going to be cheap. He knew what the terms were. He
14 knew what Reinet was going to require, if we had the
15 approvals. Thank you.

16 So, when u decide this, you would make a decision
17 as to whether, if you find that we've established the
18 other elements of our case, and I submit we have, by
19 more than a preponderance of the evidence, you would
20 have to pick between the out of pockets and the lost
21 profits, because the lost profits consider some money in
22 the project.

23 Now, Road, if we could put up Road.

24 Now, I want to talk about this a little but,
25 because we had Tommy Hartnett testify, and he testified

1 vigorously, he was the entertaining guy, who testified.
2 And he said that the value of that road tract, that .2
3 mile, its highest and best use, its highest and best
4 use, was as an access, the sole access to a residential
5 subdivision. And if that was the case, it was worth
6 five million.

7 He even went on to say, well, you know, it could
8 still, if it was developed or used in some way that the
9 public was going to use it, it could still be five
10 million dollars, maybe. But the fact is, the County's
11 told us they have no intent to do anything with this
12 property; they're going to let it be fallow. So, what
13 has the County done as a result of buying it and letting
14 it just be fallow? They have prevented us from
15 realizing the value of the property. So, at the bottom
16 is the total lost value that would have been obtained,
17 had we been able to sell it back for what it was worth
18 to a residential sub developer.

19 On the top is the money in. If you decide that,
20 that's speculative -- and we don't think it is -- you at
21 least have the value that we put in that we're never
22 going to get back, if the property is just a
23 conservation land that's not used for anything. It's
24 just worth a nominal value now. I think Mr. Irby said
25 it's a five thousand dollar piece of real estate if you

1 aren't going to have to buy it to have access.

2 So, that is the money in. And you can choose one
3 or the other. You, obviously, would not add the two.

4 I am going to have a chance to come back and talk
5 to you after Mr. Achurch, but I wanted to lay out for
6 you all the important aspects of our case, because we
7 have the burden of proof. We have to prove to you
8 contract breach, cause, and damages. We suggest we've
9 done that. We've done it by more than just a
10 preponderance of the evidence. It's not a criminal
11 case. We just have to show the proof more likely than
12 not is as we say it is.

13 Thank you. I will return for just a few remarks, I
14 promise you, next time.

15 THE COURT: You all okay? Does anyone need a
16 break? No? Yes. Okay. Ladies and gentlemen of the
17 jury, you're going to get a very brief break. Again, do
18 not discuss this case. It wouldn't be appropriate to do
19 so. Refresh yourselves and come on back out. Okay?

20 JURORS LEAVE COURTROOM 11:14 A.M.

21 BAILIFF: Jury's clear.

22 THE COURT: Thank you. All right, we'll take five
23 minutes and come back. Thank you.

24 MR. ACHURCH: Thank you, Judge.

25 THE COURT: Thank you.

1 OFF THE RECORD 11:14 A.M.

2 BACK ON THE RECORD 11:23 A.M.

3 BAILIFF: All rise. This Court's now in session.

4 THE COURT: All right. You ready to go? Everybody
5 ready? Mr. Achurch? All right. Rick, bring them in.

6 BAILIFF: Jury's entering the courtroom, your
7 Honor.

8 THE COURT: Thank you.

9 JURORS ENTER COURTROOM 11:24 A.M.

10 THE COURT: You may be seated. All right. Mr.
11 Achurch.

12 MR. ACHURCH: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. ACHURCH: Counsel.

15 CLOSING ARGUMENT ON BEHALF OF THE

16 DEFENDANT, BY MR. ACHURCH:

17 MR. ACHURCH: Mr. Foreman, I appreciate all your
18 all's time this week. I do echo what Mr. Walker said in
19 that regard. I do very much appreciate your all's time
20 and energy. It's not something anyone wanted to be here
21 doing, but it is very important to the process, and it's
22 very important to our entire legal system. And it's
23 greatly appreciated.

24 This is a very important case to Beaufort County.
25 You know, a lot of times people go, oh, well, it's just

1 the county or it's just the government. But the Judge
2 will instruct you that you have to treat the County like
3 everyone else. They get treated like an individual just
4 like everyone else.

5 And the County's not the county. It's not a
6 building. Okay? They County, Josh Gruber, Gary Kubic,
7 Hillary Austin. All the people who work for the County,
8 that's who makes up the County. So, it's not some pie-
9 in-the-sky thing. It's the people.

10 Now, the plaintiff in this case has the burden of
11 proof, and we don't believe they've met that burden.
12 The County doesn't have to prove something didn't
13 happen. The plaintiffs have to prove, they have to tip
14 the scales. They have to push these scales over. If
15 they don't tip the scales, or they go the County's way,
16 the County wins. And we don't believe they can tip
17 those scales.

18 I'm going to go through the evidence that we
19 presented, which I think is very consistent with what I
20 told you we were going to present when I got up here and
21 talked to you guys earlier. As I go through the
22 evidence, I want you to remember that what I say, what
23 Mr. Walker says, it's not evidence. I am going to go
24 through the evidence and tell it to you the best that I
25 recall it. If you think I've recalled it incorrectly or

1 you remember differently, then, you have to go with your
2 recollection of what you heard the testimony to be.

3 One thing that the Judge will instruct you as far
4 as when you're looking at the witnesses and hearing the
5 witnesses, is that you need to judge their credibility
6 or their believability. You should look at any
7 potential gain the witness might have or any
8 relationship the witness might have to the parties,
9 because that's important. Where is this person coming
10 from.

11 This is a case about a development gone bad. It's
12 not a case about the County trying to, you know, take
13 advantage of someone or mess them up with their open to
14 do a development. It's a development that went bad.
15 Did the County want to preserve it? Sure, they County
16 did want to preserve it. We paid seven million dollars
17 to preserve it. We can't say we didn't want it. But
18 the developers had every chance in the world to get this
19 done, and they couldn't do it, and it was through no
20 fault of Beaufort County. It was their own doings.

21 When the County contracted to buy this property,
22 neither Pinckney Point, LLC, nor Road, LLC, had any
23 interest in it whatsoever. They had no legal right to
24 it. Their contract had expired. It was fair game for
25 anyone.

1 As far as the contract that's being sued over,
2 Beaufort County did everything in that contract it
3 agreed to do. We've gone far afield and we've heard
4 about, oh, 2004 and 2006 and -- we didn't sign the
5 contract 'til January of 2011. We couldn't possibility
6 have breached a contract before we had a contract.

7 The important part is, the contract that we're
8 suing on -- and we did what we were supposed to do.

9 The case isn't about how nice a development was
10 going to be. It's not about whether you like to --
11 whether you think you'd rather have development. It's
12 not about whether you'd rather have preservation. It's
13 not about whether you agree with Mr. Nester that
14 building 74 homes and putting 30 dock slips on the
15 property is better than the environment than not putting
16 anything on it. It's about did we abide by the terms of
17 our contract.

18 And one thing I think is very interesting. And the
19 plaintiffs have made a big deal out of Walter Nester's
20 letter of April 17, 2013. That's Plaintiffs' Exhibit
21 Number 32. It's Plaintiffs' Number 32, and I would
22 encourage you to look at that letter. The letter is
23 important. And Mr. Nester wrote, he says in the letter
24 that he wrote it to ensure him we understood his
25 client's position with regard to use of the road.

1 Nowhere in that letter, nowhere in that letter -- now,
2 Mr. Nester was involved in all the road litigation and
3 all these things that happened before the subject
4 settlement agreement. He drafted the documents. He
5 drafted the settlement document. He was involved on all
6 that litigation. And when he wrote that letter, he did
7 not one time say you're breaching the contract.

8 What he says is, well, here's how -- we think you
9 get to use the road. Now, we disagree with him. That's
10 what he said. Here's how I think you get to use the
11 road. He mentioned breach of settlement one time. And
12 what he said in there was, if you condemn it, the road,
13 you're breaching. We hadn't condemned it. We're not --
14 we hadn't condemned it. We're not condemning it now.
15 We have no plans to condemn it.

16 He never one time mentioned a breach in that letter
17 about we're breaching it as to Road or we're breaching
18 it as to Pinckney Point, LLC. You can only conclude, at
19 that point, that Mr. Nester, their lawyer, who followed
20 all this litigation and was involved in it and who
21 drafted the contract, didn't believe it. Didn't believe
22 we were breaking the contract. He's their lawyer. He's
23 a good lawyer. You heard him. He's very thorough.
24 Don't you believe that, if he thought we were breaching
25 the contract -- he wrote the letter to try to give his

1 clients another chance to try to buy more time with ERP,
2 don't you think he would have broken out everything. He
3 didn't. And the reason is, he doesn't believe we broke
4 the contract.

5 Mr. Nester says, in his letter, that it was not
6 contemplated the County would purchase the property when
7 we signed the agreement. Well, he's right. We didn't
8 contemplate we would purchase the property. We
9 contemplated the plaintiffs would move forward and
10 develop it. That's what the County agreed to. They
11 didn't do it. We had no plans to purchase the property
12 when we signed the agreement. We wouldn't have signed
13 it if we had that.

14 The County's purchase of the property direct don't
15 affect the title or ownership to the road tract one
16 iota. So, we didn't -- we only bought the Pinckney
17 Point tract. Okay. They still have everything they
18 ever had.

19 And by the way, that was a separate agreement, as
20 is noted in the settlement agreement, which plaintiffs'
21 counsel pointed out. And it was Mr. Kunkel who
22 convinced Mr. Bunner to buy that. It wasn't Beaufort
23 County. It was Mr. Kunkel.

24 This is a case about a development that failed.
25 BB&T foreclosed on the plaintiffs' loan. Mr. Bush said,

1 well, we always pay our bills; we weren't in -- we
2 weren't in default; the loan was just due. Mr. Kunkel
3 says, no, no, we were past due; we weren't paying the
4 interest; and they foreclosed on our loan.

5 All this, mind you, before the settlement
6 agreement. Okay? The bank had a loan balance of eight-
7 and-a-half million dollars. The plaintiffs' walked away
8 from that. The bank foreclosed. They walked away from
9 an eight-and-a-half million dollar balance.

10 When the bank foreclosed, they said, oh, it's your
11 fault the development closed -- failed. We read
12 portions of their answer into the record. Their answer
13 to the bank's complaint -- and it's an exhibit in
14 evidence; it's Defendant's Number 1 -- says, oh, it's
15 your fault; we had this all worked out; we had it all
16 worked out with Ms. Pinckney; now, we're not able to --
17 the County's not even in the agreement yet; this is 2010
18 -- we had it all worked out with Ms. Pinckney, and then,
19 you messed us up because you wouldn't give us a loan,
20 even though we weren't paying the interest.

21 So, the development failed, they allege -- the
22 County doesn't allege it -- they allege in their answer
23 the bank caused them to fail.

24 Mr. Bush came up here. One of the first things he
25 says, well, the County said we had to do sewer. Who

1 told you that at the County? Oh, I can't remember, but
2 they told us we had to do sewer. Well, Mr. Nester got
3 up there and straightened that out, as well. They
4 County never told them to do sewer. They had an
5 engineer. I think it was Edward Pinckney, went out and
6 tried to do this with sewer. Had they talked to Mr.
7 Nester, or another who had read -- or even Ms. Austin,
8 who's available for people to talk with, they could have
9 told them right up front, you can't put sewer to this.
10 As Nester said, if you're more than 300 feet away, you
11 can't hook up to the sewer. And that is so, as Ms.
12 Austin said, so we don't have sprawl. You put sewer to
13 that, then, all these other parties go on there. And
14 matter of fact, in the plaintiffs' in their agreement
15 with Ms. Pinckney agreed, we won't have sewer. But if
16 they tore off and got sewer, it's for their own doing.
17 There's nobody at the County that told them. And there
18 was a -- the first letter in October of 2005 said you
19 can't put sewer in here. And that's '05. They bought
20 the property in 2006. Okay. So, they knew that. And
21 it wasn't something the County kind them to do. And
22 that is the October 2005 letter, we told them no have --
23 can't have sewer. That's Defendant's Number 2.

24 The Plaintiffs' complaint in this case says that we
25 agree that it will be a residential community, because

1 we gave them entitlements. That's their complaint. We
2 read a portion of that into the record, through Mr.
3 Bush. But now, they're saying the development failed
4 because you didn't give us entitlements. It can't be
5 both.

6 They blame the road litigation on the County.
7 Okay. This is truly disingenuous. Truly disingenuous.
8 Mr. Bush, well, you had us tied up in litigation for
9 three years over the road. The original purchase price
10 of this property was fifteen-and-a-half million dollars,
11 according to Mr. Kunkel, round numbers. What's a
12 hundred thousand? Fifteen-five, fifteen-six. It was
13 fifteen-and-a-half million dollars.

14 Mr. Pinckney, John Pinckney, -- of course, this is
15 Pinckney Colony Road, so everybody down there's a
16 Pinckney. John Pinckney just sold them the property;
17 took a five-million-dollar reduction in price, from
18 fifteen million to ten million dollars, because the
19 thought that would delay the closing. Okay. So, the
20 plaintiffs' knew full well, when they went into this
21 thing, they were going to have issues with access. If
22 the County obtained a road -- you'll hear there's
23 evidence about a twenty-foot easement. If the County
24 obtained a road through maintaining it, it's a twenty-
25 foot easement. They had to have road anyway. They

1 couldn't do a development with a twenty-foot easement.
2 They couldn't do it when it was there. They were going
3 to have to make a deal with Ms. Pinckney the whole time.

4 Mr. Pinckney sold it because it was going to be
5 delayed. And I think Mr. Kunkel said, well, he might
6 have been smart. You know what? he might have been
7 smart, because there was a litigation over it. And to
8 blame the County -- we found an email from Walter Nester
9 to Simon Fraser, who represented John Pinckney, who was
10 the seller, it's Exhibit Number 24 of the defendant's,
11 October 20, 2005, when they were anticipating and
12 talking about filing an action. Well, filing an
13 action's a complaint. So, they're talking about doing
14 that before. It was only when Mr. David Pinckney put
15 poles up in the road that the County had to get
16 involved.

17 Mr. Bush said, well, we're in this because the
18 County didn't defend its position. Well, Mr. Nester
19 says, well, you didn't have a deed to it. He agreed --
20 we sat at the same trial table together. My firm and
21 his firm sat at the same trial table together and put
22 forth the County's position. That's not thwarting
23 development. That's not working against the developer.

24 The County was willing to let the court decide. We
25 had no major stake in the outcome of the case. If it

1 was a public road, we'd keep maintaining it, the same
2 way we always did. If it's a private road, we get rid
3 of the maintenance. Truly, after the poles got out of
4 the road, this was an issue between the developers and
5 Ms. Pinckney, what could they -- what could they agree
6 to. Pinckney Point had to have, had to have, this road.
7 If the court ruled that it was a private road -- and Mr.
8 Nester agreed to this -- Pinckney Point could not
9 develop their property. They would not have had the
10 fifty feet. Pinckney Point had to have this road.
11 They're blaming the County. Oh, you had us -- we got
12 required to settle. No, you settled because you had to
13 have it.

14 When the County got presented with the settlement
15 agreement, they signed it. We got two things out of it.
16 We got the end of litigation, and we don't have to
17 maintain a road anymore. And that's really what our
18 interest was. As soon as they came to some agreement,
19 we did it. And remember, they had a settlement with
20 Agnes, Agnes Pinckney, in 2009. We weren't a part of
21 that. The County didn't know about it because they
22 couldn't -- because Pinckney Point didn't have any money
23 to pay for it. Finally, when the settlement was
24 reached, there was an amended agreement, and Road bought
25 it.

1 They talk about the dock appeal. Oh, the County
2 held us up in a dock appeal. Well, what we learned from
3 Mr. Nester was, after Mr. Bush testified, that Pinckney
4 Point filed their own appeal of the DHEC rule. They had
5 an appeal going with the DHEC. Okay? Beaufort County
6 got in later. Beaufort County got in first. So,
7 Pinckney Point and DHEC were in this dock appeal before
8 and after the County was involved.

9 Gary Kubic told us, why did you appeal the dock
10 issue? Well, we were concerned about -- we're concerned
11 about having ten docks with ten -- I'm sorry -- three
12 docks with ten slips apiece. We're concerned about what
13 would be basically a marina. And for the County to
14 appeal it isn't bad faith; it's not a breach of the
15 contract; it's the County is the person who has to look
16 out for both sides, doing what it needed to do to
17 protect people the best they can. If we feel like
18 something's trashing the environment, if we feel like
19 there's going to be a marina-type thing out there with
20 gas in the river, we're obligated to do something about
21 it. It's not bad faith, and it wasn't meant to slow
22 them down. And again, that's before the settlement
23 agreement.

24 With regard to the variance, variance is asked for
25 from the ZBOA, the Zoning Board of Appeals. That's not

1 County employees. That's a citizens' body. Volunteers.
2 They can't give a variance to move a road when there's
3 issues over who has the road. And again, Pinckney Point
4 was as involved in who owned the road as anyone else.
5 they were disputing ownership. It was the neighbors and
6 the developers were like this. So, how is the ZBOA
7 going to give you a variance to the road when we don't
8 know who owns it?

9 Pinckney Point had an agreement with Agnes Pinckney
10 in 2009. The County's not involved in that. What it
11 shows you is, them working with her outside of us to
12 resolve this litigation. When we got presented with the
13 -- with the contract, we agreed to it. We agreed to do
14 two things. Agree the road's private, and give a
15 variance. And we did those two things. The order got
16 issued by the court. The variance, it's right in the
17 settlement agreement. They got it.

18 Again, anything that happened before that
19 settlement agreement, all the things I talked about,
20 they're not relevant to the contract. They couldn't be.
21 How could we breach a contract? We didn't have a
22 contract.

23 The very contract they're suing about is evidence
24 that the County was letting them move forward with the
25 development. We're not stopping them. We didn't have

1 to settle the variance action. If we were stalling, we
2 could have let it go. Those things take years. If we
3 were stalling, we didn't have to agree to the road
4 settlement. We could say, no, no, we want the court to
5 rule.

6 There's no delay. Mr. Nester didn't testify about
7 any delay. He said, when the County got it, we agreed
8 to it. And remember, all the County wanted -- and
9 everybody said this, everyone of the plaintiffs -- how
10 did that thing get started? Oh, and they put poles in
11 the road. That's what Nester's letter to Mr. Fraser
12 from 2005, well, hey, if the County doesn't file suit,
13 we have to. And I guess Mr. Pinckney did them a favor
14 by putting the poles in the road, because, then, the
15 County had to step in and do their job.

16 The settlement agreement, Counsel went to great
17 lengths to point out the settlement agreement
18 contemplated development. It did. It did. We all
19 contemplated that the plaintiffs would move forward and
20 develop the property. They had the green light. They
21 didn't do it. We didn't have to -- if the County had
22 eye and was going to -- wanted to cheat them out of the
23 property, didn't have to sign this settlement agreement.
24 I agree a hundred percent, and the County agrees a
25 hundred percent, that, that agreement contemplated

1 development. It was -- we were saying, go ahead; yeah,
2 we'd love to preserve it, but you got it; go develop it.

3 According to Mr. Kubic, who's the County
4 administrator, he viewed that as an open to move
5 forward; got rid of the litigation. That was their
6 chance to move forward and develop the property.

7 Now, it wasn't a rubber stamp. They still had to
8 go through the rest of the process, like everyone else.
9 They not being picked on. Everyone else has to go
10 through this. It did resolve the variance issues; it
11 resolved the road issues. And again, the resolution of
12 the road issue resolved the variance issues. Once we
13 had an answer to who owned the road, we're able to give
14 you the variance. Okay.

15 From the point of signing the settlement agreement,
16 to today, the only issue that arose was the septic tank
17 issue. And there's lots of factors that go into these
18 development agreements. The County doesn't give
19 everybody a development agreement -- or approval to
20 develop a property. We can't do that. We'd have to --
21 again, we represent the developers and the other people
22 and the people who are buying these homes.

23 The only issue that came up was the septic tank
24 issue. Was that bad faith on the County? No, it wasn't
25 bad faith on the County. I'll show you Plaintiffs'

1 Exhibit Number 43. And that's a letter from Mr. Bush.
2 And you might remember this. Mr. Bush wrote a letter to
3 his lawyer, Mr. Nester, complaining because DHEC had
4 changed their rules. And he said, hey, Walter, write
5 DHEC and contact DHEC and you might have to go above
6 this guy's head, get them to change their mind, I think
7 they're wrong. But it wasn't the County who changed the
8 rules. It was DHEC who changed the rules.

9 Mr. Nester was successful with DHEC. He convinced
10 them to, basically, grandfather this. The County
11 accepted that. Mr. Nester worked with Josh Gruber. He
12 worked with me. We worked with him to resolve that
13 issue. That wasn't a stall. It wasn't bad faith. DHEC
14 changed their rules.

15 We agreed to accept that and grandfather that. But
16 at the same time, we have an obligation to protect folks
17 who are buying a lot. Their estimates are these lots
18 are going to be 1.1 to \$650,000.00 is the cheap one.
19 And so, when you buy a lot for a million dollars, you
20 want to be able to get a septic tank on it. You want to
21 be able to flush the toilet.

22 Ms. Austin told you of experiences where people
23 have gotten these blanket permits, oh, and the lot will
24 perk, but you've got to put the septic tank in the set-
25 back line, and you can't do that. It's not bad faith.

1 She's trying to make sure that someone who buys that lot
2 can get a septic tank on it and not have to -- not have
3 to -- will not be able to build a home.

4 Josh Gruber and Walter Nester came up with some
5 mutually agreeable language. Mr. Nester agreed to it.
6 And the result was we put some language on the deed
7 information so that these folks would know that they had
8 to go, you know, that maybe they needed to check their
9 permit out. And there's nothing wrong with that.

10 And as a reminder, well, we talk about you have to
11 get a permit for it; and you don't even know what kind
12 of house you're going to build; wouldn't that be awful.
13 Well, that's what the law -- that's what the rule is
14 now. As Mr. Nester said, that's what DHEC requires.

15 So, what Ms. Austin was asking them to do is the
16 same thing that DHEC asks you to do now. This was not
17 an effort by Ms. Austin to stall their development so
18 the County could buy it. It wasn't an effort to stall
19 at all. Ms. Austin didn't know they were in
20 foreclosure. She didn't even know Pinckney Point didn't
21 even own it anymore.

22 Basically, the nuts and bolts of it is, if you find
23 the County breached this contract and acted in bad
24 faith, you have to believe it was Ms. Austin's fault;
25 that Ms. Austin held them up so the County could do

1 that. There's no evidence that Ms. Austin had anything
2 but good intentions. She's got to look out for
3 everyone. Lot's of times developers don't like it, but
4 that's her job.

5 Even Mr. Nester said he couldn't say there was any
6 ill will on her behalf or the County's behalf. Mr.
7 Nester said the only thing that ever came up with this
8 whole thing were septic tank issues.

9 The plaintiffs were given their conceptual approval
10 in August 2011. Okay. That was less than two weeks
11 after they submitted for it. Now, there's lots of times
12 they were discussing septic before that, but the first -
13 - you've probably heard -- maybe the ladies, not so much
14 -- you can't get kissed if you don't ask. Okay. Well,
15 you can't get an approval until you come in and ask for
16 an approval.

17 They came in, in August 2011 and were given the
18 approval of the conceptual plan. That's your green
19 light. You can go ahead and develop this property. You
20 can do it. All you got to do is go out and do what you
21 say you're going to do. Then, it is a rubber stamp.
22 Okay. You're done.

23 Any issues with the septic tanks were resolved by
24 February of 2012. February 2012, more than a month -- a
25 year and a month before all their ability to purchase

1 had ran out, when ERP finally gave up on them, Equity
2 Resource. They had this for a month. A year and a
3 month. How long could an engineering plan take? Well,
4 we don't know, because there is no engineer who came to
5 trial. Sometimes you can tell as much about what -- by
6 witnesses people call as they don't call. Where's the
7 engineer? Oh, I could have gotten this done, but I
8 didn't have time. There's no engineer that came and
9 talked to us about that.

10 As late as November 12, and even into the early
11 months of 2013, there's a checklist in there, and it's
12 Defendant's Number 10. Defendant's Exhibit Number 10.
13 And you'll see in that checklist all these other places
14 that they needed to go that they didn't have their
15 permits and things from. And where are those people to
16 say, oh, I could have done it. Okay. They were not
17 waiting on the County for anything after really the
18 August 11th approval, and certainly not after February
19 2012, not one thing that they -- they didn't ask the
20 County for. As Ms. Austin said, they never applied.

21 If they were waiting on something else, it wasn't
22 the County. There is no link, there is no link -- this
23 is what they're trying to do -- there's no link between
24 permitting and their loss of the land. None.

25 Mr. Bush testified we lost millions because of the

1 foreclosure. Well, he's right. He didn't want to admit
2 that, but he did, because we had already asked him and
3 he answered the question. They lost millions because of
4 the foreclosure.

5 They lost the land. That happened before this
6 contract. They lost the land because they couldn't get
7 the money to buy it back. There's no link between them
8 not getting the money and the permits. Their ability to
9 get money isn't related in one way to anything the
10 County did.

11 This is interesting testimony, I thought. There's
12 a letter from Mr. Nester that says, well, their lender
13 quit making advances in 2007. They were in default on
14 their loan in 2009, again, before out settlement.

15 Mr. Kunkel testified that he didn't even start
16 looking for capital until Equity Resource said they
17 weren't going to extend their option. Now, Mr. Kunkel
18 looked like a pretty smart fellow. I mean, he's got a
19 CPA, and he went to college and all that. If you do
20 believe that testimony, it was a really bad idea. It
21 was a bad idea to not start looking before. And that's
22 not something the County asked them to do. The County
23 didn't say, wait, don't look.

24 They knew there was no money to buy this back.
25 They knew they needed money for over three years. They

1 ran out -- they ran out of time in March of 2013. They
2 were getting foreclosed on in 2010. Now, you know you
3 got to have some money.

4 Mr. Kunkel said, well, we had to have our
5 entitlements to get the money. There's not a witness,
6 not a witness to come up here to say we would have given
7 them the money if he had his entitlements. There's not
8 a witness to come up and say we didn't give them the
9 money, because he didn't have his entitlements.

10 This is interesting, too. This Reinet. Reinet
11 says they require all their entitlements before they
12 give money on a project. Well, let's remember a couple
13 of things, because there's all these LLCs and all that.
14 But Reinet owns some of Arendale Holdings. Arendale
15 Holdings owns all of Road, LLC. Pinckney Point is owned
16 in part by the Stokes Land Group. Arendale Holdings
17 owns part of Stokes Land Group. Reinet was already
18 invested in the project. They were already invested in
19 the project. How could they require entitlements to
20 invest in a project when they're already invested in the
21 project?

22 Pinckney Point, LLC, had a contract to buy this
23 land. They were looking at a fifteen-and-a-half million
24 dollar purchase. They had money for that. And how many
25 entitlements did they have then? Zero. Not one. The

1 truth is, it's the capital market. It's not the
2 entitlements, and it's not something the County did.
3 It's the capital market. And it's the market. Just
4 like how much money we make depends on this market,
5 which we have no control over whatsoever. People's
6 willingness to invest has a big factor on what's the
7 market doing.

8 They had fifteen-and-a-half million dollars to
9 invest. Not entitlement, number 1. Well, then, we
10 learn -- I asked them about 2007; you knew from 2007 you
11 needed an investor. Well, we got another one. 2007.
12 Here, again, another investor, no entitlements.

13 Then, we learned they had an investor. They talked
14 to Silver Point and they had someone willing to loan
15 them the money. That's Exhibit Number 20. I'm sorry.
16 That's Number 18. He says, oh, but we didn't have a
17 term sheet. And I gave the defendants Exhibit number 20
18 that says, well, here -- we didn't like their term
19 sheet. That's a gamble on a gamble. I mean, at this
20 time, their option has expired, and they decided they
21 don't want to take the money. We couldn't get any
22 money. They went so far as to have a closing date set.
23 And you remember, then, I think it's Number 19,
24 Defendant's Number 19, where Mr. Kunkel had -- for him
25 to sign on this loan. And then, went so far as to do

1 the closing documents. But we couldn't get our
2 entitlements -- the money because we didn't have
3 entitlements. They had the money. It's a gamble on a
4 gamble.

5 There's an email. It's Number 15. And it says,
6 you know, the option's expired; let's just do this;
7 let's just try to -- let's just try to extend this
8 option some more, instead of going with this loan. I
9 mean, this thing's getting ready to close out on them;
10 they've got the money; and they decide, well, let's take
11 a chance; let's take a chance and try to get it
12 extended.

13 And that email is after their option period had
14 already expired. Their option period -- this is in
15 March. Their option expired in February.

16 Another thing about raising the money, and this is
17 Defendant's Exhibit Number 21. Before this was in
18 litigation, and people don't know how things are going
19 to roll around, Mr. Bush write Mr. Irby a letter on
20 April 1, 2013. Says -- this is Number 21, Defense
21 Number 21:

22 *I know -- we -- our efforts were*
23 *genuine, but we could not raise the money*
24 *due to the tightness of the capital markets.*

25 He didn't say, oh, because we couldn't get our

1 permits. He didn't say because the County's stalling
2 us. He didn't say because we couldn't get our
3 entitlements. He says, *due to the capital market*.

4 That was a true statement. That was the truth.

5 Oh, ERP would have extended this if the County
6 hadn't been involved. They didn't call John Irby at
7 Equity Resource Partners. We had to do that. What did
8 Mr. Irby say? Well, he said, about the time we were
9 discussing the extension is when we learned of this
10 maneuver; when we learned that these guys bought this
11 road and they put it in the name of Pinckney Point, LLC.
12 Why'd we do that? We didn't want it to fall under the
13 collateral; we didn't want the bank to get it. Well,
14 who's the bank now? The bank's Equity Resource
15 Partners. It was a maneuver. I call it a poison pill.
16 They don't like that term. They called it strategy.
17 Either way, it's the same thing. They maneuvered it so
18 that this couldn't come under Equity Resource under
19 their collateral.

20 Mr. Irby's testimony was, at that point, we
21 questioned their integrity. They didn't call -- they
22 didn't call them down here to say we'd have done it. We
23 had to call them. He questioned their integrity. He
24 referred to the maneuver as slick or slimy, and he felt
25 it was clearly some attempt to impede their ability to

1 develop the property.

2 The plaintiffs', through their own actions, made it
3 so the property couldn't be developed. Pinckney Point,
4 an LLC, made it so Pinckney Point couldn't develop the
5 patient. You can't develop the property without that.

6 When the option ran out, Equity Resource was free
7 to sell it to whoever they wanted. Counsel's right.
8 There was no prohibition on us buying it. You can't put
9 in a contract, well, how many people on the planet
10 should we put in here that can't buy it. You don't do
11 that.

12 When the option expired, at that time, at that
13 moment, even though they gave them an extension of
14 eleven days, they decided not to take -- it's not they
15 couldn't take it; they decided not to take it --
16 Pinckney Point had no rights on the property, and at
17 that point, they had no rights in the settlement
18 agreement either. The settlement agreement relates to
19 the land. They don't own the land.

20 When the option ran out, Pinckney Point couldn't
21 fulfill its obligations. They couldn't fulfil their
22 obligation. It wasn't because the County cheated them.
23 It was their own doings. They took this chance, and
24 that's what they did.

25 And Counsel's also right. If ABC, LLC, XYZ, LLC,

1 bought this property -- and ERP could sell it to anyone,
2 Pinckney Point would be in the exact same position
3 they're in now. They wouldn't own the property. They'd
4 be in exactly the same spot.

5 Mr. Nester testified there was no legal -- he's
6 their lawyer. He wrote the contract. There's no legal
7 prohibition against Beaufort County buying the property.

8 Mr. Kunkel said, well, there's no requirement in
9 the development -- in the settlement agreement it be
10 developed. Yeah, we did contemplate it. We all
11 contemplated it. They were free to move ahead.

12 Gary Budds said he was contacted by ERP, and went
13 to the property for the first time in November. He was
14 contracted by Bill Herbkersman, who was working for
15 Equity Resource Partners. And as you'll see from the
16 settlement statement that was put up there, Equity
17 Resource Partners paid them. Those are proceeds from --
18 there's -- there's a business person doing a business
19 deal. Equity Resource Partners paid them. When Garrett
20 Budds went out of there, he's told there's an option on
21 the property and it might not be available. Couldn't be
22 available till the option expired.

23 What's Equity Resource Partners supposed to do?
24 Wait till these guys don't close again, then, start
25 looking for folks? They're doing what they're supposed

1 to be doing.

2 They County wanted to buy it. Couldn't. Had an
3 option on it. But when they let the option expire and
4 chose not to exercise it, it's fair game. Anybody can
5 buy that property.

6 Equity Resource -- and there's emails that the
7 plaintiff put in. They're even telling Taylor Bush,
8 hey, you can come out here, bring an investor to this
9 property. They didn't have a contract with the County
10 yet. They want to sell it. That's what they want to
11 do. They want to sell it.

12 Mr. Kunkel testified about expected profits. His
13 expected profits.

14 Now, the Judge will charge you on a couple things.
15 So, what you -- the Judge says, here's what the law is,
16 and then, you apply the facts to the law. And the Judge
17 will charge you that you cannot recover damages unless
18 PPLC, or Road perform their part of the contract. Well,
19 they did not. They didn't pay Dot Gnann. They didn't
20 do the other things they were supposed to do for Agnes
21 Pinckney. They didn't fulfill their contract. They
22 didn't do it.

23 They were not able to perform the development. Not
24 able. Not because of the County, even though they had
25 three years to go out and get money. And we know they

1 could get money, because they did it time and time
2 again.

3 When the plaintiffs signed a forbearance agreement,
4 -- that's the thing they signed with Equity Resource
5 saying, hey, we'll stop this foreclosure -- they agreed
6 in that, that they had no more equity in the property.
7 That's Defendant's Exhibit Number 4.

8 Now, then, they wanted to try to pretend -- the
9 CPA, Mr. Kunkel, wanted to try to pretend he didn't know
10 what equity was. But we all know what equity is. Okay.
11 That's your money. That's what you have as opposed to a
12 loan.

13 And they agreed they had no equity in the project.
14 Mr. Kunkel said, well, that was just in the contract; we
15 didn't really mean that; that's just something in there
16 we signed. But we're here today enforcing a contract.

17 The Judge will charge you that the damages cannot
18 be speculative. Everything about this project is
19 speculative. Okay. Everything.

20 Mr. Kunkel admits the most important factor in a
21 development is the market, which is -- no one in the
22 world can control it. No one can control it. What's
23 it, Black Tuesday, or the time the stock market crashed?
24 I mean, people don't know that. These things come
25 around. The market -- it's certainly nothing the

1 developer can control. It's not something the County
2 can control. So, you have no control over that.

3 They assume the lot prices are going to be 1.1
4 million dollars and \$600,000.00 on the interior. Well,
5 that's pretty stiff.

6 They did not have an expert come testify about
7 potential profits. That was Mr. Kunkel, who's a party
8 to the litigation.

9 There was no market survey.

10 One of the factors the Judge will charge, you can
11 look at the parties' own tract record. Well, Mr. Kunkel
12 prepared these estimates, and he says, we lose money on
13 35 percent of these developments. We lose money on 35
14 percent. So, how could you say with any degree of
15 certainty whatsoever these numbers are accurate? You
16 lose money on -- I promise you that any bank who got
17 those projections when -- they said, we never enter a
18 project to lose money. Of course, they don't. And
19 every time a developer puts together a proposal, you
20 can't take a proposal to an investor that says we're
21 going to lose money. Okay. But 35 percent of the time,
22 that's what happens.

23 Mr. Bush didn't even give it that. He said, I can
24 say, I can estimate we made money fifty percent of the
25 time -- over fifty percent of the time. Can you get

1 closer than that? No.

2 They start off with some high numbers. And then,
3 you got it down to -- we said, well, did you discount
4 what Pinckney Point was going to get? Well, no. Well,
5 how much -- so, they get it down -- it's three million
6 dollars. It's 2.9 to 3.1, I think, was the number.

7 Now, that didn't include the fees, management fees.
8 Well, they weren't paying -- you can't pay yourself a
9 fee. Okay. Mr. Kunkel and Mr. Bush work for SLG
10 Management Services, LLC. Okay. This goes under the
11 category of when we want to all be one, we're all one.
12 It's all still our money. But when we want to limit our
13 liability; when we don't anybody to come back against
14 us; we want to limit our liability, we're an LLC. And
15 that's how Road got started.

16 Road, LLC, did pay 1.3 million dollars for a .8
17 acre piece of land. By putting it in the name of Road,
18 LLC, they guaranteed nobody could develop it. That was
19 the point. They reserved an easement so you could get
20 up and down there, but you couldn't develop it. They
21 made it so you couldn't develop it in an effort to keep
22 it away from the bank.

23 Now, they invested 1.3, and they said they had a
24 contract to get five million dollars back, but I would
25 ask you, look at that contract. It's Defendant's Number

1 4. What's the punishment? Oh, we had a five-million-
2 dollar contract on it; that's why it's worth five
3 million dollars. What was the punishment for not buying
4 it? You lose your \$10.00 earnest money deposit. that's
5 how reliant they were on that contract. They had ten --
6 they could lose ten whole dollars by not buying it.

7 Triple 1.3 to five million dollars, triple. Well,
8 you know, that represents a lot of risk. There's a risk
9 return thing, and it was super risky. Because
10 everything -- every gamble Pinckney Point was making,
11 Road was making -- there again, they were double
12 gambling. They're gambling on Pinckney Point.

13 The plaintiffs had an expert, a paid expert, Tommy
14 Hartnett. He says, yeah, yeah, I looked at -- I looked
15 at that, and I looked at the numbers Mr. Kunkel gave me,
16 and I talked to Mr. Kunkel about it. And you know,
17 talking with him and in reliance on this contract, I
18 tied the properties together, and I say it's worth at
19 least five million dollars. At least. Okay.

20 Well, the contract he relied on the time together
21 had already explained. The contract he relied on the
22 time together had a ten-dollar provision, if you didn't
23 abide by it. And so, it's very difficult to believe
24 that he based his opinions on that. And you don't have
25 to believe -- and the Judge will tell you -- you don't

1 have to believe an expert or not believe an expert. You
2 don't have to believe this property was ever worth five
3 million dollars. Okay. But if you believe Tommy
4 Hartnett, it's still worth five million dollars.

5 I remember -- and I remember this very
6 specifically, because I was a little bit surprised, so I
7 ask him twice. How much is it worth today, Tommy? Oh,
8 at least five million dollars. Why is that? Well,
9 because it's -- you know, it's the stairs, you know, the
10 cinder blocks aren't worth anything until they lead up
11 to the thing, and then, it makes them worth -- the
12 blocks are worth five million dollars.

13 And I said, even today with the County owning it?
14 And he said, yeah, even today.

15 And the problem with that for the plaintiff is,
16 when he says it's worth five million dollars today, you
17 don't have to believe him or not, but if you do believe
18 him, then, you got to believe Road, LLC, hasn't lost any
19 money. They own a property that their expert says is
20 still worth five million dollars.

21 The County agreed the road is private. The road is
22 private. Here's the thing about property. If you're
23 the owner of private property, you can transfer rights
24 to it. You can transfer the rights to it. As an owner
25 of the property, Road, LLC, transferred rights to

1 Pinckney Point to use to this twenty-foot easement,
2 twenty-foot access. And this is in the record, as well.
3 Pinckney Point transferred that to Equity Resource
4 Partners, because they had to, to work their deal out.
5 So now, Equity Resource Partners has that private rights
6 and a private road.

7 Equity Resource -- and that was their heirs and
8 assigns. We talked about that, successors and assigns.
9 And that was Mr. Nester explaining that to us. So, the
10 next guy gets what I have. ERP transferred it to the
11 County. So now, the County has rights to it. And
12 again, the Court will tell you that you have to treat
13 the government just like any other entity. The County
14 has rights just like anyone else.

15 The County purchased that easement. It was freely
16 transferred. It wasn't freely transferred by some other
17 County entity. It was freely transferred by Road to
18 Pinckney, by Pinckney to Equity, and by Equity to
19 Beaufort County.

20 When the County bought it, it doesn't turn it into
21 a public road. It turns it into a road the County has
22 rights to use. Okay. If the County -- the similar
23 thing would be, if the County leased a piece of -- a
24 police station in a strip mall, a police substation, the
25 County has rights to that. The police go to the

1 substation. Doesn't turn the strip mall into a public.
2 The owner still owns it. Okay.

3 The plaintiffs made every effort to keep the focus
4 of this case off the settlement agreement. that they use
5 as the basis of the action. Okay. They really don't
6 like the settlement agreement, because we did everything
7 under the settlement agreement.

8 The County was required to give a variance, which
9 it did, and to agree the road was private, which it did.

10 The plaintiffs are gamblers. They are gamblers.
11 You can -- matter of degrees, but they're gamblers.
12 They gambled on the project. They gambled they could
13 get the money back. They gambled they could get the
14 money to develop the property. They were paying the
15 option. They were paying the option to extend it while
16 they had that right to do that. And now, they're here
17 telling us, well, we were paying the option, but we
18 weren't looking for money. They gambled on what they
19 could sell the lots for. They didn't win the gamble.
20 They didn't win the gamble.

21 This lawsuit is another gamble. It's another
22 gamble. We're asking that you don't let them win this
23 gamble. They're attempting to take a settlement
24 agreement that we agreed to -- we put -- we were trying
25 to get some poles out of the road. Okay. And we agreed

1 to a settlement to say the road's previous and a
2 variance. And they're trying to leverage that up.
3 They're trying to leverage that into you should pay us
4 for this development, which we couldn't get done. And
5 we're asking that you don't do that. We're asking that
6 you tell them no.

7 The plaintiff has to prove to each and every one of
8 you, each and every one of you, that we breached this
9 contract. They have to prove to each and every one of
10 you the damages they sustained. That's their burden of
11 proof. Their burden of proof. And because they have
12 the burden of proof, Counsel gets to come up here again
13 and talk to you.

14 I would ask simply that -- because I won't have a
15 chance to rebut it. I would ask simply that you, when
16 you hear from Counsel, you remember the facts as you
17 remember it. You remember the testimony from the stand
18 and in these documents.

19 When you go back and deliberate, you're going to
20 get a jury form, and the jury form will say, we find for
21 the defendant, Beaufort County. That's the first thing
22 it says, on both forms. If you find for the defendant,
23 Beaufort County, you go no further. You do not have to
24 calculate damages. We haven't breached the contract,
25 and they're not entitled to damages.

1 I appreciate your time. thank you so much. And
2 we're confident that, after you conduct your
3 deliberations, you'll render a verdict which speaks the
4 truth. And that's a verdict in favor of Beaufort
5 County.

6 Thank you.

7 CLOSING ARGUMENT IN REBUTTAL ON

8 BEHALF OF THE PLAINTIFF, BY MR. WALKER:

9 MR. WALKER: We are not here on a gamble. If the
10 case was not proven, you come back against us. We're
11 here based on the evidence.

12 We are focusing on the settlement agreement. There
13 was a lot of discussion by Mr. Achurch about what went
14 on before January 11 -- 14, 2011. But we are claiming
15 that, that agreement was breached. And it's not just
16 that the County failed to do the two things in there.
17 They did those two things. It's that they knew the
18 purpose of that agreement was for a residential
19 subdivision, and they went out and made sure that, that
20 didn't happen.

21 And in terms of frustrating the process, yes, they
22 came up with a condition that was not required dealing
23 with individual septic tank approvals. That was DHEC's
24 role. And finally, after about three months, they
25 accepted it was DHEC's role, but they still insisted on

1 the condition. And I'd ask you to look at Plaintiffs'
2 Exhibit 26, which is Walter Nester's letter in
3 September, where he lays it out in black and white. And
4 it still took us six months, a precious six months, that
5 was time when we could have been moving ahead.

6 I'm going to just quickly go over a few points,
7 because there has been a focus on so many different
8 things. But in terms of the money, I said earlier, we
9 did have Reinet, and Reinet had funded Arendale, which
10 funded the Road properties. And if you look at Exhibit
11 Number 17, there is a list of money coming in. Reinet
12 was prepared to put money in this to pay all operating
13 expenses. They advanced, through Arendale -- or
14 Tidewater, they advanced all those expenses. So, it
15 wasn't as though they were scared of the project. They
16 liked the project. We did pay our bills. The only
17 thing we couldn't do is to get them to come out of
18 pocket for the money it was going to take to acquire it
19 until the permits approvals were granted.

20 As far as the permit approvals, we'd ask you to
21 look at Defendant's Exhibit 12, which is the latest
22 tracking report, and you'll see that we had almost all
23 those approvals. And you'll see we were 98 percent
24 complete, through the other email.

25 The damages. Mr. Kunkel said, yes, we lost money,

1 and the only projects we lost money on were between 2007
2 and 2010. Well, we made it beyond that. This project m
3 it beyond because Reinet, through Tidewater, was willing
4 to fund all those expenses. So, we made it through that
5 storm on this project. This is not one of them.

6 And this is a good project, and you heard why. And
7 you can see why, just seeing a picture of that property.
8 It was a gorgeous piece of property. And those lots,
9 they were really expensive. But they did their market
10 work.

11 We were criticized about not having any basis for
12 the prices and that sort of thing. Mr. Kunkel said he
13 spoke to a local appraiser. He talked to the real
14 estate community, and that was the foundation for his
15 revenue stream.

16 Pinckney Point breached the agreement as to Gnann.
17 They raised that again. I told you that was coming.
18 That's not an agreement or obligation to the County.
19 And the only reason we couldn't deliver to Dot Gnann was
20 the County bought the property, so we didn't have the
21 property anymore. And the Judge is going to charge you
22 that, if a person prevents a performance, the person
23 being sued has prevented a condition of performance,
24 they can't rely on that, because they prevented it.
25 Here is a classic case of it.

1 Mr. Achurch brought up the answer in the
2 foreclosure case. Remember when that answer was filed,
3 BB&T foreclosed in February 2010. That answer was filed
4 before the multi-party settlement. It was filed before
5 ERP purchased the note. And because ERP purchased the
6 note, and because we were able to get an option to buy
7 it back at 6.5, the alleged millions that were in the
8 answer that were alleged to have been lost, that never
9 happened, because we were able to recover the right to
10 get the property. And so, I would just ask you to
11 consider the timing, and to consider that, that was no
12 effect.

13 The capital markets again. I went over this
14 before. Arendale and Reinet were ready if they had the
15 permit approvals. The capital markets that Taylor bush
16 and John Kunkel referred to were outside of that, where
17 we're trying to get money without permit approvals. And
18 neither Sherman -- Sherman wasn't interested, and Silver
19 Point just was not willing to commit and never really
20 committed, but we knew the terms they were asking before
21 they didn't commit were outrageous.

22 As for the last comment on damages, and that is on
23 the road parcel, Tommy Hartnett said the highest and
24 best use is as access to a residential development. Now
25 we know that's not going to happen. So, that value will

1 be lost. In fact, the whole investment will be lost.

2 You, today, are going to decide the standards that
3 are going to be applied. The Judge will give you the
4 law, but you decide whether the conduct met the law, and
5 whether the County acted appropriately, whether they
6 breached the agreement. Not just what's in it, but the
7 purpose of the agreement.

8 A government should not -- if it's permitting,
9 shouldn't be your competitor. And government should be
10 transparent. Was there transparency here? No
11 disclosure in any of the minutes of what was going on.
12 Not Rural and Critical Lands. Council was in executive
13 session. I mean, why all the secrecy. The only thing
14 that turned out to be public was the money that was
15 used.

16 We submit that, when you consider all the evidence,
17 and you get to weighing it, that we've established every
18 element of our case, and that, when you complete that
19 verdict form, since we have carried the burden of proof,
20 you will find that there was a breach of the agreement,
21 and you will determine there are damages both for
22 Pinckney Point and for Road.

23 Thank you, again, for six days of service. Thank
24 you for enduring these arguments. And thank you for
25 paying such close attention and taking the notes you

1 have. Again, both Road and Pinckney Point, LLC, thank
2 you, no matter what your verdict is.

3 THE COURT: Ladies and gentlemen, let's go ahead
4 and take just a quick stretch. Unless anyone needs a
5 break, I would like to go straight into the charge. You
6 all okay?

7 Whenever you're ready.

8 JURY CHARGE, BY THE COURT:

9 THE COURT: Mr. Foreperson, members of the jury,
10 you've heard the evidence and argument of both parties.
11 I will now explain to you the law that applies to this
12 case.

13 This case was initiated by the plaintiffs, Road,
14 LLC, and Pinckney Point, LLC, for breach of contract
15 against the defendant, Beaufort County. In bringing
16 this lawsuit, the plaintiffs claim that the defendant
17 should compensate them for their injuries or damages.

18 The fact that governmental entities and business
19 entities are parties does not prejudice you in your
20 deliberation or in your verdict. You may not
21 discriminate between governmental entities, business
22 entities, and natural persons. All are persons in the
23 eyes of the law, and all are entitled to the same fair
24 and impartial consideration and justice by the same
25 legal standards.

1 Under our constitution and code of laws, only you,
2 the jury, can make the findings of fact in this case. I
3 am not permitted to tell you how I feel about the
4 evidence which has been presented. And throughout this
5 trial, I have intended to be impartial towards both
6 parties.

7 Ladies and gentlemen, to determine the facts in
8 this case, you'll have to determine the credibility or
9 believability of the witnesses. I've already discussed
10 with you some of the things you may consider as you
11 decide whether or not to believe a witness's testimony
12 about a particular matter.

13 You can believe as much or as little of each
14 witness's testimony as you think proper. You may
15 believe the testimony of a single witness against that
16 of many witnesses, or just the opposite. You may
17 believe a part of a witness's testimony, and disbelieve
18 the rest. You should not determine the truth merely by
19 counting the number of witnesses presented by each side.

20 And throughout this trial, you have but one
21 objective, and that is to seek the truth, regardless of
22 its source.

23 Now, evidence may be direct or circumstantial in a
24 case. Direct evidence is testimony by a witness about
25 what the witness personally saw, heard or did.

1 Circumstantial evidence is indirect evidence. That is,
2 it is proof of one or more facts from which one can find
3 another fact. You are to consider both direct and
4 circumstantial evidence. The law permits you to give
5 equal weight to both, but again, it is for you to decide
6 how much weight to give any evidence.

7 Now, the rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses that we call
10 expert witnesses. A witness who, by education and
11 experience, has become an expert in some art, science,
12 or profession may give an opinion as to the subject the
13 witness claims to be an expert in, and may also give the
14 reasons for the opinion.

15 You should give and consider any expert opinion
16 given by a witness, and, like any other evidence, give
17 it the weight you think it deserves. If you decide that
18 an expert witness's opinion is not based on sufficient
19 education and experience, or if you decide that the
20 reasons given in support of the opinion are not sound,
21 or that the opinion is outweighed by other evidence, you
22 may disregard the opinion entirely. An expert witness's
23 testimony is to be given no greater weight than that of
24 other witnesses, simply because the witness is an
25 expert, and you do not have to accept an expert's

1 opinion, even though it may go uncontradicted.

2 Now, when an expert witness is called by either a
3 plaintiff or a defendant, often, they expect to be paid,
4 and they should be paid. You should not take into
5 consideration the fact that the witness is paid, unless
6 there is some evidence or circumstances appearing from
7 the evidence which would fully and reasonably convince
8 you that the testimony of the witness has been
9 influenced because of the sum that they have been paid
10 as a witness.

11 Now, testimony was presented to you by the reading
12 of a previously obtained deposition. A deposition is a
13 recording containing sworn testimony given by a witness
14 outside of the Court in the presence of lawyers for each
15 party, who may ask questions of the witness. This
16 testimony is entitled to the same consideration, and is
17 to be judged as to credibility and weighed by you the
18 same way as if that person were present and gave the
19 testimony to you from the witness stand. It is then,
20 for you, the jury, to determine the effect, the value,
21 the weight, and the truth of the testimony given in the
22 deposition.

23 Now, the same constitution and laws which designate
24 and make you, the jury, the finders of fact, make me the
25 instructor of the law. You must accept the law as I

1 give it to you. If I'm wrong, there is another time and
2 another place for that error to be considered, and, if
3 necessary, corrected. But for now, you must accept the
4 law as I give it to you. This means that you should not
5 be concerned with what you may think the law should be,
6 but only with what I charge you the law is.

7 Now, the plaintiffs have the burden of proving
8 their claim in this case, and plaintiffs' burden of
9 proof is by a preponderance of the evidence. A
10 preponderance of the evidence simply means the greater
11 weight of the evidence, which, as a whole, shows that
12 the facts sought to be proved is more likely true than
13 not true. And this can be illustrated by imagining a
14 set of scales. When a case begins, the scales are even.
15 And after all the evidence is presented, if the scales
16 should remain even, or if they should tip even slightly
17 in favor of the defendant, then, the plaintiffs will
18 have failed to meet their burden of proof as to the
19 defendant, and would not be entitled to recover in this
20 case, and your verdict would be for the defendant.

21 If, on the other hand, those scales should tip even
22 slightly in favor of the plaintiffs, then, they will
23 have met their burden of proof, and you should return a
24 verdict for the plaintiffs.

25 Now, in this case, the plaintiffs claim that the

1 defendant breached a contract that existed between the
2 parties. The first thing a plaintiff must prove by a
3 preponderance or greater weight of the evidence, is that
4 the parties entered into a binding contract. A contract
5 is a agreement entered into by two or more parties in
6 which each party agrees to perform or not to perform
7 certain acts.

8 For the agreement to be considered a contract, the
9 parties must have intended to enter into a contract and
10 must have reached a mutual understanding of the terms of
11 that contract. This is sometimes called a meeting of
12 the minds. The parties must intend to be mutually bound
13 by the agreement.

14 Settlement agreements are considered contracts.
15 When a writing -- or, excuse me -- when a contract is in
16 writing, you must determine the intention of the parties
17 primarily from the contents of the written document
18 itself. The intention of the parties must be determined
19 from the entire agreement, and not from any particular
20 clause or provision.

21 When the written contract is clear, its meaning
22 must be determined by the contents of the document
23 alone. Where the language of the contract has more than
24 one meaning, you may consider the circumstances
25 surrounding the making of the contract to help you

1 determine the real intention of the parties.

2 A contract is ambiguous when the terms of the
3 contract are reasonably susceptible of more than one
4 interpretation. The uncertainty in interpretation can
5 arise from the words of the instrument or in the
6 application of the words to the object they describe.
7 However, you may not use words to give a contract a
8 meaning which is not apparent on its face.

9 Ladies and gentlemen, there exists in every
10 contract an unspoken, but legally enforceable promise of
11 good faith and fair dealing. The concept behind the
12 implied covenant of good faith and fair dealing is that
13 the law will imply an agreement by the parties to do and
14 perform those things that, according to reason and
15 justice, they should do in order to carry out the
16 purpose for which the contract was made.

17 However, there is no breach of the implied covenant
18 where a party to a contract has done what provisions of
19 the contract expressly gave him the right to do or by
20 conduct which is permitted by law.

21 Next, the plaintiff must show by a preponderance or
22 greater weight of the evidence that the defendant
23 unjustifiably breached the contract. The word *breach*,
24 as it applies to contracts, is defined as a failure
25 without legal excuse to perform any promise which forms

1 a whole or a part of a contract, including the refusal
2 of a party to recognize the existence of the contract or
3 the doing of something inconsistent with its existence.

4 When performance of a duty under a contract is due,
5 any nonperformance is a breach. In other words, a party
6 breaches a contract when he does not perform as he
7 agreed to perform under the contract.

8 A parties contractual duty is found in the
9 obligation assumed by the party to the contract. a
10 parties failure to comply with the contractual duty
11 constitutes the breach. Nonperformance of a valid
12 contract is a breach thereof. A breach occurs when a
13 party refuses or neglects to perform some duty required
14 by the terms of the contract.

15 A breach may occur when a party, without legal
16 excuse, fails to perform any promise that is all or part
17 of the contract, or knowingly prevents, hinders, or
18 makes more costly, the other parties performance; or in
19 advance of the due date of his performance, repudiates
20 his promise to perform, that is, repudiates or renounces
21 the contract.

22 The defendant cannot take advantage of the
23 uncertainty created by his own wrongdoing. If it were
24 otherwise, then, it would be virtually impossible for a
25 plaintiff to prove a case of prevention.

1 Ladies and gentlemen, finally, a plaintiff, to
2 prove breach of contract by a preponderance or greater
3 weight of the evidence must show that the plaintiffs
4 suffered damages, which were proximately caused by the
5 defendant's breach of the contract.

6 Damages for breach of contract are those that may
7 fairly and reasonably be considered to arise naturally
8 from the breach of contract itself, or those that may be
9 reasonably supposed to have been in the minds of the
10 parties at the time the contract was made.

11 The plaintiff may not recover damages for breach of
12 contract unless the plaintiff -- or, plaintiffs, excuse
13 me -- show that they performed their party of the
14 contract, or at least were able, ready, and willing to
15 perform at the appropriate time.

16 Now, there are two possible types of damages to
17 consider in this case: actual damages or lost profits.
18 If you find the defendant breached the settlement
19 agreement, you can award only one of these two types of
20 damages. Actual damages are damages to compensate the
21 plaintiff and put them as closely as possible in the
22 same position they were in before the breach of
23 contract. In other words, actual damages are the actual
24 losses and expenses which a plaintiff has suffered
25 because a defendant breached a contract. Generally,

1 actual damages are the out-of-pocket costs actually paid
2 by the plaintiffs as a result of the breach of contract.

3 The plaintiff, in the alternative, seek to recover
4 lost profits, meaning the gain above the costs that
5 would have been realized had the contract been
6 performed. Lost profits are recoverable if the profits
7 were prevented or lost as a natural consequence of the
8 breach of contract, the lost profits were reasonably
9 supposed to have been within the contemplation of the
10 parties at the time the contract was made as a probable
11 result of a breach of the contract, and the lost profits
12 are established with reasonable certainty.

13 The standard for proving lost profits complies with
14 the general rule for recovery of damages, which mandates
15 that the fact finder determine the amount of damages
16 with reasonable certainty from the evidence. The amount
17 of damages cannot be left to conjecture, guess, or
18 speculation. However, mathematical certainty is not
19 required.

20 Case law in South Carolina has defined reasonable
21 certainty. To warrant such discovery, loss of profits
22 must be established with reasonable certainty, for
23 recovery cannot be had for profits that are conjectural
24 or speculative. But it must be borne in mind that,
25 since profits are perspective, they must, to some

1 extent, be uncertain and problematically. And so, on
2 that account, or on account of the difficulties in the
3 way of proof, a person complaining of breach of contract
4 cannot be deprived of all remedy and uncertainly merely
5 as to the amount of profits that would have been made
6 does not prevent recovery. The law does not require
7 absolute certainty of data upon which lost profits are
8 to be estimated. But all that is required is such
9 reasonable certainty that damages may not be based
10 wholly upon speculation and conjecture. And it is
11 sufficient if there is a certain standard or fixed
12 method by which profits sought to be recovered may be
13 estimated and determined with a fair degree of accuracy.

14 The requirement to establish lost profits with
15 reasonable certainty permits an inherent flexibility,
16 facilitating the just assessment of profits lost to a
17 new business due to contractual breach. And numerous
18 proof techniques have been discussed and accepted in
19 different factual scenarios.

20 Proof of lost profit may be established through
21 expert testimony, economic and financial data, market
22 surveys and analysis, business records, or similar
23 enterprises, comparison with profit performance similar
24 in size, natural and location, comparison with profit
25 history of the plaintiffs' successor, and comparison of

1 similar business owned by the plaintiffs' themselves.

2 Ladies and gentlemen, I remind you that we have
3 permitted you to take notes in the trial of this case.
4 You will have those notes back in the jury room with
5 you. Ladies and gentlemen, I just want to remind you,
6 those notes are for your own recollection. You are not
7 to rely on someone else's notes simply because they took
8 notes, if you remember something different from the
9 recollection that you have. Again, those are for your
10 own personal use, ladies and gentlemen.

11 Mr. Foreperson and members of the jury, I wish to
12 express the hope that you are mindful of the importance
13 of your responsibility here today. You're not called
14 upon very often to serve as jurors, and the proper
15 performance of that duty requires that each of you reach
16 the height of freeing your mind of all improper
17 influences.

18 Please don't get the idea that I'm trying to
19 intimate to you how you should decide this case. As
20 I've already told you, under the laws of the State of
21 South Carolina, you, the jury, are the sole judge of all
22 facts, and it would be highly improper for me to
23 influence you in your performance of that duty.

24 However, ladies and gentlemen, I am vitally
25 concerned, as the officer of this Court, that you're

1 verdict will be the result of you going back into your
2 jury room and confining your consideration to the
3 evidence and the law that you've heard here in this
4 courtroom, as I have every confidence you will.

5 Ladies and gentlemen, everyone is entitled to
6 justice in this case, both the plaintiffs and the
7 defendant. You owe no support or sympathy to anyone.

8 Everyone is entitled to justice, ladies and
9 gentlemen. Again, the Court is of the confirmed opinion
10 that, whatever verdict you reach in this case will
11 represent truth and justice for all parties concerned.

12 I remind you, Mr. Foreperson, your verdict must be
13 unanimous. It must be the verdict of all twelve jurors.
14 And to that end, we have two verdict forms in this case.
15 One is for Pinckney Point, LLC, and the other for Road,
16 LLC. Both of them simply have the caption in the case,
17 ladies and gentlemen.

18 And each of them have a question. The first
19 question would be:

20 *Do you find the defendant, Beaufort*
21 *County, breached its contract with Pinckney*
22 *Point, LLC?*

23 And there are two answers. Either no or yes.

24 If you check no, then, you stop your deliberations
25 as to that plaintiff. And Mr. Foreperson, you would

1 sign the verdict form on the bottom. And go ahead and
2 date it, too, although I don't see a date line, but go
3 ahead and date it, if you would, sir.

4 And additionally, if you do find for the plaintiffs
5 in this case or for the plaintiff, Pinckney Point, in
6 this case, you would then answer Question Number 2,
7 which would be how much you award in damages for that
8 plaintiff.

9 And the other verdict form as to Road, LLC, is
10 exactly the same. This one just says:

11 *Do you find the defendant, Beaufort*

12 *County, breached its contract with Road, LLC?*

13 And again, no or yes. And if you say yes, then, go
14 ahead and put the amount of actual damages that you find
15 as a result of the breach, and sign it.

16 Ladies and gentlemen, please don't infer the order
17 that I put either the County or the plaintiffs. Every
18 trial we just reverse them. So, there is absolutely no
19 significance to that.

20 Again, I remind you, Mr. Foreperson, you must
21 answer both verdict forms, sir, and sign both verdict
22 forms and date it.

23 Ladies and gentlemen, for the last time, I am going
24 to send you back to your jury room, and I'm going to
25 tell you not to discuss this case. If there's anything

1 further on the law that the lawyers want me to charge
2 you, I'm going to bring you out here, and I am going to
3 charge you further.

4 Ladies and gentlemen, if not, what you're going to
5 get is the two verdict forms, as well as all the other
6 evidence that was entered into the trial of this case,
7 and that is going to be your signal to begin your
8 deliberations.

9 Additionally, I understand that lunch should be
10 back there for you at about 1:00 o'clock or so. So,
11 please, ladies and gentlemen, feel free to take a break
12 during your deliberations, and certainly go ahead and
13 get a bite to eat if you can. All right.

14 With that said, ladies and gentlemen, I thank you.

15 Oh, one other thing I do want to tell you, ladies
16 and gentlemen. You've seen that my court reporter has
17 taken down the entire trial. What I want you to know is
18 there is no written transcript. What we will do, if you
19 want to hear further testimony -- or replayed, what I
20 can do is bring you back into the courtroom, and we can
21 play the audio tape of it. I just need to let you know
22 that if you want a certain portion of some testimony of
23 a witness, I am required to play back that witness's
24 entire testimony. So, that includes both the direct,
25 the cross, the re-direct, the re-cross, or however long

1 it was. All right? But certainly, if you need that, we
2 can do it for you. Okay?

3 Thank you, Mr. Foreperson and members of the jury.
4 I am going to go ahead and excuse you back to your jury
5 room. You can go ahead and take your notepads.

6 JURORS LEAVE COURTROOM 12:47 P.M.

7 BY THE COURT:

8 BAILIFF: Jury's clear, your Honor.

9 THE COURT: Thanks, Rick. Any exceptions or
10 additions to the charge from the plaintiff?

11 MR. WALKER: Not from the plaintiffs.

12 THE COURT: All right.

13 MR. ACHURCH: None from the defendant, your Honor.

14 THE COURT: All right. Thank you. We've got the
15 verdict forms as they are. And you all have already
16 gone through the exhibits, I understand. Is that
17 correct or not to that?

18 MR. WALKER: We did it Friday afternoon.

19 THE COURT: Fabulous. So, can we just put them
20 together and get them to them? Okay.

21 Why don't we go ahead -- can you all give Megan
22 some cell numbers. You are more than welcome, once I
23 release the one alternate, will you just go ahead and
24 give Megan cell numbers so you can go grab a bite to eat
25 so I will call you if we have a question or a verdict or

1 something we need you. Don't go too far. Don't go too
2 far.

3 EXHIBITS AND VERDICT FORM TAKEN

4 TO JURORS 12:55 P.M.

5 THE COURT: Mr. Lettich, I want to thank you for
6 serving on this jury. As you understand, I only lost
7 one alternate. So, at this point, I'm going to go ahead
8 and excuse you, sir. But I do need to ask you -- well,
9 first off, you are free to discuss the case, if you'd
10 like, when you go home. You can talk to family members
11 or friends. You are welcome to do that. Sometimes the
12 attorneys may want to ask you what you think. You
13 certainly aren't required to.

14 The only thing I'm going to ask, sir, is I have no
15 idea how long this jury's going to deliberate, and if
16 you've become friends with any of these jurors, I don't
17 want you speaking to them until they've reached a
18 verdict.

19 JUROR NUMBER 196: Of course.

20 THE COURT: So, whenever that is. But anyway,
21 thank you again, sir. I do appreciate it.

22 JUROR NUMBER 196: Thank you very much, ma'am.

23 THE COURT: Absolutely. If you need any kind of
24 work excuse, please just ask Rick. But Thank you.

25 JUROR NUMBER 196: I own my own business now,

1 ma'am.

2 THE COURT: Perfect. Thank you.

3 JUROR NUMBER 196: Thank you.

4 THE COURT: Thank you.

5 OFF THE RECORD 2:10 P.M.

6 BACK ON THE RECORD 2:43 P.M.

7 BY THE COURT:

8 FIRST NOTE FROM JURORS:

9 BAILIFF: All rise. This Court is now in session.

10 THE COURT: Please keep your seats. We have a
11 note, Wanda, from the jurors. Suggestions from anybody?
12 Had they listened to the charge, they would know that a
13 contract has to be between two people who intend to be
14 bound. I wish they would just go back to that part of
15 the charge, but I think where they're getting confused
16 is where they're talking about successor or even the
17 good or the bad. I'm not sure what they're thinking,
18 but.

19 MR. ACHURCH: Our suggestion would be to tell them
20 that the parties to the contract are identified in the
21 contract.

22 THE COURT: That actually is good -- I think that's
23 good for both sides.

24 MR. WALKER: Could you read the question again,
25 your Honor, on the record. I can't remember --

1 THE COURT: It says:

2 The settlement agreement, Number 78,
3 is with the County and PPLLC, and Road,
4 LLC, et al, --

5 I forgot the et al.

6 -- with the purpose of developing the
7 land. Prior to the County buying the land,
8 it was owned by ERP, --

9 And then:

10 -- who are not part of the agreement.
11 Does ERP have to abide by the settlement
12 agreement?

13 MR. WALKER: I think that's a different question
14 from whether they're a party to the settlement
15 agreement.

16 THE COURT: I think it is, too. He's just not
17 going to let me say no.

18 MR. ACHURCH: I'd be happy for you to tell them no.

19 THE COURT: What?

20 MR. ACHURCH: I'd be happy for you to tell them,
21 no, ERP doesn't have to abide, but.

22 THE COURT: Do you have the thing again? I have a
23 copy. Wanda, let them look at it. Let them both read
24 it again. Read it again. Don't worry, I read it three
25 times, always to make sure to figure out what it is

1 they're trying to get at.

2 MR. WALKER: Well, I feel like this is more a legal
3 question as to what the obligations of ERP are. And I
4 know they're very curious about it, but I would think it
5 would be that they need to decide the case based on the
6 evidence and their recollection of the witnesses'
7 testimony.

8 THE COURT: Right. It's just your standard I-
9 can't-answer-your-question response.

10 MR. ACHURCH: I mean, it's odd, because they say,
11 *who are not party to the agreement, do they have to*
12 *abide by the agreement.* So, they got that part. So, I
13 don't know if the other charge, honestly, per my
14 instruction --

15 THE COURT: Did you say that one of our jurors had
16 been to law school? Someone said that.

17 MS. LOHR: It said that on the --

18 MR. WALKER: The gentleman in the front row in the
19 collared shirt.

20 THE COURT: It said that on what, his --

21 MR. WALKER: Juror information.

22 MS. LOHR: On his juror information sheet.

23 THE COURT: Okay.

24 MR. ACHURCH: Judge, did you have a charge about
25 parties to a contract, did you say?

1 THE COURT: The charge says, you know, what is a
2 contract? A contract is an agreement between, you know,
3 two people who both intend to be mutually bound. I
4 mean, if you actually thought through it -- obviously,
5 they don't have the hard charge back there, but --

6 MR. ACHURCH: I would not -- I would not be opposed
7 to reading that charge, that small charge, again.

8 THE COURT: I mean, I can tell you, I still think
9 bringing them back out here and re-reading the same
10 thing doesn't do it. I mean, I can tell you, usually,
11 if there's a question, I mean, I'm more comfortable
12 sending the whole charge back there and letting them see
13 that.

14 MS. MONOC: The whole breach of contract, including
15 implied covenant?

16 THE COURT: It has to be everything. And that's
17 the problem. That's three-and-a-half pages of it.

18 MR. ACHURCH: I said you could tell them the
19 parties to the contract are in the contract. But they
20 already know they're not in the contract because it says
21 they're not in there.

22 THE COURT: And they've said.

23 MR. ACHURCH: I'd be okay with just telling them
24 you can't answer it.

25 THE COURT: I can't answer?

1 MR. WALKER: Yeah.

2 THE COURT: Okay.

3 MR. WALKER: Upon reflection, I'm okay with saying
4 they aren't a party to the contract, but they've already
5 said they aren't a party to the contract.

6 MS. LOHR: I'm not sure this question is what
7 they're really asking.

8 MR. WALKER: So, turn around the question.

9 THE COURT: Uh-huh.

10 MR. ACHURCH: But I don't want to give them an
11 instruction that ERP is not a party to the contract.

12 THE COURT: Except they already know that.

13 MR. ACHURCH: That's -- I mean, well, I agree with
14 you.

15 MS. LOHR: *Prior to the County -- prior*
16 *to the County buying the land, it was owned*
17 *by ERP, who are not part of the agreement.*
18 *Does ERP have to abide by the settlement*
19 *agreement?*

20 Well, I think it just means they don't get what's
21 going on at all.

22 MR. ACHURCH: What's your Honor suggest?

23 THE COURT: Oh, I have all kinds of scary thoughts,
24 not on what to say, but where this is going.

25 MS. MONOC: Down a rabbit hole that doesn't need to

1 be.

2 MR. ACHURCH: Yeah, if they get hung up, we'll
3 reconsider.

4 THE COURT: Do you know that I even thought about,
5 when I was trying to cut down my charge, not going
6 through the whole thing of what a contract is, and like,
7 just doing it very narrowly. And I said, oh, no, maybe
8 I just better include it. And there you go.

9 MR. ACHURCH: I'm okay, Judge, to tell them they
10 have to do that.

11 MS. MONOC: And to hear the whole breach of
12 contract charge or to give it to them is kind of going
13 to --

14 MS. LOHR: I don't think that, that answers that
15 question.

16 MR. WALKER: No. I think you almost answer it by
17 just saying they are not a party to the agreement, which
18 --

19 MS. MONOC: As you said, they're not a party to the
20 agreement.

21 MR. WALKER: -- which, I think, although it's self-
22 evident from here, they'll understand that's where the
23 inquiry ends.

24 THE COURT: Do you want me to just say ERP is not a
25 party to the agreement?

1 MR. WALKER: To the settlement agreement.

2 THE COURT: To the settlement agreement.

3 MR. ACHURCH: That's fine with me, Judge.

4 MR. WALKER: You're okay with that.

5 THE COURT: Okay. Give me that.

6 MR. ACHURCH: Yeah.

7 MS. MONOC: Thank you.

8 THE COURT: Can I just write it on the back? You
9 guys don't mind?

10 MR. WALKER: Yes. That's good.

11 THE COURT: We'll put a sticker on it.

12 That's going to go back to them, but you bring it
13 back out.

14 COURT REPORTER: I'm going to mark it, and then, --

15 THE COURT: She's going to make it an exhibit, so
16 they understand that they can't destroy it. I've
17 actually had them tear them up before. Okay.

18 COURT REPORTER: Juror's note is Court Exhibit 5.

19 THE COURT: All I wrote was:

20 *ERP is not a party to the settlement*
21 *agreement.*

22 MR. WALKER: That's fine.

23 THE COURT: That's it. That's it. Fine from
24 plaintiffs?

25 MR. WALKER: That's fine from the plaintiffs.

1 THE COURT: Fine from the defendant?

2 MR. ACHURCH: That's fine, your Honor.

3 THE COURT: Okay. Let's see if they're -- okay,
4 put an exhibit sticker on that, and we'll have Rick take
5 it in. Thanks, Wanda.

6 ITEM IDENTIFIED AS FIRST NOTE FROM
7 JURORS, AND THE COURT'S RESPONSE
8 MARKED COURT'S EXHIBIT NUMBER 5.
9 OFF THE RECORD 2:53 P.M.

10 VERDICT:

11 BACK ON THE RECORD before 4:33 P.M.

12 BAILIFF: All rise. Court is back in session.

13 THE COURT: Please be seated. All right. I
14 understand we've reached a verdict. Are you ready for
15 me to have the jury come in? Mr. Walker, yes?

16 MR. WALKER: Yes.

17 THE COURT: Mr. Achurch, yes?

18 MR. ACHURCH: Yes. Yes, your Honor.

19 THE COURT: Thank you.

20 MR. WALKER: Your Honor, there were a couple of
21 notes we wanted a reminder to --

22 THE COURT: Right. The first note, we did already
23 have on the record. And the second note that came will
24 be marked as Court's Exhibit Number 2.

25 MR. WALKER: That's fine.

1 THE COURT: And that'll be noted for the record.
2 And we were all back in chambers when that note came,
3 and both parties agreed to the response on that note.
4 It that correct? From the plaintiffs.

5 MR. ACHURCH: Yes, your Honor.

6 THE COURT: That's from the defense.

7 MR. ACHURCH: Yes, your Honor.

8 THE COURT: All right. Let's bring them in. Oh, I
9 also note -- you can bring them in. I also note for the
10 record that, certainly, if you all want ten days,
11 whoever wants ten days, you're more than welcome to it.
12 I just don't want to forget.

13 MR. WALKER: Thank you, your Honor.

14 THE COURT: Absolutely.

15 COURT REPORTER: That's Court's Exhibit Number 6.

16 THE COURT: Oh, thank you.

17 COURT REPORTER: The second note.

18 THE COURT: Okay.

19 ITEM IDENTIFIED AS SECOND NOTE

20 FROM JURORS

21 MARKED COURT'S EXHIBIT NUMBER 6.

22 BAILIFF: You ready, your Honor?

23 THE COURT: Yes, sir.

24 BAILIFF: Jury's entering the courtroom.

25 THE COURT: Thank you.

1 JURORS ENTER COURTROOM 4:35 P.M.

2 THE COURT: You may be seated.

3 Mr. Foreperson, I understand the jury's reached a
4 verdict.

5 FOREPERSON: Yes, ma'am.

6 THE COURT: Would you please hand it to the
7 bailiff.

8 All right. In the first case, the verdict form as
9 to Pinckney Point, LLC:

10 *Do you find the defendant, Beaufort*
11 *County, breached its contract with Pinckney*
12 *Point, LLC?*

13 The answer is no.

14 In the second case, as to Road, LLC:

15 *Do you find that the defendant, Beaufort*
16 *County, breached its contract with Road, LLC?*

17 The jury answered yes, and they find for the
18 plaintiffs, Road, LLC, in the amount of five million
19 dollars.

20 Ladies and gentlemen of the jury, if this is your
21 verdict, will you please indicate by raising your right
22 hand.

23 JURORS RESPOND.

24 Is there anything further requested of this jury?
25 From the plaintiffs?

1 MR. WALKER: Nothing from the plaintiffs.

2 THE COURT: From the defense?

3 MR. ACHURCH: No, your Honor.

4 THE COURT: All right. Ladies and gentlemen, I
5 want to thank you for your serve in this case. You have
6 assisted us in resolving this matter, as well as the
7 beginning of the week -- last week I had a number of
8 other cases that were on the roster. And of course,
9 just being here and being willing to serve, you help us
10 get rid of cases, and I want to thank you for that.

11 At this time, I'm going to go ahead and excuse you.
12 I know it looks like the weather has been a little
13 threatening out there, but it hasn't started raining
14 yet. So, hopefully, you all can get home while it's
15 dry.

16 At this time, ladies and gentlemen, you are
17 permitted to discuss this case when you go home or with
18 family and friends. You are allowed to do that, if you
19 choose to. Sometimes the attorneys may want to ask you
20 what you think. Of course, you're not required to speak
21 to anyone. You simply don't have to. If you don't want
22 to talk to someone, just simply say, no, thank you, and
23 be on your way. If anyone were to persist in some way,
24 please, let me know. Just call to the clerk's office
25 and I can take care of that. Okay?

1 Thank you, again, ladies and gentlemen. You are
2 excused.

3 JURORS LEAVE COURTROOM 4:37 P.M.

4 BAILIFF: Jury's clear, your Honor.

5 THE COURT: Okay. Everyone need ten days?

6 MS. LOHR: Yes, your Honor.

7 MR. ACHURCH: Yes, your Honor.

8 THE COURT: Okay. What I'm going to do is this,
9 when you all are ready, just call me or call my office,
10 and we'll have to schedule a time to do this. I don't
11 know -- trying to think. Week after next or is it next
12 week that I'm in Charleston? Let me just go through and
13 pull my schedule. Let me pull up my terms of court and
14 see what I've got. And obviously, I'm going to dedicate
15 some time for you all, so we can hear post-trial
16 motions. And we'll go from there.

17 Anyone want a copy of these?

18 MR. ACHURCH: We would like a copy.

19 THE COURT: Okay. Megan, would you mind making
20 copies for both sides. I think they both would like
21 one, probably. Okay?

22 MR. WALKER: Thank you.

23 THE COURT: All right. All right. Anything
24 further we need to do in this case?

25 MR. WALKER: Nothing from the plaintiffs,

1 understanding that we have ten days to submit any
2 motions. Thank you.

3 THE COURT: Same thing for the County?

4 MS. LOHR: Yes, your Honor.

5 THE COURT: Okay. All right.

6 MR. WALKER: Thank you, your Honor.

7 THE COURT: Thank you all. Goodnight.

END DAY SIX, END TRIAL, MONDAY,

MAY 2, 2016, 4:49 P.M.

CERTIFICATE OF REPORTER

APRIL 25, 26, 27, 28, 29, MAY 2, 2016

TRANSCRIPT OF PRETRIAL MOTIONS AND TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 25, 26, 27, 28, 29, May 2, 2016 Transcript of Pretrial Motions and Trial is a true, accurate, and complete record of the proceedings had and exhibits admitted on said dates, in the case of Road, LLC, et al, versus Beaufort County, Beaufort County, Court of Common Pleas, Case Number 2013-CP-07-01341; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER CONTAINS MY ORIGINAL SIGNATURE AND IS ATTACHED TO AN ORIGINAL OF THIS TRANSCRIPT FOR APPEAL. PURSUANT TO SCACR 607, UNAUTHORIZED COPYING OF THIS TRANSCRIPT IS PROHIBITED.

Witness my signature September 3, 2017.

Wanda H. Rowe, CVR-CM
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO: 2013-CP-07-01341

ROAD, LLC AND PINCKNEY POINT,
LLC,

Plaintiffs,

vs.

BEAUFORT COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
SOUTH CAROLINA,

Defendant.

VERDICT FORM AS TO
PINCKNEY POINT, LLC

2016 MAY -2 PM 5:10
CLERK OF COURT
BEAUFORT COUNTY, S.C.

1. Do you find that the Defendant Beaufort County breached its contract with Pinckney Point, LLC?

No.

If you answer no, STOP AND DELIBERATE NO FURTHER

Yes. If you answer yes, GO TO QUESTION 2.

2. If your answer to question one is yes please complete the following:

We find for the Plaintiff Pinckney Point, LLC in the amount of

\$

Foreperson

CHRIS CLAYTON

MAY 2, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2013-CP-07-01341

ROAD, LLC AND PINCKNEY POINT,
LLC,

Plaintiffs,

vs.

BEAUFORT COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
SOUTH CAROLINA,

Defendant.

VERDICT FORM AS TO
ROAD LLC.

2016 MAY -2 PM 5:10
CLERK OF COURT
BEAUFORT COUNTY, S.C.

- 1 Do you find that the Defendant Beaufort County breached its contract with Road, LLC?

_____ No. If you answer no, STOP AND DELIBERATE NO FURTHER

_____ Yes. If you answer yes, GO TO QUESTION 2.

2. If your answer to question one is yes please complete the following:

We find for the Plaintiff Road, LLC in the amount of

\$ 5.0 MIL

Foreperson

CHRIS CLAYTON

MAY 2, 2016

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2013-CP-07-01341

ROAD, LLC, AND PINCKNEY
POINT, LLC

PLAINTIFFS

VERSUS

AUGUST 9, 2016

TRANSCRIPT OF POST-TRIAL MOTIONS

BEAUFORT, SOUTH CAROLINA

BEAUFORT COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
SOUTH CAROLINA

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

WANDA H. ROWE, CVR-CM
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFFS
ROAD, LLC, AND PINCKNEY
POINT, LLC:

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WALKER, GRESSETTE, FREEMAN & LINTON, LLC
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POST OFFICE BOX 22167
CHARLESTON, SOUTH CAROLINA 29413-2167
843-727-2200
Walker@WGFLAW.com

ON BEHALF OF DEFENDANT
BEAUFORT COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
SOUTH CAROLINA:

HON. ROBERT ACHURCH
rachurch@hghpa.com
AND

HON. MARY BASS LOHR
mlohr@hghpa.com
AND

HOWELL, GIBSON & HUGHES, P.A.
25 RUE DU BOIS, LADY'S ISLAND
POST OFFICE BOX 40
BEAUFORT, SOUTH CAROLINA 29901-0040
843-522-2400

ALSO PRESENT: MR. JOSHUA ANDREW GRUBER, MR.
THOMAS KEAVENY II, MR. GARY KUBIC

1 BEGINNING 2:20 P.M.

2 THE COURT: All right. Well, we're here for post-
3 trial motions in Road, LLC, versus -- oh, sorry -- yes,
4 Road, LLC, versus Beaufort County. All right. Ms.
5 Lohr, are you, or Mr. Achurch, or both of you?

6 MS. LOHR: I think I'm arguing the mass of it. And
7 Robert may have something that he wants to add. A long
8 time ago, when the motions were first filed, I sent in a
9 memo at that time. Your Honor, do you have a copy of
10 that? I got an extra if you need it.

11 THE COURT: I'm fine.

12 MS. LOHR: Or if you'd like to have an extra copy.

13 THE COURT: Well, Ms. Leigh Ellen wants an extra
14 copy.

15 MS. LOHR: Okay. Basically, the argument with
16 regard to the jury verdict as to Road, LLC, is two
17 pronged for the County. There's no -- first, there's no
18 evidence of breach of contract to support the jury
19 verdict. As your Honor knows, we've been kind of
20 arguing this all the way through the entire case, so I'm
21 not going to belabor the points, but I'm going to kind
22 of hit them and make sure your Honor understands the
23 position of the County with regard to those issues.

24 First, the County performed -- all the evidence in
25 the case is, the County performed all its obligations

1 under the contract, primarily, that we entered into an
2 order that the road was private; and secondarily, that
3 we would grand a variance, which we did. There's really
4 no question that those things weren't done.

5 With regard to the damage sustained by the breach
6 of contract, Road's damages are not the result of the
7 actions of the County, but rather the result of Pinckney
8 Point, LLC's failure to perform under their obligations
9 under the settlement agreement.

10 Once PPLLC, Pinckney Point, LLC, lost its option,
11 they could no longer perform under the contract. Both
12 Mr. Kunkel and Mr. Bush, on behalf of Pinckney Point and
13 Road have testified in the record, which I have a
14 complete copy of if your Honor would like a copy. You
15 know, I don't know how you want to do this, since we're
16 arguing the absence of evidence in a lot of situations.

17 THE COURT: Okay.

18 MS. LOHR: I don't know if you'll want to see that
19 or not, but.

20 THE COURT: Not right now.

21 MS. LOHR: Right.

22 THE COURT: Yes. Okay.

23 MS. LOHR: But I can hand up to you -- this is the
24 portion of Mr. Bush's deposition where he says Pinckney
25 Point could not perform under the settlement agreement.

1 Additionally, Mr. Kunkel says that part of the
2 settlement agreement to buy Dot's land, Pinckney Point,
3 LLC, never could perform that once they lost the option.
4 You want a copy of these copies?

5 MR. WALKER: Sure.

6 THE COURT: Were there ever any cross-claims
7 amongst the -

8 MS. LOHR: The trial. I'm sorry, I said the
9 deposition. I meant the trial of the transcript.

10 THE COURT: Okay.

11 MS. LOHR: Both of these are evidence in the case
12 that Pinckney Point, at the time it lost its option, was
13 unable to perform under the contract -- under the
14 settlement agreement. The County's argument is, once
15 Pinckney Point, LLC, could not perform under the
16 settlement agreement, the settlement agreement is
17 invalidated just because -- once one party can't
18 perform, can no longer perform under the contract,
19 there's -- it really is an issue of fairness that you're
20 going to hold the other parties to the contract, when
21 the contract -- the agreement has become a -- it's a
22 nullity, really. It's been invalidated. Once there's
23 no way that Pinckney Point can perform under the
24 contract, the contract disappears. There's been no
25 testimony with regard to the breaches that those

1 breaches occurred prior to Pinckney Point's losing the
2 option.

3 Plaintiff, in their brief that they submitted
4 subsequent to our brief, says that we didn't argue that
5 the -- the nullity argument previously. In fact, we did
6 argue that the nullity -- the nullity argument. Page 3,
7 Paragraph 2, and Page 5, Paragraph 1, of the directed
8 verdict motion. And it's also argued during directed
9 verdict motions, after the close of the plaintiffs' and
10 defendant's case, pages at Page 972, 973, and 1122 of
11 the transcript. So I'll hand those up to you also.

12 Basically, the County's position in that regard is
13 that the non-performance of Pinckney Point, LLC,
14 invalidated the settlement agreement. There couldn't be
15 performance under the settlement agreement by that
16 party. The *Edisto Farm Credit* case says that once one
17 party fails to perform, the other parties to the
18 contract aren't held to performance under the contract.

19 Additionally, the plaintiff has repeatedly argued
20 that the settlement agreement's terms required that the
21 Pinckney Point parcel be developed into a residential
22 development. I have a copy of the settlement agreement.
23 I know your Honor probably has a copy up there. I don't
24 know for the sake of ease of reference if you'd like me
25 to hand you up another copy?

1 THE COURT: I got it. I got it.

2 MS. LOHR: Okay. And your Honor, while it was an
3 anticipated outcome of the settlement agreement that
4 there would be a residential development, it was never a
5 term of the settlement agreement itself that there would
6 be a residential development. The settlement agreement
7 doesn't speak to the term *residential community*, except
8 it does it in the body of the settlement agreement
9 itself. It never says the words *residential*
10 *development*. The only place where the words *residential*
11 *community* exist in this agreement is at the deed from
12 Agnes' Pinckney to Road, LLC, whereby she restricts the
13 use of the property that she's deeding over to them.
14 And the restriction is:

15 *Property may only be used as a right-*
16 *of way.*

17 And then a lot of other stuff. You can read it
18 yourself. But basically:

19 *For any other purpose necessary and*
20 *appropriate for an entrance to a residential*
21 *community.*

22 There's no way that that can be read to interpret
23 that somehow Pinckney Point -- the Pinckney Point 229-
24 acre parcel at the end, an adjacent lot, has any kind of
25 restriction placed on it. And furthermore, Mr. Kunkel

1 says, in his testimony, that the settlement agreement
2 does not make an agreement -- does not provide an
3 agreement for the property to be used exclusive to a
4 residential community. He agrees that that's correct.
5 And I think he says -- hold on. I'm going to read it
6 specifically to you.

7 And you agree that the settlement
8 agreement does not say that the Road property
9 can only be used for ingress and egress to
10 a residential development.

11 The settlement agreement does not make
12 it exclusive to a residential community.

13 So that's the only witness that we heard from with
14 regard to Road, LLC -- also he says again at Page 661 of
15 the transcript:

16 I do not contend that it would only
17 be a residential community.

18 So he repeats this in a couple of places. That's
19 at the heart of the Road, LLC's argument is that they
20 contend the settlement agreement provided that it would
21 be a residential development and that that's the breach
22 that the County -- that's the breach of the contract is
23 the County then purchased it, and it can't be used as a
24 residential development.

25 But the only witness we heard from during the trial

1 with regard to Road, LLC, was Mr. Kunkel, and his
2 testimony is preserved for us in the record that that's
3 not at all what he contended.

4 Hold on a second. Okay. So, also, I wanted to
5 hand up to you -- oh, in the settlement agreement, the
6 deed language exists there. It's towards the back with
7 regard to the Agnes parcel, that Agnes Pinckney -- I'll
8 give you the page number. Well, there is no page
9 number.

10 But the specific language is:

11 *And subject to -*

12 This is the passing of the road parcel:

13 *And subject to a restriction that the*
14 *property conveyed herein may be used only as*
15 *a right-of-way.*

16 So we're talking about the road parcel can be used
17 only as a right-of-way.

18 *Or other purpose associated therewith,*
19 *including, but not limited to landscaping,*
20 *parking, drainage, installation of utilities,*
21 *except, however, no gravity sewers or any*
22 *purpose -- or any other purpose necessary*
23 *and appropriate for an entrance area to a*
24 *private residential community.*

25 Again, the language of the contract specifically

1 doesn't ever reference a -- it happened to be a
2 residential community as a term of the contract.
3 That's, at the end of the day, what we all thought was
4 going to happen, but it wasn't a requirement under the
5 contract terms that that happen. Because multiple
6 parties had to do different things. And once you have
7 Pinckney Point, LLC, not performing, then there couldn't
8 be a residential development. We're not bound forever
9 in perpetuity that that property has to be a residential
10 development. That's not something the County ever
11 agreed to.

12 Additionally, your Honor, the County wasn't even -
13 although it fell under the umbrella of the settlement
14 agreement, the County was not party to the signing of
15 the deed from Agnes that referenced residential
16 community; and we weren't party to the transfer of the
17 agreement that Road, LLC, would buy the property -- I
18 mean, Pinckney Point, LLC, would buy the property from
19 Road. So those are separate agreements. While it falls
20 under the umbrella of that main agreement, it's not
21 something that the County necessarily anticipated,
22 because we didn't know that that was going to be part of
23 this agreement. Our part of the agreement was variance
24 and private road.

25 Additionally, the way you get to -- this is this

1 term -- it's not a specific term of the agreement. It's
2 not -- we can't say that it's a patent ambiguity,
3 because the words are missing. So then, we have to
4 argue that it's a latent ambiguity. That goes to the
5 intent of the parties. Mr. Kunkel has told you it was
6 not his intend that this property be used as a
7 residential development; that that wasn't a term; that
8 wasn't a requirement under the contract.

9 Additionally, the attorney for Road, LLC, and
10 Pinckney Point, LLC, Mr. Nester, said that the contract,
11 in his opinion, was not ambiguous. You've got to have
12 an ambiguity on a contract to ever address the issue of
13 what's implied in a contract or what is the latent
14 ambiguity. And without evidence of ambiguity, you can't
15 get to that analysis. So Mr. Nester -

16 THE COURT: I think he also gave the opinion at
17 trial when he testified that the County was in violation
18 of the settlement agreement.

19 MS. LOHR: Your Honor, I don't think I -

20 THE COURT: He's given lots of -- he's given lots
21 of opinions.

22 MS. LOHR: Nester said there were no implied
23 agreements that are not in the contract's specific
24 terms, and that the County did not violate the contract
25 terms as to the Road agreement. I'm going to hand that

1 to you right now.

2 Additionally, your Honor, with regard to the
3 subsequent purchase of the property by the County to --
4 by the County of the Pinckney Point parcel, that, in no
5 way, impacts the title that Road has on their parcel.
6 That's still good title. Now, it might impact their
7 expectations of the use of that property, but, again,
8 they still own the property. There's no cloud on title
9 that comes from the County's purchase of the property.

10 THE COURT: And correct me if I'm wrong, Tommy
11 Hartnett also testified that it's worth five million
12 dollars.

13 MS. LOHR: Right, and I'm going to get there in
14 just a second, your Honor.

15 THE COURT: I can tell you will. You know, I know
16 I'm going to want an entire copy of Walter Nester's
17 testimony at trial.

18 MS. LOHR: Okay. I can definitely do that.

19 THE COURT: Keep going.

20 MS. LOHR: And we have -- your Honor, we have
21 e-copies, so would you prefer to have an e-copy? Or
22 would you prefer for me to make a paper copy for you?

23 THE COURT: I just don't know how --

24 COURT REPORTER: What about I just cut it out of
25 this trial and email it to her?

1 MS. LOHR: Okay. Okay. If that -- I mean, however

2 --

3 COURT REPORTER: Is that good? You just want one,
4 you just want Nester, right?

5 THE COURT: Well, right now.

6 COURT REPORTER: All right.

7 THE COURT: And that's first. I'm going to read
8 that, but okay. Okay. Yes, I'll let you know. How
9 about at the end of this, let me figure out if there's
10 additional testimony I need.

11 MS. LOHR: Yes, ma'am.

12 THE COURT: Okay.

13 MS. LOHR: Okay, the County's -- I mean, the
14 plaintiffs' argument regarding breach of the settlement
15 agreement itself as it relates to the County are all
16 things that occurred after Pinckney Point, LLC, could no
17 longer perform under the agreement. And they cite in
18 their brief two things. Number 1, that we have failed
19 to abide by the agreement that the road is private. All
20 of the evidence is that the County agrees that the road
21 is private. There is an order that says that the road
22 is private. Now, the question becomes, then, is there
23 any way that the County can negate the agreement that
24 it's private by having a -- being out there. The County
25 has never declared the road to be public. We haven't

1 invited the public to use the road. There's not a green
2 sign as opposed to a blue sign, which is how the County
3 indicates public versus private roads. The plaintiff
4 contends, by the government simply owning the property,
5 it somehow commuted into a public property as opposed to
6 a private property. And your Honor, under the law,
7 there's just no support for that contention. There are
8 private roads owned by government agencies all over the
9 place. The road is a private road. We'd agree that
10 it's a private road. And furthermore, if that was the
11 breach of contract, the damages wouldn't be what the
12 jury awarded in this case. But the way to solve that
13 would be to file the other actions that got filed in
14 this case, because your damages wouldn't necessarily be
15 five million dollars. Your damages in that instance
16 would be quit using the road. So with that regard, that
17 can't be the breach that resulted in the five million
18 dollar award, because, quite frankly, there's an easier
19 remedy. There's a remedy under the law for them, and
20 that's to enforce the order that says it's a public
21 road.

22 Additionally, the second ground is that the
23 purchase of the property kept the property from being
24 used as a residential development. We've already
25 addressed that issue. However, There's testimony by Mr.

1 Bush in the transcript, he read an email that he had
2 sent out. And at that point, they had -- he had
3 decided to switch gears and start trying to market the
4 property for ERP to enhance the value for Road. When
5 they did that, that showed the intent that Pinckney
6 Point, LLC, had at that point that they were -- they had
7 given up on the property. You know, that shows that
8 they thought, okay, we're going to maximize what we have
9 here by doing something different, and we're going to
10 try and help ERP out at that point. So that's evidence
11 that they had a mental shift themselves with regard to
12 their expectations for this property. It's only after
13 the County comes and purchases the property that,
14 suddenly, there's an allegation of breach of contract.

15 One of the interesting things in this case, your
16 Honor, is, if there had been a breach by Pinckney Point,
17 the damages were only ten dollars for the breach of
18 contract. And I'll get to that a little bit later on,
19 also, your Honor. And Mr. Bush justifies that with his
20 testimony by saying, well, you know, the market's fluid,
21 and there's no expectations that you can have, and you
22 don't know what the value's reasonably going to be, so
23 ten dollars is a good liquidated damages.

24 There's no promise -- furthermore, there is no
25 promise in the settlement agreement that this would ever

1 be a residential development. I've already argued that.
2 I'm not going to belabor that point. That's not part of
3 the -- I'm going to get there. That's not part of the
4 -- that's not part of the terms of the contract. And
5 again, once Pinckney Point couldn't perform. That
6 *Edisto Farms Credit* case says none of the other parties
7 are bound to this agreement once performance -- it can't
8 be done at the appropriate time. Additionally in this
9 case, the appropriate time for performance under this
10 contract for Pinckney Point, LLC, would have been before
11 they lost the option.

12 Breach of implied covenant of good faith. This is
13 really kind of a -- it's interesting. There's really no
14 cases in South Carolina that give you any strong
15 guidance as to what this is. But basically, you just
16 can't act in bad faith to negate the contract.

17 THE COURT: There's got to be some kind of breach
18 somewhere.

19 MS. LOHR: There's got to be some kind of breach
20 somewhere for it to be a breach of covenant of good
21 faith and fair dealing.

22 Now, with regard to -- there was one argument that
23 they made having to do with the permitting. And that
24 was Pinckney Point's primary argument, but it kind of
25 goes hand in hand with Road, LLC, and they kind of renew

1 that during their briefing of this. And that's that,
2 during the permitting process, something the County --
3 the County did something that held up the permitting
4 that frustrated them that they were unable to get it
5 done. But the jury clearly did not buy that argument
6 with regard to Pinckney Point, LLC, because they didn't
7 award anything for Pinckney Point, LLC. So I think it
8 would be fair to say that that's an unappealable ruling.
9 The jury couldn't have found that particular permitting
10 issue was a frustration of the contract because they
11 didn't rule in favor of Pinckney Point, LLC, and that
12 was their primary basis.

13 All the other -- additionally, your Honor, with
14 regard to that, there's no evidence to support it.
15 There was months and months and months things could have
16 been done. There was nothing in the contract that said
17 the County had to cave on every issue. The contract
18 specifically addressed two issues, that was the order
19 and the variance. Those things were done, and done with
20 haste. Everything else, the agreement was -- and Walter
21 Nester testified that the expectation was they would
22 have to, you know, satisfy the requirements of the code.

23 So I think that there is no evidence in this case
24 that the breach of covenant of good faith and fair
25 dealing was with regard to Road, the permitting, because

1 it clearly wasn't considered to be a breach of the
2 covenant of good faith and fair dealing with regard to
3 Pinckney Point, LLC.

4 All the other evidence and examples that the
5 plaintiff cites in their brief with regard to the breach
6 of the covenant of good faith and fair dealing occurred
7 after Pinckney Point, LLC, could no longer perform on
8 the contract. That's still the same argument that I've
9 basically argued to you before. They cite two -- three
10 -- I'm sorry -- three issues. The purchase property --
11 the County purchased the property to prevent development
12 when that was the purpose of the settlement. Again, the
13 settlement, couldn't happen because Pinckney Point
14 couldn't perform under the contract. So the frustration
15 of the contract in that regard was done by Pinckney
16 Point, not by the County. The County comes in after the
17 fact and purchases the property.

18 I think also Kunkel says there was nothing in -- I
19 think Kunkel says there was nothing that would prohibit
20 ERP -- in his testimony, he says there was nothing that
21 would prohibit ERP from selling to anybody that they
22 wanted to at that point, because the option had expired.

23 Certainly, if the contract can't be performed, it's
24 responsible for the County not to consider itself bound
25 under the contract anymore, because the contract isn't

1 going to be performed.

2 Now, could they argue later on we could go -- and
3 give us four more months and I'll get to that. Give us
4 four more months and we'll be able to perform under the
5 contract. But that's completely speculative, and I'll
6 address that in a minute.

7 Additionally, they talk about Walter Nester's
8 letter warning of the violation of the settlement
9 agreement. In fact, Walter Nester's letter does not
10 warn of the violation of the settlement agreement.
11 Walter Nester's letter addresses only access. In
12 Walter's letter he says, you agree the road's a private
13 road, and by the way, there's no easement. You can't
14 use that easement to cross the road. And so, you can't
15 build this park that you want to build or whatever,
16 because you don't have access across the road.

17 But there's not anything in that letter that says
18 you're going to violate the settlement agreement. I
19 don't think Mr. Nester anticipated that there was a
20 violation of the settlement agreement at that point, for
21 the same reasons I'm telling you it isn't a violation
22 now, is because the settlement agreement kind of goes
23 out the window when Pinckney Point doesn't perform under
24 it.

25 And then the failure -- the third instance of the

1 breach of covenant of good faith and fair dealing,
2 again, these are all after the fact of Pinckney Point's
3 inability to perform, is that there has been minor --
4 there has been maintenance of the road. Again, the
5 damages for that particular breach could not possibly be
6 five million dollars. That would be an injunction, a
7 rule to show cause, you know, that would be something
8 else other than the scenario where you've lost profit.
9 That would be more of a trespass-type issue, not a
10 you've-caused-us-five-million-dollars'-worth-of-damage
11 breach of contract.

12 And again, I don't think it's -- I think the
13 contract did exist at that point. And what we're
14 talking about is some time in the recent future, long
15 after the County purchased the property.

16 Now, lastly, I want to get to the third -- the
17 second prong of our argument is the lost profit, lost
18 profit claims. The jury's verdict is not supported by
19 the evidence in the case. Number 1, profit was too --
20 the profit alleged by the plaintiff in this case is too
21 speculative to support an award to Road in the first
22 place. Any award of lost profit has to be ascertained
23 to a reasonable degree of certainty. I think that's the
24 -- that's the charge, perhaps, you gave. That's the
25 case law that we agreed to was the appropriate case law.

1
2 There is no evidence of certainty that Pinckney
3 Point, LLC, would have ever gotten another investor
4 before ERP sold to some other developer and entity.
5 Again, Mr. Kunkel testifies they could have sold to
6 anybody at any time. The only evidence they put forward
7 was their own speculation that perhaps within four
8 months they could have found somebody if they had had
9 another option.

10 However, they also, interestingly, testify that
11 they couldn't get an investor because they didn't have
12 the entitlements. Well, they couldn't get the
13 entitlements because they lost the property at that
14 point. And Ms. Hillary Austin testified that she
15 couldn't have given them the final approval once they
16 didn't have an option or ownership interest in the
17 property.

18 So, even though they speculate, they don't tell us
19 who or how or when for sure that they would have had
20 this money, but they think in four months they could
21 have gotten the money. That is pure speculation. We
22 have no evidence that backs that up that supports that
23 contention from these individuals. That's just their
24 best guess. And in fact, the evidence actually -- their
25 testimony goes to show us that they wouldn't have been

1 able to do it because they're saying they had to have
2 the entitlements. And we know after they lost the
3 option they couldn't get the entitlements, and that
4 would have been the four-month window that we're talking
5 about. So there is no reliable evidence of potential
6 investors.

7 Additionally -- I think we touched on this a minute
8 ago. There's some testimony of Mr. Bush that the
9 damages -- the liquidated damages portion of the
10 purchase agreement was only ten dollars, because,
11 basically, the market is uncertain and the values are
12 fluctuating in a real estate development market. So
13 that's his own testimony of lack of reasonable
14 certainty.

15 I also have the purchase agreement for you that
16 contains that provision.

17 So the evidence in this case supports there was no
18 investor waiting in the wings out there and no
19 reasonable certainty that Pinckney Point would have ever
20 been able to get the project going; and then, in turn,
21 be able to pay Road, LLC, back for the investment.

22 Now, finally, with regard to the evidence of lost
23 profit/lost value, the jury's award is not supported by
24 the evidence in the record. The evidence in the record
25 is -- and I believe I supplied the complete portion of

1 Tommy Hartnett's testimony to your Honor, but I've got
2 specific provisions of it right here. The property is
3 worth five million dollars today, even the County owning
4 the Pinckney Point parcel at the end.

5 Now, plaintiff contents in their argument that,
6 well, the jury could have taken some of Mr. Hartnett's
7 testimony and could have ignored other parts of Mr.
8 Hartnett's testimony and not believed that it's worth --
9 believed that it's worth five million dollars today.
10 The problem with that is, your Honor, there's no
11 evidence in the record or anywhere else of what it's
12 worth today. The only evidence in the record is that
13 it's worth the five million dollars by Mr. Hartnett.

14 Plaintiff uses the example of what the deduction
15 was when the ingress and egress became an issue. They
16 say, oh, it will -- they deducted it by five million
17 dollars. But the problem with that, your Honor, is, at
18 the end of the day, when the jury awards this verdict,
19 they still own the property. So we have no evidence in
20 the record, except Mr. Hartlett's testimony that it's
21 worth five million dollars, of what the actual fair
22 market value would be.

23 So there's no evidence that would support that
24 they're entitled to five million dollars, because this
25 is what -- this is the problem, they actual get a double

1 recover. They pay the 1.3; they get a five million
2 dollar piece of property, according to Mr. Hartnett;
3 there's no evidence out there for the jury with regard
4 to any other value; they keep the property; they still
5 own it; and they get five million dollars. That clearly
6 isn't what the evidence supports. Even if you believe
7 there's a breach of contract, the evidence doesn't
8 support a five-million-dollar verdict, because the
9 property has to have some value.

10 Plaintiff claims the damages are self-evident in
11 this case. Well, you know, we got the 1 -- we paid 1.3
12 and we were going to get five. Well, honestly, your
13 Honor, what would be supported would be 3.7, because
14 that's the difference between 1.3 and the 5, and you got
15 3.7, and you keep the property that you bought for 1.3
16 But that's not what the jury's verdict was. The verdict
17 is absolutely not supported by the evidence in the
18 record in this case. And in fact, the only evidence in
19 the case is that it's worth five million. That is a net
20 profit to the plaintiff of 3.7 million dollars. So they
21 can't be damaged in this case if you use that testimony.

22 It is inherently a problem in the evidence in the
23 record that there's no indication of value today.
24 Because what ends up happening is the plaintiff still
25 owns this property. It's as if the jury looked at it as

1 a condemnation. And it's not. So the County --
2 additionally, with the remaining claims of the plaintiff
3 out there, it's not true that it's self-evident, because
4 that road parcel may have a value to the County if your
5 Honor rules that you can't access the tennis racket
6 head, the 229 acres, if you can't access that or it
7 somehow creates a public road, it inherently does have a
8 value, because then, the person who owns the property at
9 the even of the tennis racket head might need to
10 purchase it. So there's no evidence that it doesn't
11 have ne value; that they have a complete loss of five
12 million dollars. That's not -- that was an erroneous
13 outcome by the jury. It's not supported by the
14 testimony that was in front of them, and we believe your
15 Honor should vacate the verdict on that basis.

16 And then, additionally, it is a double recovery for
17 the plaintiff as they get to keep the property.

18 I don't know if your Honor intends to hear us today
19 on those remaining causes of action, or if you prefer to
20 rule on this one before we go to that. But that's the
21 basis of our JNOV motion at this time.

22 THE COURT: Anything else?

23 MS. LOHR: No, ma'am.

24 THE COURT: All right. Mr. Walker.

25 MR. WALKER: Thank you very much, your Honor.

1 We're here only on a motion for judgment notwithstanding
2 verdict. The defendants did not claim there was any
3 error in the jury instructions. They're not asking for
4 a new trial. They're simply saying there was no
5 evidence to support the verdict. We believe that your
6 Honor ruled correctly the first two times, and we're
7 back on the same record the third time. Because you
8 ruled at the conclusion of the second directed verdict
9 motion, at Page 1134 of the transcript:

10 *Well, again, just in keeping with what*
11 *we did before, I think there are facts that*
12 *were testified to that this jury could conclude*
13 *that there was a breach of contract. So I'm*
14 *going to go ahead and deny your motion for a*
15 *directed verdict.*

16 The standard, as we say in our brief, is extremely
17 exacting for what they have to show in order to set
18 aside this verdict. The Supreme Court in June decided a
19 contentious case between Frank Maybank and BB&T. It's
20 Opinion Number 27640. And in it, the Court again stated
21 what the law is under *Heading 3, JNOV Motions*:

22 *The trial court must deny a motion*
23 *for directed verdict or JNOV if the evidence*
24 *yields more than one reasonable inference, or*
25 *if its inference is in doubt. Moreover, a*

1 *motion for JNOV may be granted only if no*
2 *reasonable jury could have reached the*
3 *challenged verdict. In deciding such motions,*
4 *neither the trial court nor the appellate*
5 *court has the authority to decide credibility*
6 *issues or to resolve conflicts in the testimony*
7 *or evidence.*

8 And we believe, your Honor, that this was a classic
9 case where the evidence was all over the place, and it
10 was up to the jury to decide it. And now, I'm going to
11 get to the specific grounds that have been alleged for
12 the motion.

13 The argument was made that there was no evidence of
14 a breach of contract and that the County performed. The
15 largest legal argument that the County has made is that
16 the County was somehow excused from performance of the
17 contract was a nullity, because Pinckney Point did not
18 acquire the investor needed to exercise the option and
19 purchase the property. Well, we disagree with the
20 assertion that the County was excused. This *Edisto Farm*
21 *Credit* case would not apply here. Here, there was
22 performance by all the parties.

23 Road, LLC, certainly performed its part. Road,
24 LLC, paid the 1.3 million dollars to Agnes Pinckney and
25 acquired the property. The County, I don't think, could

1 argue that Agnes Pinckney needs to give the money back.

2 Pinckney Point performed any obligations it had
3 under the settlement agreement. They County loosely,
4 abstractly says, well, Pinckney Point couldn't perform
5 under the settlement agreement. They didn't say what
6 Pinckney Point didn't perform insofar as an obligation
7 to the County.

8 What Pinckney Point could not do was, Pinckney
9 Point could not realize the residential development that
10 was expressly contemplated by the settlement agreement.
11 The County has argued, well, there's nothing in the
12 settlement agreement that states that the property needs
13 to be a residential development. We agree there's
14 nothing in the settlement agreement that says this
15 property is absolutely prohibited from being anything
16 other than a residential development. It doesn't say
17 that. However, there are more provisions than the one
18 that Ms. Lohr referred to that talk about development
19 and clearly contemplates that the property will be
20 developed as a residential development.

21 On Page 3 of Exhibit 78, in talking about the
22 variance and why the variance was granted and the effect
23 of it, the agreement says:

24 *To the extent a variance shall be*
25 *required from the river buffer and river*

1 *setback requirements of Section 106-1845*
2 *of the ZDSO for the construction of the*
3 *road parcel and the utility infrastructure,*
4 *for the development of the Point tract,*
5 *it's contemplated herein. Beaufort County*
6 *agrees that the variance is hereby approved.*
7 *So, it specifically says that it's contemplated*
8 *that the Point tract will be developed.*

9 *On Page 4, there's a similar provision:*

10 *By County agrees that said right-of-way*
11 *provides sufficient access to and from the*
12 *Point tract for the development thereof in*
13 *accordance with the Beaufort County Zoning*
14 *and Development Standards Ordinance.*

15 *ZDSO. Clearly, there was a contemplated use of*
16 *residential development, and the County agreed that the*
17 *contemplated use was residential development.*

18 *So to get back to our argument as to what the*
19 *breach was as to Road, LLC, we say there really are a*
20 *number of breaches as to Road, LLC. While the County*
21 *performed the obligation of granting the variance, there*
22 *was proof that would have led a jury to believe the*
23 *County has violated the provision that the road was*
24 *private. The testimony was that the County has*
25 *maintained the road. There was also testimony that the*

1 County only maintained public roads. There was proof
2 that the County had not restricted access, left the gate
3 open. Mr. Kubic testified that there was no restriction
4 on access. If the gate was open, any member of the
5 public could go down and enjoy it, and that, in effect,
6 a jury could conclude a reasonable inference that the
7 County was treating it as a public road.

8 We're not saying solely that simply because the
9 County purchased it, it became a public road defacto as
10 a matter of law. We're saying, through their conduct,
11 they both violated the agreement by treating it as a
12 public road and the anticipatory repudiation that
13 they're going to continue to do that.

14 Mr. Gruber testified that the only thing that
15 making it private did was to shift the responsibility of
16 maintenance over to the private party; that they could
17 just go use it as much as they wanted. And the jury was
18 entitled on that testimony alone to find that there was
19 a breach of the private road provision.

20 We also maintain that there was a violation of the
21 covenant of good faith and fair dealing. There was a
22 violation in a number of ways. There was a violation
23 since the County had violated the provision that the
24 road would be private. There was a violation since
25 everybody knew that, and the County was included in that

1 group, knew that Road, LLC, was putting up 1.3 and had a
2 contract with Pinckney Point to get paid back. And the
3 whole purpose of the settlement was to facilitate the
4 residential development. The County knew that was the
5 purpose. And the County purchased the property in order
6 to defeat the development that was the purpose of the
7 contract. That also is a breach of contract.

8 Your Honor charged the jury with the defendant's
9 charge on breach of contract, and it came straight from
10 *Anderson's Handbook*. And that charge says -- talks
11 about a breach as being not just the failure to perform
12 an express obligation, but the doing of something
13 inconsistent with its existence. The charge further
14 goes on to talk about -- and I'll get it right here --
15 the purpose of the contract. So not only is a breach
16 the doing of something inconsistent with the existence
17 of the contract, but a breach occurs when a party
18 refuses or neglects to perform some duty required by the
19 terms of the contract. All right? Well, they had a
20 duty and an objection to treat it as a private road.
21 They didn't. Or a breach also occurs when a party
22 knowingly prevents, hinders, or makes more costly the
23 other party's performance. Here, the County, through
24 the acquisition of the property, made it impossible for
25 Road, LLC, to realize the benefit of its bargain.

1 As Mr. Kunkel said, and was brought out by Mr.
2 Achurch on cross-examination, the value to Road, LLC,
3 was not just that Pinckney Point would develop the Point
4 property, but if Pinckney Point couldn't, it had the
5 sole road and any other developer who wanted to develop
6 it would have to come back to Road, LLC, to buy the
7 road.

8 In fact, that's what send John Irby of ERP off the
9 edge, because he felt that it was slimy, slippery, and
10 all this for Road, LLC, to set it up so that anybody who
11 bought the Point tract as a residential development
12 would have to deal with Road, LLC, and buy it. And when
13 he said we'll give you four more months, that was the
14 condition in his email in early January of 2003, it was
15 that we want you to remove that restriction; we want you
16 to give us free access; this is way too -- it's
17 inhibiting what we can do with the property.

18 So even, I think, Irby acknowledged and that it was
19 -- that anybody buying the Point would have to deal with
20 Road. And Mr. Achurch described it as a poison pill;
21 that anybody who was going to have to buy it; buy the
22 Point property for residential development would have to
23 go through Road and work something out, because the
24 limited easement was a 20-foot, unimproved dirt road,
25 and there was not the 50-foot paved right-of-way that

1 would be necessary to subdivide the property. So, when
2 the County bought it to use either as a park or just as
3 dead space, conservation, and there was certainly
4 testimony they may just leave it the way it is, that
5 completely frustrated the purpose.

6 And Mr. Hartnett said the highest and best use is
7 as access to residential development, and that would no
8 longer happen. There's no proof the County intends to
9 develop it. In fact, the County said through its
10 testimony, we aren't going to develop it; we're never
11 going to develop it; we may never do anything. So that
12 would be a breach in and of itself and certainly a
13 violation of the covenant of good faith and fair
14 dealing.

15 There's the argument that Road's damages resulted
16 from Pinckney Point's inability to close. Well, we have
17 over on this side the argument that Pinckney Point was
18 frustrated by the County and could not extend the option
19 because of the County's actions, but I'm going to leave
20 that over here for just a minute, because that gets more
21 to Pinckney Point. I think that's one way we get to the
22 County's actions caused damage to Road. But the cleaner
23 way, so we don't have to go through the tangle of
24 testimony, is the testimony I just referred to where Mr.
25 Kunkel said if it's bought by anybody who's planning a

1 residential development, they're going to have to go
2 through Road, LLC.

3 Also, Mr. Hartnett's testimony that it's worth at
4 least five million dollars. That's what he said, at
5 least five million dollars. So there was testimony that
6 of proximate cause, even if we don't look at Pinckney
7 Point, LLC. But we also would submit, your Honor, that
8 what the County did in slow walking the permit and in
9 negotiating for this property at a time when the ERP had
10 suggested they would extend the option, could have led a
11 jury to the reasonable inference that the County's
12 actions led to ERP not extending time. We also submit
13 that there was testimony. It's not wildly speculative
14 and a guess. There was testimony that had Pinckney
15 Point received another 120 days, Taylor Bush testified
16 that they most probably would have gotten the approvals.
17 And Mr. Kunkel testified that they would have obtained
18 the financing. But for purposes of Road, we don't have
19 to go there. We think that's a back-up argument. The
20 jury ruled against Pinckney Point. It was a jury
21 issues, so I'm not going to pour all that on you,
22 because we haven't made a motion for Pinckney Point.

23 THE COURT: Right.

24 MR. WALKER: All of this was clearly a jury issue.

25 THE COURT: Let me ask you, Mr. Walker. So how, in

1 your theory, and not -- I can always sit back here and
2 Monday-morning quarterback the jury. But how did they
3 come up with the five-million-dollar number if Tommy
4 Hartnett says that's the value of the property, and
5 Road, LLC, still owns it? Truth be told, I thought when
6 I heard that come out of his mouth, I thought he was
7 prepping for the condemnation action afterwards, and
8 that's what his testimony was going to be. And then, my
9 next thought is, is that, you know, at this point, if I
10 let this judgment stand and this verdict stand, does
11 Beaufort not own that now? I mean, it sounds like that
12 if they had to pay a five-million-dollar verdict, it
13 would be paid for. So I just want to know where the
14 five million came from as far as the evidence in this
15 case.

16 MR. WALKER: Well, first, I want to say that Tommy
17 Hartnett said a number of things, and the jury didn't
18 have to accept all of his testimony. And we've got
19 that. We cite the case. I'll hand it up. *Small versus*
20 *Pioneer Machine.*

21 THE COURT: But what other values did he get?

22 MR. WALKER: We had other values. He said it was
23 worth -- he said it was worth five million dollars, at
24 least five million dollars as an access to a residential
25 subdivision. So he gave that opinion. That's separate

1 from the question of is it worth five million today. He
2 said the jury could have said, you're right, it has five
3 million dollars' value, at least five million as access
4 to a residential subdivision. The County has breached
5 the settlement agreement, violated the implied covenant
6 of good faith and fair dealing, and forever prevented
7 that highest and best use, because they have no intent
8 to do it. So the jury could have concluded in the -- go
9 ahead.

10 THE COURT: Go ahead. No, no, no. I'm sorry. Go
11 ahead.

12 MR. WALKER: The jury could have concluded in the
13 evidence that that five million really was only there if
14 it were used as a residential subdivision. And because
15 it can't, because the County purchased it, then, that is
16 what caused the loss. And his testimony's proof as to
17 the value. Also, there's other proof that, years
18 before, when the property was marketed as a residential
19 subdivision, as it could be developed as a matter of
20 right, that when the access was granted, the value was
21 reduced by five million dollars. And they may say,
22 well, that wasn't in this negotiation, but it is other
23 proof the jury could have considered that the value of
24 access for a residential subdivision is five million
25 dollars.

1 I want to come back to your question, too, about it
2 seems they own it, and yet, they get -

3 THE COURT: Well, no, they don't own it. That's
4 the thing. They don't own it. So Road, LLC, still has
5 the property. It's still theirs.

6 MR. WALKER: Well, right, but here's where -- and
7 this gets to the equitable claims. We have both legal
8 and equitable claims. The legal claim was tried. We
9 alleged equitable claims. If we have an adequate remedy
10 at law, we don't get to the equitable claims. We say
11 the jury verdict should stand. We have an adequate
12 remedy at law. The jury awarded damages for breach of
13 contract. We had been awarded the value of our contract
14 -- or the benefit of our bargain. At that point, we've
15 been compensated. I don't think we can enjoin -- I'm
16 just speaking frankly with you now. We can't enjoin the
17 County because we received an adequate remedy at law.
18 The County can do what it wants with it, I think, now,
19 because we have been compensated. If we get compensated
20 for the breach, even though we have legal title -

21 THE COURT: You're saying they can use it as a
22 public road now, and that -- I mean, are you going to
23 sign over title to it?

24 MR. WALKER: Well, we were given damages because
25 they violated the provision and treated it like a public

1 road. And if the jury concluded that the County's
2 treating it like a public road, and they don't know
3 about the equitable relief, they're to decide what our
4 loss is. And so, the jury could conclude we're entitled
5 to five million dollars because the County's already
6 made up its mind that it's going to treat it as a public
7 road no matter what.

8 And I agree. We can't get a double recovery. We
9 can still own the fee, but it doesn't mean we get to
10 stop them from doing anything. I don't know. It seems
11 to me that we get -- and I'm saying this in a fluid
12 fashion, and I don't want to say that this is my
13 conclusive position and you said that in a hearing. I'm
14 thinking it through with you.

15 Did you get that disclaimer, Wanda?

16 COURT REPORTER: I did. I sure did.

17 MR. WALKER: But if you -- I just want to show you
18 there's a way to reconcile it.

19 THE COURT: Okay.

20 MR. WALKER: That we do have a -- we have a legal
21 remedy. I don't know how we can go tromping out there,
22 because first thing you'd say is you already collected
23 for that damage, sorry, Charlie. That's what I would
24 expect you to say. And if they want to conclude it, I'm
25 sure we'll give them title to it. That's not an issue.

1 But there is adequate proof of five million dollars, and
2 there was proof that it was worth a nominal value now,
3 too. The jury didn't have to believe Tommy Hartnett's
4 testimony the way they spin it. But I also think you
5 could look at Tommy Hartnett's testimony a little bit
6 differently. He said that it's worth five million
7 dollars because the next mouse is going to come along
8 and want to pay five million dollars. That was the
9 back-and-forth with Mr. Achurch.

10 THE COURT: Right.

11 MR. WALKER: There was the argument, well, you
12 know, the first mouse got slapped by the trap. And
13 Tommy said, well, later, the second mouse is going to
14 have to pay the five million dollars. Well, you know
15 what? the jury could have said the County took away the
16 second mouse; the County's the cat; they ate the second
17 mouse; there isn't going to be no second mouse. And so,
18 you could have looked at Hartnett's testimony as saying,
19 if there's somebody who's going to develop it as a
20 residential subdivision, they're going to pay it. But
21 the other proof is, nobody's going to do that. So I
22 think the jury could have easily read into his testimony
23 only if it's used as a residential subdivision. But
24 they could have also rejected his testimony it's worth
25 five million now.

1 The point is that we can't go in the jury room and
2 make decisions as to how they got there as to whether
3 there's any evidence at all for them to reach it. And
4 there's plenty of evidence. Is there's any doubt about
5 an inference from the evidence? Yes. We have different
6 arguments about what Tommy Hartnett's - the inference to
7 be drawn from it, but he certainly did say the highest
8 and best use was as access to a residential development.
9 If the jury believed that alone, and he said it was
10 worth at least five million, then the five million's
11 sustained. Then we get back to this question of, well,
12 they still own the property. But it's clear, and I
13 think the jury can conclude, it's a nominal value. At
14 this point, if the County's going up and down the road,
15 it's not there as a resident. You can't build on it.
16 It's a road. Yes, I think that there's a reasonable
17 inference from the evidence that it's a nominal value.
18 And Hartnett's opinion was it was worth at least five
19 million. And so, that nominal value would come out.

20 There was testimony, too, or there was a statement
21 made -- and I apologize for jumping around, but I saved
22 this one. And there was the assertion that Walter
23 Nester testified there was no breach of the agreement.
24 And what happened was, they tried to impeach him, or
25 they did impeach him. But also, if you look at Page

1 831, which they handed up, at Line 3 through Line 10, he
2 said, yeah, it was breached. Mr. Achurch said:

3 *Yeah, are you aware of any facts of*
4 *information that Beaufort County violated the*
5 *terms and conditions of Part 1, Paragraph 3,*
6 *which related to the agreement as to the Road*
7 *action?*

8 *Well, without spending an awful lot of*
9 *time on it, I -- well, I'm not -- facts -*

10 *Yeah.*

11 Answer:

12 *The agreement that it's a private road.*

13 Clearly, the inference is he said that they
14 violated the provision of the agreement that it's a
15 private road.

16 We disagree with their characterization of Walter
17 Nester's letter, too, because he did talk in the second
18 paragraph -- or the first full paragraph on the second
19 page of Exhibit 32, and I'm not going to read the whole
20 thing. But he says the parties in the four-party
21 settlement agreement agreed that Pinckney Point Colony
22 Road is private. And then he goes on and says:

23 *In reliance upon that four-party*
24 *settlement agreement, and for the specific*
25 *purpose of making the road private, Road, LLC,*

1 *acquired the road parcel and granted the road*
2 *parcel easement to Pinckney Point, LLC, as we*
3 *discussed.*

4 It was never contemplated that Beaufort County
5 would be a potential purchaser of the Point tract.

6 It's interesting, because the County's not arguing
7 that the purpose of the contract wasn't frustrated.
8 Their whole argument to get out from under that
9 liability is the contract is a nullity. They didn't
10 stand up and say, we didn't frustrate the purpose of the
11 contract. They know the contract says it contemplates a
12 residential development. The County said, we bought the
13 land to keep it from being a residential development.
14 That's precisely what the county administrator said: We
15 bought it to make sure it could never be a residential
16 subdivision, and they did it.

17 The moment that the option expired, they began
18 negotiations in earnest over the price, in fact, were
19 negotiating through their agent before the option
20 expired. There was an argument that the Land Trust is
21 not the agent of the County, yet, in the deposition
22 excerpts that we read to the jury, in fact, the county
23 administrator said twice that Beaufort County Open Land
24 Trust acted as the County's agent. And that's at Page
25 937, Lines 1 to 2, and Line 25.

1 So they frustrated the purpose. They did it
2 shortly after the option expired. They knew that Road,
3 LLC, had spent the money, 1.3, and they knew they had a
4 contract to buy it back. The damages directly flowed
5 from the breach. Road, LLC, was deprived of the benefit
6 of its bargain of being able to sell it to a residential
7 developer.

8 The County has characterized the loss as lost
9 profits. I don't think it necessarily has to be, quote,
10 *lost profits*. We aren't dealing with an enterprise with
11 great pro formas with revenues and expenses. When we
12 did that analysis for Pinckney Point, you saw that we
13 had spread sheets. They did projections over twelve
14 years or something, and a buyout, and discounts, and
15 discounts that weren't taken. I mean, that was an
16 operating business where you were looking at lost
17 profits of an operating business. We aren't talking
18 about lost profits of an operating business. It would
19 have been for Pinckney Point, LLC, certainly, lost
20 profits of an operating business. It wasn't *Drews* lost
21 profits of an operating business. And all the cases
22 that are cited, including the *Thornton-Crosby* case that
23 dealt with a condo developer that went down the tubes
24 and alleged a claim against the bank, that also dealt
25 with an ongoing business.

1 But here, we're dealing with a very simple
2 transaction where we paid 1.3; the County knew we were
3 going to sell it; they knew it had value; they knew that
4 in order for us to get the value back, we had to be able
5 to sell it to somebody who's going to use it as a
6 residential development; and they've just gone out there
7 and indifferently gone up and down the road and left it
8 open for anybody to use.

9 So we submit that Road, LLC, met its burden of
10 proof. It's not speculative. It was very clear cut.
11 There are three ways you get to five million dollars.
12 You have the discount in the price in 2005. The jury
13 could have considered that as evidence. No reason they
14 couldn't. We don't know. We've got a contract between
15 Pinckney Point and Road, LLC, where it was five million
16 dollars as access to a residential community. And we've
17 also got Tommy Hartnett's testimony of at least five
18 million dollars, with the highest and best use being
19 access to a residential community. So we --

20 THE COURT: Was the proposed settlement -- or was
21 the settlement agreement between Pinckney and Road, LLC,
22 for the five million, was that just for access, or was
23 that for, you know, selling them the property?

24 MR. WALKER: It was to sell them the property.

25 THE COURT: That's what I thought. Okay.

1 MR. WALKER: I mean, that was the way they
2 structured the transaction.

3 THE COURT: I just wondered.

4 MR. WALKER: But you know, they could buy an
5 easement, but if it was -- much rather have a fee than
6 an easement. So, yeah, there was -

7 THE COURT: I'm still trying to come up with the
8 value of the land.

9 MR. WALKER: Right. It was to sell the property
10 for five million dollars.

11 THE COURT: So, I understand now. Okay.

12 MR. WALKER: Your Honor, there was just so much
13 that was asserted, I'm not going to spend more of your
14 time going through my notes. I'll just sit down, and
15 I'll wait to see what else is said, and I'll respond to
16 that. Thank you.

17 THE COURT: Okay. Thank you. Mr. Achurch.

18 MR. ACHURCH: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. ACHURCH: I'm going to ask -- Ms. Lohr's going
21 to address some specific, but I do want to address the
22 Court for a moment and kind of, hopefully, bring us all
23 back into focus on where we are with this appeal.

24 The trial of the case has lots and lots of
25 testimony about lots and lots of things, things that

1 happened before the contract, frustration of the
2 permits, all of those things. And really, from when I
3 reviewed the transcript, it was almost exclusively about
4 this Pinckney Point and Pinckney Point's allegation of a
5 breach of contract and how we frustrated them and they
6 lost their project and all of this. There was really
7 almost nothing, really, about this Road, LLC. And we're
8 kind of having some of that again today, and there's a
9 lot of talk about the Pinckney Point property and
10 frustration and all that.

11 As I think we need to remember, Road, LLC, and
12 Pinckney Point are completely different entities. And
13 what Beaufort County did was go buy a piece of property
14 that had nothing to do with Road, LLC. Road, LLC, has
15 everything they ever had. We bought a piece of
16 property. The Pinckney Point property wasn't bound by
17 any covenants or restrictions. There were no
18 restrictions on that. Your Honor even allowed testimony
19 -- I assume maybe the terms were ambiguous so there
20 could be testimony. There's only one person who
21 testified for Road in this case, and that was Mr.
22 Kunkel, who's here today.

23 And there was no testimony at all from Mr. Kunkel
24 that, well, Road bought this property in reliance on
25 this agreement. There was no testimony about that.

1 There is not a provision in the contract, the
2 settlement agreement, that says this has to be a
3 residential community. In fact, Mr. Kunkel's testimony
4 for Road was -- the only testimony was -- we don't
5 contend this had to be a residential community.
6 Certainly the parties thought that's what the case would
7 be, but the truth is, Pinckney Point could have sold
8 that property. They're separate entities. Pinckney
9 Point could have sold that property to the Open Land
10 Trust themselves, and Road would be in the same
11 position.

12 They cannot point to anything in that contract that
13 said it had to be a residential community. They cannot
14 point to anything in that contract that says another
15 person could have bought it. Ted Turner could have
16 bought it and put a house on there, and Road would be in
17 the same spot. There's no prohibition against Beaufort
18 County buying the property. So, as Mr. Hartnett said,
19 Road, LLC, has everything they ever had. Mr. Walker
20 talked about, well, they're going over it and they're
21 doing -- well, you know, yeah, we're going over it,
22 because we have an easement. Beaufort County has an
23 easement over there. That's never been in dispute. And
24 Mr. Nester's opinion that Beaufort County being able to
25 use it turned it into a private road, that may be his

1 opinion on behalf of his client, and I'm not arguing
2 about jury calls, but as a matter of law, your Honor,
3 that doesn't change it. It's a matter of law.

4 The County buying this separate piece of property
5 doesn't turn the road property into a private road. And
6 that's really what they're saying, well, you've turned
7 it into a private road. The jury could have believed --
8 oh, sorry. The jury could have believed it was a public
9 road. It doesn't turn it into a public road as a matter
10 of law. And that's what we're really here about.

11 And those are the points I want to make, your
12 Honor, as an overview. And I know we definitely need to
13 make other arguments and make sure that we have our
14 record and all. But I'll ask the Court to kind of keep
15 focus on the big picture there and the County's purchase
16 of the road of the Pinckney Point property did not
17 violate the contract or the settlement agreement, and
18 there's just no evidence that it did.

19 MS. LOHR: Just real quickly.

20 THE COURT: Yes.

21 MS. LOHR: I just wanted to hand this up with
22 regard to the argument that Robert just made. This is
23 the access agreement between Pinckney Point, LLC, and
24 Road, LLC. To the extent the plaintiff has argued that
25 using the property going back and forth across it makes

1 it a -- turns a private road into a public road, you'll
2 see within the -- the successor in interest to Pinckney
3 Point, LLC, was ERP. The County's a successor in
4 interest from ERP. Therefore, the County is a successor
5 in interest to any rights under that easement. And that
6 easement is drafted as broadly as you could possibly
7 draft it to allow invitees, licensees, everybody, you
8 know, the gardener, the maids, the real estate agents,
9 the, you know, visitors to the property, anybody who
10 wanted could come across that property. And that was
11 intentional. And now they want to complain about the
12 fact that anybody the County invites to come across the
13 property because there was an unanticipated outcome.
14 But your Honor, the road is still a private road.
15 However, there is a very broad access agreement that
16 allows lots and lots of people to come across that road.
17 So, as a matter of law, I don't think it could be said
18 that the jury could find that, by the County's use of
19 the end parcel, that the road has become a public road,
20 because that access agreement specifically allows
21 invitees of the County to cross the road. It's a
22 laundry list of folks, as a matter of fact.

23 So to the extent the argument's been made by
24 putting County property down there, people are crossing
25 it, they shouldn't be crossing it, and now it's a public

1 road, and that violates the contract, the jury should
2 never have heard that argument, because as a matter of
3 law, that couldn't have been the breach, because the
4 County's allowed, as the successor in interest, to have
5 people cross that parcel. And that was something they
6 put in place for the benefit of themselves, honestly.

7 Oh, with regard to -- Mr. Walker very neatly danced
8 around your question, but I think the question's still
9 very important. What's the value of the property today?
10 Because you can't come up with they still own -- he
11 never answered the question. They still actually own
12 that parcel, and whether it's worth 1.3 million or five
13 million or eighty thousand dollars or fifty thousand
14 dollars, that evidence was never in front of the jury.
15 The only evidence that was in front of the jury was
16 that, even with the County owning it, that parcel was
17 worth five million dollars. So and that's important,
18 because that means that there wasn't a lost profit.
19 That means that what they own is still worth five
20 million dollars today.

21 And I thought the same thing that you did, your
22 Honor, when I heard that testimony, they're preparing
23 for the condemnation action that's going to follow. So,
24 yeah, I'm, you can't have it both ways. You can't have
25 your cake and eat it, too. You can't say it's worth

1 five million dollars, and then turn around and say that
2 you've lost anything, because that's a pretty good
3 investment. If it's 1.3 and you still have something
4 that's worth five.

5 And when the Court of Appeals takes a look at this,
6 they're going to see that the only evidence in the
7 record is that the property's worth five million dollars
8 today. And you've got to have put up some evidence of
9 the lost value. If you're claiming a loss, and you want
10 to be made whole, you got to show what your loss is.
11 And there's no evidence of that in this record.

12 MR. WALKER: Well, we'd obviously dispute that.
13 And we would also point to evidence in the record, aside
14 from the reasonable inference that it has nominal value,
15 that John Irby, whose deposition testimony was read,
16 said it's worth a few thousand dollars at most. So that
17 is evidence in the record. And the jury could have
18 either measured it was five million against Irby's
19 testimony or concluded it had a nominal value. And we
20 are not saying that the purchase by the County
21 automatically converts it to a public road. I mean, we
22 may have an argument that there was a jury question
23 about whether their actions were inconsistent with it
24 being a private road in that they maintained it. The
25 jury could easily have concluded that, because the

1 County maintained it, and the County only maintains
2 public roads, and because Josh Gruber testified that we
3 can use it whenever we want, being a private road does
4 not affect use, it only puts the maintenance obligation
5 on the owner. They could have easily have concluded
6 that was a violation of the settlement agreement's
7 provision that be a private road.

8 And insofar as the County was reading from the
9 access easement agreement, we think that helps us,
10 because a reasonable inference from this language is
11 that it was to be a residential subdivision. On the
12 bottom of Page 2 on the access agreement -- and your
13 Honor, I can give you the exhibit number. I think
14 it's -

15 THE COURT: I have it right here.

16 MS. LOHR: Was that part of the settlement
17 agreement, though?

18 MR. WALKER: No, but you were reading from the
19 access agreement.

20 MS. LOHR: I know, but that -- but you can't draw
21 an inference of breach of contract from that, is my
22 point.

23 MR. WALKER: Well, it also goes to bad faith and
24 other things. But the County -- I'm only responding
25 because the County just read from it. And it says:

1 The rights granted herein shall be for
2 the benefit of the grantee for the benefit of
3 any and all other occupants, occupants, of
4 grantee's property and for respective sub-
5 tenants, licensees, customers, agents, invitees,
6 mortgagees, successors, and assigns.

7 So a jury could have concluded from that that we're
8 talking about a residential subdivision.

9 And we are not dealing with a third party. We're
10 dealing with these facts. The County has said, well,
11 Pinckney Point didn't have to use it as a residential
12 subdivision. But the proof is undisputed that was their
13 sole intent.

14 The County's saying, well, ABC Corporation -- we
15 went through this at trial -- could buy it. Well, ABC
16 Corporation is not a party to the settlement agreement.
17 They County is saying, well, there's no restriction in
18 the settlement agreement; there's no express provision
19 saying that this property can only be used forever as a
20 residential subdivision. No, it doesn't say that. But
21 it also says it's contemplated it's going to be a
22 residential subdivision. It's like an insurance
23 contract. An insurance contract doesn't say, your
24 insurance company is not going to give the policy holder
25 the runaround. It just sets forth what the obligations

1 are.

2 And the mere fact that something is not
3 specifically excluded or addressed does not mean that it
4 doesn't come within the implied covenant of good faith
5 and fair dealing. And certainly, a contract doesn't
6 have to be ambiguous to have implied obligations and
7 ambiguities where the meaning's inconsistent. But the
8 jury's entitled to draw whatever inferences it wants
9 from the contract, even if it's unambiguous.

10 So we maintain, your Honor, we showed a breach, we
11 showed causation, and we showed that the damages are
12 supported. There's evidence of it. There's an
13 inference from the evidence. There may be -- and we
14 don't agree with this -- 1,999 pounds of evidence in the
15 County's favor, and there may be one pound in our favor,
16 but if we have one pound, the jury verdict stands, and
17 they're entitled to go with our pound and to weigh that
18 more than everything the County has, and they did that.

19 They were discerning, they separated the parties,
20 and they rendered their verdict. We spent a week trying
21 it. The jury heard everything. We should let the
22 system work and not intervene to say we don't like the
23 result. It was a factual question, and they came back
24 -- the community spoke, and we should live with what the

1 community spoke, because it's supported by the evidence.
2 Thank you.

3 THE COURT: Anything more, Ms. Lohr?

4 MS. LOHR: No, your Honor. I am concerned, though,
5 that we're left in this position -- I am concerned we're
6 left in this position with having to pay their five
7 million dollars with the jury verdict, and then, still
8 owning the parcel. And it really does smack of a
9 condemnation, and that's not what we're talking about
10 here. I think that one of my biggest concerns in this
11 case is how do we address that. I mean, Mr. Walker was
12 throwing out ideas, but that doesn't change the fact
13 that they still own that road.

14 THE COURT: Have you all been talking at all? I
15 mean -- let's just go off the record, Wanda.

16 OFF THE RECORD 3:37 P.M.

17 BACK ON THE RECORD 3:41 P.M.

18 MS. LOHR: And your Honor, with regard to Irby -

19 THE COURT: Yes.

20 MS. LOHR: -- I don't think that he's allowed to
21 give opinion testimony as to the value of the property.
22 At that point, he wasn't offering any testimony as to
23 the value of the property as its owner.

24 MR. WALKER: It was not objected to when they
25 published it. That's an objection to the admissibility

1 of the testimony. It's in the record. And they
2 designated it.

3 THE COURT: All right. Anything else?

4 MR. WALKER: Nothing from the plaintiff, your
5 Honor.

6 THE COURT: What are the outstanding equitable
7 causes of actions that are out there?

8 MS. LOHR: It is the -

9 THE COURT: Just to refresh me.

10 MS. LOHR: It is -- I've got them written down.
11 The DJ action for a determination that the road is
12 private. Injunction to enjoin the County for using
13 access for general public and from using Point for
14 anything other than a residential development. Specific
15 performance. An order compelling the County to prohibit
16 its invitation to the public in using Point parcel or
17 anything other than residential development. And a DJ
18 action seeking an order that the public cannot use the
19 road and the Point parcel can't be used for anything
20 other than a residential development.

21 THE COURT: Okay.

22 MS. LOHR: I can tear those out and hand them up to
23 you.

24 THE COURT: No, I've got them. I just wanted some
25 of it. Okay. All right. Well, I'll get back with you.

1 all. I know you didn't expect anything today anyway,
2 so. And I'm not sure when I'll get back to you. I'll
3 let you know as soon as I can. I'm trying to do this
4 sooner rather than later, because we all know it's
5 leaving me, but I'll just let you all know. Okay. I
6 appreciate it, everybody. Thank you.

7 MR. WALKER: Thank you, your Honor.

8 MR. ACHURCH: Thank you, your Honor.

END PROCEEDING 3:44 P.M.

CERTIFICATE OF REPORTER

AUGUST 9, 2016 TRANSCRIPT OF POST-TRIAL MOTIONS
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing August 9, 2016 Transcript of Post-Trial Motions is a true, accurate, and complete record of the proceedings had on said date, in the case of Road, LLC, et al, versus Beaufort County, Beaufort County, Court of Common Pleas, Case Number 2013-CP-07-01341; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by Hon. John P. Linton, Jr. Pursuant to SCACR 607, requests for copies of this or any transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature September 3, 2017.

Wanda H. Rowe, CVR-M
Official Court Reporter

THE SETTLEMENT
AGREEMENT # 78
IS WITH THE
COUNTY AND APPLIC
& ROAD LLC. ~~ET~~ ET. AL
WITH THE PURPOSES
OF DEVELOPING THE
LAND.

PRIOR TO THE COUNTY
BUYING THE LAND
IT WAS OWNED BY
E.R.P. WHO ARE
NOT PART OF THE
AGREEMENT. DOES
~~THE~~ E.R.P HAVE TO
ABIDE BY THE
SETTLEMENT AGREEMENT.



2:25 PM
MAY 2, 2016

CHRIS CLAYTON

ERP is not a party
to the settlement
agreement.

C. Muller
Judge
5/2/16

IS BEAUFORT COUNTY AS
THE NEW OWNER ARE
THEY OBLIGATED TO
UPHOLD THE TERMS
OF THE SETTLEMENT AGREE-
MENT. AND DOES THAT
MEAN THAT THE COUNTY
HAS TO DEVELOP ~~THE~~
THE LAND AS RESIDENTIAL
PROPERTY.

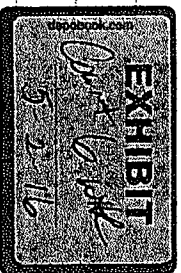
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MAY 2, 2016

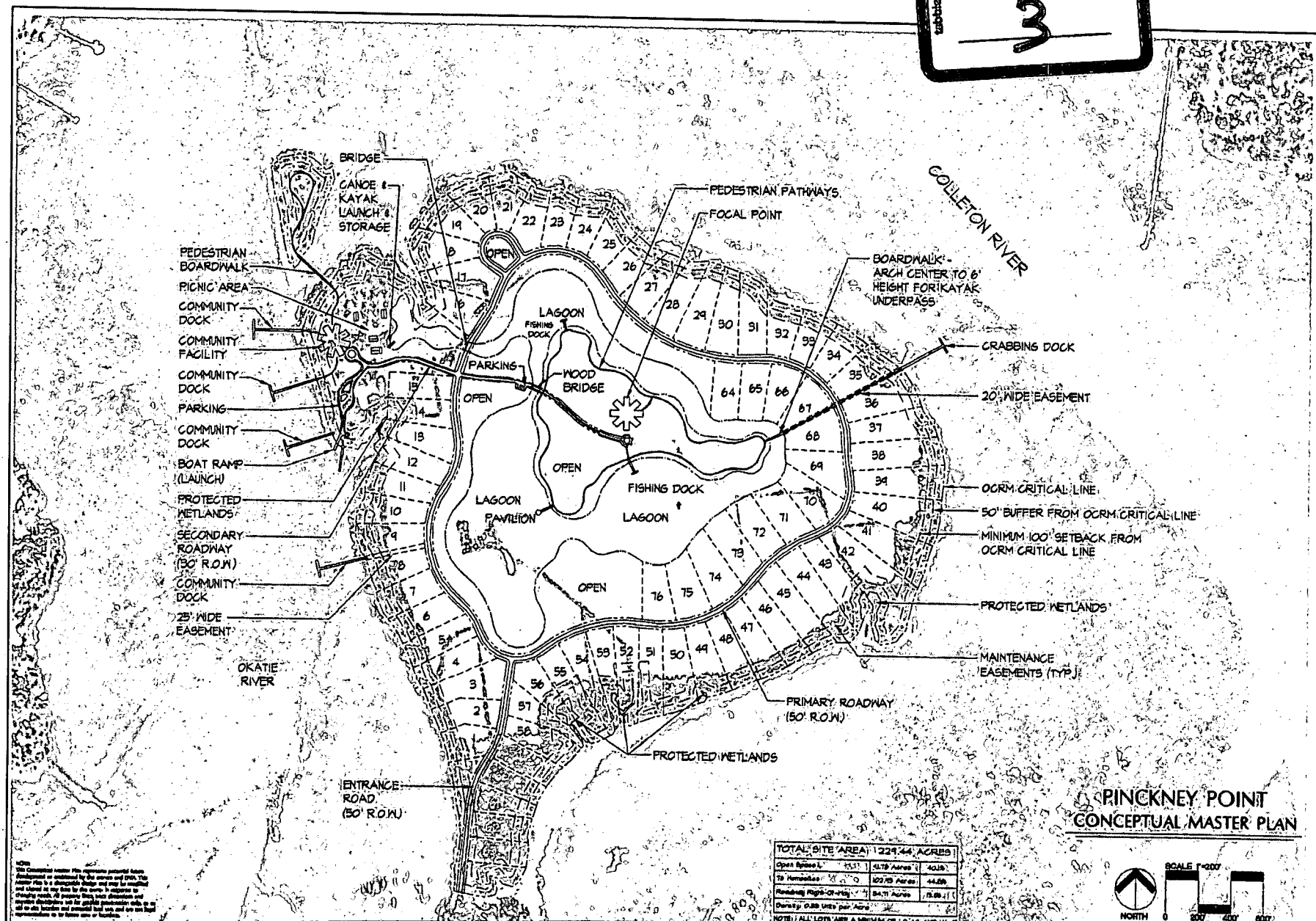


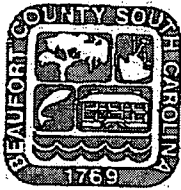
CHRIS CLAYTON

You have to decide the case
based on the evidence before
you and the law as I
instructed you.



Chris Clayton
5/2/17

**PLAINTIFF'S
EXHIBIT**
3


**COUNTY COUNCIL OF BEAUFORT COUNTY**

Beaufort County Zoning & Development
Multi Government Center ♦ 100 Ribaut Road
Post Office Drawer 1228, Beaufort, SC 29901-1228
OFFICE (843) 470-2780
FAX (843) 470-2784



March 19, 2007

Mr. Taylor Bush
Stokes Land Group
4315 Pablo Oaks Court
Jacksonville, FL 32224

Re: Pinckney Point (Conceptual)

Dear Mr. Bush:

As stated in the Beaufort County Zoning & Development Standards Ordinance, Section 106-368 (b) (1) "Upon completion of all appropriate county reviews, the ZDA shall then file a staff report including all review recommendations no later than five working days prior to the scheduled DRT meeting". This letter will serve as the recommendations from each member of the DRT for conceptual review of the referenced project.

1. Applicant shall be required to meet the 100' OCRM setback requirement for the road, or request a variance from the ZBOA.
2. Applicant shall indicate exact location of the 2.46 acres of Mixed upland forest, mature, the location of the 7.51 acres of mixed upland forest, young and the .81 acre of non-tidal wetlands.
3. Applicant shall indicate the archaeological sites on the subdivision layout plan.
4. Applicant shall submit a conceptual plat with length and width of lots to ensure the proposed lots meet the minimum lot requirements.
5. Will applicant be requesting modulation approval to place conservation easements on lots? If so applicant shall address request for modulation and why modulation is needed.
6. All trees shall be surveyed, except for the areas that will be saved as protected forest.
7. Applicant shall not be permitted to remove any trees from the lots; therefore, the trees proposed for removal at the entrance outside of the right-of-way shall not be approved for removal.
8. Provide environmental impact assessment for all docks and boat landing.
9. Overlay lot layout on natural resource protection plan.
10. On lot natural resource protection is allowed on lots greater than 2 acres. Lot 45 is 2 acres. Please check acreage of other lots with proposed natural resource protection.
11. List acreage of each natural resource protection area on the natural resource analysis legend.

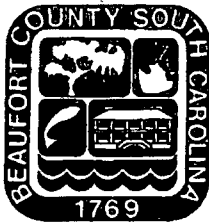
"Professionally we serve; Personally we care!"

DRT recommends deferral until the above information has been submitted.

NOTE: THE DRT RESERVES THE RIGHT TO CONSIDER ADDITIONAL INFORMATION RELATED TO THE PROJECT LISTED ABOVE PRIOR TO THE DATE OF THE DRT MEETING. THEREFORE, THE DRT'S DECISIONS MAY CHANGE ACCORDING TO NEW FACTS OR THE CONSIDERATION OF ADDITIONAL FACTS UNKNOWN AS OF THE DATE OF THIS REPORT.

Sincerely,


Hillary A. Austin
Zoning & Development Administrator



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development
Multi Government Center ♦ 100 Ribaut Road
Post Office Drawer 1228, Beaufort, SC 29901-1228
OFFICE (843) 470-2780
FAX (843) 470-2784



March 29, 2007

Mr. Taylor Bush
Stokes Land Group
4315 Pablo Oaks Court
Jacksonville, FL 32224

Re: Pinckney Point (Conceptual)

Dear Mr. Bush:

The Development Review Team (DRT) met on March 28, 2007 to render their decision on the subject project. Listed below is the DRT's decision.

After a unanimous vote by the members present, DRT recommended the project be deferred until the deficiencies listed in the recommendation letter dated March 19, 2007, are addressed. The following comments were also made:

1. DRT will not approve sewer to the site, because it is more than the required 300'.
2. Applicant shall submit a Traffic Impact Analysis.
3. Applicant & staff will address the ownership of the access to the property.
4. DRT addressed the 3 questions the applicant had.

Question 1: What is the recommended process for taking a project through ZBOA and DRT since we will need a variance regarding the OCRM setback? Do we start with ZBOA and then move to concept DRT?

Answer: Yes.

Question 2: Tree survey – your comment indicates that all trees other than those in areas to be preserved must be surveyed. Does this include the trees that would end up on a lot but will not be included in the protected forest area?

Answer: Yes, a full tree survey is required.

Question 3: Why is an environmental impact assessment needed for the docks & boat landing? Were there comments received by the county during the public notice period? That is normally the only occasion we experience the need for an environmental impact assessment.

Answer: Table 106-1876 states all Water Dependent uses in open space shall be a Special Use and is required to complete an environmental impact assessment.

The DRT also explained to the applicant that there should be two requests to the ZBOA, one for the variance to encroach in the 100' OCRM setback requirement for the road, and the other to request a special use permit for the docks and the boat ramp.

If I may be of further assistance, please do not hesitate to give me a call at 843.470.2781.

Sincerely,

Hillary A. Austin
Hillary A. Austin
Zoning & Development Administrator

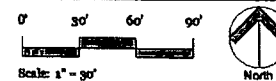
Cc: DRT Members

"Professionally we serve; Personally we care!"



- (A) Exhibit A - Entrance North Bound**
(B) Exhibit B - Exit South Bound
(C) Exhibit C - Typical Existing Road within 50' OCRM Buffer - To Be Abandoned

Entrance Enlargement



PINCKNEY POINT
MAIN ENTRANCE
PREPARED FOR
Pinckney Point, LLC
Beaufort County, South Carolina

PLAINTIFF'S
EXHIBIT

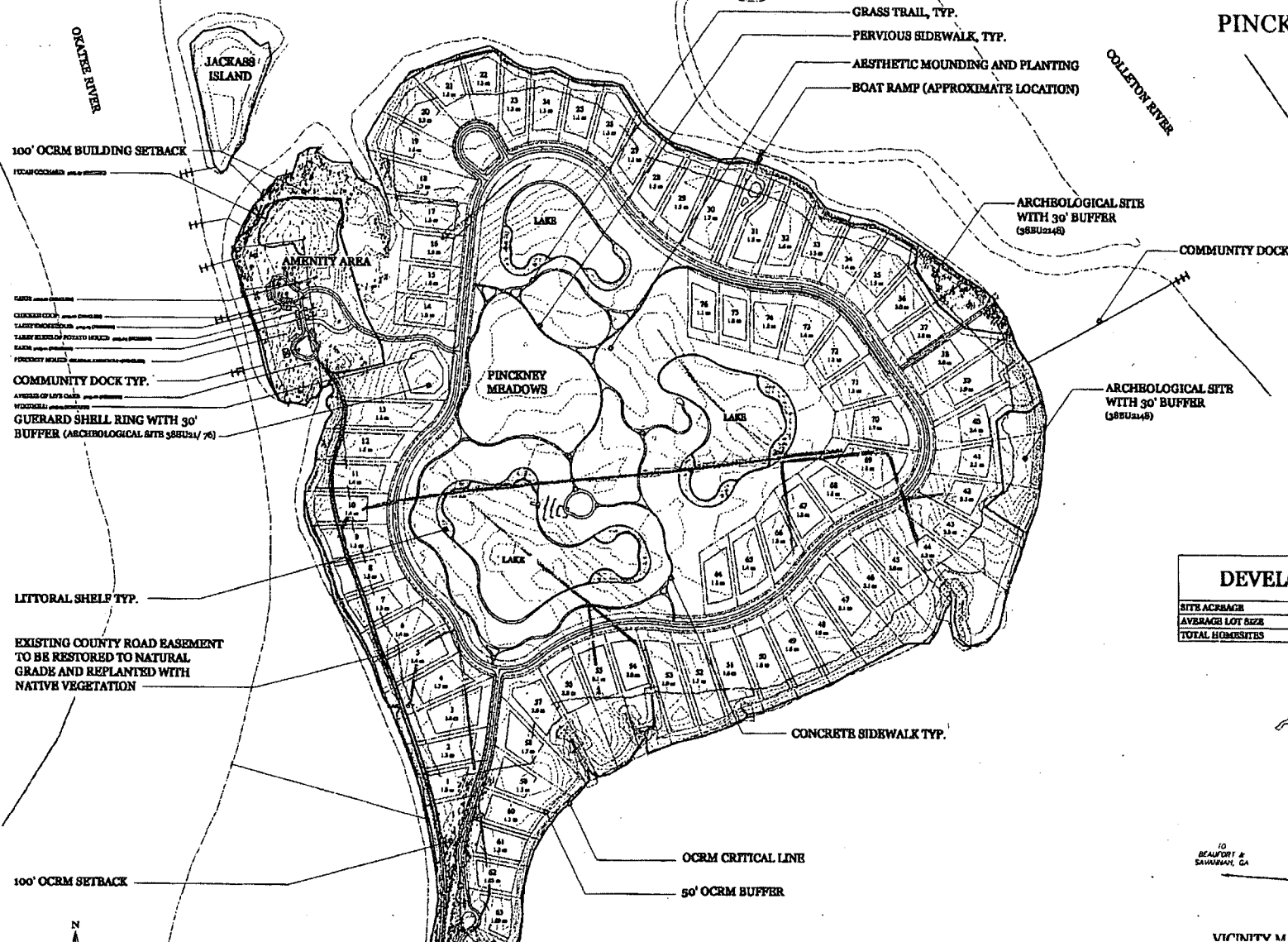
10

CONCEPTUAL MASTER PLAN
FOR
PINCKNEY POINT

BEAUFORT COUNTY, SOUTH CAROLINA

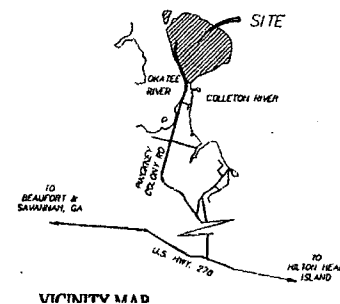
PREPARED FOR
PINCKNEY POINT LLC

APRIL 12, 2007



DEVELOPMENT SUMMARY

SITE ACREAGE	+/- 229.4 ACRES
AVERAGE LOT SIZE	+/- 1.10 S.E. ACRES
TOTAL HOMESITES	75 HOMESITES





COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development
Multi Government Center ♦ 100 Ribaut Road
Post Office Drawer 1228, Beaufort, SC 29901-1228
OFFICE (843) 470-2780
FAX (843) 470-2784



November 20, 2007

Ms. Jennifer Frantz
Atlantic International Design Studio
5 Dunmore Court
Suite 2
Hilton Head Island, SC 29926

Re: Pinckney Point S/D – Conceptual

Dear Ms. Frantz:

The Development Review Team (DRT) met on November 19, 2007 to render their decision on the subject project. Listed below is the DRT's decision.

After a unanimous vote by the members present, DRT recommended that the project be deferred until the following information is submitted.

Applicant shall receive permission from the Public Service Committee to abandon the road.

Applicant will need a variance from the ZBOA for the waterline to be placed in the river buffer.

Applicant shall receive permission from the owner of the 50' access easement leading into the property from the property owner to place the waterlines and other utility lines within the easement on the property to be developed. (This information may be submitted at final review).

Applicant shall revise the modulation plans to show the construction envelope on Lot 33 a minimum of 30' from the protected forest area.

ZDA shall check the tree removal at final submittal.

If I may be of further assistance, please do not hesitate to give me a call at 843.470.2781.

Sincerely,

Hillary A. Austin
Hillary A. Austin
Zoning & Development Administrator

cc: DRT Members

"Professionally we serve; Personally we care!"

THE STATE OF SOUTH CAROLINA
In The Court of Appeals



APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

DOCKET NO. 08-ALJ-07-0365-CC

Beaufort County.....Appellant,

v.

South Carolina Department of Health and Environmental Control
and Pinckney Point, LLC.....Respondents.

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (hereafter "Agreement") is entered into by and between Pinckney Point, LLC, a South Carolina limited liability company, and Beaufort County, a political subdivision of the State of South Carolina, effective on the date last executed. Pinckney Point, LLC, and Beaufort County collectively sometimes referred to herein as "the Parties."

PARTIES

Pinckney Point, LLC, is a limited liability company formed for purposes of land acquisition and development and is the owner of approximately 233 upland acres, located in Beaufort County, South Carolina (the "Property"). Pinckney Point, LLC proposes to develop the Property as a residential development of approximately seventy-six (76) homesites (the "Development").

Beaufort County is a body politic with the legal authority to review proposals to develop land within the County and to enforce ordinances and other requirements that are applicable within Beaufort County.

RECITALS

1. The Parties hereto are currently involved in a contested case appeal initially before the South Carolina Administrative Law Court ("ALC") entitled *Beaufort County v. South Carolina Department of Health and Environmental Control & Pinckney Point, LLC*, presently pending in the South Carolina Court of Appeals, Docket No. 08-ALJ-07-0365-CC (hereafter referred to as the "Appeal").
2. The Appeal arises from a challenge by Beaufort County of the South Carolina Department of Health and Environmental Control ("SCDHEC") Office of Ocean and Coastal Resource Management's ("OCRM") issuance of a critical area permit and 401 water quality certification, 2007-

827-11W-P (the "Permit") to Pinckney Point, LLC, which authorizes the construction of three (3) community docks, a boat ramp, floating dock and bridge for the Development on and adjacent to the Okatie and Colleton Rivers and an unnamed tributary in Beaufort County, South Carolina. Pinckney Point, LLC, also challenged the issuance of the Permit and the two matters were consolidated for hearing purposes. The contested case initiated by Pinckney Point, LLC, is not the subject of this Agreement.

3. Beaufort County's challenge to the Permit was based on its position that OCRM's regulations limit Pinckney Point, LLC, to only one (1) community dock for the Development. In response, Pinckney Point, LLC, filed a Motion to Dismiss seeking the dismissal of Beaufort County on the grounds that Beaufort County lacked standing to contest the issuance of the Permit.

4. The presiding Administrative Law Judge ("ALJ") dismissed the contested case filed by Beaufort County based on the ALJ's conclusions that Beaufort County lacked standing and, therefore, the ALC lacked subject matter jurisdiction to consider Docket No. 08-ALJ-07-0365-CC. OCRM filed a Motion to Reconsider or Alter or Amend in the companion contested case and on November 13, 2009 the ALJ issued an Amended Final Order on January 6, 2010 (The "Amended Final Order and Decision"). Beaufort County filed an appeal of the Amended Final Order and Decision of the ALJ with the South Carolina Court of Appeals, where the Appeal is now pending.

5. Beaufort County's claim that Pinckney Point, LLC, is only entitled to one (1) community dock and Pinckney Point, LLC's claim that Beaufort County lacks standing to challenge the Permit constitute the disputes, allegations and averments in the Appeal and shall hereafter be collectively referred to as the "Claims."

6. The Parties desire to avoid further expense, controversy delay in implementation of development, burden and diversion of the Appeal and to fully resolve the Appeal by and among them. Further, the Parties have agreed on a compromise and settlement of this matter that each of the Parties believes to be in the best interest of the Parties and of the citizens of Beaufort County. The terms of the compromise and settlement of this matter, which result in dismissal of the Appeal pending in the Court of Appeals and resolution of all of the Claims pending between the Parties, are set forth below.

COVENANTS

NOW THEREFORE, in consideration of the mutual covenants, agreements, promises and undertakings set forth herein, and for the good and valuable consideration to be received by the Parties hereto as provided in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Appeal before the Court of Appeals. The Parties agree to file a joint Consent Motion with the Court of Appeals to obtain an order to remand the Appeal with instructions to vacate that portion of the Amended Final Order and Decision of the Honorable Ralph King Anderson, III dated January 6, 2010, in which the ALJ concluded that Beaufort County did not demonstrate standing and the contested case filed by Beaufort County was dismissed. The Motion to Remand and Vacate shall be in the form attached hereto as Exhibit A.

2. Amended Final Order and Decision. Upon remand by the Court of Appeals, the Parties agree that Pinckney Point shall withdraw its Motion to Dismiss before the Administrative Law Court, which shall remove any procedural impediment to the Administrative Law Judge's vacating that portion of his Amended Final Order and Decision addressing Beaufort County's standing.

3. **Docks.** OCRM has issued the Permit to Pinckney Point, LLC which includes a critical area permit and water quality certification authorizing the construction of three (3) community docks within the Development. As described above, the Permit was reviewed in the South Carolina Administrative Law Court ("ALC") in the form of a contested case. The ALC conducted a hearing on the combined contested cases filed by Beaufort County and Pinckney Point, LLC on July 14-15, 2009, and its Amended Final Order and Decision on modified the Permit to provide for five (5) community docks, boat ramp, floating dock and bridge. Notwithstanding the Amended Final Order and Decision, Pinckney Point, LLC agrees to have no other docks within the Development other than the following: a) the docks and boat ramp reflected in the OCRM-approved dock master plan, incorporated by reference into the Permit; and b) the docks authorized in accordance with the Permit as modified by the Amended Final Order and Decision of the ALC. Notwithstanding the Amended Final Order and Decision of the ALC, Pinckney Point, LLC agrees to limit to a maximum of four (4) community docks, to be located at the discretion of Pinckney Point, LLC, in the locations approved by OCRM as modified by the Amended Final Order and Decision of the ALC. Except the floating dock for the boat ramp, any and all non-community docks shall comply with Beaufort County Zoning and Development Standards Ordinance.

4. **Critical Area Impacts.** Beaufort County hereby agrees that Pinckney Point, LLC shall be permitted to construct the community boat ramp and associated floating dock described in the Permit, and access pathways to the community docks described in Paragraph 3 above (collectively the "Critical Area Impacts") as further depicted in that certain plan prepared by Witmer-Jones-Keefer, Ltd, dated July 1, 2010 and entitled Pinckney Point Conceptual Master Plan (the "Conceptual Master Plan"), attached hereto and made a part hereof as **Exhibit B**, without the requirement to obtain a Special Use Permit pursuant to Section 106-551 of the Beaufort County Zoning and Development Standards Ordinance. However, the Critical Area Impacts shall require review and approval of the Beaufort County Development Review Team ("DRT") as part of the DRT's review and approval of the conceptual land development plan for the Property, or upon separate application for approval to undertake the proposed Critical Area Impacts. The DRT shall use the same standards for approval of the Critical Area Impacts as it would for approval of an application for similar impacts to the River Buffer in accordance with Section 106-1845(3) of the Beaufort County Zoning and Development Standards Ordinance.

5. **Setbacks.** Pinckney Point, LLC hereby agrees to require by restrictive land covenants for the Development an average eighty foot (80') setback with a minimum of fifty feet (50') from the OCRM Critical Line as more particularly depicted in the Conceptual Master Plan. It is understood and agreed that the Conceptual Master Plan is prepared for the purposes of this Agreement. Changes to the Conceptual Master Plan may be necessary or required during the permitting and development process except, however, no such change(s) may be made to reduce the average rear property setback below eighty feet (80').

6. **Attorneys' Fees, Costs, and Expenses.** Each of the parties hereto shall be responsible for its own attorneys' fees, experts' and consultants' fees, and all other costs and expenses of any kind incurred in connection with or related in any way to the claims, allegations, litigation, or other matters to be compromised, dismissed, resolved or released pursuant to this Agreement.

7. **Disputed Liability.** The execution of this Agreement shall not constitute the admission by any Party of the allegations made against it in the Appeal or an admission of any liability or damage to any other party based on or arising out of the allegations made against them. The Parties hereto understand, agree, and acknowledge that the consideration being provided pursuant to this Agreement is not, is not intended to be, and shall not be construed to be, in any way whatsoever now or at any time in the future for any purpose or in any future proceeding, an admission of liability or responsibility of any kind with respect to any of the matters at issue in the Appeal. Neither this Agreement, nor any of the terms or provisions hereof, nor the substance of this Agreement or any of its terms or provisions, shall be

offered or received into evidence in any proceeding as evidence of or to prove the liability or wrongdoing of any type or nature whatsoever on the part of any party hereto, or to prove an admission or concession of any liability or wrongdoing by any party.

8. **Waiver and Modification.** No waiver or modification of any of the terms of this Agreement will be valid or effective unless in writing and signed by all parties to this Agreement. The failure of any party to enforce, at any time, any provision of this Agreement, or to require the performance of any provision hereof, shall not be and shall not be construed to be a waiver or modification of such provision, or of the right thereafter to enforce such provision or any other provision of this Agreement. No waiver of any breach of this Agreement shall be, nor shall such be construed to be, a waiver of any other or subsequent breach.

9. **Entire Agreement.** Except for the consideration provided to the Parties through this Agreement, the Parties hereto declare and represent that no promise, inducement, or agreement not expressed in this Agreement has been made or offered to them and that this Agreement contains and represents the entire agreement between the parties regarding the settlement of the claims in the Appeal and that the terms of this Agreement are contractual and are not merely recitals.

10. **Warranties and Representations of Authority.** The Parties hereto, and each of them, represent and warrant that all necessary authorizations and all other actions and approvals have been taken and received such that execution, delivery, and performance of this Agreement and all other actions taken or to be taken pursuant to or in connection with this Agreement have been authorized and approved.

11. **Binding Effect.** This Agreement shall be binding on, and inure to the benefit of, all of the parties hereto, as well as all of their predecessors, successors, assigns, affiliated companies, shareholders, directors, officers, employees, agents, representatives, creditors, consultants, attorneys, heirs, executors, and administrators, as well as any corporation, partnership, or other entity into which any party hereto may merge or with which any party hereto may be consolidated.

12. **Consultation with Legal Counsel.**

- (a) Each party hereto, before executing this Agreement, had an opportunity to consult with legal counsel with respect to the full force and effect of this Agreement and each of the terms and provisions hereof, and each party fully understands and intends the full force and effect of this Agreement and each of its terms and provisions.
- (b) Each party to this Agreement has had a full and complete opportunity to investigate any and all matters believed by them to be appropriate or prudent for investigation or understanding prior to entering into this Agreement.

13. **Authorship of the Agreement.** The Parties agree that this Agreement has been drafted jointly by the Parties hereto and no one party shall be deemed to be the party who drafted the Agreement.

14. **Acknowledgement of Fair Consideration.** The Parties acknowledge that the consideration has been received in connection herewith and is fair, just and adequate, and constitutes lawful consideration supporting the execution and legally binding effect hereof.

15. **No Assignment of Rights.** Each of the Parties hereto represents and warrants that no part of any alleged claim or claims released herein have been assigned to any other entity, person, firm or corporation.

16. Additional Documentation. The Parties shall execute such additional documents as shall be necessary to implement or effect the provisions contained in this Agreement.

Beaufort County

By: [Signature]
Its: County Administrator ✓
Date: January 14, 2011

Pinckney Point, LLC

By: [Signature]
Its: Authorized Agent
Date: 1-11-14

EXHIBIT A

JOINT MOTION TO DISMISS APPEAL AND REMAND TO ADMINISTRATIVE LAW COURT
WITH INSTRUCTIONS TO VACATE PORTION OF ORDER

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

DOCKET NO. 08-ALJ-07-0365-CC

Beaufort County.....Appellant,

v.

South Carolina Department of Health and Environmental Control
and Pinckney Point, LLC..... Respondents.

JOINT MOTION TO DISMISS APPEAL AND REMAND TO
ADMINISTRATIVE LAW COURT
WITH INSTRUCTIONS TO VACATE PORTION OF ORDER

Appellant Beaufort County and Respondent Pinckney Point, LLC, hereby jointly move to dismiss Beaufort County's appeal and seek an order remanding the case to the South Carolina Administrative Law Court with instructions to vacate that portion of the Amended Final Order and Decision dated January 6, 2010, addressing Beaufort County's standing to challenge the issuance of the critical area permit issued to Respondent Pinckney Point, LLC. This motion is made pursuant to the terms of the settlement agreement between the parties, a copy of which is attached to this Joint Motion.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

By: _____
Melinda Lucka
Post Office Box 225
Charleston, SC 29402

Attorneys for Appellant Beaufort County

McNair Law Firm, P.A.

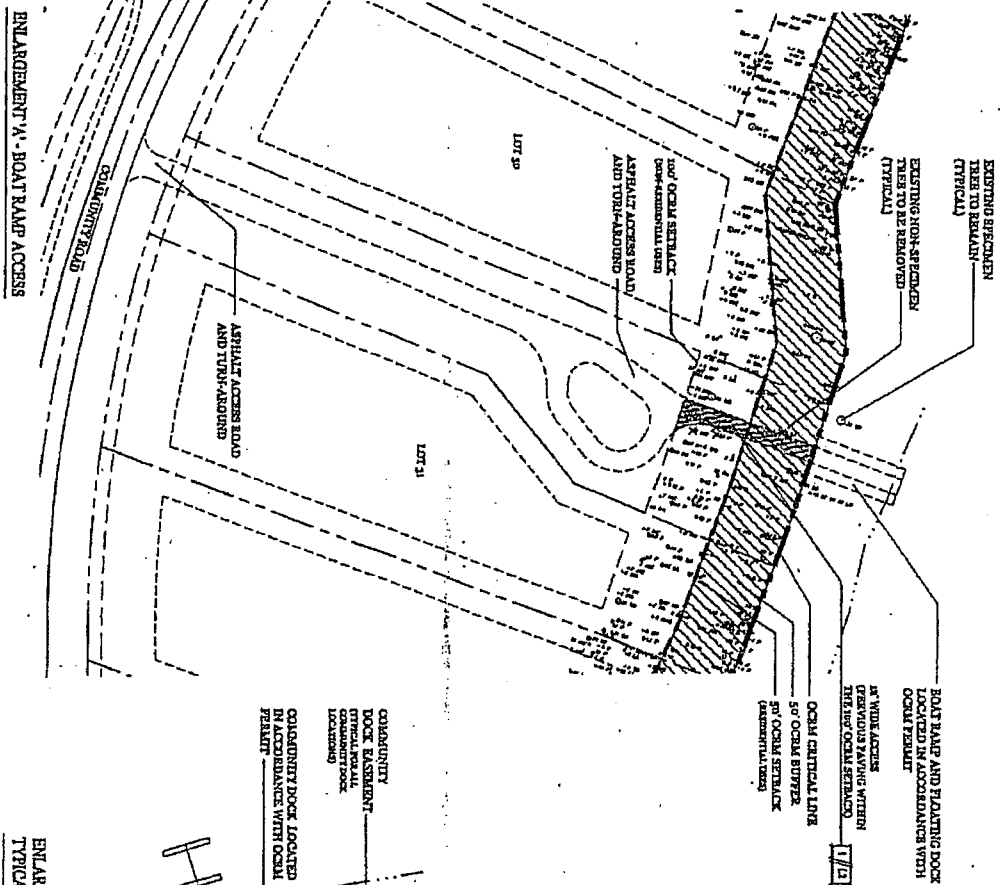
By: _____
Mary D. Shahid
Post Office Box 1431
Charleston, South Carolina 29402

Attorneys for Respondent
Pinckney Point, LLC

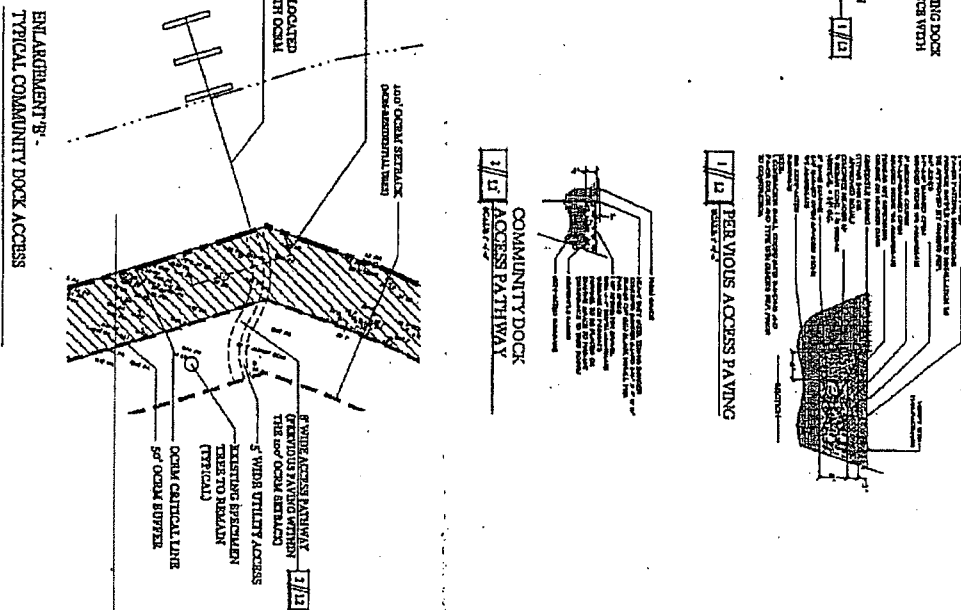
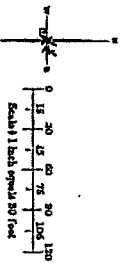
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EXHIBIT B

**Pinckney Point Conceptual Master Plan
prepared by Witmer-Jones-Keefer, Ltd. dated July 1, 2010**



ENLARGEMENT 'A' - BOAT RAMP ACCESS



ENLARGEMENT 'B' -
TYPICAL COMMUNITY DOCK ACCESS

The diagram shows a cross-section of a multi-story building. A flag is flying from a pole on the roof. The building is labeled 'PERVIOUS ACCESS PAVING' in large, bold, capital letters. The building is shown with multiple floors, and the ground level is indicated by a line. The building is shown in a perspective view, with the front and side visible. The building is shown with a flag on top, and the flag is shown with a pole and a flag. The building is shown with a flag on top, and the flag is shown with a pole and a flag. The building is shown with a flag on top, and the flag is shown with a pole and a flag.

COMMUNITY DOCK
ACCESS PATHWAY

Diagram illustrating the Community Dock structure and its components, including the crane and the access pathway.

BEAUFORT COUNTY SPECIAL USE PLAN
PCA
PINCKNEY POINT
COMMUNITY DOCK AND BOAT RAMP ENLARGEMENT PLAN
PREPARED FOR
PINCKNEY POINT, LLC
BEAUFORT COUNTY, SOUTH CAROLINA

Witmer Jones Keeler
LLC
Insurance Broker
and Planner
www.wjk.com



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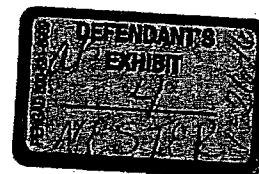
MEMORANDUM

TO: Ladson F. Howell (via e-mail)
COPY: Pinckney Point, LLC (via e-mail)
FROM: Walter J. Nester, III
DATE: June 29, 2011
FILE#: 040116.00017
RE: Pinckney Point Permitting

Lad:

As a follow up to our phone conversation yesterday regarding the approval by SCDHEC for the Pinckney Point subdivision of onsite wastewater disposal as a method for sewage disposal, I thought it would be helpful to provide you with some background information and correspondence. As discussed, the project was approved by SCDHEC as indicated in a letter of April 21, 2008 from Terry Lyons, Director of Environmental Health, Region 8, DHEC. (Please note that the first page of this letter was misdated.) This was confirmed by letter dated May 25, 2011, also from Mr. Lyons, which we obtained in an effort to clarify questions raised by Tony Criscitiello's letter of May 6, 2011 to Daniel Keefer of Witmer-Jones-Keefer, Ltd., a consultant of the owner. Importantly, and as related to Section 106-2827(a) and (b) of the ZDSO, Pinckney Point, LLC has achieved the required approval from SCDHEC. In order to achieve the approval described in Mr. Lyons' correspondence, Pinckney Point, LLC was required to, and did dig individual soil test pits and successfully tested each proposed lot in the subdivision for onsite septic. This is all shown in the materials delivered to DHEC in 2007 providing supporting correspondence, maps and data submitted in 2007 by the applicant to DHEC to get the approval described in Mr. Lyons' correspondence.

The only distinction in the new legislation Tony mentions in his May 6 correspondence, which was passed by the South Carolina legislature after the application was submitted to DHEC by Pinckney Point, LLC was a new requirement that the developer obtain an individual permit for each lot. Pinckney Point, LLC has obtained project approval from DHEC, as required by Section 106-2827 of the ZDSO. Further, each proposed lot has been tested to achieve the project approval by DHEC, and Pinckney Point, LLC should not be required by the County to now obtain a permit for each individual proposed lot where these lots have already been tested and approved. To obtain an individual permit for each lot will require new testing and new applications and fees, which serves only to duplicate the work already completed and approved. It is acknowledged by Pinckney Point, LLC, as required by DHEC, that the



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23-B Shellar Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
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mcnair.net

ANDERSON BLUFFTON CHARLESTON CHARLOTTE COLUMBIA GREENVILLE HILTON HEAD MYRTLE BEACH PAWLEYS ISLAND

McNair Docs 6353

June 29, 2011
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M C N A I R
ATTORNEYS

owners of the individual lots will need to obtain an individual permit for such site prior to the construction of any improvements on any lot in the subdivision, but should not have to repeat any of the prior approval steps that have been undertaken to obtain DHEC approval for the project. Again, as Mr. Lyons points out, DHEC has approved the subdivision for onsite septic as a method of sewage disposal. No further approval is required. Pinckney Point, LLC has met the criteria of the ZDSO.

Furthermore, and as discussed, to address any concerns that the County may have about prospective purchasers, Pinckney Point, LLC offers and agrees to show the location of the septic system on each lot in any subdivision survey, which puts each prospective purchaser on notice of the requirement and location of the onsite septic system for each lot in the subdivision. As shown in the materials supporting the application to DHEC for subdivision approval for onsite sewage disposal as a method, these locations are all suitable for the same.

Please let me know if you have any questions or concerns.

Best regards.

WJN:dkr
Enclosures
HILTONHEAD 745357v1

McNair Docs 6354



M C N A I R
ATTORNEYS

September 16, 2011

Walter J. Nester, III

wnester@mcnair.net
T (843) 785-2171
F (843) 686-5991

Via E-mail (hillarva@bcgov.net)

Ms. Hillary Austin
Zoning Department Administrator
Beaufort County Planning & Zoning
Department
PO Drawer 1228
100 Ribault Road
Beaufort, SC 29901-1228

Re: Pinckney Point, LLC - Application for Subdivision
Our File No. 040116-00020

Dear Ms. Austin:

This correspondence is sent in response to the August 23, 2011 report of the Beaufort County Development Review Team ("DRT") of the August 17, 2011 meeting of the DRT for the review of the application of Pinckney Point, LLC (the "Applicant" or "PPLLC") for conceptual subdivision approval of the Pinckney Point development ("Project"). The last condition set forth in the August 23 report of the DRT requires that the applicant submit "septic system permits from DHEC". As I indicated at the August 17, 2011 DRT meeting, the Applicant has obtained and submitted to the DRT all requirements of applicable state and local law regarding disposal of sewage required for subdivision approval of this Project. The August 23, 2011 report of the DRT imposes the requirements for individual permits to construct septic systems on individual lots prior to final review and approval of the site plan creating such lots. Such a condition is not required by applicable law and we contend that the DRT does not have the authority to impose it.

This is not a request for an administrative review by you in your capacity as the Zoning Department Administrator for an administrative interpretation under Section 106-701 of the Beaufort County Zoning and Development Standards Ordinance (the "ZDSO"). It is to advise the DRT that the Applicant has met the requirements regarding sewage disposal necessary for final subdivision approval. The condition set forth in the August 23, 2011 report should therefore be removed.

The requirement for individual septic tank permits for each lot in the subdivision prior to final approval of the subdivision itself is not a requirement of the ZDSO, nor is it a requirement of South Carolina law, as it pertains to this Project.

McNair Law Firm, P. A.
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Hilton Head Island, SC 29928

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Ms. Hillary Austin
September 16, 2011
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M C N A I R
ATTORNEYS

I have enclosed as Exhibit "A" hereto a letter from Mr. Terry Lyons of the South Carolina Department of Health and Environmental Control ("DHEC") regarding DHEC's approval of individual septic systems as a method of sewage disposal for the Project. This letter is misdated April 21, 2007 (the correct date is April 21, 2008) but it is the approval for individual on-site waste disposal (septic tanks) for the Project. In light of questions raised in a pre-application meeting concerning the use of on-site septic systems, and new State legislation regarding permitting of septic systems as a method of sewage disposal described in a letter dated May 6, 2011 from Mr. Criscitiello to Daniel Keefer, an agent of the Applicant, Exhibit "B" hereto, this Firm sought confirmation from DHEC, specifically from Mr. Lyons, of its April 21, 2008 approval of septic systems for this Project and requested clarification regarding the new legislation and, specifically, how it relates, if at all, to the Project. Mr. Lyons responded in a letter dated May 25, 2011, which I have enclosed as Exhibit "C" hereto. As you will note, DHEC determined that the Project would not be reviewed under, nor required to comply with, the new regulation passed by the South Carolina legislature which became effective January 1, 2008, Section 44-55-822 et seq. of South Carolina Code of Laws, because the application for approval of individual septic systems as a method of sewage disposal at Pinckney Point was submitted prior to the effective date of that legislation and review by DHEC of the Project was already underway. Mr. Lyons confirmed that individual septic systems as a method for sewage disposal on Pinckney Point was approved in 2008 and compliance with the new legislation is not required.

While Section 44-55-822 does not apply to the Project, the DRT should know that the requirements of that new legislation have essentially already been met by the Applicant. Soil suitability testing for each proposed lot has already occurred, has been reviewed by DHEC, and plans for engineered systems, where necessary, have been authorized and a permitting process for the construction of the systems has been established. While, as Mr. Lyons states, Section 44-55-822 does not apply to this subdivision, DHEC did, in fact, review soils stability tests for each lot in the proposed subdivision. I direct your attention to Mr. Lyons misdated April 21, 2008 correspondence, in which approval for septic systems as a method for sewage waste disposal for this subdivision was granted by DHEC. The first page lists materials reviewed and provided by the Applicant and its agents for DHEC's review. This included soil reports with results of soil evaluations conducted on each lot. Further, soil evaluations were conducted by DHEC personnel. Finally, this correspondence further provides requirement for each lot before individual permits shall be issued by DHEC. Those requirements have been incorporated into the engineering drawings for the development of the project. It also notes that prior to issuance of a permit to construct, the proposed residences shall be reviewed on a case-by-case basis. Therefore, this Applicant has not only met all requirements of applicable law regarding final approval for subdivision, it has also obtained and provided essentially the same data that would be required under the new legislation.

Additionally, in its correspondence to Mr. Keefer of August 10, 2011, Exhibit "D" hereto, the DRT indicated that "final plans must include the actual septic system permits to ensure that on-lot systems (including drainfields) will not encroach into river buffers, on-lot natural resource areas, or on-lot preserved archaeological sites". This requirement is not one described in the ZDSO. However, the Applicant has proposed to designate, by restrictive land use covenant, the area permitted on each subdivided lot for installation of the on-site septic systems and drain fields. The approved drain field area will be delineated on the plats. Therefore, none have the capacity as potential to encroach or disturb the resources described in the August 10, 2011 letter.

As stated at the August 17 meeting of the DRT, the Applicant understands the requirement that, as stated in the April 21, 2008 approval and, again, in the May 25, 2011 confirmation, prior to the construction of any structure on any individual lot in the subdivision, the owner of the lot must obtain a permit for the

construction of an individual septic system for such lot. This does not require that PPLLC obtain such permits prior to the subdivision approval. The Applicant, therefore, has met all requirements of applicable State law for approval of this subdivision for septic systems as a method of sewage disposal. At this stage of approval for the Project individual lot permits are not required, nor is any further approval available from DHEC.

At the August 17 meeting of the DRT, reference was made to Section 106-2827 of the ZDSO. This section is part of Division Three, Service Standards of Article XIII, Subdivision and Land Development Standards. As stated in Section 106-2766, all proposed subdivisions shall conform with the standards set forth in Article XIII unless otherwise exempted. The Project, as proposed, complies with these standards because it sets forth a proposal for a subdivision meeting these standards.

Division Three of Article XIII describes Service Standards. Section 106-2826 requires that all developments shall be provided with the minimum services listed and the property owner or developer is responsible for the provision of these basic services within the proposed development. Development is prohibited unless "provision is made" for the basic services listed. These services include "(3) means for treatment and disposal of domestic sewage and other liquid waste;". Sewer standards are more specifically discussed in Section 106-2827. Subsection (b) provides that all on site systems be properly installed and meet standards of DHEC. There is no requirement in Division Three of Article XIII or in the ZDSO that requires each individual lot in a proposed subdivision be permitted for a septic system prior to the final approval of the subdivision itself. The only requirement is that on site systems be properly installed and meet the standards of DHEC. As set forth in Mr. Lyons' correspondence, the DHEC standards for approval of the subdivision have been met. No other approvals are required, nor available, for this subdivision from DHEC.

Furthermore, the Applicant is cognizant of concerns voiced by the DRT and other staff members as well as others regarding the Okatie and Colleton Rivers. The Applicant, from the start of its efforts to permit the Project, has put forth plans which are sensitive to the rivers and watershed areas involved. It should not be necessary to describe that process again, but a proposal for sewers to the Project was made by the Applicant in the fall of 2005. The DRT stated in responsive correspondence in October of 2005 that sewers were not allowed without a finding that a documented health condition warrants expansion of sewer systems to the Project and that expansion may not be for development purposes only. Based on that directive, the Applicant undertook to obtain all necessary approvals from DHEC for on-site disposal for the Project. Testing was undertaken on each proposed lot and each was reviewed by DHEC. Specific engineered on-site disposal system criteria was designed and approved for each lot at considerable expense to the Applicant. The Applicant should not now, after undertaking to design and obtain this approval pursuant to the directive of the DRT, be required to provide anything more than required by applicable law. The Applicant has fulfilled all requirements of applicable law with respect to sewage disposal for the Project and the condition requiring individual lot specific septic system permits for final subdivision approval should be dropped.

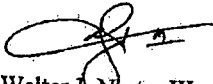
Ms. Hillary Austin
September 16, 2011
Page 4

MCNAIR
ATTORNEYS

On behalf of the Applicant, it is requested that the DRT remove the last condition of its August 27, 2011 approval. It is also requested that imposition of this condition be reviewed by the County Attorney.

Sincerely,

McNAIR LAW FIRM, P.A.



Walter J. Nester III

WJN:jc
Enclosures

cc: Ladson F. Howell, Esq. (*via email*)
Mr. Anthony J. Criscitiello (*via email*)



MCNAIR
ATTORNEYS

December 15, 2011

Walter J. Nester, III

wnester@mcnair.net
T (843) 785-2171
F (843) 888-5981

Via E-mail (lgruber@bcgov.net)

Joshua A. Gruber, Esq.
Beaufort County Legal Department
PO Box 1228
Beaufort, SC 29901-1228

Re: Pinckney Point Subdivision - Septic Tank Restrictive Covenant Language
Our File No. 040116.00020

Dear Josh:

With regard to the language for the Pinckney Point subdivision plat which we discussed in our meeting last month, attached please find restrictive covenant language which I propose shall be placed on the subdivision plat. I have incorporated the language that you proposed and believe this addresses the concerns of the members of the DRT. Assuming that it is acceptable, please ask Tony to send me some writing which removes the condition for septic tank permits prior to final approval on the conceptual approval for this project provided by the DRT dated August 23, 2011. That condition may be replaced with a condition that this covenant be placed on all subdivision plats for the project, and should also note that the four (4) new lots shall require a septic system construction permit prior to subdivision. These are Lots numbered 68, 69, 70 and 71 on the concept plan approved by the DRT at its August 17, 2011 meeting.

Please let me know if you have any questions or require further information. We would like to resolve this issue prior to the end of the year so the applicant may commence design and planning for its final subdivision application.

With best regards, I am

Sincerely,

MCNAIR LAW FIRM, P.A.

Walter J. Nester III

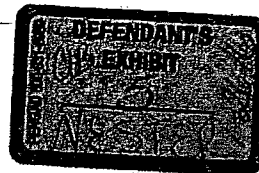
McNair Law Firm, P.A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29928

WJN:dlr

Enclosure

c: Pinckney Point, LLC (via e-mail)
HILTONHEAD 755485v1



ANDERSON BLUFFTON CHARLESTON CHARLOTTE COLUMBIA GREENVILLE HILTON HEAD MYRTLE BEACH PAWLEYS ISLAND

McNair Docs 6420

Approval of this Plat does not constitute a statement by Beaufort County as to the ability of any Lot to support or not support the installation of a septic system for any Lot created by this Plat. Owners of any Lot created by this Plat shall be required to obtain an individual septic system permit from the South Carolina Department of Health and Environmental Control prior to the issuance of a building permit from Beaufort County for construction of improvements upon such Lot.

Septic System Restrictive Covenant

Septic system drain fields may only be constructed within the septic system drain field setbacks depicted on each Lot created by this Plat. This requirement shall be a restrictive covenant upon each Lot in consideration of the protection of the adjacent water bodies, scenic and environmental resources and property values in general, and such restrictive covenant is intended to and shall run with the land and be binding on all heirs, successors, assigns, lessees or occupiers of any such Lot.



MCNAIR
ATTORNEYS

April 17, 2013

Walter J. Nester, III

Via E-mail (jgruber@bcgov.net)

wjnester@mcnair.net

T 843.785.2171
F 843.688.5991

Joshua A. Gruber, Esq.
Beaufort County Legal Department
P.O. Box 1228
Beaufort, SC 29901-1228

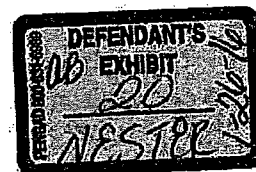
Re: Pinckney Point, LLC: Summary of 4/15/13 Meeting—
Pinckney Colony Road
Our File No. 059198.00001

Dear Josh:

I thought it would be helpful to summarize our Monday afternoon discussions in your office regarding the land owned by Road, LLC, which is located at the end of the public portion of Pinckney Colony Road. I believe the issues discussed during that meeting are important enough that memorializing them is helpful for a clear understanding by all involved.

As I have indicated in all of our discussions since Beaufort County announced its plans to purchase the Pinckney Point tract from Equity Resource Partners III, LLC, my client, Road, LLC, wants to ensure that all of the parties involved understand Road, LLC's position regarding its property and the rights, if any, of others in that property. Any of our discussions about the activities of any of the persons or parties as well as the history of Pinckney Point, LLC's involvement has been provided solely for the purpose of background information and clarification, and are not intended to criticize such activities. I appreciate your inclusion of Attorney Robert Achurch and his firm in these discussions, as he has been involved in the nearly six years of disputes regarding the Pinckney Point tract, in which the ownership of Pinckney Colony Road was at issue.

As you know, the County, along with Road, LLC, joined in the execution of the Settlement Agreement (the "4-Party Settlement Agreement"), and is bound by the agreements set forth therein, including the agreement that the approximately 0.7 mile portion of Pinckney Colony Road—from the end of the pavement to the homestead on Pinckney Point—is a private road. At our meeting, Attorney Tom Bendle had a copy of the deed from Agnes Pinckney granting to Road, LLC the 0.85 acre parcel (the "Road Parcel") as well as a copy of the Easement Agreement in which Road, LLC granted limited easement rights to Pinckney Point, LLC (the "Road Parcel Easement"). There are some features of this Road Parcel Easement that I believe are important enough to warrant repeating. Regardless of whether the Road Parcel Easement is determined to run with title



McNair Law Firm, P. A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29938

mcnair.net

HILTONHEAD 809657v2

KENTUCKY LEXINGTON | NORTH CAROLINA CHARLOTTE | SOUTH CAROLINA ANDERSON BLUFFTON CHARLESTON COLUMBIA GREENVILLE HILTON HEAD MYRTLE BEACH PAWLEY'S ISLAND

to the Pinckney Point tract (the "Point Tract"), the easement rights are very limited. The Road Parcel Easement was intended to serve a private residential development on the Point Tract. It is twenty feet (20') wide and is for ingress and egress only. It may not be improved, repaired or maintained without the approval of Road, LLC. Further and as specifically set forth in the Road Parcel Easement, only the lawful occupants of the Point Tract may use the easement, and it is not for the general public's use. Arguably, Road, LLC has the right to install a farm gate on both ends of its property and to require the occupants of the Point Tract to keep the gate closed at all times to prevent the use by those who are neither occupants nor lawful users of the Road Parcel Easement. The Road Parcel was never intended for public access nor to accommodate a high volume of traffic, and we believe this is clear in the Road Parcel Easement.

As indicated above, the parties in the 4-Party Settlement Agreement agreed that Pinckney Colony Road is private. From the beginning of the dispute, Mrs. Dorothy Gnann and Mrs. Agnes Pinckney (as guardian for her husband) took the position that the road was private. Mr. Pinckney placed poles in the road, which prompted the County's declaratory action. Six years later, the parties executed the 4-Party Settlement Agreement, settling the dispute and agreeing that the road was private. In reliance upon that 4-Party Settlement Agreement, and for the specific purpose of making the road private, Road, LLC acquired the Road Parcel and granted the Road Parcel Easement to Pinckney Point, LLC. As we discussed, it was never contemplated that Beaufort County would be a potential purchaser of the Point Tract. Clearly, given the limitations in the Road Parcel Easement, the use is limited. Furthermore, given the history of litigation regarding access and the settlement, we believe that condemnation may be a breach of the 4-Party Settlement Agreement.

Finally, we certainly appreciate the County's concerns regarding the environmental issues facing the Okatie and Colleton Rivers. At the time that Pinckney Point, LLC purchased the Point Tract, it was essentially denuded. There were five stormwater outfalls which still exist today. These outfalls drain soil, silt and pesticides from the Point Tract into the Okatie and Colleton Rivers and marshes. In addition, the on-site roadway running through the Point Tract was (and still is today) located within the river buffer. Pinckney Point, LLC undertook significant expense to mitigate these environmental impacts by designing a low-density development plan. As part of the 4-Party Settlement Agreement, Pinckney Point, LLC also agreed to move the on-site roadway out of the river buffer and to restore the buffer to its natural state. Pinckney Point, LLC also sought to install sewers in its first development plan application, but this was not allowed by the ZDSO at that time, and is still not allowed. Furthermore, according to the separate settlement agreement between Agnes Pinckney (as guardian for her husband) and Pinckney Point, LLC, sewers are not allowed. Septic systems were imposed upon Pinckney Point, LLC—they were not chosen. Pinckney Point, LLC's approved conceptual development plan provided for the removal of the five stormwater outfalls and the installation of retention facilities to accommodate a 100-year flood event, which far exceeds the County's best management practices for stormwater. While we believe the County's use would be sensitive to environmental concerns, we are uncertain how the County's use of the Point Tract, as proposed, would exceed those protections.

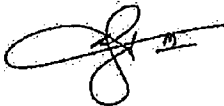
Joshua A. Gruber, Esq.
April 17, 2013
Page 3

M C N A I R
ATTORNEYS

Please let me know if you have any questions.

With best regards, I am

Sincerely,



Walter J. Nester, III

WJN:amb

cc: Road, LLC (*via e-mail*)
Robert Achurch, Esq. (*via e-mail*)
Tom Bendle, Esq. (*via e-mail*)



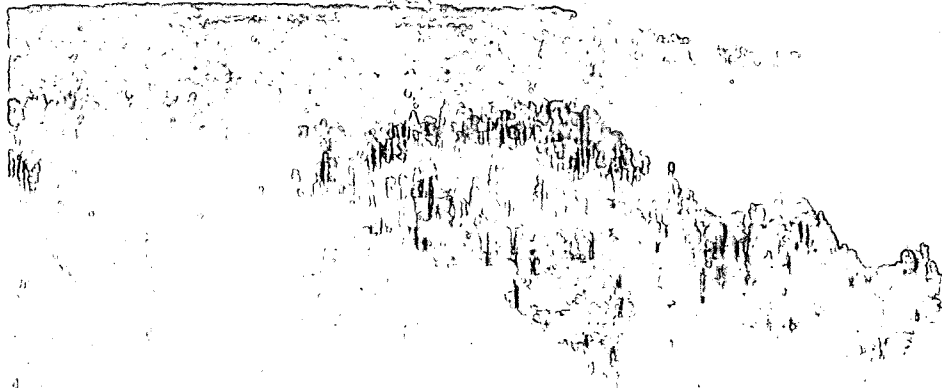
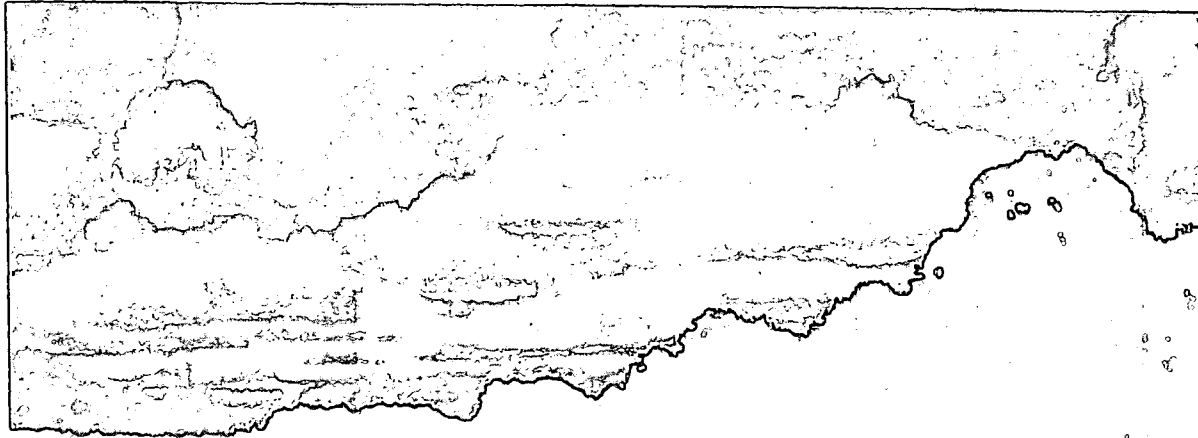
rural & critical land preservation program
beaufort county, south carolina

executive session
03.14.13

pinckney point - okatie

BCOLT-0036

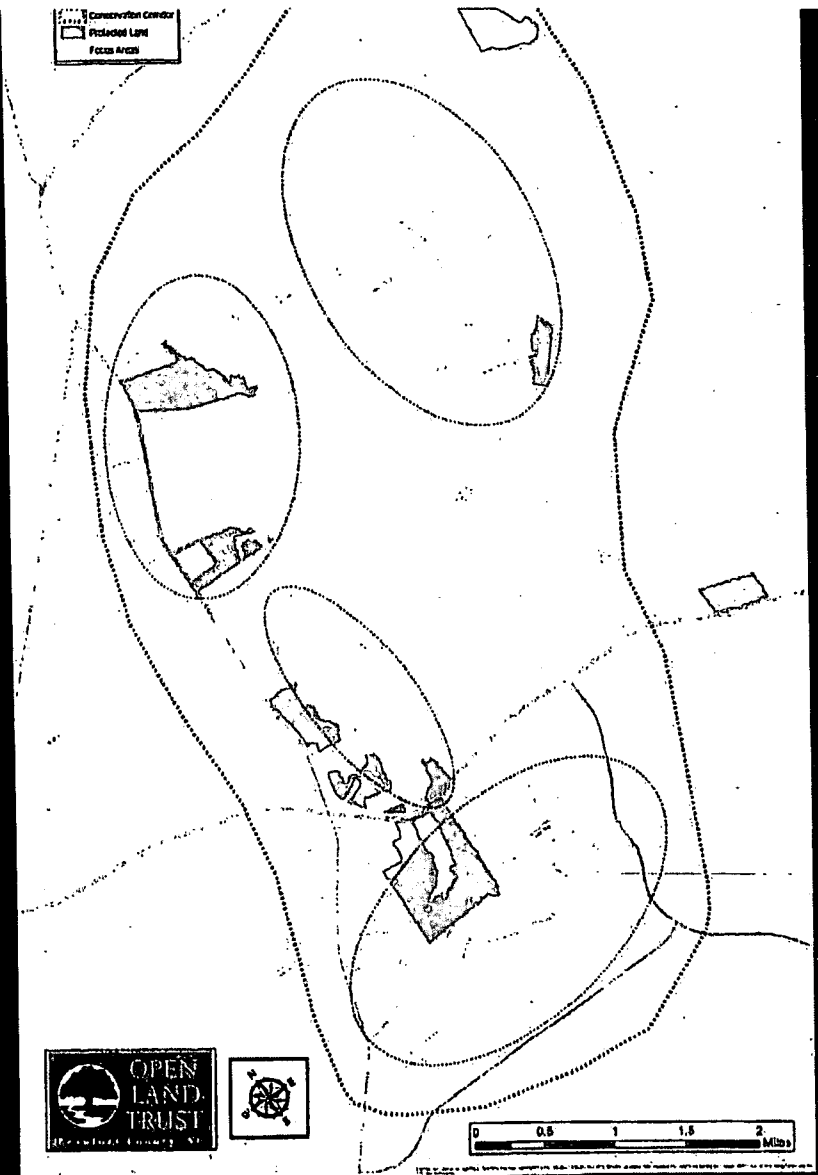
okatie river conservation corridor



corridor

*restoring a natural
resource*

*building a regional
recreational amenity*



straddles Okatie and
Colleton rivers

removes development
threat - 70+ residences

expands Okatie conservation corridor

opportunity for regional park

compliments protection
across the river at Altamaha
and Camp St Mary's



© 2018 Google

32°19'48.05" N 80°53'27.69" W elev 3 m

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Type alt 2.18 km

pinckney point - okatie

1663



Google

- seller: Southwood Development Co, LLC
- acreage: 270 acres +/-
- acquisition: 3 options -
 - 1) conservation easement
 - 2) fee simple/conservation easement
 - 3) fee simple absolute
- price:
 - 1) \$5,875,000
 - 2) \$6,500,000
 - 3) \$6,950,000
- price/acre:
 - 1) \$21,750/acre
 - 2) \$24,000/acre
 - 3) \$25,750/acre
- cost structure: 100% Beaufort County
- ranking: 8.81

BCOL-0040



CLOSING STATEMENT

Buyer: Beaufort County, South Carolina, whose address is c/o Beaufort County Administrator, P.O. Drawer 1228, Beaufort, SC 29901-1228 (hereinafter referred to as "County")

Seller: Equity Resource Partners III, LLC
2255 Cumberland Parkway
Building 1700, 2nd Floor
Atlanta, GA 30339

By and through its Intermediary:

Atlanta Escrow and Exchange Service, Inc., A Georgia Corporation
6133 Peachtree Dunwoody Road, N.E.
Atlanta, GA 30328

Closing Attorney: Thomas A. Bendle, Jr., Esq. ("Closing Attorney")

Property Interest: TMS:R600 -014-000-001A-000-00
TMS:R600 -014-000-002G-000-00
TMS:R600 -014-000-002J- 000-00
TMS:R600 -014-000-002F-000-00
TMS:R600 -014-000-002K-000-00
(hereinafter referred to as the Property").

Purchase Price: \$8,950,000.00

Closing Date: May 28, 2013

I. Adjustments and Prorations

Purchase Price: \$6,950,000.00

1.	Deposit	NONE	
2.	Paid by County		\$6,950,000.00

CASH DUE SELLER FROM BUYER AT CLOSING \$6,950,000.00

II. Seller's Account

Cash Due Seller from Buyer \$6,950,000.00

ess Disbursements on behalf of Seller:

Documentary Stamps EXEMPT
Consulting Fee to 4H Family Trust, LLC 250,000.00
Pro-Rata Share of Beaufort County Real Property Taxes

TMS:	R600 -014-000-001A-000-00 (\$2,034.67)	831.42
TMS:	R600 -014-000-002G-000-00 (391.18)	159.43
TMS:	R600 -014-000-002J- 000-00 (1,955.29)	798.64
TMS:	R600 -014-000-002F-000-00 (429.25)	175.82
TMS:	R600 -014-000-002K-000-00 (236.80)	96.85

Wire fee to Howell Gibson and Hughes 25.00
Fee/Expenses to Atlanta Escrow & Exchange Service, Inc. 1,030.00
Recording Fees to Beaufort County ROD Office (Cancellations) 13.00
SC NON Resident Real Estate Withholding (\$210,958.00) (POC)

T CASH DUE SELLER AT CLOSING \$ 6,696,869.84
(To Atlanta Escrow & Exchange Service, Inc., QI)

Buyer's Account

sh Due from Beaufort County \$6,950,000.00

Agreement of Parties

Each of the parties hereto agrees and acknowledges that it has reviewed and approved the disbursements shown herein. The parties agree to cooperate in correcting any mathematical or other error on this Closing Statement.

The parties acknowledge that certain amounts set forth above may be estimates and are subject to adjustment in the future. The parties hereto agree to adjust any of the amounts set forth on this Closing Statement if and when any and all corrected and/or final bills are received. All tax prorations are final.

Subject to receipt and collection at Closing of the TOTAL CASH DUE FROM BUYER AT CLOSING, Closing Attorney is hereby authorized and directed to (a) make the Disbursements on behalf of Sellers listed in Section II above at Closing, (b) make the Disbursements on behalf of Buyers listed in Section III above at Closing, and (c) disburse the Net Cash Due Seller at closing.

Closing Attorney agrees to serve as the reporting person for purposes of completing and timely filing IRS Form 1099, if one is required.

This Closing Statement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

SELLER:

Atlanta Escrow and Exchange Service,
Inc., A Georgia Corporation
6133 Peachtree Dunwoody Road, N.E.
Atlanta, GA 30328

By: _____
Its: _____

Acknowledged by:

Equity Resource Partners, III, LLC
A Georgia Limited Liability Company

By: Tall Pine Properties, LLC, Manager

By: _____
John H. Irby, Managing Member

CLOSING ATTORNEY:

Howell, Gibson and Hughes, P.A.

By: T. Bendle
Thomas A. Bendle, Jr., Esq.

BUYER:

BEAUFORT COUNTY,
a political subdivision of the State of
South Carolina

By: Gary Kubic
Name: Gary Kubic
Title: Beaufort County
Deputy Administrator
Post Office Box 1228
Beaufort, South Carolina 29902

Approved as to form:

By: Joshua Gruber
Joshua Gruber
Beaufort County Attorney
Post Office Box 1228
Beaufort, South Carolina

SELLER:

Atlanta Escrow and Exchange Service,
Inc., A Georgia Corporation
6133 Peachtree Dunwoody Road, N.E.
Atlanta, GA 30328

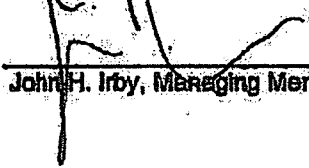


By: Dana L. Button
Its: Assistant Vice President

Acknowledged by:

Equity Resource Partners, III, LLC
A Georgia Limited Liability Company

By: Tall Pine Properties, LLC, Manager

By: 
John H. Irby, Managing Member

CLOSING ATTORNEY:

Howell, Gibson and Hughes, P.A.

By: 
Thomas A. Bendle, Jr., Esq.

BUYER:

BEAUFORT COUNTY,
a political subdivision of the State of
South Carolina

By: _____
Name: Gary Kubie
Title: Beaufort County
Deputy Administrator
Post Office Box 1228
Beaufort, South Carolina 29902

Approved as to form:

By: _____
Joshua Gruber
Beaufort County Attorney
Post Office Box 1228
Beaufort, South Carolina



Subject: Pinckney Point, LLC - Application for Subdivision

Date: 10/18/2011 3:44 PM

From: "Nester, Walter" <wnester@mcnair.net>

To: "Robert W. Achurch, III" <RAchurch@hghpa.com>

Cc: "Taylor Bush" <tbush@stokeslandgroup.com>, "Howell, Ladson" <lhowell@bcgov.net>

Robert – Thank you for taking the time this morning to discuss my concerns regarding Pinckney Point, LLC's application for subdivision approval for Pinckney Point from Beaufort County's DRT. As discussed, I thought you should be aware of the action described in the attached correspondence because of the recent settlement agreements with the County. Attached below is my most recent correspondence with the DRT which was sent in response to their conceptual approval of the Pinckney Point subdivision. I have also attached a copy of the DRT letter with the conditional approval. The DRT met with the applicant and its consultants this past Friday morning – as proposed in my September 16th correspondence – in an effort to show them the efforts the applicant would take to address the DRT's specific concerns – since there is no requirement in the ZDSO or under state law to provide the permits for septic the DRT is requiring for final approval of this project. We will also be sending information requested by the DRT as a follow up to the meeting this past Friday. While we content that the DRT has no right to demand individual permits, with this information, the DRT will have information from DHEC and the applicant's consultants that we believe sufficiently addresses the stated concerns of the DRT and will again demand that the condition be dropped. Please let me know if you have any questions. Best regards, Walter J. Nester III Shareholder wnester@mcnair.net McNair Law Firm, P.A. Hilton Head Island Office | Shelter Cove Executive Park, 23-B Shelter Cove Lane | Suite 400 | Hilton Head Island, SC 29928 843 785 2171 Main | 843 686 5991 Fax Mailing Post Office Drawer 3 | Hilton Head Island, SC 29938 Bio: <http://www.mcnair.net/Professionals/wnester> Website: <http://www.mcnair.net>

about:blank



8/2/2015

McNair Docs 8861



Nancy Jane Dennis

From: John H. Irby <jirby@wbilegal.com>
Sent: Tuesday, July 17, 2012 1:18 PM
To: Taylor Bush
Cc: John Kunkel
Subject: RE: Change of Address

Thanks. Will look forward to hearing from you later. And I will ask if anyone has any names for you.

John H. Irby
Managing Member
WILSON BROCK & IRBY, L.L.C.
 Overlook 1, Suite 700
 2849 Paces Ferry Road
 Atlanta, Georgia 30339
jirby@wbilegal.com
 (404) 853-5050 phone
 (404) 853-1812 fax

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From: Taylor Bush [mailto:taylor@arendaleholdings.com]
Sent: Tuesday, July 17, 2012 1:26 PM
To: John H. Irby
Cc: John Kunkel
Subject: RE: Change of Address

John,

You were on my list today. Thanks for your patience as I just returned this morning. John is traveling but I hope to catch up with him within the next two days to discuss our response to your question. I will, however, update you on a couple of things.

- Yesterday I was in Atlanta meeting with an Architect. We are in the process of selecting the Architect that will be designing the amenity buildings as well as programming the Architectural Guidelines for the property.
- We will be going before the DRT (county planning department) for final site plan approval within the next 30 days.
- Civil Engineering is about 75% complete and we will be submitting plans for final permits probably within 60 days.
- I am currently working with several groups to make a final determination of how we wish to move forward with the marketing of the property. Over the past several years we have collected a list of people who have expressed an interest in purchasing a lot. My strategy is to give this exclusive group of people a private first look at the lot

PLTF ROAD & PP 000978

offering before we take the sales to the public. If you, Matt or Lee have any names that you would like to add to that "first look" list I will be happy to do so.

I will try and be back to you by the end of the week with some feedback to your question. Thanks

Taylor

From: John H. Irby [mailto:jirby@wbilegal.com]
Sent: Tuesday, July 17, 2012 12:42 PM
To: Taylor Bush
Subject: RE: Change of Address

Taylor, I hope you had a nice trip.
Any update?

John H. Irby
Managing Member
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Taylor Bush [mailto:taylor@arendaleholdings.com]
Sent: Friday, June 29, 2012 10:57 AM
To: John H. Irby
Cc: John Kunkel
Subject: RE: Change of Address

John,
I wanted to pop you a note and confirm that I have received this request. I am leaving Sunday and will be unavailable for two weeks (30th wedding anniversary trip). I have placed this on my calendar as a top priority to review with John upon my return and will endeavor to give you a thorough update of where we are today with the final entitlement process and what our plans are relative to the note and extension. You can expect a response from me the week of July 16th. I hope this will be ok....thanks
Taylor

PLTF ROAD & PP 000979

From: John H. Irby [mailto:jirby@wblegal.com]
Sent: Thursday, June 28, 2012 12:04 PM
To: John Kunkel
Cc: Taylor Bush
Subject: RE: Change of Address

John/Taylor, can you guys give us a update? Just trying to make our own plans with September not too far away and if you can tell us what you are thinking at this point it would help. Thanks.

John H. Irby
Managing Member
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wblegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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If you have received this message in error, please immediately delete the message, attachments and any hard drive copies, and notify sender by reply email so that the error may be corrected.

From: John Kunkel [mailto:jkunkel@arendaleholdings.com]
Sent: Monday, May 21, 2012 12:50 PM
To: John H. Irby; lwooddall@southwooddev.com; Matt Lowe
Cc: Taylor Bush
Subject: Change of Address

For your records, please note that Pinckney Point, LLC, Stokes Land Group, LLC as well as each of our officers have changed our address. We are now located at: 4200 Marsh Landing Parkway, Suite 100, Jacksonville Beach, FL 32250. Our phone numbers are the same.

JCK

Nancy Jane Dennis

From: Taylor Bush
Sent: Tuesday, October 30, 2012 4:44 PM
To: John H. Irby
Cc: John Kunkel; John Moore
Subject: RE: Pinckney
Attachments: Permits and Approvals Summary Report 110911.xls

John,

Please find attached the updated "Permits and Approvals Report" which I have retitled "Tracking Report" for permits affecting the property. You will note that there have been no new permits issued since the last report. We continue to work on the plans for the development of the property and I would be happy to set up a meeting to review those plans with you and Lee at your request. I will check on the status of the tax payment and advise. Thanks Taylor

-----Original Message-----

From: John H. Irby [mailto:jirby@wbilegal.com]
Sent: Tuesday, October 30, 2012 4:25 PM
To: Taylor Bush
Cc: John Kunkel; Missy.Turra@hklaw.com
Subject: RE: Pinckney

Taylor, would you please submit a Tracking Report (see Option Agreement, section 10 (D)). And also report the status of tax payment.

Thank you.

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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PLTF ROAD & PP 000981

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-----Original Message-----

From: Taylor Bush [mailto:taylor@arendaleholdings.com]
Sent: Wednesday, September 12, 2012 9:24 AM
To: John H. Irby
Cc: Taylor Bush; John Kunkel; Missy.Turra@hklaw.com
Subject: RE: Pinckney

John.... you currently have everything that we have... Taylor

"John H. Irby" <jirby@wbilegal.com> wrote:

Please confirm that we have all a copy of all the most recent permits, permit applications, and test results.

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com<mailto:jirby@wbilegal.com>
(404) 853-5050 phone
(404) 853-1812 fax

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From: Taylor Bush [mailto:taylor@arendaleholdings.com]
Sent: Monday, July 23, 2012 3:12 PM
To: John H. Irby
Cc: John Kunkel; Missy.Turra@hklaw.com

PLTF ROAD & PP 000982

Subject: Pinckney

John,

As I mentioned in my previous email, we are still working on our engineering and final site plan approvals for the Pinckney Point Property. We are also working to finalize our Amenity design all of which is required before we bring this property to the market. As a result, it appears that the development of the property will be moved into the spring of next year depending on market conditions. Please accept this email as confirmation that we will be exercising our option to extend the closing date as provided for in our option agreement. It is my understanding that we are required under the agreement to fund an extension fee of \$375,000 prior to 2:00 pm August 31, 2012. Please advise if this deadline is not correct or if you require notice of our intent in any other form. Thanks for your patience in providing this response to your request.

Taylor Bush

TRACKING REPORT
Pinckney Point Permits and Approvals Summary

Name	Description	Permit Status	Comments
Amenity	Land Plan	No permit Required	Complete
Amenity	Site Plan Approval	Included in DRT Approval	Underway
Amenity	Site Design	No permit Required	Underway
Amenity	Architectural Design	Not Requested	
Amenity	Storm Water Permit	Not Requested	
Amenity	Grading Permit	Not Requested	
Amenity	Building Construction Permits	Not Requested	
Docks	Dock Permit (OCRM)	Pending	Settlement to dismiss appeal by SCDHEC
Docks	Dock Construction Permit (County)	Not Requested	Estimated Time 120 Days
Entrance	Storm Water Permit	Not Requested	
Entrance	Grading Permit	Not Requested	
Entrance	Roadway Design	Not Requested	
Lots	Water System Permit	Pending	
Lots	Preliminary Site Plan Approval		Concept DRT approval with conditions
Lots	Final Site Plan Approval		Not scheduled but expect to present this year
Lots	Memorandum of Agreement (MOA) SHIPO	Complete	Signed 6/17/09
Lots	Historic Site Surveys	Complete	Part of MOA
Lots	MOA Restrictive Covenant Preparation	Not Requested	30 Days
Lots	MOA Restrictive Covenant Recording	Not Requested	
Lots	MOA Management Summary	Not Requested	60 Days
Lots	MOA Public Information Plan	Not Requested	90 Days
Lots	MOA Historic Documentation of Structures to be Removed (DSR)	Not Requested	90 Days
Lots	MOA Approval of DSR	Not Requested	90 Days
Lots	MOA Preservation and Maintenance Plan for remaining structures	Not Requested	90 Days
Lots	Wetlands Verification - USACE	Complete	Valid 3/8/11 - 3/8/16 SAC 2010-1065-1JA
Lots	Construction Placard	Not Requested	Follows issuance of Development Permit
Lots	Storm Water Permit - OCRM	Complete	Permit No. 07-08-04-01
Lots	Septic Permit Master Plan Approval	Issued	
Lots	Septic Permit (individual Lots)	Not Requested	Will be requested by individual buyer
Lots	R/W Abandonment	Not Requested	Estimated Time 90 Days
Lots	Grading Permit	Pending	Need Final DRT approval only
Lots	Plat Design	In Process	Follows Concept DRT - Keefer
Lots	Preliminary Plat Approval	Not Requested	Basic approval is achieved via Concept DRT
Lots	Plat Recording	Not Requested	Follows issuance of Development Permit
Lots	Cable, Gas, Electricity	Issued	Letters of Intent in hand
Lots	Fire Marshal	Approved	5/5/2008
Off-site	Water System Permit	Issued	
Off-site	Utility Encroachment permit	Issued	
Off-site	Storm Water Permit - OCRM	Complete	Permit No. 07-08-04-01A



Nancy Jane Dennis

From: Taylor Bush
Sent: Monday, January 7, 2013 7:48 PM
To: John H. Irby
Cc: John Kunkel
Subject: RE: Pinckney Point

John,
Thanks for the reply John and it was great to finally meet you. I will be in Charleston for a couple of days but will get John as soon as I return. One of us will be in touch soon.
Taylor

From: John H. Irby [mailto:jirby@wbilegal.com]
Sent: Monday, January 07, 2013 3:31 PM
To: Taylor Bush
Cc: lee Woodall; John Kunkel; Missy.Turra@hklaw.com; WNester@MCNAIR.NET
Subject: RE: Pinckney Point

Taylor/John, we wanted to follow up on our conversation on Friday.

First, I can now confirm, that we will return to you the full amount of any 2012 property refund, if any, received by us on the approximate \$80,000 amount you told us that you have recently paid for 2012 property taxes on Pinckney Point and for which Walt Nester applying for a rebate after he files the papers we discussed and I signed on Friday putting the property back on agricultural use; this is only if the agricultural use status is reapplied for 2012, we receive the money, there are no adverse tax consequences to ERP of any ty and all of the expense of re-applying and obtaining the refund are fully and timely paid you; please have Walt send me a copy of the final document and evidence of payment as soon as possible and keep me informed of the progress. Based on our conversation, we fully relying on Walt to proceed with the effort immediately.

We would also appreciate another thorough update on the status of "permits" (and actual copies) including what you don't have and intend to get (with a schedule of that effort) a a updated copy of your maps and development surveys/drawings and a copy of your rec appraisal(s) discussed.

We understand that you would like to have some additional time to exercise your option buy the property.

We can conditionally agree to this request for a period of 120 days after the current date for expiration of your option if, (and after supplying the above) prior to February 15, 20

parties can mutually agree to, in their sole and absolute discretion, and fully execute, document to be recorded for an expansion of the current easement over the "private" road; expansion would have to be of a size, use and maintenance that would allow a owner of land to fully develop it in accordance with your current development plans; further, you execute and place in Escrow with your counsel a deed to the private road that would be delivered to us in the event you do not exercise your option before expiration of the original 120 day period.

Let me know if these terms are agreeable and if so, I will ask Missy to send me a revised draft of the expanded easement, escrow agreement supplement, and deed.

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Box 1, Suite 700
Paces Ferry Road
Atlanta, Georgia 30339
www.wbiregal.com
404-5050 phone
404-1812 fax

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John H. Irby
Wednesday, January 02, 2013 10:23 AM
Taylor Bush
cc: Woodall; John Kunkel
Subject: RE: Pinckney Point

in my office work for you?

J. Irby

WILSON BROCK & IRBY, L.L.C.

Overlook I, Suite 700

2849 Paces Ferry Road

Atlanta, Georgia 30339

jirby@wbilegal.com

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From: Taylor Bush [mailto:taylor@arendaleholdings.com]

Sent: Monday, December 31, 2012 2:30 PM

To: John H. Irby

Cc: Taylor Bush; Lee Woodall; John Kunkel

Subject: Re: Pinckney Point

ok....till Wednesday...happy New Year

Sent from my Verizon Wireless 4G LTE DROID

"John H. Irby" <jirby@wbilegal.com> wrote:

We have both been traveling - sounds good. Lets firm up on Wednesday

Sent from my iPhone

On Dec 31, 2012, at 11:35 AM, "Taylor Bush" <taylor@arendaleholdings.com> wrote:

John and Lee,

The below email was sent to you on 12/27/12 using a personal email account. Since I have not heard back I wanted to resend in the event it did not get through. Please could you review when you have a moment and confirm that you will be filling out the exemption application and when the two of you would have some time to meet with me and John Kunkel. Thanks and I hope you both have a great New Years Eve.

Taylor

"Previous Email Below"

I hope your Christmas has been enjoyable.

Please find attached a memo from our attorney in regards to the taxes for the Pinckney Point Property. John, when this bill was forwarded to me I realized that the amount was significantly higher than years prior. After research is was determined that the property has been billed for roll back taxes. Each year we have filed for an exemption since the property currently still qualifies as agriculture. When the title transferred to you it would have been up to the new owner to file that exemption. Fortunately we are still within the time limit to do so. The memo explains in further detail the matter and the attached application will need to be filled out and signed by the new owner in order to reinstate the ag exemption and avoid the roll back taxes. This will result in a reduction of the taxes by over \$80,000. Please could you fill out the application and return it to Walter Nester at McNair Law Firm (wnester@mcnair.net <<mailto:wnester@mcnair.net>>). We will coordinate with the county to get the taxes paid. According to Walter we have until January 15th to pay the bill so we are hopeful that the new invoice will be in hand by then. Otherwise we will be responsible for the penalty as it would not be practical to pay the full amount and seek a refund.

Also, Me and John Kunkel will be in Atlanta on the 4th (next Friday) and would like to know if you and Lee would have a minute for us to come by and update you on matters relating to the property (development and marketing strategies, etc).

<Real Estate Tax Memo 122612.pdf>

<Application for tax exemption.pdf>



Nancy Jane Dennis

From: John Kunkel
Sent: Friday, February 8, 2013 6:11 PM
To: John H. Irby
Cc: Taylor Bush
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes
Attachments: image001.png; image002.jpg

Thanks for keeping us apprised.

JCK

From: John H. Irby [mailto:jirby@wbilegal.com]
Sent: Friday, February 08, 2013 3:32 PM
To: Taylor Bush
Cc: John Kunkel
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

To give you a update – we have a meeting Tuesday that will better enable us to get back with you on your proposal.

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Taylor Bush [mailto:taylor@arendaleholdings.com]
Sent: Wednesday, February 06, 2013 12:55 PM
To: John H. Irby
Cc: Taylor Bush; John Kunkel
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

PLTF ROAD & PP 000999

sorry but we were both in meetings at 11. we are available at 1:30 if that can still work for y'all. if so....do we need to set up a call in number?

Taylor

Sent from my Verizon Wireless 4G LTE DROID

"John H. Irby" <jirby@wbilegal.com> wrote:

Today is fine. 11:00, or 1:30 ?

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Taylor Bush [<mailto:taylor@arendaleholdings.com>]
Sent: Tuesday, February 05, 2013 5:26 PM
To: John H. Irby
Cc: John Kunkel
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

John,

Sorry for the delayed response. We have been having a fair amount of discussions with our investor who own the small parcel in front of Pinckney Point. With the request that you are asking, it requires quite a bit of behind the scenes discussions which are nearly wrapped up.

Would it be possible for me and John to have a call with you and Lee to provide you a quick update on how the equity raise efforts have transpired as well as discuss the terms in which all parties would feel comfortable to provide the easement that you have requested? If so then please let me know what time would be good for you.

Thank You,

Taylor

From: John H. Irby [jirby@wbilegal.com]
Sent: Monday, February 04, 2013 1:48 AM
To: Taylor Bush
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

Taylor, what is the status on you guys?

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Nester, Walter [mailto:WNester@MCNAIR.NET]
Sent: Tuesday, January 29, 2013 5:52 PM
To: John H. Irby; 'taylor@arendaleholdings.com'
Cc: Baumann, Angela
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

The tax information was obtained directly from the County Assessor's Office on-line information. It indicated that it was last updated 1-26-13 and those were the numbers listed. We will pull that information and e-mail it to you.

The exemption for agricultural purposes remains until such time as there is a transfer of beneficial interest in the property or a change in the property to another use – and the County is aware of such change in use i.e. the recording of a subdivision plat creating residential lots. The approval for final subdivision by the Planning and Zoning Department alone is not a trigger – but the recording of an approved subdivision plat would likely trigger the termination of the exemption.

MCNAIR
ATTORNEYS

Walter J. Nester III
Shareholder
wnester@mcnair.net

McNair Law Firm, P.A.
Hilton Head Island Office Shelter Cove Executive Park, 23-B Shelter Cove Lane | Suite 400 | Hilton Head Island, SC 29928
843 785 2171 Main | 843 686 5991 Fax

PLTF ROAD & PP 001001

Mailing Post Office Drawer 3 | Hilton Head Island, SC 29938
VCard | Bio URL | Web site

From: John H. Irby [mailto:jirby@wblegal.com]
Sent: Tuesday, January 29, 2013 5:33 PM
To: Baumann, Angela; 'taylor@arendaleholdings.com'
Cc: Nester, Walter
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

I thought it was about \$60,000 for 2012?
How long is this good for Walt?

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wblegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Baumann, Angela [mailto:ABaumann@mcnair.net]
Sent: Tuesday, January 29, 2013 5:15 PM
To: 'taylor@arendaleholdings.com'
Cc: John H. Irby; Nester, Walter
Subject: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

Sent on behalf of Walter Nester. Please contact Walter directly with any questions or comments.

Thank you, kindly,

Angela Baumann
Administrative Assistant
abaumann@mcnair.net
McNair Law Firm, P.A.
Hilton Head Island Office Shelter Cove Executive Park, 23-B Shelter Cove Lane | Suite 400 | Hilton Head Island, SC 29928
843 785 2171 Main | 843 686 5991 Fax
Mailing Post Office Drawer 3 | Hilton Head Island, SC 29938

PLTF ROAD & PP 001002

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PLTF ROAD & PP 001003

Nancy Jane Dennis

From: John H. Irby <jirby@wbilegal.com>
Sent: Tuesday, February 12, 2013 3:18 PM
To: Taylor Bush; John Kunkel
Cc: Lwooddall@southwooddev.com
Subject: Pinckney Point
Attachments: image001.png; image002.jpg

John/Taylor - Lee and I have met and talked with our partners. We think it is best to stick to the terms of your Option Agreement. We just don't want to lock the property up any longer. If you are not able to exercise the option prior to it's expiration later this month and we have not made other commitments or plans, we will certainly try to entertain discussions at later dates if you are able to firm up financial backing to support your endeavors.

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Taylor Bush [mailto:taylor@arendaleholdings.com]
Sent: Wednesday, February 06, 2013 12:55 PM
To: John H. Irby
Cc: Taylor Bush; John Kunkel
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

sorry but we were both in meetings at 11. we are available at 1:30 if that can still work for y'all. if so....do we need to set up a call in number?
Taylor

Sent from my Verizon Wireless 4G LTE DROID

"John H. Irby" <jirby@wbilegal.com> wrote:

PLTF ROAD & PP 001004

Today is fine. 11:00, or 1:30 ?

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Taylor Bush [mailto:taylor@arendaleholdings.com]
Sent: Tuesday, February 05, 2013 5:26 PM
To: John H. Irby
Cc: John Kunkel
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

John,

Sorry for the delayed response. We have been having a fair amount of discussions with our investor who own the small parcel in front of Pinckney Point. With the request that you are asking, it requires quite a bit of behind the scenes discussions which are nearly wrapped up.

Would it be possible for me and John to have a call with you and Lee to provide you a quick update on how the equity raise efforts have transpired as well as discuss the terms in which all parties would feel comfortable to provide the easement that you have requested? If so then please let me know what time would be good for you.

Thank You,

Taylor

From: John H. Irby [jirby@wbilegal.com]
Sent: Monday, February 04, 2013 1:48 AM
To: Taylor Bush
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

Taylor, what is the status on you guys?

John H. Irby



Nancy Jane Dennis

From: Taylor Bush
Sent: Saturday, February 23, 2013 5:03 PM
To: John H. Irby
Cc: Taylor Bush; John Kunkel
Subject: Re: Pinckney Point

John,
 i completely understand your position. please thank you're team for their reconsideration. have a great weekend.

Sent from my Verizon Wireless 4G-LTE DROID

"John H. Irby" <jirby@wbilegal.com> wrote:

Guys we talked about it. I think we're going to just let the Option expire and stay in touch in the coming weeks. TI for your effort.

Sent from my iPhone

On Feb 22, 2013, at 7:19 PM, "Taylor Bush" <taylor@arendaleholdings.com> wrote:

John,

Thank you so much for taking time late on Friday to discuss Pinckney. Rather than getting wordy in this email I will rely upon you to convey to your partners our conversation regarding our efforts to raise capital (which we now feel is achievable with a little more time). With that said we respectfully ask that your group reconsider allowing us to complete this process. The specific request is as follows:

- o Equity Resources grants to us a 120 day extension to close the transaction
- o We agree to complete the final step to have the permit for the 53 docks issued by DHEC
- o We agree to grant to Equity Resources (with no conditions) the r/w easement which will be executed on 2/28/13
- o We pay to Equity Resources an extension fee of \$100,000 on 2/28/13
- o We agree to an increase in the purchase price of \$150,000.

Your consideration of this request is greatly appreciated. Have a wonderful weekend and we look forward to your reply.

Regards,

Taylor Bush

From: John H. Irby [mailto:jirby@wbilegal.com]
Sent: Friday, February 22, 2013 6:07 PM
To: Taylor Bush
Subject: Re: Pinckney Point

PLTF ROAD & PP 001015

Tomorrow sort of tough but you can call my cell phone right now if you would like. I just left the office.
404 - 245 - 2777

Sent from my iPhone

On Feb 22, 2013, at 6:00 PM, "Taylor Bush" <taylor@arendaleholdings.com> wrote:

John,

Any chance you could have a brief call in the morning...say around 11 am... Taylor

From: John H. Irby [<mailto:jirby@wbilegal.com>]

Sent: Tuesday, February 12, 2013 3:18 PM

To: Taylor Bush; John Kunkel

Cc: lwooddall@southwooddev.com

Subject: Pinckney Point

John/Taylor - Lee and I have met and talked with our partners. We think it is best to stick to the terms of your Option Agreement. We just don't want to lock the property up any longer. If you are not able to exercise the option prior to it's expiration later this month and we have not made other commitments or plans, we will certainly try to entertain discussions at later dates if you are able to firm up financial backing to support your endeavors.

John H. Irby

WILSON BROCK & IRBY, L.L.C.

Overlook I, Suite 700

2849 Paces Ferry Road

Atlanta, Georgia 30339

jirby@wbilegal.com

(404) 853-5050 phone

(404) 853-1812 fax

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From: Taylor Bush [<mailto:taylor@arendaleholdings.com>]

Sent: Wednesday, February 06, 2013 12:55 PM

To: John H. Irby

Cc: Taylor Bush; John Kunkel

PLTF ROAD & PP 001016

Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

sorry but we were both in meetings at 11. we are available at 1:30 if that can still work for y'all. if so....do we need to set up a call in number?
Taylor

Sent from my Verizon Wireless 4G LTE DROID

"John H. Irby" <jirby@wbilegal.com> wrote:

Today is fine. 11:00, or 1:30 ?

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
(404) 853-1812 fax

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From: Taylor Bush [<mailto:taylor@arendaleholdings.com>]

Sent: Tuesday, February 05, 2013 5:26 PM

To: John H. Irby

Cc: John Kunkel

Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

John,

Sorry for the delayed response. We have been having a fair amount of discussions with our investor who own the small parcel in front of Pinckney Point. With the request that you are asking, it requires quite a bit of behind the scenes discussions which are nearly wrapped up.

PLTF ROAD & PP 001017

Would it be possible for me and John to have a call with you and Lee to provide you a quick update on how the equity raise efforts have transpired as well as discuss the terms in which all parties would feel comfortable to provide the easement that you have requested? If so then please let me know what time would be good for you.

Thank You,

Taylor

From: John H. Irby [jirby@wbilegal.com]
Sent: Monday, February 04, 2013 1:48 AM
To: Taylor Bush
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes

Taylor, what is the status on you guys?

John H. Irby
WILSON BROCK & IRBY, L.L.C.
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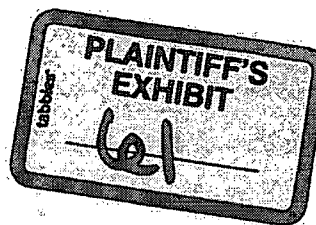
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From: Nester, Walter [<mailto:WNester@MCNAIR.NET>]
Sent: Tuesday, January 29, 2013 5:52 PM
To: John H. Irby; 'taylor@arendaleholdings.com'
Cc: Baumann, Angela
Subject: RE: Stokes, Bush & Barnes Investments, LLC: 2012 Beaufort County ad valorem taxes



Subject: RE: Pinckney Point
Date: 3/12/2013 10:55 AM
From: "John H. Irby" <jirby@wbilegal.com>
To: "Nester, Walter" <WNester@MCNAIR.NET>

Walt, at this point we are not willing to commit further on the property.

John H. Irby
 WILSON BROCK & IRBY, L.L.C.
 Overlook I, Suite 700
 2849 Paces Ferry Road
 Atlanta, Georgia 30339
jirby@wbilegal.com
 (404) 853-5050 phone
 (404) 853-1812 fax

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From: John H. Irby
Sent: Monday, March 11, 2013 5:03 PM
To: 'Nester, Walter'
Cc: Taylor Bush (taylor@arendaleholdings.com)
Subject: RE: Pinckney Point

Thanks Walt. I will get back as soon as I have some direction.

John H. Irby
 WILSON BROCK & IRBY, L.L.C.
 Overlook I, Suite 700
 2849 Paces Ferry Road
 Atlanta, Georgia 30339
jirby@wbilegal.com
 (404) 853-5050 phone
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Nester, Walter [mailto:WNester@MCNAIR.NET]
Monday, March 11, 2013 4:55 PM
Hon. H. Irby
Taylor Bush (taylor@arendaleholdings.com)
cc: Pinckney Point

Thank you for the message on Friday. I understand from that message that you were on vacation last week as were many if not all of the other members of Equity Resource Partners III, LLC. I hope you had an enjoyable vacation. I am planning to be out of the office starting Wednesday for the same thing and I am writing if there has been an opportunity to discuss the closing extension requested by Pinckney Point with your representatives. If helpful, I am glad to set up a conference call to discuss. Please let me know.

Very truly,
you.

MCNAIR
ATTORNEYS

Walter J. Nester III
Shareholder
wnester@mcnair.net

McNair Law Firm, P.A.
Hilton Head Island Office Shelter Cove Executive Park, 23-B Shelter Cove Lane | Suite 400 | Hilton Head Island, SC 29928
843 785 2171 Main | 843 686 5991 Fax
Mailing Post Office Drawer 3 | Hilton Head Island, SC 29938
VCard | Bio URL | Web site

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Nancy Jane Dennis

From: John Kunkel
Sent: Wednesday, April 3, 2013 5:38 PM
To: Taylor Bush
Cc: HughAOL Connerty
Subject: FW: Pinckney

This is a good sign...

JCK

From: John H. Irby [mailto:jirby@wbilegal.com]
Sent: Wednesday, April 03, 2013 5:00 PM
To: Taylor Bush
Cc: John Kunkel; HughAOL Connerty
Subject: RE: Pinckney

Sorry - I was out of the country on Monday and Tuesday. Yes you do have permission to show your potential invest the property this week. Please contact Charles to let him know in advance. If you need to go on the property again future - just let me know please; should not be a problem.

John H. Irby
WILSON BROCK & IRBY, L.L.C.
 Overlook I, Suite 700
 2849 Paces Ferry Road
 Atlanta, Georgia 30339
jirby@wbilegal.com
 (404) 853-5050 phone
 (404) 853-1812 fax

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From: Taylor Bush [mailto:tbush@arendale.com]
Sent: Wednesday, April 03, 2013 9:47 AM
To: John H. Irby
Cc: John Kunkel; HughAOL Connerty
Subject: Pinckney

PLTF ROAD & PP 001047

n,

ou an email a couple of days ago and wanted to make sure you received it. Also, I have an potential investor that
ce to take a look at the property this week. Do I have your permission to take him on the property? Thanks

David C. Gunderson



From: John H. Irby
nt: Wednesday, April 03, 2013 4:43 PM
J: David C. Gunderson
Subject: FW: PP acreage

Will you try to pull the settlement agreement that gives us access so we can send it to him

Hpl

John H. Irby
WILSON BROCK & IRBY, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
jirby@wbilegal.com
(404) 853-5050 phone
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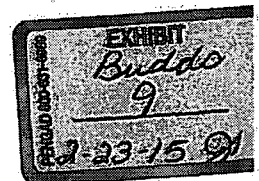
From: mfdusa@aol.com [mailto:mfdusa@aol.com]
Sent: Tuesday, April 02, 2013 7:42 PM
To: garrett.budds@gmail.com
Cc: Lwooddall@southwooddev.com; John H. Irby
Subject: Re: PP acreage

Weston concurred that there is a prescriptive easement, so good to go.

BH

—Original Message—

From: Gbudds <garrett.budds@gmail.com>
To: MFDUSA <MFDUSA@aol.com>
Cc: Lwooddall <Lwooddall@southwooddev.com>; jirby <jirby@wbilegal.com>
Sent: Tue, Apr 2, 2013 3:30 pm
Subject: Re: PP acreage



Please do. Thanks.

acing brevity...ruminations and responses sent from my iPhone...

On Apr 2, 2013, at 3:28 PM, MFDUSA@aol.com wrote:

garrett, the road to my knowledge having discussed it with Weston Newton is a County Road. There was an additional easement purchased by Stokes to allow for development - i.e. fire trucks etc. I think there may have been a legal action a few years ago to codify the county ownership.

you'd like I can verify with Weston.

III

a message dated 4/2/2013 3:24:35 P.M. Eastern Daylight Time, garrett.budds@gmail.com writes:

Sents,

couple questions:

we've been working under the assumption that PP is 270. County GIS shows it at 229. Not a problem, just need to know accurate number. What does the plat show?

the road: who owns it? Is access going to be an issue?

JB

Garrett James Budds, JD, MS
35 Bohicket Road
Harris Island, SC 29455
garrett.budds@gmail.com
843.810.3559

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO. 05-CP-07-2337

BEAUFORT COUNTY, A Political
Subdivision of the State of South
Carolina,

Plaintiff,

v.

AGNES F. PINCKNEY, As Guardian
And Conservator For JOHN DAVID
PINCKNEY, AND PINCKNEY POINT,
LLC.,

Defendants.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this 24th day of November, 2009, by and between Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney ("Pinckney"), and Pinckney Point, LLC, a South Carolina limited liability company ("PPLLC").

RECITALS

WHEREAS, there is currently pending in the Court of Common Pleas for Beaufort County, the following civil actions:

1. Beaufort County, a Political Subdivision of the State of South Carolina v Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney, Dorothy P. Grant and Pinckney Point, LLC (Case No. 05-CP-07-2337). This case will hereinafter be referred to as the "Road Action"; and

2. Pinckney Point, LLC v. Beaufort County and Zoning Board of Appeals for Beaufort County, Case No. 07-CP-07-3474. This case will hereinafter be referred to as the "Variance Action".

The two aforesaid cases alternatively also hereinafter collectively referred to as the "Actions".

WHEREAS, Pinckney and PPLLC wish to settle and resolve all matters in dispute concerning the Road Action and the real property known as Pinckney Point and owned by PPLLC (the "Point Tract") more particularly described in Exhibit "A" attached hereto and made a part hereof, and the unpaved roadway to, from and upon it, which roadway is the subject of the aforesaid Road Action.

McNair 0042

af

NOW, THEREFORE, in consideration of the exchange of promises set forth hereinbelow, the adequacy and sufficiency of which, as consideration, is hereby acknowledged, Pinckney and PPLLC agree as follows:

PART I

SETTLEMENT

1. Recitals. The recitals set forth hereinabove are incorporated herein by reference as if fully set forth herein.

2. Settlement Payments. PPLLC shall pay Agnes F. Pinckney One Million Three hundred Thousand Dollars (\$1,300,000) good and lawful currency of the United States of America for the settlement of the Road Action. Payment shall be made as follows: (i) Three Hundred Thousand Dollars (\$300,000) in cash or its equivalent, within thirty (30) business days after dismissal of the Actions and expiration of applicable periods for appeal (the same to run concurrent with such thirty (30) day period; and (ii) the balance being paid in cash or its equivalent at the time of the closing of a loan by PPLLC for the development of the Point Tract, as contemplated herein; the refinance of the existing purchase money financing for PPLLC's acquisition of the Point Tract (provided, however, that such refinancing provides cash of not less than One Million Dollars (\$1,000,000) more than the payoff of the existing indebtedness); or four (4) years from the date of execution of this Agreement by Agnes F. Pinckney, whichever occurs first. The portion of the aforesaid payment described in (ii) above shall be secured by a first priority mortgage in favor of "Agnes F. Pinckney" on the Right of Way Parcel (as hereinafter defined).

PPLLC shall submit its application for final land development plan approval within thirty (30) business days of the dismissal of the Actions and expiration of applicable periods for appeal (the same to run concurrent with such thirty (30) day period. In the event PPLLC shall fail to achieve final approval of its land development plan, as described in Section 106-372(a) of the Beaufort County Zoning and Development Standards Ordinance ("ZDSO"), within twelve (12) months of the execution of this Agreement by Agnes F. Pinckney, PPLLC shall have the unilateral right and option to terminate this Agreement upon fifteen (15) days written notice to Agnes F. Pinckney, repayment of the Three Hundred Thousand Dollars (\$300,000) from Agnes F. Pinckney, and the release of the Right of Way Parcel easement to Agnes F. Pinckney.

PART II

COVENANTS AND AGREEMENTS RELATING TO THE
DEVELOPMENT OF THE POINT TRACT (THE "RESTRICTIVE COVENANTS")

3. Restrictive Covenants.

(a) Within sixty (60) business days of the receipt of all permits and approvals necessary for PPLLC's proposed development of the Point Tract, PPLLC shall submit for recording restrictive covenants that restrict the number of residential units on the Point Tract to a total of seventy-four (74), with a minimum lot size of one (1) acre each. The four (4) parcels of real property adjacent to the 0.2 mile

portion of Pinckney Colony Road that is the subject of the Road Action will comprise three (3) residential lots previously owned by Wayne A. and Virginia Baker, Sidney Pinckney and David and Gay Pinckney (collectively hereinafter "Trailer Lots"), said Trailer Lots being more particularly described in Exhibit attached hereto and made a part hereof, shall be restricted to use for administration building/sales office and other uses for the support development of the Point Tract, or a single residence. Two (2) of the density units attributable to the three (3) Trailer Lots shall be used on the Point Tract; shall be added to the previously agreed seventy-two (72) units for a total seventy-four (74) residential lots (referenced hereinabove) on the Point Tract a one (1) residential density unit for the Trailer Lots. Such restrictive covenants shall be for the benefit of the parties, their heirs, successors and assigns. To the extent there is a settlement with Dorothy P. Gnann, a co-defendant in the Road Action, as settlement in the Road Action or at any other time, which results in the Gnann property, more particularly described in Exhibit "C" attached hereto and made a part hereof (the "Gnann Lot"), as included in and made a part of the Point Tract development, the residential density associated with the Gnann Lot shall not count against the total of seventy-four (74) lots, but such lot shall be limited to one (1) additional lot for a total of seventy-five (75) lots. The Restrictive Covenants shall provide a procedure by which the Restrictive Covenants may be amended or terminated by agreement of the parties and/or their heirs, successors and assigns.

(b) Any development or use of the property owned by Pinckney adjacent to Pinckney Colony Road or the Point Tract, which property is more particularly described on Exhibit "D" attached hereto and made a part hereof, shall be used and/or constructed upon in accordance with the setback provisions of the ZDSO, and no non-operable machinery or other personal property or materials shall be stored within such setbacks in violation thereof, or with the result that the same or any other action be taken which unreasonably detracts from the beauty of the land or interfere with the use and enjoyment of the Point Tract and Trailer Lots by PPLLC and its successors and assigns.

4. Docks. The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM") has issued P/N # 2007-827-11WP ("the OCRM Permit") to PPLLC which includes a critical area permit and water quality certification authorizing the construction of three community docks within the Point Tract. PPLLC sought review of the OCRM Permit in the South Carolina Administrative Law Court ("ALC") in the form of a contested case. Beaufort County also filed a request for a contested case in the ALC challenging the OCRM Permit. The ALC conducted a hearing on the combined contested cases filed by Beaufort County and PPLLC on July 14-15, 2009, and issued a Final Order and Decision of the ALC on November 13, 2009 modifying the OCRM Permit to approve five (5) community docks and a boat ramp. Notwithstanding the Final Order and Decision, PPLLC agrees to have no other docks within the Point Tract and Jackass Island other than the following: a) the docks reflected in the OCRM-approved dock master plan, incorporated by reference into the OCRM Permit; and b) the docks authorized in accordance with the OCRM Permit as modified by the Final Order and Decision of the ALC. Notwithstanding the Final

Order and Decision of the ALC, PPLLC agrees to limit to a maximum of four (4) community docks, to be located at the discretion of PPLLC, in the locations approved by OCRM as modified by the Final Order and Decision of the ALC. PPLLC agrees to put in place restrictive covenants which prohibit anyone from sleeping over night on board any boat tied or moored at any and all such docks. Use of such community docks shall be restricted to use by the owners of property within the Pinckney Point development which may or may not include the Gnann Lot. To the extent economically feasible, such feasibility being the exclusive determination of PPLLC, materials for the construction of permitted community docks shall be delivered by barge it being understood that materials to be installed from the landward side for the construction of the community docks shall be delivered by land.

PART III

EASEMENTS/CONSERVATION EASEMENT

5. Right of Way. Agnes F. Pinckney shall execute an easement in favor of PPLLC, its successors and assigns conveying not less than fifty feet (50') wide right-of-way (the "Right-of-Way"), bordered on the east by the western boundaries of the private Hayfield Road; the three (3) Trailer Lots and the Gnann Lot, from the end of the maintenance of the South Carolina Department of Transportation right-of-way designated as S.C. 7-50 to the southern boundary of the Point Tract (a distance of approximately 0.2 miles) (the "Right of Way Parcel"). Said easement shall be in the form contained in Exhibit "E" attached hereto and made a part hereof. Said easement shall be contained in and a part of a conservation easement described below that restricts all of the property that lies to the west of the Trailer Lots and Gnann Lots to landscaping and construction and use of an access road. Any road surface constructed shall be pervious. Said Right-of-Way Easement shall also be subject to a twenty feet (20') wide easement for access, ingress and egress only in favor of the Gnann Lot, Dorothy P. Gnann, and an easement for access, ingress and egress in favor of the owners of all property accessed by the private Hayfield Road and their heirs, successors and assigns. The Right-of-Way Easement shall be executed by Pinckney and held in escrow by an escrow agent mutually agreeable to the parties to be released to PPLLC upon payment of consideration referenced in paragraph 1(i) above.

6. Conservation Easement:

(a) Pinckney shall subject the property that lies to the west of the said Right-of-Way and north of the property now or formerly owned by D.J. Into, Jr. to a conservation easement so as to preserve said property in its current undeveloped condition, reserving the right to deed it to the Beaufort County Open Land Trust dedicating the gift to the memory of a Pinckney Heir to be determined by Mrs. Agnes Pinckney, and to the extent permissible maintained by PPLLC. Agnes Pinckney and her heirs (but not assigns) may reserve the right to walk upon the said conservation easement and to use it for picnics and other similar recreation purposes that do not require disturbance of the flora and fauna; the construction of any structures either temporary or permanent; or the interference with the development of the Point Tract and Trailer Lots as contemplated herein. However, any construction of any sort, any type of clearing of trees, disturbance of the ground or other development, to include agriculture, shall be strictly

prohibited; provided, however the property may be maintained by PPLLC in a condition so as to provide a view of the waters and marsh.

(b) Pinckney shall subject the approximate two (2) acre parcel of property lies to the east of the Trailer Lots and to the north of the private dirt road kno as Hayfield Road to a conservation easement so as to preserve this property in current undeveloped condition to the Beaufort County Open Land Trust or so other entity at her sole discretion.

(c) Pinckney shall be entitled to receive any and all benefit from the recordi of the conservation easements described above. PPLLC shall have the right prior review and opportunity to reasonably comment as to the terms a conditions of the conservation easements and shall have the right and obligati to maintain such conserved property under the conservation easements. It agreed that the conservation easements described herein shall not prohibit restrict, in any way, the ability of PPLLC to develop the Point Tract or the Trail Lots as contemplated herein.

7. Gated Access. PPLLC shall cause development of the Point Tract to have gate and secure access, which shall at a minimum be an electronic gate in the proposed location depicted in the proposed conceptual site plan, prepared by Witmer Jones Keefer, Ltd., date October 30, 2009 and attached hereto as Exhibit "F" and made a part hereof.

8. Sewer. PPLLC agrees to not install offsite gravity sewers to serve the Poin Tract.

9. Water. The Point Tract shall be served by water provided by Beaufort-Jasper Water & Sewer Authority, or other similarly situated water utility company, subject to applicable government approvals, which water service shall provide sufficient flow for residential fire hydrants capable of servicing all development on the Property. Installation of these water lines shall be at PPLLC's expense.

10. Stormwater Discharge. All development on the Property shall be governed by the Stormwater Management Best Management Practices Manual approved by Beaufort County from time to time under the ZDSO. Any stormwater discharge created by PPLLC's realignment of the road on the Point Tract in the critical area and the 0.2 mile portion of Pinckney Point Road shall be constructed generally in accordance with engineering plans prepared by Ward Edwards Engineering and submitted to the Beaufort County Zoning Board of Appeals by PPLLC in April 2007, which plans are attached hereto as Exhibit "G" and made a part hereof.

11. Improvements to Right-of-Way Parcel. Any improvements to the Right-of-Way Parcel shall be limited to the minimum standards and size required by the Beaufort County ZDSO and approved by appropriate governing agencies.

PART IV

COOPERATION AND NONINTERFERENCE:

12. Pinckney and her heirs, successors and assigns agree that they shall not, directly or indirectly, oppose, fight, interfere with, object to, comment negatively upon or with respect to, or otherwise hinder or delay PPLLC's obtaining the necessary and appropriate permits and approvals for the development of the Point Tract and the Trailer Lots. Further, Pinckney agrees that they shall not deposit trash, materials, storage, structures, improvements, equipment, machinery, or vehicles that detract from the natural beauty of the land within the setback and buffer area described in paragraph 3(b) hereof.

PART V

DISMISSAL OF ACTIONS:

13. Road Action. Within thirty (30) days of the execution of this Agreement, Pinckney and PPLLC, as Defendants, shall seek a Consent Order from the Presiding Judge of the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, State of South Carolina, dismissing the said Road Action with prejudice. The Consent Order shall be identical in form and content to Exhibit "H" which is attached hereto and incorporated herein by reference. By separate settlement agreement (the "County Settlement"), PPLLC and Beaufort County, a political subdivision of the State of South Carolina, the Plaintiff, agreed to join in seeking said Consent Order.

PART VI

INDEMNIFICATION AND RELEASES:

14. Indemnification and Releases.

(a) Release given by and between Pinckney and PPLLC. For and in consideration of the exchange of promises set forth hereinabove and hereinbelow, the receipt, adequacy and sufficiency of which, as consideration, is hereby acknowledged, Pinckney and PPLLC hereby for themselves and all of their successors, assigns, personal representatives, heirs, beneficiaries, partners, agents, insurers, sureties, subcontractors, servants and employees, hereby remise, release and acquit and forever discharge each other and all of their successors, assigns, personal representatives, heirs, beneficiaries, partners, agents, insurers, sureties, subcontractors, servants, and employees, and all other persons, firms, corporations, associations or partnerships, whether herein named or referred to or not, and who, together, may be liable to one another, of and from any and all past, present and future claims, cross-claims, demands, debts, rights, actions, damages (including direct, incidental and consequential damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants, and/or experts, and all claims of any nature or kind whatsoever, now existing or which may hereinafter accrue, and all known and unknown discovered and undiscovered, foreseen and unforeseen, losses and damages resulting from, or which may in any way be alleged to have resulted from any and all matters or

things done, omitted or suffered to be done by Pinckney and PPLLC connection with, or in any way related to, any and all aspects of the aforesaid Road Action, saving and excepting any and all claims arising as a result of violation of this Agreement. This Release specifically includes, but is not limited to, any and all counterclaims, third-party claims and cross-claims which were, could have been, asserted by and between Pinckney and PPLLC in the said Road Action.

(b) Indemnification. For and in consideration of promises set forth hereinabove and hereinbelow, the receipt, adequacy and sufficiency of which, consideration, is hereby acknowledged by PPLLC for itself and its successors or assigns, hereby agrees to indemnify and pay any and all reasonable attorney fees and costs ordered by the Court to be paid to Gann for the dismissal of the Road Action.

PART VII

MISCELLANEOUS PROVISIONS:

15. No Admission of Liability: Pinckney and PPLLC acknowledge that this settlement is a compromise of disputed claims and that the payments made and promises exchanged pursuant to this Agreement shall not be construed as an admission of liability or of wrongdoing by any party to this action or a statement of any kind whatsoever on any matters not specifically addressed in this document.

16. Authority to Settle: Each party to this Agreement represents and warrants that he/she/it has the complete authority to execute this Agreement and compromise the claims as described in this Agreement. This Agreement includes the follows:

(a) Each of the undersigned warrants that he/she/it has not assigned or otherwise alienated the claims being settled by this Agreement;

(b) Each of the undersigned warrants to the persons and entities hereby released that they have a full right, title, and authority to pursue and to settle any and all claims for loss, costs, damages, liens, expenses (including attorney fees), or other liability which might be claimed or imposed upon the persons and entities hereby released, or any of them, as a result of the matters, transactions, or occurrences that formed the basis of the Road Action and the Variance Action, and they specifically warrant that no third person or entity has a valid legal claim to an interest in the matters referred to herein; or has a valid legal claim as an assignee or subrogee or successor-in-interest of any of the claims or causes of action mentioned above; or has a valid claim of right of indemnity or contribution against the person or entities hereby released as a result of the matters, transactions, or occurrence which forms the basis of the Road Action and the Variance Action;

(c) Each of the undersigned warrants that he/she/it has been counseled about the meaning and importance of this Agreement and its included releases; and

(d) Each of the undersigned warrants that he/she/it knowingly and voluntarily executes this Agreement with the included releases.

17. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of each and every party to this Agreement, their representatives, administrators, successors and assigns.

18. **Fees:** Each party to this Agreement agrees to bear its own costs and attorney fees in the Road Action and in the Variance Action and in the preparation and execution of this Agreement and any documents related to the performance of any obligations created by this Agreement.

19. **South Carolina Law:** This Agreement shall in all respects be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina.

20. **Complete Understanding:** The parties acknowledge that this Agreement, including all exhibits hereto, contains the full and complete agreement between and among them and that there are no oral or implied agreements or understandings which are not specifically set forth either in this Agreement or in the exhibits hereto, and that this Agreement may be amended, supplemented or modified only by a written agreement signed by each of the parties hereto. Each party acknowledges that no party, or agent or attorney of any other party or any person, firm, corporation or any other entity has made any promise, representation, or warranty whatsoever, express, implied or statutory, not contained herein concerning the subject matter hereof to induce the execution of this Agreement. Each signatory also acknowledges that it has not executed this Agreement in reliance of any promise, representation or warranty not contained in either this Agreement or the exhibits attached hereto.

21. **Execution and Counterparts:** This Agreement may be executed with one or more separate counterparts, each of which, when so executed, shall, together, constitute one and the same instrument.

22. **Unenforceability of any Portion of Agreement:** If any part of this Agreement is determined to be unenforceable, the remainder of the Agreement shall continue to be valid and it shall be enforceable to the fullest extent permitted by law.

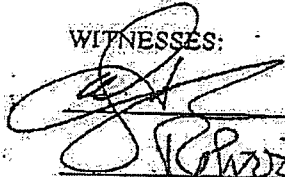
23. **Captions:** The captions appearing at the beginning of the Paragraphs in this Agreement are descriptive only and for convenience of reference. Should any conflict arise between any such caption and the Paragraph at the head of which it appears, the Paragraph and not such caption shall control and govern in the construction of this Agreement.

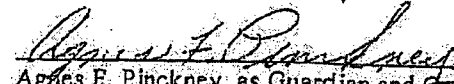
24. **Condition:** This Agreement is expressly conditioned upon the execution by the County of the County Settlement Agreement within thirty (30) days of execution by Pinckney.

[Remainder of page intentionally left blank.]

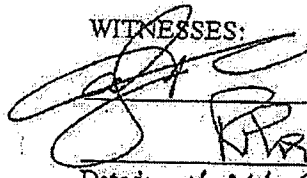
WITNESS our hands and seals as they appear hereinbelow:

WITNESSES:


Robert Vany
Dated: 11-24-9


Agnes F. Pinckney, as Guardian and Conservator
for John David Pinckney

WITNESSES:


Robert Vany
Dated: 11-24-9

PINCKNEY POINT, LLC

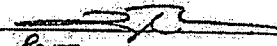
By: 
Its: Pres.

Exhibit A

Point Tract Legal Description

ALL those certain parcels or tracts of land located in Bluffton Township, Beaufort County, South Carolina and identified as Tracts A1, A2, A3 and B on a plat of 229.18 acres prepared by Ward Edwards, Inc., dated April 8, 2005, last revised June 13, 2005, the metes and bounds of which are described on that deed recorded in the Beaufort County Register of Deeds in Deed Book 2357 at Page 1972.

Exhibit B

Trailer Lots Legal Description

Tax Map #R600/014/000/002G/0000

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being shown and delineated as Lot One (1) containing 0. acre, more or less, on that certain plat prepared for Wayne A. Baker and Virginia L. Baker Arthur E. White, Jr., RLS #14196, dated February 25, 1997, recorded in the Beaufort County Records in Plat Book 60 at Page 59. For a more detailed description as to the metes and bounds courses and distances, reference is had to the aforementioned recorded plat.

AND ALSO

Tax Map #R600/014/000/0023/0000

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 2 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records in Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat.

AND ALSO

Tax Map #R600/014/000/002K and 002F/0000

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 3 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records in Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat.

Exhibit C

Gnann Lot Legal Description

Tax Map #R600 014 000 002B 0000

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township in Beaufort County, South Carolina, containing 1.2 acres, shown and described on plat of Property of Neal O. Sides, Bluffton Township, Beaufort County, South Carolina, prepared by Carl E. Ekholm, Registered Land Surveyor No. 2047, dated May 4, 1958, the metes and bounds of which are described on that deed recorded in the Beaufort County Register of Deeds in Deed Book 2028 at Page 2064.

Exhibit D

Pinckney Property Legal Description

Tax Map #R600 014 000 0002 0000

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township in Beaufort County, South Carolina, containing of 87.4 acres, more or less, and having such metes, courses, distar and bounds as will be more fully shown by reference to a plat of the survey of the property of William Pinckney, Jr., prepared by James H. Mills on April 13, 1957, and recorded in the RMC Office Beaufort County, South Carolina in Book 10 of Plats, at Page 60.

SAVE AND EXCEPTING from this conveyance the parcels heretofore conveyed to D.J. Into, Sr. by deed dated March 5, 1978, and recorded in the RMC Office for Beaufort County, South Carolina in Book 75 Deeds, at Page 544; to Neal O. Sides by deed dated May 16, 1958, and recorded in said RMC Office Book 90 of Deeds, at Page 244; to D.J. Into by deed dated May 10, 1958, and recorded in said RMC Office in Book 99 of Deeds, at Page 218; to Frances M. Pinckney by deed dated June 22, 1961, and recorded in said RMC Office in Book 109 of Deeds, at Page 71; to John David Pinckney by deed dated August 20, 1967 and recorded in said RMC Office in Book 148, at Page 173; to Mary Ann P. Richards by deed dated May 30, 1974, and recorded in said RMC Office in Book 221 of Deeds, at Page 744; Charles River's Pinckney by deed dated June 3, 1975, and recorded in said RMC Office in Book 228 Deeds, at Page 1903; to James W. Pinckney by deed dated September 25, 1975, and recorded in said RMC Office in Book 231 of Deeds, at Page 924; to Gerald W. Himes and Helen P. Himes by deed dated September 4, 1975, and recorded in said RMC Office in Book 231 of Deeds, at Page 929; to Sidney Dea Pinckney by deed dated July 10, 1975, and recorded in said RMC Office in Book 231 of Deeds, at Page 934; to Mary Ann P. Richardson by deed dated September 25, 1975, and recorded in said RMC Office in Book 231 of Deeds, at Page 2027; to Thomas P. Pinckney and Barbara J. Pinckney by deed dated December 30, 1975, and recorded in said RMC Office in Book 234 of Deeds, at Page 63, and to Robert B. Pinckney and Charlotte F. Pinckney by deed dated July 19, 1979, and recorded in said RMC Office in Book 285 of Deeds, at Page 412.

Exhibit E

Right-of-Way Easement

- 14 -

McNair 0055

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GRANT OF RIGHT OF WAY
AND
EASEMENT AGREEMENT

THIS GRANT OF RIGHT OF WAY AND EASEMENT AGREEMENT ("Agreement") made effective this _____ day of _____, 2010, by AGNES W. PINCKNEY individually and as Guardian and Conservator for John David Pinckney with an address of 550 Allen Corner, Bluffton, South Carolina 29910 (collectively hereinafter "Pinckney") and PINCKNEY POINT LLC, a Florida limited liability company authorized to conduct business in South Carolina, with a address of 4315 Pablo Oaks Court, Suite 1, Jacksonville, Florida 32224-9667, and/or its assign ("PPLLC").

WITNESSETH:

WHEREAS, Pinckney is the owner of certain real property located in Bluffton Township, Beaufort County, South Carolina, consisting of approximately 35.9 acres, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Burdened Property"); and

WHEREAS, PPLLC is the owner of certain real property located in Bluffton Township, Beaufort County, South Carolina, consisting of approximately 231 acres more or less, as more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Benefitted Property"); and

WHEREAS, Pinckney and PPLLC are parties to that certain action entitled *Beaufort County vs. Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney, Dorothy P. Gnann and Pinckney Point, LLC*, Case No. 05-CP-07-2337 (the "Road Action"); and

WHEREAS, Beaufort County, Pinckney and PPLLC have entered into that certain Settlement Agreement dated _____, 2010 (the "Settlement Agreement") for the settlement of the Road Action; and

WHEREAS, the Settlement Agreement provides, among other matters, for the conveyance by Pinckney of a 50' wide right-of-way easement to PPLLC for access, ingress, and egress across, through and under the Burdened Property as more particularly described in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions of the Settlement Agreement, the terms and conditions of this Agreement, and the sum of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency all of which is hereby acknowledged, the parties agree as follows:

1.

2.

3.

4.

5.

6.

6.1

6.2

6.3

6.4

7.

7.1

7.2

accessed via Pinckney Colony Road from the private dirt road known and described as Hayf Road as depicted in the Right-of-Way Plat.

8. Taxes: PPLLC shall be responsible for payment, prior to delinquency, of all taxes on Right-of-Way Easement. Should PPLLC fail to pay any taxes on the Right-of-Way Easement prior to delinquency, Pinckney, its successors or assigns, shall be entitled to pay said delinquent taxes and collect from PPLLC all expenses incurred, including reasonable legal fees and costs.

9. Notices: Notices required under this Agreement shall be deemed to have been given writing if by facsimile or overnight delivery, or if by regular mail sent certified, return receipt request to the addresses set forth above or to any such other address provided by written notice.

10. Breach Not Termination: No breach of this Agreement shall entitle any party to cancel or terminate this Agreement. No breach or forbearance of remedies shall affect in any manner any rights or remedies any party may have under this Agreement.

11. Binding Effect: The Right-of-Way Easement and agreements set forth in this Agreement shall run with title to the Benefitted Property and the Burdened Property and shall inure to the benefit of and be binding upon, the successors and assigns of the parties hereto. The right-of-way, easements and agreements contained in this Agreement shall remain in full force and effect and shall be unaffected by any change of ownership of the Benefitted Property or the Burdened Property.

12. Miscellaneous: The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Agreement and the terms and provisions hereof shall bind and inure to the benefit of the parties and their respective legal representatives, and successors and assigns. For the convenience of the parties hereto, duplicate originals of this Agreement may be executed and each such original shall be deemed to be an original instrument. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina. Titles of the paragraphs and subparagraphs included herein have been inserted as a matter of convenience for reference only and shall not affect the meaning or construction of any of the terms or provisions hereof. This Agreement and all documents and instruments incorporated herein by specific reference are intended by the parties hereto to be the final expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made. In the event of litigation relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing party. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further written agreement duly executed by the parties hereto.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the easements belonging to or in any way incident or appertaining to the above easements.

TO HAVE AND TO HOLD all and singular the rights, privileges and easements aforesaid unto PPLLC, its successors and assigns forever.

AND Pinckney does hereby warrant and defend all and singular the said rights, privileges and easements unto PPLLC, its successors and assigns against itself and its successors lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, Pinckney and PPLLC have executed this Agreement the date first
then above.

WITNESSES:

PINCKNEY:

AGNES F. PINCKNEY, Individually and as
Guardian and Conservator for JOHN DAVID
PINCKNEY

By: _____

Its: _____

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 2010 by Agnes W. Pinckney.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

PPLLC:

Pinckney Point, LLC

By: _____

Its: _____

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 2010 by _____, a (member/manager),
Pinckney Point, LLC, a Florida limited liability company, on behalf of the company.

Notary Public for South Carolina
My Commission Expires: _____

Exhibit "A"

Burdened Property

ALL, that certain piece, parcel or tract of land in Bluffton Township, Beaufort County, South Carolina, consisting of 35.9 acres, more or less, and more particularly bounded and described as follows to-wit:

Commencing at a concrete monument located on the western right-of-way of South Carolina Highway 7-50 at a point which is the southeastern corner of the subject property and running thence 89° 14' W a distance of One thousand twenty-two and 34/100 (1,022.34) feet to a concrete monument; thence N 4° 58' W a distance of Four hundred forty-two and 6/10 (442.6) feet to a concrete monument; thence S 78° 40' 30" W a distance of Five hundred sixty-two and 3/10 (562.3) feet to a concrete monument; thence N 5° 21' 10" W a distance of Six hundred sixty and 75/100 (660.75) feet to a concrete monument; thence N 2° 54' 30" W a distance of Eighty-two and 4/10 (82.4) feet to a concrete monument; thence N 80° 36' 50" E a distance of One thousand one hundred fifty-three and 65/100 (1,153.65) feet to a concrete monument; thence N 14° 52' W a distance of One hundred seventy-three and 35/100 (173.35) feet to a concrete monument; thence N 77° 19' 20" E a distance of One hundred twenty-three and 4/10 (123.4) feet to a concrete monument; thence in a general southeasterly direction along the western right-of-way of South Carolina Highway 7-50 a distance of approximately One thousand five hundred fifty-eight and 32/100 (1,558.32) feet to a concrete monument and the point of beginning.

TAX MAP REFERENCE: R600-022-000-0021-0000

Exhibit "B"

Benefitted Property

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 2 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records with Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat. Bearing Tax Map # R600/014/000/0023/0000.

AND ALSO

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 3 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records with Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat. Bearing Tax Map # R600/014/000/002Kand 002F/0000.

AND ALSO

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being shown and delineated as Lot One (1) containing 0.50 acre, more or less, on that certain plat prepared for Wayne A. Baker and Virginia L. Baker by Arthur E. White, Jr., RLS #14196, dated February 25, 1997, recorded in the Beaufort County Records in Plat Book 60 at Page 59. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat. Bearing Tax Map # R600/014/000/002G/0000.

AND ALSO

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being shown and described as 229.18 Acres, more or less, on that certain plat prepared by Ward Edwards, Inc., Michael J. Gardner, S.C.R.L.S. # 12239, dated April 8, 2005 and recorded in the Beaufort County Records in Deed Book 115 at Pages 158-159. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned plat. Bearing Tax Map # R600/014/000/001A/0000.

Exhibit "C"

Gnann Lot

ALL, that certain piece, parcel or tract of land, situate, lying, and being in Bluffton Township, Beaufort County, South Carolina, containing 1.2 acres, shown and described on plat of Property Neal O. Sides, Bluffton Township, Beaufort County, South Carolina, prepared by Carl E. Ekho, Registered Land Surveyor No. 2047, dated May 4, 1958. According to said plat, the land here conveyed is more particularly described as follows: Beginning at a point on the eastern margin of S State Road 7-50 (dirt) four-tenths of a mile southwest of said road's end, the property hereby conveyed extends S75°25'E a distance of 387 feet; thence, S16°50'E a distance of 136 feet; thence, S26°56'W a distance of 100 feet; thence, N55°11' W a distance of 471 feet; thence, N20°30'E a distance of 51 feet to the point of beginning.

AND ALSO

ALL that certain piece or tract of land, consisting of 61/100th of an acre, in the shape of a triangle situate in Bluffton Township, Beaufort County, S. C. its apex being at the western shoreline of Okat River, and being bounded as follows: on the Northeast by land, now or formerly of W.E. Pinckney or Charles E. Dean, for a distance of 471.0 feet; on the Southwest by land, now or formerly, of W. Pinckney for a distance of 456.2 feet; on the Northwest by a public road (20' dirt surface) for a distance of 115.0 feet, all of which fully appear by reference to plat thereof made June 16, 1973, by Carl Ekho, RLS No. 2047.

TAX MAP REFERENCE: R600 014 000 002B 0000

Exhibit F

Proposed Conceptual Site Plan

- 15 -

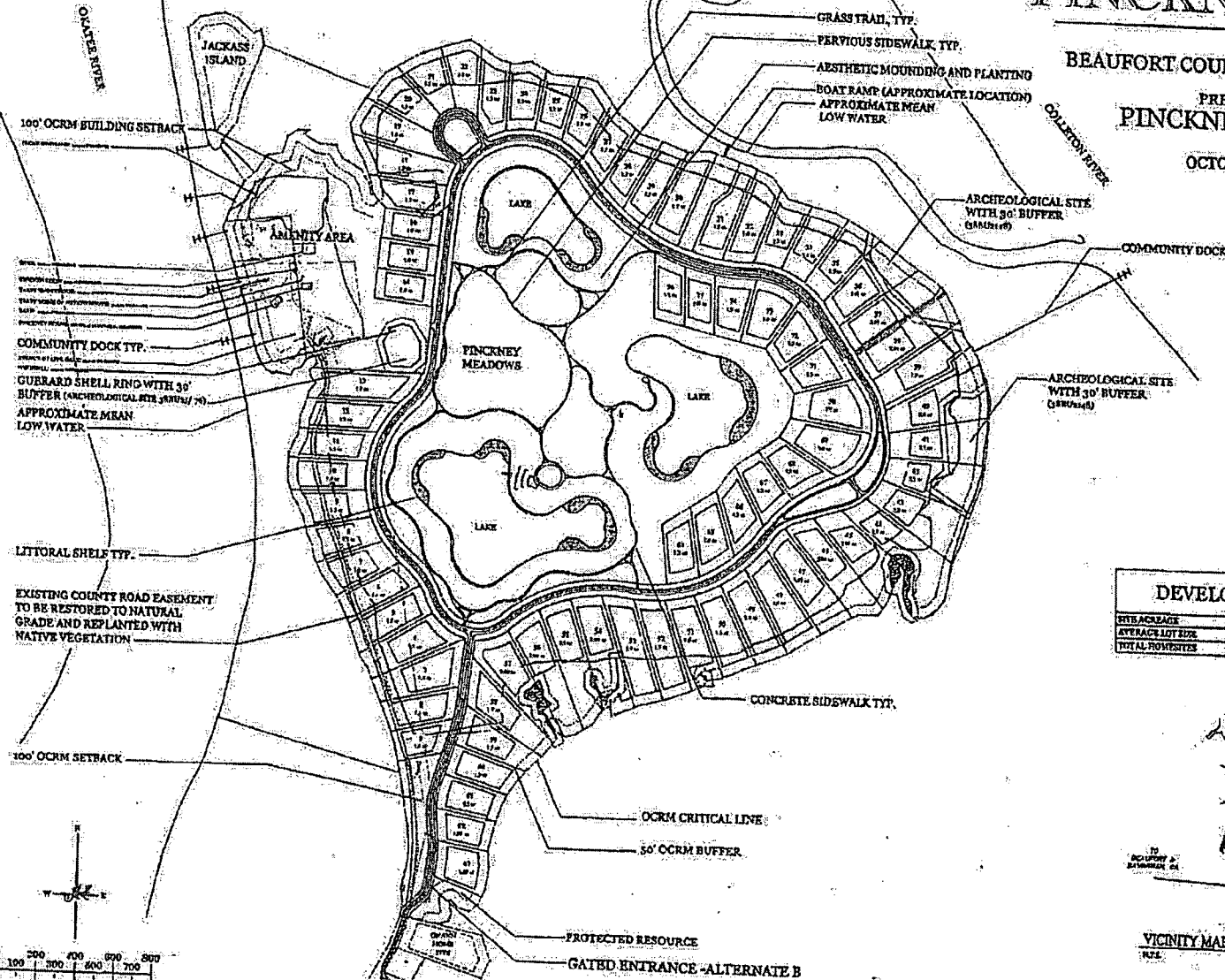
McNair 0063

CONCEPTUAL MASTER PLAN FOR PINCKNEY POINT

BEAUFORT COUNTY, SOUTH CAROLINA

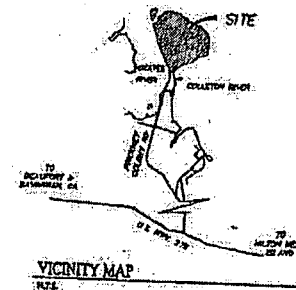
PREPARED FOR
PINCKNEY POINT LLC

OCTOBER 30, 2009



DEVELOPMENT SUMMARY

SITE ACREAGE	47.000 ACRES
AVERAGE LOT SIZE	1.111 ACRES
TOTAL HOMESITES	76 HOMESITES



McNair 0064

Exhibit G

Stormwater Discharge

- 16 -

McNair 0065

Exhibit H

Consent Order - Road Action

HILTONHEAD 7/10/34ys

- 17 -

McNair 0066

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

~~COUNTY OF BEAUFORT~~

~~CASE NO. 05 CP 07 2337~~

BEAUFORT COUNTY, A Political
Subdivision of the State of South
Carolina,

Plaintiff,

v.

CONSENT ORDER
FOR DISMISSAL

AGNES F. PINCKNEY, As Guardian
And Conservator For JOHN DAVID
PINCKNEY, DOROTHY P. GNANN,
AND PINCKNEY POINT, LLC.,

Defendants.

WHEREAS, the parties to the above action, by and through their duly authorized
counsel of record, have advised the Court that they have reached an agreed settlement by way
of compromise, and have agreed to jointly move for a dismissal pursuant to Rule 41, SCRPC.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that
the Plaintiff's claims as stated in the above captioned matter are hereby dismissed with
prejudice.

AND IT IS SO ORDERED.

The Honorable Marvin H. Dukes III
Master in Equity for Beaufort County

_____, 2010

LOVE:

I CONSENT:

Robert W. Achurch III Esquire
Hewell, Gibson & Hughes, PA
Rue Du Bois
Pine Bluff, SC 29907-1667
(3) 522-2400
(3) 522-2429 (fax)
ert@hghpa.com
Attorneys for Beaufort County

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(843) 686-5991
wnester@mcnair.net
Attorneys for Pinckney Point, LLC

ONSENT:

I CONSENT:

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Harvey & Battey, PA
Drawer 1107
101 Craven Street
Bluffton, SC 29910-1107
(3) 524-3109
(3) 524-6973
holloway@harveyandbattey.com
Attorneys for the Dorothy P. Gnan

Roberts Vaux Esquire
Vaux & Marscher, P.A.
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(843) 757-5280
roberts.vaux@vaux-marscher.com
*Attorneys for Agnes F. Pinckney, as Guardian
and Conservator for John David Pinckney*

McNair 0068



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BEAUFORT COUNTY, A Political
Subdivision of the State of South
Carolina,

Plaintiff,

v.

DOROTHY P. GNANN AND
PINCKNEY POINT, LLC.,

Defendants.

IN THE COURT OF COMMON P

CASE NO. 05-CP-07-2337

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this 2
AUGUST, 2010, by and between Dorothy P. Gnann ("Gnann"), and Pinckney
LLC, a South Carolina limited liability company and/or its assigns ("PPLLC").

RECITALS

WHEREAS, there is currently pending in the Court of Common Pleas for I
County, the following civil actions:

1. Beaufort County, a Political Subdivision of the State of South Carolina, Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney, Dorothy P. and Pinckney Point, LLC (Case No. 05-CP-07-2337). This case will hereinafter be referred to as the "Road Action"; and

2. Pinckney Point, LLC v. Beaufort County and Zoning Board of Appeals for I
County, Case No. 07-CP-07-3474. This case will hereinafter be referred to as the "Variance Action".

The two aforesaid cases alternatively also hereinafter collectively referred to as the "Actions".

WHEREAS, Gnann and PPLLC wish to settle and resolve all matters in
concerning the Road Action and the real property known as Pinckney Point and owned by PPLLC (the "Point Tract") more particularly described in Exhibit "A" attached hereto and a part hereof, and the unpaved roadway to, from and upon it, which roadway is the subject of the aforesaid Road Action.

NOW, THEREFORE, in consideration of the exchange of promises set forth hereinbelow, the adequacy and sufficiency of which, as consideration, is hereby acknowledged, Pinckney and PPLLC agree as follows:

PART I

SETTLEMENT

1. **Recitals.** The recitals set forth hereinabove are incorporated herein by reference as if fully set forth herein.

2. **Settlement Payments.** PPLLC shall pay Gnann Two Hundred Fifteen Thousand Eighty-seven Dollars (\$215,087) good and lawful currency of the United States of America for the settlement of the Road Action. Payment shall be made at the time of the closing of a loan by PPLLC for the development of the Point Tract, as contemplated herein, or four (4) years from the date of execution of this Agreement by Gnann, whichever occurs first. The aforesaid payment shall be secured by a first priority mortgage in favor of Gnann (the "PPLLC Mortgage") on the Road Frontage Parcel (as hereinafter defined).

PPLLC shall submit its application for final land development plan approval within thirty (30) business days of the dismissal of the Actions and expiration of applicable periods for appeal (the same to run concurrent with such thirty (30) day period). In the event PPLLC shall fail to achieve final approval of its land development plan, as described in Section 106-372(a) of the Beaufort County Zoning and Development Standards Ordinance ("ZDSO"), within twelve (12) months of the execution of this Agreement by Gnann, PPLLC shall have the unilateral right and option to terminate this Agreement upon fifteen (15) days written notice to Gnann, and the reconveyance of the Road Frontage Parcel to Gnann in satisfaction of the PPLLC Mortgage.

PART II

CONVEYANCES

3. **Dock.** The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM") has issued P/N # 2007-827-IIWP ("the OCRM Permit") to PPLLC which includes a critical area permit and water quality certification authorizing the construction of community docks within the Point Tract. PPLLC shall provide Gnann with the right and/or title, depending on structure for ownership created by PPLLC, in its sole discretion, to a boat slip in the first community dock constructed by PPLLC at the Point Tract. Gnann shall not be required to pay any initiation fee or other consideration for the title to or assignment of the boat slip. Gnann shall, however, be responsible for and pay any regular maintenance fees and/or costs associated with the boat slip on the same terms as other slip owners/holders in the community. Gnann shall have the right to sell such boat slip at any time after receipt of title or right thereto as part of the sale of the Gnann Lot, as hereinafter defined, or alone to some other purchaser, except, however, such purchaser shall be an owner of property in the Point Tract.

4. **Community.** The Gnann Lot, more particularly described in Exhibit "B" attached hereto and made a part hereof, shall be added to and included in the plan for

development of the Point Tract. The Gnann Lot shall be located "behind the gate" which provides access to the proposed community and shall be subject to any and all covenants and restrictions for which the Point Tract shall be subject. Gnann covenants and agrees to execute a joint and several instrument with PPLLC and any other document reasonably necessary for the purposes of permitting and recording the same and agrees to provide the same promptly upon request. The Gnann Lot shall be liable for assessments made payable by such covenants until the earlier of a) the Gnann Lot is transferred to a third party, or b) four (4) years from the date of the closing of the first lot in the Pinckney Point community contemplated herein to a third party not affiliated with PPLLC.

5. **Utilities.** The Gnann Lot shall have the right to connect to utility lines installed by PPLLC to service the Point Tract. All such connections shall be at the expense of Gnann or the owner of the Gnann Lot.

6. **Road Frontage.** Gnann agrees to execute and deliver a deed to PPLLC, clear of all liens and encumbrances other than ad valorem taxes, assessed but not yet payable, conveying a 0.11 acre portion of the Gnann Lot fronting the 0.2 mile portion of Pinckney Colony Road that is the subject of the Road Action. Said portion being the frontage of the Gnann Lot on Pinckney Colony Road to a depth of thirty feet (30' "Road Frontage Parcel"). Said property shall be conveyed subject to a reserved easement for ingress and egress and for the installation of applicable utility infrastructure for the lot in Gnann to the private Pinckney Colony Road, and the PPLLC Mortgage. All utility infrastructure on the Road Frontage Parcel shall be underground. Gnann's obligation for the conveyance of the Road Frontage Parcel and the agreement of PPLLC to pay the Settlement Payments and the dock to Gnann are expressly contingent upon the agreement by Gnann's lender to release the Road Frontage Parcel pursuant to a partial release in form and content as described in "C" attached hereto and made a part hereof.

PART III

COOPERATION AND NONINTERFERENCE:

7. Gnann and her heirs, successors and assigns agree that they shall not, directly or indirectly, oppose, fight, interfere with, object to, comment negatively upon or with respect to, or otherwise hinder or delay PPLLC's obtaining the necessary and appropriate permit and approvals for the development of the Point Tract.

PART IV

DISMISSAL OF ACTIONS:

8. **Road Action.** Within thirty (30) days of the execution of this Agreement, Gnann and PPLLC, together with Agnes Pinckney, as Guardian and Conservator for John Pinckney, as Defendants, and Beaufort County, a political subdivision of the State of South Carolina, as Plaintiff, shall seek a Consent Order from the Presiding Judge of the Circuit Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, State of South Carolina, dismissing the said Road Action with prejudice. Such Consent Order shall be as specifically and particularly described and contained in that certain settlement agreement by and between Gnann and PPLLC.

PPLLC, Agnes Pinckney, as Guardian and Conservator for John David Pinckney, and Beaufort County, a political subdivision of the State of South Carolina.

PART V

INDEMNIFICATION AND RELEASES:

9. Release Given by and between Gnnann and PPLLC. For and in consideration of the exchange of promises set forth hereinabove and hereinbelow, the receipt, adequacy and sufficiency of which, as consideration, is hereby acknowledged, Gnnann and PPLLC hereby for themselves and all of their successors, assigns, personal representatives, heirs, beneficiaries, partners, agents, insurers, sureties, subcontractors, servants and employees, hereby remise, release and acquit and forever discharge each other and all of their successors, assigns, personal representatives, heirs, beneficiaries, partners, agents, insurers, sureties, subcontractors, servants, and employees, and all other persons, firms, corporations, associations or partnerships, whether herein named or referred to or not, and who, together, may be liable to one another, of and from any and all past, present and future claims, cross-claims, demands, debts, rights, actions, damages (including direct, incidental and consequential damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants, and/or experts, and all claims of any nature or kind whatsoever, now existing or which may hereinafter accrue, and all known and unknown discovered and undiscovered, foreseen and unforeseen, losses and damages resulting from, or which may in any way be alleged to have resulted from any and all matters or things done, omitted or suffered to be done by Gnnann and PPLLC in connection with, or in any way related to, any and all aspects of the aforesaid Road Action, saving and excepting any and all claims arising as a result of the violation of this Agreement. This Release specifically includes, but is not limited to, any and all counterclaims, third-party claims and cross-claims which were, or could have been, asserted by and between Gnnann and PPLLC in the said Road Action.

PART VI

MISCELLANEOUS PROVISIONS:

10. No Admission of Liability: Gnnann and PPLLC acknowledge that this settlement is a compromise of disputed claims and that the payments made and promises exchanged pursuant to this Agreement shall not be construed as an admission of liability or of wrongdoing by any party to this action or a statement of any kind whatsoever on any matters not specifically addressed in this document.

11. Authority to Settle: Each party to this Agreement represents and warrants that he/she/it has the complete authority to execute this Agreement and compromise the claims as described in this Agreement. This Agreement includes the follows:

- (a) Each of the undersigned warrants that he/she/it has not assigned or otherwise alienated the claims being settled by this Agreement;
- (b) Each of the undersigned warrants to the persons and entities hereby released that they have a full right, title, and authority to pursue and to settle any and all claims for loss, costs, damages, liens, expenses (including attorney fees),

or other liability which might be claimed or imposed upon the persons hereby released, or any of them, as a result of the matters, transactions and occurrences that formed the basis of the Road Action and the Variance Action and they specifically warrant that no third person or entity has a valid claim to an interest in the matters referred to herein; or has a valid legal claim as assignee or subrogee or successor-in-interest of any of the claims or actions mentioned above; or has a valid claim of right of indemnity or contribution against the person or entities hereby released as a result of the transactions, or occurrence which forms the basis of the Road Action or Variance Action;

(c) Each of the undersigned warrants that he/she/it has been counseled as to the meaning and importance of this Agreement and its included releases;

(d) Each of the undersigned warrants that he/she/it knowingly and voluntarily executes this Agreement with the included releases.

12. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of each and every party to this Agreement, their representatives, administrators, successors and assigns.

13. **Fees:** Each party to this Agreement agrees to bear its own costs and attorney's fees in the Road Action and in the Variance Action and in the preparation and execution of this Agreement and any documents related to the performance of any obligations created by this Agreement.

14. **South Carolina Law:** This Agreement shall in all respects be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina.

15. **Complete Understanding:** The parties acknowledge that this Agreement, including all exhibits hereto, contains the full and complete agreement between and among the parties and that there are no oral or implied agreements or understandings which are not specifically set forth either in this Agreement or in the exhibits hereto, and that this Agreement may be amended, supplemented or modified only by a written agreement signed by each of the parties. Each party acknowledges that no party, or agent or attorney of any other party or any firm, corporation or any other entity has made any promise, representation, or warranty, in whole or in part, whatsoever, express, implied or statutory, not contained herein concerning the subject matter hereof to induce the execution of this Agreement. Each signatory also acknowledges that he/she/it has not executed this Agreement in reliance of any promise, representation or warranty not contained in either this Agreement or the exhibits attached hereto.

16. **Execution and Counterparts:** This Agreement may be executed with one or more separate counterparts, each of which, when so executed, shall, together, constitute the same instrument.

17. **Unenforceability of any Portion of Agreement:** If any part of this Agreement is determined to be unenforceable, the remainder of the Agreement shall continue to be valid and enforceable to the fullest extent permitted by law.

18. **Captions:** The captions appearing at the beginning of the Paragraphs in this Agreement are descriptive only and for convenience of reference. Should any conflict arise between any such caption and the Paragraph at the head of which it appears, the Paragraph and not such caption shall control and govern in the construction of this Agreement.

19. **Assignment:** PPLLC may assign its rights and obligations hereunder in its sole discretion.

20. **Additional Documentation:** The parties shall execute such documents as shall be reasonably necessary to implement or effect the provisions contained in this Agreement.

WITNESS our hands and seals as they appear hereinbelow:

WITNESSES:

Walter N. [Signature]
Ilse [Signature]

D. P. Gnann

Dorothy P. Gnann

Dated: August 4, 2010

WITNESSES:

[Signature]
Dale L. [Signature]

PINCKNEY POINT, LLC

By: [Signature]

Its: PRESIDENT

Dated: AUGUST 2, 2010

Exhibit A

Point Tract Legal Description

ALL those certain parcels or tracts of land located in Bluffton Township, Beaufort County, South Carolina and identified as Tracts A1, A2, A3 and B on a plat of 229.18 acres prepared by Edwards, Inc., dated April 8, 2005, last revised June 13, 2005, the metes and bounds of which are described on that deed recorded in the Beaufort County Register of Deeds in Deed E 2357 at Page 1972.

Exhibit B**Gnann Lot Legal Description**

ALL, that certain piece, parcel or tract of land, situate, lying, and being in Bluffton Township in Beaufort County, South Carolina, containing 1.2 acres, shown and described on plat of Property of Neal O. Sides, Bluffton Township, Beaufort County, South Carolina, prepared by Carl E. Ekholm, Registered Land Surveyor No. 2047, dated May 4, 1958. According to said plat, the land hereby conveyed is more particularly described as follows: Beginning at a point on the eastern margin of S.C. State Road 7-50 (dirt) four-tenths of a mile southwest of said road's end, the property hereby conveyed extends S75°25'E a distance of 387 feet; thence, S16°50'E a distance of 136 feet; thence, S26°56'W a distance of 100 feet; thence, N55° 11' W a distance of 471 feet; thence, N20° 30'E a distance of 51 feet to the point of beginning.

AND ALSO

ALL that certain piece or tract of land, consisting of $61/100^{\text{th}}$ of an acre, in the shape of a triangle, situate in Bluffton Township, Beaufort County, S. C. its apex being at the western shoreline of Okatie River, and being bounded as follows: on the Northeast by land, now or formerly of W.E. Pinckney and Charles E. Dean, for a distance of 471.0 feet; on the Southwest by land, now or formerly, of W.E. Pinckney for a distance of 456.2 feet; on the Northwest by a public road (20' dirt surface) for a distance of 115.0 feet, all of which fully appear by reference to plat thereof made June 16, 1973, by Carl Ekholm, RLS No. 2047.

TAX MAP REFERENCE: R600 014 000 002B 0000

Exhibit C

Partial Release

HILTONHEAD 717718v4

pared by and return to:

Nair Law Firm, P.A.
 Shelter Cove Executive Park, Suite 400
 B Shelter Cove Lane
 Office Drawer 3
 Ton Head Island, SC 29938
 3) 785-2171

STATE OF SOUTH CAROLINA)

PARTIAL RELEASE OF MORTGAGE

COUNTY OF BEAUFORT)

(Ref: Book 2528 at Page 117)

WHEREAS, on February 23, 2007, Dorothy P. Gnann, as Trustee of the Dorothy P. Gnann Trust dated July 1, 2004 (the "Borrower") caused to be executed and delivered a certain mortgage in the maximum principal sum of THREE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$3,200,000.00) to South Carolina Bank and Trust, N.A. (the "Lender"), which said Mortgage is duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2528 at Pages 117-125.

NOW, KNOW ALL MEN BY THESE PRESENTS, that Lender, for valuable consideration in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby release and forever discharge from the lien of the above referenced Mortgage the following described real property, to wit:

ALL that certain piece, parcel or tract of land, situate, lying, and being in Bluffton Township in Beaufort County, South Carolina, containing approximately 0.11 acres, shown and described on plat prepared by _____, Registered Land Surveyor No. _____, dated _____ and recorded in the Office of the Register of Deeds for Beaufort County in Plat Book _____ at Page _____.

THIS BEING a portion of the same property conveyed to Dorothy P. Gnann, Trustee, The Dorothy P. Gnann Trust dated July 1, 2004 by deed of Dorothy P. Gnann recorded in the Beaufort County, S.C. Register's Office in Book 2028 at Page 2064.

TAX MAP REFERENCE: R600 014 000 002B 0000

This Partial Release of Mortgage shall not in any way affect or impair the right of Lender retain under said Mortgage, as security for the sums remaining due thereon or any sums subsequently advanced, all of the premises therein conveyed and not hereby released.

IN WITNESS WHEREOF, South Carolina Bank and Trust, N.A. has caused this Part
Release of Mortgage to be executed this _____ day of _____, 2010.

WITNESSES:

SOUTH CAROLINA BANK
AND TRUST, N.A. (SEAL)

(Witness #1)

BY: _____
Name & Title: _____
its authorized officer

(Witness #2/Notary)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, _____, do hereby certify that _____
an authorized officer of South Carolina Bank and Trust, N.A., on behalf of the Bank, personall
appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2010.

Notary Public for _____ (SEAL)
My Commission Expires: _____

LAYOUT PLAN FOR **CKNEY POINT**

PORT COUNTY, SOUTH CAROLINA
 PREPARED FOR
STOKES LAND GROUP

AUGUST 24, 2009

UPDATED:
 MARCH 22, 2010

PLTF ROAD & PP 000147

PINCKNEY POINT
 HOME SITE
 #74

NATURAL RESOURCE
 PROTECTION AREA

EXISTING ROAD
 ROADWAY TO BE RESTORED
 TO NATURAL GRADE AND
 REPLANTED WITH NATIVE
 VEGETATION

PERVIOUS PAVING TO
 100' OCRM SETBACK

NATURAL RESOURCE
 PROTECTION AREA

GNANN
 HOME SITE
 #75

SALES PARKING

PROPOSED STRUCTURES

REAR COURTYARD GARDEN

GUEST PARKING
 (PERVIOUS GRAVEL)

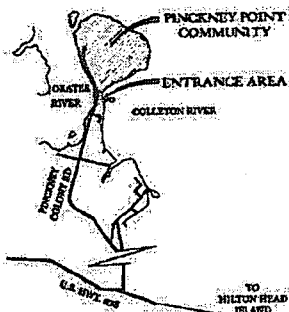
CONSERVATION LAND

MEADOW GRASSES AND NATIVE PLANTINGS
 WITH LOW AREAS TO CAPTURE AND TREAT
 STORMWATER
 ONE-WAY TURN AROUND
 (PERVIOUS PAVING)

HAYFIELD ROAD (EXISTING)

END OF EXISTING PAVEMENT

PINCKNEY COLONY
 ROAD
 (STATE PAVED ROAD)



INSET MAP

CONSERVATION LAND

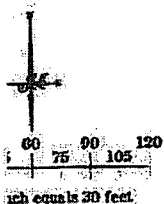
TOP OF BLUFF

EXISTING ROADWAY TO BE
 RESTORED TO NATURAL
 GRADE

PERVIOUS PAVING

GATE ACCESS

BRICK WALL
 AND COLUMNS



Witmer Jones Keeler
 Inc.
 Landscape Architecture
 1000 N. 1st St.
 Suite 100
 Charleston, SC 29401
 843.799.1111
 www.wjk.com



STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON

COUNTY OF BEAUFORT

) CASE NO. 05-CP-07-2337

BEAUFORT COUNTY, A Political
Subdivision of the State of South
Carolina,

Plaintiff,

v.

AGNES F. PINCKNEY, As Guardian
And Conservator For JOHN DAVID
PINCKNEY, AND PINCKNEY POINT,
LLC.,

Defendants.

FIRST AMENDMENT TO SETTLEMENT AGREEMENT

THIS FIRST AMENDMENT TO SETTLEMENT AGREEMENT (Amendment") is made this 14th day of January, 2011, to amend that certain Agreement dated November 24, 2009 (the "Settlement Agreement") by and between Pinckney, as Guardian and Conservator for John David Pinckney ("Pinckney"), and Point, LLC, a Florida limited liability company authorized to conduct business in South ("PPLLC").

RECITALS

WHEREAS, the Settlement Agreement provides, among other matters, for the Pinckney of an easement for a right-of-way of not less than fifty feet (50') in width particularly described in the Settlement Agreement (the "Right-of-Way"); and

WHEREAS, the Settlement Agreement also provides for the payment by Pinckney of a settlement payment of One Million Three Hundred Thousand and No/10 (\$1,300,000.00) in cash or its equivalent with time periods more particularly described in the Settlement Agreement; and

WHEREAS, due to severe economic conditions and the unavailability of commercial forms of financing, PPLLC does not have the cash resources to pay the Settlement Agreement and

WHEREAS, in order to preserve the agreements made in the Settlement Agreement consummate the development of the Point Tract as described therein and to fulfill its obligations to Pinckney by ensuring the payment of the Settlement Payments, PPLLC has entered

agreement with Road, LLC, a South Carolina limited liability company ("Road, LLC") for the payment of the Settlement Payments to Pinckney; and

WHEREAS, Road, LLC desires as security for its investment the conveyance by Pinckney in fee simple title the fee interest in the real property that is the subject of the Right-of-Way, and therefore joins in this First Amendment as a party subject to the terms, covenants and conditions hereto relating to the Right of Way Parcel.

NOW, THEREFORE, in consideration of the agreement set forth herein and for Ten and No/100 Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Recitals. The recitals set forth hereinabove are incorporated herein by reference as if fully set forth herein.

2. Settlement Payments. Road, LLC shall pay Pinckney One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) in cash or its equivalent upon the complete execution of this First Amendment and the complete execution of the settlement agreements of the Road Action and the Variance Action and all exhibits thereto, and the conveyance of the Right of Way Parcel as more particularly described herein.

3. Right-of-Way. Pinckney shall convey, by limited warranty deed in form attached hereto as "Exhibit 1", the Right of Way Parcel. Any road surface constructed shall be pervious. Said Right of Way Parcel shall be conveyed subject to a twenty foot (20') wide easement for access, ingress and egress only in favor of the Gnann Lot, and PPLLC, their successors and assigns, and an easement for access, ingress, and egress in favor of Pinckney and any of the owners of any property accessed by the private Hayfield Road, and their heirs, successors and assigns, and any other restrictions or reservations contained therein.

4. Closing and Closing Expenses. The closing of the transaction contemplated in this First Addendum shall take place upon expiration of the period of time described in Paragraph 2 of this First Addendum. Road, LLC shall be responsible for paying the Deed Recording Fee as required by Section 12-24 of the Code of Laws of South Carolina 1976, as amended (formerly referred to as documentary stamps) as well as for preparation of the deed, any other fees for recording the deed, and for any Town/County transfer fees, if applicable. As to any other expenses associated with closing, Road, LLC and Pinckney shall pay such closing expenses customarily paid by sellers and purchasers in Beaufort County, South Carolina.

5. Condition. Paragraph 24 of the Settlement Agreement is hereby deleted.

6. Water Service. PPLLC agrees as additional consideration to be paid hereunder, at such time as the water service is extended to the Point Tract, as contemplated in Paragraph 8 of the Settlement Agreement, PPLLC shall cause to be installed, at its sole cost and expense, one (1) water tap plus any associated tap fees or costs to serve the Pinckney residence located on Pinckney Colony Road (SC 7-50).

7. Amenity Package. Upon the creation of a property owners' association or club to own and operate the amenities to be provided to owners of the residential lots in the community

("Owner") proposed for the Property as contemplated in the Settlement Agreement shall be provided one (1) complete amenity package entitling Pinckney and family an authorized for any Owner), free of any cost or charge except for any user fees or charge any Owner, entitling use of such amenities the same as any other Owner. Such amenities shall not be transferable and only for the lifetime of Pinckney.

8. Ratification of Agreement. Except as otherwise modified herein, all terms and conditions of the Settlement Agreement are hereby ratified and confirmed. Any terms not defined herein shall have the meaning set forth in the Settlement Agreement. In the event of any conflict between any provision of the Settlement Agreement and this First Amendment, this First Amendment shall control.

9. Binding Effect. This First Amendment shall be binding upon and in the benefit of each and every party to this First Amendment, their representatives, administrators, successors and assigns.

10. South Carolina Law. This First Amendment shall in all respects be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina.

11. Execution and Counterparts. This First Amendment may be executed in one or more separate counterparts, each of which, when so executed, shall, together, constitute the same instrument.

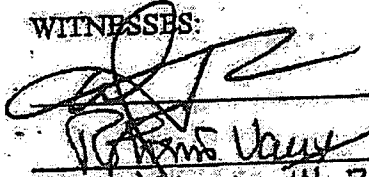
12. Unenforceability of any Portion of this First Amendment. If any part of this First Amendment is determined to be unenforceable, the remainder of the First Amendment shall continue to be valid and it shall be enforceable to the fullest extent permitted by law.

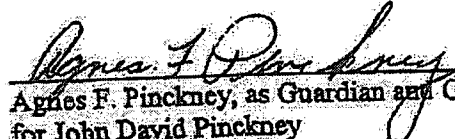
13. Captions. The captions appearing at the beginning of the Paragraphs in this First Amendment are descriptive only and for convenience of reference. Should any conflict arise between any such caption and the Paragraph at the head of which it appears, the Paragraph shall control and govern in the construction of this First Amendment.

[Remainder of page intentionally left blank.]

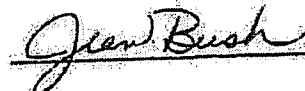
WITNESS our hands and seals as they appear hereinbelow.

WITNESSES:


John David Pinckney
Dated: January 14, 2011


Agnes F. Pinckney, as Guardian and Conservator
for John David Pinckney

WITNESSES:


Jean Bush
Dated: 1-14-11

PINCKNEY POINT, LLC, a Florida limited liability company

By: 
Taylor Bush
Its: President

WITNESSES:

Dated: _____

ROAD, LLC, a South Carolina limited liability company

By: _____
Its: _____

WITNESS our hands and seals as they appear hereinbelow:

WITNESSES:

Dated: _____

Agnes F. Pinckney, as Guardian and Conservator
for John David Pinckney

WITNESSES:

Dated: _____

PINCKNEY POINT, LLC, a Florida limited
liability company

By: _____
Taylor Bush
Its: President

WITNESSES:

KEERAT KAUR
Dated: 01/13/2011

ROAD, LLC, a South Carolina limited
liability company

By: _____

Its: President

Exhibit 1

Right of Way Parcel Deed

recorded return to:

4IR LAW FIRM, P.A./WJN

Shelter Cove Lane, Post Office Drawer 3

Hilton Head Island, SC 29938

785-2171

STATE OF SOUTH CAROLINA)

LIMITED WARRANTY DEED

COUNTY OF BEAUFORT)

WHEREAS, the undersigned AGNES F. PINCKNEY, individually and as Guardian and conservator for John David Pinckney, with an address of 530 Allens Corner, Bluffton, SC 29910 ("Grantor"), am the owner of certain real property located in Bluffton Township, Beaufort County, South Carolina; and

WHEREAS, Grantor is a party to that certain action entitled *Beaufort County vs. Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney, Dorothy Gnam and Pinckney Point*, Case No. 05-CP-07-2337 (the "Action"); and

WHEREAS, the parties to the Action have entered into an agreement for the settlement of the action of even date herewith (the "Settlement Agreement"), which Settlement Agreement provides, among other matters, for the conveyance of certain real property to Road, LLC, a South Carolina limited liability company, by Grantor pursuant to terms and conditions contained in the Settlement Agreement

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that I, Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and settlement of the Action and no other consideration to me in hand paid by ROAD, LLC, a South Carolina limited liability company with address of _____ ("Grantee"), the receipt of which is hereby acknowledged, have hereby granted, bargained, sold and released and by these presents do grant, gain, sell and release subject to the easements, restrictions, reservations and conditions set forth herein, to the said Grantee, the following described property:

ALL that certain piece, parcel and tract of land shown and depicted as "Proposed R/W Parcel" containing 0.85 acres, more or less, on that certain plat of survey entitled "A Plat of Proposed R/W Parcel", prepared by Cook Land Surveying, certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated January 12, 2011, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book _____ at Page _____

The within deed was prepared in the Law Offices of McNair Law Firm, P.A. by Walter J. Nester III, Post Office Drawer 3, Hilton Head Island, South Carolina 29938, (843) 785-2171

THIS CONVEYANCE IS MADE SUBJECT TO all easements and restrictions of record and otherwise affecting the property.

PORTION OF TMS R600 014 000 0002 0000

AND ALSO SUBJECT TO an easement for vehicular access, ingress and egress on, over across the approximate 20' private dirt road depicted in the plat referenced above.

AND ALSO SUBJECT TO an easement for access, ingress and egress on, over, under and the R/W Parcel to all property lawfully accessed via the adjacent private Hayfield Road depicted plat referenced above.

AND ALSO SUBJECT TO a restriction that the property conveyed herein may be used onl right of way or other purpose associated therewith including but not limited to landscaping, pa drainage, installation of utilities except, however, no gravity sewers, or any other purpose necessar appropriate for an entrance area to a private residential community.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, her heirs and assigns, forever; subject, however, to the rights, restrictions and condition constitute covenants running with the land which are set forth or referred to herein or which otherwise appear of record.

AND I do hereby bind myself and my heirs and personal representatives to warrant and fo defend all and singular the said premises unto the said Grantee, her heirs and assigns, against me an heirs and any person lawfully claiming or to claim the same or any part thereof, by, through or unde or them, but against none other.

[Signatures Follow]

WITNESS my hand and seal this _____ day of _____, 20____

SEED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(1)

By

Agnes F. Pinckney, individually, and as Guardian
and Conservator for John David Pinckney

Signature of 1st Witness

Signature of 2nd Witness/Notary Public

COUNTY OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that Agnes F. Pinckney, individually, and as Guardian and Conservator for John David Pinckney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the _____ day of _____, 20____.

(4)

Notary Public for _____

My Commission Expires: _____

Notary's Address: _____

Instructions for Execution of Deed
(Please Follow Carefully - and Use Blue Ink Only)

- A. Authorized corporate officer(s) sign on line numbered (1), indicating their title.
- B. Two (2) disinterested persons must sign as witnesses on lines numbered (2) and (3).
The Notary Public may also serve as one of the witnesses.
- C. Notary Public signs on line numbered (4) and affixes seal and expiration date.



PLTF ROAD & PP 000001

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) CASE NO. 05-CP-07-2337

BEAUFORT COUNTY, A Political
Subdivision of the State of South
Carolina,

Plaintiff,

v.

AGNES F. PINCKNEY, As Guardian
And Conservator For JOHN DAVID
PINCKNEY, DOROTHY P. GNANN,
AND PINCKNEY POINT, LLC.,

Defendants.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) CASE NO. 07-CP-07-3474

PINCKNEY POINT, LLC,

Plaintiff,

v.

BEAUFORT COUNTY AND ZONING
BOARD OF APPEALS FOR BEAUFORT
COUNTY,

Defendants.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this ____ day of January, 2011, by and among Beaufort County, a Political Subdivision of the State of South Carolina ("Beaufort County"); the Zoning Board of Appeals for Beaufort County ("Board"); Pinckney Point, LLC, a South Carolina limited liability company and/or its assigns ("PPLLC"); Agnes F. Pinckney Individually and as Guardian and Conservator for John David Pinckney; Dorothy P. Gnann; and Road, LLC.

HILTONHEAD 717692v8

RECITALS

WHEREAS there is currently pending in the Court of Common Pleas for Beaufort County, the following civil actions:

1. Beaufort County, a Political Subdivision of the State of South Carolina v. Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney, Dorothy P. Gnann and Pinckney Point, LLC (Case No. 05-CP-07-2337). This case will hereinafter be referred to as the "Road Action"; and

2. Pinckney Point, LLC v. Beaufort County and Zoning Board of Appeals for Beaufort County, Case No. 07-CP-07-3474. This case will hereinafter be referred to as the "Variance Action".

The two aforesaid cases alternatively also hereinafter collectively referred to as the "Actions".

WHEREAS, Beaufort County, Agnes F. Pinckney Individually and as Guardian and Conservator for John David Pinckney, Dorothy P. Gnann ("Gnann"), and PPLLC wish to settle and resolve the Road Action and all matters in dispute concerning the unpaved roadway to and from the real property known as Pinckney Point and owned by PPLLC (the "Point Tract") more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Beaufort County, the Board and PPLLC wish to also settle and resolve all matters in dispute concerning the relocation and improvement of a portion of the roadway located on the Point Tract, all of which are the subject of the aforesaid Variance Action.

NOW, THEREFORE, in consideration of the exchange of promises set forth hereinbelow, the adequacy and sufficiency of which, as consideration, is hereby acknowledged, Beaufort County, Agnes F. Pinckney Individually and as Guardian and Conservator for John David Pinckney (hereinafter collectively "Pinckney"), Gnann and PPLLC agree as follows:

PART I

SETTLEMENT

1. Recitals. The recitals set forth hereinabove are incorporated herein by reference as if fully set forth herein.

2. Variance Action. Beaufort County, the Board and PPLLC agree to settle the Variance Action in accordance with the terms and conditions which are described in Exhibit "B" attached hereto and made a part hereof (the "ZBOA Settlement") which generally reflect the terms of the proposed settlement of the Variance Action arising out of the mediation between Beaufort County and PPLLC.

3. Road Action. Beaufort County, Pinckney, Gnann and PPLLC agree to settle the Road Action pursuant to the terms of this Agreement. Beaufort County agrees to allow the improvement of the Road Parcel, as hereinafter defined, in the same manner as described in the

ZBOA Settlement in Paragraph 2 above and as depicted on Exhibit B-1 attached hereto and made a part hereof. Plans to improve the Road Parcel shall be submitted to and must be approved by the Beaufort County Engineer and the Development Review Team. Such plans shall provide that PPLLC shall improve this portion of the road consistent with the ZBOA Settlement and the Agnes Pinckney Settlement Agreement as hereinafter defined and in conformance with plan depicted in Exhibit B-1. To the extent a variance shall be required from the river buffer and river setback requirements of Section 106-1845 of the ZDSO for the construction of the Road Parcel and utility infrastructure for the development of the Point Tract as contemplated herein, Beaufort County hereby agrees that such variance is hereby approved and no further variance from Beaufort County shall be required so long as any encroachment into the Buffer or Setback is minimized to the extent reasonably possible.

Subject to the approval by Beaufort County of the plans to improve the roadway that is the subject of the Road Action and the Variance Action, the parties hereto agree that the Road Parcel is and shall be a private road for the use and benefit of those parties described in the Right Of Way and Easement Agreement, hereinafter defined. Further, that the parties hereto agree that, notwithstanding any claim, allegation, submission or testimony in either of the Road Action or the Variance Action, nor any hearing or meeting related thereto, there is no, nor has there been any, dedication of or intent to dedicate to the County, the roadway that is subject to the Actions. PPLLC's agreement to the aforesaid is specifically contingent on full and complete performance by Beaufort County, the Board, Pinckney and Gnann under this Agreement.

PART II

CONVEYANCES AND EASEMENTS

4. Conveyances.

(a) Pinckney, by separate amended settlement agreement with PPLLC and Road, LLC, a South Carolina limited liability company, concerning the Road Action (the "Pinckney Settlement"), has agreed to convey fee simple title to Road, LLC a parcel of real property of not less than fifty feet (50') wide, bordered on the east by and including a portion of the private Hayfield Road; the four (4) parcels of real property adjacent to the 0.2 mile portion of Pinckney Colony Road that is the subject of the Road Action which comprise three (3) residential lots previously owned by Wayne A. and Virginia L. Baker, Sidney Pinckney and David and Gay Pinckney (collectively hereinafter the "Trailer Lots"), said Trailer Lots being more particularly described in Exhibit "C" attached hereto and made a part hereof, and the lot owned by Gnann, co-defendant in the Road Action more particularly described in Exhibit "D" attached hereto and made a part hereof (the "Gnann Lot"), from the end of the maintenance of the South Carolina Department of Transportation right-of-way designated as S.C. 7-50 to the southern boundary of the Point Tract (a distance of approximately 0.2 miles) (the "Road Parcel"). Said conveyance shall be in the form being more particularly shown and described in the deed attached hereto as Exhibit "E" and made a part hereof. Said Road Parcel shall be conveyed subject to an easement for access, ingress and egress in favor of the owners of all property accessed by the private Hayfield

Road and their heirs, successors and assigns. Road, LLC, by a separate agreement with PPLLC (the "Road Agreement"), has agreed to convey either the Road Parcel to PPLLC or an easement for right-of-way not less than fifty feet (50') wide to PPLLC upon payment of certain consideration described in said Road Agreement. If by right-of-way easement, said right-of-way easement shall be in the form more particularly shown and described in the Right-of-Way Easement Agreement attached hereto as Exhibit "F" and made a part hereof (the Road Parcel and Right-of-Way Easement Agreement hereinafter alternatively referred to as the "Right-of-Way"). Beaufort County agrees that said Right-of-Way provides sufficient access to and from the Point Tract for the development thereof in accordance with the Beaufort County Zoning and Development Standards Ordinance ("ZDSO"). PPLLC agrees that such Right-of-Way is required for the development of the Point Tract as contemplated herein. Until such time, said Road Parcel shall be subject to an easement for access, ingress and egress over the road (20' dirt surface) located and existing on the Road Parcel in favor of the owners of all property accessed by such road, their heirs, successors and assigns.

(b) Gnann, by separate settlement agreement with PPLLC for the Road Action (the "Gnann Settlement"), has agreed to execute and deliver a deed to PPLLC or its assigns free and clear of all liens and encumbrances other than ad valorem taxes, assessed but not yet due or payable, conveying a 0.11 acre portion of the Gnann Lot fronting the 0.2 mile portion of Pinckney Colony Road that is the subject of the Road Action (the "Gnann Deed"). Said portion being the entire frontage of the Gnann Lot on Pinckney Colony Road to a depth of thirty feet (30') as depicted in the diagram attached hereto as Exhibit "G" and made part hereof. Said property shall be conveyed subject to a reserved easement for access, ingress and egress and for the installation of applicable utility infrastructure for the Gnann Lot to Pinckney Colony Road. The Gnann Deed, in the form attached hereto as Exhibit "H" and made part hereof, shall be executed by Gnann and held in escrow by an escrow agent mutually agreeable to the parties to be released to PPLLC upon payment of the consideration described in Paragraph 2 of the Gnann Settlement.

5. **Conservation Easement and Conveyances:**

(a) Pursuant to the Pinckney Settlement, Pinckney shall subject the property that lies to the west of the said Right-of-Way and north of the property now or formerly owned by D.J. Into, Jr. to a conservation easement so as to preserve said property in its current undeveloped condition, reserving the right to deed it to the Beaufort County Open Land Trust dedicating the gift to the memory of a Pinckney Heir to be determined by Mrs. Agnes Pinckney, and to the extent permissible maintained by PPLLC. Agnes Pinckney and her heirs (but not assigns) may reserve the right to walk upon the said conservation easement and to use it for picnics and other similar recreation purposes that do not require disturbance of the flora and fauna; the construction of any structures either temporary or permanent; or the interference with the development of the Point

Tract and Trailer Lots. However, any construction of any sort, any type of clearing of trees, disturbance of the ground or other development, to include agriculture, shall be strictly prohibited; provided, however the property may be maintained in such a condition so as to provide a view of the waters and marsh. Beaufort County hereby agrees to accept conveyance of said conservation easement.

(b) Pursuant to the Pinckney Settlement, Pinckney shall subject the approximate two (2) acre parcel of property that lies to the east of the Trailer Lots and to the north of the private dirt road known as Hayfield Road to a conservation easement so as to preserve this property in its current undeveloped condition to the Beaufort County Open Land Trust or some other entity at her sole discretion. Beaufort County hereby agrees to accept conveyance of said conservation easement, if requested to do so. Open portions of this property may be used for the purposes of temporary vehicle parking for various single day events such as marathons and other athletic and civic events.

PART III

DISMISSAL OF ACTIONS:

6. Road Action. Promptly following the execution of this Agreement, Beaufort County, the Plaintiff, and PPLLC, Pinckney and Gnann, the Defendants, shall seek an Order from the Presiding Judge of the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, State of South Carolina, declaring the road that is the subject of the Road Action a private road. The Order shall be in form and content to Exhibit "I" which is attached hereto and made a part hereof. Pending issuance of the Order, the parties agree to join in the filing of a motion pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure in form and content of the Rule 40(j) Motion attached hereto as Exhibit "J" and made a part hereof.

7. Variance Action. Promptly following the execution of this Agreement, PPLLC, the Plaintiff, and Beaufort County and the Board, the Defendants, shall obtain an Order from the Presiding Judge of the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, State of South Carolina, dismissing the said Variance Action. The Order shall be in form and content to Exhibit "K" which is attached hereto and made a part hereof. Pending issuance of the Order, the parties agree to join in the filing of a motion pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure in form and content of the Rule 40(j) Motion attached hereto as Exhibit "L" and made a part hereof.

PART IV

RELEASES:

8. Release Given by and between Beaufort County, Pinckney, Gnann and PPLLC. For and in consideration of the exchange of promises set forth hereinabove and hereinbelow, the receipt, adequacy and sufficiency of which, as consideration, is hereby acknowledged, Beaufort County, Pinckney, Gnann and PPLLC hereby for themselves and all of their successors, assigns, partners, agents, insurers, sureties, subcontractors, servants and employees, hereby remise, release and acquit and forever discharge each other and all of their

successors, assigns, partners, agents, insurers, sureties, subcontractors, servants, and employees, and all other persons, firms, corporations, associations or partnerships, whether herein named or referred to or not, and who, together, may be liable to one another, of and from any and all past, present and future claims, cross-claims, demands, debts, rights, actions, damages (including direct, incidental and consequential damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants, and/or experts, and all claims of any nature or kind whatsoever, now existing or which may hereinafter accrue, and all known and unknown discovered and undiscovered, foreseen and unforeseen, losses and damages resulting from, or which may in any way be alleged to have resulted from any and all matters or things done, omitted or suffered to be done by Beaufort County, Pinckney, Gnann and PPLLC in connection with, or in any way related to, any and all aspects of the aforesaid Road Action or Variance Action, saving and excepting any and all claims arising as a result of the violation of this Agreement.

9. Release given by and between Beaufort County, the Board and PPLLC. For and in consideration of the exchange of promises set forth hereinabove and hereinbelow, the receipt, adequacy and sufficiency of which, as consideration, is hereby acknowledged, Beaufort County, the Board and PPLLC do hereby, for themselves and all of their officers, directors, shareholders, related, affiliated and parent corporations, successors, assigns, partners, agents, insurers, sureties, subcontractors, servants and employees, hereby remise, release, acquit and forever discharge each other and all of their officers, directors, shareholders, related and affiliated corporations, successors, assigns, partners, agents, insurers, sureties, subcontractors, servants, and employees and all other persons, firms, corporations, associations or partnerships, whether herein named or referred to or not, and who, together, may be liable to one another, of and from any and all past and future claims, cross-claims, demands, debts, rights, actions, damages (including direct, incidental and consequential damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of the consultants and/or experts, and all claims of any nature or kind whatsoever, now existing or which may hereinafter accrue, and all known and unknown, discovered and undiscovered, foreseen and unforeseen, losses and damages resulting from, or which may in any way be alleged to have resulted from any and all matters or things done, omitted or suffered to be done by the said Beaufort County, the Board and PPLLC in connection with, or in any way related to, any and all aspects of the Variance Action saving and excepting any and all claims arising as a result of the violation of this Agreement. This Release specifically includes, but is not limited to, any and all counterclaims, third-party claims and cross-claims which were, or could have been, asserted by and between Beaufort County, the Board and PPLLC in the said Variance Action.

PART V

MISCELLANEOUS PROVISIONS:

10. No Admission of Liability: Beaufort County, the Board, Pinckney, Gnann and PPLLC acknowledge that this settlement is a compromise of disputed claims and that the payments made and promises exchanged pursuant to this Agreement shall not be construed as an admission of liability or of wrongdoing by any party to this action or a statement of any kind whatsoever on any matters not specifically addressed in this document.

11. **Authority to Settle:** Each party to this Agreement represents and warrants that he/she/it has the complete authority to execute this Agreement and compromise the claims as described in this Agreement. This Agreement includes the follows:

(a) Each of the undersigned warrants that he/she/it has not assigned or otherwise alienated the claims being settled by this Agreement;

(b) Each of the undersigned warrants to the persons and entities hereby released that they have a full right, title, and authority to pursue and to settle any and all claims for loss, costs, damages, liens, expenses (including attorney fees), or other liability which might be claimed or imposed upon the persons and entities hereby released, or any of them, as a result of the matters, transactions, or occurrences that formed the basis of the Road Action and the Variance Action, and they specifically warrant that no third person or entity has a valid legal claim to an interest in the matters referred to herein; or has a valid legal claim as an assignee or subrogee or successor-in-interest of any of the claims or causes of action mentioned above; or has a valid claim of right of indemnity or contribution against the person or entities hereby released as a result of the matters, transactions, or occurrence which forms the basis of the Road Action and the Variance Action;

(c) Each of the undersigned warrants that he/she/it has been counseled about the meaning and importance of this Agreement and its included releases; and

(d) Each of the undersigned warrants that he/she/it knowingly and voluntarily executes this Agreement with the included releases.

12. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of each and every party to this Agreement, their representatives, administrators, successors and assigns.

13. **Fees:** Except as otherwise herein provided, each party to this Agreement agrees to bear its own costs and attorney fees in the Road Action and in the Variance Action and in the preparation and execution of this Agreement and any documents related to the performance of any obligations created by this Agreement.

14. **South Carolina Law:** This Agreement shall in all respects be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina.

15. **Complete Understanding:** The parties acknowledge that this Agreement, including all exhibits hereto, contains the full and complete agreement between and among them and that there are no oral or implied agreements or understandings which are not specifically set forth either in this Agreement or in the exhibits hereto, and that this Agreement may be amended, supplemented or modified only by a written agreement signed by each of the parties hereto. Each party acknowledges that no party, or agent or attorney of any other party or any person, firm, corporation or any other entity has made any promise, representation, or warranty whatsoever, express, implied or statutory, not contained herein concerning the subject matter hereof to induce the execution of this Agreement. Each signatory also acknowledges that it has

not executed this Agreement in reliance of any promise, representation or warranty not contained in either this Agreement or the exhibits attached hereto.

16. **Execution and Counterparts:** This Agreement may be executed with one or more separate counterparts, each of which, when so executed, shall, together, constitute one and the same instrument.

17. **Captions:** The captions appearing at the beginning of the Paragraphs in this Agreement are descriptive only and for convenience of reference. Should any conflict arise between any such caption and the Paragraph at the head of which it appears, the Paragraph and not such caption shall control and govern in the construction of this Agreement.

18. **Assignment:** PPLLC may assign its rights and obligations hereunder in its sole discretion.

19. **Road, LLC:** Road, LLC is not a party to the Actions but is an interested party and joins in this Agreement for the purposes of expressing its agreement to the easements and conveyances described herein, and pursuant hereto, upon its acquisition of the Road Parcel, all parties hereby acknowledge the receipt and sufficiency of such agreement as consideration to bind the covenants and conditions and promises of the parties hereto.

20. **Additional Documentation.** The parties hereto shall execute such additional documents as shall be necessary to implement or effect the provisions contained in this Agreement.

[Remainder of page intentionally left blank.]

WITNESS our hands and seals as they appear hereinbelow:

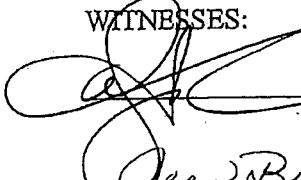
WITNESSES:

 Dated: _____

WITNESSES:

 Dated: _____

WITNESSES:



 Dated: 1-14-11

WITNESSES:



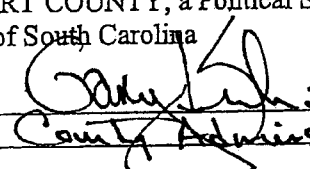
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WITNESSES:

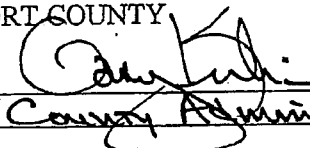
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 Dated: _____

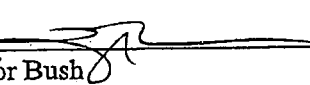
BEAUFORT COUNTY, a Political Subdivision of
 the State of South Carolina

By: 
 Its: County Administrator

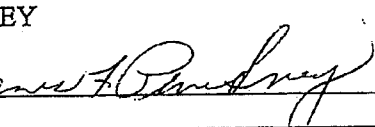
ZONING BOARD OF APPEALS FOR
 BEAUFORT COUNTY

By: 
 Its: County Administrator

PINCKNEY POINT, LLC, a Florida limited
 liability company

By: 
 Its: President

AGNES F. PINCKNEY, Individually and as
 Guardian and Conservator for JOHN DAVID
 PINCKNEY

By: 
 Its: _____

Dorothy P. Gnam

ROAD, LLC, a South Carolina limited
 liability company

By: _____
 Its: _____

WITNESS our hands and seals as they appear hereinbelow:

WITNESSES:

 Dated: _____

WITNESSES:

 Dated: _____

WITNESSES:

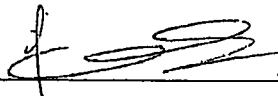
 Dated: _____

WITNESSES:

 Dated: _____

WITNESSES:

WITNESSES:



 KEGRAT KAUR
 Dated: 01/13/2011

BEAUFORT COUNTY, a Political Subdivision of
 the State of South Carolina

By: _____
 Its: _____

ZONING BOARD OF APPEALS FOR
 BEAUFORT COUNTY

By: _____
 Its: _____

PINCKNEY POINT, LLC, a Florida limited
 liability company

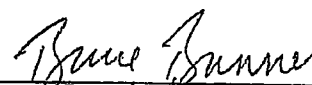
By: _____
 Taylor Bush
 Its: President

AGNES F. PINCKNEY, Individually and as
 Guardian and Conservator for JOHN DAVID
 PINCKNEY

By: _____
 Its: _____

 Dorothy P. Gnan

ROAD, LLC, a South Carolina limited
 liability company

By: 
 Its: President

WITNESS our hands and seals as they appear hereinbelow:

WITNESSES:

Dated: _____

BEAUFORT COUNTY, a Political Subdivision of
the State of South Carolina

By: _____
Its: _____

WITNESSES:

Dated: _____

ZONING BOARD OF APPEALS FOR
BEAUFORT COUNTY

By: _____
Its: _____

WITNESSES:

Dated: _____

PINCKNEY POINT, LLC

By: _____
Its: _____

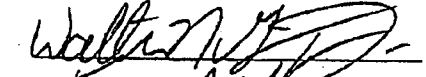
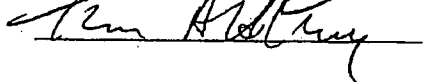
WITNESSES:

Dated: _____

AGNES F. PINCKNEY, Individually and as
Guardian and Conservator for JOHN DAVID
PINCKNEY

By: _____
Its: _____

WITNESSES:

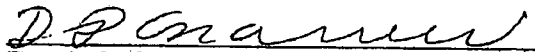

Dorothy P. Gnann

Exhibit A

Point Tract Legal Description

ALL those certain parcels or tracts of land located in Bluffton Township, Beaufort County, South Carolina and identified as Tracts A1, A2, A3 and B on a plat of 229.18 acres prepared by Ward Edwards, Inc., dated April 8, 2005, last revised June 13, 2005, the metes and bounds of which are described on that deed recorded in the Beaufort County Register of Deeds in Deed Book 2357 at Page 1972.

Exhibit BZBOA Settlement

BACKGROUND:

Pinckney Point, LLC, the Appellant in the Variance Action ("PPLLC") is the owner of a +229 acre tract of land known as Pinckney Point (hereinafter "Pinckney Point" or the "Property"). The Property is located at the northern end of a public road known as Pinckney Colony Road in Beaufort County, South Carolina. The Property is zoned Rural which allows up to one (1) single family residence per three (3) acres. In accordance with the Beaufort County Zoning and Development Standards Ordinance ("ZDSO"), PPLLC submitted an application for conceptual review for the proposed development of 76 single family home sites which constitute the density allowed under existing zoning for the Property. Currently, the major portion of Pinckney Point has historically been used for agricultural purposes, most recently as a sod farm. The Property contains mixed upland young forest around its perimeter. In accordance with and in response to the written comments by the County Zoning and Development Administrator dated March 19, 2007, PPLLC submitted an application for a variance to the Beaufort County Zoning Board of Appeals ("ZBOA").

PROPERTY:

The property is a uniquely shaped tract of land surrounded primarily by the Okatie and Colleton Rivers and the marshes thereto, with its southernmost boundary and only connection to the mainland being an isthmus approximately 155' wide. Access to the Property is made via Pinckney Colony Road. Beaufort County maintains the last approximately 0.7 miles of Pinckney Colony Road. Currently, the portion of Pinckney Colony Road that is located on the Property is located primarily within the 50' River Buffer (the "River Buffer") and 100' River Setback (the "River Setback") established by Section 106-1845 of the ZDSO. The entire 155' area connecting Pinckney Point to adjacent land through which Pinckney Colony Road runs is within the River Buffer/River Setback. The portion of Pinckney Colony Road located on the subject property is a cul-de-sac and Beaufort County claims a prescriptive easement over and implied dedication over the road. This road serves one residence. There are no other residences and no portion of the Property is public. In its application for a variance, PPLLC requested a variance from the River Buffer/River Setback for the proposed improvement and realignment of the portion of Pinckney Colony Road on the Property, all of which is currently located within the River Buffer/River Setback.

VARIANCE:

As shown in the filings with the ZBOA, Pinckney Colony Road enters the Property currently within the River Buffer/River Setback and runs within and along the same for a distance of approximately 3,483 linear feet. As shown in its application, PPLLC proposes to improve a portion of the Pinckney Colony Road at the point of entry to the Property and realign the right-of-way to remove it from the River Buffer/River Setback as soon as feasible given the land area available and the unique shape of the Property. The proposed revised routing shall

reduce the existing road impact to the River Buffer/River Setback by greater than ninety-five percent (95%). PPLLC shall use pervious paving for all road improvements within the River Buffer/River Setback. To restore the environmental health and stability of the River Buffer/River Setback and the natural resources protected thereby, PPLLC further shall restore the natural grade and provide a re-vegetation plan for the area from which the road is to be relocated. Such revegetation shall conform to that proposed in the application.

AGREEMENT:

It is agreed that if PPLLC did not obtain a variance, it could seek to improve the existing road within the Property by right for a distance of approximately 1,700 feet. PPLLC has prepared an alternative plan using the road in its current location which still permits the by-right subdivision of the Property. Keeping the road in the River Buffer/River Setback where the opportunity is available to remove it does not constitute good land planning.

The improvement and perpetuation of the road in its current location in the River Buffer/River Setback thwarts, rather than advances, the County's policy of protecting and preserving these environmentally sensitive areas. Granting the variance serves to reduce the distance of the road in this environmentally sensitive area from 3,483 linear feet to just 130 linear feet. Moreover, PPLLC shall use pervious paving for the portion that remains in the River Buffer-River Setback. Since the more damaging plan of leaving and improving the roadway in its current location would be granted as a matter of right, the grant of a variance serves to accomplish considerably greater protection of this environmentally important area and is more in keeping with the County's comprehensive plan.

As a condition to Beaufort County's agreement to the variance, PPLLC agrees to construct the relocated road to the road code standards of Beaufort County and to use pervious pavers or pavement for the portion of the road within the River Buffer-River Setback.

The approximate location shall be as shown in the drawings attached hereto as Schedule A. The final location and configuration of the road is subject to DRT approval at the time of subdivision review. The relocated road provides access to the Property just as the existing road now does for approximately the same length.

The relocation of the existing road serves to improve the quality of the River Buffer and natural resources protected thereby. The existence of an unpaved road within the River Buffer is potentially more detrimental to the environment. The proposed relocation of the road includes the construction of storm water drainage facilities that virtually eliminate storm water runoff from the Property into the critical area and marshes. This Agreement therefore serves to benefit the County by ameliorating the negative effects of a nonconforming road currently located and maintained in the River Buffer-River Setback. This Agreement also includes the right to construct, relocate, install and maintain any and all utility lines, electronics, communication lines, cables, utility or storm water infrastructure or other service necessary and desirable for the development of the Property and the planned improvements described in Schedule A.

Finally, this Agreement results in the termination of litigation over the denial of the variance. The litigation of this appeal through the trial and appellate courts could well take two to three years. By entering this settlement, the Parties save significant attorneys' fees and costs that would be incurred as a result of protracted litigation.

In sum, the granting of the variance on the terms herein shall:

1. Significantly reduce negative impacts along the River Buffer/River Setback on the Property; and
2. Restore approximately 3,353 linear feet of road (i.e., 3,483 linear feet minus 130 linear feet) within the River Buffer/River Setback to natural land; and
3. Eliminate County maintenance costs for the existing dirt road; and
4. Eliminate the payment of significant attorneys' fees that the County would incur if the matter were litigated to conclusion; and
5. Replace the uncertainty of outcome of the litigation with the resolution that benefits the County financially as well as promote an important County environmental policy.

The conditions associated with granting the variance are the following:

1. Pervious pavement or pavers must be used for the road surface within the River Buffer/River Setback on the Property; and
2. The new entrance road shall be constructed by PPLLC in accordance with the Beaufort County Road Construction standards; and
3. PPLLC shall restore to a natural state the approximately 3,353 linear feet of existing road in the River Buffer-River Setback in the current location of the road; and
4. PPLLC shall not be required to install the infrastructure described herein and shall have the right to use Pinckney Colony Road in its condition as of the date of this Agreement to access the Point Tract for and until such time as the construction of the subdivision infrastructure, including but not limited to roads, lakes, utility infrastructure and amenity areas is completed, it being understood that there is only one point of access to the Point Tract for motor vehicles, being Pinckney Colony Road; and
5. All utility lines and utility infrastructure shall be underground.

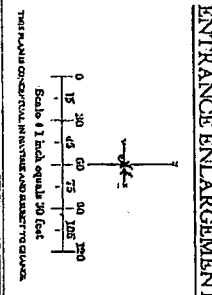
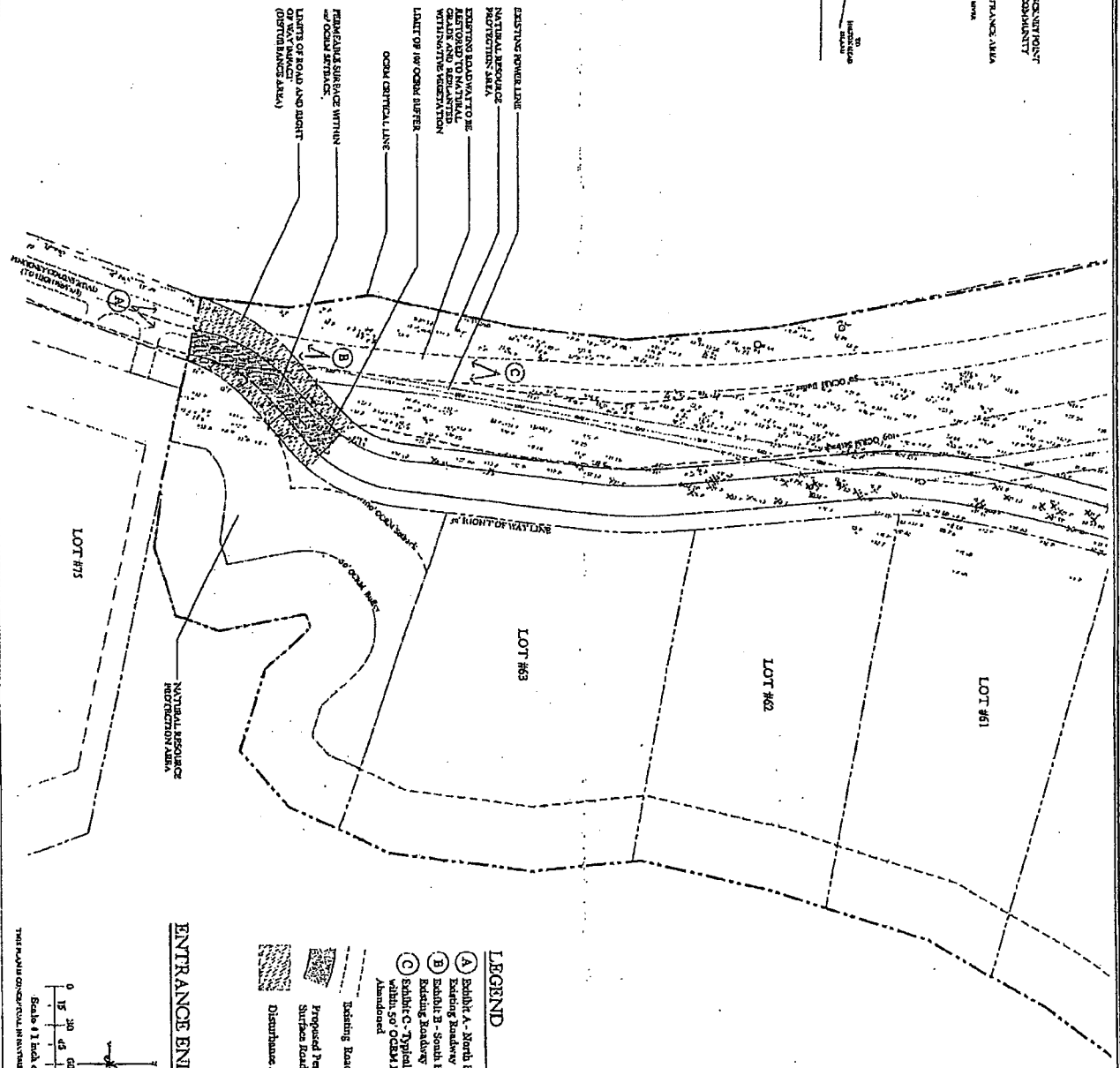
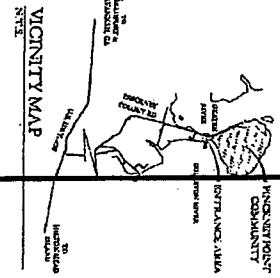
SCHEDULE A

to Exhibit "B"

Road Relocation Plan

Prepared by Witmer-Jones-Keefer, LTD

Dated August 25, 2010



- LEGEND**
- (A) Exhibit A - North Bound View of Existing Roadway
 - (B) Exhibit B - South Bound View of Existing Roadway
 - (C) Exhibit C - Typical Existing Road within 50' Ocean Buffer - To Be Abandoned
 - Existing Road
 - Proposed Permeable Surface Road
 - Disturbance Area

BEAUFORT COUNTY SUBMITTAL PLAN FOR PINCKNEY POINT MAIN ENTRANCE PREPARED FOR PINCKNEY POINT, LLC BEAUFORT COUNTY, SOUTH CAROLINA		Witmer Jones-Keefer LLC INCORPORATED IN SOUTH CAROLINA 1000 W. 10TH STREET, SUITE 100 BEAUFORT, SOUTH CAROLINA 29516 TEL: 843.733.1111 WWW.WJK-LLC.COM
DATE: 03/15/17 PROJECT NO: 000017 SHEET NO: 01 DESIGNED BY: JWK CHECKED BY: JWK	CREATED: 03/15/17 BY: JWK REVISION: 01 DATE: 03/15/17	SCALE: 1" = 100'

Exhibit "B-1"

Entrance Area Drawings

Prepared by Witmer-Jones-Keefer, LTD
Dated August 24, 2009, Last Revised March 22, 2010

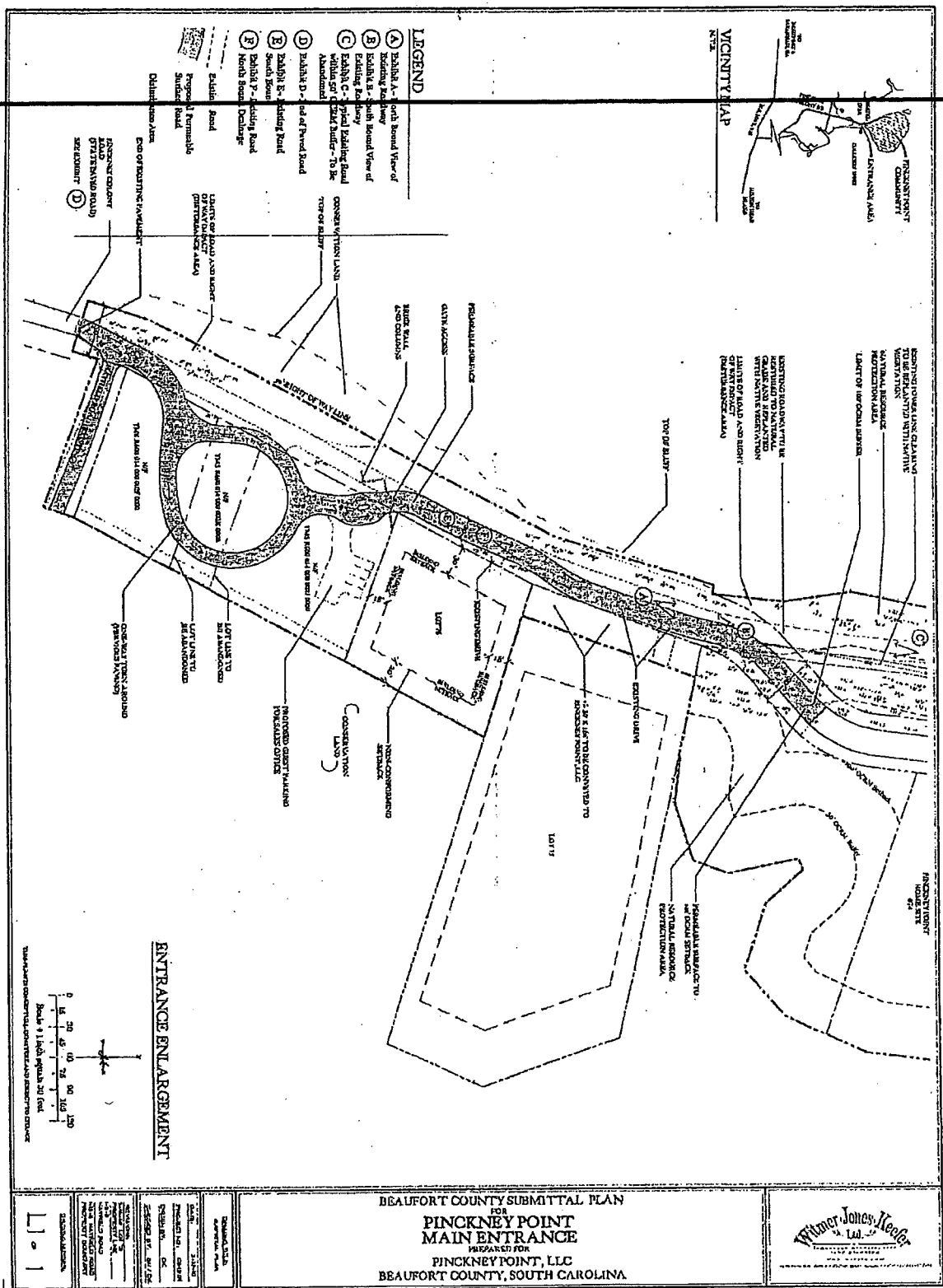


Exhibit C

Trailer Lots Legal Description

Tax Map #R600/014/000/002G/0000

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being shown and delineated as Lot One (1) containing 0.50 acre, more or less, on that certain plat prepared for Wayne A. Baker and Virginia L. Baker by Arthur E. White, Jr., RLS #14196, dated February 25, 1997, recorded in the Beaufort County Records in Plat Book 60 at Page 59. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat.

AND ALSO

Tax Map #R600/014/000/0023/0000

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 2 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records with Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat.

AND ALSO

Tax Map #R600/014/000/002Kand 002F/0000

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 3 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records with Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat.

Exhibit D

Gnann Lot Legal Description

ALL, that certain piece, parcel or tract of land, situate, lying, and being in Bluffton Township in Beaufort County, South Carolina, containing 1.2 acres, shown and described on plat of Property of Neal O. Sides, Bluffton Township, Beaufort County, South Carolina, prepared by Carl E. Ekholm, Registered Land Surveyor No. 2047, dated May 4, 1958. According to said plat, the land hereby conveyed is more particularly described as follows: Beginning at a point on the eastern margin of S.C. State Road 7-50 (dirt) four-tenths of a mile southwest of said road's end, the property hereby conveyed extends S75°25'E a distance of 387 feet; thence, S16°50'E a distance of 136 feet; thence, S26°56'W a distance of 100 feet; thence, N55° 11' W a distance of 471 feet; thence, N20° 30'E a distance of 51 feet to the point of beginning.

AND ALSO

ALL that certain piece or tract of land, consisting of $61/100^{\text{th}}$ of an acre, in the shape of a triangle, situate in Bluffton Township, Beaufort County, S. C. its apex being at the western shoreline of Okatie River, and being bounded as follows: on the Northeast by land, now or formerly of W.E. Pinckney and Charles E. Dean, for a distance of 471.0 feet; on the Southwest by land, nor or formerly, of W.E. Pinckney for a distance of 456.2 feet; on the Northwest by a public road (20' dirt surface) for a distance of 115.0 feet, all of which fully appear by reference to plat thereof made June 16, 1973, by Carl Ekholm, RLS No. 2047.

TAX MAP REFERENCE: R600 014 000 002B 0000

Exhibit E

Road Parcel Deed

When recorded return to:
 MCNAIR LAW FIRM, P.A./WJN
 23-B Shelter Cove Lane, Post Office Drawer 3
 Hilton Head Island, SC 29938
 (843) 785-2171

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

LIMITED WARRANTY DEED

WHEREAS, the undersigned AGNES F. PINCKNEY, as Guardian and Conservator for John David Pinckney, with an address of 530 Allens Corner, Bluffton, SC 29910 ("Grantor"), am the owner of certain real property located in Bluffton Township, Beaufort County, South Carolina; and

WHEREAS, Grantor is a party to that certain action entitled *Beaufort County vs. Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney, Dorothy Gnann and Pinckney Point, LLC*, Case No. 05-CP-07-2337 (the "Action"); and

WHEREAS, the parties to the Action have entered into an agreement for the settlement of the Action of even date herewith (the "Settlement Agreement"), which Settlement Agreement provides, among other matters, for the conveyance of certain real property to Road, LLC, a South Carolina limited liability company, by Grantor pursuant to terms and conditions contained in the Settlement Agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that I, Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and settlement of the Action and no other consideration to me in hand paid by ROAD, LLC, a South Carolina limited liability company with an address of 40 West 57th Street, 20th Floor, New York, NY 10019 ("Grantee"), the receipt of which is hereby acknowledged, have hereby granted, bargained, sold and released and by these presents do grant, bargain, sell and release subject to the easements, restrictions, reservations and conditions set forth herein, unto the said Grantee, the following described property:

ALL that certain piece, parcel and tract of land shown and depicted as "Proposed R/W Parcel" containing 0.85 acres, more or less, on that certain plat of survey entitled "A Plat of Proposed R/W Parcel", prepared by Cook Land Surveying, certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated January 12, 2011, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book _____ at Page _____.

The property intended to be conveyed herein is a portion of the property conveyed to the within Grantor by Deed from Agnes F. Pinckney, Conservator for John David Pinckney, dated January 14, 2008, and recorded in Book 2673 at Page 1287, Beaufort County Records, on January 17, 2008; and Corrective Deed recorded in Book 2736 at Page 2222, on August 23, 2008.

A PORTION OF TMS R600 014 000 0002 0000

The within deed was prepared in the Law Offices of McNair Law Firm, P.A. by Walter J. Nester III, Post Office Drawer 3, Hilton Head Island, South Carolina 29938, (843) 785-2171

THIS CONVEYANCE IS MADE SUBJECT TO all easements and restrictions of record and otherwise affecting the property.

AND ALSO SUBJECT TO an easement for vehicular access, ingress and egress on, over and across the approximate 20' private dirt road depicted in the plat referenced above.

AND ALSO SUBJECT TO an easement for access, ingress and egress on, over, under and across the R/W Parcel to all property lawfully accessed via the adjacent private Hayfield Road depicted in the plat referenced above.

AND ALSO SUBJECT TO a restriction that the property conveyed herein may be used only as a right of way or other purpose associated therewith including but not limited to landscaping, parking, drainage, installation of utilities except, however, no gravity sewers, or any other purpose necessary and appropriate for an entrance area to a private residential community.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, her heirs and assigns, forever; subject, however, to the rights, restrictions and conditions that constitute covenants running with the land which are set forth or referred to herein or which may otherwise appear of record.

AND I do hereby bind myself and my heirs and personal representatives to warrant and forever defend all and singular the said premises unto the said Grantee, her heirs and assigns, against me and my heirs and any person lawfully claiming or to claim the same or any part thereof, by, through or under me or them, but against none other.

[Signatures Follow]

WITNESS my hand and seal this _____ day of January, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(2) _____
Signature of 1st Witness

(3) _____
Signature of 2nd Witness/Notary Public

(1) _____
By _____
Agnes F. Pinckney, as Guardian and Conservator
for John David Pinckney

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the _____ day of January, 2011.

(4) _____
Notary Public for South Carolina
My Commission Expires: _____

Instructions for Execution of Deed
(Please Follow Carefully - and Use Blue Ink Only)

- A. Authorized corporate officer(s) sign on line numbered (1), indicating their title.
- B. Two (2) disinterested persons must sign as witnesses on lines numbered (2) and (3).
The Notary Public may also serve as one of the witnesses.
- C. Notary Public signs on line numbered (4) and affixes seal and expiration date.

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

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

3. Check one of the following: The deed is

- (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

Check Yes _____ or No _____

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **\$1,300,000.00**.

- (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: **\$0.00**.

6. The deed recording fee is computed as follows:

- 1770

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$4,810.00

*Hilton Head Transfer Fee is \$0.00

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

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

Responsible Person Connected with the Transaction

Walter J. Nester, Jr.
Print or Type Name Here

SWORN to before me this 14th day of January, 2011.

Notary Public for South Carolina
My Commission Expires: _____

HILTONHEAD 734773v1

Exhibit F

Right Of Way and Easement Agreement

This instrument prepared by:
McNair Law Firm, P.A. (WJN)
PO Drawer 3
Hilton Head Island, SC 29938

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) GRANT OF RIGHT OF WAY
) AND
) EASEMENT AGREEMENT

THIS GRANT OF RIGHT OF WAY AND EASEMENT AGREEMENT ("Agreement") is made effective this _____ day of _____, 2011, by ROAD, LLC, a South Carolina limited liability company with an address of _____ ("Road, LLC"), and PINCKNEY POINT, LLC, a Florida limited liability company authorized to conduct business in South Carolina, with an address of 4315 Pablo Oaks Court, Suite 1, Jacksonville, Florida 32224-9667, and/or its assigns ("PPLLC").

WITNESSETH:

WHEREAS, Road, LLC is the owner of certain real property located in Bluffton Township, Beaufort County, South Carolina, consisting of approximately 0.85 acres, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Burdened Property"); and

WHEREAS, PPLLC is the owner of certain real property located in Bluffton Township, Beaufort County, South Carolina, consisting of approximately 231 acres more or less, as more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Benefitted Property"); and

WHEREAS, the sole access by land to the Benefitted Property is made across the Burdened Property and PPLLC has requested and Road, LLC has agreed, pursuant to terms and conditions contained in a separate agreement between the parties hereto of even date herewith (the "Road Agreement"), among other matters, for the conveyance by Road, LLC of a 50' wide right-of-way easement to PPLLC for access, ingress, and egress across, through and under the Burdened Property as more particularly described in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions of the Road Agreement, the terms and conditions of this Agreement, and the sum of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency all of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are incorporated herein and made a part hereof.
2. Grant of Right of Way and Easement. Road, LLC does hereby grant to PPLLC and/or its assigns forever, a perpetual easement over that area shown as a "Proposed R/W Parcel" ("Right-of-Way Easement") on that certain plat entitled "Proposed R/W Parcel Pinckney Colony Road", dated January 12, 2011, prepared by Cook Land Surveying, certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, and

recorded in the ROD at Plat Book _____ at Page _____ ("Right-of-Way Plat") according to the terms and conditions of this Agreement and, which shall be a non exclusive perpetual easement appurtenant and right-of way to be used for, but not limited to, vehicular and pedestrian ingress, egress, ~~signage, parking and installation of utilities excluding, however, gravity sewers, over and across a portion~~ of the Burdened Property.

3. Improvements. This grant includes the unlimited right in the sole discretion of PPLLC to construct and install an access road, drainage, signage, utilities and other improvements (collectively the "Improvements") in, upon and under the Right-of-Way Easement by and at the sole cost of PPLLC, pursuant to the rights granted in this Agreement.

4. Restrictions. PPLLC, its successors and assigns, shall at all times comply with all applicable laws, regulations and ordinances which govern the use and improvement of the Right-of-Way Easement and Improvements, provided, however, that such rules and regulations shall not unreasonably or materially interfere with the use of the Right-of-Way Easement and Improvements by PPLLC, its successors and assigns, as private access for vehicular, pedestrian and utility traffic and utility infrastructure.

5. Maintenance. PPLLC, its successors and assigns, shall be responsible for the maintenance of the Right-of-Way Easement and Improvements.

6. Representations and Warranties. Road, LLC represents and warrants that:

6.1 the Right-of-Way Easement shall be and shall forever remain a first priority encumbrance on the Burdened Property as depicted in the Right-of-Way Plat;

6.2 there are no covenants, restrictions or other agreements which may encumber or affect the Burdened Property which impose any restrictions on the use of the Burdened Property for vehicular and pedestrian ingress, egress or parking or maintenance of the Right-of-Way Easement and Improvements; and

6.3 it is the owner of the Burdened Property and has the authority to grant the easement and rights contemplated in this Agreement; and

6.4 all items contained in this Section 6 shall be true and correct throughout the term of this Agreement.

7. Subject to Rights of Others. The grant of an easement for the Right-of-Way Easement described herein is expressly subject to the following:

7.1 Non-exclusive right of ingress, egress and access only to that certain parcel more particularly described on Exhibit "C" attached hereto and made part hereof; and

7.2 Non-exclusive right to ingress, egress and access, together with the right to install utilities in favor of all owners, residents, guests, invitees, heirs and assigns of any real property accessed via Pinckney Colony Road from the private dirt road known and described as Hayfield Road as depicted in the Right-of-Way Plat.

8. Taxes. PPLLC shall be responsible for payment, prior to delinquency, of all taxes on the Right-of-Way Easement. Should PPLLC fail to pay any taxes on the Right-of-Way Easement prior to delinquency, Road, LLC, its successors or assigns, shall be entitled to pay said delinquent taxes and to collect from PPLLC all expenses incurred, including reasonable legal fees and costs.

9. Notices. Notices required under this Agreement shall be deemed to have been given in writing if by facsimile or overnight delivery, or if by regular mail sent certified, return receipt requested to the addresses set forth above or to any such other address provided by written notice.

10. Breach Not Termination. No breach of this Agreement shall entitle any party to cancel, rescind or terminate this Agreement. No breach or forbearance of remedies shall affect in any manner any rights or remedies any party may have under this Agreement.

11. Binding Effect. The Right-of-Way Easement and agreements set forth in this Agreement shall run with title to the Benefitted Property and the Burdened Property and shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. The right-of-way, easements and agreements contained in this Agreement shall remain in full force and effect and shall be unaffected by any change of ownership of the Benefitted Property or the Burdened Property.

12. Miscellaneous. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Agreement and the terms and provisions hereof shall bind and inure to the benefit of the parties and their respective legal representatives, and successors and assigns. For the convenience of the parties hereto, duplicate originals of this Agreement may be executed and each such original shall be deemed to be an original instrument. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina. Titles of the paragraphs and subparagraphs included herein have been inserted as a matter of convenience for reference only and shall not affect the meaning or construction of any of the terms or provisions hereof. This Agreement and all documents and instruments incorporated herein by specific reference are intended by the parties hereto to be the final expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made. In the event of litigation relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing party. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further written agreement duly executed by the parties hereto.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the easements belonging to or in any way incident or appertaining to the above easements.

TO HAVE AND TO HOLD all and singular the rights, privileges and easements aforesaid unto PPLLC, its successors and assigns forever.

AND Road, LLC does hereby warrant and defend all and singular the said rights, privileges and easements unto PPLLC, its successors and assigns against itself and its successors lawfully claiming or to claim the same, or any part thereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Road, LLC and PPLLC have executed this Agreement the date first written above.

WITNESSES:

ROAD, LLC, a South Carolina limited
Liability company

By: _____
Its: _____

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by _____, as _____ of ROAD, LLC, a South Carolina limited liability company.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

PINCKNEY POINT, LLC, a Florida limited
liability company authorized to do business
in South Carolina

By: _____
Its: _____

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Taylor Bush, President of Pinckney Point, LLC, a Florida limited liability company, on behalf of the company.

Notary Public for South Carolina
My Commission Expires: _____

Exhibit "A"

Burdened Property

ALL that certain piece, parcel and tract of land shown and depicted as "Proposed R/W Parcel" containing 0.92 acres, more or less, on that certain plat of survey entitled "A Plat of Proposed R/W Parcel", prepared by Cook Land Surveying, certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated December 17, 2010 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book _____ at Page _____.

A PORTION OF TMS R600 014 000 0002 0000

Exhibit "B"**Benefitted Property**

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 2 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records with Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat. Bearing Tax Map # R600/014/000/0023/0000.

AND ALSO

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 3 on a plat entitled "Plat of Survey - Land of Proposed Subdivision - A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina," dated March 8, 1975, prepared by Carl E. Ekholm, Reg. Land Surveyor No. 2047, and recorded in the Beaufort County Records with Deed Book 231 at Page 937. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat. Bearing Tax Map # R600/014/000/002Kand 002F/0000.

AND ALSO

ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being shown and delineated as Lot One (1) containing 0.50 acre, more or less, on that certain plat prepared for Wayne A. Baker and Virginia L. Baker by Arthur E. White, Jr., RLS #14196, dated February 25, 1997, recorded in the Beaufort County Records in Plat Book 60 at Page 59. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat. Bearing Tax Map # R600/014/000/002G/0000.

AND ALSO

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being shown and described as 229.18 Acres, more or less, on that certain plat prepared by Ward Edwards, Inc., Michael J. Gardner, S.C.R.L.S. # 12239, dated April 8, 2005 and recorded in the Beaufort County Records in Deed Book 115 at Pages 158-159. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned plat. Bearing Tax Map # R600/014/000/001A/0000.

Exhibit "C"Gnann Lot

ALL, that certain piece, parcel or tract of land, situate, lying, and being in Bluffton Township in Beaufort County, South Carolina, containing 1.2 acres, shown and described on plat of Property of Neal O. Sides, Bluffton Township, Beaufort County, South Carolina, prepared by Carl E. Ekholm, Registered Land Surveyor No. 2047, dated May 4, 1958. According to said plat, the land hereby conveyed is more particularly described as follows: Beginning at a point on the eastern margin of S.C. State Road 7-50 (dirt) four-tenths of a mile southwest of said road's end, the property hereby conveyed extends S75°25'E a distance of 387 feet; thence, S16°50'E a distance of 136 feet; thence, S26°56'W a distance of 100 feet; thence, N55° 11' W a distance of 471 feet; thence, N20° 30'E a distance of 51 feet to the point of beginning.

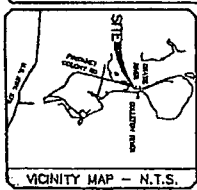
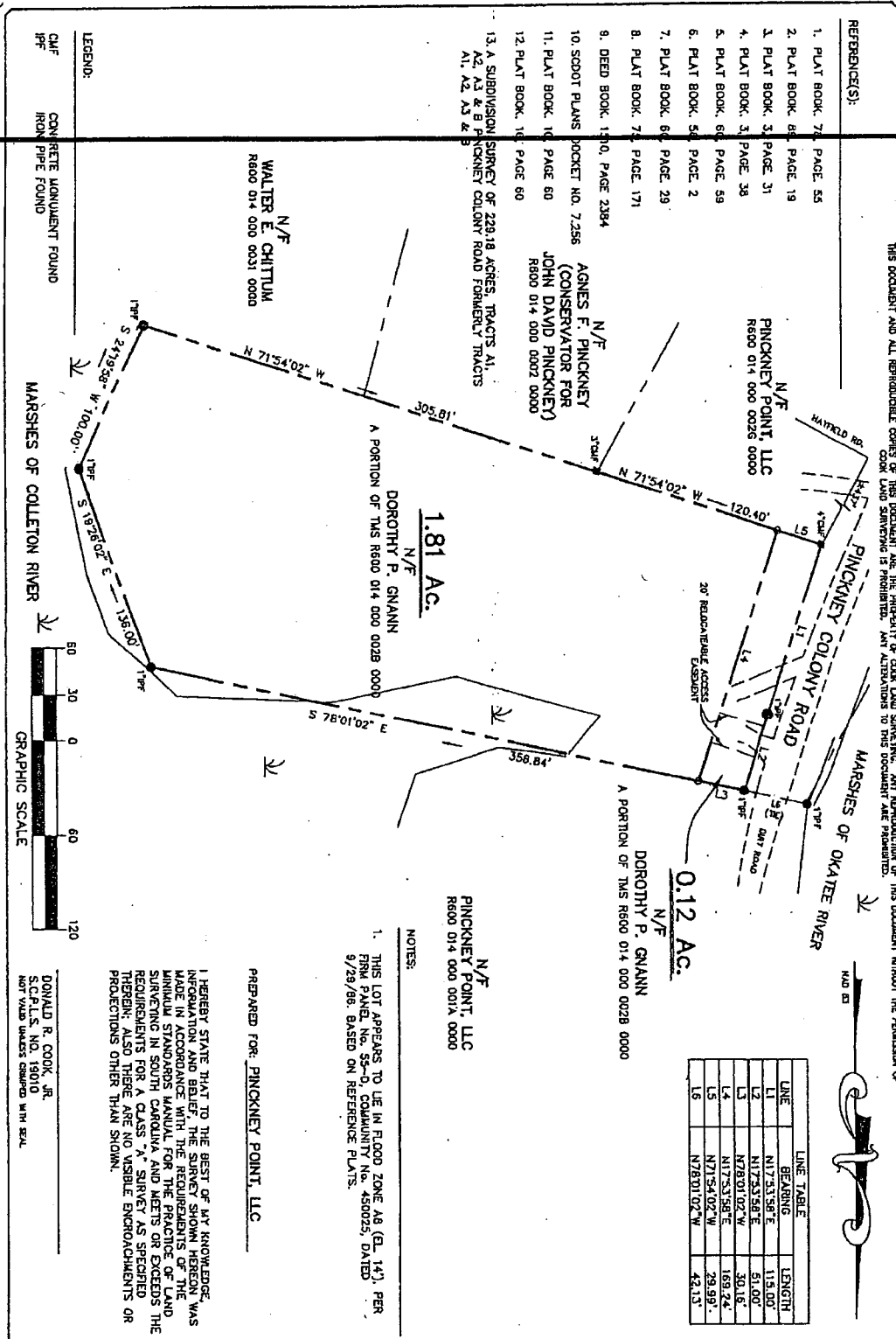
AND ALSO

ALL that certain piece or tract of land, consisting of $61/100^{\text{th}}$ of an acre, in the shape of a triangle, situate in Bluffton Township, Beaufort County, S. C. its apex being at the western shoreline of Okatie River, and being bounded as follows: on the Northeast by land, now or formerly of W.E. Pinckney and Charles E. Dean, for a distance of 471.0 feet; on the Southwest by land, now or formerly, of W.E. Pinckney for a distance of 456.2 feet; on the Northwest by a public road (20' dirt surface) for a distance of 115.0 feet, all of which fully appear by reference to plat thereof made June 16, 1973, by Carl Ekholm, RLS No. 2047.

TAX MAP REFERENCE: R600 014 000 002B 0000

Exhibit G
Gnann Lot Diagram

Plat entitled "A Subdivision Survey of 1.93 Ac. Pinckney Colony Road" prepared by Cook Lands Surveying dated August 6th, 2010



A PLAT OF
1.93 Ac.
PINCKNEY COLONY ROAD
TMS R600 014 000 002B 0000

BLUFFTON TOWNSHIP
BEAUFORT COUNTY, SOUTH CAROLINA

DRAWN BY: DRC

DATE: 08.06.10
SCALE: 1"=50'

PROJECT NO: 09010001

PROJECT NAME: 09010001

FILE: 09010001SD 1117 081810.4.m

Cook
Land Surveying

23 Trotting Hill Lane, Bluffton, SC 29910
phone: 843.815.LAND(5263)
fax: 843.815.5264
email: cooklandsurvey@earthlink.net

Exhibit H
Gnann Deed

*This deed was prepared by and after
recording return to the law offices of
McNair Law Firm, PA*

*23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928
(843) 785-2171*

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE
(LIMITED WARRANTY)

KNOW ALL MEN BY THESE PRESENTS that I, Dorothy P. Gnann, Trustee, The Dorothy P. Gnann Trust Dated July 1, 2004, hereinafter referred to as "Grantor", in the State aforesaid, for and in consideration of the sum of TWO HUNDRED FIFTEEN THOUSAND EIGHTY-SEVEN AND NO/100 DOLLARS (\$215,087.00) to Grantor in hand paid by Pinckney Point, LLC, hereinafter referred to as "Grantee", the receipt of which is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release, unto the said Grantee, its successors and assigns forever, the following described property:

See Attached Exhibit "A"

THIS CONVEYANCE IS MADE SUBJECT TO all other easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its successors and assigns, forever; subject, however, to the rights, restrictions and conditions that constitute covenants running with the land which are set forth or referred to herein or which may otherwise appear of record.

AND I, Grantor, do hereby bind myself and my heirs and personal representatives to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against me and my heirs and any person lawfully claiming or to claim the same or any part thereof, by, through or under me or them, but against none other.

WITNESS my/our Hand(s) and Seal(s) this _____ day of _____, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(1)

(2)

Signature of 1st Witness

Dorothy P. Gnann, Trustee, The Dorothy P.
Gnann Trust Dated July 1, 2004

(3)

Signature of 2nd Witness/Notary Public

STATE OF SOUTH CAROLINA)

)

COUNTY OF BEAUFORT)

)

I, the undersigned Notary Public, do hereby certify that Dorothy P. Gnann, Trustee, The Dorothy P. Gnann Trust Dated July 1, 2004 (Grantor), personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the _____ day of _____, 2011.

(4)

Notary Public for South Carolina
My Commission Expires: _____

Grantee's Address: 4315 Pablo Oaks Court, Suite 1
Jacksonville, FL 32224-9667

Instructions for Execution of Deed
(Please Follow Carefully - and Use Blue Ink Only)

- A. Authorized corporate officer(s) sign on line numbered (1), indicating their title.
- B. Two (2) disinterested persons must sign as witnesses on lines numbered (2) and (3).
The Notary Public may also serve as one of the witnesses.
- C. Notary Public signs on line numbered (4) and affixes seal and expiration date.

Exhibit "A"

ALL that certain piece, parcel or tract of land, situate, lying, and being in Bluffton Township in Beaufort County, South Carolina, containing 0.12 acres, shown and described on plat prepared by Cook Land Surveying Registered Land Surveyor No. 3290, dated August 6, 2010 and recorded in the Office of the Register of Deeds for Beaufort County in Plat Book _____ at Page _____.

SUBJECT TO an easement in favor of Grantor's adjacent parcel of real property from which the property conveyed hereby is a part as more particularly described in that certain deed to Dorothy P. Gnann, Trustee, The Dorothy P. Gnann Trust Dated July 1, 2004 in deed by Dorothy P. Gnann recorded in the Beaufort County, S.C. Register's Office in Book 2028 at Page 2064 (the "Benefitted Parcel"). Said reserved easement shall be for pedestrian and vehicular access, ingress and egress in, to, over, across and through the property conveyed hereby and shall burden and be binding upon such property and shall be appurtenant to and run with the title to the Benefitted Parcel.

THIS BEING a portion of the same property conveyed to Dorothy P. Gnann, Trustee, The Dorothy P. Gnann Trust Dated July 1, 2004 by deed of Dorothy P. Gnann recorded in the Beaufort County, S.C. Register's Office in Book 2028 at Page 2064.

This deed was prepared without the benefit of title examination.

TAX MAP REFERENCE: R600 014 000 002B 0000

Exhibit I

Consent Order – Road Action

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) CASE NO. 05-CP-07-2337

BEAUFORT COUNTY, A Political
Subdivision of the State of South
Carolina,

Plaintiff,

v.

CONSENT ORDER

AGNES F. PINCKNEY, As Guardian
And Conservator For JOHN DAVID
PINCKNEY, DOROTHY P. GNANN,
AND PINCKNEY POINT, LLC.,

Defendants.

WHEREAS, the parties to the above action, by and through their duly authorized counsel of record, have advised the Court that they have reached an agreed settlement by way of compromise as evidenced by their signatures below.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED:

1. That all claims and counterclaims in the above captioned matter are hereby dismissed with prejudice; and
2. That the unpaved portion of Pinckney Point Road is a private road.

AND IT IS SO ORDERED.

The Honorable Marvin H. Dukes III
Master in Equity for Beaufort County

_____, 2011

I MOVE:

I CONSENT:

Robert W. Achurch III Esquire
Howell, Gibson & Hughes, PA
25 Rue Du Bois
Lady's Island
Beaufort, SC 29907-1667
(843) 522-2400
(843) 522-2429 (fax)
robert@hgpha.com
Attorneys for Beaufort County

Walter J. Nester III
McNair Law Firm, PA
PO Drawer 3
Hilton Head Island, SC 29938-0003
(843) 785-2171
(843) 686-5991
wnester@mcnair.net
Attorneys for Pinckney Point, LLC

I CONSENT:

I CONSENT:

Thomas A. Holloway Esquire
Harvey & Battey, PA
PO Drawer 1107
1001 Craven Street
Beaufort, SC 29901-1107
(843) 524-3109
(843) 524-6973
tholloway@harveyandbattey.com
Attorneys for the Dorothy P. Gnann

Roberts Vaux Esquire
Vaux & Marscher, P.A.
PO Box 769
Bluffton, SC 29910
(843) 757-2888
(843) 757-5280
roberts.vaux@vaux-marscher.com
*Attorneys for Agnes F. Pinckney, as Guardian
ad Conservator for John David Pinckney*

Exhibit J

Rule 40(j) Motion

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT) CASE NO. 05-CP-07-2337

BEAUFORT COUNTY, A Political
Subdivision of the State of South
Carolina,

Plaintiff,

v.

AGNES F. PINCKNEY, As Guardian
And Conservator For JOHN DAVID
PINCKNEY, DOROTHY P. GNANN,
AND PINCKNEY POINT, LLC.,

Defendants.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT) CASE NO. 07-CP-07-3474

PINCKNEY POINT, LLC,

Plaintiff,

v.

BEAUFORT COUNTY AND ZONING
BOARD OF APPEALS FOR BEAUFORT
COUNTY,

Defendants.

RULE 40(j) CONSENT ORDER TO STRIKE CASE

WHEREAS, the parties to the above action, by and through their duly authorized
counsel of record, hereby agree to strike the actions from the docket of Beaufort County in the
above actions pursuant to Rule 40(j), SCRCF; and

WHEREAS, the parties agree that all Orders shall remain in full force and effect and
~~that the Court shall have continuing jurisdiction over any matters related to this case.~~

IT APPEARING TO THE COURT on Motion of all parties, the ends of justice would be served by dismissing this case from the active roster, pursuant to the provisions of Rule 40(j) of the South Carolina Rules of Civil Procedure;

IT FURTHER APPEARING THAT the Parties agree that this case must be restored upon motion filed by any party within one year of the date of this signed Consent Order;

AND, IT FURTHER APPEARING THAT the parties agree that if the case is restored upon motion made within one year, the statute of limitations shall be tolled during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the case is restored.

NOW, THEREFORE, BY AND WITH THE CONSENT OF THE PARTIES, IT IS HEREBY ORDERED THAT:

1. The above-captioned matter be and is hereby stricken from the active roster and will be restored by motion filed within one year from the date of the entry of this Order;
2. All Orders shall remain in full force and effect and the Court shall have continuing jurisdiction over any matters related to this case; and
3. If the case is restored upon motion made within one year, the statute of limitations shall be tolled during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the case is restored.

AND IT IS SO ORDERED.

The Honorable Marvin H. Dukes III
Master in Equity for Beaufort County

_____, 2011

WE CONSENT:

Robert W. Achurch III Esquire
Howell, Gibson & Hughes, PA
25 Rue Du Bois
Lady's Island
Beaufort, SC 29907-1667
(843) 522-2400
(843) 522-2429 (fax)
robert@hghpa.com
*Attorneys for Beaufort County and
Zoning Board of Appeals for
Beaufort County*

WE CONSENT:

Thomas A. Holloway
Harvey & Battey, PA
PO Drawer 1107
1001 Craven Street
Beaufort, SC 29901-1107
(843) 524-3109
(843) 524-6973
tholloway@harveyandbattey.com
Attorneys for the Dorothy P. Gnann

WE CONSENT:

Walter J. Nester III
McNair Law Firm, PA
PO Drawer 3
Hilton Head Island, SC 29938-0003
(843) 785-2171
(843) 686-5991
wnester@mcnair.net
Attorneys for Pinckney Point, LLC

WE CONSENT:

Roberts Vaux Esquire
Vaux & Marscher, P.A.
PO Box 769
Bluffton, SC 29910
(843) 757-2888
(843) 757-5280
roberts.vaux@vaux-marscher.com
*Attorneys for Agnes F. Pinckney, as Guardian
ad Conservator for John David Pinckney*

Exhibit K

Consent Order – Variance Action

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NO. 07-CP-07-3474
PINCKNEY POINT, LLC,	)	
Plaintiff,	)	
v.	)	CONSENT ORDER
BEAUFORT COUNTY AND ZONING	)	FOR DISMISSAL
BOARD OF APPEALS FOR	)	
BEAUFORT COUNTY,	)	
Defendants.	)	

WHEREAS, the parties to the above action, by and through their duly authorized counsel of record, have advised the Court that they have reached an agreed settlement by way of compromise, and have agreed to jointly move for a dismissal pursuant to Rule 41, SCRPC.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that the Plaintiff's claims as stated in the above captioned matter are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Marvin H. Dukes III
Master in Equity for Beaufort County

_____, 2011

I MOVE:

G. Trenholm Walker, Esq.
Pratt-Thomas, Walker, P.A.
PO Drawer 22247
16 Charlotte Street
Charleston, SC 29413
(843) 727-2208
(843) 805-6533
gtw@wiselaw.com
Attorneys for Pinckney Point, LLC

I CONSENT:

Robert W. Achurch III Esquire
Howell, Gibson & Hughes, PA
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Zoning Board of Appeals for
Beaufort County*